UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, May 27, 2020
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, which advises the court that it is waiving the fee for the use of its service by pro se (not represented by an attorney) parties through May 31, 2020. 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. 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**
WJH-1

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
3-16-2020 [21]

SANDTON CREDIT SOLUTIONS MASTER FUND IV, LP/MV
RENO FERNANDEZ/ATTY. FOR DBT.
KURT VOTE/ATTY. FOR MV.
PER ECF ORDER #75 SET FOR EVIDENTIARY HEARING ON 9/17/20

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

DISPOSITION: Continued to September 17, 2020 at 9:30 a.m. and will conclude September 18, 2020, if necessary.

NO ORDER REQUIRED: The court already issued an order. Doc. #75.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Leatham, has accepted a post-clerkship position at Wanger, Jones, Helsley ("WJH"). As long as Mr. Leatham remains employed by the court, he will be screened from any matters where WJH is counsel of record. Mr. Leatham was screened from this matter. Nevertheless, the court advises the parties to discuss with their clients whether they wish to ask the court to recuse itself on this or future matters.

This matter was continued to May 27, 2020. Doc. #60. Pursuant to this court's scheduling order, this matter is set for an evidentiary hearing on September 17, 2020 at 9:30 a.m and will conclude September 18, 2020, if necessary. Doc. #75. Refer to the scheduling order, doc. #75, for specific orders concerning pertinent dates and deadlines.

2. 20-10809-B-11 **IN RE: STEPHEN SLOAN**
FW-2

CONTINUED MOTION TO USE CASH COLLATERAL
4-21-2020 [100]

STEPHEN SLOAN/MV
PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 9, 2020 at 9:30 a.m.

NO ORDER REQUIRED: The court already issued an order. Doc. #149.

Pursuant to the parties stipulation (doc. #147) and this court's order (doc. #149), this matter is continued to June 9, 2020 at 9:30 a.m. Debtor is granted interim authorization to use cash collateral in the amount of (a) $13,500.00 to make payroll due on or about May 31, 2020, (b) $1,750.00 to pay for workers compensation insurance, and (c) $8,000.00 to pay the amount due on the debtor's domestic support obligation in May. Any reply to the objection shall be filed not later than June 6, 2020.

3. 20-10809-B-11 **IN RE: STEPHEN SLOAN**
WJH-2

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
3-16-2020 [22]

SANDTON CREDIT SOLUTIONS MASTER FUND IV, LP/MV
PETER FEAR/ATTY. FOR DBT.
KURT VOTE/ATTY. FOR MV.
PER ECF ORDER #112 SET FOR EVIDENTIARY HEARING ON 9/17/20

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

DISPOSITION: Continued to September 17, 2020 at 9:30 a.m. and will conclude September 18, 2020, if necessary.

NO ORDER REQUIRED: The court already issued an order. Doc. #112.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Leatham, has accepted a post-clerkship position at Wanger, Jones, Helsley ("WJH"). As long as Mr. Leatham remains employed by the court, he will be screened from any matters where WJH is counsel of record. Mr. Leatham was screened from this matter. Nevertheless, the court advises the parties to discuss with their clients whether they wish to ask the court to recuse itself on this or future matters.

This matter was continued to May 27, 2020. Doc #89. Pursuant to this court's scheduling order, this matter is set for an evidentiary

hearing on September 17, 2020 at 9:30 a.m. Doc. #112. Refer to the scheduling order, doc. #112, for specific orders concerning pertinent dates and deadlines.

4. 11-10912-B-11 **IN RE: JAMIE/JAMES THOMAS**
MB-4

MOTION TO AMEND ORDER
4-27-2020 [267]

JAMIE THOMAS/MV
KIRK BRENNAN/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 amount 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.

This motion is GRANTED. Debtor seeks to amend an order valuing collateral that was entered by the court on June 7, 2011. Doc. #117. That motion sought to value real property at $250,000.00; determine that the claim held by Residential Mortgage Capital secured by the first deed of trust against the property in excess of $250,000.00 is a general unsecured claim for purposes of the Chapter 11 Plan, and; the amount of the claim held by Wells Fargo Bank, N.A. secured by the second deed of trust is $0.00 for the purposes of the Chapter 11 plan. Doc. #55.

Debtor seeks to amend the order because the order did not include recording information for the deeds of trust attached as exhibits or placed in the body of the order. Doc. #267.

Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rule of Bankruptcy Procedure 9024, permits a court to "correct a clerical mistake or a mistake arising from oversight or omission

whenever one is found in a judgment, order, or other part of the record."

Here, debtor's former attorney made a mistake in failing to include the recording documents attached as exhibits to the order, what has resulted in the order not reflecting the intent of the court and the parties of the "stripping off" of the second deed of trust of Wells Fargo Bank on the property. As a result, debtors have not been able to refinance the property because their title company reports that the underwriter will not guarantee title based on the order. Doc. #269. There is no opposition to this motion, and all necessary parties have been properly served.

This motion is GRANTED. The proposed order attached as Exhibit C to the motion shall be entered when properly lodged with the court.

5. 19-10423-B-12 **IN RE: KULWINDER SINGH AND BINDER KAUR**
FW-5

CONTINUED STATUS CONFERENCE RE: MOTION TO MODIFY CHAPTER 12 PLAN
2-25-2020 [199]

KULWINDER SINGH/MV
DAVID JOHNSTON/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

6. 16-13345-B-11 **IN RE: JONATHAN/PATRICIA MAYER**

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-27-2020 [289]

JOSE MARQUEZ/MV
PETER FEAR/ATTY. FOR DBT.
JOHN HAMMERSTRAND/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

First, the notice 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 movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

Second, LBR 9004-2(a)(6), (b)(5), (b)(6), (e) and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

This motion did not have a DCN.

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

This motion was filed and served on more than 28 days' notice. But the notice of hearing did not state when written opposition, if any, was due.

Additionally it does not appear that debtors, nor debtors' bankruptcy counsel, were served. See doc. #294.

For the above reasons, the motion is DENIED WITHOUT PREJUDICE.

7. 18-13677-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL HEALTH CARE DISTRICT**

CONTINUED STATUS CONFERENCE RE: CHAPTER 9 VOLUNTARY PETITION 9-7-2018 [1]

RILEY WALTER/ATTY. FOR DBT.

NO RULING.

8. 18-13677-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL HEALTH CARE DISTRICT**
WJH-10

CONTINUED AMENDED/MODIFIED PLAN
12-3-2019 [470]

RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Granted. The plan is confirmed.

ORDER: The court will issue the order.

The parties are advised that the Judicial Law Clerk for this Department, Mr. Leatham, has accepted a position with the Wanger Jones Helsley law firm. Mr. Leatham is screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Leatham.

Coalinga Regional Medical Center, a California Local Health Care District ("the District"), seeks confirmation of its Second Amended Plan of Adjustment Dated as of November 25, 2019 ("Plan"). Beckman Coulter, Inc. withdrew its opposition on May 22, 2020. Doc. #573.

The Second Amended Disclosure Statement ("Disclosure Statement") was approved by this Court on January 16, 2020. Doc. #501. Not later than February 18, 2020, copies of the order, Disclosure Statement, Plan of Adjustment, any Exhibits, and a Ballot were required to be provided to all parties as described in the Order Granting the District's Ex Parte Application to Prescribe Scope and Notice of Hearings on Disclosure Statement and Plan Confirmation entered on July 18, 2019. Id.

This court fixed March 17, 2020 as the last day for receipt by Wanger Jones Helsley, Counsel for the District as Ballot Agent, of signed acceptances or rejections of the Plan. Id. March 17, 2020 was fixed as the last day for filing, serving and receipt of written objections to confirmation of the Plan under to FRBP 3020(b)(1). Id.

The Ballot Tabulation showing the percentages of acceptances and rejections for impaired classes, in number and dollar amount were due to Wanger Jones Helsley no later than March 24, 2020. Id. The District timely filed the Ballot Tabulation on March 20, 2020. Docs. #523-25.

Briefs and evidence in support of Confirmation of the Plan were to be filed and served on or before March 24, 2020. Doc. #501.

March 31, 2020 at 9:30 a.m. was fixed as the date and time for the commencement of the hearing on Confirmation of the Plan of

Adjustment. Id. On March 24, 2020, this court ordered a continuance because the District determined that its lessee, Coalinga Medical Center ("CMC"), appeared to be experiencing financial difficulties and the District wished to reassess the feasibility of the Plan. Docs. #521, 527.

The District was ordered to advise the court and all parties in interest if it intended to proceed with the continued confirmation hearing on or before April 21, 2020. Doc. #527. The District gave notice that it intended to proceed with confirmation on April 8, 2020. Doc. #538. April 14, 2020 was the final filing deadline for written objections to confirmation. Id. No objections to confirmation were filed.

Wayne C. Allen, the Administrator/Chief Executive Officer/Strategic Advisor of the District filed a declaration on April 17, 2020, which stated his belief that CMC would not be receiving support from the State of California due to the COVID-19 crisis. Doc. #545. Mr. Allen informed the court that CMC has ceased moving forward on the asset purchase agreement, is not current on the April rent, and was told that the State of California is not likely to provide assistance to CMC to reopen the hospital in response to the COVID-19 Crisis. Id. Mr. Allen has further stated that while he believes the District will still be able to perform the Plan by finding another buyer for the facility and personal property assets, he does not have a high degree of confidence that there will not be a need for further financial reorganization in the future. Id. It is his professional opinion that it is still best to move forward with confirmation even if there is a need for further financial reorganization in the future. Id.

At Creditor Beckman Coulter, Inc.'s ("Beckman") request and due to the developments that occurred after the Plan objection and balloting deadline had passed, the court continued the confirmation hearing to May 27, 2020. Docs. #549, 556. The defaults of all non-responding parties, except Beckman, were entered with respect to the plan confirmation procedure since no objections were timely filed. Doc. #556. Beckman was required to file and serve its objection to confirmation not later than May 12, 2020, and the District was required to serve any reply not later than May 20, 2020. Id. Beckman filed its objection and contends that the Plan is not feasible under 11 U.S.C. § 943(b)(7) because CMC was delinquent on April and May 2020 rent payments and was unlikely to exercise its option to purchase the District's real and personal property. Doc. #564. Beckman withdrew its opposition on May 22, 2020. Doc. #573.

The District replied, stating that the Plan was overwhelmingly accepted by Class 3 creditors, including Beckman, with 75% in number and 96% in dollar amount. Docs. #569; 571, Ex. A. The District reaffirmed its belief that the Plan is feasible and must be confirmed. Additionally, while CMC did fall behind on the April and May rent payments, on May 13, 2020 the rent was fully paid and is now current. Doc. #570.

Confirmation requirements under 11 U.S.C. § 943(b)

Bankruptcy courts shall confirm a plan if the debtor proves the confirmation requirements set forth in 11 U.S.C. § 943(b) by a preponderance of the evidence. In re Barnwell Cty. Hosp., 471 B.R. 849, 855-56 (Bankr. D.S.C. 2012). Once the confirmation conditions are met, the court must confirm the plan. In re Pierce Cty. Hous. Auth., 414 B.R. 702, 715 (Bankr. W.D. Wash. 2009), as amended (Aug. 24, 2009).

11 U.S.C. § 943(b) states that the court shall confirm the plan if –

> (1) the plan complies with the provisions of this title made applicable by sections 103(e) and 901 of this title;
> (2) the plan complies with the provisions of this chapter [9];
> (3) all amounts to be paid by the debtor or by any person for services or expenses in the case or incident to the plan have been fully disclosed and are reasonable;
> (4) the debtor is not prohibited by law from taking any action necessary to carry out the plan;
> (5) except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that on the effective date of the plan each holder of a claim of a kind specified in section 507(a)(2) of this title will receive on account of such claim cash equal to the allowed amount of such claim;
> (6) any regulatory or electoral approval necessary under applicable non-bankruptcy law in order to carry out any provision of the plan has been obtained, or such provision is expressly conditioned on such approval; and
> (7) the plan is in the best interests of creditors and is feasible.

Compliance with 11 U.S.C. §§ 103(e) and 901 - 943(b)(1)

Section 943(b)(1) states that the court shall confirm the plan if the plan complies with the applicable provisions of sections 103(e) and 901. The provisions of § 901 that are applicable in plan confirmation include §§ 1122, 1123(a)(1), 1123(a)(2), 1123(a)(3), 1123(a)(4), 1123(a)(5), 1123(b), 1123(d), 1124, 1125, 1126(a), 1126(b), 1126(c), 1126(e), 1126(f), 1126(g), 1127(d), 1128, 1129(a)(2), 1129(a)(3), 1129(a)(6), 1129(a)(8), 1129(a)(10), 1129(b)(1), 1129(b)(2)(A), and 1129(b)(2)(B).

Substantially similar classes-§ 1122(a) - Section 1122(a) allows a plan to place a claim or interest in a particular class "only if such claim or interest is substantially similar to the other claims or interests of such class." While unsecured claims are similar, the plan proponent has "broad discretion to classify claims and interests according to the particular facts and circumstances of each case." Franklin High Yield Tax-Free Income Fund v. City of Stockton (In re City of Stockton), 542 B.R. 261, 280 (B.A.P. 9th Cir. 2015) (quoting In re City of Colo. Springs Spring Creek Gen. Improv. Dist., 187 B.R. 683, 687 (Bankr. D. Colo. 1995); Steelcase

Inc. v. Johnston (In re Johnston), 21 F.3d 323, 327-28 (9th Cir. 1993). The District must cite "a legitimate business or economic reason" for a separate classification for a classification to be proper and the purpose must not be to secure the vote of an impaired, consenting class of claims. Barakat v. Life Inc. Co. of Va. (In re Barakat), 99 F.3d 1520, 1525-26 (9th Cir. 1996); In re Johnston, 21 F.3d at 328; Wells Fargo Bank, N.A. v. Loop 76, LLC (In re Loop 76, LLC), 465 B.R. 525, 536 (B.A.P. 9th Cir. 2012), aff'd, 578 F.App'x 644 (9th Cir. 2014).

The District asserts that the Plan provides for separate classification of claims based on the underlying nature of the claims. This is unopposed.

Class 1 consists of holders of Taxable Refunding Revenue Bonds, Series 2019, which are secured by separate rights and collateral. These bonds have a principal amount of $11,000,000 and are current. Doc. #523. Therefore, Class 1 is not impaired under the Plan.

Class 2 is comprised of classified secured claims. There are no Class 2 secured claims. Id.

Class 3 includes all unsecured claims, including obligations to vendors, trade creditors, parties to various agreements, and other creditors in the aggregate amount of between $4.5 and $5.5 million. Id. Class 3 is impaired under the Plan.

Class 4 includes all liability claims. There are no Class 4 claims because the malpractice and tort claims have been resolved. Doc. #542.

Class 5 is an administrative convenience class. Eligible Class 3 unsecured creditors may elect treatment in that class. Doc. #523. Class 5 is impaired under the Plan.

Fair and equitable-§ 1129(b)(1)- Even if not all impaired classes have accepted the plan, the court is authorized under § 1129(b)(1) to confirm the plan if it has been accepted by at least one impaired class and "the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claim . . . ." 11 U.S.C. § 1129(b)(1).

Six of eight Class 3 creditors approved the Plan, representing 75% of the creditors in number and 96% of the total dollar amount of Class 3 claims. Docs. #523-25.

Nineteen of nineteen Class 5 creditors approved the Plan, representing 100% of the creditors in number and 100% of the total dollar amount of Class 5 claims. Id. At least one impaired class has accepted the Plan.

Regarding unsecured claims, Section 1129(b)(2)(B) (the "absolute priority rule") defines "fair and equitable" to mean that unsecured creditors may receive less than the value of their claims as of the effective date of the plan only if no class of junior claims of such

class receives or retains any distribution from their claims or interests. 11 U.S.C. 1129(b)(2)(B). The absolute priority rule is not applicable to the unsecured creditors of municipal debtors in chapter 9 cases because there cannot be a junior class of equity interests most commonly prevented from receiving or retaining property. In re Corcoran Hosp. Dist., 233 B.R. 449, 458 (Bankr. E.D. Cal. 1999).

A plan is fair and equitable as to unsecured creditors of a municipal district if creditors receive "all that they can reasonably expect in the circumstances." Lorber v. Vista Irr. Dist., 127 F.2d 628, 639 (9th Cir. 1942), cert. denied 323 U.S. 784, 65 S. Ct. 270 (1944); W. Coast Life Ins. Co. v. Merced Irr. Dist., 114 F.2d 654, 678 (9th Cir. 1940) (affirming confirmation of a plan under municipal debtor provisions of Bankruptcy Act of 1898 when the plan payments were "all that could reasonably be expected in all the existing circumstances"). It is not necessary for all collected taxes to be used to pay creditors, nor is it necessary that taxes be increased at all. Lorber, 127 F.2d at 639; In re Corcoran Hosp. Dist., 233 B.R. at 459. It is important that municipal debtors retain adequate funding to continue operations because the chapter 9 debtor cannot be dismantled or liquidated. Id.

The Plan proposes to pay creditors what the financial projections will allow. Under the Plan, the Class 3 General Unsecured claims will receive a distribution of an estimated 45% to 56.25% on the allowed claims over the next 10 years. Doc. #470. The District asserts that it does not have the financial resources to fund more than a minimum amount to pay for deferred maintenance obligations, other necessary repairs, and programs identified in the community needs assessment, along with any more than what the Plan provides for general unsecured claims. If the District is required to pay more on general unsecured claims, it will not be able to build adequate cash reserves and continue to provide healthcare services. Doc. #542. Therefore, the distribution to general unsecured creditors is all that can be reasonably expected under the circumstances and the plan is fair and equitable under § 1129(b)(1).

Unfair discrimination-§ 1129(b)(1)- Section 1129(b)(1) also requires that the plan "does not discriminate unfairly." 11 U.S.C. § 1129(b)(1). However, the plan may still discriminate fairly. In re Plant Insulation Co., 2012 Bankr. LEXIS 1716 at *27-28 (Bankr. N.D. Cal. Mar. 15, 2012); In re Aztec Co., 107 B.R. 585, 588-89 (Bankr. M.D. Tenn. 1989). It is "necessarily inherent in the term 'unfair discrimination' . . . that there may be 'fair' discrimination in the treatment of classes of creditors." In re Simmons, 288 B.R. 737, 747-48 (Bankr. N.D. Tex. 2003), holding modified by In re King, 260 B.R. 708 (Bankr. N.D. Tex. 2011) (citing 7 *Collier on Bankruptcy* ¶ 1129.04[3] (15th ed. 2002)).

No party here has raised unfair discrimination as an objection. The resolution of pre-Disclosure Statement litigation allowed for the District to propose a confirmable plan. Creditors who have settled with the District and agreed to accept the Plan or make other valuable concessions may receive more favorable treatment than non-

settling creditors without violating the prohibition on unfair discrimination in § 1129(b)(1).

Additionally, the District is not required to show that the Plan does not discriminate unfairly because all classes of impaired claims have voted to confirm the Plan. Dissenting creditors in an accepting class of general unsecured creditors does not require the court to conduct a "cram down" analysis under § 1129(b). In re City of Stockton, 542 B.R. at 283 (citing In re City of Colo. Springs Spring Creek Gen. Improv. Dist., 187 B.R. 683, 690 (Bankr. D. Colo. 1995)).

Therefore, this Plan does not unfairly discriminate under § 1129(b)(1).

Contents of the plan - § 1123

11 U.S.C. § 1123 establishes the requirements for the contents of the plan. Sections 1123(a)(1)-(5), 1123(b), and 1123(d) are incorporated under § 901(a).

Designate classes-§ 1123(a)(1)- Section 1123(a)(1) requires a plan to designate classes of claims, other than claims of a kind specified in §§ 507(a)(2), 507(a)(3), or 507(a)(8), and classes of interests. 11 U.S.C. 1123(a)(1). Here, the Plan designates five classes of claims, none of which are specified in §§ 507(a)(2) (claims of federal reserve banks and claims entitled to administrative priority under § 503(b)), 507(a)(3) (involuntary gap claims), or 507(a)(8) (claims of governmental units for taxes, customs duties, and penalties). Doc. #470. There are no classes of interest under the Plan because there are no equity holders in this case. Therefore, the Plan satisfies the requirements of § 1123(a)(1).

Specify treatment of unimpaired claims-§ 1123(a)(2)- Section 1123(a)(2) states that a plan shall specify any class of claims or interests that is not impaired under the plan. 11 U.S.C. § 1123(a)(2). Here, Article III of the Plan specifies the classes of claims that are not impaired. Doc. #470. Class 1 is unimpaired under the Plan and presumed to have accepted the Plan. There are no Class 2 or Class 4 claims. Therefore, the Plan complies with the requirements of § 1123(a)(3).

Specify treatment of impaired claims-§ 1123(a)(3)- Section 1123(a)(3) requires that a plan shall specify the treatment of any class of claims or interests that is impaired under the plan. 11 U.S.C. § 1123(a)(3). Article III of the Plan specifies the treatment of the impaired classes of claims, which are Classes 3 and 5. Doc. #470.

Same treatment for each respective class claim-§ 1123(a)(4)- Section 1123(a)(4) states that the plan shall "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest[.]" 11 U.S.C. §

1123(a)(4). Here, the Plan provides for the same treatment of each claim in each respective class. Doc. #470.

Adequate means of implementation-§ 1123(a)(5)- Section 1123(a)(5) requires that the plan provide an adequate means for the plan's implementation. 11 U.S.C. § 1123(a)(5). Based on current financial information and audited financial statements, the District prepared long-term financial projections that show that it will be able to achieve a balanced and sustainable budget for the foreseeable future and make the proposed Plan payments. Doc. #473, Ex. A. The District will implement the Plan by operating under applicable law and collecting tax revenues, rents, and other revenue. Doc. #470. The revenue will allow the District to continue its mission set forth in its bylaws, maintain and fund the services set forth in its bylaws, and satisfy its obligations to its creditors as restructured pursuant to the Plan. Id. As discussed below, CMC's performance under various post-petition agreements is currently precarious. But the Plan does provide a means to implement its provisions: sale or lease of certain assets. The means of implementation is provided in the Plan which satisfies this requirement.

Allowances-§ 1123(b)- Section 1123(b) sets for the provisions that may be incorporated into a chapter 9 plan. 11 U.S.C. § 1123(b). Section 1123(b) provides that a plan may impair or leave unimpaired any class of claims, secured or unsecured or of interests. 11 U.S.C. § 1123(b)(1). Here, some classes are impaired while others are unimpaired. Doc. #470, Art. III and IV.

Section 1123(b)(2) allows a plan, subject to § 365, to provide for the assumption, rejection, or assignment of any executory contract not previously rejected. 11 U.S.C. § 1123(b)(2). Article VI of the Plan provides a description of which contracts and leases will be assumed, assigned, or rejected pursuant to the Plan. Doc. #470, § VI.

Section 1123(b)(3) permits a plan to provide for the settlement or adjustment of any claim or interest belonging to the debtor, or retention and enforcement by the debtor, trustee, or representative of the estate appointed for such purpose, of any such claim or interest. 11 U.S.C. § 1123(b)(3). Article V of the Plan specifies that the District shall be vested with all right, title, and interest of all of its assets, which includes the claims and interests under § 1123(b)(3). Doc. #470, Art. V, § 5.1.

Confirmation - § 1129

Next, § 901(b) incorporates the requirements of §§ 1129(a)(2), 1129(a)(3), 1129(a)(6), 1129(a)(8), 1129(a)(10), 1129(b)(1), 1129(b)(2)(A), and 1129(b)(2)(B) in determining whether the court shall confirm a plan. 11 U.S.C. § 901(b).

Compliance with applicable title 11 provisions-§ 1129(a)(2)- Section 1129(a)(2) requires that the proponent of the plan comply with the applicable provisions of title 11. The purpose of this requirement is to include the provisions of §§ 1125 and 1126 regarding

disclosure and plan solicitation. See H.R. Rep. No. 95-595, at 412 (1997); S. Rep. No. 95-989 (1978).

Section 1125(b) requires that a plan proponent transmit a copy of the plan and a court-approved disclosure statement containing "adequate information" before the plan proponent may solicit acceptances of the plan at or before the time of such solicitation. 11 U.S.C. § 1125(b).

Section 1126 authorizes only holders of allowed claims to accept or reject a plan. 11 U.S.C. § 1126(a).

Here, the District served by mail the documents required by the order approving the Disclosure Statement on all eligible voters determined to be holders of allowed claims. Doc. #518.

Therefore, the District has complied with the requirements of §§ 1125, 1126, and 1129(a)(2).

Good faith-§ 1129(a)(3)- Section 1129(a)(3) requires that the plan has been proposed in good faith and not by any means forbidden by law. Good faith is determined based upon the totality of the circumstances in a particular case. In re City of Stockton, 542 B.R. at 278-79. "In order to satisfy the statutory requirement of good faith, a plan must be intended to achieve a result consistent with the objectives of the Bankruptcy Code." In re Corey, 892 F.2d 829, 835 (9th Cir. 1989) (citing In re Stolrow's, Inc., 84 B.R. 167, 172 (B.A.P.9th Cir. 1988) and In re Jorgensen, 66 B.R. 104, 108-09 (B.A.P. 9th Cir. 1986).

In assessing whether a plan was proposed in good faith, courts have determined that the test is whether the plan allowed an insolvent municipality to restructure its debts in order to continue to provide public services. Mount Carbon Metro. Dist., 242 B.R. 18, 41 (Bankr. D. Colo. 1999). The District asserts the Plan was proposed in good faith because its primary objective in proposing the Plan is to restructure its debts in order to provide healthcare services to its residents, which the Plan will achieve. Doc. #545. Further, the District claims it has demonstrated good faith by negotiating with creditors to settle litigation, resolve claims and disputes, refinance its bond indebtedness to save millions of dollars, and identify a suitable partner to reopen its medical facilities to provide health care services to its residents. Doc. #542. The District cites that impaired classes of creditors voted to accept the Plan as evidence of its success in its good faith efforts. Doc. #470. Class 3, which will receive a 45% to 56.25% distribution over the next ten years under the Plan, voted to accept. Docs. #523-25. Therefore, the District has satisfied the good faith requirement under § 1123(a)(3).

Government regulatory commission approval-§ 1129(a)(6)- Section 1129(a)(6) requires that any governmental regulatory commissions with jurisdiction over the rates of the debtor approve the rate change provided for in the plan after confirmation.

The District is not subject to any governmental rate-setting commission; therefore, § 1129(a)(6) does not apply.

Acceptance of impaired classes-§ 1129(a)(8)- Section 1129(a)(8) requires that impaired classes accept the plan. 11 U.S.C. § 1129(a)(8). Here, Class 1 is not impaired. Docs. #523-25. An unimpaired class is conclusively presumed to have accepted the plan. 11 U.S.C. § 1126(f). There are no Class 2 or 4 creditors. Doc. #523. As discussed above, Classes 3 and 5 are impaired but have accepted the Plan. Id. Under § 1126(c), an impaired class of claims accepts the plan if more than at least two-thirds in total dollar amount and one-half in number of the allowed claims have accepted the plan. Here, 75% of creditors representing 96% of the total dollar amount voted to approve the Plan, and therefore Class 3 has accepted the Plan. Doc. #523.

Therefore, the Plan complies with § 1129(a)(8).

Acceptance of impaired classes without insiders-§ 1129 (a) (10)- Section 1129(a)(1) states that if a class of claims is impaired under the plan, at least one impaired class has accepted the plan, not including any acceptance of the plan by insiders. 11 U.S.C. § 1129(a)(10).

Since each of the impaired Classes 3 and 5 voted to accept the Plan, it therefore satisfied § 1129(a)(10). Docs. #523-25.

Compliance with chapter 9 - § 943(b)(2)

Section 943(b)(2) requires that the plan complies with the provisions in this chapter, which will be discussed below.

§§ 941 and 942- Section 941 requires that the debtor file a plan for adjustment of debts. If not filed with the petition, the plan may be filed at a later time as the court fixes. 11 U.S.C. § 941.

Section 942 authorizes the debtor to modify the plan at any time before confirmation, so long as the plan still meets the requirements of the Bankruptcy code. 11 U.S.C. § 942. The court did not set any deadline to file the Plan, and the District has not filed any plan modifications prior to the confirmation hearing, so the Plan satisfies §§ 941 and 942.

§ 943(b)(2)- Section 943(b)(2) requires that the plan complies with the provisions in this chapter, which will be discussed below.

All amounts paid disclosed and reasonable - § 943(b)(3)

Section 943(b)(3) states that "all amounts to be paid by the debtor . . . for services or expenses in this case or incident to the plan have been fully disclosed and are reasonable." 11 U.S.C. § 943(b)(3). The District claims that it has been paying its professionals on a current basis and does not expect that there will be any future payments that fall within § 943(b)(3). Doc. #542.

Not prohibited by law - § 943(b)(4)

Section 943(b)(4) states that the plan shall be confirmed if the debtor is not prohibited by law from taking any action necessary to carry out the plan. 11 U.S.C. § 943(b)(4). This section is intended to prevent chapter 9 debtors from using chapter 9 cases to circumvent compliance with state law after confirmation. In re Sanitary & Improv. Dist. #7, 98 B.R. 970 (Bankr. D. Neb. 1989). The District indicates its intention to comply with all laws, regulations, and ordinances following confirmation of the Plan. Doc. #541.

Provides for the payment in full - § 943(b)(5)

Section 943(b)(5) states that a plan cannot be confirmed unless it provides for the payment in full on the effective date of the plan all claims specified in § 507(a)(2). 11 U.S.C. § 943(b)(5). Section 507(a)(2) refers to administrative expenses under § 503(b), unsecured claims of any Federal reserve bank related to loans made through programs or facilities authorized under section 13(3) of the Federal Reserve Act (12 U.S.C. 343), and any fees and charges assessed against the estate under chapter 123 of title 28. 11 U.S.C. § 507(a)(2).

Administrative expenses-§ 503(b)- Sections 503(b)(3)(D) and (F), 503(b)(4) and (b)(5) are applicable to chapter 9 cases. These include claims arising from substantial contribution to the chapter 9 case; expenses of lawfully appointed official committee members that are incurred in the performance of their duties; and reasonable compensation for attorneys or accountants working for parties making a substantial contribution to the case. 11 U.S.C. §§ 503(b)(3)(D) and (F), (b)(4)-(5). Sections § 503(b)(7)-(9) are also other allowable administrative expenses. 11 U.S.C. §§ 503(b)(7)-(9).

Here, only one creditor, Fresno County Private Security, filed a claim seeking payment under §§ 503(b)(3)(D) and (b)(7)-(9), which is currently in dispute and being withdrawn by the claimant. Docs. #481-84, 505. The District states that it is not aware of any other claims. Doc. #541.

In chapter 9 cases, there is no estate that needs to be preserved. Diamond Z Trailer, Inc. v. JZ L.L.C. (In re JZ L.L.C.), 371 B.R. 412, 419 n.4 (B.A.P. 9th Cir. 2007); In re City of Vallejo, 403 B.R. 72, 78 n.2 (Bankr. E.D. Cal. 2009), aff'd sub nom. IBEW, Local 2376 v. City of Vallejo (In re City of Vallejo), 432 B.R. 262 (E.D. Cal. 2010); In re Jefferson County, 484 B.R. 427, 460-61 (Bankr. N.D. Ala. 2012). Therefore, there can be no "necessary costs and expenses of preserving the estate" because the estate does not exist. In re New York City Off-Track Betting Corp., 434 B.R. 131, 142 (Bankr. S.D.N.Y. 2010); In re Texas Wyoming Drilling, Inc., 486 B.R. 746, 759 (Bankr. N.D. Tex. 2013). The Plan does not provide for payment of claims as allowable administrative expenses under § 503(b)(1)(A). Additionally, there have not been any objections from creditors as to the treatment under the Plan and the scope of administrative expense priority. Therefore, § 943(b)(5) is satisfied.

Regulatory or electoral approval - § 943(b)(6)

Section 943(b)(6) states that any regulatory or electoral approval necessary under non-bankruptcy law in order to carry out any provision of the plan has been obtained, or is conditioned on approval. 11 U.S.C. § 943(b)(6).

The District asserts that it does not need to obtain regulatory or electoral approval to carry out the Plan and that the Board has approved the Plan. Doc. #541. Therefore, § 943(b)(6) is satisfied.

Feasibility and Best Interests - § 943(b)(7)

Section 943(b)(7) requires that a Chapter 9 plan be "in the best interests of creditors and is feasible." The court has an independent obligation to determine that a proposed plan meets the confirmation requirements of § 943 (b) notwithstanding creditor approval. Prime Healthcare Mgmnt. v. Valley Health Sys. (In re Valley Health Sys.), 429 B.R. 692, 710 n. 45 (Bankr. C.D. Cal. 2010). The District here has the burden to prove the requirements for confirmation of the Chapter 9 Plan by a preponderance of the evidence. In re Pierce Cnty. Hous. Auth., 414 B.R. 702, 715 (Bankr. W.D. Wash. 2009).

The Plan is based on assumptions underlying its financial projections, which include:

> (a) CMC will remain current on its lease obligations and purchase the District's personal property for $200,000;
> (b) CMC will exercise its option to purchase the District's real property in fiscal year ending 2022 for $1 million;
> (c) the District's ad valorem tax revenues increase at the rate of 3% per annum;
> (d) the District recovers at least $225,000 through avoidance actions over a two-year period;
> (e) the District provides community benefit services at the minimum level required by law;
> (f) expenses do not exceed the amount set forth in the financial projections; and
> (g) the District rebuilds its cash reserves to a prudent level to address various risks and contingencies. Docs #470, 564.

The District has the approval of qualified claimants in both impaired classes—general unsecured creditors (Class 3) and the "administrative convenience class" (Class 5) — but the court must find both feasibility and best interests to confirm the Plan.

These findings are difficult here. No objection to confirmation has been filed, the District's CEO and Strategic Advisor, Wayne Allen, has, in successive declarations, shown in real time the frailty of projections upon which performance of the proposed plan is based. Mr. Allen testified in one declaration (doc. #521) that after CMC initially failed to perform its lease obligations earlier this year, the District's board needed to determine feasibility even if CMC did not perform.

Shortly thereafter, some of the effects of the current COVID-19 pandemic became apparent and optimism for CMC's lease and contract performance surged. In a later declaration, (doc. #541) Mr. Allen testified that CMC brought the lease current. He also stated he believes the state of California will be providing CMC with assistance and incentives for reopening the hospital on an accelerated basis. The District agreed to extend the initial March 30, 2020 reopening date to August 2020.

Then, optimism turned into uncertainty. In a third "supplemental" declaration (doc. #545) Mr. Allen testified that CMC "ceased moving forward on the Asset Purchase Agreement," is not current on April 2020 rent, and the District needs another buyer/lessee for the assets. Mr. Allen also stated his belief that it best to move forward with confirmation even if there is a need for future financial reorganization.

Now Mr. Allen declares the lease with CMC is current. But CMC's performance is "less than stellar." This reality was, in fact, adequately disclosed in the approved Disclosure Statement. Mr. Allen also says the District will look for another tenant or buyer. At present, feasibility is established. To be sure, CMC may default next month, in two months, in six months. That does not mean the District has failed to establish feasibility.

Feasibility-To be a feasible plan in Chapter 9, the debtor must be able to have a reasonable prospect of successfully implementing the plan while continuing to provide government services. In re Hardeman Cty. Hosp. Dist., 540 B.R. 229, 242 (Bankr. N.D. Texas 2015). A Chapter 9 plan is feasible if "it offers a reasonable prospect of success and is workable." In re Valley Health Sys., 429 B.R. at 711. The court should conduct "an objective evaluation of the proposed [Chapter 9] reorganization." In re Mount Carbon Metro. Dist., 242 B.R. 18, 36 (Bankr. D. Colo. 1999). The Chapter 9 plan cannot be "speculative or conjectural." Id. at 35 quoting In re Ames, 973 F.2d 849, 851 (10th Cir. 1992) quoting In re Novak, 102 B.R. 22, 24 (Bankr. E.D.N.Y. 1989).

The approved Disclosure Statement here had projections as an exhibit (Doc. 473). Those projections and the assumptions for those projections unequivocally state the District's performance under the proposed plan needs: CMC's lease continuing on existing terms, the lease option must be performed, the District needs at least $225,000 of payments per year, the completion of an equipment sale and maintenance of current *ad valorem* tax revenue.

The proposed plan, though, provides for the disposition of certain assets. CMC was the designated purchaser/lessee, but CMC's potential breach does not change the plan. CMC may or may not perform its' obligations. If the District faces the end of the relationship with CMC, the District can seek another lessee/buyer. The hospital is currently closed. The District may have to make some hard choices, especially if there are few interested parties. Since the District was able to find a buyer/lessee before, there is a reasonable prospect it will again; it is not "conjectural." The court was

informed the District's voters overwhelmingly approved the proposed sale/lease of District assets. So, for now, an alternative operator is a political reality.

The key to the District continuing to provide health care services to the citizens of the District, according to the evidence, is an operator of the medical facilities. The District is not proposing a complex reorganization here or one relying on unproven future developments to be successful. CMC agreed to a lease/purchase option and an asset sale. Under § 904 the court cannot convert the case or order the liquidation of District property. The current buyer/lessee is problematic but that does not mean the plan is not feasible. The District also is pursuing avoidance claims which may result in additional cash infusions. Mr. Allen's latest declaration states the District will be looking for another buyer/lessee. The proposed payment schedule is 10 years. The court finds that the proposed plan is feasible under § 943(b)(7).

Best interest of creditors- This finding is factually based. Franklin High Yield Tax-Free Income Fund et al v. City of Stockton (In re City of Stockton), 542 B.R. 261, 284 (B.A.P. 9th Cir. 2015). This test requires "that a proposed plan provides a better alternative for creditors than what they already have." In re Pierce Cnty. Hous. Auth., 414 B.R. at 718; In re: Sanitary & Improv. Dist. #7, 98 B.R. 970, 974 (Bankr. D. Neb. 1989). The court must consider the "collective interests of all concerned creditors in a municipal Plan of Adjustment rather than focusing on claims of individual creditors." In re City of Stockton, 542 B.R. at 286.

Unlike a Chapter 11 case, creditors in a Chapter 9 cannot propose their own plan. The court cannot interfere with the property of the debtor, convert the case, or appoint a trustee. The court can dismiss the case. § 930. If plan confirmation is refused or the court denies confirmation of the plan and not allow the debtor time to propose a new plan, the case can be dismissed. The alternative of dismissal now is not in creditors' best interest. If dismissed, then creditors with larger claims will "rush to the courthouse." After going through lengthy and expensive litigation, the creditors may not be any better off than the proposed plan.

Under the plan, the unsecured creditors not electing the convenience class can expect 45-56% dividends over 10 years. That lengthy payment period and the discounted claim amounts have not with some exceptions, resulted in the impaired class voting against the plan. True enough, the court must make an independent judgment about best interests. But nothing in the law requires the court to ignore reality: the creditors largely voted to accept the plan. The Disclosure Statement outlined risks including the present difficulties with CMC. Still the creditors favor the plan.

The District may have to operate the hospital if no buyer/lessees are found. It is also possible the relevant state health officials may make other arrangements to provide medical care to the District's residents. But not even that possibility suggests this plan should not be confirmed. When considering all the creditors, the medically underserved residents of this District and the

alternatives, the court finds the plan is in the best interests of the creditors.

Conclusion

Therefore, the plan conforms to the requirements of 11 U.S.C. § 943(b)(1)-(7). The Plan is confirmed.

9. 18-13677-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL HEALTH CARE DISTRICT**
WJH-11

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
5-6-2020 [559]

COALINGA REGIONAL MEDICAL CENTER, A CALIFORNIA LOCAL
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Continued to July 14, 2020 at 9:30 a.m.

NO ORDER REQUIRED: The court already issued an order. Doc. #575.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Leatham, has accepted a post-clerkship position at Wanger, Jones, Helsley ("WJH"). As long as Mr. Leatham remains employed by the court, he will be screened from any matters where WJH is counsel of record. Mr. Leatham was screened from this matter. Nevertheless, the court advises the parties to discuss with their clients whether they wish to ask the court to recuse itself on this or future matters.

Pursuant to the parties' stipulation and this court's order, this matter is continued to July 14, 2020 at 9:30 a.m. due to ongoing discussions between counsel for the District and Med One Capital Funding, LLC. Doc. #575. Opposition, if any, is due not later than June 30, 2020.

10. 19-15277-B-11 **IN RE: SVENHARD'S SWEDISH BAKERY**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
12-19-2019 [1]

DERRICK TALERICO/ATTY. FOR DBT.

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

DISPOSITION: Continued to June 3, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

Judge Lastreto has recused himself from hearing this case. The case has been assigned to Judge Klein. This matter is continued June 3, 2020 at 11:00 a.m. in Sacramento, CA at 501 I Street.

11. 19-15277-B-11 **IN RE: SVENHARD'S SWEDISH BAKERY**
BR-1

CONTINUED MOTION FOR TURNOVER OF FUNDS HELD BY THE DEBTOR THAT ARE NOT PROPERTY OF THE ESTATE
1-28-2020 [42]

BIMBO BAKERIES USA, INC./MV
DERRICK TALERICO/ATTY. FOR DBT.
CHERYL CHANG/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 3, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

Judge Lastreto has recused himself from hearing this case. The case has been assigned to Judge Klein. This matter is continued June 3, 2020 at 11:00 a.m. in Sacramento, CA at 501 I Street.

12. 19-15277-B-11 **IN RE: SVENHARD'S SWEDISH BAKERY**
DT-7

MOTION TO EXTEND EXCLUSIVITY PERIOD FOR FILING A CHAPTER 11 PLAN AND MOTION/APPLICATION TO EXTEND EXCLUSIVITY PERIOD FOR FILING A CHAPTER 11 PLAN AND DISCLOSURE STATEMENT FILED BY DEBTOR SVENHARD'S SWEDISH BAKERY
4-17-2020 [126]

SVENHARD'S SWEDISH BAKERY/MV
DERRICK TALERICO/ATTY. FOR DBT.

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

DISPOSITION: Continued to June 3, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

Judge Lastreto has recused himself from hearing this case. The case has been assigned to Judge Klein. This matter is continued June 3, 2020 at 11:00 a.m. in Sacramento, CA at 501 I Street.

13. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
WJH-20

CONTINUED OBJECTION TO CLAIM OF WELLS FARGO VENDOR FINANCIAL, CLAIM NUMBER 162 AND/OR OBJECTION TO CLAIM OF WELLS FARGO VENDOR FINANCIAL, CLAIM NUMBER 163
1-8-2020 [1794]

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
CONTINUED TO 6/23/20 PER ECF ORDER #2175

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

DISPOSITION: Dropped from the calendar.

NO ORDER REQUIRED: Movant withdrew the objection. Doc. #2182.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Leatham, has accepted a post-clerkship position at Wanger, Jones, Helsley ("WJH"). As long as Mr. Leatham remains employed by the court, he will be screened from any matters where WJH is counsel of record. Mr. Leatham was screened from this matter. Nevertheless, the court advises the parties to discuss with their clients whether they wish to ask the court to recuse itself on this or future matters.

14. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
WJH-4

MOTION TO FILE AMENDED PROOF OF CLAIM
4-10-2020 [2126]

DEPARTMENT OF HEALTH CARE SERVICES/MV
RILEY WALTER/ATTY. FOR DBT.
XAVIER BECERRA/ATTY. FOR MV.
CONTINUED TO 6/23/20 PER STIPULATION AND ORDER #2181

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

DISPOSITION: Continued to June 23, 2020 at 9:30 a.m.

NO ORDER REQUIRED: The court already issued an order. Doc. #2181.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Leatham, has accepted a post-clerkship position at Wanger, Jones, Helsley ("WJH"). As long as Mr. Leatham remains employed by the court, he will be screened from any matters where WJH is counsel of record. Mr. Leatham was screened from this matter. Nevertheless, the court advises the parties to discuss with their clients whether they wish to ask the court to recuse itself on this or future matters.

Pursuant to the parties' stipulation and this court's order, this matter is continued to June 23, 2020 at 9:30 a.m. Doc. #2181. Opposition, if any, is due not later than June 9, 2020.

11:00 AM

1. 20-11159-B-7 **IN RE: PEDRO AMARO**

PRO SE REAFFIRMATION AGREEMENT WITH FIRST TECH FEDERAL CREDIT UNION
4-28-2020 [13]

TIMOTHY SPRINGER/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.

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). In this case, the debtor's 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.

2. 20-11064-B-7 **IN RE: JOSE FELIX**

REAFFIRMATION AGREEMENT WITH AMERICAN HONDA FINANCE CORP.
4-20-2020 [13]

TIMOTHY SPRINGER/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.

3. 20-10874-B-7 **IN RE: OLGA FLORES**

PRO SE REAFFIRMATION AGREEMENT WITH RELIANT FINANCIAL CORP.
5-7-2020 [44]

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This reaffirmation between the debtor and creditor Reliant Financial Corp. was filed on May 7, 2020. The court deems this reaffirmation to be an amendment to the reaffirmation filed by the same creditor on April 20, 2020. Doc. #33. The court heard the matter on May 12, 2020. Debtor appeared and the court denied the reaffirmation with Reliant Financial Corp. Doc. #51. Therefore, this hearing is dropped as moot.

1:30 PM

1. 20-10906-B-7 **IN RE: PEDRO ESCUTIA**
DMG-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-29-2020 [11]

VEL VALIRA LLC/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling conference.

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

The hearing on this motion will be called as scheduled and will proceed as a scheduling conference.

The court first notes that there is no proof of service attached to the motion. As such, the court is unable to verify whether the chapter 7 trustee and the debtor were properly served. Because debtor's attorney responded, the court may take the motion up on its merits. But unless evidence of timely service is produced at the hearing, the court will require that the motion and accompanying documents be served on the necessary parties, a proof of service filed with the court, and the hearing may be further continued.

Movant Vel Valira LLC ("Movant") asks the court for an order lifting the automatic stay as to real property located at 1301 Cottonwood Road in Bakersfield, CA. Doc. #11. Movant alleges that debtor has defaulted on obligations owed to Movant and debtor has no equity in the property. Doc. #13.

Debtor timely opposed, stating that the "property is in escrow for $91,000.00" and therefore Movant is adequately protected. Doc. #17. The meeting of creditors is scheduled for May 20, 2020 at which time the chapter 7 trustee will determine if the property will be administered or indicated if he will not oppose a motion to abandon. Id.

Since this matter is scheduled to be heard after the meeting of creditors takes place, the parties shall appear at this hearing and report on what took place at the meeting.

This matter is now deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of

discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

Based on the record, the factual issues appear to include: whether debtor has any equity in the property; whether Movant is adequately protected.

2. 20-10414-B-7 **IN RE: JOSE ROBLES**
ICE-1

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
4-17-2020 [13]

MARK HANNON/ATTY. FOR DBT.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The chapter 7 trustee's motion to dismiss is DENIED AS MOOT. The grounds of the motion are that debtor failed to attend the § 341 meeting of creditors. Doc. #13. Debtor attended the continued § 341 meeting on May 14, 2020 and the meeting was concluded. Therefore the grounds of the motion is moot and the motion is denied.

3. 18-10419-B-7 **IN RE: JARED NEIDLINGER**
FW-5

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR PETER A. SAUER, TRUSTEES ATTORNEY(S)
4-23-2020 [83]

ERIC ESCAMILLA/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 amount 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 motion will be GRANTED. The chapter 7 trustee's counsel, Peter Sauer of Fear Waddell, P.C., requests fees of $23,339.00 and costs of $218.56 for a total of $23,557.56 for services rendered from April 25, 2018 through April 22, 2020. Doc. #83.

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) Preparation of employment and fee applications for various professionals, (2) Settling an employment discrimination claim, and (3) Updating the trustee on general case matters and claims analysis. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $23,339.00 in fees and $218.56 in costs.

4. 18-10419-B-7 **IN RE: JARED NEIDLINGER**
JES-2

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, CHAPTER 7 TRUSTEE(S)
4-27-2020 [97]

JAMES SALVEN/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
PETER SAUER/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 amount 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.

This motion is GRANTED. 11 U.S.C. §§ 326 and 330 allow reasonable compensation to the chapter 7 trustee for the trustee's services. 11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses.

Chapter 7 Trustee James Salven ("Trustee") requests fees of $10,592.50 and costs of $263.49 for a total of $10,855.99 as statutory compensation and actual and necessary expenses. During this case, Trustee conducted the meeting of creditors, settled an employment discrimination claim, and prepared the final report.

The court finds Trustee's services were actual and necessary to the estate, and the fees are reasonable. The motion is GRANTED and Trustee is awarded the requested fees and costs.

5. 18-10419-B-7 **IN RE: JARED NEIDLINGER**
RTW-2

MOTION FOR COMPENSATION FOR RATZLAFF, TAMBERI & WONG, ACCOUNTANT
4-27-2020 [90]

RATZLAFF, TAMBERI & WONG/MV
ERIC ESCAMILLA/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 amount 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 motion will be GRANTED. The chapter 7 trustee's accountant, Ratzlaff, Tamberi & Wong, requests fees of $1,496.00 and costs of $15.00 for a total of $1,511.50 for services rendered from February 27, 2020 through March 17, 2020. Doc. #90.

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) Communicating with the trustee regarding estate and preparation of tax returns, (2) Reviewing the petition and analyzing tax issues, (3) Preparing and filing federal and state fiduciary income tax returns including underlying workpapers for the period ended March 31, 2020, and (4) Preparing and submitting the fee application. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $1,496.00 in fees and $15.00 in costs.

6. 16-10521-B-7 **IN RE: ALAN ENGLE**
TMT-2

MOTION FOR COMPENSATION FOR TRUDI G. MANFREDO, CHAPTER 7 TRUSTEE
4-20-2020 [327]

TRUDI MANFREDO/MV
SUSAN HEMB/ATTY. FOR DBT.
GABRIEL WADDELL/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 amount 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.

This motion is GRANTED. 11 U.S.C. §§ 326 and 330 allow reasonable compensation to the chapter 7 trustee for the trustee's services. 11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses.

Chapter 7 Trustee Trudi Manfredo ("Trustee") requests fees of $13,000.00 and costs of $625.40 for a total of $13,625.40 as statutory compensation and actual and necessary expenses. During the course of this case, Trustee conducted the meeting of creditors, auctioned estate property, and uncovered extensive undisclosed assets that were liquidated. Doc. #330.

The court finds Trustee's services were actual and necessary to the estate, and the fees are reasonable. The motion is GRANTED and Trustee is awarded the requested gees and costs.

7. 18-13224-B-7 **IN RE: ANTHONY CORRAL**
JES-4

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT
4-23-2020 [122]

JAMES SALVEN/MV
DAVID JENKINS/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 amount 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 motion will be GRANTED. The chapter 7 trustee's accountant, James Salven, requests fees of $1,775.00 and costs of $243.08 for a

total of $2,018.08 for services rendered from February 27, 2020 through April 23, 2020. Doc. #122.

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) Preparation of employment and fee applications, (2) Analyzing and input of closing statement, and (3) Analyzing and inputting date for tax returns. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $1,775.00 in fees and $243.08 in costs.

8. 20-11053-B-7 **IN RE: MICHAEL/DIANE STOFFAN**
GT-1

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
4-17-2020 [13]

MICHAEL STOFFAN/MV
GRISELDA TORRES/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 amount 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.

This motion is GRANTED. 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 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). Section 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Capital One Bank (USA), N.A., in the sum of $5,358.01 on February 26, 2019. Doc. #16. The abstract of judgment was recorded with Mariposa County on April 10, 2019. Id. That lien attached to the debtor's interest in a residential real property in Mariposa, California. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $387,500.00 as of the petition date. Doc. #1, Schedule A. The unavoidable liens totaled $292,025.56 on that same date, consisting of a first deed of trust in favor of Rushmore Loan Management, and a second deed of trust in favor of CALHFA Mortgage Assistance Program, and an assessment lien in favor of Hero California Residential Program. Doc. #1, Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of $175,000.00. Doc. #1, Schedule C.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

9. 20-10357-B-7 **IN RE: STEPHEN MEZA**
AP-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-27-2020 [32]

WELLS FARGO BANK, N.A./MV
MARK ZIMMERMAN/ATTY. FOR DBT.
WENDY LOCKE/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 amount 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, Wells Fargo Bank, N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to real property located at 2172 Stuart Rd., Hibbing, Minnesota 55746 ("Property"). Doc. #37.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least 9 pre- and post-petition payments. The movant has produced evidence that debtors are delinquent at least $13,587.99. Doc. #34. The property is valued at $190,000.00 and debtor owes $184,422.80. Doc. #16.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) 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 order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 9 payments, both pre- and post-petition to Movant.

The request of the Moving Party, at its option, to provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement as allowed by state law will be denied. The court is granting stay relief to movant to exercise its rights and remedies under applicable bankruptcy law. No more, no less.

10. 19-14170-B-7 **IN RE: JOHNNY GONZALES**
KAS-5

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION FOR A FINDING OF "GOOD FAITH"; PURSUANT TO 11 U.S.C. 363(M), MOTION FOR COMPENSATION FOR BERKSHIRE HATHAWAY HOME SERVICES, BROKER(S)
5-6-2020 [86]

PETER FEAR/MV
KELSEY SEIB/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 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 Federal Rule of Bankruptcy Procedure 2002(a)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults. Even if a party defaults the court may deny entry of a default judgment if it determines there is insufficient evidence to support the claim. The court has discretion not to enter a default judgment if the facts pled are insufficient to establish liability. Cashco Financial Services, Inc. v. McGee (In re McGee), 359 B.R. 764, 771 (B.A.P. 9th Cir. 2007). 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.

This motion is GRANTED.

Under 11 U.S.C. § 363(f), the chapter 7 trustee ("Trustee") may sell property of the estate outside the ordinary course of business, after notice and a hearing, free and clear of "any interest in such property of an entity other than the estate, only if— . . . (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest." 11 U.S.C. § 363(f).

Trustee wishes to sell two parcels of real property located at 4755 and 4767 E. Braly Ave., Fresno, CA 93702 ("Properties") for $125,000.00 and $130,000.00, respectively, for a total of $255,000 to Drake Equity, Inc. ("Buyer") and subject to higher and better bids. Doc. #89. Buyer has paid a $3,500.00 deposit for each property, $7,000.00 total, which is nonrefundable if Buyer fails to perform. The property is being sold "as is, where is" with no warranties made by the trustee. Doc. #91, Ex. A & B.

Encumbrances

The following encumbrances appear to be attached to the Properties:

1. a bail bond deed of trust in favor of Absolute Bail Bonds in the amount of $20,000.00 and recorded June 30, 1997[1];
2. an abstract of judgment in favor of Frances Wright in the amount of $1,451.12, recorded March 25, 1999, and renewed October 20, 2008;
3. a deed of trust in favor of Mid Valley Services, Inc. ("Mid Valley") in the amount of $114,000.00 and recorded November 14, 2007 (outstanding principal balance is approximately $140,000.00 as of October 1, 2019);
4. a federal tax lien in favor of the Internal Revenue Service ("IRS") in the amount of $2,573.62 and recorded September 25, 2008;
5. a federal tax lien in favor of the IRS in the amount of $19,715.41 and recorded September 25, 2008;
6. an abstract of judgment in favor of Frances Wright in the amount of $1,451.12 and recorded October 20, 2008;
7. an abstract of judgment in favor of Patricia Ann Ramirez dba Albert Ramirez Bail Bonds ("Patricia Ann Ramirez") in the amount of $4,373.47 and recorded September 10, 2009;
8. a penalty lien in favor of the Director of Industrial Relations as Administrator of the Uninsured Employers Fund State of California ("DIR") in the amount of $6,000.00 and recorded October 6, 2010;
9. a lien in favor of the City of Fresno in the amount of $467.74 and recorded January 10, 2011;
10. a lien in favor of the City of Fresno in the amount of $588.74 and recorded May 26, 2011;
11. an abstract of judgment in favor of the State Labor Commissioner Chief, Division of Labor Standards Enforcement State of California ("Labor Commissioner") in the amount of $500.00 and recorded October 25, 2010;
12. an abstract of judgment in favor of the Labor Commissioner in the amount of $2,937.93 and recorded June 1, 2011;
13. an abstract of judgment in favor of the Labor Commissioner in the amount of $2,917.01 and recorded June 1, 2011;
14. an abstract of judgment in favor of the Labor Commissioner in the amount of $2,936.52 and recorded July 8, 2011;
15. an abstract of judgment in favor of the Labor Commissioner in the amount of $5,102.64 and recorded September 27, 2011;
16. a lien in favor of the City of Fresno in the amount of $269.00 and recorded May 22, 2012;
17. an abstract of judgment in favor of the California Franchise Tax Board in the amount of $7,737.95 and recorded May 10, 2017.

Docs. 89, 91.

Additionally, in March 2020, the debtor transferred his interest in 4755 Braly to himself and his wife, Minerva Gonzales, as husband and

[1] Trustee states that this bond was originally recorded in the amount of $20,000.00, but Absolute Bail Bonds submitted a demand for $1,000.00. Doc. #89.

wife as joint tenants. See doc. #91, Ex. G. Trustee contends that this is an unauthorized post-petition transfer of property of the estate and therefore avoidable under 11 U.S.C. § 549. Doc. #89.

Trustee is asking to sell the Properties free and clear of the liens junior to Mid Valley pursuant to 11 U.S.C. § 363(f)(3), (4), & (5) and 11 U.S.C. § 724(b).

11 U.S.C. § 365(f)(5)

Trustee argues that the tax lien distribution scheme of 11 U.S.C. § 724(b) is "precisely the kind of 'legal or equitable proceeding' that fits the narrow Clear Channel view of Section 363(f)(5)." Doc. #88. It does not here.

Several courts have found that § 724(b) is precisely the type of "legal or equitable proceeding" described in § 363(f)(5). See, e.g., In re Healthco Int'l, Inc., 174 B.R. 174, 177 (Bankr. D. Mass. 1994); In re Grand Slam U.S.A., Inc., 178 B.R. 460, 463-64 (E.D. Mich. 1995); In re A.G. Van Metre, Jr., Inc., 155 B.R. 118, 123 (Bankr. E.D. Va. 1993), subsequently aff'd, 16 F.3d 414 (4th Cir. 1994); In re Gulf States Steel, Inc. of Ala., 285 B.R. 497, 509 (Bankr. N.D. Ala. 2002). The Ninth Circuit Bankruptcy Appellate Panel has cited the Gulf Steel States case. See Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC), 391 B.R. 25, 42-43 (B.A.P. 9th Cir. 2008).

This court previously denied Trustee's request to sell 4755 Braly without prejudice for three reasons. See doc. #82. First, not all lienholders were served. This court noted that among lienholders listed in the motion was a judgment lien in favor of Lorena Saenz. The judgment was entered against the debtor June 1, 2011 in the amount of $2,937.93. This lien was among those Trustee contended should not impede the sale, but this court noted that neither Lorena Saenz nor her counsel were served. We noted that the Trustee did serve other claimants through counsel for the Labor Commissioner, James E. Berry, but not Lorena Saenz. This court found that the separate service of James Berry was not enough unless counsel affirmatively agreed to accept service. See Beneficial Cal., Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

Since the last motion was denied, the California State Labor Commissioner filed claim no. 7 on April 7, 2020, which consolidates the abstracts of judgment of Lorena Saenz, Maria Saenz, Maria Zapien, Sandra Rubio, and all Labor Commissioner penalties into one claim held by the California State Labor Commissioner. See doc. #91, Ex. E. We previously had issue with the fact that Lorena Saenz was not individually served, however, her claim is now held by the Labor Commissioner in claim no. 7, which was served according to the proof of service. Doc. #92. Additionally, the Labor Commissioner recently filed a consent to the sale so long as it receives payment for the amount of its secured claim from the net sale proceeds. Doc. #95.

Second, Trustee had not met the requirements of § 724(e). In order to subordinate tax liens to administrative and other priority expenses under § 724(b), Trustee must exhaust the unencumbered

assets of the estate and recovery appropriate preservation costs from secured creditors. There was nothing in the record that indicated Trustee had done that. This is a requirement before using § 724(b) to satisfy the requisites free and clear sale under § 363(f)(5). This court noted that Trustee's own declaration referenced 4767 Braly, which may be unencumbered upon payment of a senior lien in this sale. Doc. #61. This court noted that there are going to be unencumbered assets that would need to be considered before a subordination of distribution could be ordered.

Trustee claims that he has now exhausted the unencumbered assets of the estate. The Properties are jointly encumbered by a single deed of trust in favor of Mid Valley and the sale of one of those properties alone would not satisfy the full balance due. Doc. #89. Trustee contends that the Buyer's present offer to purchase both Properties will satisfy the entire balance to Mid Valley. Doc. #88.

Trustee also notes that the debtor has two other unencumbered and nonexempt assets, a 1993 Dodge Van valued at $1,000.00 and a 1994 Ford Aerostar valued at $1,500.00. Id. Trustee states that if he were to sell these assets, after administrative costs to employ an auctioneer, the auctioneer's commission of 15%, and any other fees for storage, repair, or cleaning the vehicles, it is likely that only a de minimis amount of proceeds would remain for the estate. Id.

Third, this court noted that even if § 724(b) was applicable, the lienholders with unavoidable liens subordinate to the tax liens are not affected and "set aside" by the subordination of tax liens to administrative and certain priority expenses. Trustee asserted that Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC), 391 B.R. 25, 42 (B.A.P. 9th Cir. 2008) supports the proposition that § 724(b) is the type of "legal or equitable proceeding" described in § 363(b)(5). But we noted that Clear Channel disagrees with most of the authorities Trustee cites: In re Grand Slam, U.S.A., 178 B.R. 460 (E.D. Mich. 1995) and In re Healthco Int'l, Inc., 174 B.R. 174 (Bankr. D. Mass. 1994). Clear Channel, 391 B.R. at 46. The court does not read Clear Channel's reference to In re Gulf States Steel, 285 B.R. 497, 509 (Bankr. N.D. Ala. 2002) as broadly as Trustee. Clear Channel cited Gulf States Steel as a reference to the requisite type of "legal and equitable" proceeding that would satisfy § 363(f)(5). But Gulf States Steel largely relied on Chapter 11 "cram down" plan provisions to meet the requirements. The "cram down" is explicitly rejected as a qualifying proceeding by Clear Channel. See Clear Channel, 391 B.R. at 46. Also, the Clear Channel court did not include the § 724(b) subordination as an example of a qualifying "legal and equitable proceeding." Id. at 43. There is no reason the court would not since it cited cases the Trustee relies upon using § 724(b). The only logical conclusion is that the omission was intentional.

Trustee contends that the abstract of judgments in favor of Frances Wright and Patricia Ann Ramirez dba Albert Ramirez Bail Bonds are void under California Code of Civil Procedure ("CCP") § 697.310 because the judgment liens were not renewed on October 20, 2018 and September 10, 2019, respectively. Doc. #89. Additionally, Trustee

states that the federal tax liens in favor of the IRS expired and are no longer valid because they were not renewed and the IRS filed no proof of claim. Id.; see also doc. #90. The remaining encumbrances are in favor of Absolute Bail Bonds, Mid Valley, DIR and Labor Commissioner, California Franchise Tax Board, and the City of Fresno and presently total approximately $189,127.49. Doc. #89, 91.

Also, since the IRS tax liens are no longer effective, § 724(b) does not apply. Section 724(b)(2) subordinates payment of tax liens "to the extent of the amount of such allowed tax claim that is secured by such tax lien." No allowed tax claim secured by a lien is involved here. The IRS liens are non-existent.

Finally, on this issue, § 363(f)(5) only applies if the affected entity could be compelled in a legal or equitable proceeding "to accept a money satisfaction" of the interest. The Trustee here wants to sell the property free and clear of all liens subordinate to the tax claims. The Trustee did not propose to satisfy these lien holders with money.

The court finds that the chapter 7 trustee is not entitled to relief under (f)(5), but the court does find relief available under (f)(3) and (f)(4).

11 U.S.C. § 365(f)(3) & (f)(4)

The trustee may sell property of the estate free and clear of a non-debtors interest if such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property. 11 U.S.C. § 363(f)(3).

Here, Trustee contends that the sale price of $255,000.00 exceeds the aggregate value of all unexpired liens on the property, which totals $189,127.49. Doc. #88.

Next, the trustee may sell property of the estate free and clear of a non-debtor's interest that is in bona fide dispute. 11 U.S.C. § 363(f)(4). "Under this standard, a court need not determine the probable outcome of the dispute, but merely whether one exists." In re Octagon Roofing, 123 B.R. 583 (Bankr. N.D. Ill. 1991) (citing In re Busick, 831 F.2d 745, 750 (7th Cir. 1987)). "The parties must provide some factual grounds to show some objective basis for the dispute." In re Kellogg-Taxe, No. 2:12-BK-51208-RN, 2014 WL 1016045, *6 (Bankr. C.D. Cal. Mar. 17, 2014) (citing In re Gaylord Grain L.C.C., 306 B.R. 614, 627 (B.A.P. 8th Cir. 2004).

Trustee argues that the liens in favor of Francis Wright, the IRS, and Patricia Ann Ramirez, are in bona fide dispute due to not being timely renewed and void under CCP § 697.310. Trustee also contends that the transfer of Debtor's interest in 4755 Braly to himself and his wife, Minerva Gonzales, is also in dispute and may be avoided under § 549 as a post-petition transfer. Trustee has provided factual grounds to show an objective basis for a bona fide dispute relating to these liens and interests, and therefore may sell the property free and clear of liens under § 363(f)(4). The liens and

interests will follow the proceeds. The Trustee must then determine the way to resolve any remaining disputes.

Proposed sales under 11 U.S.C. § 363 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, No. 16-00327-GS, 2018 WL 6584772, at *2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 2018 WL 6584772, at *4, 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., citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Here, Trustee contends that this sale is in the best interests of the estate resulting from a fair and reasonable price and supported by sound business judgment because the sale will pay off a number of creditors and provide liquidity to the estate, which will be enough to pay all administrative expense claims and a significant dividend on allowed unsecured claims. Doc. #88.

Trustee claims that this sale is proposed in good faith. According to Trustee, the debtor has refused to cooperate in this sale. Doc. #89. Upon inquiring the debtor about the liens, which were not disclosed in his bankruptcy paperwork, the debtor's answers were purportedly "noncommittal, evasive, and generally unhelpful." Id. Debtor "has been either unwilling or unable to provide any information helpful" in providing specifics or documentation about any of the liens that still exist. Id. Because debtor has consistently given testimony that is inconsistent with documentation, Trustee has been unable to rely on uncorroborated information. Additionally, Debtor has alleged attempted to "thwart" Trustee's efforts to conduct the sale, including by transferring title to his wife to cloud title. Id. Trustee has stated that Debtor refuses to cooperate. He continues not to appear at the meeting of creditors and has not turned over documents as requested. He has removed sale signage and transferred title to his wife despite knowing Trustee's intention to sell the Properties. Debtor has refused Trustee and Buyer access to inspect the Properties. Id.

Good faith under § 363(m)

Trustee also requests a finding of good faith under § 363(m).

Section 363(m) states:

> The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to such entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such such or lease were stayed pending appeal.

11 U.S.C. § 363(m).

This court is aware of the difficulties and impediments imposed by the debtor regarding the proposed sale of the Properties. The debtor has refused to cooperate with the trustee and continues to fail to appear at meeting of creditors. Doc. #89. He has removed signage to the properties and refused all access to inspect the Properties. Id. Additionally, he recently transferred title to his wife post-petition and without authorization to further cloud title. Doc. #91, Ex. G. Buyer has persevered and done everything required to complete the sale. The court has no evidence before it suggesting the sale price represents other than fair market value. There is also no evidence that the bids for the property are other than "arm's length." The court finds that the sale of the Properties is in good faith.

Commission

Additionally, Trustee seeks authorization under § 330 to pay a 6% commission on the final sale price for reasonable compensation for actual, necessary services to Berkshire Hathaway Home Services, whose employment we previously authorized. Doc. #18. This motion is granted.

Waiver of FRBP 6004(h)

To protect the estate and Buyer, Trustee requests waiver of the fourteen day stay of Federal Rule of Bankruptcy ("FRBP") 6004(h) because the debtor has attempted to prevent Trustee from selling the properties in furtherance of his statutory duties under 11 U.S.C. § 704(a). The debtor has allegedly removed signage, refused to cooperate with Trustee, and transferred title post-petition without authorization to impede the sale process. There is, then, a business justification for waiver of the stay.

Often the stay is not waived to allow a co-owner to exercise rights under § 363 (h). But that provision protects the co-owner who held the right "at the time of the commencement of the case." The Trustee has established that Ms. Minerva Gonzales was granted her interest less than two months ago. Waiver of the fourteen day stay under FRBP is appropriate and hereby granted.

Because the price at which such property is to be sold is greater than the aggregate value of all unexpired liens on such property and such interests are in bona fide dispute; Trustee may sell the properties located at 4755 and 4767 E. Braly Ave., Fresno, CA 93702 to Buyer for $125,000.00 and $130,000.00, respectively, for a total

amount of $255,000.00, subject to higher and better bids, and free and clear of the liens of the Frances Wright, the IRS, Patricia Ann Ramirez. These liens have expired. Minerva Gonzales' interest is transferred to the proceeds subject to further adjudication. The liens of Absolute Bail Bonds, Mid Valley, the DIR and Labor Commissioner, California Franchise Tax Board, and the City of Fresno are transferred to the proceeds.

Trustee's motion is GRANTED.

11. 19-12674-B-7 **IN RE: ADRIAN PEREZ**
DMG-2

FURTHER SCHEDULING CONFERENCE RE: OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-11-2019 [36]

JEFFREY VETTER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

12. 20-11274-B-7 **IN RE: ASHLEY CHAVIRA**
VVF-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-29-2020 [13]

AMERICAN HONDA FINANCE CORPORATION/MV
JERRY LOWE/ATTY. FOR DBT.
VINCENT FROUNJIAN/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 amount 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, American Honda 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 Honda Accord ("Vehicle"). Doc. #18.

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 three post-petition payments. The movant has produced evidence that debtor is delinquent at least $1,735.94. Doc. #16.

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. Doc. #18. The Vehicle is valued between $12,025.00 and 15,350.00 and debtor owes $23,425.81. Id.

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.

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

13. 18-13678-B-7 **IN RE: VERSA MARKETING, INC.**
19-1032

CONTINUED ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY PROCEEDING FOR FAILURE TO PROSECUTE
1-7-2020 [52]

VERSA MARKETING, INC. V. WEST
LIBERTY FOODS, LLC
RESPONSIVE PLEADING

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

DISPOSITION: The OSC will be vacated.

NO ORDER REQUIRED. The OSC will be vacated.

The chapter 7 trustee sold the claim on May 12, 2020. See SSA-2, doc. #570.

14. 18-13784-B-7 **IN RE: BERNADETTE GARCIA-DAR**
JES-2

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
4-29-2020 [108]

JAMES SALVEN/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, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo 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 motion will be GRANTED. The chapter 7 trustee's accountant, James Salven, requests fees of $1,000.00 and costs of $289.73 for a total of $1,289.73 for services rendered from April 11, 2020 through April 29, 2020. Doc. #108.

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) Preparation of employment and fee applications and (2) Analyzing and inputting date for tax returns. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $1,000.00 in fees and $289.73 in costs.

15. 19-15288-B-7 **IN RE: VIDAL SIERRA SANCHEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-5-2020 [48]

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings and conclusions.

ORDER: The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

16. 19-11794-B-7 **IN RE: ERICA AMEZQUITA**
PBB-2

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
4-29-2020 [20]

ERICA AMEZQUITA/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, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver

of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo 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.

This motion is GRANTED. 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 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). Section 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Capital One Bank (USA), N.A., in the sum of $5,258.61 on June 22, 2011. Doc. #22. The abstract of judgment was recorded with Fresno County on August 5, 2011. Doc. #23. That lien attached to the debtor's interest in a residential real property in Parlier, California. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $191,000.00 as of the petition date. Doc. #1, Schedule A. The unavoidable liens totaled $138,683.00 on that same date, consisting of a first deed of trust in favor of Ditech and a second deed of trust in favor of Educational Employees Credit Union. Id., Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of $75,000.00. Id., Schedule C.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

17. 20-10697-B-7 **IN RE: JESUS/SARA VERA**
EPE-2

MOTION TO COMPEL ABANDONMENT
4-14-2020 [25]

JESUS VERA/MV
ERIC ESCAMILLA/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 amount 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.

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." In order to grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. In re Vu, 245 B.R. 644, 647 (9th Cir. B.A.P. 2000). As one court noted, "an order compelling abandonment 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." In re K.C. Mach. & Tool Co., 816 F.2d 238, 246 (6th Cir. 1987). And in evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. In re Johnson, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). In re Galloway, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at 16-17 (B.A.P. 9th Cir. 2014).

Debtor asks this court to compel the chapter 7 trustee to abandon the estate's interest in debtor's fuel station testing and repair sole proprietorship business "Versaras Testing and Repairs." Doc. #25. The assets include tools of the trade, equipment, accounts receivable, and business-related assets ("Business Assets"). Doc. #27. There is no opposition to the motion.

The court finds that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately scheduled and exempted in their entirety. Doc. #11. Therefore, this motion is GRANTED.

The order shall include a specific list of the property abandoned.