

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Tuesday, June 8, 2021  
Place: Department B – Courtroom #13  
Fresno, California

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

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

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

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

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

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

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

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

**9:30 AM**

1. [21-11001](#)-B-11      **IN RE: NAVDIP BADHESHA**  
[RMB-1](#)

MOTION TO EMPLOY ROKSANA D. MORADI-BROVIA AS ATTORNEY(S)  
5-11-2021    [\[23\]](#)

NAVDIP BADHESHA/MV  
MATTHEW RESNIK/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

ORDER:                        The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit an order in conformance with the ruling below.

Debtor-in-possession Navdip Badhesha ("DIP") asks the court to approve the DIP's retention of Resnik, Hayes, Moradi, LLP ("the Firm") as general bankruptcy counsel for this chapter 11 estate effective April 21, 2021.

The application is supported by the DIP's and Attorney Moradi-Brovia's declarations. It also appears the application and hearing documents were properly served as required by Fed. R. Bankr. P. 2016. All creditors and the United States Trustee were served.

In the absence of opposition, this motion will be GRANTED.

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

Under 11 U.S.C. § 327 a professional person such as an attorney can be employed by the estate with court's approval if the proposed professional does not hold or represent an interest adverse to the estate and is "disinterested."

The evidence here is the Firm is experienced in bankruptcy, insolvency, chapter 11 proceedings, and related issues. Further, the evidence establishes neither the Firm nor Attorney Moradi-Brovia

So, in the absence of any opposition stated at the hearing - if presented, the court may continue the hearing to accommodate submission of further briefing or evidence - the court finds the Firm does not hold or represent an adverse interest to the estate and is disinterested.

Application will be APPROVED. Applicant is retained effective April 21, 2021.

DEPARTMENT OF HEALTH CARE  
SERVICES/MV  
RILEY WALTER/ATTY. FOR DBT.  
GRANT LIEN/ATTY. FOR MV.  
CONT'D TO 8/31/21 PER ECF ORDER #696

NO ORDER REQUIRED.

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3. 18-13677-B-9      IN RE: COALINGA REGIONAL MEDICAL CENTER, A  
      WJH-18             CALIFORNIA LOCAL HEALTH CARE DISTRICT

CONTINUED OBJECTION TO CLAIM OF DEPARTMENT OF HEALTH CARE  
SERVICES, CLAIM NUMBER 61  
10-19-2020 [657]

COALINGA REGIONAL MEDICAL  
CENTER, A CALIFORNIA LOCAL  
RILEY WALTER/ATTY. FOR DBT.  
CONT'D TO 8/31/21 PER ECF ORDER #695. RESPONSIVE PLEADING.

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

DISPOSITION: Continued to August 31, 2021, at 9:30 a.m.

NO ORDER REQUIRED.

The parties stipulated to continue this matter due to a significant number of additional documents produced in responses to discovery requests. Doc. #691. On May 19, 2021, the court approved the stipulation and continued the matter to August 31, 2021 at 9:30 a.m. Doc. #695. Coalinga Regional Medical Center shall file and serve its responsive pleadings to the Department of Health Care Services' opposition not later than five days before the continued hearing date.

4. 20-11992-B-11 IN RE: CHAR PHAR INVESTMENTS, LLC

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION  
6-12-2020 [1]

WILLIAM COWIN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

Since posting the original rulings, the court has changed its intended ruling on this matter.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to July 13, 2021, at 9:30.

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

Debtor-in-Possession Char Phar Investments, LLC ("DIP") filed a status report on June 2, 2021 (Doc. # 197). DIP's counsel has suffered medical setbacks over the past several months. DIP requests that the status conference be continued to August 10, 2021.

Secured creditor State Bank of India (California) ("SBIC") objects to DIP's request for a continuance. Doc. #200. SBIC contends that this case has been pending for nearly one year, but no progress

towards reorganization has been made. SBIC argues that DIP is administratively insolvent, no plan of reorganization has been filed, and confirming a plan of reorganization appears to be impossible.

This matter will be called as scheduled to inquire about the parties' positions. The court is inclined to continue the status conference to July 13, 2021. There are three reasons for this. First, the motion to assume the Blue River lease is scheduled for that date (See #5 below). Second, DIP's status report says a Plan and Disclosure Statement will be filed by June 30, 2021 and should be filed by then. Third, the case has been pending for a very lengthy period and needs to move forward.

If before July 13, 2021, a Plan and Disclosure Statement is filed and the Disclosure Statement set for hearing, the court will continue the status conference to the date of the hearing on the adequacy of the Disclosure Statement. If not, DIP shall file and serve a status report on or before July 6, 2021. Any other party is invited, but not ordered, to file a status report on or before July 6, 2021.

5. [20-11992](#)-B-11     **IN RE: CHAR PHAR INVESTMENTS, LLC**  
[WLC-6](#)

CONTINUED MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
7-27-2020    [\[64\]](#)

CHAR PHAR INVESTMENTS, LLC/MV  
WILLIAM COWIN/ATTY. FOR DBT.

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

DISPOSITION:       Continued to July 13, 2021, at 9:30 am.

ORDER:                The court will issue the order.

On May 28, 2021, a stipulation between DIP, Blue River Farms, Fresno Truck Center, and State Bank of India was submitted to the court requesting a continuance of the hearing to July 13, 2021 to accommodate discussions between the parties. The court issued an order on June 1, 2021. Doc. #194. Any opposition must be served and filed 14 calendar days before the continued hearing date.

11:00 AM

1. [21-10401](#)-B-7      **IN RE: FOSTER/MARY STEELE**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION  
- 2018 TOYOTA TACOMA  
5-12-2021    [\[21\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION:      Denied.

ORDER:              The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Although the debtors' attorney executed the agreement, no evidence has been presented to the court to indicate how the debtors can afford to make the payment. The debtors claim fewer expenses (or that they have filed on all of their debt and can afford the payment) but has not provided the court with an amended Schedule J. Therefore, the reaffirmation agreement with Toyota Motor Credit Corporation will be DENIED.

2. [21-10401](#)-B-7      **IN RE: FOSTER/MARY STEELE**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION  
- 2016 TOYOTA RAV4  
5-12-2021    [\[22\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION:      Denied.

ORDER:              The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Although the debtors' attorney executed the agreement, no evidence has been presented to the court to indicate how the debtors can

afford to make the payment. The debtors claim fewer expenses (or that they have filed on all of their debt and can afford the payment) but has not provided the court with an amended Schedule J. Therefore, the reaffirmation agreement with Toyota Motor Credit Corporation will be DENIED.

3. [21-10793](#)-B-7     **IN RE: LUIS FLORES DIAZ AND DOLORES RODRIGUEZ**

REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION  
5-18-2021    [\[14\]](#)

NICHOLAS ANIOTZBEHERE/ATTY. FOR DBT.

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

DISPOSITION:     Dropped.

ORDER:             The court will issue an order.

Debtors' counsel shall notify the debtors that no appearance is necessary.

The court originally set this reaffirmation agreement (Doc. #14) as the Creditor had not signed the agreement. A second reaffirmation agreement with Noble Credit Union was filed on May 20, 2021. Doc. No. 16. The Creditor has now signed the reaffirmation agreement. Therefore, this hearing will be dropped from calendar. No hearing is required. The court will issue an order.

1:30 PM

1. [21-10316](#)-B-7     **IN RE: CABLE LINKS CONSTRUCTION GROUP, INC.**  
[JAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
5-11-2021    [\[19\]](#)

MOBILE MODULAR PORTABLE  
STORAGE/MV  
HAGOP BEDOYAN/ATTY. FOR DBT.  
JANET SHAPIRO/ATTY. FOR MV.

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

DISPOSITION:        Denied without prejudice.

ORDER:                The court will issue an order.

Mobile Modular Portable Storage ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a lease agreement on an 8 x 20-foot storage container ("Property"). Doc. #19.

This motion was filed on 28 days' notice pursuant to Local Rule of Practice 9014-1(f)(1).<sup>1</sup> This matter will be DENIED WITHOUT PREJUDICE for failure to comply with the federal and local rules.

First, Rule 4001(a) requires motions for relief from the automatic stay to be "made in accordance with Rule 9014." Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. This motion could be a contested matter if any party in interest opposes.

Rule 7004 allows service in the United States by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business" and "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 7004(b)(1), (b)(3). Though not applicable here, if the United States trustee is acting solely as trustee, then "by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending." Rule 7004(b)(10).

Rule 9036 does allow for electronic service but provides: "This rule does not apply to any pleading or other paper required to be served

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<sup>1</sup> Unless otherwise indicated, references to "LBR" will be to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California; "Rules" will be to the Federal Rules of Bankruptcy Procedure; and "Civil Rule" will be to the Federal Rules of Civil Procedure.



in accordance with Rule 7004." Rule 7004's service requirement is not subject to waiver under Civil Rule 4(d). See Rule 7004(a)(1).

Here, the certificate of service indicates that it was sent ". . . via electronic filing with the above-entitled court on May 11, 2011, which sent notice to all ECF notice registrants." Doc. #22. No parties were listed, and no email addresses were listed. *Id.*

Debtor and Debtor's counsel must be served by mail in accordance with Rule 7004. Because this motion will affect property of the estate, the Chapter 7 Trustee must also be served in accordance with Rule 7004. Rule 7004, which is applicable for relief from stay motions under Rules 4001 and 9014, is specifically precluded from electronic service by Rule 9036. Thus, the Movant must serve the Debtor, Debtor's counsel, and the Ch. 7 Trustee in conformance with Rule 7004.

Additionally, the Movant must serve or notify the UST, who may raise, appear, and be heard on any issue in any case under § 307. Because relief is not being sought against the UST, electronic notification under Rule 7005 and LBR 7005-1 will be sufficient, as discussed below.

Second, LBR 7005-1(a) allows service by electronic means pursuant to Civil Rule 5(b)(2)(E), as made applicable to Rule 7005, which typically only applies to pleadings filed after the original complaint and other papers specified in Civil Rule 5(a)(1). LBR 7005-1(d) states, in relevant part:

1) Upon Those Parties Consenting to Service by Electronic Means. Service by electronic means pursuant to Fed. R. Civ. P. 5(b)(2)(E) shall be accomplished by transmitting an email which includes as a PDF attachment the document(s) served. The subject line of the email shall include the words "Service Pursuant to Fed. R. Civ. P. 5," and the first line of the email shall include the case or proceeding name and number and the title(s) of the document(s) served.

. . .

3) Certificate of Service. The certificate of service shall include all parties served, whether by electronic or conventional means. Where service was accomplished by electronic means, the certificate of service shall include the email addresses to which the document(s) were transmitted, and the party, if any, whom the recipient represents.

LBR 7005-1(d)(1), (d)(3). Here, the certificate of service indicates ECF registrants and does not name the individual parties. Doc. #22. The certificate of service does not comply with LBR 7005-1(d)(3) because it does not include the email addresses of the parties served. As noted above, the Debtor, Debtor's counsel, and the Chapter 7 Trustee must be served as required by Rule 7004. Electronic service may be made on the UST, but that electronic service must comply with LBR 7005-1(d)(3) and include the UST's email address.

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

2. [21-10316](#)-B-7     **IN RE: CABLE LINKS CONSTRUCTION GROUP, INC.**  
[WJH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
5-11-2021    [\[23\]](#)

DITCH WITCH FINANCIAL  
SERVICES/MV  
HAGOP BEDOYAN/ATTY. FOR DBT.  
KURT VOTE/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.

Ditch Witch Financial ("Movant") seeks retroactive relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a T12 D Towmaster Trailer, a Ditch Witch JT 10 Drill, a Ditch Witch MV800 Mud Vac, and a Ditch Witch MV800 Trailer ("Equipment") financed to Cable Links Construction Group, Inc. ("Debtor").  
Doc. #23.

This motion will be GRANTED.

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

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 defaulted on the loan pre-petition.<sup>2</sup> Movant accelerated the balance due of \$39,981.28 under the terms of the Financing Agreement to be paid by Debtor not later than January 15, 2021. Doc. #26, Ex. B. Movant contacted Debtor on January 6, 2021 and learned that Debtor was going out of business but was not informed Debtor had filed chapter 7 bankruptcy, nor that it intended to do so. Doc. #27, ¶ 2. Debtor filed for relief under Chapter 7 on February 9, 2021. Doc. #1. Movant retrieved the Equipment on February 22, 2021 and did not know that Debtor had filed for bankruptcy. Doc. #27, ¶ 3. Movant was not listed on the master address list and did not receive notice of the bankruptcy filing. Docs. #3; #14.

The court finds that the Debtor does not have an equity in the property and the property is not necessary to an effective reorganization. Debtor values the Equipment at \$70,000.00 and Debtor owes \$1,213,925.05 in liens. Doc. #24, #28. Movant took possession of Equipment on February 22, 2021. A stipulation regarding Motion for Relief from Stay and Distribution of Net Proceeds of Sale of Property of the Estate between Movant, the Chapter 7 Trustee ("Trustee"), and Creditor Premier Valley Bank ("PVB") was filed on May 14, 2021. Doc. #30. The court signed an order approving stipulation on May 19, 2021. Doc. #33.

Accordingly, this 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.

The Ninth Circuit Court of Appeals has warned that retroactive relief should only be "applied in extreme circumstances." *In re Aheong*, 276 B.R. 233, 250 (B.A.P. 9th Cir. 2002) (citations omitted). In *Fjeldsted*, the court outlined factors for a court to consider when deciding a motion to annul the automatic stay: 1) the number of bankruptcy filings by the debtor; 2) whether, in a repeat filing case, the circumstances indicate an intent to delay and hinder creditors; 3) the extent of any prejudice, including to a bona fide purchaser; 4) the debtor's overall good faith; 5) whether creditors knew of the stay but nonetheless took action; 6) the debtor's compliance with the Code; 7) the relative ease of restoring the parties to the *status quo ante*; 8) cost of annulment to debtors and creditors; 9) how quickly the creditor moved for annulment, and how quickly the debtor moved to set aside the sale; 10) whether creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief; 11) whether annulment of the stay will cause irreparable injury to the debtor; and 12) whether stay relief will promote judicial economy or

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<sup>2</sup> The Letter of Default is dated December 31, 2020, while Debtor filed bankruptcy on February 9, 2021. Doc. #26, Ex. B; *cf.* Doc. #1.

other efficiencies. One factor alone may be dispositive. *In re Fjeldsted*, 293 B.R. 12, 24-25 (B.A.P. 9th Cir. 2003).

The court finds that the *Fjeldsted* factors weigh in favor of the Movant. The first two factors are inapplicable because the Debtor does not have multiple bankruptcy filings. The third and fifth factors weigh in favor of stay relief because Movant will be prejudiced if stay relief is not retroactive. Movant will be punished for violating the stay despite never receiving notice of the bankruptcy filing before it retrieved possession of the Equipment on February 22, 2021. When Movant became aware of the bankruptcy filing, it immediately contacted Trustee and counsel for PVB. Trustee and PVB stipulated to stay relief. Additionally, Debtor is out of business and has no need for Equipment any longer. The seventh factor also weighs in favor of stay relief because Debtor is going out of business. Factors eight and nine lean towards stay relief because Movant acted promptly by filing this motion to obtain stay relief, and the cost of annulment is low for Debtor because it is going out of business. Factors 10, 11, and 12 also weigh in favor of stay relief. Movant moved expeditiously to gain stay relief and quickly contacted Trustee and PVB. Annulment of the stay will not cause irreparable injury to Debtor because it is going out of business. Stay relief will promote judicial economy and other efficiencies because Movant is already in possession of the Equipment and the parties have stipulated to stay relief.

Therefore, the court finds that "cause" exists to retroactively annul the automatic stay as of the petition date under 11 U.S.C. §§ 362(d) (1) and (2).

The 14-day stay of Fed. R. Bankr. P. 4001(a) (3) will be ordered waived because the Equipment is in the possession of the Movant and sale is pending.

3. [11-10721](#)-B-7     **IN RE: RUBEN/IRENE ARELLANO**  
[MAZ-3](#)

MOTION TO AVOID LIEN OF DENNIS M. WRIGHT, DBA CENTRAL  
BUSINESS BUREAU  
5-6-2021     [\[30\]](#)

IRENE ARELLANO/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

Ruben Arellano and Irene Arellano ("Debtors") seeks to avoid a judicial lien in favor of Dennis M. Wright, d/b/a Central Business Bureau ("Creditor"), and encumbering residential real property

located at 307 E. Wren Avenue, Visalia, CA 93291 ("Property"). Doc. #30. No party in interest timely filed written opposition.

This motion will be GRANTED.

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

First, the court notes that Fed. R. Bankr. P. 4003(b)(1) allows a party in interest to object to a claim of exemptions within 30 days after the conclusion of the § 341 meeting of creditors, or 30 days after an amended Schedule C has been filed, whichever is later. Here, Debtors amended Schedule C on May 6, 2021, so the 30-day deadline to object expired on June 5, 2021. To date, no parties in interest have objected to Debtors' claimed exemptions.

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

Here, a judgment was entered against Debtors in favor of Creditor in the sum of \$6,648.61 on December 17, 2010. Doc. #33, Ex. D. The abstract of judgment was issued that same day and then recorded in Tulare County on December 27, 2010. *Id.* Creditor filed an application for and renewal of judgment on November 4, 2020 in the renewed amount of \$13,323.05, which was recorded in Tulare County on December 7, 2020. *Id.* That lien attached to Debtors' interest in Property. Doc. #32.

As of the petition date, Property had an approximate value of \$200,000.00. Doc. #1, Schedule A. The unavoidable liens totaled \$211,329.56 on that same date, consisting of a first and second deed of trust in favor of BAC Home Loan Services. Docs. #1, Schedule D; #33, Ex. B. Debtors claimed an exemption pursuant to Cal. Civ. Proc.

Code § 703.140(b)(1) in the amount of \$1,000.00. Doc. #28, Schedule C. Property's encumbrances can be illustrated as follows:

|  |   |               |
|--|---|---------------|
| Fair Market Value of Property on petition date |   | \$200,000.00  |
| Total amount of unavoidable liens              | - | \$211,329.56  |
| Remaining available equity                     | = | (\$11,329.56) |
| Debtors' homestead exemption                   | - | \$1,000.00    |
| Creditor's judicial lien                       | - | \$13,323.05   |
| Extent Debtors' exemption impaired             | = | (\$25,652.61) |

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

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

4. [19-12927](#)-B-7     **IN RE: CEDAR MILL FARMS, LLC**  
[RH-8](#)

MOTION FOR COMPENSATION FOR ROBERT HAWKINS, TRUSTEES  
ATTORNEY(S)  
5-7-2021    [\[168\]](#)

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

DISPOSITION:     Granted.

ORDER:             Applicant shall prepare the order conforming to the ruling below.

General counsel for the Chapter 7 Trustee, Robert Hawkins ("Applicant"), asks the court to approve his final application for fees and expenses. Applicant asks for fees of \$20,760.00 and is waiving any claim for reimbursement of costs or expenses. Doc. #170

This motion will be GRANTED.

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

1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

11 U.S.C. § 330 (a) provides, in part, that a professional person appointed by the court may be awarded reasonable compensation for actual, necessary services rendered by the professional after notice and a hearing. Reimbursement for actual, necessary expenses may also be awarded but that is irrelevant here since applicant has waived that claim.

Applicant was retained with court approval on September 13, 2019. The Trustee needed assistance navigating some creditor issues related to debts owed by a member of the LLC. The Trustee determined that the sale of the debtor's primary asset, real property, would maximize recovery for the estate's creditors. Applicant analyzed the legal basis of the claims, negotiated with the consensual lien holder and a lessee of a portion of the property so the estate could monetize the asset pending sale. The sale did not materialize, and the Trustee abandoned the property. There were also water rights expiration risks which needed managing by counsel.

Though the property was not sold, § 330(a)(3)(C) requires the court to evaluate the necessity of the services when they were rendered. Here the applicant provided the support service Trustee required to both protect the estate's interests and monetize the estate's primary asset.

The court finds the services both reasonable and necessary. Applicant has stated he will waive those fees necessary to assure all administrative claimants receive some compensation.

Application will be GRANTED. Order to provide the disbursement of the fees will be at the Trustee's discretion.

5. [19-12927](#)-B-7     **IN RE: CEDAR MILL FARMS, LLC**  
[RH-9](#)

MOTION TO USE CASH COLLATERAL  
5-10-2021     [\[174\]](#)

JAMES SALVEN/MV  
ROBERT HAWKINS/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:     Granted.

ORDER:     Trustee's counsel to prepare order to be approved as to form by counsel for JADJ Land Holdings, LLC.

Chapter 7 Trustee, James Salven ("Trustee") asks the court to authorize use of cash collateral claimed by JADJ Land Holdings, LLC ("Creditor") to be subject to its' lien. Doc. #174. The cash

collateral is rents from real estate in Amador County, California that is property of the estate collected and held by Trustee. The amount at issue is \$5,645.00. Trustee wants to use the cash collateral to pay a portion of Trustee's compensation when authorized.

Creditor filed a non-opposition. Doc. #180.

This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the 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 except Creditor are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

While his efforts to sell real estate in Amador County for the benefit of the estate were underway, Trustee was confronted with an insurance lapse, expiring water rights, and an offer by a third party to lease part of the Amador County real estate. Trustee did lease a part of the real estate and collected rents. Eventually, Trustee determined that marketing conditions would not support continued efforts to sell the real estate. Trustee has stopped the marketing efforts.

The real estate is subject to at least three interests:

1. A secured property tax lien in favor of the Amador County Tax Collector for what it alleges are delinquent taxes totaling \$85,756.21.
2. Creditor's Deed of Trust securing approximately \$1.024 million. This deed of trust allegedly contains an assignment of rents.
3. A writ of attachment lien issued by the Fresno County Superior Court in a collection action styled *Lucky Gold v. Cedar Mill Farms, LLC et al* 16CEGCG02260. The amount alleged owed is \$580,000.

The secured property tax lien is not also a lien on rents. The attachment lien does not give Lucky Gold the right to proceed against the property until after Lucky Gold obtains a judgment. *Diamant v. Kasparian (In re S. California Plastics, Inc.)* 165 F. 3d 1243, 1246 (9th Cir. 1999) citing *Arcturus Mfg. Corp. v. Superior Court*, 223 Cal. App. 2d 187 (1964). Both the tax collector and Lucky



Gold and counsel were served with the notice of the hearing on this motion. They have not filed a response.

Assuming Creditor has a valid Assignment of Rents, the collected rents held by the Trustee are cash collateral and not to be used without court order. § 363(c)(2). Creditor has affirmatively stated in its non-opposition that it does not oppose Trustee's use of the \$5,645.00 for compensation. Doc. #180.

The problem here is Trustee has not been authorized to operate the debtor's business under § 721. That is a pre-requisite to requesting use of cash collateral. § 363(c)(1).

Trustee's alternate position is that under § 506(c) the compensation sought is a cost or expense of preserving the property subject to Creditor's lien. No doubt many costs or expenses were necessary to preserve the property, or its value as stated in Trustee's documents supporting the motion. But there is no authority provided by Trustee that trustee compensation is an allowable cost or expense that can be recovered by Creditor's collateral.

Such recovery, if allowed, is limited to the extent of any benefit to Creditor. § 506(c). No evidence on that point is provided in the motion papers. There is some reference to the negative impact lapsed insurance or expired water rights might have on the real property, but it is not quantified. That is movant's burden. See, *General Elec. Credit Corp. v. Levin & Weintraub (In re Flagstaff Foodservice Corp.)*, 739 F.2d 73,77 (2d Cir. 1984).

That said, and because Creditor does not oppose, the court will grant the motion and authorize use of property of the estate under § 363(b)(1) as prayed in the motion. Order to be approved as to form by Creditor's counsel.

6. [20-12729](#)-B-7     **IN RE: CHUCK/NICOLE COZZITORTO**  
[FW-1](#)

MOTION TO AVOID LIEN OF SAN JOAQUIN VALLEY HAY GROWERS  
ASSOCIATION AND/OR MOTION TO AVOID LIEN OF QUALITY MILK  
SERVICE INC.  
5-5-2021     [\[35\]](#)

NICOLE COZZITORTO/MV  
PETER FEAR/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:     This matter will proceed as scheduled.

DISPOSITION:     Continued to August 10, 2021 at 1:30 p.m.

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

Chuck Scott Cozzitorto and Nicole Ann Cozzitorto ("Debtors") seek to avoid two judicial liens: (1) \$35,683.78 in favor of San Joaquin Valley Hay Growers Association ("SJVGHA"); and (2) \$329,717.84 in favor of Quality Milk Service, Inc. ("QMS"). Doc. #35. Both liens encumber Debtors' 25% interest in real property located at 19569 Johnson Avenue, Hilmar, CA 95324 ("Property"). Doc. #35.

QMS timely filed written opposition. Doc. #40. The defaults of SJVGHA and all other parties in interest is entered.

This motion was filed on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. The court is inclined to CONTINUE this matter to August 10, 2021 at 1:30 p.m.

### DISCUSSION

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

#### SJVGHA Lien

A judgment was entered against Debtors in favor of SJVGHA in the sum of \$35,683.78 on February 7, 2019. Doc. #38, Ex. C. The abstract of judgment was issued on February 26, 2019 and recorded in Madera County on March 7, 2019.

#### QMS Lien

A judgment was entered against Debtors in favor of QMS in the sum of \$329,717.84 on April 22, 2019. *Id.*, Ex. D. The abstract of judgment was issued on October 31, 2019 and recorded in Madera County on November 8, 2019.

#### Property's Value, Exemptions, and Encumbrances

Debtors contend that Property had an approximate value of \$1.25 million on the petition date. Doc. #1, Schedule A/B, ¶ 1.1. Debtors allege that there is a 15% pre-payment penalty if Property is sold before 2024, which reduces its petition-date value by approximately \$100,000.00. Thus, Debtors declare Property was valued at \$1.15 million on the petition date. Doc. #37, ¶ 3.

Debtors own a 25% interest in Property. The remaining 75% is owned by Joint Debtor's mother, Kimberly Clarot. Debtors insist that the value of their 25% interest is \$287,500.00, based on the \$1.15 million valuation. Doc. #1, Schedule A/B.

The unavoidable liens totaled \$692,441.92 on the petition date, consisting of a deed of trust in favor of Steven and Shelley Fliflet. *Id.*, Schedule D. Property's remaining equity totals \$457,558.08, with Debtors' 25% interest valued at \$114,389.52.

Debtors claimed an exemption pursuant to Cal. Civ. Proc. Code ("C.C.P.") § 704.730 in the amount of \$100,000.00. *Id.*, Schedule C. Debtors contend that Property's encumbrances can be illustrated as follows:

|  |   |                |
|--|---|----------------|
| Fair Market Value of Property on petition date |   | \$1,150,000.00 |
| Total amount of unavoidable liens              | - | \$692,441.92   |
| Remaining available equity                     | = | \$457,558.08   |
| Debtors' 25% interest                          | = | \$114,389.52   |
| Debtors' homestead exemption                   | - | \$100,000.00   |
| SJVHGA judicial lien                           | - | \$35,683.78    |
| Extent SJVHGA judicial lien unsecured          | = | (\$21,294.26)  |
| QMS judicial lien                              | - | \$329,717.84   |
| Extent QMS judicial lien unsecured             | = | (\$329,717.84) |

#### QMS Opposition

QMS opposes this motion and argues that Debtors have understated Property's value. Doc. #40. QMS asks to continue the matter to August 10, 2021 so that it may obtain an appraisal report. QMS further contends that the 17-acre almond orchard attached to Property is not subject to the homestead exemption under C.C.P. § 704.710(a)(1). Instead, Creditor insists that the exemption is limited to the 1,900-square-foot home and nearby land incidental to or part of the residence or dwelling. *Id.*

#### CONCLUSION

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

This matter is now deemed to be a contested matter. Pursuant to Fed. R. Bankr. P. 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared to set a briefing schedule.

Based on the record, the factual issues are:

- (1) The value of Property on the petition date.

The legal issues:

- (2) The extent to which Property may be exempted under C.C.P. § 704.730.

This matter will be CONTINUED to August 10, 2021 at 1:30 p.m. for further scheduling should an evidentiary hearing be necessary. Additional opposition from QMS shall be filed 14 days before the continued hearing date. Any reply shall be filed 7 days before the continued hearing date.

7. [21-10631](#)-B-7     **IN RE: RUBEN LOPEZ**  
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
4-26-2021    [\[13\]](#)

VINCENT QUIGG/ATTY. FOR DBT.

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

DISPOSITION:     Conditionally denied.

ORDER:             The court will issue the order.

Chapter 7 Trustee Peter L. Fear ("Trustee") seeks dismissal for failure to appear and testify at the § 341(a) meeting of creditors scheduled for April 26, 2021. Doc. #14.

Ruben Lopez ("Debtor") timely opposed, and later supplemented his opposition. Docs. ##17-20.

Trustee's motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for June 14, 2021, at 3:00 p.m. If Debtor fails to do so, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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

8. [21-10544](#)-B-7     **IN RE: LISA AGUNDIS AND JUAN AVALOS**

MOTION TO DISMISS JUAN JOSE AVALOS  
5-11-2021    [\[14\]](#)

LISA AGUNDIS/MV  
LISA AGUNDIS/ATTY. FOR MV.

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

DISPOSITION:     Granted

ORDER:             The court will prepare the order.

Joint debtor Lisa Agundis asks the court to dismiss joint debtor Juan Avalos from this Chapter 7 case. Doc. #14. Lisa Agundis and Juan Avalos are not married though they have a long-term relationship and children from that relationship.

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

11 U.S.C. § 707(a) provides that "[t]he court may dismiss a case under this chapter only after notice and a hearing and only for cause." *Bartee v. Ainsworth (In re Bartee)*, 317 B.R. 362, 366 (B.A.P. 9th Cir. 2004). Joint petitions may only be filed by an individual and such individual's spouse. §302 (a); *In re Villaverde*, 540 B.R. 431 (Bankr. C.D. Cal. 2015).

The debtors here are unmarried. Though they have a long-term relationship, the bankruptcy code does not currently permit them to file a joint petition. There is no opposition to the motion.

The motion will be GRANTED.

9. [21-11145](#)-B-7      **IN RE: DENNIS/DEANA LUCKEN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
5-17-2021    [\[13\]](#)

GRISelda TORRES/ATTY. FOR DBT.  
\$338.00 FILING FEE PAID 5/17/21

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

DISPOSITION:      The OSC will be vacated.

ORDER:              The court will issue an order.

The record shows that the filing fee of \$338.00 was paid on May 17, 2021. Therefore, the Order to Show Cause will be vacated.

10. [16-14447](#)-B-7     **IN RE: JEFFREY/ELIZABETH GIBSON**  
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)  
5-5-2021    [\[84\]](#)

JAMES SALVEN/MV  
NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

James E. Salven ("Accountant"), a certified public accountant employed by chapter 7 trustee Peter L. Fear ("Trustee"), requests final compensation of \$2,250.00 for services rendered and reimbursement of \$477.98 for expenses incurred (totaling \$2,727.98) from March 31, 2021 through April 27, 2021. Doc. #84. Trustee declares that he received and reviewed the statement, believes that the requested compensation is reasonable and necessary for administration of the estate, and has no objection to the same. Doc. #87.

This motion will be GRANTED.

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

On April 19, 2021, the court approved Accountant's employment effective March 20, 2021 under 11 U.S.C. §§ 327, 330-331. Doc. #83. Compensation was only permitted following application under § 330(a) and was set at the "lodestar rate" for accounting services applicable at the time services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Acceptance of employment was deemed to be an irrevocable waiver of any pre-petition claim, if any, against the bankruptcy estate. *Id.*

Accountant indicates that he spent 9.0 billable hours at a rate of \$250.00 per hour, totaling \$2,250.00. Doc. #88, Ex. A. Accountant also incurred the following expenses:

|                                  |                 |
|----------------------------------|-----------------|
| Copies (43 @ \$0.25)             | \$10.75         |
| Envelopes (5 @ \$0.20)           | \$1.00          |
| Lacerte Tax Proc (2 @ \$186.00)  | \$372.00        |
| Tax Return Copies (168 @ \$0.20) | \$33.60         |
| Service fee app (47 @ \$1.29)    | \$60.63         |
| <b>Total Costs:</b>              | <b>\$477.98</b> |

*Id.*, Ex. B.

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) preparing employment application; (2) reviewing docket and pleadings regarding personal injury matter; (3) researching personal injury claim and inputting data; (4) processing tax returns and preparing determination letters; (5) finalizing tax returns and transmittal letters. *Id.*, Ex. A; Doc. #86. The court finds the services reasonable and necessary, and the expenses requested actual and necessary.

Movant shall be awarded \$2,250.00 in fees and \$477.98 in costs on a final basis. Trustee will be authorized to pay Accountant a total of \$2,727.98 in compensation.

11. [21-10947](#)-B-7 **IN RE: MARK/ASHLEY NEVAREZ**  
[NSC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
5-6-2021 [[10](#)]

THE GOLDEN 1 CREDIT UNION/MV  
PETER BUNTING/ATTY. FOR DBT.  
NICHOLAS COUCHOT/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

The Golden 1 Credit Union ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2014 Dodge Charger ("Vehicle"). Doc. #10. Debtors filed non-opposition on May 14, 2021. Doc. #18.

This motion will be GRANTED.

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

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 the debtors have failed to make at least 3 pre-petition payments. Movant has produced evidence that the debtors are delinquent at least \$1,020.81. Doc. #14.

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. According to the debtors' 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 debtors have failed to make at least 3 pre-petition payments to Movant and the Vehicle is a depreciating asset.



12. [20-10357](#)-B-7     **IN RE: STEPHEN MEZA**  
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)  
5-3-2021     [\[111\]](#)

JAMES SALVEN/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

James E. Salven ("Accountant"), a certified public accountant employed by chapter 7 trustee Peter L. Fear ("Trustee"), requests compensation of \$3,750.00 for services rendered and reimbursement of \$397.93 for expenses incurred (totaling \$4,147.93) from September 1, 2020 through April 27, 2021. Doc. #111. Trustee declares that he received and reviewed the statement, believes that the requested compensation is reasonable and necessary for administration of the estate, and has no objection to the same. Doc. #114.

This motion will be GRANTED.

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

On September 24, 2020, the court approved Accountant's employment effective September 10, 2020 under 11 U.S.C. §§ 327, 330-331. Doc. #63. Compensation was only permitted following application under § 330(a) and was set at the "lodestar rate" for accounting services applicable at the time services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Acceptance of employment was deemed to be an irrevocable waiver of any pre-petition claim, if any, against the bankruptcy estate. *Id.*

Accountant indicates that he spent 15.0 billable hours at a rate of \$250.00 per hour, totaling \$ 3,750.00. Doc. #115, Ex. A. However,

0.9 billable hours (\$225.00) were performed on September 1, 2020, which was before the September 10, 2020 effective date of employment. LBR 2014-1(b) (1) provides that an order approving employment under Fed. R. Bankr. P. 2014(a) shall be presumed to relate back to the later of 30 days before the filing of the application or the order for relief. Movant filed the employment application September 23, 2020, so the order approving employment is presumed to relate back to August 24, 2020.

Accountant also incurred the following expenses:

|                                |                 |
|--------------------------------|-----------------|
| Copies (182 @ \$0.15)          | \$27.30         |
| Envelopes (5 @ \$0.20)         | \$1.00          |
| Lacerte Tax Proc (2 @ \$81.00) | \$162.00        |
| Final Tax Returns              | \$147.00        |
| Service fee app (47 @ \$1.29)  | \$60.63         |
| <b>Total Costs:</b>            | <b>\$397.93</b> |

*Id.*, Ex. B.

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) preparing employment application and conducting conflict review; (2) researching debtor's acquisition and cost of property; (4) tax analysis of the sale of various assets; (5) loss carryback review and preparing amended 2014 returns and 2015 loss carrybacks; (6) analyzing returns, inputting data, and processing returns; (7) preparing, filing, serving fee application. *Id.*, Ex. A; Doc. #113. The court finds the services reasonable and necessary, and the expenses requested actual and necessary.

Movant shall be awarded \$3,750.00 in fees and \$397.93 in costs on a final basis. Trustee will be authorized to pay Accountant a total of \$4,147.93 in compensation.

13. [20-12159](#)-B-7     **IN RE: OGANES SHISHIKYAN**  
[JDW-3](#)

MOTION TO AVOID LIEN OF DISCOVER BANK  
5-25-2021    [\[39\]](#)

OGANES SHISHIKYAN/MV  
JOEL WINTER/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

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

Organes Shishikyan ("Debtor") seeks to avoid a judicial lien in favor of Discover Bank ("Creditor"), and encumbering residential real property located at 479 E. Ramon Ave., Fresno, CA 93710 ("Property"). Doc. #39. Written opposition was not required and may be presented at the hearing.

In the absence of opposition, this motion will be GRANTED.

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

First, the court notes that LBR 9014-1(d)(3)(B)(i) requires the notice to include the names and addresses of persons who must be served with any opposition. The notice of hearing provided that any opposition shall be served on the Trustee and Debtor's attorney, but then listed Michael H. Meyer as an addressee. Mr. Meyer is not the chapter 7 trustee in this case and the notice should have directed respondents to send opposition and evidence to Peter L. Fear.

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

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$37,653.60 on November 7, 2018. Doc. #41, Ex. 1. The abstract of judgment was issued on July 2, 2019 and recorded in Kern

County on August 16, 2019. *Id.* That lien attached to Debtor's interest in Property. Doc. #43.

As of the petition date, Property had an approximate value of \$242,606.00. Doc. #1, Schedule A/B. The unavoidable liens totaled \$186,173.00 on that same date, consisting of a deed of trust and home equity line of credit in favor of Chase Mortgage. *Id.*, Schedule D. Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code ("C.C.P.") § 704.730 in the amount of \$56,433.00. *Id.*, Schedule C. Property's encumbrances can be illustrated as follows:

|  |   |               |
|--|---|---------------|
| Fair Market Value of Property on petition date |   | \$242,606.00  |
| Total amount of unavoidable liens              | - | \$186,173.00  |
| Remaining available equity                     | = | \$56,433.00   |
| Debtor's homestead exemption                   | - | \$56,433.00   |
| Creditor's judicial lien                       | - | \$37,653.60   |
| Extent Debtors' exemption impaired             | = | (\$37,653.60) |

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

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

14. [21-10061](#)-B-7 **IN RE: JACINTO/KAREN FRONTERAS**  
[GEG-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13  
4-26-2021 [\[30\]](#)

GLEN GATES/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.

Jacinto Fronteras and Karen Jo Fronteras ("Debtors") want to convert this case from chapter 7 to chapter 13. Doc. #30. Debtors filed this case under chapter 7 because Ms. Fronteras' employment as a hairstylist was "effectively eliminated" due to COVID-19. With the release of COVID-19 restrictions, Ms. Fronteras' income is now available and will allow Debtors to keep their vehicle and pay off their debts in a chapter 13 plan. No party in interest timely filed written opposition.

This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo 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. § 706(a) allows a debtor in chapter 7 to convert to chapter 13 "at any time," unless the case was previously converted to chapter 7 from another chapter.

However, the Supreme Court in *Marrama v. Citizens Bank*, 549 U.S. 365, 371-72 (2007), held that a debtor does not have an absolute right to convert a chapter 13 under § 706(a), but also must be eligible to be a debtor under chapter 13. The Supreme Court held that "[i]n practical effect, a ruling that an individual's Chapter 13 case should be dismissed or converted to Chapter 7 because of prepetition bad-faith conduct, including fraudulent acts committed in an earlier Chapter 7 proceeding, is tantamount to a ruling that the individual does not qualify as a debtor under Chapter 13." Therefore, the court must find that Debtors are eligible to be debtors under chapter 13 in conformance with 11 U.S.C. § 1307(c).

11 U.S.C. § 109(e) sets forth the eligibility requirements for Chapter 13 relief. Debtors fall within the limits for total debts according to the schedules. The question is whether they have regular income. Ms. Fronteras was unemployed when the case was filed (Doc. # 1). Now, her salon business is restarting. The impact on the regularity of income is not quantified in the motion. But, based on past results from the schedules, there is potential for regular income from the salon business. There is no opposition to the motion or evidence of bad faith.

The court finds that this case has not been previously converted to chapter 7 from another chapter, and that Debtors are eligible to be debtors under chapter 13 in conformance with 11 U.S.C. § 1307(c). This motion will be GRANTED.

15. [21-10467](#)-B-7     **IN RE: AGUSTIN GODOY LOPEZ**  
[UST-1](#)

MOTION FOR DENIAL OF DISCHARGE OF DEBTOR UNDER 11 U.S.C.  
SECTION 727(A)  
5-25-2021    [\[19\]](#)

TRACY DAVIS/MV  
VINCENT QUIGG/ATTY. FOR DBT.  
JORGE GAITAN/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.

Tracy Hope Davis, the United States Trustee for Region 17 ("UST")  
moves for an order denying Agustin Godoy Lopez's ("Debtor")  
discharge under 11 U.S.C. § 727(a)(8). Doc. #19.

This motion will be GRANTED.

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

11 U.S.C. § 727(a)(8) states that a debtor shall be granted a  
discharge unless "the debtor has been granted a discharge under this  
section . . . in a case commenced within 8 years before the date of  
the filing of the petition."

Fed. R. Bankr. P. ("Rule") 4004(d) allows an objection to discharge  
under § 727(a)(8) to be commenced by motion under Rule 9014.

Debtor previously filed for chapter 7 relief in the Central District  
of California, case no. 13-33087, on September 17, 2013 and received  
a discharge on December 30, 2013. September 17, 2013 is within eight  
years of the date this petition was filed (February 24, 2021).  
Therefore, Debtor cannot receive a discharge in this case. UST's  
motion will be GRANTED.

16. [21-10688](#)-B-7     **IN RE: MANUEL AGUERO**  
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
5-4-2021    [\[9\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.

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

DISPOSITION:        Conditionally denied.

ORDER:                The court will issue an order.

Chapter 7 Trustee Peter L. Fear ("Trustee") seeks dismissal for failure to appear and testify at the § 341(a) meeting of creditors scheduled for May 3, 2021. Doc. #9.

Manuel Borsuto Aguero ("Debtor") timely opposed. Doc. #12.

Trustee's motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for June 14, 2021, at 3:00 p.m. If Debtor fails to do so, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Fed. R. Bankr. P. 1017(e)(1) and 4004(a) for the Chapter 7 Trustee and the U.S. Trustee to object to Debtor's discharge or file motions for abuse, other than presumed abuse, under § 707, will be extended to 60 days after the conclusion of the meeting of creditors.

17. [21-11089](#)-B-7     **IN RE: YUNUEN OREGEL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
5-13-2021    [\[16\]](#)

DISMISSED 5/17/21

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

DISPOSITION:        Dropped as moot.

ORDER:                The court will issue an order.

An order dismissing this case was entered on May 17, 2021. Doc. #24. The Order to Show Cause for failure to pay \$3.00 will be DROPPED AS MOOT.

The court notes that the debtor paid the \$3.00 on June 1, 2021.