

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, June 16, 2021
Place: Department A - Courtroom #11
Fresno, California

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

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

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

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
1-2-2020 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

2. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-21](#)

CONTINUED AMENDED/MODIFIED PLAN
2-18-2021 [[520](#)]

LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

3. [20-13293](#)-A-11 **IN RE: PATRICK JAMES, INC.**
[MB-25](#)

MOTION FOR COMPENSATION FOR DEMERA DEMERA CAMERON LLP, ACCOUNTANT(S)
5-13-2021 [[307](#)]

DEMERA DEMERA CAMERON LLP/MV
HAGOP BEDOYAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

DeMera DeMera Cameron LLP ("Movant"), accountants for debtor in possession Patrick James, Inc., requests allowance of final compensation for services rendered from December 14, 2020 through April 29, 2021. Doc. #307. Movant provided accounting services valued at \$29,924.38, and pursuant to Movant's motion for compensation and declaration, Movant requests compensation for \$29,648.00. Doc. #307, 309; Decl. of Evin Edwards II, Doc. #310. Movant does not request reimbursement for expenses. Doc. #307.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) preparing financial statements for the year ended December 31, 2020; (2) preparing annual federal and state income tax filings; (3) reviewing inventory and support for inventory difference; (4) reviewing QuickBooks; (5) researching changes to financial statements for reporting under bankruptcy proceedings; and (6) performing LIFO calculation. Decl. of Evin Edwards II, Doc. #310; Doc. #309. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED. The court allows on a final basis compensation in the amount of \$29,648.00.

4. [20-13293](#)-A-11 **IN RE: PATRICK JAMES, INC.**
[MB-26](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF MCCORMICK,
BARSTOW, SHEPPARD, WAYTE & CARRUTH LLP FOR HAGOP T. BEDOYAN,
DEBTORS ATTORNEY(S)
5-13-2021 [[312](#)]

HAGOP BEDOYAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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

McCormick, Barstow, Sheppard, Wayte & Carruth, LLP ("Movant"), attorney for debtor and debtor in possession Patrick James. Inc., requests allowance of final compensation and reimbursement for expenses for services rendered from February 1, 2021 through April 30, 2021. Doc. #312. Movant provided legal services valued at \$57,648.50, and requests compensation for that amount. Doc. #314. Movant requests reimbursement for expenses in the amount of \$1,300.49. Doc. #314.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 11 case. 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing general case administration; (2) drafting fee/employment applications; (3) reviewing, revising, and finalizing monthly operating reports; (4) reviewing proof of claims for possible objections; (5) drafting, reviewing, and revising all fee applications; (6) reviewing post-petition lease agreements and dealing with other real property lease issues; (7) reviewing and revising loan documents regarding UMB's exit loan; (8) researching second draw post-bankruptcy PPP loan opportunity; (9) preparing chapter 11 plan and modification of plan; and (10) preparing plan confirmation supporting documents. Decl. of Hagop T. Bedoyan, Doc. #315; Doc. #314. The court finds the compensation of \$57,648.50 and reimbursement for expenses of \$1,300.49 sought for the period from February 1, 2021 through April 30, 2021 are reasonable, actual, and necessary and should be allowed on a final basis.

Movant also requests the court conduct a final review pursuant to 11 U.S.C. § 330 of all fees and expenses previously allowed pursuant to 11 U.S.C. § 331 on an interim basis. Specifically, Movant seeks final allowance of the following compensation and reimbursement for expenses previously awarded to Movant:

Date of Hearing	Fees Allowed	Costs Allowed
January 27, 2021	\$58,255.00	\$618.84
March 31, 2021	\$65,460.00	\$294.19

The court approves on a final basis all fees and expenses of Movant previously allowed on an interim basis.

This motion is GRANTED. The court allows on a final basis compensation in the amount of \$57,648.50 and reimbursement for expenses in the amount of \$1,300.49. The court also allows on a final basis all fees and expenses previously allowed to Movant on an interim basis, as set forth in the above chart.

MOTION FOR COMPENSATION FOR THE STAPLETON GROUP, OTHER
PROFESSIONAL(S)
5-13-2021 [\[317\]](#)

STAPLETON GROUP, INC./MV
HAGOP BEDOYAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

The Stapleton Group, Inc. ("Movant"), financial consultants for debtor in possession Patrick James, Inc., requests allowance of final compensation and reimbursement for expenses for services rendered from February 1, 2021 through April 30, 2021. Doc. #317. Movant provided consulting services valued at \$13,816.50, and requests compensation for that amount. Doc. #317. Movant requests reimbursement for expenses in the amount of \$22.50. Doc. #317.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) reviewing revised projection model for plan support, § 503(b) claim payment schedule and budget/actual analysis; (2) reviewing financial reports and bank support schedules; (3) preparing and processing monthly accounting; and (4) preparing summary of assumptions used in financial statement projections. Decl. of David P. Stapleton, Doc. #319; Doc. #320. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

Movant also requests the court conduct a final review pursuant to 11 U.S.C. § 330 of all fees and expenses previously allowed pursuant to 11 U.S.C. § 331 on an interim basis. Specifically, Movant seeks final allowance of the

following compensation and reimbursement for expenses previously awarded to Movant:

Date of Hearing	Fees Allowed	Costs Allowed
January 27, 2021	\$26,533.00	\$0
March 31, 2021	\$46,283.50	\$0

The court approves on a final basis all fees and expenses of Movant previously allowed on an interim basis.

This motion is GRANTED. The court allows on a final basis compensation in the amount of \$13,816.50 and reimbursement for expenses in the amount of \$22.50. The court also allows on a final basis all fees and expenses previously allowed to Movant on an interim basis, as set forth in the above chart.

11:00 AM

1. [21-11092](#)-A-7 **IN RE: KERRY SWEAZY**

PRO SE REAFFIRMATION AGREEMENT WITH PATELCO CREDIT UNION
5-25-2021 [\[11\]](#)

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 the debtor that no appearance is necessary.

The debtor was represented by counsel when he entered into the reaffirmation agreement. 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)(3) and is not enforceable.

1. [19-12511](#)-A-7 **IN RE: FAULKNER TRUCKING, INC.**
[THA-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF COLEMAN & HOROWITT, LLP
FOR THOMAS H. ARMSTRONG, TRUSTEES ATTORNEY(S)
5-11-2021 [\[132\]](#)

RILEY WALTER/ATTY. FOR DBT.
THOMAS ARMSTRONG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

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

Coleman and Horowitt, LLP ("Movant"), general counsel for chapter 7 trustee Peter L. Fear ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from December 10, 2019 through June 30, 2021. Doc. #132. Movant provided legal services valued at \$35,266.00, and requests compensation for that amount. Doc. #132. Movant requests reimbursement for expenses in the amount of \$2,211.24. Doc. #132. Movant also requests a final review and allowance of all previously allowed fees pursuant to 11 U.S.C. §§ 330 and 331. Doc. #132. The court has previously granted one interim award of \$11,931.40 in compensation and \$1,756.55 in reimbursement for expenses. Order, Doc. #103.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) analyzing and recovering estate assets; (2) drafting a motion to approve sale proceeds sharing agreement with Celtic Bank; (3) drafting employment applications; (4) commencing an adversary proceeding to recover alleged fraudulent transfers; (5) drafting a motion for authority to compromise a controversy; (6) filing an interim fee application; (7) preparing a motion to pay certain post-petition administrative expenses; and (8) filing a final fee application. Doc. #135. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary. The court also approves on a final basis the \$11,931.40 in compensation and \$1,756.55 in reimbursement for expenses previously allowed on an interim basis.

This motion is GRANTED. The court allows on a final basis compensation in the amount of \$35,266.00 and reimbursement for expenses in the amount of \$2,211.24. Trustee is authorized to make a combined payment of \$37,477.24, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code. The court also allows on a final basis the \$11,931.40 in compensation and \$1,756.55 in reimbursement for expenses previously allowed to Movant on an interim basis.

2. [15-12213](#)-A-7 **IN RE: GARY/DEBORAH POST**
[RSW-1](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA) N.A.
6-1-2021 [\[25\]](#)

DEBORAH POST/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Federal Rule of Bankruptcy Procedure ("Rule") 9014(b) requires a motion to avoid a lien under 11 U.S.C. § 522(f) be served "in the manner provided for service of a summons and complaint by Rule 7004." Service of the motion on Capital One Bank N.A. ("Creditor") does not satisfy Rule 7004.

Rule 7004(h) provides that service on an insured depository institution, such as Creditor, "shall be made by certified mail addressed to an officer of the institution unless" an appearance by an attorney of the institution has been entered, the court orders otherwise, or the institution waives its entitlement to service by designating an officer to receive service. The certificate of service filed in connection with this motion does not show that service of the motion was made by certified mail or addressed to an officer Creditor. See Doc. #29. Further, a review of the docket shows no attorney for Creditor has appeared in for Creditor in this bankruptcy case and no officer has been designated to receive service for Creditor in this bankruptcy case. Based on the pleadings filed with this court, Creditor was not served properly with this motion pursuant to Rule 7004(h).

Accordingly, this motion is DENIED WITHOUT PREJUDICE for improper service.

MOTION FOR COMPENSATION BY THE LAW OFFICE OF COLEMAN & HOROWITT, LLP
FOR THOMAS H. ARMSTRONG, TRUSTEES ATTORNEY(S)
5-19-2021 [\[56\]](#)

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

DISPOSITION: Granted.

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

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

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

Coleman and Horowitt, LLP ("Movant"), special counsel for chapter 7 trustee Peter L. Fear ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from April 21, 2020 through June 16, 2021. Doc. #56. Movant provided legal services valued at \$15,394.50, and requests compensation for that amount. Doc. #56. Movant requests reimbursement for expenses in the amount of \$728.23. Doc. #56.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) conducting review of amended schedules and exemptions; (2) drafting employment application; (3) drafting objection to exemptions; (4) drafting complaint and prosecuting adversary proceeding to sell co-owned real property; (5) dealing with the settlement and compromise of the adversary proceeding; and (6) filing final fee application. Doc. #59. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED. The court allows on a final basis compensation in the amount of \$15,394.50 and reimbursement for expenses in the amount of \$728.23. Trustee is authorized to make a combined payment of \$16,122.73, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

4. [21-10622](#)-A-7 **IN RE: KALYN HILL**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT
SEC. 341(A) MEETING OF CREDITORS
5-17-2021 [\[15\]](#)

JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

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

The debtor shall attend the meeting of creditors rescheduled for June 24, 2021 at 3:00 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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

5. [21-10764](#)-A-7 **IN RE: SERGIO GALLARDO**
[RLF-1](#)

MOTION TO AVOID LIEN OF CITIBANK, N.A.
5-11-2021 [\[17\]](#)

SERGIO GALLARDO/MV
LE'ROY ROBERSON/ATTY. FOR DBT.
LE'ROY ROBERSON/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the

U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Because the court is granting the motion based a different analysis then that used by the debtor in the motion, the hearing on this motion will proceed as scheduled.

Sergio Gallardo ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Citibank, N.A. ("Creditor") on Debtor's residential real property commonly referred to as 3960 Bert Crane Road, Atwater, CA 95301 (the "Property"). Doc. #17; Schedules A and C, Doc. #1. Debtor filed the chapter 7 petition on March 30, 2021. Doc. #1.

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

In this case, Debtor values the Property according to a post-petition appraisal. Decl. of Debtor, Doc. #19; Ex. 5, Doc. #24. The post-petition appraisal values the Property at \$375,000 as of April 2021. Ex. 5, Doc. #24. However, for lien avoidance purposes, the value of the debtor's property is determined on the date the petition is filed. 11 U.S.C. § 522(a)(2); In re Dore, 124 B.R. 94, 96 (Bankr. S.D. Cal. 1991). Debtor filed the bankruptcy petition on March 30, 2021. Debtor's Schedule A/B, also filed on March 30, 2021, asserts a value for the Property of \$435,000. Schedule A/B, Doc. #1. The valuation of \$435,000 is reasserted throughout Debtor's schedules. See Schedules C and D, Doc. #1. Because the value of Debtor's Property is determined on the date the petition is filed and because Debtor's schedules are filed under penalty of perjury, the court will use the Property's scheduled value of \$435,000 for the lien avoidance analysis. Likewise, the court will use the scheduled value of Flagstar Bank's mortgage lien on the Property of \$249,443.00, the value asserted by Debtor in Schedule D. Doc. #1.

A judgment was entered against Sergio Gallardo in the amount of \$4,674.73 in favor of Creditor on November 6, 2019. Ex. 3, Doc. #22. The abstract of judgment was recorded pre-petition in Merced County on December 20, 2019. Ex. 3, Doc. #22. The lien attached to Debtor's interest in the Property located in Merced County. Doc. #22. The Property also is encumbered by a lien in favor of Flagstar Bank in the amount \$249,443.00. Schedule D, Doc. #1. Debtor claimed an exemption of \$185,557.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$435,000.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

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Amount of Creditor's judicial lien		\$4,674.73
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$249,443.00
Amount of Debtors' claim of exemption in the Property	+	\$185,557.00
	sum	\$439,674.73
Value of Debtors' interest in the Property absent liens	-	\$435,000.00
Amount Creditor's lien impairs Debtors' exemption	=	\$4,674.73

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

6. [17-12781](#)-A-7 **IN RE: DALIP NIJJAR**
[JES-4](#)

MOTION FOR COMPENSATION FOR JAMES SALVEN, CHAPTER 7 TRUSTEE(S)
5-14-2021 [[297](#)]

JAMES SALVEN/MV
JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

James E. Salven ("Trustee"), the chapter 7 trustee in this bankruptcy case, requests allowance of final compensation and reimbursement for expenses for services rendered from July 20, 2017 through the closing of the case. Doc. #297. Trustee requests compensation of \$31,190.49. Doc. #297. Trustee requests reimbursement for expenses in the amount of \$345.53. Doc. #297. Since being appointed to this case on July 20, 2017, Trustee administered the estate, employed counsel and accountants, disposed of estate property, reviewed and reconciled financial records, and prepared final filings. Exs., Doc. #300.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a chapter 7 trustee. 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded a chapter 7 trustee, the court shall treat such compensation as a commission, based on § 326 of the Bankruptcy Code. 11 U.S.C. § 330(a)(7). Here, Trustee demonstrates reasonable compensation in accordance with the statutory framework of § 326. Ex. A, Doc. #300. Trustee notes that this case was transferred from the District of Colorado Bankruptcy Court, and therefore requests compensation for the statutory commission less \$15,000 sought as compensation by the Colorado trustee. Doc. #297; Decl. of Trustee, Doc. #299. Further, the court finds Trustee's services and requested expenses were actual and necessary to the administration of this estate.

This motion is GRANTED. The court allows statutory compensation in the amount of \$31,190.49 and reimbursement for expenses in the amount of \$345.53.

7. [17-12781](#)-A-7 **IN RE: DALIP NIJJAR**
[JES-5](#)

MOTION FOR COMPENSATION FOR KEVIN P. KUBIE, CHAPTER 7 TRUSTEE(S)
5-14-2021 [\[303\]](#)

JAMES SALVEN/MV
JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Kevin P. Kubie ("Trustee"), the chapter 7 trustee in this bankruptcy case, requests allowance of final compensation and reimbursement for expenses for services rendered from March 14, 2016 through July, 19, 2020. Doc. #303. Trustee rendered trustee services from case filing until the case was transferred from the Bankruptcy Court of the District of Colorado to the current court. Doc. #303. Trustee requests compensation of \$15,000.00. Doc. #303. Trustee requests reimbursement for expenses in the amount of \$260.45. Doc. #303. From Trustee's appointment to this case on March 14, 2016 until the case was transferred, Trustee administered the estate, employed

counsel and accountants, disposed of estate property, reviewed and reconciled financial records, and prepared final filings. Doc. #305.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a chapter 7 trustee. 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded a chapter 7 trustee, the court shall treat such compensation as a commission, based on § 326 of the Bankruptcy Code. 11 U.S.C. § 330(a)(7). Trustee requests compensation for a portion of the statutory commission, representing services rendered in the District of Colorado. Doc. #303. Here, Trustee demonstrates reasonable compensation in accordance with the statutory framework of § 326. Ex. A, Doc. #300. Further, the court finds Trustee's services and requested expenses were actual and necessary to the administration of this estate.

This motion is GRANTED. The court allows statutory compensation in the amount of \$15,000.00 and reimbursement for expenses in the amount of \$260.45.

8. [16-10889](#)-A-7 **IN RE: WILLIAM/MARY JENNINGS**
[TCS-2](#)

MOTION TO AVOID LIEN OF HSBC BANK NEVADA, N.A.
6-2-2021 [\[31\]](#)

MARY JENNINGS/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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 section 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 section 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Federal Rule of Bankruptcy Procedure ("Rule") 4003(b)(1) allows a party in interest to object to a claim of exemption within 30 days after the conclusion of the § 341 meeting of creditors or 30 days after the filing of an amended Schedule C, whichever is later. In this case, the debtors filed an amended Schedule C on June 2, 2021. See Doc. #34. The amended Schedule C exempts, for the first time, an interest in the debtors' residence. Because parties in interest can still object to the debtors' claimed exemptions under Rule 4003, the debtors cannot yet establish that they are entitled to the scheduled exemption that the debtors assert is impaired by the lien. This motion is therefore premature and not ripe for hearing because the debtors cannot satisfy the first element required to avoid a lien under § 522(f)(1).

Accordingly, this motion will be DENIED WITHOUT PREJUDICE.