

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, July 8, 2020
Place: Department B – 510 19th Street
Bakersfield, 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. 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.

9:00 AM

1. [19-12515](#)-B-13 **IN RE: ALICE CAMERON**
[JCW-1](#)

AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY
5-13-2020 [\[64\]](#)

U.S. BANK NATIONAL ASSOCIATION/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.
DISMISSED 5/15/20

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The case was dismissed on May 15, 2020. Doc. #72.

2. [20-10319](#)-B-13 **IN RE: OLGA AGUILAR**
[MHM-1](#)

MOTION TO DISMISS CASE
5-26-2020 [\[39\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 5, 2020 at 9:00 a.m.

ORDER: The court will issue an order.

The chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c) for debtor's failure to confirm a chapter 13 plan. Doc. #39. Debtor timely responded, stating that a motion to confirm a plan is set for hearing on the same calendar (see matter #3 below, RSW-2).

That matter is being continued to August 5, 2020 at 9:00 a.m. to allow debtor an opportunity to respond to the chapter 13 trustee's opposition to confirmation. Therefore this motion will be continued

to that date and time to be heard in conjunction with the continued motion to confirm plan.

3. [20-10319](#)-B-13 **IN RE: OLGA AGUILAR**
[RSW-2](#)

MOTION TO CONFIRM PLAN
6-3-2020 [\[43\]](#)

OLGA AGUILAR/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 5, 2020 at 9:00 a.m. The court sets September 25, 2020 as a bar date by which a chapter 13 plan must be confirmed or the case will be dismissed.

ORDER: The court will issue an order.

The chapter 13 trustee ("Trustee") has filed an objection to the debtor's fully noticed motion to confirm a chapter 13 plan. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than July 22, 2020. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. Trustee shall file and serve a reply, if any, by July 29, 2020.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than July 29, 2020. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

Pursuant to § 1324(b), the court will set September 25, 2020 as a bar date by which a chapter 13 plan must be confirmed or the case will be dismissed on Trustee's declaration.

4. [15-14827](#)-B-13 **IN RE: BRIAN HOVEN**
[LKW-5](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
6-12-2020 [\[91\]](#)

LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

This motion is GRANTED. Movant is awarded \$2,640.00 in fees and costs of \$5.30.

5. [20-11229](#)-B-13 **IN RE: THERON/BARBARA REDFEARN**
[MHM-1](#)

MOTION TO DISMISS CASE
5-15-2020 [\[22\]](#)

MICHAEL MEYER/MV
MICHAEL REID/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 29, 2020 at 9:30 a.m.

ORDER: The court will issue an order.

The chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c) for debtor's failure to confirm a chapter 13 plan and because debtor has failed to make all payments due under the plan. Doc. #22. Debtor timely responded, stating that a motion to confirm a plan is set for hearing on July 29, 2020 at 9:30 a.m. See WL-1, doc. #31. Therefore, this motion will be continued to that date and time to be heard in conjunction with the motion to confirm plan.

6. [20-11736](#)-B-13 **IN RE: JASPAL KAUR**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-3-2020 [\[15\]](#)

WILLIAM EDWARDS/ATTY. FOR DBT.
DISMISSED 6/8/20

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on June 8, 2020. Doc. #18. The Order to Show Cause will be dropped as moot. No appearance is necessary.

7. [20-10444](#)-B-13 **IN RE: DAVID/LATUNJIA JOHNSON**
[PK-2](#)

OBJECTION TO CLAIM OF LVNV FUNDING LLC, CLAIM NUMBER 9
4-30-2020 [\[48\]](#)

DAVID JOHNSON/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

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

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This objection is SUSTAINED.

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under section 501, is deemed allowed, unless a party in interest objects.

Federal Rule of Bankruptcy Procedure 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (9th Cir. BAP 2000).

Debtor objects to the claim on the grounds that it is barred by the statute of limitations, that the lack of assignment constitutes a defense under California law and debtors are entitled to raise it under 11 U.S.C. § 502, and that the claimant does not have standing. Doc. #48. Claimant did not file opposition.

Here, the movant has established that the statute of limitations in California bars a creditor's action to recover on a contract, obligation, or liability founded on an oral contract after two years and one founded on a written instrument after four years. See California Code of Civil Procedure §§ 312, 337(1), and 339. A claim that is unenforceable under state law is also not allowed under 11 U.S.C. § 502(b)(1) once objected to. In re GI Indust., Inc., 204 F.3d 1276, 1281 (9th Cir. 2000). Regardless of whether the contract was written or oral, the last transaction on the account according to the evidence was May 22, 2003, which is well past the two and four year mark in the statutes of limitations.

Therefore, claim no. 9 filed by LVNV Funding LLC is disallowed in its entirety on statute of limitations grounds alone. The court makes no finding on the other issues.

Objectors state they may request attorney's fees in pursuing the objection. They may do so by filing a motion within the time limits and other procedures under Fed. R. Bankr. P. 7054(b) which is applicable in contested matters under Fed. R. Bankr. P. 9014(c).

8. [20-10444](#)-B-13 **IN RE: DAVID/LATUNJIA JOHNSON**
[PK-4](#)

MOTION TO CONFIRM PLAN
5-27-2020 [\[64\]](#)

DAVID JOHNSON/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The court confirmed a later filed plan (PK-5, matter #9 below) on this calendar.

9. [20-10444](#)-B-13 **IN RE: DAVID/LATUNJIA JOHNSON**
[PK-5](#)

MOTION TO CONFIRM PLAN
6-2-2020 [\[77\]](#)

DAVID JOHNSON/MV
PATRICK KAVANAGH/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

10. [20-10445](#)-B-13 **IN RE: GERARDO/BRITTANY MEDEL**
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL
ASSOCIATION
4-8-2020 [\[17\]](#)

U.S. BANK NATIONAL ASSOCIATION/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
SEAN FERRY/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled as moot. Debtor has agreed to the
proposed changes in the objection.

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

This objection was filed and served pursuant to Local Rule of
Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled.

Creditor U.S. Bank National Association ("Creditor") objects to plan
confirmation because the plan does not account for the entire amount
of the pre-petition arrearages that debtor owes to creditor. Doc.
#17, claim #12.

Section 3.02 of the plan provides that it is the proof of claim, not
the plan itself, that determines the amount that will be repaid
under the plan. Doc. #2. Creditor's proof of claim, filed March 29,
2020, states a claimed arrearage of \$18,263.52. This claim is
classified in class 1 - paid by the chapter 13 trustee. Plan section
3.07(b)(2) states that if a Class 1 creditor's proof of claim
demands a higher or lower post-petition monthly payment, the plan
payment shall be adjusted accordingly.

Debtors' plan understates the amount of arrears. The plan states
arrears of \$14,422.99. Doc. #2. Debtor responded, stating that they
"agree to make the changes to satisfy the objection. A proposed
order confirming plan with those changes has been sent to counsel,
but not yet returned." Doc. #30.

This matter is called to determine Creditor's status with debtors'
proposal and the proposed order.

11. [17-14055](#)-B-13 **IN RE: WES/GLORIA MCMACKIN**
[PK-6](#)

MOTION TO MODIFY PLAN
6-3-2020 [\[132\]](#)

WES MCMACKIN/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE. There is no proof that the creditors were served the notice of hearing or the amended plan.

The certificate of service only shows that the United States Trustee and the Chapter 13 Trustee were served. Doc. #138.

12. [17-14055](#)-B-13 **IN RE: WES/GLORIA MCMACKIN**
[PK-7](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY
6-4-2020 [\[143\]](#)

PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. Movant is awarded \$8,340.00 (limited to \$6,300.00) in fees and \$165.44 in costs.

13. [20-10969](#)-B-13 **IN RE: DIANE PENDLEY**
[MHM-1](#)

MOTION TO DISMISS CASE
6-10-2020 [\[30\]](#)

MICHAEL MEYER/MV
RICHARD LOA/ATTY. FOR DBT.
RESPONSIVE PLEADING

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 court will issue the order.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

The chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. §§ 1307(c)(1) and (c)(4) because debtor has failed to make all payments due under the plan and failed to confirm a chapter 13 plan. Doc. #30.

Debtor responded, albeit one day late, stating that they have filed a motion to confirm a chapter 13 plan and that because due to financial impacts which have temporarily reduced their income, debtors were unable to make the full payments necessary under the plan. Doc. #36. It does not appear that the opposition was served.

It is true that debtors have filed a motion to confirm plan, set for hearing in early September 2020, but that motion is procedurally deficient and will not be granted. There is no docket control number, no LBR 9014-1(d)(3)(B)(iii) language in the notice of hearing, the notice of motion, motion, declaration, exhibits, and plan are all filed as one document instead of separately, nor does it appear that all creditors were served. The master address list (doc. #2) lists one Keith Kayser that was not served the motion to confirm plan. Doc. #37.

The court is inclined to grant the motion. The court urges debtor's counsel to review the LBR before filing another motion to confirm plan.

14. [20-11570](#)-B-13 **IN RE: ROGELIO/MYRA RIOS**
[MHM-2](#)

MOTION TO DISMISS CASE
6-10-2020 [\[22\]](#)

MICHAEL MEYER/MV
PHILLIP GILLET/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir. 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The record shows that there has been unreasonable delay by the debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtors failed to appear at the scheduled 341 meeting of creditors and failed to complete Credit Counseling Certificates timely. Accordingly, the case will be dismissed.

15. [19-13072](#)-B-13 **IN RE: GARY/SANDRA BOZARTH**
[DMG-2](#)

MOTION FOR COMPENSATION FOR D. MAX GARDNER, DEBTORS ATTORNEY(S)
5-27-2020 [\[42\]](#)

D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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

This motion is GRANTED. Movant is awarded \$4,142.00 in fees and \$42.92 in costs.

16. [18-10876](#)-B-13 **IN RE: RODNEY/TRACI JONES**
[PK-1](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY
5-21-2020 [\[27\]](#)

PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. Movant is awarded \$5,070.00 in fees.

17. [17-12486](#)-B-13 **IN RE: PAULA DUNAWAY**
[PK-4](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY
6-5-2020 [\[55\]](#)

PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. Movant is awarded \$4,000.00 in fees.

18. [20-10592](#)-B-13 **IN RE: JUAN PATINO**
[MHM-1](#)

MOTION TO DISMISS CASE
5-18-2020 [\[48\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondent's

default will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir. 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtor failed to appear at the continued 341 meeting of creditors, failed to make all payments due under the plan (11 U.S.C. § 1307(c)(1) and (c)(4), and failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Accordingly, the case will be dismissed.

19. [19-14193](#)-B-13 **IN RE: ELIZABETH VILLA**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
3-2-2020 [\[35\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The grounds of the motion are moot. The grounds are that debtor failed to confirm a chapter 13 plan. Doc. #35. Debtor's motion to confirm a plan is granted on this calendar. See matter #20 below, RSW-2. Therefore the motion is DENIED AS MOOT.

20. [19-14193](#)-B-13 **IN RE: ELIZABETH VILLA**
[RSW-2](#)

MOTION TO CONFIRM PLAN
6-3-2020 [\[81\]](#)

ELIZABETH VILLA/MV
ROBERT WILLIAMS/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

10:00 AM

1. [19-13700](#)-B-7 **IN RE: KEITH/KRISTI BLACKETT**
[DMG-1](#)

MOTION TO AVOID LIEN OF BMO HARRIS, N.A.
6-10-2020 [\[18\]](#)

KEITH BLACKETT/MV
D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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

A judgment was entered against the debtor in favor of BMO Harris Bank N.A. in the sum of \$625,540.02 on January 7, 2019. Doc. #21. The abstract of judgment was recorded with Kern County on April 15, 2019. Id. That lien attached to the debtor's interest in a residential real property in Bakersfield, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$280,000.00 as of the petition

date. Doc. #1. The unavoidable liens totaled \$255,000.00 on that same date, consisting of a first deed of trust in favor of Freedom Mortgage. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of \$25,000.00. Id.

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

2. [19-10112](#)-B-7 **IN RE: SONIA CASTEEL**
[RSW-1](#)

MOTION TO AVOID LIEN OF CITIBANK, N.A.
6-4-2020 [\[24\]](#)

SONIA CASTEEL/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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

Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Citibank, N.A. in the sum of \$2,919.46 on July 16, 2018. Doc. #27. The abstract of judgment was recorded with Kern County on September 26, 2018. Id. That lien attached to the debtor's interest in a residential real property in Bakersfield, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$233,300.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$186,938.00 on that same date, consisting of a first deed of trust in favor of PennyMac Loan Services, LLC. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of \$75,000.00. Id.

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

3. 19-10112-B-7 **IN RE: SONIA CASTEEL**
RSW-2

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
6-4-2020 [29]

SONIA CASTEEL/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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

A judgment was entered against the debtor in favor of Capital One Bank (USA), N.A. in the sum of \$3,858.76 on August 27, 2018. Doc. #32. The abstract of judgment was recorded with Kern County on October 29, 2018. Id. That lien attached to the debtor's interest in a residential real property in Bakersfield, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$233,300.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$186,938.00 on that same date, consisting of a first deed of trust in favor of PennyMac Loan Services, LLC. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of \$75,000.00. Id.

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

4. [19-14015](#)-B-7 **IN RE: MAXIMUS III COMPANY**
[LNH-1](#)

MOTION TO EMPLOY LISA HOLDER AS ATTORNEY(S) AND/OR MOTION FOR
COMPENSATION FOR LISA HOLDER, TRUSTEES ATTORNEY(S)
6-16-2020 [\[31\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and 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.

This motion is GRANTED.

The chapter 7 trustee ("Trustee") here submitted a report of no distribution. There was an objection to that report and the ensuing litigation and negotiation resulted in the sale of assets which is also on this calendar. The court finds the terms and conditions of the proposed employment to be reasonable and the fixed fee compensation proposed to be reasonable.

Since the court has found the proposed compensation to be reasonable and since the case is essentially fully administered, there is no need for a separate motion approving the fixed fee compensation. The Trustee is authorized, in his discretion, to pay the fixed fee compensation to counsel.

Pursuant to 11 U.S.C. § 327(e), the trustee may employ, with the court's approval and for a specified special purpose, an attorney that has represented the debtor if it is in the best interest of the estate and if the attorney does not represent nor hold an adverse interest to the debtor or to the estate with respect to the matter on which such attorney is to be employed. Trustee wishes to employ Lisa Holder ("Counsel") to advise him concerning estate administration and his rights and remedies regarding assets of the estate and creditors' claims and to prepare such pleadings, motions, notices, and orders as required for the orderly administration of the case. Doc. #31. Trustee proposes to pay Counsel on a fixed-fee basis. Id. Counsel has agreed to the fixed fee.

After review of the evidence, and unless any opposition is given at the hearing, the court finds that Counsel does not represent nor hold an adverse interest to the debtor or to the estate with respect to the matter on which Counsel is to be employed.

This motion is GRANTED. Trustee is authorized to employ Counsel for the purposes stated above and in the motion. The Trustee is also authorized to pay the fixed fee compensation in his discretion.

5. [19-14015](#)-B-7 **IN RE: MAXIMUS III COMPANY**
[LNH-2](#)

MOTION TO SELL AND/OR MOTION TO COMPROMISE CONTROVERSY/APPROVE
SETTLEMENT AGREEMENT WITH COASTAL STAR PARTNERS, LLC
6-16-2020 [\[36\]](#)

JEFFREY VETTER/MV
D. GARDNER/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied without prejudice
in part.

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

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

This motion is GRANTED IN PART and DENIED WITHOUT PREJUDICE IN PART. The motion to sell is granted, but the motion requesting the compromise of a controversy is denied without prejudice. Movant has not offered any evidence or the necessary legal analysis to grant that relief in this motion. The chapter 7 trustee ("Trustee") asks the court for an order authorizing Trustee to sell real and personal property and to compromise a breach of contract lawsuit related to The Vines at Greenfield project. Doc. #36.

As part of the bankruptcy estate there exists several assets related to a development project the debtor has an interest in, The Vines at Greenfield ("Development"). Doc. #38. The assets at issue in this motion are 1) a disputed interest in a \$30,000.00 escrow account, 2) a private roadway pertaining to Development, and 3) other unscheduled assets, sometimes called "residual assets," together the "Vines Assets." Id. Coastal Star Partners, LLC ("Coastal") has offered to purchase the Vines Assets for \$12,000.00. Doc. #36.

11 U.S.C. § 363(b)(1) allows the Trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, No. 16-00327-GS, 2018 WL 6584772, at *2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200

B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 2018 WL 6584772, at *4, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" Id., citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

It appears that the sale of the Vines Assets is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith. Trustee believes the real property is only minimally valuable. The escrow account "is the only asset . . . that . . . could have any real value." Doc. #38. Coastal believes that it is entitled to the entire amount in the escrow account, while debtor believes it has earned a portion of that amount. Id. The escrow account was unscheduled, and in order to "avoid future disputes regarding unscheduled assets, and to ensure finality to all parties" Trustee determined that "it is in the estate's best interest to sell all other unscheduled assets to Coastal." Id. Coastal has also filed a lawsuit against debtor in state court. Doc. #39. The sale motion should resolve that lawsuit.

Any party desiring to bid at the hearing must: (1) Deliver a \$1,200.00 refundable deposit in certified funds (the "Deposit") to Trustee before or at the hearing; (2) Be prepared to bid for The Vines Assets in minimum \$500.00 increments; (3) Be prepared to enter into a purchase and sale agreement at least as favorable to the estate as the agreement between Trustee and Proposed Buyer; (4) Be prepared to pay the remaining sale price within seven days after the hearing; (5) The winning bidder (including Proposed Buyer) who fails to perform will forfeit its Deposit as reasonable liquidated damages for failing to perform; (6) Unsuccessful bidders' Deposits will be returned at or shortly after the hearing; (7) A back-up bidder may be qualified at the hearing, which will be authorized to consummate the sale if the winning bidder fails to perform by the deadline.

When the sale of litigation claims will involve the termination of those claims the court must consider proposed sale offers not only under § 363(b) but also as a settlement of such claims under Fed. R. Bankr. P. 9019. Simantob v. Claims Prosecutor, LLC (In re Lahijani), 325 B.R. 282, 290 (9th Cir. BAP 2005); Goodwin v. Mickey Thompson Entertainment Group, Inc., 292 B.R. 415, 420 (9th Cir. BAP 2003).

There is no evidence to show that Trustee has considered the standards of In re Woodson, 839 F.2d 610, 620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. the probability of success in the litigation;
- b. the difficulties, if any, to be encountered in the matter of collection;

- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

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

The evidence supporting the motion contains no analysis of the germane factors governing settlements. The exhibits include a copy of the complaint that Coastal filed against the debtor. The complaint alleges debtor failed to perform a contract requiring construction of improvements for a commercial development. There is no cross-complaint filed by the debtor. So, the "compromise" seems illusory.

Coastal here has filed a claim for \$225,000.00. The motion mentions that as part of the consideration for the asset sale, Coastal will provide a dismissal. That is presumably a dismissal of the referenced lawsuit. There is no mention in the motion how Coastal's bankruptcy claim will be administered.

Therefore the motion to sell only is GRANTED. The court is unable to make the necessary findings to grant relief under Fed. R. Bankr. P. 9019.

6. [19-14015](#)-B-7 **IN RE: MAXIMUS III COMPANY**
[MHK-1](#)

CONTINUED OPPOSITION/OBJECTION TO CHAPTER 7 TRUSTEE'S REPORT OF
NO DISTRIBUTION, MOTION FOR RELIEF FROM AUTOMATIC STAY
3-17-2020 [\[17\]](#)

COASTAL STAR PARTNERS, LLC/MV
D. GARDNER/ATTY. FOR DBT.
DAVID MEEGAN/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

7. [18-15022](#)-B-7 **IN RE: TERRY WHEELER**
[PK-2](#)

MOTION TO AVOID LIEN OF FIRST FINANCIAL INSURANCE COMPANY
6-24-2020 [\[22\]](#)

TERRY WHEELER/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

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

A judgment was entered against the debtor in favor of First Financial Insurance Company in the sum of \$9,497.40 on April 22, 2010. Doc. #26. The abstract of judgment was recorded with Kern County on June 16, 2010. Id. That lien attached to the debtor's interest in a residential real property in Bakersfield, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$190,000.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$151,887.00 on that same date, consisting of a first deed of trust in favor of Seterus, Inc. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of \$38,113.00. Id.

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

8. [18-15022](#)-B-7 **IN RE: TERRY WHEELER**
[PK-3](#)

MOTION TO AVOID LIEN OF SYSCO CENTRAL CALIFORNIA INC.
6-24-2020 [\[28\]](#)

TERRY WHEELER/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

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

A judgment was entered against the debtor in favor of Sysco Central California Inc. in the sum of \$20,398.10 on October 20, 2010. Doc. #31. The abstract of judgment was recorded with Kern County on January 19, 2011. Id. That lien attached to the debtor's interest in a residential real property in Bakersfield, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$190,000.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$151,887.00 on that same date, consisting of a first deed of trust in favor of Seterus, Inc. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of \$38,113.00. Id.

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

9. [18-15022](#)-B-7 **IN RE: TERRY WHEELER**
[PK-4](#)

MOTION TO AVOID LIEN OF COMMERCIAL TRADE, INC.
6-24-2020 [\[34\]](#)

TERRY WHEELER/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

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

Three separate judgments were entered against debtor in an individual capacity as well as against a corporation debtor owned, BBQ4U Catering, Inc. AKA BBQ 4 U Catering, in favor of creditor Commercial Trade, Inc. Doc. #36. The first judgment was entered in the sum of \$19,342.28 on March 22, 2013 and the abstract of judgment was recorded with Kern County on June 14, 2013 and the abstract of judgment was recorded with kern County on June 134, 2013. Id. The second judgment was entered in the sum of \$85,869.79 on November 6, 2014 and the abstract of judgment was recorded with Kern County on December 22, 2014. Id. The third judgment was entered in the sum of \$85,869.79 on April 18, 2018 and the abstract of judgment was recorded with Kern County on July 5, 2018. Id.

The liens attached to the debtor's interest in a residential real property in Bakersfield, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$190,000.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$151,887.00 on that same date, consisting of a first deed of trust in favor of Seterus, Inc. Id.

The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of \$38,113.00. Id.

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

10. [20-11647](#)-B-7 **IN RE: ANGELA CISNEROS**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-3-2020 [\[11\]](#)

FIRST INVESTORS FINANCIAL SERVICES/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, First Investors Financial Services ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2014 Hyundai Elantra ("Vehicle"). Doc. #11.

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 debtor has failed to make at least six pre-petition payments. The movant has produced evidence that debtor is delinquent at least \$4,934.37. Doc. #14.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. The Vehicle is valued at \$8,700.00 and debtor owes \$22,325.57. Doc. #14, #15.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the movant is in possession of the vehicle.

11. [14-13574](#)-B-7 **IN RE: DAVID/CAROL BROWN**
[RSW-1](#)

MOTION TO AVOID LIEN OF UNIFUND CCR, LLC
6-19-2020 [\[28\]](#)

DAVID BROWN/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" In re Tracht Gut, LLC, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

There is no evidence that the judgment was recorded. The abstract of judgment, exhibit D, does not show that the judgment was ever recorded. Therefore the judgment did not attach and the lien is not perfect. The motion is DENIED WITHOUT PREJUDICE.

12. [19-13374](#)-B-7 **IN RE: KENNETH HUDSON**
[LNH-1](#)

CONTINUED MOTION TO EMPLOY LISA HOLDER AS ATTORNEY(S)
5-20-2020 [\[55\]](#)

JEFFREY VETTER/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

13. [19-13374](#)-B-7 **IN RE: KENNETH HUDSON**
[LNH-2](#)

CONTINUED MOTION TO SELL FREE AND CLEAR OF LIENS
2-12-2020 [\[34\]](#)

JEFFREY VETTER/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling
conference.

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

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

This matter is now deemed to be a contested matter. Pursuant to
Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of
discovery apply to contested matters. The parties shall be prepared
for the court to set an early evidentiary hearing.

Based on the record, the factual issues appear to include: whether
the rights to the royalties that the Trustee intends to sell free
and clear belong to Royalty Lending and not debtor.

14. [20-11275](#)-B-7 **IN RE: EDNA O'DONNELL**
[PK-1](#)

MOTION TO ALLOW MR THAYER TO ACT ON BEHALF OF THE DEBTOR, TO
WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT, AS TO DEBTOR,
FOR WAIVER OF DEBTOR'S APPEARANCE AT THE 341 MEETING OF
CREDITORS OR TO ALLOW THE DEBTOR'S SON TO APPEAR IN HER
STEAD AS TO DEBTOR
6-4-2020 [\[12\]](#)

EDNA O'DONNELL/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. Debtor's counsel asks the court to waive the
debtor education requirement and wither waive the debtor's
appearance at the § 341 meeting of creditors, or to allow the
debtor's son to appear in her stead. Doc. #12. Debtor suffered a
debilitating stroke in April and "can speak but she is very
difficult to understand." Doc. #14. Debtor's son hold power of
attorney on behalf of debtor.

Federal Rule of Bankruptcy Procedure 1016 provides:

Death or incompetency of the debtor shall not abate a
liquidation case under chapter 7 of the Code. In such
event the estate shall be administered and the case
concluded in the same manner, so far as possible, as
though the death or incompetency had not occurred. If a
reorganization, family farmer's debt adjustment, or
individual's debt adjustment case is pending under
chapter 11, chapter 12, or chapter 13, the case may be

dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

No party has filed opposition to this motion. Therefore, in accordance with Fed. R. Bankr. P. 1016, the debtor education requirement is waived and debtor's son shall attend the § 341 meeting of creditors in debtor's stead. The clerk's office is to treat this case as it would if the debtor had filed a certificate of completion of the financial management course.

15. [20-10682](#)-B-7 **IN RE: CLINTON/MONIQUE CLASSEN**
[CJK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-23-2020 [\[18\]](#)

ARC HOME, LLC/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The movant, Arc Home LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(2) with respect to real property located at 10612 Barrichello Street, Bakersfield, California 93314 ("Property"). Doc. #18.

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 debtors have failed to make at least 7 pre- and post-petition payments. The movant has produced evidence that debtors are delinquent at least \$16,664.61 and the entire balance of \$315,912.67 is due. Doc. #21.

The court also finds that the debtors do not have any equity in the Property and the Property is not necessary to an effective

reorganization because debtors are in chapter 7. The property is valued at \$356,774.00. The debtor owes movant \$315,912.67, plus a 2nd Deed of Trust to STRATA in the amount of \$83,070.00. Doc. #20.

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

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a) (3) will be ordered waived because debtors have failed to make at least 7 payments, both pre- and post-petition to Movant.

16. [20-11788](#)-B-7 **IN RE: RYAN FREED**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-8-2020 [\[11\]](#)

AMERICREDIT FINANCIAL SERVICES, INC./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, First Investors Financial Services ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2014 Hyundai Elantra ("Vehicle"). Doc. #11.

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 debtor has failed to make at least nine complete pre-petition payments. The movant has produced evidence that debtor is delinquent at least \$13,458.65. Doc. #14.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. The Vehicle is valued at \$69,475.00 and debtor owes \$112,649.35. Doc. #14, #15.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the vehicle is a depreciating asset and debtor's Statement of Intention indicates the vehicle will be surrendered.

17. [19-14045](#)-B-7 **IN RE: DAVID MARTIN**
[20-1010](#) [ADJ-2](#)

CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH BILL GENE FARRIS
4-28-2020 [\[23\]](#)

EDMONDS V. FARRIS
ANTHONY JOHNSTON/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

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

This motion is GRANTED. It appears from the moving papers that the chapter 7 trustee has considered the standards of In re Woodson, 839 F.2d 610, 620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. the probability of success in the litigation;
- b. the difficulties, if any, to be encountered in the matter of collection;
- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of the trustee's business judgment. The order should be limited to the claims compromised as described in the motion.

The trustee requests approval of a settlement agreement between the trustee ("Plaintiff") and debtor ("Defendant") concerning a pre-petition transfer of real estate made to Defendant's now-deceased wife. Doc. #23.

Under the terms of the compromise, Defendant will pay \$5,406.00 to Plaintiff for satisfaction of all the Plaintiff's claims relative to the transfer of the real estate. Doc. #27.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is uncertain as it would require further litigation and discovery to determine if Defendant was at the time of or became insolvent as a result of the transfer; collection would not be very easy as Plaintiff would have to sell the real estate, and Defendant is essentially judgment-proof; the litigation is not complex but moving

forward would decrease the net to the estate due to the legal fees; and the creditors will greatly benefit from the net to the estate, that would otherwise not exist; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

11:00 AM

1. [19-12217](#)-B-7 **IN RE: JASON BLANKENSHIP**
[20-1015](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-12-2020 [\[1\]](#)

BLANKENSHIP V. SUNSET CREDIT SERVICES, INC. ET AL
NANCY KLEPAC/ATTY. FOR PL.

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

DISPOSITION: Vacated.

ORDER: The court will issue the order.

A new summons was issued. The summons set a new status conference hearing for August 19, 2020. Therefore this status conference is vacated.

2. [15-13444](#)-B-7 **IN RE: TRAVIS/AMBER BREWER**
[15-1151](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-17-2015 [\[1\]](#)

BJORNEBOE V. BREWER
MISTY PERRY-ISAACSON/ATTY. FOR PL.
DISMISSED 6/18/20. RESPONSIVE PLEADING.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been entered. Doc. #115.

3. [19-13569](#)-B-7 **IN RE: JOHN ESPINOZA**
[20-1021](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-8-2020 [\[1\]](#)

FEAR V. ESPINOZA ET AL
KELSEY SEIB/ATTY. FOR PL.

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

DISPOSITION: Continued to July 29, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

Plaintiff has filed a motion for entry of default set for hearing on July 29, 2020 at 11:00 a.m. This status conference is continued to that date and time to be heard in conjunction with that motion.

4. [19-13374](#)-B-7 **IN RE: KENNETH HUDSON**
[20-1027](#)

STATUS CONFERENCE RE: COMPLAINT
5-1-2020 [\[1\]](#)

ROYALTY LENDING II, LTD. V. HUDSON ET AL
CALVIN STEAD/ATTY. FOR PL.

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

DISPOSITION: Continued to September 9, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

The time to respond to the complaint has been extended in to mid-August 2020. Therefore this status conference is continued to September 9, 2020 at 11:00 a.m. Status reports shall be filed and served not later than September 2, 2020.

5. [19-14045](#)-B-7 **IN RE: DAVID MARTIN**
[20-1010](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-11-2020 [\[1\]](#)

EDMONDS V. FARRIS
ANTHONY JOHNSTON/ATTY. FOR PL.

NO RULING.

11:30 AM

1. [20-11278](#)-B-7 **IN RE: FERNANDO/CYNTHIA ALEJANDRE**

PRO SE REAFFIRMATION AGREEMENT WITH WESTAMERICA BANK
5-26-2020 [\[16\]](#)

PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

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

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