

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday July 13, 2022
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed 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. [22-10416](#)-A-11 IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V
VOLUNTARY PETITION
3-18-2022 [[1](#)]

RILEY WALTER/ATTY. FOR DBT.

NO RULING.

2. [22-10416](#)-A-11 IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION
[WJH-1](#)

CONTINUED HEARING RE: MOTION TO USE CASH COLLATERAL
3-21-2022 [[14](#)]

KR CITRUS, INC., A CALIFORNIA CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted on an interim basis through September 20, 2022.

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 pursuant to an interim order authorizing use of cash collateral and granting adequate protection (the "Interim Order"). Doc. #95. The motion was heard initially on March 24, 2022, again on March 30, 2022, and again on April 27, 2022, and each time was granted on an interim basis. See Doc. #49; Doc. #65; Doc. #95. A continued hearing for interim use of cash collateral was set for July 13, 2022. Interim Order, Doc. #95. Pursuant to the Interim Order, opposition to the continued use of cash collateral may be raised at the hearing. Id. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion on an interim basis. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper. The court will issue an order if a further hearing is necessary.

KR Citrus Inc. ("Debtor" or "DIP") moves the court for a further interim order authorizing Debtor to use the cash collateral of (1) PTF, a partnership; (2) California FarmLink; (3) Small Business Administration ("SBA"); and (4) Vox Funding LLC from July 20, 2022 through September 20, 2022 ("Subject Period"). Third Suppl. Decl. of James Reed in Support of Mot. for Authority to Use Cash Collateral ("Reed 3d Suppl. Decl."), Doc. #154.

Debtor asserts PTF has a producer's lien on dragon fruit plants and proceeds to secure a debt of approximately \$234,000. Id. ¶ 14. PTF has consented to allow the budgeted uses of cash collateral without any adequate protection payments. Id.

California FarmLink is owed about \$203,361. Id. ¶ 15. California FarmLink holds a duly perfected security interest in nearly all of Debtor's personal property and farm products. Id. All payments owed to California FarmLink are current through June 2022. Id. The proposed budget proposes monthly payments to California FarmLink to keep the loan current. Ex. A, Doc. #155.

SBA holds a junior security interest to California FarmLink to secure a debt of approximately \$500,000. Reed 3d Suppl. Decl. ¶ 16, Doc. #154. No payment is due on the SBA loan until December 2022. Id. SBA does not have a security interest in farm products, but does have a security interest in accounts. Id. No payments are to be made to SBA during the Subject Period. Id.

Debtor disputes the claims and liens of Vox Funding. Vox Funding claims to own 16% of all gross revenues received by Debtor. Reed 3d Suppl. Decl. ¶ 18. Debtor contends that Vox Funding loaned money to Debtor and Debtor did not sell its accounts. Debtor proposes to provide a replacement lien to Vox Funding as adequate protection for use of cash collateral pending a resolution of the legal dispute over the transaction between Debtor and Vox Funding. Id.

Pursuant to 11 U.S.C. § 363, a debtor in possession can use property of the estate that is cash collateral by obtaining either the consent of each entity that has an interest in such cash collateral or court authorization after notice and a hearing. 11 U.S.C. § 363(c)(2). "The primary concern of the court in determining whether cash collateral may be used is whether the secured creditors are adequately protected." In re Plaza Family P'ship, 95 B.R. 166 (E.D. Cal. 1989); see 11 U.S.C. § 363(e). Bankruptcy Code § 361(1) states that adequate protection may be provided by "requiring the [debtor in possession] to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property." 11 U.S.C. § 361(1). DIP carries the burden of proof on the issue of adequate protection. 11 U.S.C. § 363(p).

When, as here, the motion requests a hearing before 14 days after service of the motion, Federal Rule of Bankruptcy Procedure 4001(b)(2) permits the court to "authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(b)(2).

DIP moves the court for an order authorizing DIP to use cash collateral through September 20, 2022, consistent with the budget filed as Ex. A, Doc. #155. DIP seeks court authorization to use cash collateral to pay expenses incurred by DIP in the normal course of its business. Reed 3d Suppl. Decl., Doc. #154. As adequate protection for DIP's use of cash collateral, DIP will grant a replacement lien against its post-petition accounts receivable for those creditors with valid liens to extent cash collateral is actually used as well as adequate protection payments to California FarmLink. Ex. A, Doc. #155.

Bankruptcy Code § 361 requires DIP to provide adequate protection to the secured creditors for DIP's use of cash collateral for any decrease in the value of the secured creditors' interest in the accounts receivable due to DIP's use of cash collateral. Based on the evidence before the court, the new crops and proceeds produced and generated by Debtor through the use of cash collateral will be greater than the amount of cash collateral sought to be used. Reed 3d Suppl. Decl. ¶ 22, Doc. #154.

Accordingly, the Motion will be GRANTED. The court grants DIP's request for use of cash collateral through September 20, 2022, consistent with the budget attached as Exhibit A to Doc. #155.

3. [22-10416](#)-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**
[WJH-6](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
6-7-2022 [[112](#)]

KR CITRUS, INC., A CALIFORNIA CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 8/10/22 PER ECF ORDER #143

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

DISPOSITION: Continued to August 10, 2022 at 9:30 a.m.

NO ORDER REQUIRED.

On June 27, 2022, the court issued an order continuing the hearing on the motion to assume lease to August 10, 2022 at 9:30 a.m. Doc. #143.

4. [22-10416](#)-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**
[WJH-7](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
6-7-2022 [[118](#)]

KR CITRUS, INC., A CALIFORNIA CORPORATION/MV
RILEY WALTER/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.

KR Citrus Inc. ("DIP"), the debtor and debtor in possession in this chapter 11 subchapter V case, moves the court for authorization to assume a nonresidential commercial lease for an office/shop facility ("Office/Shop") that DIP uses as its headquarter office and shop (the "Assumed Lease"). Doc. #118; Ex. A, Doc. #122. The Assumed Lease expires on February 25, 2031, with an option to renew for an additional 20-year term. Ex. A, Doc. #122. The landlords of the Office/Shop are DIP's two shareholders. Decl. of James Reed, Doc. #121.

Section 365(a) of the Bankruptcy Code states that "subject to the court's approval, [the debtor in possession] may assume [any] unexpired lease of the debtor." In evaluating a decision under § 365(a) to assume an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." Agarwal v. Pomona Valley Med. Grp., Inc. (In re Pomona Valley Med. Grp., Inc.), 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted). The bankruptcy court should approve the assumption under § 365(a) unless the debtor in possession's conclusion is based on bad faith, whim, or caprice. Id.

Here, DIP states that assumption of the Assumed Lease is essential to DIP's successful reorganization. Reed Decl., Doc. #121. As part of its business operations, DIP propagates and sells Dragon Fruit plants and milkweed plants as well as grows organic citrus. Id. DIP uses the Office/Shop to store records, supplies and inventory used in operating its business. Id. DIP has been performing according to the terms of the Assumed Lease. Id. DIP believes that assumption of the Assumed Lease is in the best interests of the estate and without the Office/Shop there would be no hope for a reorganization for DIP. Id. The court finds that DIP's decisions are based on sound business judgment.

The motion is GRANTED. DIP is authorized to assume the Assumed Lease in conformance with DIP's motion.

5. [22-10416-A-11](#) **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**
[WJH-8](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
6-8-2022 [[124](#)]

KR CITRUS, INC., A CALIFORNIA CORPORATION/MV
RILEY WALTER/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.

KR Citrus Inc. ("DIP"), the debtor and debtor in possession in this chapter 11 subchapter V case, moves the court for authorization to assume a nonresidential commercial lease for a grow facility ("Grow Facility") that DIP uses as its nursery operation for growing, selling and delivering plants to The Home Depot (the "Assumed Lease"). Doc. #124; Ex. A, Doc. #127. The Assumed Lease expires on October 31, 2029, with an option to renew for an additional 10-year term. Ex. A, Doc. #127. The landlord of the Grow Facility is Sunburst Packing, LLC. Decl. of James Reed, Doc. #126. Sunburst Packing, LLC is an entity that is owned by DIP's two shareholders. Doc. #128.

Section 365(a) of the Bankruptcy Code states that "subject to the court's approval, [the debtor in possession] may assume [any] unexpired lease of the debtor." In evaluating a decision under § 365(a) to assume an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." Agarwal v. Pomona Valley Med. Grp., Inc. (In re Pomona Valley Med. Grp., Inc.), 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted). The bankruptcy court should approve the assumption under § 365(a) unless the debtor in possession's conclusion is based on bad faith, whim, or caprice. Id.

Here, DIP states that assumption of the Assumed Lease is essential to DIP's successful reorganization. Reed Decl., Doc. #126. As part of its business operations, DIP propagates and sells Dragon Fruit plants and milkweed plants. Id. DIP uses the Grow Facility as a nursing operation to propagate Dragon Fruit plants and milkweed plants. Id. DIP has been performing according to the terms of the Assumed Lease. Id. DIP believes that assumption of the Assumed Lease is in the best interests of the estate and without the Grow Facility there would be no hope for a reorganization for DIP. Id. The court finds that DIP's decisions are based on sound business judgment.

The motion is GRANTED. DIP is authorized to assume the Assumed Lease in conformance with DIP's motion.

6. [22-10629](#)-A-12 **IN RE: LUIS/ANGELA OLIVEIRA**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION
4-12-2022 [\[1\]](#)

DAVID JOHNSTON/ATTY. FOR DBT.

NO RULING.

7. [20-12258](#)-A-11 **IN RE: JARED/SARAH WATTS**
[FRB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION/APPLICATION
TO CONFIRM TERMINATION OR ABSENCE OF STAY
6-10-2022 [[337](#)]

FARM CREDIT WEST, PCA/MV
LEONARD WELSH/ATTY. FOR DBT.
MICHAEL GOMEZ/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 27, 2022 at 9:30 a.m.

ORDER: The court will issue an order.

Pursuant to the Notice of Potential Resolution filed on July 11, 2022,
(Doc. #351), this motion will be continued to July 27, 2022 at 9:30 a.m. The
July 27 hearing will be treated as a status conference on the status of the
stipulated adequate protection order.

1. [22-10603](#)-A-7 **IN RE: NOU YANG**

PRO SE REAFFIRMATION AGREEMENT WITH FREEDOM MORTGAGE CORPORATION
6-21-2022 [[23](#)]

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

This matter was automatically set for a hearing because the reaffirmation agreement is not signed by an attorney. However, this reaffirmation agreement appears to relate to a consumer debt secured by real property. Pursuant to 11 U.S.C. §524(c)(6)(B), the court is not required to hold a hearing and approve this agreement.

2. [22-10485](#)-A-7 **IN RE: RENE GARZA**

REAFFIRMATION AGREEMENT WITH ALLY BANK
6-21-2022 [[16](#)]

GLEN GATES/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship that has not been rebutted in the reaffirmation agreement. Although the debtor's attorney executed the agreement, no evidence has been presented to the court to indicate how the debtor can afford to make the payment. The debtor claims he will reduce expenses but has not provided the court with an amended Schedule J. Therefore, the reaffirmation agreement with Ally Bank will be DENIED.

1. [13-15711](#)-A-7 **IN RE: GEORGE/ELISE SALDATE**
[FW-2](#)

MOTION TO EMPLOY ERIN K. COPELAND AS SPECIAL COUNSEL AND/OR
MOTION TO EMPLOY D. CHAD AARONSON AS SPECIAL COUNSEL,
MOTION TO EMPLOY ROBERT M. HAMMERS JR. AS SPECIAL COUNSEL
6-10-2022 [[30](#)]

JAMES SALVEN/MV
LAYNE HAYDEN/ATTY. FOR DBT.
PETER FEAR/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 debtors, 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 of the bankruptcy estate of George Saldate and Elisa Saldate, moves the court for an order authorizing the employment of Fibich, Leebron, Copeland, Briggs, LLP ("FLCB"), Schneider Hammers, LLC ("S&H"), and Aaronson & Rash, PLLC ("A&R") (collectively, "Special Purpose Counsel") pursuant to 11 U.S.C. §§ 327 and 328. Doc. #30. Trustee seeks authority to employ Special Purpose Counsel on a contingent fee basis and unambiguously requests approval under § 328. Doc. #30.

Section 327(a) of the Bankruptcy Code provides, in relevant part, "the trustee, with the court's approval, may employ one or more attorneys . . . that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a). The trustee may, with the court's approval, employ a professional on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. 11 U.S.C. § 328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

On or about November 27, 2016, Elisa Saldate ("Debtor") retained A&R and S&H to pursue a liability claim against the manufacturer of an allegedly defective product stemming from a pre-petition physical injury Debtor received on or about February 20, 2013 (the "Claim"). Decl. of James E. Salven, Doc. #32; Decl. of Erin K. Copeland, Doc. #33. A&R and S&H subsequently associated FLCB to assist in prosecution of the Claim. Id. Special Purpose Counsel has represented Debtor for many years, is familiar with the Claim, and has considerable experience representing numerous other individuals against manufacturers where the type of claim asserted by Debtor is similar. Salven Decl., Doc. #32; Copeland Decl., Doc. #33.

The court finds that Special Purpose Counsel is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Copeland Decl., Doc. #33; Decl. of D. Chad Aaronson, Doc. #34; Decl. of Robert M. Hammers, Jr., Doc. #35. Trustee requires Special Purpose Counsel's services to realize, for the benefit of the estate, a settlement offer attributable to an unscheduled claim of Debtor. The settlement will enable Trustee to administer the estate for the benefit of creditors and enable Trustee to close the case. Special Purpose Counsel will assist Trustee with resolving liens and performing other necessary terms of the settlement.

Trustee unambiguously requests pre-approval of payment to Special Purpose Counsel pursuant to § 328. Doc. #30. Upon court approval of the settlement, Trustee will pay a contingency fee of 40% to Special Purpose Counsel. Doc. #30. Special Purpose Counsel will split the contingency fee award between themselves, with 41.25% of the contingency fee award allocated to FLCB, 41.25% of the contingency fee award allocated to S&H, and 17.5% of the contingency fee award allocated to A&R. Doc. #30.

Accordingly, this motion is GRANTED. The arrangement between Trustee and Special Purpose Counsel is reasonable in this instance. Trustee shall submit a form of order specifically stating that employment of Special Purpose Counsel has been approved pursuant to 11 U.S.C. § 328.

2. [03-19034](#)-A-7 **IN RE: MANUEL/ISABEL PARAMO**
[FW-2](#)

MOTION TO EMPLOY LEE B. BALEFSKY AS SPECIAL COUNSEL
6-13-2022 [\[25\]](#)

PETER FEAR/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
PETER FEAR/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 debtors, 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.

Peter L. Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Manuel Paramo and Isabel Paramo, moves the court for an order authorizing the employment of Kline & Specter, P.C. ("Special Purpose Counsel") pursuant to 11 U.S.C. §§ 327 and 328. Doc. #25. Trustee seeks authority to employ Special Purpose Counsel on a contingent fee basis and unambiguously requests approval under § 328. Doc. #25.

Section 327(a) of the Bankruptcy Code provides, in relevant part, "the trustee, with the court's approval, may employ one or more attorneys . . . that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a). The trustee may, with the court's approval, employ a professional on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. 11 U.S.C. § 328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

On or about July 1, 2013, Isabel Paramo ("Debtor") retained Special Purpose Counsel to pursue a liability claim against the manufacturer of an allegedly defective product stemming from a pre-petition physical injury Debtor received on or about July 16, 2002 (the "Claim"). Decl. of Lee B. Balefsky, Doc. #27; Decl. of Peter L. Fear, Doc. #28. Special Purpose Counsel has represented Debtor for many years, is familiar with the Claim, and has considerable experience representing numerous other individuals against manufacturers where the type of claim asserted by Debtor is similar. Fear Decl., Doc. #28; Balefsky Decl., Doc. #27.

The court finds that Special Purpose Counsel is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Balefsky Decl., Doc. #27. Trustee requires Special Purpose Counsel's services to realize, for the benefit of the estate, a settlement offer attributable to an unscheduled claim of Debtor. The settlement will enable Trustee to administer the estate for the benefit of creditors and enable Trustee to close the case. Special Purpose Counsel will assist Trustee with resolving liens and performing other necessary terms of the settlement.

Trustee unambiguously requests pre-approval of payment to Special Purpose Counsel pursuant to § 328. Doc. #25. Upon court approval of the settlement, Trustee will pay a contingency fee of 40% to Special Purpose Counsel. Doc. #25.

Accordingly, this motion is GRANTED. The arrangement between Trustee and Special Purpose Counsel is reasonable in this instance. Trustee shall submit a form of order specifically stating that employment of Special Purpose Counsel has been approved pursuant to 11 U.S.C. § 328.

3. [22-10934](#)-A-7 **IN RE: JON/DANIELLE FINLEY**
[SW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-21-2022 [\[14\]](#)

ELITE ACCEPTANCE CORPORATION/MV
STEVEN ALPERT/ATTY. FOR DBT.
ADAM BARASCH/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion will be DENIED WITHOUT PREJUDICE. The moving papers were not served on the debtors' attorney as required by Federal Rules of Bankruptcy Procedure 4001(a)(1), 7004(g) and 9014(b).

In addition, the form and/or content of the notice do not comply with Local Rule of Practice 9014-1(d)(3)(B)(iii). The court urges counsel to review the local rules in order to be compliant in future matters. The rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

4. [21-10035](#)-A-7 **IN RE: JASWINDER BHANGOO**
[LNH-3](#)

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION FOR
COMPENSATION FOR WATSON REALTY AND PAULA VARGAS, BROKER(S)
6-22-2022 [\[88\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled for higher and better offers.

DISPOSITION: Granted subject to certain conditions.

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 filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. While not required, on June 29, 2022, PHH Mortgage Corporation ("PHH"), the holder of the first deed of trust against the real property to be sold, filed a conditional non-opposition asserting that the amount due under the first deed of trust is more than the amount projected to be paid by the trustee from the sale proceeds. Doc. #96. Unless further opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion subject to higher and better offers and conditioned upon the payment in full of the

amount due PHH and clarification of the amount to be paid to one of the judicial lienholders. 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.

As an initial procedural matter, the motion and related pleadings were not served on the following secured creditors affected by the motion: Engs Commercial Finance Co. ("Engs") and Ascentium Capital LLC ("Ascentium"). Doc. #93. Only the notice of motion was served on these parties. Doc. #92. Federal Rule of Bankruptcy Procedure ("Rule") 9014 requires service of a motion to comply with Rule 7004. At a minimum, because the motion purports to determine the amount to be paid to Engs and Ascentium with respect to their secured claims against the real property that is the subject of the motion, the motion, declaration and exhibits in support of the motion should have been served on Engs and Ascentium. Because the trustee asserts that he has negotiated agreements with both Engs and Ascentium as to the amounts to be paid, and because counsel for Engs and Ascentium have appeared previously in this bankruptcy case, the court will consider waiving any defective service as to Engs and Ascentium if counsel for Engs and Ascentium sign off on the order granting this motion.

Jeffrey M. Vetter ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Jaswinder Singh Bhangoo ("Debtor"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of real property located at 6907 Wild Rogue Court, Bakersfield, California 93313 (the "Property") to Prithvi Singh and Ramandeep Sandu (collectively, "Buyers") for the purchase price of \$409,000.00, subject to higher and better bids at the hearing. Doc. #88. Trustee states that there is one consensual purchase-money lien and two judgment liens deed attaching to the Property. Doc. #88; Decl. of Trustee, Doc. #91. Trustee also seeks authorization to pay a commission for the sale to Watson Realty ("Broker"). Doc. #88.

Selling Property of Estate under 11 U.S.C. § 363(b)(1) Permitted

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 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, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (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. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Tr.'s Decl., Doc. #91. Trustee engaged broker to market the Property. Id. Broker procured an offer from Buyers of \$409,000, with escrow to close in 60 days, which Trustee has accepted conditioned upon the court's approval and better and higher offers at the hearing. Id. The sale is "as is, where is" with no warranties or representations of any nature. Id.

Trustee estimates sale proceeds to be distributed as follows:

Commission (6%)	\$ 24,540.00
Costs of sale (2%)	\$ 8,180.00
Claims of exemption	\$ 30,825.00
Debtor's alleged admin claim	\$ 8,677.78
PHH (1st deed of trust)	\$115,000.00
Engs (1st judicial lien)	\$ 52,500.00 ¹
Ascentium (2nd judicial lien)	\$123,000.00
Estimated benefit to estate	\$ 46,277.22

While Trustee estimates the amount owed to PHH to be \$115,000, PHH asserts it is owed \$126,623.13 as of June 30, 2022. Doc. #96. Trustee has negotiated with the first judicial lienholder, Engs, to fix its claim at \$52,500. Tr.'s Decl., Doc. #91. Trustee has negotiated with the second judicial lienholder, Ascentium, to fix its claim at \$123,000. Id. Trustee estimates a benefit to the estate of approximately \$46,000. Id. Property taxes are current, and Trustee expects to pay a \$24,540 commission to Broker and \$8,180 in costs of sale. Id.

It appears that the sale of the estate's interest in the Property is in the best interests of the estate, the Property will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith.

Accordingly, subject to overbid offers made at the hearing, the court will GRANT Trustee's motion and authorize the sale of the Property pursuant to 11 U.S.C. § 363(b) (1).

Compensation to Broker

Trustee also seeks authorization to pay Broker a commission for the sale of the Property. This court has determined that employment of Broker is in the best interests of the estate and has previously authorized a percentage commission payment structure pursuant to 11 U.S.C. § 328. Order, Doc. #77.

Trustee seeks to pay Broker a 6% commission on the sale of the Property as the real estate broker for the sale. Tr.'s Decl., Doc. #91. Trustee estimates that Broker's commission for the sale of the Property will equal \$24,450.00, unless there is an overbid at the hearing, in which case the commission will be higher. Id. The court finds the compensation sought is reasonable, actual, and necessary.

Conclusion

Accordingly, subject to overbid offers made at the hearing and conditioned upon (i) the payment in full of the amount due PHH, and (ii) clarification of the amount to be paid to Engs, the court will GRANT Trustee's motion and authorize the sale of the Property pursuant to 11 U.S.C. § 363(b) (1). Trustee is authorized to pay Broker for services as set forth in the motion.

¹ There is a discrepancy between the amount at which Engs agreed to fix its claim based on the testimony in Trustee's declaration, \$52,500, and the amount used by Trustee in his chart allocating the distribution of sale proceeds, \$52,700. For purposes of this allocation, the court uses the amount set forth in Trustee's testimony, \$52,500, and has increased the estimated benefit to the estate accordingly.

5. [08-16938](#)-A-7 **IN RE: PAUL KLIMEK AND CHARLENE MARCUM**
[FF-2](#)

MOTION TO COMPEL ABANDONMENT
6-10-2022 [\[50\]](#)

PAUL KLIMEK/MV
GARY FRALEY/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped without prejudice.

ORDER: The court will issue an order.

Pursuant to the reply filed on July 6, 2022, the parties agree to drop the motion from calendar without prejudice to refile by the debtors. Doc. #60. Therefore, this motion will be DROPPED WITHOUT PREJUDICE.

6. [22-10941](#)-A-7 **IN RE: CLEMENTE/ESTHER RENTERIA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-14-2022 [\[14\]](#)

GRISelda TORRES/ATTY. FOR DBT.
\$338.00 FILING FEE PAID 6/15/22

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fees now due have been paid in full. The case shall remain pending.

7. [21-11856](#)-A-7 **IN RE: BOBBY/KATHY DULAY**
[ICE-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH
EDUCATIONAL EMPLOYEES CREDIT UNION
6-7-2022 [\[22\]](#)

IRMA EDMONDS/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
IRMA EDMONDS/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 debtors, 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.

Irma Edmonds ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Bobby Dulay and Kathy Dulay (collectively, "Debtors"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of all claims and disputes with creditor Educational Employees Credit Union ("Creditor"). Doc. #22.

Among the assets of the estate is a claim against Creditor for the avoidance and recovery of preferential and/or fraudulent transfers of \$4,987.44 made by Debtors to Creditor in the 90 days preceding the bankruptcy filing. Tr.'s Decl. at ¶ 3, Doc. #24. Creditor and Trustee have agreed to settle the claim of the avoidable transfers to Creditor with a payment of \$3,000.00 to the estate. Id. at ¶ 4.

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. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #22. Although Trustee believes she will ultimately succeed in litigation, the terms of the settlement with Creditor obviates the need to continue litigation of the estate's claims. Id. The settlement provides the estate with as much money as what Trustee sought to recover from litigation and places that amount back in the estate, without the expenses of litigation costs or issues in the matter of collection. Id. Trustee believes in her business judgment that the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Tr.'s Decl. at ¶ 5, Doc. #24. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. 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). No opposition has been filed. Furthermore, the law favors compromise and not

litigation for its own sake. Id. Accordingly, the motion is GRANTED, and the settlement between Trustee and Creditor is approved.

8. [17-11186](#)-A-7 **IN RE: JAVIER GARCIA AND ARELI ZAVALA**
[MAZ-2](#)

MOTION TO AVOID LIEN OF KINGS FEDERAL CREDIT UNION
6-10-2022 [\[29\]](#)

ARELI ZAVALA/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to a date to be determined at the hearing.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an 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). Kings Federal Credit Union ("Creditor") timely filed written opposition on June 29, 2022. Doc. #36. The failure of 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 non-responding parties in interest are entered.

Javier A. Garcia and Areli Zavala (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Creditor on their residential real property commonly referred to as 616 W. Florinda Street, Hanford, CA 93230 (the "Property"). Doc. #29; Schedules C and D, 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 § 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 § 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)).

Debtors filed their bankruptcy petition on March 31, 2017. A judgment was entered against Javier A. Carrillo aka Javier A. Garcia C aka Javier A. Garcia Carrillo in the amount of \$11,533.07 in favor of Creditor on December 16, 2015. Ex. D, Doc. #31. The abstract of judgment was recorded pre-petition in Kings County on July 5, 2016 as document number 1611414. Ex. D, Doc. #31. The lien attached to Debtors' interest in the Property located in Kings County. Doc. #31. The Property also is encumbered by a first deed of trust held by Chase in the amount \$75,660.00. Schedule D, Doc. #1. Debtors claimed an exemption of \$100,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at \$120,000.00. Schedule A/B, Doc. #1.

Creditor opposes the valuation of the property and asserts that there may be significantly more equity in the Property than alleged by Debtors. Decl. of Richard Gosvener, Doc. #37. Creditor requests that the hearing on this motion to be continued to allow Creditor time to further investigate the value of the Property and obtain an appraisal of the Property by an expert. Doc. #36.

Debtors filed a response to Creditor's opposition on July 7, 2022. Doc. #42. Debtors claim that Creditor did not object to the value of the Property within 30 days after the conclusion of the meeting of creditors on May 4, 2017, and therefore cannot file an objection now. Doc. #42. However, "the inability of the trustee and other parties in interest to challenge the exemption has no impact on the ability to avoid a lien." Mohring, 142 B.R. at 394.

The court is inclined to continue this matter to a date to be determined at the hearing to allow Creditor to investigate the value of the Property. The parties should be prepared to discuss at the hearing the timing of the continued motion and any other deadlines the parties want the court to set related to this motion.

9. [22-10887](#)-A-7 **IN RE: LARRY/CHERIE WALTERS**
[JRL-1](#)

MOTION TO AVOID LIEN OF SOUTH VALLEY MATERIALS, INC.
6-3-2022 [\[13\]](#)

CHERIE WALTERS/MV
JERRY LOWE/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Larry B. Walters and Cherie A. Walters (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of South Valley Materials, LLC ("Creditor") on their residential real property commonly referred to as 2475 Bliss Avenue, Clovis, CA 93611 (the "Property"). Doc. #13; Am. Schedule C, Doc. #12; Schedule D, Doc. #1; Doc. #31. On the day Debtors filed the original motion, Debtor submitted two other motions to avoid liens under § 522(f). See Doc. ##18, 23. The motions involve the Property and seek to avoid different judicial liens.

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 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 § 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)).

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtors filed their bankruptcy petition on May 25, 2022. A judgment was entered against Larry B. Walters dba Larry Walters Construction in the amount of \$11,940.30 in favor of Creditor on May 23, 2013. Ex. A, Doc. #16. The abstract of judgment was recorded pre-petition in Fresno County on July 23, 2013 as document number 2013-0102928. Ex. A, Doc. #16. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #15. The Property also is encumbered by a first deed of trust held by Rocket Mortgage in the amount \$212,951.00. Schedule D, Doc. #1. Debtors claimed an exemption of \$167,049.00 in the Property under California Code of Civil Procedure § 704.730. Am. Schedule C, Doc. #12. Debtors assert a market value for the Property as of the petition date at \$380,000.00. Schedule A/B, Doc. #1. There does not appear to be any senior judicial liens.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$11,940.30
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$212,951.00
Amount of Debtors' claim of exemption in the Property	+	\$167,049.00
		\$391,940.30
Value of Debtors' interest in the Property absent liens	-	\$380,000.00
Amount Creditor's lien impairs Debtors' exemption		\$11,940.30

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 Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

MOTION TO AVOID LIEN OF L.A. COMMERCIAL GROUP, INC.
6-3-2022 [\[18\]](#)

CHERIE WALTERS/MV
JERRY LOWE/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.

Larry B. Walters and Cherie A. Walters (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of L.A. Commercial Group, Inc. ("Creditor") on their residential real property commonly referred to as 2475 Bliss Avenue, Clovis, CA 93611 (the "Property"). Doc. #18; Am. Schedule C, Doc. #12; Schedule D, Doc. #1. On the day Debtors filed the instant motion, Debtor submitted two other motions to avoid liens under § 522(f). See Doc. ##13, 23. The motions involve the Property and seek to avoid different judicial liens.

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 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 § 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)).

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88

(B.A.P. 9th Cir. 2007). "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtors filed their bankruptcy petition on May 25, 2022. A judgment was entered against Larry B. Walters dba Larry Walters Construction in the amount of \$4,523.04 in favor of Creditor on October 11, 2013. Ex. A, Doc. #21. The abstract of judgment was recorded pre-petition in Fresno County on November 15, 2013 as document number 2013-0157454. Ex. A, Doc. #21. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #20. The Property also is encumbered by a first deed of trust held by Rocket Mortgage in the amount \$212,951.00. Schedule D, Doc. #1. Debtors claimed an exemption of \$167,049.00 in the Property under California Code of Civil Procedure § 704.730. Am. Schedule C, Doc. #12. Debtors assert a market value for the Property as of the petition date at \$380,000.00. Schedule A/B, Doc. #1. There appears to be one senior judicial lien on the Property. Doc. #16. The senior judgment lien was recorded in Fresno County on July 23, 2013 with respect to a judgment of \$11,940.30. Doc. #16.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$4,523.04
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$224,891.30
Amount of Debtors' claim of exemption in the Property	+	\$167,049.00
		\$396,463.34
Value of Debtors' interest in the Property absent liens	-	\$380,000.00
Amount Creditor's lien impairs Debtors' exemption		\$16,463.34

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 Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

11. [22-10887](#)-A-7 **IN RE: LARRY/CHERIE WALTERS**
[JRL-3](#)

MOTION TO AVOID LIEN OF A&A TARZANA LP
6-3-2022 [\[23\]](#)

CHERIE WALTERS/MV
JERRY LOWE/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.

Larry B. Walters and Cherie A. Walters (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of A&A Tarzana Plaza LP ("Creditor") on their residential real property commonly referred to as 2475 Bliss Avenue, Clovis, CA 93611 (the "Property"). Doc. #23; Am. Schedule C, Doc. #12; Schedule D, Doc. #1. On the day Debtors filed the instant motion, Debtor submitted two other motions to avoid liens under § 522(f). See Doc. #13, 18. The motions involve the Property and seek to avoid different judicial liens.

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 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 § 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)).

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtors filed their bankruptcy petition on May 25, 2022. A judgment was entered against Larry Walters dba Larry Walters Construction in the amount of \$91,580.50 in favor of Creditor on February 11, 2015. Ex. A, Doc. #26. The abstract of judgment was recorded pre-petition in Fresno County on August 13, 2020 as document number 2020-0104587. Ex. A, Doc. #26. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #25. The Property also is encumbered by a first deed of trust held by Rocket Mortgage in the amount \$212,951.00. Schedule D, Doc. #1. Debtors claimed an exemption of \$167,049.00 in the Property under California Code of Civil Procedure § 704.730. Am. Schedule C, Doc. #12. Debtors assert a market value for the Property as of the petition date at \$380,000.00. Schedule A/B, Doc. #1. There appears to be two senior judicial liens on the Property. Doc. #16; Doc. #21. The first senior judicial lien was recorded in Fresno County on July 23, 2013 with respect to a judgment of \$11,940.30. Doc. #16. The other senior judicial lien was recorded in Fresno County on November 15, 2013 with respect to a judgment of \$4,523.04. Doc. #21.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$91,580.50
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$229,414.34
Amount of Debtors' claim of exemption in the Property	+	\$167,049.00
		\$488,043.84
Value of Debtors' interest in the Property absent liens	-	\$380,000.00
Amount Creditor's lien impairs Debtors' exemption		\$108,043.84

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 Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

12. [21-11988](#)-A-7 **IN RE: JOSE GONZALEZ**
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG, ACCOUNTANT(S)
6-7-2022 [\[47\]](#)

RATZLAFF TAMBERI & WONG/MV
TRAVIS POTEAT/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.

Ratzlaff Tamberi & Wong ("Movant"), accountants for chapter 7 trustee James E. Salven ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from January 20, 2022 through May 5, 2022. Doc. #47. Movant provided accounting services valued at \$1,104.50, and requests compensation for that amount. Doc. #47. Movant requests reimbursement for expenses in the amount of \$4.77. Doc. #47. This is Movant's first and final fee application.

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 current accounting relating to the estate taxes; (2) corresponding with trustee; (3) preparing final federal and state fiduciary income tax returns; and (4) preparing the employment and fee applications. Decl. of Christopher A. Ratzlaff, Doc. #50; Ex. A, Doc. #51. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$1,104.50 and reimbursement for expenses in the amount of \$4.77. Trustee is authorized to make a combined payment of \$1,109.27, 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.

13. [22-10898](#)-A-7 **IN RE: GEORGE/RENAY SORONDO**
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-14-2022 [\[11\]](#)

EXETER FINANCE LLC/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtors filed a statement of non-opposition on June 27, 2022. Doc. #18. 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 movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Exeter Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2009 Chevrolet Silverado ("Vehicle"). Doc. #11. The debtors do not oppose the motion. Doc. #18.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least three complete post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$1,576.78, which includes late fees in the amount of \$50.86. Doc. #14.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. The Vehicle is valued at \$12,225.00 and the debtors owe \$16,294.55. Doc. #14.

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

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