

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, July 29, 2021
Place: Department B – Courtroom #13
Fresno, California

The court resumed in-person courtroom proceedings in Fresno ONLY on June 28, 2021. Parties may still appear telephonically provided that they comply with the court's telephonic appearance procedures. For more information click [here](#).

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [20-10800](#)-B-11 **IN RE: 4-S RANCH PARTNERS, LLC**
[MF-15](#)

RESCHEDULED CONTINUED MOTION TO EMPLOY CHRISTOPHER E.
SEYMOUR AS SPECIAL COUNSEL
6-14-2021 [\[439\]](#)

4-S RANCH PARTNERS, LLC/MV
RENO FERNANDEZ/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 Moving Party
shall prepare and submit order after hearing.

This motion was continued from June 29, 2021. Doc. #463. At that hearing, the court set a briefing schedule. The court rescheduled the continued hearing to July 29, 2021. Doc. #469. Movant timely complied. Doc. #480.

Debtor-in-possession 4-S Ranch Partners, LLC ("DIP") seeks to employ Christopher E. Seymour ("Counsel") of Gilmore Magness Janisse, P.C. ("Firm") as special counsel under 11 U.S.C. § 327(a). Doc. #439. DIP withdrew part of its original request for relief under § 327(e) on June 22, 2021. Doc. #451. The proposed retention is necessary because of a pending adversary proceeding against DIP that Sandton filed.

DIP proposes to pre-approve Counsel's compensation under 11 U.S.C. § 328 by allowing Sloan Cattle Company, LLC ("Sloan Cattle") to pay for all services rendered by Counsel from Sloan Cattle's own assets that are not part of DIP's bankruptcy estate. Sloan Cattle has agreed to this arrangement and acknowledges that it will have no control or input as to the services provided, nor any right to reimbursement from DIP or the estate. Doc. #441. The court raised a question about DIP's consent to the arrangement. Later filings have sufficiently clarified that issue for the court.

Sandton Credit Solutions Master Fund IV, LP ("Sandton") opposed DIP's motion. Doc. #454. Sandton argues the motion is procedurally improper because DIP already has retained counsel to generally assist DIP under § 327(a). Second, Sandton contends the application

does not describe any tangible benefit counsel's retention will be to the estate. Retention of other "special counsel" to pursue a declaratory relief action about Merced's Groundwater Ordinance has proved unbeneficial, claims Sandton. Third, Sandton questions two aspects of the proposed retention: proposed counsel's payment by Sloan Cattle—an asset of the related Stephen Sloan case—to the detriment of Sloan's creditors, and proposed counsel's firm was involved in transactions involving the Sloan family which Sandton contends are disputed and should be "unwound." Docs. #88; #286; #365.

DIP responds arguing first that § 327(a) provides the legal basis for hiring special counsel. Second, DIP argues there is no factual or legal basis for holding Firm and Mr. Seymour have a conflict of interest in the proposed retention. Third, DIP contends Sandton's potential claims against Stephen Sloan or Sloan family members does not currently disqualify Firm or Mr. Seymour from representing DIP in the adversary proceeding Sandton brought.

The court agrees there has not been an actual conflict of interest established by Sandton. Further there does yet appear to be evidence showing that Firm or Mr. Seymour are not disinterested.

Section 101(14) defines "disinterested person." There is no evidence that Firm or Mr. Seymour is a creditor, equity security holder or an insider. § 101(14) (A). Nor is there evidence that Firm or Mr. Seymour was an officer, director, or employee of 4-S for the relevant period. § 101(14) (B).

The same is true relating to adverse interests. § 101(14) (C). When counsel is only employed to perform limited services, then an interest "adverse to the estate means an adverse interest relating to the services which are to be performed by that attorney." *In re Fondiller*, 15 B.R. 890, 892 (B.A.P. 9th Cir. 1981) *appeal dismissed*, 707 F. 2d 441 (9th Cir. 1983). Sandton does not isolate a scenario where Firm's proposed services in defending an adversary proceeding is a disqualifying adverse interest.

Any devaluation of Stephen Sloan's interest in proposed payor Sloan Cattle, is not quantified or established by Sandton. Now, that is pure speculation. Sandton does not explain its standing to question a separate entity's decision to pay attorney's fees. Sandton claims to be a creditor with a substantial claim against Stephen Sloan under a guaranty agreement. True enough, but how Sloan's interest would be affected by Sloan Cattle's payment of fees is neither explained nor other than speculation now.

Similarly, Firm's activities performing estate planning and advisory services to Stephen Sloan and his family do not now establish an adverse interest or disqualifying conflict. Firm's potential client here is DIP. It is conceivable that at some time there will be a dispute about the separateness of 4-S from the Sloan family. But that is not the case now. Firm has a continuing disclosure obligation if they represent DIP. Failure to disclose or properly manage the relationships may result in a significant risk of fee

disgorgement or denial and disqualification. Firm is evidently willing to take that risk.

The court rejects Sandton's benefit to the estate argument for two reasons. First, though DIP earlier advised the court and parties of its position concerning severance of water rights, Sandton filed the adversary proceeding. Oddly, Sandton's position ignores its pending action requiring a defense. Second, what may or may not have occurred concerning a declaratory relief action dealing with the Merced Groundwater Ordinance is not relevant to what DIP now faces with Sandton's adversary proceeding.

The motion will be GRANTED.

2. [20-12642](#)-B-11 **IN RE: 3MB, LLC**

RESCHEDULED CONTINUED STATUS CONFERENCE RE: CHAPTER 11
VOLUNTARY PETITION
8-11-2020 [\[1\]](#)

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

The court intends to dismiss this case in matter #4 below. See LKW-17. The court will likely drop this status conference at the scheduled hearing.

3. [20-12642](#)-B-11 **IN RE: 3MB, LLC**
[LKW-11](#)

RESCHEDULED CONTINUED AMENDED/MODIFIED CHAPTER 11 PLAN
2-4-2021 [\[172\]](#)

LEONARD WELSH/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 matter was previously continued to July 27, 2021 due to ongoing negotiations of the parties. Docs. #270; #275. The deadline to file objections to the plan was July 13, 2021 and 3MB, LLC's ("3MB") replies and other documents in support of confirmation were due not later than July 20, 2021. *Id.* The court rescheduled that hearing to July 29, 2021. Doc. #286. But, on June 29, 2021, 3MB moved to voluntarily dismiss this case, which scheduled in matter #4 below. The court intends to grant that motion. Accordingly, this motion to confirm plan will be DENIED AS MOOT.

4. [20-12642](#)-B-11 **IN RE: 3MB, LLC**
[LKW-17](#)

RESCHEDULED MOTION TO DISMISS CASE
6-29-2021 [\[279\]](#)

3MB, LLC/MV
LEONARD WELSH/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.

Debtor-in-possession 3MB, LLC ("3MB") moves to voluntarily dismiss
this case under 11 U.S.C. § 1112(b). Doc. #279.

No party in interest timely filed written opposition. This motion
will be GRANTED.

This motion was set for hearing on July 27, 2021 with 28 days'
notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1).
Doc. #280. The court rescheduled that hearing to July 29, 2021. Doc.
#288.

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

3MB filed chapter 11 bankruptcy on August 11, 2020. Doc. #1. No
trustee has been appointed in this case. 3MB owns and operates a
shopping center ("Shopping Center") in Bakersfield, California,
which is its only asset with significant value to creditors. *Id.*,
Schedule A/B. The Shopping Center is encumbered by a deed of trust
in favor of US Bank National Association as Trustee for BSCMSCI
2007-PWR16 ("USB") securing a promissory note. The obligation to USB
matured in May 2017 and totaled \$9,620,744.05 on the petition date.
Claim #5. 3MB filed bankruptcy on the eve of a scheduled foreclosure
sale with the intent of restructuring and repaying the debt owed to
USB while retaining ownership and possession of the Shopping Center.
Doc. #281.

On September 9, 2020, USB sought dismissal of this bankruptcy, which 3MB opposed. AG-1. USB's motion was denied without prejudice on October 8, 2020. Doc. #75. On December 9, 2020, USB sought stay relief, and on December 21, 2020, USB objected to the Disclosure Statement. AG-3; Doc. #143. The request for stay relief was denied without prejudice for procedural reasons on January 6, 2021. Doc. #148. The Disclosure Statement was not approved. Doc. #154.

3MB filed an Amended Disclosure Statement. LKW-11. The Amended Disclosure Statement was approved over USB's objection, but the court noted that feasibility issues should be raised at plan confirmation. Docs. #244; #254.

Meanwhile, USB had filed a second stay relief motion. AG-4. 3MB opposed, USB replied, and the matter was continued. Docs. #218; #227; #232. The parties stipulated to stay relief, and the court approved the stipulation on June 28, 2021, lifting the automatic stay under 11 U.S.C. § 362(a) and waiving Fed. R. Bankr. P. 4001(a)(3). Doc. #274.

3MB has determined that it will be difficult to confirm a plan of reorganization due to losses caused by COVID-19. Doc. #281. Robert Bell, 3MB's member, declares that 3MB arranged with USB to allow USB to foreclose against the Shopping Center in full satisfaction of all claims against 3MB held by USB. *Id.* The terms of this agreement are not before the court. Mr. Bell believes that reorganization under chapter 11 will no longer be possible after foreclosure.

11 U.S.C. § 1112(b) allows the court to dismiss a chapter 11 case. Absent "unusual circumstances," § 1112(b)(1) provides that the court shall convert or dismiss a case under this chapter for "cause," whichever is in the best interests of creditors and the estate. Section 1112(b)(4) includes a non-exhaustive list of "causes." Cause exists where there is "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." § 1112(b)(4)(A). Cause exists where creditors will not benefit from administration. *In re Brogdon Inv. Co.*, 22 B.R. 546, 546 (Bankr. N.D. Ga. 1982) ("There is simply nothing to reorganize, no creditors to benefit from the administration of the estate in this court, and no reason to continue the reorganization."). Cause also exists if reorganization is no longer necessary or a debtor's circumstances have materially changed since the filing of the case. *In re OptInRealBig.com, LLC*, 345 B.R. 277, 283-84 (Bankr. D. Colo. 2006).

The court should "consider other factors as they arise and use its equitable power to reach the appropriate result." *Pioneer Liquidating Corp. v. U.S. Trustee (In re Consol. Pioneer Mortg. Entities)*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) *aff'd*, 264 F.3d 803 (9th Cir. 2001). The court has broad discretion in determining cause. *Id.*

If there is "cause" to convert or dismiss, the court must then decide: (1) whether dismissal is in the best interests of creditors and the estate; and (2) identify whether there are unusual circumstances that establish dismissal or conversion is not in the

best interests of creditors and the estate. *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 612 (B.A.P. 9th Cir. 2001).

3MB contends that cause exists because it will be difficult for it to confirm a chapter 11 plan of reorganization because of (1) losses suffered as result of COVID-19; and (2) an agreement with USB allowing it to foreclose in full satisfaction of its claims outside of court. Doc. #279. After foreclosure and transfer of USB's cash collateral, 3MB has no other assets to administer for the benefit of the estate. Doc. #1, *Schedule A/B*.

Mr. Bell declares no knowledge of any prejudice to 3MB or its creditors if this motion is granted. Doc. #281. Since USB intends to foreclose against the Shopping Center and there is no equity in the Shopping Center that could possibly be liquidated for the benefit of unsecured claims, Mr. Bell believes that there is no reason to convert this case to chapter 7 or appoint a chapter 11 trustee. *Id.* citing *Appraisal*, Doc. #197, Ex. A. Other than the Shopping Center, USB claims a lien under an assignment of rents clause against 3MB's accounts receivables, so conversion is not in the best interests of creditors.

Dismissal appears to be in the best interests of creditors and the estate. No party in interest timely filed written opposition. This motion will be GRANTED. The chapter 11 case will be dismissed without prejudice under 11 U.S.C. § 1112(b)(1) for cause.

5. [20-12642](#)-B-11 **IN RE: 3MB, LLC**
[LKW-18](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
7-6-2021 [\[294\]](#)

3MB, LLC/MV
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 shall submit a proposed order after hearing.

Leonard K. Welsh of the Law Offices of Leonard K. Welsh ("Applicant"), attorney for debtor-in-possession 3MB, LLC ("3MB"), requests final compensation under 11 U.S.C. §§ 330 and 331 in the amount of \$6,193.18, consisting of \$6,150.00 in fees and \$43.18 in costs for services rendered from June 1, 2021 through June 30, 2021. Doc. #294. Robert Bell, 3MB's authorized representative, declares that he has reviewed the fee application and has no objection to being authorized to pay the requested fees. Doc. #298. Mr. Bell states that the fees will be paid from capital contributions to 3MB

made by its members and will not affect administration of the case due to 3MB's pending motion to dismiss in matter #4 above. *Id.*

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

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

This is Applicant's fifth and final fee application.

On September 3, 2020, Applicant's employment was authorized effective July 10, 2020. Doc. #29. The order specified that Applicant was authorized to employ Applicant pursuant to 11 U.S.C. § 328(a), subject to the applicable terms and conditions of §§ 327, 329-331. *Id.* Compensation was set at the "lodestar rate" applicable at the time services are rendered per *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). *Id.*, at ¶ 3. The order further specified that monthly applications for interim compensation pursuant to § 331 would be entertained. *Id.*, at ¶ 5.

Form B2030, *Disclosure of Compensation of Attorney for Debtor(s)*, indicates that Applicant was paid \$6,717.00 by 3MB prior to the filing of the petition. Of that pre-petition payment, Applicant applied \$1,717.00 to costs incurred before the filing of the chapter 11 case. Doc. #1, *Form B2030*. All fees and costs after August 4, 2020 will be paid by application as approved by this court. *Id.*

The court previously authorized the following fees:

Appl.	Approved	Time Period	Fees	Costs	Total
1	12/03/20	08/01/20 - 10/31/20	\$18,460.00	\$222.55	\$18,682.55
2	01/21/21	11/01/20 - 11/30/20	\$9,030.00	\$99.70	\$9,129.70
3	05/03/21	12/01/20 - 02/28/21	\$19,700.00	\$429.90	\$20,129.90
4	07/08/21	03/01/21 - 05/31/21	\$15,960.00	\$226.70	\$16,186.70
		Total:	\$63,150.00	\$978.85	\$64,128.85

1. On December 3, 2020, the court authorized compensation of \$18,682.55. 3MB was permitted to pay Applicant \$13,682.55 and Applicant was allowed to apply a \$5,000.00 retainer for payment of \$18,460.00 in fees and \$222.55 in expenses for services rendered from August 1, 2020 through October 31, 2020. Doc. #123.
2. On January 21, 2021, the court authorized 3MB to pay Applicant \$9,129.70. 3MB was permitted to pay Applicant \$9,030.00 in fees and \$99.70 in expenses for services rendered from November 1, 2020 through November 30, 2020. Doc. #167.

3. On May 3, 2021, the court authorized 3MB to pay Applicant \$20,129.90. Applicant was authorized to be paid \$19,700.00 in fees and \$429.90 in costs for services rendered from December 1, 2020 through February 28, 2021, but 3MB was not authorized to pay any amounts from US Bank's cash collateral without further order. Doc. #253.
4. On July 8, 2021, the court authorized 3MB to pay Applicant \$16,186.70. 3MB was permitted to pay Applicant \$15,960.00 in fees and \$226.70 in expenses for services rendered from March 1, 2021 through May 31, 2021, but 3MB was not authorized to pay any amounts from US Bank's cash collateral without further order. Doc. #305.

Applicant has been awarded a total of \$64,128.85 and has been paid a total of \$47,849.75 of the fees authorized. Doc. #294. Applicant's remaining balance due but unpaid is \$16,279.10. *Id.*

US Bank previously filed a notice of non-consent to use of cash collateral. Doc. #10. The parties stipulated to use of cash collateral through December 31, 2020. Doc. #108. US Bank objected to 3MB's earlier cash collateral motion on the basis that it had not authorized any subsequent use of cash collateral and sought additional adequate protection payments. Doc. #222. The parties recently stipulated to stay relief, wherein 3MB agreed to turnover and return any cash collateral held in 3MB's debtor-in-possession accounts. Doc. #274. 3MB seeks voluntary dismissal in matter #4 above, which the court intends to grant.

Applicant declares that the fees will be paid directly by 3MB from capital contributions from 3MB's members. Doc. #297. As noted above, Mr. Bell declares the same. Doc. #298. Applicant contends that payment by 3MB's members is not prohibited or inappropriate without the showing of an actual conflict of interest between 3MB and its members. Doc. #260, citing § 329(b)(2); *In re Lotus Props.*, 200 B.R. 388, 392-95 (Bankr. C.D. Cal. 1996). US Bank did not object.

Applicant's office provided 17.70 billable hours of legal services for 3MB totaling \$6,150.00 as follows:

Professional	Rate	Hours	Total Amount
Leonard K. Welsh	\$350.00	17.50	\$6,125.00
Trinette Lidgett	\$125.00	0.20	\$25.00
Totals		17.70	\$6,150.00

Doc. #294, ¶ 11; Doc. #296, Ex. B. Lidgett is Applicant's legal secretary, who has been providing legal secretary and assistant services since 1982. *Id.*, Ex. A. Applicant also seeks reimbursement of \$43.18 in expenses:

Postage	\$22.50
Telephonic Appearances	\$20.68
Total Costs	\$43.18

Doc. #294, ¶ 14. These combined fees and expenses total **\$6,193.18**.

11 U.S.C. § 330(a)(1)(A) and (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . .[a] professional person, or attorney" and "reimbursement for actual, necessary expenses."

Applicant's services included, without limitation: (1) advising 3MB about its duties and the administration of the chapter 11 case; (2) preparing for status conferences; (3) preparing monthly operating report for May 2021; (4) preparing a motion to dismiss chapter 11 case in matter #4 above (LKW-17) (5) preparing and prosecuting the fourth and fifth fee applications (LKW-16; LKW-17); and (6) stipulating to relief from the automatic stay in favor of US Bank (Doc. #271). Docs. #294; #296, Ex. B; #297. The court finds the services reasonable and necessary, and the expenses requested actual and necessary.

This motion will be GRANTED. Applicant will be authorized to receive \$6,150.00 in fees and \$43.18 in costs for services rendered from June 1, 2021 through June 30, 2021 provided that payment is consistent with the court's prior orders and the parties' agreements regarding the use of US Bank's cash collateral. Applicant shall be compensated \$6,193.18 on a final basis under 11 U.S.C. § 331. Further, the court will approve on a final basis \$64,128.85 previously awarded on an interim basis to Applicant for the four prior applications. The total amount of fees and expenses awarded to Applicant in this case is \$70,322.03.

6. [20-13855](#)-B-11 **IN RE: MOHOMMAD KHAN**
[MK-3](#)

RESCHEDULED MOTION TO SET ASIDE DISMISSAL OF CASE
6-14-2021 [[131](#)]

MOHOMMAD KHAN/MV
MOHOMMAD KHAN/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The court will issue an order.

Pro se chapter 11 debtor Mohommad Mahmood Khan ("Debtor") moves to set aside dismissal of his case. Doc. #131.

Tracy Hope Davis, United States Trustee for Region 17 ("UST") and Fay Servicing, LLC as authorized servicer for Wilmington Trust ("Fay"), timely opposed. Docs. #143; #146. Both raise similar arguments urging the court to deny the motion: (1) Debtor failed to demonstrate why his case should be reinstated; (2) the motion rehashes prior failed arguments and raises new arguments that should have been included in the initial motion to dismiss opposition;

(3) the motion does not meet the standards of relief under either Civil Rule 59(e) or 60; and (4) the notice does not comply with the LBR.

This motion will be DENIED for failure to comply with the local rules and failure to make a *prima facie* showing that Debtor is entitled to the relief sought.

This motion was set for hearing on July 27, 2021 with 28 days' notice under Local Rule of Practice ("LBR") 9014-1(f)(1). The court rescheduled that hearing to July 29, 2021. This matter will proceed as scheduled.

PROCEDURAL DEFECTS

The LBR "are intended" to supplement and shall be construed consistently with and subordinate to the Federal Rules of Bankruptcy Procedure and those portions of the Federal Rules of Civil Procedure that are incorporated by the Federal Rules of Bankruptcy Procedure." LBR 1001-1(b). The most up-to-date local rules can be found at <http://www.caeb.uscourts.gov/LocalRules.aspx>. The newest rules became effective April 12, 2021.

First, the notice did not contain the language required under LBR 9014-1(d)(3)(B). LBR 9014-1(d)(3)(B)(iii), which is about noticing requirements, requires the movant to notify respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view pre-hearing dispositions by checking the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

Second, the notice (Doc. #132) does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition.

Third, there was an exhibit attached to the motion. LBR 9004-2(d) requires exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets.

Fourth, no substantive evidence was included with this motion. LBR 9014-1(d)(1) provides that every application, motion, or other request for an order "shall be comprised of a motion, or other request for relief, notice, evidence, and a certificate of service." The exhibit attached to the motion is a calendar memo notifying Debtor that his previous motion – filed 67 days after dismissal – to vacate dismissal was not calendared because it was set on the wrong hearing date after being filed on the chapter 7 calendar, rather than the chapter 11 calendar. See Doc. #124. Debtor responded by filing this motion.

Fifth, according to the proof of service, only Wilmington was served. Doc. #133. No parties that filed requests for special notice, including UST, were notified. Cf. Docs. #11-12. No creditors filing proofs of claim were notified. UST may raise, appear, and be heard on any issue in any case under 11 U.S.C. § 307 and should be served or notified. There is insufficient evidence that the required parties were properly served or notified. LBR 9014-1(e)(2) requires a proof of service, in the form of a certificate of service, to be filed with the clerk of the court concurrently with the pleadings or documents served, or not more than three days after the papers are filed.

Sixth, this motion is not timely. It was filed 110 days after the dismissal. The case was dismissed on February 24, 2021 and the motion was filed on June 14, 2021. Docs. #103; #131. Though Debtor cites no authority nor presents any legal argument, he appears to be attempting to either alter or amend the dismissal or seek relief from the court's order.

Federal Rule of Bankruptcy Procedure ("Rule") 9023 incorporates Federal Rule of Civil Procedure ("Civil Rule") 59. The deadline to file a motion for a new trial or to amend a judgment is 14 days after entry of judgment under Rule 9023.

Debtor filed a motion to set aside 14 days after entry of dismissal on March 10, 2021. Doc. #113. This motion was timely, but Debtor did not file a notice of hearing, evidence, or serve the motion on any parties in interest. See docket generally. The clerk issued a calendar correction memo informing Debtor that the matter would not be calendared without first filing a notice of hearing. Doc. #114. The clerk's notice was sent by first class mail to Debtor's petition mailing address at 84 Birch Ave., Clovis, CA 93611 on March 12, 2021. Doc. #115.

Debtor attempted to file an amended motion to set aside on May 3, 2021 - 67 days after dismissal - but it was incorrectly set on the chapter 7 calendar, so it was not calendared. Doc. #121. The clerk issued another calendar correction memo, which was mailed to Debtor on May 4, 2021. Docs. #124; #127.

This motion was filed on June 14, 2021 - 110 days after dismissal, 96 days after the first motion was filed without a notice of hearing, and 94 days after Debtor was notified that a notice of hearing was required to proceed.

This is well beyond the 14-day deadline to file a motion to amend judgment. If the motion were timely, a Civil Rule 59(e) motion to alter or amend judgment "may not be used to relitigate old matters, or to raise arguments, or present evidence that could have been raised prior to the entry of judgment. *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008) (internal quotation omitted); *Weeks v. Bayer*, 246 F.3d 1231, 1236 (9th Cir. 2001) ("[T]he forbidden 'second bite at the apple' . . . is not the purpose of Rule 59.") (internal quotation and citation omitted). Debtor repeats previous failed arguments and claims his health issues were not adequately considered. But Debtor has continually raised these health issues

throughout the case as a reason for leniency. And they do not explain the basis for dismissal, which is years of filing consecutive bankruptcy cases that were all dismissed pre-confirmation for failure to comply with court orders, as well as unreasonable delay, and bad faith.

The motion is devoid of citations to authority and legal argument. Debtor does not argue any manifest errors of law or fact, newly discovered or previously unavailable evidence, or any other bases upon which the court should vacate the order dismissing the case with prejudice. So even if a Rule 59(e) motion were timely filed, it would still be denied.

Despite these procedural and substantive errors, the court must treat *pro se* litigants "with great leniency when evaluation compliance with the technical rules of civil procedure." *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992) (citing *Draper v. Coombs*, 795 F.2d 915, 924 (9th Cir. 1986)). "Thus, before dismissing a *pro se* complaint the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity amend effectively." *Ferdik*, 963 F.2d at 1261 (citing *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987)). Even with that great leniency, the court is still constrained by the law. See *King v. Burwell*, 135 S. Ct. 2480, 2505 (2015).

Even if all procedural errors were addressed, the moving papers still 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 (B.A.P. 9th Cir. 2014 (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007))).

PROCEDURAL HISTORY

This case was dismissed with prejudice for cause under 11 U.S.C. § 1112(b) and Rules 1017(f) and 9014 on February 24, 2021. Doc. #103. In a 16-page ruling, this court considered Debtor's untimely response and thoroughly explained the many reasons that overwhelmingly supported dismissal with prejudice. See Doc. #98. The court concluded that Debtor filed the case in bad faith because (1) this was his tenth repeat-filing since 2016 – eleventh since 2011; (2) he failed to timely file accurate schedules and other documents; (3) he repeatedly sought extensions of time and failed to use them to make progress in or prosecute this case; (4) he failed to retain counsel; (5) he failed to demonstrate an ability to prosecute this case without counsel; (6) he failed to file monthly operating reports; (7) he failed to turnover proof of insurance, and proof of identification and Social Security number to UST; (8) he failed to attend the continued Initial Debtor Interview; and (9) unreasonable delay that is prejudicial to creditors. *Id.*; see also, Adv. Proc. No. 20-01068 ("AP"), Doc. #65. The court determined that conversion was not in the best interest of creditors, and Debtor filed the case solely to delay, hinder, and defraud creditors. Debtor was barred from filing any petition for relief in the U.S. Doc. #103. Bankruptcy Court for the Eastern District of California for 180 days from entry of dismissal and the court retained

jurisdiction in UST's adversary proceeding, Adv. Proc. No. 20-01068. *Id.*

Later, in that adversary proceeding, the court entered Debtor's default on April 1, 2021. AP Doc. #32. Default judgment was entered on July 6, 2021 and Debtor was enjoined from filing or causing to be filed, any subsequent petition for relief in the U.S. Bankruptcy Court for the Eastern District of California, for a period of two years without first obtaining permission of the Chief Bankruptcy Judge of the Eastern District of California. AP Doc. #70.

In the post-dismissal interim, Debtor filed a motion to set aside the dismissal on March 10, 2021, which was 14 days after the case was dismissed. Doc. #113. Debtor claimed there will be immediate and irreparable harm if the case is not reinstated. Debtor stated that his son was diagnosed with schizophrenia on March 3, 2021 and has disappeared and gone missing. Debtor was previously attacked by him in 2018, but he was released in December. His condition recently worsened due to the lockout from the property. Debtor claimed that Wilmington presented a fake court order from another bankruptcy that allowed them to conduct the lockout and seize possession. *Id.* As discussed below, there was no automatic stay in effect.

That motion was never set for hearing. Debtor did not include a notice of hearing, evidence, or serve any documents on any parties in interest. See docket generally. The clerk issued a calendar correction memorandum informing Debtor that the matter would not be calendared without first filing a notice of hearing. Doc. #114. The clerk's notice was sent by first class mail to Debtor's petition mailing address at 84 Birch Ave., Clovis, CA 93611 on March 12, 2021. Doc. #115.

Debtor did not ever file a notice of hearing. Instead, Debtor requested additional time to file an Answer in the adversary proceeding. See AP Doc. #14.

Though this was his second time extension in the adversary proceeding (Doc. #8), his request was granted, and Debtor was given until March 22, 2021 to file an Answer.¹ AP Doc. #15. Debtor made a third request for additional time on March 22, 2021, but this request was denied. AP Docs. ##19-20.

On March 26, 2021, Debtor filed two more requests in the adversary proceeding and one request in the bankruptcy for additional time to file an Answer or a response. AP Docs. #22; #29; Bankr. Doc. #116. No notice of hearing had been filed on the motion to set aside the bankruptcy dismissal.

Then on March 31, 2021, Debtor filed a four-page response entirely in block capitals alleging fraud, corporate espionage, theft of intellectual property by an unnamed insider, implications that Fay

¹ Prior to dismissal of the bankruptcy, Debtor had been given two extensions of time to file schedules. Docs. #23; #33. Both provided that no further extensions would be permitted by *ex parte* application. Subsequent requests were denied. Docs. #35; #76; #101.

was responsible for the death of this unnamed insider, and health issues, among other things. Doc. #117. A request for entry of default was filed by UST on March 31, 2021 and entered on April 1, 2021. AP Docs. #24; #32. Debtor's requests in the adversary proceeding were denied. AP Doc. #37.

Debtor moved to set aside default, again with no notice of hearing, evidence, or certificate of service. AP Doc. #34. The clerk issued a calendar correction memo informing Debtor that the motion would not be calendared without a notice of hearing. AP Doc. #36. This was sent to Debtor's mailing address by first class mail on April 7, 2021. AP Doc. #40.

Debtor filed an amended motion to set aside dismissal on May 3, 2021, but it was incorrectly set on the chapter 7 calendar, so it was not calendared. Bankr. Doc. #121. The clerk issued another calendar correction memo, which was mailed on May 4, 2021. Docs. #124; #127

On June 14, 2021, Debtor filed this motion - 110 days after dismissal and 96 days after his first motion was filed without a notice of hearing. Doc. #131. Debtor subsequently filed an adversary proceeding against Fay on June 21, 2021. Adv. Proc. No. 21-01026.

DISCUSSION

A motion for reconsideration is treated as a motion to alter or amend judgment under Civil Rule 59(e) if it is filed within 28 days of the entry of judgment (14 days in Bankruptcy cases Fed. R. Bankr. Proc. 9023), otherwise it is treated as a motion for relief from judgment under Civil Rule 60(b). *Am. Ironworks & Erectors, Inc. v. N. Am. Contr. Corp.*, 248 F.3d 892, 898-99 (9th Cir. 2001). "When taken together, [Civil] Rule 59 and [Civil] Rule 60 encompass all possible post-judgment relief: [Civil] Rule 59 incorporates common law principles of equity for granting new trials, and [Civil] Rule 60 preserves the relief afforded by ancient remedies for relief from settlement judgments while abolishing the separate and independent use of those remedies." *In re Walker*, 332 B.R. 820, 831-32 (Bankr. D. Nev. 2005) (internal citation omitted). Reconsideration is the exception to the rule: it is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (internal quotation omitted); *School Dist. No. 1J v. ACandS, Inc.*, 5.3d 1255, 1263 (9th Cir. 1993). "Whether or not to grant reconsideration is committed to the sound discretion of the court." *Navajo Nation v. Confederated Tribes and Bands of the Yakama Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003).

As noted above, relief under Civil Rule 59 is not available here. Rule 9023 shortens the filing deadline to 14 days. Debtor's initial motion to vacate was filed 14 days after the dismissal, so it was timely. Doc. #113. No notice of hearing was filed. Debtor's second motion to vacate was filed 54 days later - 98 days after the dismissal. Doc. #121. It was filed on the wrong calendar. Debtor's third motion was filed 42 days later - 110 days after the dismissal. "Absent adequate, cogent argument and briefing, a court can decline

to consider an argument that is not properly before it." *In re Gold Digger Apples, Inc.*, 2017 Bankr. LEXIS 348 at n.21 (Bankr. E.D. Wash. Feb. 7, 2017).

Under Civil Rule 60(b), the court may relieve a party for six reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) void judgment; (5) satisfied, released, or discharged judgment; or (6) any other reason that justifies relief. Civil Rule 60(b)(1-6). As with Civil Rule 59, Civil Rule 60(b) cannot be used to take a "second bite at the apple." *Alexander v. Bleau (In re Negrete)*, 183 B.R. 195, 198 (B.A.P. 9th Cir. 1995) *aff'd*, 103 F.3d 139 (9th Cir. 1996).

Debtor does not sufficiently plead any of these reasons. He says he was hospitalized from March 1, 2021 to June 5, 2021. Doc. #131. But as noted above, he continually raised these health issues throughout the case as a reason for leniency. And he has raised them in his previous bankruptcy cases as well. He was given extensions of time and told that those extensions would stop at some point. Debtor failed to use those extensions of time, instead opting to request further extensions. Medical issues are Debtor's "get out of jail free" card. At some point, the court cannot delay proceedings forever. Further, Debtor's health issues do not resolve the reasons that the case was dismissed: bad faith, years of filing consecutive bankruptcy cases that were all dismissed pre-confirmation for failure to comply with court orders, and unreasonable delay that is prejudicial to creditors.

Debtor re-alleges that Wilmington violated of the automatic stay on December 22, 2020. This frivolous argument can be disregarded. As discussed in the adversary proceeding (AP Doc. #65), the automatic stay was not in existence with respect to real property at 1810 Mora Avenue, Calistoga, CA 94515 ("Mora Property") due to an *in rem* relief from stay order entered by the U.S. Bankruptcy Court for Northern District of California and recorded in Napa County on July 25, 2019. Doc. #80, Ex. 1.

Like Debtor, Bruce Chadbourne – Debtor's business partner – also has a history of serial bankruptcy filings. In one of Chadbourne's bankruptcies – the sixth affecting the Mora Property – the Honorable Dennis Montali of the Northern District of California Bankruptcy Court found that Chadbourne, Debtor, and Debtor's spouse, Ayesha Khan, engaged in a bad faith scheme to hinder, defraud, and delay Fay through abuse of the bankruptcy system and granted *in rem* stay relief under 11 U.S.C. § 362(d)(4) on June 8, 2019. Doc. #82, Ex. 15. An order entered under § 362(d)(4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order. So, no automatic stay could affect Mora Property until after June 8, 2021. The alleged violation occurred on December 22, 2020, when the automatic stay was not in effect as a matter of law.

Fay and UST also correctly point out that Debtor's rehashing of previously failed arguments is impermissible. Doc. #143, citing *Wall St. Plaza, LLC v. JSJF Corp. (In re JSJF Corp.)*, 344 B.R. 94, 103 (B.A.P. 9th Cir. 2006), *aff'd and remanded*, 277 Fed. App'x 718 (9th

Cir. 2008); Doc. #146, citing *Negrete*, 183 B.R. at 197. Since Debtor failed to allege any grounds meriting reconsideration of relief, the motion should be denied.

Next, Debtor claims Wilmington is engaged in elder abuse, conspiracy, financial elder abuse, espionage, and fraud. Doc. #131. But none of these claims are plead sufficiently, or with any particularity. Fraud claims must "be 'specific enough to give defendants notice of the particular misconduct . . . so that they can defend against the charge and not just deny that they have done anything wrong.'" *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009) (citations omitted). "Averments of fraud must be accompanied by 'the who, what, when, where, and how' of the misconduct conduct charged." *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d

Debtor accuses his attorney of making mistakes leading to dismissal, but Debtor does not have an attorney of record. Doc. #131. Claiming to have a new attorney, Debtor seeks leave to amend his motion and promises to "show the court" what has transpired over the last five years if he is given 30 more days to "bring the attorney on board[.]" *Id.*, at 2. But Debtor said he was speaking with an attorney "today" on January 12, 2021. Doc. #26.

And then on January 13 and 14, 2021, he said his appointment with his attorney was "scheduled for Friday" - which would have been January 15, 2021. Docs. #28; #41.

January 15, he filed multiple motions stating that he is "hiring attorneys" and intends to "conduct a [sic] adversary complaint with an attorney this week." Docs. #48 #50; #52; #57.

January 22, Debtor claims to have included a declaration from his attorney to support the claim that his case will be successful and "provide a plan within 6 months" but no declaration was filed. Doc. #63.

January 29, Debtor "authorized 3 family and partners to set up meetings with attorneys this next week to review [his] case to retain . . . an attorney." Doc. #74.

February 12, Debtor identified his new attorney as "Mr. Glaubiger" but then acknowledged that the attorney was neither paid nor retained yet. Doc. #84.

February 22, Debtor filed a status update in which he arranged to pay \$15,000 to Ethan Glaubiger for representation, who will file an adversary proceeding and apply for employment on March 9, 2021. Doc. #93. Debtor said that he has not retained Mr. Glaubiger yet due to loss of income and the checks being located at Mora Property. *Id.* He included a redacted email dated February 2 who "briefly looked over" the documents presented and had not yet agreed whether to take the case. *Id.*, at 8.

March 10, Debtor claimed his attorneys "are in the process of resolving the pleading issues and cases related to the property" but

he had to adjust meetings with those attorneys by seven days to search for his son with schizophrenia. Doc. #113.

March 31, Debtor claimed he had not heard back from Mr. Glaubiger. Doc. #117. He also claimed that he could not hire an attorney because his possessions were locked in Mora Property.

May 3, Debtor repeats that his attorneys "are in the process of resolving the pleading issues and causes related to the property" and that meetings were adjusted seven days to search for his son with schizophrenia. Doc. #121.

And now, in this motion, June 14, 2021, Debtor hopes to get an attorney, but he is "suffering from the elder abuse from creditor Wilmington trust attorney . . ." Doc. #131, at 1. He claims to have been misled by his previous attorney in another case and is suffering from espionage and fraud. *Ibid.* Debtor seeks to have his case reinstated because he has proof that he has "gotten an attorney and engagement is coming soon." Promising to repay creditors in full, Debtor believes his chapter 11 plan should be ready "by the next hearing in July[.]" *Ib.*, at 2. Debtor restates his claim that Wilmington violated the automatic stay and claims to be suffering from intellectual property fraud, infringement, and dealing with the ongoing investigation into the death of an insider. He promises to "have some sort of plan with law enforcement and [his] attorney . . . in [his] next hearing." *Ibid.*

Debtor claimed he would hire an attorney seven months ago and failed to do so. Further, these claims were already dispensed in the motion to dismiss, so Debtor is merely rehashing old arguments. *JSJF Corp.*, 344 B.R. at 103.

For the above reasons, this motion will be DENIED. The case will remain dismissed with prejudice. The judgment in the adversary proceeding entered July 6, 2021 is still in effect and was not the subject of this motion. That judgment enjoins Debtor from filing another bankruptcy petition in the Eastern District of California for two years without first obtaining permission from the Chief Judge. Debtor is free to pursue his claims in state court.

11:00 AM

1. [21-10825](#)-B-7 **IN RE: DANIEL ORTEGA**

RESCHEDULED PRO SE REAFFIRMATION AGREEMENT WITH U.S.
NATIONAL ASSOCIATION
6-30-2021 [\[25\]](#)

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

DISPOSITION: Dropped.

NO ORDER REQUIRED.

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. Accordingly, the hearing will be DROPPED from calendar.

2. [21-10640](#)-B-7 **IN RE: RENEE DAY**

RESCHEDULED CONTINUED REAFFIRMATION AGREEMENT WITH TOYOTA
MOTOR CREDIT CORPORATION
5-28-2021 [\[14\]](#)

JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

NO ORDER REQUIRED.

Debtor filed a Notice of Rescission of Reaffirmation Agreement between Debtor and Toyota Motor Credit Corporation on July 15, 2021. Doc. #29. Accordingly, the hearing will be DROPPED from calendar.

3. [21-10844](#)-B-7 **IN RE: MARIBEL MONTES**

PRO SE REAFFIRMATION AGREEMENT WITH AMERICREDIT FINANCIAL
SERVICES, INC.
7-9-2021 [\[15\]](#)

MONICA ROBLES/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Debtor was represented by counsel when she 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). 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. Accordingly, the Reaffirmation Agreement with Americredit Financial Services, Inc. will be DENIED.

4. [21-11151](#)-B-7 **IN RE: ELLEN SMITH**

REAFFIRMATION AGREEMENT WITH 21ST MORTGAGE CORPORATION
7-6-2021 [\[22\]](#)

LAYNE HAYDEN/ATTY. FOR DBT.

NO RULING.

5. [21-11076](#)-B-7 **IN RE: ROMAN LINDAY**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
6-30-2021 [\[19\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

NO RULING.

6. [21-11076](#)-B-7 **IN RE: ROMAN LINDAY**

REAFFIRMATION AGREEMENT WITH NAVY FEDERAL CREDIT UNION
7-1-2021 [[20](#)]

MARK ZIMMERMAN/ATTY. FOR DBT.

NO RULING.

1:30 PM

1. [21-10709](#)-B-7 **IN RE: AMB RANCH MANAGEMENT, INC.**
[SW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-13-2021 [\[25\]](#)

ALLY FINANCIAL/MV
JAMES MILLER/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 was filed and served on less than 28 days' notice pursuant to LBR 9014-1(f)(2), but the language in the notice requires written response at least 14 days before the hearing in compliance with LBR 9014-1(f)(1). Therefore, the motion will be DENIED WITHOUT PREJUDICE.

The court notes that this is the second motion filed by Ally Financial regarding the personal property listed as 2018 Ford F-150. The court urges movant to review the LBR before filing a third motion.

2. [21-11219](#)-B-7 **IN RE: SCOTT KAUFFMAN**
[APN-1](#)

RESCHEDULED MOTION FOR RELIEF FROM AUTOMATIC STAY
6-22-2021 [\[20\]](#)

HARLEY-DAVIDSON CREDIT CORP/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
AUSTIN NAGEL/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.

Harley-Davidson Credit Corp ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2018 Harley-Davidson FLTRX Road Glide ("Vehicle"). Doc. #20.

No party in interest timely filed written opposition. This motion will be GRANTED.

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

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least twenty-eight (28) complete pre-petition payments. The movant has produced evidence that debtor is delinquent at least \$11,360.10, including late fees. Doc. #22, #24.

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. *Id.* The Vehicle is valued at \$20,240.00 and debtor owes \$24,243.04. Doc. #22, #24.

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.

3. [21-10420](#)-B-7 **IN RE: KHALIL JABER**
[PFT-1](#)

RESCHEDULED MOTION TO SELL
6-24-2021 [\[25\]](#)

PETER FEAR/MV
HAROUT BOULDOUKIAN/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed for higher and better
bids only.

DISPOSITION: Granted.

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

Chapter 7 trustee Peter L. Fear ("Trustee") seeks authorization to sell the estate's interest in a 2015 Dodge Ram ("Vehicle") to Khalil Abdel Jaber ("Debtor") for \$12,325.00 subject to higher and better bids. Doc. #25. Trustee has received the funds and is awaiting court approval. Trustee requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 6004(h).

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on July 27, 2021 with 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Doc. #26. The court rescheduled that hearing to July 29, 2021. Doc. #30. 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). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the Notice of Hearing (Doc. #26) filed with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition. Counsel is advised to review the local rules to ensure procedural compliance in subsequent motions. Future violations of the local rules may result in the matter being denied without prejudice.

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*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., 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*, 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.* citing *In re Psychometric Sys.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Prod. Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to the Debtor. Vehicle is listed in the schedules with a value of \$10,000.00. Doc. #10, Am. Schedule A/B. Debtor exempted Vehicle in the amount of \$3,325.00 pursuant to Cal. Civ. Proc. Code ("C.C.P.") § 704.010. *Id.*, Am. Schedule C. Vehicle does not appear to have any encumbrances. Doc. #1, Schedule D. Trustee proposes to sell Vehicle for \$12,325.00, which exceeds Vehicle's scheduled value. Debtor has made a payment of \$9,000.00 to the estate and will receive credit for the \$3,325.00 exemption. Doc. #25.

Trustee states that Debtor made the initial offer, which he accepted subject to higher and better bids at the hearing. Doc. #27. This is the best and highest offer Trustee has received for the Vehicle. Trustee contends that the sale price was determined by estimating the fair market value of the property less the costs associated with storing and selling the Vehicle at auction *Id.* Trustee believes that the \$9,000 offer (excluding exemption credit) will yield more than selling the property at auction after accounting for the auctioneer's commission, cost of storage, and cost of obtaining court approval for hiring an auctioneer for the bankruptcy estate. *Id.* There will be no tax consequences to the estate based on this sale. *Id.* Trustee has presumably conducted due diligence and concluded the sale in the best interest of creditors and the estate.

It appears that the sale of the Vehicle 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. There are no objections or opposition to the motion. Accordingly, this motion will be GRANTED. This matter will proceed as scheduled for higher and better bids only.

If Debtor is the winning bidder, the 14-day stay of Rule 6004(h) will be ordered waived because Vehicle is a depreciating asset and already in possession of the Debtor. Further, any delay extends a potential estate liability.

The motion does not request, nor will the court authorize, the sale free and clear of any liens or interests. Trustee indicates that there are no encumbrances on the Vehicle.

Any party wishing to overbid must appear at the hearing and acknowledge that no warranties or representations are included with the Vehicle; it is being sold "as-is." Winning bidders must pay the Trustee in certified funds to be received in Trustee's office no later than five business days following the conclusion of the auction. Back-up bids will be taken and notified if the winning bidder has failed to perform. The back-up bidder must pay the purchase price within five business days of being notified that the back-up bidder is now the winning bid.

4. [20-12036](#)-B-7 **IN RE: SANDRA SANCHEZ**
[JES-3](#)

RESCHEDULED MOTION TO COMPEL
6-27-2021 [\[49\]](#)

JAMES SALVEN/MV
MARK HANNON/ATTY. FOR DBT.
ANTHONY JOHNSTON/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Chapter 7 trustee James E. Salven ("Trustee") seeks an order compelling Sandra Sanchez ("Debtor") to turnover 2020 Federal and State tax returns within seven days under 11 U.S.C. § 542(a). Doc. #51.

This motion will be DENIED WITHOUT PREJUDICE.

First, the motion and supporting documents were not served on Debtor, Debtor's attorney, or the U.S. Trustee. Doc. #52. The certificate of service provides that the following documents were served: (1) Notice of Hearing on Trustee's Motion for Order Approving Compromise of Controversy; Motion for Order Approving Compromise of Controversy; and Declaration of James E. Salven in Support Thereof. *Id.* There is no evidence that this Motion to Compel was served. LBR 9014-1(e)(2) requires a proof of service, in the form of a certificate of service, to be filed with the clerk of the court concurrently with the pleadings or documents served, or not more than three days after the papers are filed.

Second, the declaration and exhibit does not procedurally comply with LBR 9004-2(c)(1). Doc. #51. LBR 9004-2(c)(1) requires motions, exhibits, and other specified pleadings to be filed as separate documents. Here, the motion and a one-page exhibit are attached and not filed separately.

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

5. [21-11445](#)-B-7 **IN RE: GOBINDER/HARINDER AUJLA**
[VVF-1](#)

RESCHEDULED MOTION FOR RELIEF FROM AUTOMATIC STAY
7-1-2021 [\[20\]](#)

HONDA LEASE TRUST/MV
PETER BUNTING/ATTY. FOR DBT.
VINCENT FROUNJIAN/ATTY. FOR MV.
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 Moving Party
shall submit a proposed order after hearing.

Honda Lease Trust ("Movant") seeks relief from the automatic stay
under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2020 Honda
Pilot ("Vehicle"). Doc. #20.

This motion relates to an executory contract or lease of personal
property. The time prescribed in 11 U.S.C. § 365(d)(1) for the lease
to be assumed by the chapter 7 trustee has not expired and, pursuant
to § 365 (p)(1), the leased property is still property of the estate
and protected by the automatic stay under § 362(a).

Written opposition was not required and may be presented at the
hearing. In the absence of opposition, this motion will be GRANTED.

This motion was filed and served pursuant to Local Rule of Practice
("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless
opposition is presented at the hearing, the court intends to enter
the respondents' defaults and grant the motion. If opposition is
presented at the hearing, the court will consider the opposition and
whether further hearing is proper pursuant to LBR 9014-1(f)(2). The
court will issue an order if a further hearing is necessary. The
trustee has not moved to assume the subject lease and the debtors
have filed non-opposition to the motion.

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).

Relief under § 362(d)(2) is moot because this is a lease and debtors
do not acquire equity interest in a leased Vehicle.

After review of the included evidence, the court finds that "cause"
exists to lift the stay because debtors have failed to make at least

one pre-petition payment and one post-petition payment. The movant has produced evidence that debtors are delinquent at least \$1,482.82, including late fees. Doc. #22.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtors have failed to make at least one pre-petition and one post-petition payment. No other relief is awarded.

6. [21-10148](#)-B-7 **IN RE: JOAQUIN/SARAH MURRIETA**
[PET-2](#)

RESCHEDULED MOTION TO SELL
6-24-2021 [\[35\]](#)

PETER FEAR/MV
SCOTT LYONS/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed for higher and better bids only.

DISPOSITION: Granted.

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

Chapter 7 trustee Peter L. Fear ("Trustee") seeks authorization to sell the estate's interest in a 2013 Chevrolet Malibu ("Vehicle") to Joaquin Jesse Murrieta and Sarah Inez Murrieta ("Debtors") for \$4,625.00 subject to higher and better bids. Doc. #35. Trustee requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 6004(h).

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on July 27, 2021 with 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Doc. #36. The court rescheduled that hearing to July 29, 2021. Doc. #40. 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). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima*

facie showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the Notice of Hearing (Doc. #36) filed with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition. Counsel is advised to review the local rules to ensure procedural compliance in subsequent motions. Future violations of the local rules may result in the matter being denied without prejudice.

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*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., 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*, 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.* citing *In re Psychometric Sys.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Prod. Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sell is to the Debtors. Vehicle is listed in the schedules with a value of \$4,625.00. Doc. #28, Am. Schedule A/B. Debtors did not exempted Vehicle. *Id.*, Am. Schedule C. Vehicle does not appear to have any encumbrances. Doc. #1, Schedule D. Trustee proposes to sell Vehicle for \$4,625.00, which equals Vehicle's scheduled value. Debtors will make payments to Trustee, to be paid in full by December 2021. Doc. #35. The source of the payment is from Debtors' ongoing income. Doc. #37.

Trustee states that Debtors made the initial offer, which he accepted subject to higher and better bids at the hearing. *Id.* This is the best and highest offer Trustee has received for the Vehicle. Trustee contends that the sale price was determined by estimating the fair market value of the property less the costs associated with storing and selling the Vehicle at auction *Id.* Trustee believes that the \$4,625.00 offer will yield more than selling the property at auction after accounting for the auctioneer's commission, cost of storage, and cost of obtaining court approval for hiring an auctioneer for the bankruptcy estate. *Id.* There will be no substantial tax consequences to the estate based on this sale. *Id.*

Trustee has presumably conducted due diligence and concluded the sale in the best interest of creditors and the estate.

It appears that the sale of the Vehicle 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. There are no objections or opposition to the motion. Accordingly, this motion will be GRANTED. This matter will proceed as scheduled for higher and better bids only.

If Debtors are the winning bidders, the 14-day stay of Rule 6004(h) will be ordered waived because Vehicle is a depreciating asset and already in possession of the Debtors. Further, delay in concluding the sale extends potential estate liability.

The motion does not request, nor will the court authorize, the sale free and clear of any liens or interests. Trustee indicates that there are no encumbrances on the Vehicle.

Any party wishing to overbid must appear at the hearing and acknowledge that no warranties or representations are included with the Vehicle; it is being sold "as-is." Winning bidders must pay the Trustee in certified funds to be received in Trustee's office no later than five business days following the conclusion of the auction. Back-up bids will be taken and notified if the winning bidder has failed to perform. The back-up bidder must pay the purchase price within five business days of being notified that the back-up bidder is now the winning bid.

7. [21-10648](#)-B-7 **IN RE: MICHAEL/CYNTHIA MCBRIDE**
[DMG-1](#)

RESCHEDULED MOTION TO AVOID LIEN OF BANK OF AMERICA, N.A.
6-18-2021 [\[14\]](#)

CYNTHIA MCBRIDE/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.

Michael Winslow McBride and Cynthia Tracy McBride ("Debtors") seeks to avoid a judicial lien in favor of Bank of America, N.A. ("Creditor"), in the amount of \$6,613.50 and encumbering residential real property located at 12314 Magruder Ave., Bakersfield, CA 93312 ("Property"). Doc. #14.

This matter was originally scheduled for July 27, 2021. Doc. #15. The court rescheduled that hearing to July 29, 2021. Doc. #19. Debtors properly served Brian Moynihan, Creditor's CEO, by certified

mail on June 18, 2021. Doc. #18. Debtors have complied with Rule 7004(b) and (h).

No party in interest timely filed written opposition. This motion will be GRANTED.

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

As a procedural matter, the exhibits (Doc. #17) filed with this motion do not comply with LBR 9004-2(d), which requires an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and consecutively numbered exhibit pages, including any separator, cover, or divider sheets. Here, there was an exhibit index, but the exhibit pages were not consecutively numbered throughout the entire exhibit document. Doc. #17.

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

Here, a judgment was entered against joint debtor Cynthia "Cindy" McBride in favor of Creditor in the sum of \$6,613.50 on August 31, 2017. Doc. #17, Ex. A. The abstract of judgment was issued on January 24, 2018 and recorded in Kern County on August 1, 2019. *Id.* That lien attached to Debtors' interest in Property and its current balance is estimated at approximately \$10,000.00. Doc. #16.

As of the petition date, Property had an approximate value of \$193,000.00. Doc. #1, *Schedule A/B*. There were no unavoidable liens encumbering Property on the petition date. *Id.*, *Schedule D*; Doc. #16. Debtors claimed an exemption pursuant to C.C.P. § 704.730 in

the amount of \$300,000.00. Doc. #1, *Schedule C*. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property on petition date		\$193,000.00
Total amount of unavoidable liens	-	\$0.00
Remaining available equity	=	\$193,000.00
Debtors' homestead exemption	-	\$300,000.00
Creditor's judicial lien	-	\$6,613.50
Extent Debtors' exemption impaired	=	(\$113,613.50)

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

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

8. [20-13049](#)-B-7 **IN RE: STEPHEN BRYANT**
[ADJ-6](#)

RESCHEDULED MOTION TO COMPROMISE CONTROVERSY/APPROVE
SETTLEMENT AGREEMENT WITH STEPHEN DUANE BRYANT
7-1-2021 [\[42\]](#)

DAVID JENKINS/ATTY. FOR DBT.
ANTHONY JOHNSTON/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.

Chapter 7 trustee Irma C. Edmonds ("Trustee") moves for an order approving a settlement agreement ("Settlement Agreement") between Stephen Duane Bryant ("Debtor") and the estate. Doc. #42.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

The motion was scheduled for hearing on July 27, 2021. Doc. #43. The court rescheduled that hearing to July 29, 2021. Doc. #47. 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.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. ("Rule") 9019. Approval of a compromise must be based upon considerations of fairness and equity. *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. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Trustee requests approval of a Settlement Agreement between the estate and Debtor to resolve an informal dispute regarding funds held in an investment account ("Investment Account") with an approximate balance of \$72,000. Doc. #44. The last deposit to the Investment Account was an accelerated life insurance death benefit of \$180,000, which was paid in May 2014 due to the terminal illness of Debtor's late wife, Michele Bryant. Before deposit of the life insurance proceeds, the Investment Account was funded with a \$101,000 deposit. Debtor has withdrawn funds from the Investment Account over the years, but he has not made any withdrawals since the petition date. As of the petition date, Debtor had \$1,619 in non-exempt funds in his checking account. Debtor's only other income is \$2,174 in Social Security benefits.

Debtor claims 100% of the funds in the Investment Account are exempt as life insurance proceeds under Cal. Civ. Proc. Code ("C.C.P.") § 704.100(c). Under a "first in, first out" analysis, 100% of the funds originate from the life insurance proceeds. But under a "last in, first out" analysis, none of the funds on deposit originate from the life insurance proceeds. Trustee and Debtor have agreed to full satisfaction of the estate's claims against the Investment Account, non-exempt checking account funds, and any other assets listed in the schedules.

Under the terms of the compromise, Debtor will pay \$15,000 in certified funds to Trustee within 10 days of the effective date of the Settlement Agreement in exchange for full satisfaction of Trustee's claims. Doc. #45, Ex. A. If Debtor fails to tender \$15,000 as required, the Settlement Agreement shall terminate.

The court concludes that the *Woodson* factors balance in favor of approving the compromise.

1. Probability of success in litigation: The probability of success is far from assured. The parties stipulated to extend the deadline for Trustee to object to the exemption to August 18, 2021. Doc. #41. The primary issue will be the method of tracing the funds back to the exempt life insurance proceeds. Trustee acknowledges that the Investment Account funds strongly appear to be needed for Debtor's support and maintenance, and they are very likely exempt. If Debtor contests the objection to exemption, Trustee has a substantially lower probability of success than the Debtor.

Under California law, Debtor has the burden to prove his entitlement to the exemption. *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 327, 337 (B.A.P. 9th Cir. 2016). California exemption statutes are liberally construed to protect income and property needed for subsistence of the debtor. *Estate of Short v. Payne (In re Payne)*, 323 B.R. 723, 727 (B.A.P. 9th Cir. 2005). Under C.C.P. § 703.080(c), the tracing of funds shall be by application of the lowest intermediate balance principle unless a party demonstrates some other method of tracing would better serve the interests of justice and equity under the circumstances of the case. Under this principle, "exempt funds may not exceed lowest balance at any time between deposit of exempt amounts of money and time of levy." 8 Witkin, Cal. Proc. 5th, Enf. Judgmt. § 174 (2020). Here, the lowest balance between the time of deposit of the life insurance proceeds and the petition was the balance on hand as of the petition date, so it is possible that 100% of the funds may be exempt life insurance proceeds. Doc. #42. This factor weighs in favor of approval.

2. Difficulties, if any, to be encountered in collection: If the court finds that the Investment Account funds are not exempt, collection will not be difficult because there have been no withdrawals since the petition date. Trustee states that no amount is guaranteed except the \$15,000 contemplated in the Settlement Agreement. Trustee would, however, incur additional attorney fees and costs if the Settlement Agreement is not approved. This factor weighs in favor of approval.

3. Complexity of litigation involved, and expense, inconvenience, and delay necessarily attending to it: The tracing of funds issue is complex. While the exemption statutes are liberally construed in favor of the debtor, a party may demonstrate that some other method serves the interest of justice and equity under the circumstances. This litigation would require the estate to incur additional legal fees to contest the claim, which the estate does not currently have. This Settlement Agreement avoids expense, inconvenience, and delay, and weighs in favor of approval.

4. Paramount interest of the creditors and a proper deference to their reasonable views: This Settlement Agreement benefits creditors because it provides certainty of recovery under the Settlement Agreement. If Trustee contests the exemption and loses, the estate incurs expenses and will receive nothing. Approval of the Settlement Agreement will provide liquidity to the estate that can be used to pay its claims and the matter will be quickly resolved without additional expense.

The Settlement Agreement appears to be fair and equitable. Accordingly, the compromise under Rule 9019 is a reasonable exercise of the Trustee's business judgment. This matter will be called as scheduled to inquire whether any parties in interest oppose. In the absence of opposition, this motion will be GRANTED.

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.*

This ruling is not authorizing the payment of any fees or costs associated with the litigation. The order should be limited to the claims compromised as described in the motion.

9. [21-11151](#)-B-7 **IN RE: ELLEN SMITH**
[RDW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
7-9-2021 [\[26\]](#)

LOGIX FEDERAL CREDIT UNION/MV
LAYNE HAYDEN/ATTY. FOR DBT.
REILLY WILKINSON/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied in part.

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

Logix Federal Credit Union ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2019 Forest River Stealth Evo ("Vehicle"). Doc. #26.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED IN PART and DENIED IN PART.

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

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor is 3 payments past due in the amount of \$733.23. Doc. #29.

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. Debtor values the Vehicle at \$23,000.00 and the amount owed to Movant is \$25,854.50. Docs. #28, #29.

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. Adequate protection is unnecessary considering the relief granted herein.

The request for attorney's fees will be DENIED pursuant to 11 U.S.C. § 506(b). Debtor has no equity in the property.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 3 payments and the Vehicle is a depreciating asset. Debtor's Statement of Intention indicates that debtor intends to surrender the Vehicle.

10. [20-10259](#)-B-7 **IN RE: JOSE URIBE RIZO AND LORENZA URIBE**

RESCHEDULED ORDER TO SHOW CAUSE REGARDING DISMISSAL OF CASE
6-28-2021 [\[51\]](#)

OSCAR SWINTON/ATTY. FOR DBT.

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

DISPOSITION: Continued to August 31, 2021 at 1:30 p.m.

NO ORDER REQUIRED.

On July 15, 2021, the debtors' counsel requested to continue this hearing to August 31, 2021 at 1:30 p.m. under Local Rule of Practice ("LBR") 9014-1(j). Doc. #58. Counsel states that he will be on a family vacation outside of the continental United States, which was planned last year and cannot be refunded. *Id.* Five days later, counsel filed a second, near-identical motion. Doc. #60. On July 21, 2021, the court continued this hearing to August 31, 2021 at 1:30 p.m. Doc. #62.

11. [20-12159](#)-B-7 **IN RE: OGANES SHISHIKYAN**
[JDW-4](#)

CONTINUED MOTION TO AVOID LIEN OF DISCOVER BANK
6-15-2021 [\[50\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Oganes Shishikyan ("Debtor") seeks to avoid a judicial lien in favor of Discover Bank ("Creditor"), in the amount of \$37,653.60 and encumbering residential real property located at 479 E. Ramon Ave., Fresno, CA 93710 ("Property"). Doc. #50.

This matter was previously continued to July 27, 2021 so that Debtor could effectuate service on Creditor under Federal Rule of Bankruptcy Procedure ("Rule") 7004(h). Doc. #58. The court rescheduled that hearing to July 29, 2021. Doc. #60. Debtor served the motion documents with an updated notice of hearing on Creditor's President, James Roszkowski, by certified mail on July 7, 2021. Docs. ##62-63. Debtor has complied with Rule 7004(h).

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

The motion and amended notice were filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Doc. #62. 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.

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

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$37,653.60 on November 7, 2018. Doc. #53, Ex. 1. The abstract of judgment was issued on July 2, 2019 and recorded in

Fresno County on August 16, 2019. *Id.* That lien attached to Debtor's interest in Property. Doc. #53.

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

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

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

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

12. [20-10465](#)-B-7 **IN RE: JASPREET DHILLON**
[DMG-3](#)

RESCHEDULED MOTION FOR COMPENSATION FOR D. MAX GARDNER,
TRUSTEES ATTORNEY(S)
6-29-2021 [\[57\]](#)

PHILLIP GILLET/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.

D. Max Gardner ("Applicant"), counsel for chapter 7 trustee Jeffrey M. Vetter ("Trustee"), requests fees of \$2,867.50 and costs of \$87.75 for a total of \$2,955.25 for services rendered from January 26, 2021 through June 28, 2021. Doc. #57. Trustee has reviewed the application and supporting documentation and consents to the proposed payment. *Id.*, ¶ 14.

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on July 27, 2021 with 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Doc. #58. The court rescheduled that hearing to July 29, 2021. Doc. #63. The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Jaspreet Dhillon ("Debtor") filed chapter 7 bankruptcy on February 8, 2020. Doc. #1. That same day, Trustee was appointed as interim trustee. Doc. #2. The first § 341(a) meeting of creditors was scheduled on April 3, 2020 but rescheduled to May 8, 2020 due to COVID-19 courthouse closure orders. See docket generally. Trustee became permanent trustee at the May 8, 2020 meeting of creditors. *Id.* Trustee moved to employ Applicant on February 26, 2021 pursuant to 11 U.S.C. §§ 327, 329-331. DMG-1. The court approved employment effective January 26, 2021, but noted employment was presumed to be authorized 30 days before filing the motion. Doc. #42. Employment should have been effective January 27, 2021 because the motion was filed on February 26, 2021. Applicant here requests fees starting January 26, 2021 and invoices begin to accrue charges of \$155.00 on that date. Doc. #60, Ex. A. Though Applicant's services were not within the presumptive 30-day time frame prescribed in LBR 2014-1(b)(1) and Fed. R. Bankr. P. 2014(a) for employment orders, the court will allow the requested compensation in this instance because the order states January 26, 2021. Employment applications should be filed within 30 days of performing services.

Applicant here requests fees beginning more than 30 days before the filing of the employment application. But Applicant presents no evidence why the presumption of allowing compensation beginning thirty days before the application should not apply here. Because the amount is *de minimis* (\$155.00) the court will overlook Applicant's error in this instance. See LBR 2014-1(b)(2).

Applicant provided services of 9.25 billable hours at a rate \$310.00 per hour and totaling **\$2,867.50** in fees. Doc. #57, ¶ 8. Applicant also requests reimbursement of the following expenses:

Postage	\$77.55
Photocopies	\$10.20
Total Costs	\$87.75

Id., ¶ 9. These combined fees and expenses total **\$2,955.25**.

11 U.S.C. § 330(a)(1)(A) and (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . .[a] professional person, or attorney" and "reimbursement for actual, necessary expenses."

Applicant's services included, without limitation: (1) providing counsel to Trustee as to the administration of the chapter 7 case; (2) successfully prosecuting a motion to compromise controversy (DMG-2); and (3) preparing employment and fee applications (DMG-1; DMG-3). Doc. #59. The court finds the services reasonable and necessary, and the requested expenses actual and necessary. Trustee reviewed the application and consents to payment of the requested fees and expenses. Doc. #67, ¶ 14.

No parties in interest timely filed written opposition. This motion will be GRANTED. Applicant shall be awarded \$2,867.50 in fees and \$87.75 in expenses. Trustee will be permitted in his discretion to pay Applicant \$2,955.25 for services rendered to the estate from January 26, 2021 through June 28, 2021.

13. [21-10467](#)-B-7 **IN RE: AGUSTIN GODOY LOPEZ**
[UST-2](#)

MOTION FOR REVIEW OF FEES
7-9-2021 [\[25\]](#)

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

NO RULING.

The United States Trustee ("UST") asks the court to review the fees of debtor's counsel, Vincent Quigg, and order that he disgorge the entirety of the \$1,200.00 fee payment he received. Doc. #25.

This case was filed on February 24, 2021. Doc. #1. But on July 9, 2021, the court entered an order on UST's motion (UST-1) to deny debtors' discharge under § 727(a)(8). Doc. #27. That provision precludes entry of a chapter 7 discharge in a case commenced within eight years from the commencement of a previous case in which the debtor received a discharge.

UST argues there was no value to counsel's services since the discharge was denied. Doc. #25. UST contends that a simple review of prior bankruptcy filings by the debtor would have prevented the expenditure of debtor's funds and other efforts. Counsel merely needed to wait a few months to file this case.

Though this motion is noticed under LBR 9014-1(f)(2) and the hearing will proceed, at this time, the UST has provided no evidence supporting this motion. There is no request for judicial notice or other evidence supporting the UST's factual contentions.

The court may deny the motion or continue the motion based upon the results of the hearing.

14. [17-13570](#)-B-7 **IN RE: JUANITA GIBSON**
[DMG-4](#)

RESCHEDULED MOTION FOR COMPENSATION FOR D. MAX GARDNER,
TRUSTEES ATTORNEY(S)
6-29-2021 [\[67\]](#)

OLAF LANDSGAARD/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.

D. Max Gardner ("Applicant"), counsel for chapter 7 trustee Jeffrey M. Vetter ("Trustee"), requests fees of \$2,170.00 and costs of \$44.40 for a total of \$2,214.40 for services rendered from March 12, 2021 through June 25, 2021. Doc. #67. Trustee has reviewed the application and supporting documentation and consents to the proposed payment. *Id.*, ¶ 14.

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on July 27, 2021 with 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Doc. #68. The court rescheduled that hearing to July 29, 2021. Doc. #73. The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Juanita Gibson ("Debtor") filed chapter 7 bankruptcy on September 18, 2017. Doc. #1. That same day, Trustee was appointed as interim trustee. Doc. #2. Trustee became permanent trustee at the first § 341(a) meeting of creditors on November 3, 2017. *See* docket generally. Trustee moved to employ Applicant on April 12, 2021 pursuant to 11 U.S.C. §§ 327, 329-331. DMG-2. The court approved employment effective February 9, 2021, but noted employment was

authorized 30 days before filing the motion – which the order stated was on April 9, 2021. Doc. #42. Thus, employment should have been effective March 13, 2021 because the motion was filed on April 12, 2021. Applicant here requests fees starting March 12, 2021, but the invoices do not begin to accrue charges until March 19, 2021. Doc. #70, Ex. A. Applicant's services were within the presumptive 30-day time frame prescribed in LBR 2014-1(b)(1) and Fed. R. Bankr. P. 2014(a) for employment orders, so this discrepancy is *de minimis*.

Applicant provided services of 7.00 billable hours at a rate of \$310.00 per hour and totaling **\$2,170.00** in fees. Doc. #67, ¶ 8. Applicant also requests reimbursement of the following expenses:

Postage	\$33.00
Photocopies	\$11.40
Total Costs	\$44.40

Id., ¶ 9. These combined fees and expenses total **\$2,214.40**.

11 U.S.C. § 330(a)(1)(A) and (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . .[a] professional person, or attorney" and "reimbursement for actual, necessary expenses."

Applicant's services included, without limitation: (1) providing counsel to Trustee as to the administration of the chapter 7 case; (2) successfully prosecuting a motion to compromise controversy (DMG-1); (3) preparing and filing a motion for payment of administrative expenses (DMG-3); and (4) preparing employment and fee applications (DMG-2; DMG-4). Doc. #69. The court finds the services reasonable and necessary, and the requested expenses actual and necessary. Trustee reviewed the application and consents to payment of the requested fees and expenses. Doc. #67, ¶ 14.

No parties in interest timely filed written opposition. This motion will be GRANTED. Applicant shall be awarded \$2,170.00 in fees and \$44.40 in expenses. Trustee will be permitted in his discretion to pay Applicant \$2,214.40 for services rendered to the estate from March 13, 2021 through June 25, 2021.

15. [19-12674](#)-B-7 **IN RE: ADRIAN PEREZ**
[DMG-4](#)

MOTION FOR ADMINISTRATIVE EXPENSES
7-2-2021 [\[131\]](#)

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

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") seeks authority to pay administrative expenses of \$497.33 to Trustee Insurance Agency for real property insurance. Doc. #131. Trustee conducted a sale of Adrian Perez's ("Debtor") personal residence on March 20, 2021 (DMG-3) and was required to maintain real property insurance to maintain and administer property of the estate. Doc. #133.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

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

11 U.S.C. § 503 allows an entity to file a request for payment of administrative expenses. After notice and a hearing, payment of certain administrative expenses shall be allowed, other than those specified in § 502(f), including the actual, necessary costs and expenses of preserving the estate. § 503(b)(1)(A).

The administrative expenses here were necessary to maintain and administer property of the estate. Doc. #131. Trustee believes that it is in the best interest of the estate and creditors to pay them prior to the close of the case to avoid further cost and delay that could be detrimental to the estate. *Id.* Trustee declares that there are sufficient funds on hand to pay these expenses. Doc. #133. Trustee has determined that there will be funds available for distribution to general unsecured creditors after payment of these administrative expenses and payment of Trustee and professional expenses to be sought later. *Id.*

This matter will be called as scheduled to inquire whether any parties in interest oppose payment of \$497.33 to Trustee Insurance Agency. In the absence of opposition, this motion will be GRANTED.

The court notes that the notice of hearing (Doc. #132) references a payment of \$5,495.00 to the Internal Revenue Service for taxes incurred from the sale of Debtor's real property. The motion and supporting declaration did not mention any payments besides the \$497.33 to Trustee Insurance Agency. It is unclear whether omission of payment to the IRS from the motion or inclusion in the notice was in error.

Nevertheless, there is no evidence supporting any request for payment to the IRS. So, the only order that is supported, if granted, is the payment of \$497.33 for insurance.

16. [19-12674](#)-B-7 **IN RE: ADRIAN PEREZ**
[DMG-5](#)

MOTION FOR COMPENSATION FOR D MAX GARDNER, TRUSTEES
ATTORNEY(S)
7-2-2021 [\[135\]](#)

ROBERT WILLIAMS/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.

D. Max Gardner ("Applicant"), counsel for chapter 7 trustee Jeffrey M. Vetter ("Trustee"), requests fees of \$9,610.00 and costs of \$197.13 for a total of \$9,807.13 for services rendered from November 6, 2019 through July 1, 2021. Doc. #135. Trustee has reviewed the application and supporting documentation and consents to the proposed payment. *Id.*, ¶ 14.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

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

Adrian Perez ("Debtor") filed chapter 7 bankruptcy on June 21, 2019. Doc. #1. That same day, Trustee was appointed as interim trustee. Doc. #2. Trustee became permanent trustee at the first § 341(a) meeting of creditors on August 9, 2019. See docket generally. Trustee moved to employ Applicant on December 6, 2019 pursuant to 11 U.S.C. §§ 327, 329-331. DMG-1. The court approved employment effective November 2, 2019, but noted employment was authorized 30 days before filing the motion – which the order stated was on

December 2, 2019. Doc. #42. Thus, employment should have been effective November 6, 2019 because the motion was filed on December 6, 2019. Applicant here requests fees beginning November 6, 2019. Applicant's services were within the presumptive 30-day time frame prescribed in LBR 2014-1(b)(1) and Fed. R. Bankr. P. 2014(a) for employment orders, so this discrepancy is *de minimis*.

Applicant provided services for 31.00 billable hours at a rate of \$310.00 per hour and totaling **\$9,610.00** in fees. Doc. #135, ¶ 8. Applicant also requests reimbursement of the following expenses:

Postage	\$57.90
Photocopies	\$7.23
CourtCall Charges	\$132.00
Total Costs	\$197.13

Id., ¶ 9. These combined fees and expenses total **\$9,807.13**.

11 U.S.C. § 330(a)(1)(A) and (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses."

Applicant's services included, without limitation: (1) providing counsel to Trustee as to the administration of the chapter 7 case; (2) prosecuting and prevailing on an objection to claim of exemption after evidentiary hearing (DMG-2); (3) preparing and filing a motion to sell real property (DMG-3); (4) filing a motion to pay administrative expenses, which is set for hearing in matter #15 above (DMG-4); and (5) preparing employment and fee applications (DMG-1; DMG-5). Doc. #137. The court finds the services reasonable and necessary, and the requested expenses actual and necessary. Trustee reviewed the application and consents to payment of the requested fees and expenses. Doc. #135, ¶ 14.

This matter will be called as scheduled to inquire whether any parties in interest oppose. In the absence of opposition, this motion will be GRANTED. Applicant shall be awarded \$9,610.00 in fees and \$197.13 in costs. Trustee will be permitted in his discretion to pay to Applicant \$9,807.13 for services rendered to the estate from November 6, 2019 through July 1, 2021.

17. [21-11181](#)-B-7 **IN RE: ELISSA GARCIA**
[MAZ-1](#)

RESCHEDULED MOTION TO AVOID LIEN OF NDS, LLC.
6-25-2021 [\[16\]](#)

ELISSA GARCIA/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Elissa A. Garcia ("Debtor") seeks to avoid a judicial lien in favor of NDS, LLC ("Creditor"), assignee of record for Unifund CCR Partners, in the amount of \$11,606.05 and encumbering residential real property located at 1219 E. Ferguson Ave., Visalia, CA 93292 ("Property"). Doc. #16.

This motion will be DENIED WITHOUT PREJUDICE for failure to make a *prima facie* showing that Debtor is entitled to the relief sought.

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

Federal Rule of Bankruptcy Procedure ("Rule") 4003(b)(1) allows a party in interest to object to a claim of exemptions within 30 days after the conclusion of the § 341 meeting of creditors or 30 days after the filing of an amended Schedule C, whichever is later. In this case, the meeting of creditors concluded on July 6, 2021. See docket generally. Parties in interest can still object to Debtor's claimed exemptions under Rule 4003, so Debtor has not established entitlement to the exemption that Debtor claims is impaired by the lien. This motion is therefore premature and not yet ripe for hearing because the Debtor cannot establish the elements under § 522(f)(1).

Accordingly, this motion will be DENIED WITHOUT PREJUDICE.

The court notes two other procedural issues that may warrant denial. First, the notice of hearing (Doc. #17) does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition.

Second, service here is sufficient under Rules 7004(b)(3) and (8). Debtor properly served Michael David Schulman, Creditor's registered

agent for service of process. Doc. #20. However, Debtor directed service to "Attn: Officer" while attempting to serve Unifund. *Id.* There is a split in authority regarding whether service upon an unnamed officer is sufficient. *Addison v. Gibson Equip. Co. (In re Pittman Mech. Contractors)*, 180 B.R. 604 (Bankr. E.D. Va. 1995) ("Attn: President" is insufficient for service under Rule 7004(b)(3)); *cf. Schwab v. Assocs. Commercial Corp. (In re C.V.H. Transp., Inc.)*, 254 B.R. (Bankr. M.D. Pa. 2000) (finding that service directed to unnamed "officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service of process" was sufficient under Rule 7004(b)(3)).

The Ninth Circuit has long required Rule 7004(b)(3) service to be directed to a named officer. See *In re Schoon*, 153 B.R. 48, 49 (Bankr. N.D. Cal. 1993) ("By addressing the envelope 'Attn: President' the debtors did not serve an officer, they served an office.") (emphasis in original); *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 94 (B.A.P. 9th Cir. 2004) ("Only if the notice is 'directed to a corporation and the attention of an officer or agent as identified in Rule 7004(b)(3),' can it be received by a person who is charged with responding to the service.") quoting *C.V.H. Transport*, 254 B.R. at 334.

Service here is sufficient because a registered agent for service of process was properly served. But addressing service merely to a "Manager" alone would not comply with Rule 7004(b). Had the registered agent not been served, the motion would have been denied for failing to list the name of a manager authorized to receive service.

18. [21-10387](#)-B-7 **IN RE: ROBERT PENA**
[BTH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-2-2021 [\[18\]](#)

M&T BANK/MV
LAYNE HAYDEN/ATTY. FOR DBT.
NICHOLAS COUCHOT/ATTY. FOR MV.
DISCHARGED 5/24/21

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion was filed and served on less than 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2), but the language in the original notice filed and served on July 2, 2021 (Doc. #19) requires written response within 14 days of the hearing in compliance with LBR 9014-1(f)(1).

Additionally, the amended notice of hearing filed and served on July 7, 2021 (Doc. #25) also contains language requiring written response

under LBR 9014-1(f)(1). Therefore, the motion will be DENIED WITHOUT PREJUDICE.

19. [21-11192](#)-B-7 **IN RE: MARIA GARCIA**
[PFT-1](#)

RESCHEDULED OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR
FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
6-15-2021 [\[13\]](#)

LEROY AUSTIN/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue an order.

Chapter 7 trustee Peter L. Fear ("Trustee") seeks dismissal for debtor's failure to appear and testify at the § 341(a) meeting of creditors. Doc. #13.

Maria Carmen Garcia ("Debtor") timely filed opposition on July 7, 2021. Doc. #15. Debtor's attorney, Travis Poteat, declares that Debtor appeared by video conference using the Zoom link she was provided, but Debtor was unable to get her audio to work. *Id.*

This motion will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for August 9, 2021 at 3:00 p.m. Doc. #12. If Debtor fails to do so, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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

20. [21-10594](#)-B-7 **IN RE: GURKAMAL SINGH**
[PBB-2](#)

RESCHEDULED CONTINUED MOTION TO AVOID LIEN OF WELLS FARGO
BANK, N.A.
5-27-2021 [\[28\]](#)

GURKAMAL SINGH/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Gurkamal Singh ("Debtor") seeks to avoid a judicial lien in favor of Wells Fargo Bank, N.A. ("Creditor"), in the amount of \$14,526.00 and encumbering residential real property located at 3056 North Hanover Avenue, Fresno, CA 93722 ("Property"). Doc. #28.

This matter was initially scheduled for June 29, 2021 and continued to July 27, 2021 so that Debtor could effectuate service on Trustee under Federal Rule of Bankruptcy Procedure ("Rule") 7004(h). Doc. #56. The court rescheduled that hearing to July 29, 2021. Doc. #62. Trustee had changed her address shortly before the motion was filed and was not served at her updated address. Doc. #32. Debtor served the motion documents with an updated notice of hearing on Trustee by ordinary mail on June 29, 2021. Docs. ##46-47. Prior to the last hearing, Debtor properly served Charles W. Scharf, Creditor's CEO and President, by certified mail on May 27, 2021. Doc. #32. Creditor's default was entered at the June 29, 2021 hearing. Doc. #50. Debtor has complied with Rule 7004(b) and (h).²

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was originally set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The defaults of all non-responding parties except Trustee were entered at the June 29, 2021 hearing. Doc. #50. The amended notice of hearing was also filed on 28 days' notice under LBR 9014-1(f)(1). Doc. #46. The failure of the Trustee to file written opposition at

² If an insured depository institution makes an appearance by its attorney, Rule 7004(h)(1) states that the attorney shall be served by first class mail. Here, Creditor filed a Request for Special Notice on March 31, 2021 requesting notices of all events relevant to the bankruptcy to be sent to Aldridge Pite, LLP. Doc. #16. Notably, the document does not specify whether it is also a notice of appearance.

Aldridge Pite was not served. But Creditor's Request for Special Notice states that "the within party *does not authorize Aldridge Pite, LLP*, either expressly or impliedly through Aldridge Pite, LLP's participation in the instant proceeding, to act as its agent for purposes of service under Fed. R. Bankr. P. 7004[.]" *Id.*, at 2, ¶¶ 12-14. Thus, Aldridge Pite does not appear to be authorized to receive Rule 7004 service. Accordingly, it appears that Debtor properly served Creditor's CEO and President in accordance with Rule 7004(h).

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, Trustee's default is entered, and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the amended notice of hearing (Doc. #46) filed with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition. Counsel is advised to review the local rules to ensure procedural compliance in subsequent motions. Future violations of the local rules may result in the matter being denied without prejudice.

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

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$10,913.60 on July 27, 2017. Doc. #31, Ex. E. The abstract of judgment was issued on September 15, 2017 and recorded in Fresno County on February 27, 2018. *Id.* That lien attached to Debtor's interest in Property and its current balance is approximately \$14,526.00. Doc. #30.

As of the petition date, Property had an approximate value of \$325,000.00. Doc. #19, *Schedule A/B*. The unavoidable liens totaled \$66,419.00 on that same date, consisting of a deed of trust in favor of Wells Fargo Home Mortgage. Doc. #1, *Schedule D*. Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$300,000.00. Doc. #19, *Schedule C*. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property on petition date		\$325,000.00
Total amount of unavoidable liens	-	\$66,419.00
Remaining available equity	=	\$258,581.00
Debtor's homestead exemption	-	\$300,000.00
Creditor's judicial lien	-	\$14,526.00
Extent Debtor's exemption impaired	=	(\$55,945.00)

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

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

21. [21-10594](#)-B-7 **IN RE: GURKAMAL SINGH**
[PBB-3](#)

RESCHEDULED CONTINUED MOTION TO AVOID LIEN OF PACCAR
FINANCIAL CORP.
5-27-2021 [\[33\]](#)

GURKAMAL SINGH/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Gurkamal Singh ("Debtor") seeks to avoid a judicial lien in favor of PACCAR Financial Corp. ("Creditor") in the amount of \$94,284.55 and encumbering residential real property located at 3056 North Hanover Avenue, Fresno, CA 93722 ("Property"). Doc. #33.

This matter was initially scheduled for June 29, 2021 and continued to July 27, 2021 so that Debtor could effectuate service on Trustee under Federal Rule of Bankruptcy Procedure ("Rule") 7004(h). Doc. #57. The court rescheduled that hearing to July 29, 2021. Doc. #64. Trustee had changed her address shortly before the motion was filed and was not served at her updated address. Doc. #37. Debtor served the motion documents with an updated notice of hearing on Trustee by ordinary mail on June 29, 2021. Docs. ##48-49. Prior to the last hearing, Debtor properly served Creditor's agent for service of process, CEO, and attorney by U.S. mail on May 27, 2021: (1) The Prentice-Hall Corporation System, Inc.; (2) Harrie C.A.M. Schippers, and (3) Raymond A. Policar. Doc. #37; cf. Creditor's Req. for Special Notice, Doc. #9. Creditor's default was entered at the June 29, 2021 hearing. Doc. #52. Debtor has complied with Rule 7004(b).

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was originally set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The defaults of all non-responding parties except Trustee were entered at the June 29, 2021 hearing. Doc. #52. The amended notice of hearing was also filed on 28 days' notice under LBR 9014-1(f)(1). Doc. #48. The failure of the Trustee 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, Trustee's default is entered, and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the amended notice of hearing (Doc. #51) filed with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition. Counsel is advised to review the local rules to ensure procedural compliance in subsequent motions. Future violations of the local rules may result in the matter being denied without prejudice.

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

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$70,838.13 on October 18, 2017. Doc. #36, Ex. E. The abstract of judgment was issued on November 21, 2017 and recorded in Fresno County on November 28, 2017. *Id.* That lien attached to Debtor's interest in Property and its current balance is approximately \$94,284.55. Doc. #35.

As of the petition date, Property had an approximate value of \$325,000.00. Doc. #19, *Schedule A/B*. The unavoidable liens totaled \$66,419.00 on that same date, consisting of a deed of trust in favor of Wells Fargo Home Mortgage. Doc. #1, *Schedule D*. Debtor claimed an exemption pursuant to C.C.P. § 704.730 in the amount of \$300,000.00. Doc. #19, *Schedule C*. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property on petition date		\$325,000.00
Total amount of unavoidable liens	-	\$66,419.00
Remaining available equity	=	\$258,581.00
Debtor's homestead exemption	-	\$300,000.00
Creditor's judicial lien	-	\$94,284.55
Extent Debtor's exemption impaired	=	(\$135,703.55)

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

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

22. [21-10594](#)-B-7 **IN RE: GURKAMAL SINGH**
[PBB-4](#)

RESCHEDULED CONTINUED MOTION TO AVOID LIEN OF BMO HARRIS
BANK, N.A.
5-27-2021 [\[38\]](#)

GURKAMAL SINGH/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Gurkamal Singh ("Debtor") seeks to avoid a judicial lien in favor of Discover Bank ("Creditor"), in the amount of \$332,524.08 and encumbering residential real property located at 479 E. Ramon Ave., Fresno, CA 93710 ("Property"). Doc. #38.

This matter was initially scheduled for June 29, 2021 and continued to July 27, 2021 so that Debtor could effectuate service on Trustee under Federal Rule of Bankruptcy Procedure ("Rule") 7004(h). Doc. #58. The court rescheduled that hearing to July 29, 2021. Doc. #66. Trustee had changed her address shortly before the motion was filed and was not served at her updated address. Doc. #42. Debtor served the motion documents with an updated notice of hearing on Trustee by ordinary mail on June 29, 2021. Docs. #51; #53. Prior to the last hearing, Debtor properly served David R. Casper, Creditor's CEO, by certified mail on May 27, 2021 and Creditor's default was entered at the June 29, 2021 hearing. Docs. #42; #54. Debtor has complied with Rule 7004(b) and (h).

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was originally set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The defaults of all non-responding parties except Trustee were entered at the June 29, 2021 hearing. Doc. #54. The amended notice of hearing was also filed on 28 days' notice under LBR 9014-1(f)(1). Doc. #51. The failure of the Trustee 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, Trustee's default is entered, and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the amended notice of hearing (Doc. #51) filed with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition. Counsel is advised to review the local rules to ensure procedural compliance in subsequent motions. Future violations of the local rules may result in the matter being denied without prejudice.

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

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$249,830.26 on April 12, 2017. Doc. #41, Ex. D. The abstract of judgment was issued on April 18, 2017 and recorded in Fresno County on April 24, 2017. *Id.* That lien attached to Debtor's interest in Property and its current balance is approximately \$332,524.08. Doc. #40.

As of the petition date, Property had an approximate value of \$325,000.00. Doc. #19, *Schedule A/B*. The unavoidable liens totaled \$66,419.00 on that same date, consisting of a deed of trust in favor of Wells Fargo Home Mortgage. Doc. #1, *Schedule D*. Debtor claimed an exemption pursuant to C.C.P. § 704.730 in the amount of \$300,000.00. Doc. #19, *Schedule C*. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property on petition date		\$325,000.00
Total amount of unavoidable liens	-	\$66,419.00
Remaining available equity	=	\$258,581.00
Debtor's homestead exemption	-	\$300,000.00
Creditor's judicial lien	-	\$332,524.08
Extent Debtor's exemption impaired	=	(\$373,943.08)

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

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

23. [15-11756](#)-B-7 **IN RE: EPHRAIM AGUIRRE**
[EJA-1](#)

MOTION TO SUBSTITUTE ATTORNEY
6-30-2021 [\[26\]](#)

EPHRAIM AGUIRRE/MV
ADRIAN WILLIAMS/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. Order preparation determined at the hearing.

Ephraim Joe Aguirre ("Debtor") moves to substitute himself *in propria persona* as his attorney of record in place of Adrian S. Williams ("Counsel"). Doc. #26. Counsel approved the motion, which is more in the form of a proposed order rather than a motion or another request for relief. *Id.* Debtor states that he can no longer afford Counsel's legal services, but he desires to prosecute a motion to avoid lien that is set for hearing on August 10, 2021. Doc. #31; EJA-2.

In the absence of opposition at the hearing, the court may GRANT the motion.

This motion was filed on June 30, 2021. Doc. #26. Debtor filed a notice of hearing on July 15, 2021, which is at least 14 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(2). Doc. #30. All parties in interest were served on that same day. Doc. #32. This matter 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.

Debtor filed chapter 7 bankruptcy on April 30, 2015. Doc. #1. Counsel was paid \$2,165.00 in connection with this case. *Id.*, *Disclosure of Compensation of Attorney for Debtor*, at 41. Those fees did not include services for non-dischargeability actions, adversary proceedings concerning federal or state taxes, or representation of Debtor in any other adversary proceedings or contested matters.

Debtor's discharge was entered on August 10, 2015. Doc. #13. The bankruptcy case was closed on August 14, 2015. Doc. #15. Debtor reopened this case on June 30, 2021. Docs. ##17-18. That same day, Debtor filed amended Schedule C, a motion to avoid lien, and this motion to substitute.

Under LBR 2017-1(a)(1), an attorney who is retained to represent a debtor constitutes an appearance for all purposes in the case, including motions to avoid liens and other specified matters. If the debtor files a motion to reopen the case, the attorney representing the debtor in connection with that motion shall be the debtor's attorney of record. An attorney appearing in a bankruptcy case "*may not withdraw from representation, or decline to act on behalf of the client, without first complying with the withdrawal requirements of Subpart (e) of this Rule.*" LBR 2017-1(a)(2). Though Debtor filed the motion to reopen the case *pro se*, he is not an attorney, so Counsel is still attorney of record.

LBR 2017-1(e) governs attorney withdrawal. It states that an attorney who has appeared may not withdraw leaving the client *in propria persona* without leave of the court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal of an attorney is governed by the Rules of Professional Conduct of the State Bar of California and Counsel shall conform to the requirements of those rules. However, "[t]he authority and duty of the attorney of record *shall continue until relieved by order of the Court[.]*"

Meanwhile, LBR 2017-1(h) provides that an attorney who has appeared in an action may substitute another attorney and withdraw from the action by submitting a substitution of attorneys that sets forth the full name and address of the new individual attorney and is signed by the withdrawing attorney, the new attorney, and the client.

Since no withdrawal or substitution was previously filed, Counsel is still attorney of record. It is not incumbent on the Debtor to perform duties required by Counsel. Here, the request for Counsel's withdrawal comes directly from the Debtor. As such, the affidavit required under LBR 2017-1(e) is not from Counsel, but from Debtor. Doc. #31. The affidavit does list Debtor's last known address, but it does not document Counsel's efforts to withdraw. Debtor seeks to terminate Counsel's services and it is unclear whether Debtor has been informed of the risks of proceeding alone without an attorney.

Furthermore, LBR 2017-1(a)(1) specifically includes "motions to avoid liens" as part of the scope of representation for an attorney who is retained to represent a debtor. This case was filed in April of 2015. Doc. #1. The debt owed to Cavalry SPV I and secured by Debtor's residence was the result of an abstract of judgment recorded on February 19, 2014. Doc. #22, Ex. 2. This debt was known at the time the case was filed and is listed in Schedule D. Doc. #1, *Schedule D*. Counsel was paid \$2,165.00 to represent Debtor. *Id.*, at 41. Though the *Disclosure of Compensation* form precludes services

for contested matters, any agreement purporting to limit the scope of an attorney's representation beyond what is permitted in LBR 2017-1(a)(1) will not be recognized by the court. LBR 2017-1(a)(2). Debtor has consented to Counsel's withdrawal, but it has not been established that Debtor understands the risks of proceeding without counsel.

This matter will be called as scheduled to inquire about the parties' positions. In the absence of opposition, the court may GRANT the motion. The authority and duty of Counsel as attorney for Debtor in this bankruptcy case shall continue until the court enters the order.