



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Department B – Courtroom #13  
Fresno, California  
Hearing Date: Tuesday, July 30, 2024**

Unless otherwise ordered, all matters before the Honorable René Lastreto II, shall be simultaneously: (1) **In Person** at, Courtroom #13 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties or their attorneys who wish to appear at a hearing remotely must sign up by **4:00 p.m. one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>. Each party/attorney who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties and their attorneys who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest and/or their attorneys may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press who wish to attend by ZoomGov may only listen in to the hearing using the Zoom telephone number. Video participation or observing are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may attend in person unless otherwise ordered.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#). If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

**Unauthorized Recording is Prohibited:** Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

## 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.

**Post-Publication Changes:** 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 any possible updates.

9:30 AM

1. [20-10809](#)-B-11     **IN RE: STEPHEN SLOAN**  
[WF-19](#)

MOTION TO SELL  
7-12-2024    [\[689\]](#)

TERRENCE LONG/MV  
PETER FEAR/ATTY. FOR DBT.  
DANIEL EGAN/ATTY. FOR MV.  
OST 7/16/24

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

DISPOSITION:                    Granted.

ORDER:                            The Moving Party shall submit a proposed order  
after hearing.

Terence J. Long, Plan Administrator in the above-styled Chapter 11 case, ("Movant") seeks authorization to sell the estate's interest in real property located at 0 Canyon Road, Los Banos, California ("the SLWD Pistachio Orchard" or "the Orchard"), and to pay closing costs and a real estate commission at the close of escrow. Doc. #689.

This motion was set for hearing on shortened notice with an OST under the procedure specified in Local Rule of Practice ("LBR") 9014-1(f)(3), which states that [u]nless otherwise ordered, when the time for service is shortened to fewer than fourteen (14) days, no written opposition is required." LBR 9014-1(f)(3). In this instance, however, the OST stated that "Opposition, if any, to the Motion shall be filed on or before July 26, 2024." Doc. #710. As the Motion and accompanying papers were served on July 12, 2024, this gave any potential respondents fourteen days in which to file written opposition, which the court deems an adequate notice period under these exigent circumstances.

Consequently, the failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition by the July 26, 2024, deadline as required by the OST 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 may be entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

No party in interest responded by the July 26, 2024, deadline, and the defaults of all nonresponding parties are entered. This motion will be GRANTED and proceed for higher and better bids only.

## BACKGROUND

Stephen William Sloan ("Debtor") filed this chapter 11 case on March 2, 2020. Doc. #1. The plan was confirmed on February 2, 2022. Doc. #483. The confirmation order appoints Movant as Plan Administrator. *Id.* Pursuant to provisions of the confirmed plan, Movant is directed to sell certain property owned by Debtor, including the Orchard, which is an approximately 64.6-acre pistachio orchard in Los Banos, California. Doc. #691.

The court approved the retention of Pearson Realty to handle the marketing of the Orchard by an order dated April 15, 2024. Doc. #674. After marketing of the Orchard, Movant has accepted an offer from the Janet and Dennis Soares 1996 Trust ("the Prospective Buyer"). Doc. #691. The material terms of the sale are (1) a purchase price of \$1,485,800.00, (ii) a deposit of \$65,000.00, (iii) an increased deposit of \$65,000.00 if the buyer wishes to take early possession, and (iv) a close of escrow on or before August 14, 2024. *Id.* The agreement contemplates that closing will occur prior to harvest and that the Prospective Buyer will retain the 2024 crop. *Id.* Movant and Prospective Buyer have also agreed that, subject to payment of the increased deposit, Prospective Buyer may take possession of the Orchard after court approval of the sale but before closing. *Id.* The sale is "as-is" and is subject to certain due diligence contingencies that must be waived or satisfied on or before July 26, 2024. *Id.*

Per the listing agreement with Pearson Realty, which this court has already approved, Pearson Realty will earn a commission of 6% which will be shared with the buyer's broker, Nancy Soares of Berkshire Hathaway Home Services Drysdale Properties ("the Buyer's Broker"). Doc. #689. Movant requests authority to pay this commission from escrow. *Id.* Movant also requests authority to pay property taxes and other closing costs from escrow at closing. *Id.*

On July 23, 2024, Movant submitted an amendment to this motion, averring that, after the filing of the motion, the title company amended its preliminary title report to identify a lien created by an abstract of judgment filed by Oak Valley Community Bank ("OVCB"). Doc. #717. The amended motion further avers that OVCB has agreed to release its lien on the property in exchange for one-half of the net proceeds of the sale. *Id.*

## DISCUSSION

### Sale of Property

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 N. Brand Partners v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners)*, 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*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer, 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 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 Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). There is nothing in the record suggesting that Proposed Buyer is an insider with respect to Debtor. Proposed Buyers are neither listed in the schedules nor the master address list. Docs. #1,2,16.

The Orchard does not appear to be listed specifically in the Schedules, though Debtor does list in Schedule A/B "Property Known as Hamburg Ranch. Approximately 668.6 acres of almond and pistachio farm property in Merced County." Doc. #19. Other than the OVCB lien, the Orchard does not appear to be encumbered. While taxes are to be paid from escrow, the moving papers do not say the amount of taxes owed on the Orchard.

If sold at the proposed sale price, the proceeds from the proposed sale could be illustrated as follows:

|   |                       |
|---|-----------------------|
| Sale price                              | \$1,485,800.00        |
| Estimated broker fee (6%)               | (\$89,148.00)         |
| <b>Estimated gross sale proceeds</b>    | <b>\$1,396,652.00</b> |
| ½ of proceeds paid to OVCB              | \$698,326.00          |
| <b>Estimated net proceeds to estate</b> | <b>\$698,326.00</b>   |

The sale under these circumstances should maximize potential recovery for the estate. The sale of the Property appears to be in the best interests of the estate because it will provide liquidity that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. Therefore, this sale is an appropriate exercise of Movant's business judgment and will be given deference.

#### Real Estate Brokers' Compensation

This motion affects the proposed disposition of estate assets and the Broker. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion to add Broker as a party.

LBR 9014-1(d)(5)(B)(ii) permits joinder of claims for authorization for the sale of real property and allowance of fees and expenses for

such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rule 6004.

Pursuant to the employment order, Trustee requests to compensate Pearson Realty with a commission of 6% (or \$89,148.00 at the current sale price if there are no overbidders) which will be split equally between Pearson Realty and the buyer's real estate broker. Doc. #689. The court will authorize Movant to pay broker commissions as prayed.

#### Overbid Procedure

Any party wishing to overbid shall, prior to the hearing, comply with the overbid procedures as outlined on page 3 of the Motion under the heading "**B. PROPOSED OVERBIDDING PROCEDURES**." Doc. #685.

#### Waiver of 14-day Stay

Movant does not request a waiver of the 14-day stay of Rule 6004(h), and no such relief will be granted.

#### Conclusion

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be authorized: (1) to sell the SLWD Pistachio Orchard to the prevailing bidder at the hearing, as determined at the hearing; (2) to execute all documents necessary to effectuate the sale of the SLWD Pistachio Orchard; (3) to pay broker commission in the amount of 6% of the total sale price to be split evenly between Broker and the buyer's broker, as determined at the hearing; (4) to pay OCVB one-half of the sale proceeds in exchange for release of its lien; and (5) to pay all costs, commissions, and real property taxes directly from escrow. The 14-day stay of Rule 6004(h) will not be ordered waived.

2. [20-10809](#)-B-11     **IN RE: STEPHEN SLOAN**  
[WF-20](#)

MOTION TO SELL  
7-12-2024    [\[695\]](#)

TERRENCE LONG/MV  
PETER FEAR/ATTY. FOR DBT.  
DANIEL EGAN/ATTY. FOR MV.  
OST 7/16/24

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

DISPOSITION:                Granted.

ORDER:                        The Moving Party shall submit a proposed order  
after hearing.

Terence J. Long, Plan Administrator in the above-styled Chapter 11 case, ("Movant") seeks authorization to sell the estate's interest in real property consisting of an approximately 50.45-acre almond orchard located in Los Banos, California ("the Almond Orchard" or "the Orchard"), and to pay closing costs and a real estate commission at the close of escrow. Doc. #695.

This motion was set for hearing on shortened notice with an OST under the procedure specified in Local Rule of Practice ("LBR") 9014-1(f)(3), which states that [u]nless otherwise ordered, when the time for service is shortened to fewer than fourteen (14) days, no written opposition is required." LBR 9014-1(f)(3). In this instance, however, the OST stated that "Opposition, if any, to the Motion shall be filed on or before July 26, 2024." Doc. #710. As the Motion and accompanying papers were served on July 12, 2024, this gave any potential respondents fourteen days in which to file written opposition, which the court deems an adequate notice period under these exigent circumstances.

Consequently, the failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition by the July 26, 2024, deadline as required by the OST 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 may be entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

No party in interest responded by the July 26, 2024, deadline, and the defaults of all nonresponding parties are entered. This motion will be GRANTED and proceed for higher and better bids only.

#### BACKGROUND

Stephen William Sloan ("Debtor") filed this chapter 11 case on March 2, 2020. Doc. #1. The plan was confirmed on February 2, 2022. Doc.

#483. The confirmation order appoints Movant as Plan Administrator. *Id.* Pursuant to provisions of the confirmed plan, Movant is directed to sell certain property owned by Debtor, including the Orchard, which is an approximately 50.45-acre almond orchard in Los Banos, California. Doc. #697.

The court approved the retention of Pearson Realty to handle the marketing of the Orchard by an order dated April 15, 2024. Doc. #674. After marketing of the Orchard, Movant has accepted an offer from Jaspreet and Navreet Mann ("the Prospective Buyers"). Doc. #695. The material terms of the sale are (1) a purchase price of \$857,560.00 (ii) a deposit of \$38,000.00, (iii) an increased deposit of \$38,000.00 if the Prospective Buyers wish to take early possession, and (iv) a close of escrow on or before August 14, 2024. *Id.* The agreement contemplates that closing will occur prior to harvest and that the Prospective Buyer will retain the 2024 crop. *Id.* Movant and Prospective Buyer have also agreed that, subject to payment of the increased deposit, Prospective Buyer may take possession of the Orchard after court approval of the sale but before closing. *Id.* The sale is "as-is" and is subject to certain due diligence contingencies that must be waived or satisfied on or before July 26, 2024. *Id.*

Per the listing agreement with Pearson Realty, which this court has already approved, Pearson Realty will earn a commission of 6%. Doc. 695. Buyers have no cooperating broker, so if there is no successful overbid, Pearson Realty will retain the entire commission. *Id.* If there is a successful overbidder, Pearson Realty will share the commission with any cooperating broker per industry custom. *Id.* Movant requests authority to pay this commission from escrow. *Id.* Movant also requests authority to pay property taxes and other closing costs from escrow at closing. *Id.*

On July 23, 2024, Movant submitted an amendment to this motion, averring that, after the filing of the motion, the title company amended its preliminary title report to identify a lien created by an abstract of judgment filed by Oak Valley Community Bank ("OVCB"). Doc. #719. The amended motion further avers that OVCB has agreed to release its lien on the property in exchange for one-half of the net proceeds of the sale. *Id.*

## DISCUSSION

### Sale of Property

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 N. Brand Partners v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners)*, 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*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer, 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 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 Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). There is nothing in the record suggesting that Proposed Buyer is an insider with respect to Debtor. Proposed Buyers are neither listed in the schedules nor the master address list. Docs. #1,2,16.

The Orchard does not appear to be listed specifically in the Schedules, though Debtor does list in Schedule A/B "Property Known as Hamburg Ranch. Approximately 668.6 acres of almond and pistachio farm property in Merced County." Doc. #19. Other than the OVCB lien, the Orchard does not appear to be encumbered. While taxes are to be paid from escrow, the moving papers do not say the amount of taxes owed on the Orchard.

If sold at the proposed sale price, the proceeds from the proposed sale could be illustrated as follows:

|   |                     |
|---|---------------------|
| Sale price                              | \$857,000.00        |
| Estimated broker fee (6%)               | (\$51,459.00)       |
| <b>Estimated gross sale proceeds</b>    | <b>\$805,541.00</b> |
| ½ of proceeds paid to OVCB              | \$402,770.50        |
| <b>Estimated net proceeds to estate</b> | <b>\$402,770.50</b> |

The sale under these circumstances should maximize potential recovery for the estate. The sale of the Property appears to be in the best interests of the estate because it will provide liquidity that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. Therefore, this sale is an appropriate exercise of Movant's business judgment and will be given deference.

#### Real Estate Brokers' Compensation

This motion affects the proposed disposition of estate assets and the Broker. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion to add Broker as a party.

LBR 9014-1(d)(5)(B)(ii) permits joinder of claims for authorization for the sale of real property and allowance of fees and expenses for such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rule 6004.

Pursuant to the employment order, Trustee requests to compensate Pearson Realty with a commission of 6% (or \$51,459.00 at the current sale price if there are no overbidders), with Pearson Realty retaining the entirety of the commission. Doc. #695. In the event of a successful overbid, the commission will be split equally between Pearson Realty and the buyer's real estate broker, if there is one. *Id.* The court will authorize Movant to pay broker commissions as prayed.

#### Overbid Procedure

Any party wishing to overbid shall, prior to the hearing, comply with the overbid procedures as outlined on page 3 of the Motion under the heading "**B. PROPOSED OVERBIDDING PROCEDURES**." Doc. #695.

#### Waiver of 14-day Stay

Movant does not request a waiver of the 14-day stay of Rule 6004(h), and no such relief will be granted.

#### Conclusion

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be authorized: (1) to sell the SLWD Pistachio Orchard to the prevailing bidder at the hearing, as determined at the hearing; (2) to execute all documents necessary to effectuate the sale of the SLWD Pistachio Orchard; (3) to pay broker commission in the amount of 6% of the total sale price to be split evenly between Broker and the buyer's broker, as determined at the hearing; (4) to pay OCVB one-half of the sale proceeds in exchange for release of its lien; and (5) to pay all costs, commissions, and real property taxes directly from escrow. The 14-day stay of Rule 6004(h) will not be ordered waived.

### 3. [17-11028](#)-B-11     **IN RE: PACE DIVERSIFIED CORPORATION** [BBR-25](#)

MOTION FOR FINAL DECREE AND ORDER CLOSING CASE  
7-2-2024    [[544](#)]

T. BELDEN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Granted.

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

Pace Diversified Corporation ("Debtor") requests entry of a *Final Decree and Order Closing Debtor's Chapter 11* case confirming that Debtor's estate has been fully administered. Doc. #544.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest has opposed the motion, and Macpherson Oil Company ("Macpherson") has filed a non-opposition. Doc. #549. The defaults of all non-responding parties will be entered. This motion will be GRANTED.

Debtor filed this Chapter 11 proceeding on March 23, 2017. Doc. #1. Debtor filed its *Second Amended Plan of Reorganization* on December 27, 2017 ("the Plan"), and the Plan was confirmed and an order confirming the Plan was entered on December 28, 2017. Docs. ##398, 399. The Effective Date of the Plan was January 27, 2018. *Id.*

Prior to confirmation, Debtor commenced an adversary proceeding against Macpherson in Adv. Proc. No. 18-01006-B ("the Adversary" or "AP"). AP at Doc. #1. According to the Declaration and Exhibits, Debtor and Macpherson entered into a settlement agreement and the Adversary was dismissed on June 20, 2024. *See Docs. ##546, 547.* Counsel for Debtor declares:

- a. The Order Confirming Second Amended Plan of Reorganization filed by Debtor Dated December 26, 2017, was entered on December 28, 2017, and is final;
- b. All deposits required by the Plan have been distributed;
- c. All property proposed by the Plan to be transferred has been transferred;
- d. Debtor has assumed the business or the management of the property dealt with by the Plan;
- e. All payments or other distributions under the Plan have commenced and have been completed;
- f. All motions, contested matters, and adversary proceedings have been finally resolved.

Doc. #546. It appearing that the case has been fully administered, that all motions, contested matters and adversary proceedings have been resolved, and that and no opposition has been made, this motion will be GRANTED.

4. [24-10546](#)-B-12     **IN RE: MAXIMINIO/MARIE SILVEIRA**  
[FW-7](#)

OBJECTION TO CLAIM OF FIRST CITIZENS BANK & TRUST COMPANY,  
CLAIM NUMBER 20  
6-27-2024    [\[101\]](#)

MARIE SILVEIRA/MV  
PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION:     Overruled without prejudice.

ORDER:             The court will prepare the order.

Maximinio and Marie Silveira ("Debtors") object to Proof of Claim #20 filed by First Citizens Bank & Trust ("Creditor") on the grounds that it is duplicative of Creditor's Proof of Claim #19. Doc. #101. This Objection will be OVERRULED WITHOUT PREJUDICE for failure to comply with the Local Rules.

Notice for Objections to proofs of claim is governed by LBR 3007-1(b)(1)-(2). LBR 3007-1(b)(1) states that such Objection may be set on 44-days' notice, in which case any opposition must be in writing and submitted no later than fourteen (14) days before the date or continued date of the hearing. LBR 3007-1(b)(2) states that such Objection may be set on fewer than 44-days' notice but at least thirty (30) days' notice, in which case no written response is required.

Here, the hearing date was set for July 30, 2024, but notice was served on June 27, 2024, which is less than 44-days' notice but more than 30-days' notice. Doc. #102. However, the notice improperly states:

Pursuant to Local Rule 3007-1(b)(1)(B), opposition, if any, to the sustaining of the objection shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. Without good cause, no party shall be heard in opposition to an objection at oral argument if written opposition to the objection has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the sustaining of the objection or may result in the imposition of sanctions.

*Id.* This is incorrect. Because this matter is an objection to a proof of claim, LBR 3007-1(b)(1)-(2) takes precedence over LBR 9014-1. Because the notice was served on less than 44- but more than 30-days' notice, LBR 3007-1(b)(2) applies, and the notice should have stated that written opposition was not required, and opposition

could be presented at the hearing. Therefore, the notice was materially deficient.

Accordingly, this Objection will be OVERRULED without prejudice.

5. [24-11751](#)-B-11     **IN RE: VALDOR LLC**  
[CAE-1](#)

ORDER TO SHOW CAUSE  
6-28-2024    [\[6\]](#)

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Case dismissed. The minutes of the hearing  
will be the court's findings and conclusions.

ORDER:                        The court will issue an order.

An *Order Showing Cause* was filed by this court on June 28, 2024, directing Valdor LLC ("Valdor") to appear at the hearing and show cause why this case should not be dismissed since Debtor has not appeared with counsel. Doc. #6

Valdor has not filed a written response providing evidence as to why the bankruptcy petition should not be dismissed and/or monetary sanctions imposed. As set forth in the order, this court can dismiss the matter based on the lack of response. The court notes that no attorney has made an appearance on behalf of Valdor.

The court notes that Valdor has not paid an amendment filing fee and the case may be dismissed on July 29, 2024. (Doc. #42). Even if the fee is paid, however, this hearing will go forward and the case will be dismissed in accord with the *Order Showing Cause*.

The case will be DISMISSED.

6. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[FRB-1](#)

MOTION FOR ADMINISTRATIVE EXPENSES  
6-20-2024    [\[1890\]](#)

GLC-(CA) MADERA, LLC/MV  
RILEY WALTER/ATTY. FOR DBT.  
MICHAEL GOMEZ/ATTY. FOR MV.  
CONT'D TO 8/27/24 PER ECF ORDER NO. 1934

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

DISPOSITION:     Continued to August 27, 2024, at 9:30 a.m.

No order is required.

On July 15, 2024, the parties agreed by Stipulation that this matter should be continued to August 27, 2024, at 9:30 a.m. and all response and reply dates are continued accordingly based on the new hearing date. Therefore, this matter is CONTINUED to **August 27, 2024, at 9:30 a.m.**

7. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[WJH-86](#)

MOTION FOR ADMINISTRATIVE EXPENSES  
6-21-2024    [\[1897\]](#)

MADERA COMMUNITY HOSPITAL/MV  
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

Madera Community Hospital ("MCH"), reorganized debtor in this Chapter 11 case, moves for the entry of an order pursuant to 11 U.S.C. § 503(b)(1)(A) allowing and directing immediate payment to Impossible Services Group, Inc. certain administrative expense claims for services rendered in the amount of **\$152,309.00**. Doc. #1897. The motion is accompanied by (1) a Declaration by Aaron G. Chambers, President and owner of Impossible Services Group, Inc. d/b/a Chambers Business Solutions ("the Company"), attesting to the services the Company has performed for MCH; (2) a Declaration by Karen Paolinelli, CEO for MCH, stating that she has reviewed the invoices and supports the motion; and (c) Exhibits consisting of a proposed order and invoices from the Company. Doc. ##1899-1901.

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). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

Section 503(b)(1)(A) states in relevant part:

(b)After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—

(1)

(A)the actual, necessary costs and expenses of preserving the estate including—

(i)wages, salaries, and commissions for services rendered after the commencement of the case . . .

In an order dated April 18, 2023, the court authorized MCH to assume a consulting agreement with the Company. Doc. #262. Pursuant to that order, "[s]uccess fees, transaction fees, or other back-end fees, if any, shall be approved by the Court at the conclusion of the case on a reasonableness standard and are not being preapproved by entry of this Order." *Id.*

The specific work for which the Company was contracted was to provide the services of Aaron Chambers and Shondale Seymore to serve as MCH's Controller and CFO respectively. Doc. ##64-66.

On April 17, 2024, the plan was confirmed. Doc. #1707. On June 21, 2024, MCH filed the instant motion, seeking authorization to pay the Company for the work performed on its behalf by Chambers and Seymore. Doc. #1897.

The billing records accompanying the motion divide the compensation sought into two tranches: one covering from October 1, 2023 to March 7, 2024 (from the beginning of their employment up until the operation Assumption Date) ("the First invoice") and from March 8, 2024 to May 6, 2024 (the Effective Date) ("the Second Invoice"). Doc. #1901. Somewhat unhelpfully, the invoices do not provide a total of the hours worked nor do

they provide a division of how much of the total compensation sought is for billable hours versus expense reimbursement. *Id.* It appears that both Chambers and Seymore consistently billed at \$175.00 per hour, which the court finds a reasonable hourly rate. *Id.* In the First Invoice, the Company submits a balance due of \$111,505.25. *Id.* In the second, it submits a balance due of \$40,803.75. *Id.* The total compensation requested is **\$152,309.00.**

The court has reviewed the billing records holistically and finds that the services provided were actual services necessary for the preservation of the estate. No party in interest has responded, and the defaults of all non-responding parties are entered. This motion is supported by a Declaration from MCH's CEO that she has reviewed the invoices filed as an Exhibit to the motion and that she believes that "the relief sought is essential to the Debtor's business and in the best interests of the Debtor, creditors and community." Doc. #1900.

Accordingly, this motion is GRANTED.

8. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-18](#)

CONTINUED OBJECTION TO CLAIM OF TULARE HOSPITALIST GROUP,  
CLAIM NUMBER 231  
1-8-2020    [[1784](#)]

TULARE LOCAL HEALTHCARE  
DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.  
CONT'D TO 10/8/24 PER ECF ORDER NO. 2676

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

DISPOSITION:     Continued to October 8, 2024, at 9:30 a.m.

No order is required.

Pursuant to a Stipulation of the parties approved by this court on July 17, 2024 (see Doc. #2676), this matter is CONTINUED to October 8, 2024, at 9:30 a.m.



9. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-19](#)

CONTINUED OBJECTION TO CLAIM OF GUPTA-KUMAR MEDICAL  
PRACTICE, CLAIM NUMBER 232  
1-8-2020    [\[1789\]](#)

TULARE LOCAL HEALTHCARE  
DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.  
CONT'D TO 10/8/24 PER ECF ORDER NO. 2677

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

DISPOSITION:     Continued to October 8, 2024, at 9:30 a.m.

No order is required.

Pursuant to a Stipulation of the parties approved by this  
court on July 17, 2024 (see *Doc. #2676*), this matter is  
CONTINUED to October 8, 2024, at 9:30 a.m.

10. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-25](#)

CONTINUED OBJECTION TO CLAIM OF INPATIENT HOSPITAL GROUP,  
INC., CLAIM NUMBER 230  
1-10-2020    [\[1834\]](#)

TULARE LOCAL HEALTHCARE  
DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.  
CONT'D TO 10/8/24 PER ECF ORDER NO. 2678

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

DISPOSITION:     Continued to October 8, 2024, at 9:30 a.m.

No order is required.

Pursuant to a Stipulation of the parties approved by this court on  
July 17, 2024 (see *Doc. #2676*), this matter is CONTINUED to October  
8, 2024, at 9:30 a.m.

11:00 AM

1. [24-10956](#)-B-7     **IN RE: ADAM PEREZ**

REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA INC.  
6-14-2024    [\[16\]](#)

JERRY LOWE/ATTY. FOR DBT.

DISPOSITION:        Concluded and removed from the Calendar.

ORDER:                No order necessary.

This Reaffirmation Agreement was filed with the court on June 14, 2024 (Doc. #16).

The Debtor here was represented by counsel during the negotiation of the Reaffirmation Agreement. Counsel certified the facts necessary under 11 U.S.C. § 524 (c) (3). No hearing is required under §524.

Provided the Debtor does not timely rescind the Reaffirmation Agreement, it appears the Agreement was properly signed and filed. The court neither approves nor denies approval of the Reaffirmation Agreement.

2. [24-11164](#)-B-7     **IN RE: BRIAN VARGAS AND BRITTANY COWEN-VARGAS**

REAFFIRMATION AGREEMENT WITH CAPITAL ONE AUTO FINANCE  
7-10-2024    [\[27\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION:        Denied.

ORDER:                The court will issue an order.

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

A Reaffirmation Agreement between Brian and Brittany Vargas ("Debtors") and Capital One Auto Finance for a 2013 Chevrolet Spark Hatchback ("Vehicle") was filed on July 10, 2024. Doc. #27.

11 U.S.C. § 524(c) (6) (A) (ii) states "An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable non-bankruptcy law, whether or not discharge of such debt is waived, only if the court approves such agreement as in the best interest of the debtor."

Here, the Vehicle is valued at \$6,025.00. The amount being reaffirmed by Debtor is \$7,441.50 with a 6.44% interest rate. Debtors have negative equity of (\$1,416.50) with approximately 47 months (approximately four years) remaining on the loan and only \$4.00 remaining in the budget every month according to the Debtors' schedules.

The court finds no evidence that this Reaffirmation Agreement is in the best interest of the Debtor. Accordingly, approval of the Reaffirmation Agreement between Debtors and Capital One Auto Finance will be DENIED.

1:30 PM

1. [24-11003](#)-B-7      **IN RE: FITIMA GOODMAN**

CONTINUED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
6-11-2024    [\[60\]](#)

NO RULING.

2. [22-11907](#)-B-7      **IN RE: FREON LOGISTICS**  
[HBB-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-10-2024    [\[1238\]](#)

DION GRAVINO/MV  
LEONARD WELSH/ATTY. FOR DBT.  
WILLIAM IRELAND/ATTY. FOR MV.

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

DISPOSITION:      Denied without prejudice.

ORDER:              The court will issue an order.

Nicholas Bousquet, Scott Lee, and Dion Gravino ("Movants") seek to modify the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and 362(d)(2) to proceed to final judgment in a state court personal injury lawsuit against Freon Logistics ("Debtor") currently pending in Connecticut County Superior Court, Case No. HHD-CV 22-615879-S. Doc. #1238. Movants also request waiver of the 14-day stay of any stay relief order under Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3). *Id.*

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, the notice did not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice of hearing to include the names and addresses of persons who must be served with any opposition. Counsel is advised to review the local rules and ensure procedure compliance in subsequent matters. Docs. #1239; #1252.

Second, Movants' Certificate of Service Section 6 A 1 indicates service by Rule 7004 but does not include the matrix listing the parties served by mail. Doc. #1244. In the absence of this matrix, the court cannot confirm if the proper parties were served.

Further, declarant is the attorney for the Movant but filled out and signed the Certificate of Service under Section 7B, Third Party Service Provider. Doc. 1244.

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

The court is aware this is Movants' third attempt to seek stay relief. The previous attempts were also denied without prejudice to filing of another properly filed and served motion. The previous two attempts and this attempt were riddled with procedural errors. Movants are admonished that if they elect to file another motion and it is not in compliance with the rules, the court will deny the motion with prejudice.

3. [24-11218](#)-B-7     **IN RE: PARMJIT JOHAL**  
[CAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-21-2024    [\[26\]](#)

ALLY BANK/MV  
PETER BUNTING/ATTY. FOR DBT.  
CHERYL SKIGIN/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.

Ally Bank ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2019 Volvo (VIN: 4V4NC9EH7KN872251) ("Vehicle"). Doc. #26. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). Id.

Parmjit Johal ("Debtor") did not oppose and the Vehicle was impounded on June 2, 2023. No other 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 amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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).

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has failed to make at least 15 pre-petition payments and one post-petition. The Movant has produced evidence that Debtor is delinquent at least \$26,800.18. Docs. ##28, 29.

The court declines finding that Debtor does not have any equity in the Vehicle. Although this is a chapter 7 case and the Vehicle is not necessary for an effective reorganization, the moving papers indicate that Debtor has approximately \$1,418.91 in equity. Doc. #28. Relief under § 362(d)(2) is moot because there is "cause" to grant the motion under § 362(d)(1).

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtor has failed to make at least 16 payments to Movant and the Vehicle is a depreciating asset.

4. [24-10828](#)-B-7     **IN RE: ANTHONY/REBECCA GRAY**  
[JDR-1](#)

MOTION TO AVOID LIEN OF MERCED SCHOOL EMPLOYEES FCU  
6-29-2024    [\[13\]](#)

REBECCA GRAY/MV  
JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

Anthony and Rebecca Gray ("Debtors") move for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of **Merced School Employees FCU** ("Creditor") in the sum of **\$8,022.41** and encumbering residential real property located at 3224 Shannon Avenue, Merced, California 95340 ("Property"). Doc. #13.

Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor's registered agent for service of process via first class mail on June 15, 2023. Doc. #27. Debtor also complied with Rule 7004(h), which requires service to be made by certified mail and addressed to an officer, unless one of three exceptions not relevant here applies.

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

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

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

Here, a judgment was entered against Debtors in favor of Creditor in the amount of \$9,349.52 on April 15, 2022. Doc #15 (*Exhib. B*). The abstract of judgment was issued on May 27, 2022, and was recorded in Merced County on June 6, 2022. *Id.* That lien attached to Debtor's interest in Property. Doc. ##15-16. Debtor estimates that the current amount owed on account of this lien is \$8,022.41. Doc. #16.

As of the petition date, Property had an approximate value of \$352,000.00. Doc. #1 (*Sched. A/B*). Debtors claimed a \$300,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. Doc. #15; Doc. #1 (*Sched. C*)

Property is encumbered by a first deed of trust in favor of Shellpoint Mortgage Servicing ("Shellpoint") in the amount of \$269,369.00. Doc. #1 (*Sched. D*). While no other encumbrances are listed on Schedule D, Debtor Anthony Gray declares that the Property is also subject to two judicial liens: one held by Creditor in the amount of \$8,022.41 and one held by Discover Bank ("Discover") in the amount of \$9,349.52. Doc. #16. According to the moving papers, the Shellpoint deed of trust is first in priority, followed by the Creditor's lien, and then Discover's lien. *Id.* Discover's lien is the subject of Item #5 below.

Property's encumbrances can be illustrated as follows:

| Creditor      | Amount      | Recorded | Status                     |
|---------------|-------------|----------|----------------------------|
| 1. Shellpoint | \$272,00000 | 9/7/21   | Unavoidable                |
| 2. Creditor   | \$8,022.41  | 6/14/22  | Avoidable; Item #4 (JDR-1) |
| 3. Discover   | \$9,349.52  | 3/14/23  | Avoidable; Item #5 (JDR-2) |

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*; § 522(f)(2)(B).

"Under the full avoidance approach, as used in *Brantz*, the only way a lien would be avoided 'in full' was if the debtor's gross equity were equal to or less than the amount of the exemption." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 596 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999), citing *In re Brantz*, 106 B.R. 62, 68 (Bankr. E.D. Pa. 1989) ("Avoidance of all judicial liens results unless (3) [the result of deducting the debtor's allowable exemptions and the sum of all liens not avoided from the value of the property] is a positive figure."), citing *In re Magosin*, 75 B.R. 545, 547 (Bankr. E.D. Pa. 1987) (judicial lien was avoidable in its entirety where equity is less than exemption).

This lien is not the most junior lien subject to avoidance and there is not any equity to support the lien. Strict application of the § 522(f)(2) formula with respect to Creditor's junior lien is illustrated as follows:

|   |                |
|---|----------------|
| Amount of judgment lien                         | \$8,022.41     |
| Total amount of unavoidable liens               | + \$272,000.00 |
| Debtor's claimed exemption in Property          | + 300,000.00   |
| <i>Sum</i>                                      | = \$580,022.41 |
| Debtor's claimed value of interest absent liens | - \$352,000.00 |
| Extent lien impairs exemption                   | = \$228,022.41 |

*All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007); accord. *Hanger* 217 B.R. at 596, *Higgins v. Household Fin. Corp. (In re Higgins)*, 201 B.R. 965, 967 (B.A.P. 9th Cir. 1996); cf. *Brantz*, 106 B.R. at 68, *Magosin*, 75 B.R. at 549-50, *In re Piersol*, 244 B.R. 309, 311 (Bankr. E.D. Pa. 2000). Since there is no equity for liens to attach and this case does not involve fractional interests or co-owned property with non-debtor third parties, the § 522(f)(2) formula can be re-illustrated using the *Brantz* formula with the same result:



|                                     |   |                |
|-------------------------------------|---|----------------|
| Fair market value of Property       |   | \$352,000.00   |
| Total amount of unavoidable liens   | - | \$272,000.00   |
| Homestead exemption                 | - | 300,000.00     |
| Remaining equity for judicial liens | = | (\$220,000.00) |
| Creditor's judicial lien            | - | \$8,022.41     |
| Extent Debtor's exemption impaired  | = | (\$228,022.41) |

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support any judicial liens. Therefore, the fixing of Creditor's 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). Accordingly, this motion will be GRANTED. The proposed order shall state that Creditor's lien is avoided from the subject Property only and include a copy of the abstract of judgment as an exhibit.

5. [24-10828](#)-B-7      **IN RE: ANTHONY/REBECCA GRAY**  
[JDR-2](#)

MOTION TO AVOID LIEN OF DISCOVER BANK  
6-29-2024    [\[19\]](#)

REBECCA GRAY/MV  
JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION:      Granted.

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

Anthony and Rebecca Gray ("Debtors") move for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of **Discover Bank** ("Creditor") in the sum of **\$9,349.52** and encumbering residential real property located at 3224 Shannon Avenue, Merced, California 95340 ("Property"). Doc. #19.

Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor's registered agent for service of process via first class mail on June 15, 2023. Doc. #17. Debtor also complied with Rule 7004(h), which requires service to be made by **certified mail and addressed to an officer**, unless one of three exceptions not relevant here applies.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other

party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., 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.

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

Here, a judgment was entered against Debtors in favor of Creditor in the amount of \$9,349.52 on May 26, 2020. Doc #21 (*Exhib. C*). The abstract of judgment was issued on February 23, 2023, and was recorded in Merced County on March 14, 2023. *Id.* That lien attached to Debtor's interest in Property. Doc. ##21-22. Debtor estimates that the current amount owed on account of this lien is \$9,349.52. Doc. #22.

As of the petition date, Property had an approximate value of \$352,000.00. Doc. #1 (*Sched. A/B*). Debtors claimed a \$300,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. Doc. #21; Doc. #1 (*Sched. C*)

Property is encumbered by a first deed of trust in favor of Shellpoint Mortgage Servicing ("Shellpoint") in the amount of \$269,369.00. Doc. #1 (*Sched. D*). While no other encumbrances are listed on Schedule D, Debtor Anthony Gray declares that the Property is also subject to two judicial liens: one held by Merced School Employees FCU ("the Credit Union") in the amount of \$8,022.41 and one held by Creditor in the amount of \$9,349.52. Doc. #22. According to the moving papers, the Shellpoint deed of trust is first in priority, followed by the Credit Union's lien, and then Creditor's lien. *Id.* The Credit Union's lien is the subject of Item #4 Above.

Property's encumbrances can be illustrated as follows:

| Creditor        | Amount      | Recorded | Status                     |
|-----------------|-------------|----------|----------------------------|
| 1. Shellpoint   | \$272,00000 | 9/7/21   | Unavoidable                |
| 2. Credit Union | \$8,022.41  | 6/14/22  | Avoidable; Item #4 (JDR-1) |
| 3. Creditor     | \$9,349.52  | 3/14/23  | Avoidable; Item #5 (JDR-2) |

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*; § 522(f)(2)(B).

"Under the full avoidance approach, as used in *Brantz*, the only way a lien would be avoided 'in full' was if the debtor's gross equity were equal to or less than the amount of the exemption." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 596 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999), citing *In re Brantz*, 106 B.R. 62, 68 (Bankr. E.D. Pa. 1989) ("Avoidance of all judicial liens results unless (3) [the result of deducting the debtor's allowable exemptions and the sum of all liens not avoided from the value of the property] is a positive figure."), citing *In re Magosin*, 75 B.R. 545, 547 (Bankr. E.D. Pa. 1987) (judicial lien was avoidable in its entirety where equity is less than exemption).

This lien is the most junior lien subject to avoidance and there is not any equity to support the lien. Strict application of the § 522(f)(2) formula with respect to Creditor's junior lien is illustrated as follows:

|   |                |
|---|----------------|
| Amount of judgment lien                         | \$9,349.52     |
| Total amount of unavoidable liens               | + \$272,000.00 |
| Debtor's claimed exemption in Property          | + 300,000.00   |
| <i>Sum</i>                                      | = \$581,349.52 |
| Debtor's claimed value of interest absent liens | - \$352,000.00 |
| Extent lien impairs exemption                   | = \$229,349.52 |

*All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007); *accord. Hanger* 217 B.R. at 596, *Higgins v. Household Fin. Corp. (In re Higgins)*, 201 B.R. 965, 967 (B.A.P. 9th Cir. 1996); *cf. Brantz*, 106 B.R. at 68, *Magosin*, 75 B.R. at 549-50, *In re Piersol*, 244 B.R. 309, 311 (Bankr. E.D. Pa. 2000). Since there is no equity for liens to attach and this case does not involve fractional interests or co-owned property with non-debtor third parties, the § 522(f)(2) formula can be re-illustrated using the *Brantz* formula with the same result:

|                                     |   |                |
|-------------------------------------|---|----------------|
| Fair market value of Property       |   | \$352,000.00   |
| Total amount of unavoidable liens   | - | \$272,000.00   |
| Homestead exemption                 | - | 300,000.00     |
| Remaining equity for judicial liens | = | (\$220,000.00) |
| Creditor's judicial lien            | - | \$9,349.52     |
| Extent Debtor's exemption impaired  | = | (\$229,349.52) |

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support any judicial liens. Therefore, the fixing of Creditor's 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). Accordingly, this motion will be GRANTED. The proposed order shall state that Creditor's lien is avoided from the subject Property only and include a copy of the abstract of judgment as an exhibit.

6. [24-11662](#)-B-7      **IN RE: JEREMY CRANK**  
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-21-2024    [\[12\]](#)

AMERICAN CREDIT ACCEPTANCE/MV  
JERRY LOWE/ATTY. FOR DBT.  
SHERYL ITH/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.

American Credit Acceptance ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2007 Harley-Davidson FLHX Street Glide (VIN: 1HD1KB4167U721561) ("Vehicle"). Doc. #12. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). Id.

Jeremy Crank ("Debtor") did not oppose. No other 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 amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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 9 pre-petition payments. The Movant has produced evidence that Debtor is delinquent at least \$23,788.08. Docs. #14, 17.

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 \$5,000.00 and Debtor owes \$6,297.74. Doc. #17.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtor has failed to make at least 16 payments to Movant and the Vehicle is a depreciating asset.

7. [24-11003-B-7](#) **IN RE: FITIMA GOODMAN**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE  
7-16-24 [68}]

FITIMA GOODMAN/MV  
FITIMA GOODMAN/Atty. for mv.

NO RULING.