

**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, August 9, 2022
Department B – Courtroom #13
Fresno, California**



Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in 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.

Prior to the hearing, parties appearing via Zoom or CourtCall are encouraged to review the court's [Zoom Policies and Procedures](#) or [CourtCall Appearance Information](#).

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided:

Video web address: <https://www.zoomgov.com/j/1616678243?pwd=bUpLWGx6RWRlTlEyaVlqc2dvVFhJZz09>
Meeting ID: 161 667 8243
Password: 524105
ZoomGov Telephone: (669) 254-5252 (Toll Free)

Please join at least 5 minutes before the start of your hearing and wait with your microphone muted and camera on until your matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screenshots" 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. [21-11001](#)-B-11 **IN RE: NAVDIP BADHESHA**
[RMB-16](#)

FURTHER STATUS CONFERENCE RE: OBJECTION TO CLAIM OF
CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION, CLAIM
NUMBER 8
4-11-2022 [\[241\]](#)

NAVDIP BADHESHA/MV
MATTHEW RESNIK/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

At the May 24, 2022 scheduling conference hearing, the parties indicated that extensive discovery would be necessary if this matter were to proceed.

The court continued the objection for further briefing as to the issue of whether the court should abstain from hearing the objection until the conclusion of concurrent administrative proceeding only and indicated that this August 9, 2022 hearing would proceed for further scheduling. Doc. #274. The California Department of Tax and Fee Administration ("CDTFA") was directed to file and serve a brief not later than June 4, 2022, and debtor-in-possession Navdip S. Badhesha ("Debtor") to file and serve a brief not later July 25, 2022. *Id.*; Doc. #276.

The parties timely filed briefs in compliance with the court's order. Docs. #284; #294.

Based on the briefing, neither party contends the court should abstain. Even if the parties did not agree that abstention is appropriate, the allowance or disallowance of a claim against the estate is a core proceeding under 28 U.S.C. § 157(b)(2)(B). Under the *Tucson Estates* factors, it is not appropriate to abstain because whether Debtor is personally liable for BIL's tax liability will greatly affect the efficient administration of the estate and the objection is significantly related to the confirmed plan. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990). Additionally, the *Notice of Determination* occurred post-petition, the appeal is ongoing, and CDTFA has not yet made a final determination without further appeal.

Accordingly, the court will not abstain. At the hearing, the court will discuss with the parties further scheduling of this matter.

2. [22-10947](#)-B-11 **IN RE: FLAVIO MARTINS**
[DJP-2](#)

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC
STAY
7-26-2022 [\[114\]](#)

BANK OF THE SIERRA/MV
HAGOP BEDOYAN/ATTY. FOR DBT.
DON POOL/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 with the stipulation
attached as an exhibit.

Secured creditor Bank of the Sierra ("Creditor") moves for an order approving a joint stipulation with debtor-in-possession Flavio Almeida Martins dba Top Line Dairy ("Debtor") under Federal Rule of Bankruptcy Procedure ("Rule") 4001(d). Doc. #114.

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.¹ 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 has four outstanding loans with Creditor, which are identified by the last four digits of the loan number for each: 1001 Loan, 1003 Loan, 1004 Loan, and 1005 Loan (collectively, "the Loans"). Doc. #118. Debtor first executed the 1001 Loan on or about November 3, 2014 in the principal amount of \$6.325 million and secured by, among other things, real property located at 18250 13th Avenue and 13891 Kent Avenue in Hanford, California. *Id.*; Doc. #116, *Ex. A*. Thereafter, Debtor entered into the 1004, 1004, and 1005 Loans. Doc. #118. Each of the Loans were in default on the petition date, including the 1001 Loan.

On July 8, 2022, Creditor and Debtor entered into a *Stipulation for Relief from the Automatic Stay* ("Stipulation") to permit Creditor to record a *Notice of Default* with respect to the collateral securing the Loans. Doc. #116, *Ex. B*. Debtor agrees that Creditor shall be entitled to record the *Notice of Default* on the 1001 Loan upon entry of an

order approving the Stipulation. *Id.* Creditor agrees that, unless this case is dismissed, it shall not take other action to proceed with a non-judicial foreclosure of the collateral, including the recordation of a *Notice of Sale* or noticing of a non-judicial foreclosure sale date. *Id.* The Stipulation shall solely permit Creditor to record the *Notice of Default*. *Id.*; Doc. #118. Creditor also separately filed the Stipulation and docketed it as a stipulation. See Doc. #120.

Creditor now seeks approval of the Stipulation between Creditor and Debtor so that it may record the aforementioned *Notice of Default*. Doc. #114. Creditor also seeks relief from the 14-day stay provided by Rule 4001(a)(3).

Under Rule 4001(d)(1)(A)(iii), a party may file a motion for approval of an agreement to modify or terminate the stay provided in § 362. The motion contains the required contents outlined in Rule 4001(d)(1)(B) and was properly served on all creditors as required by Rule 4001(d)(1)(C). Pursuant to Rule 4001(d)(1), (2), and (3), a hearing was set on at least seven days' notice and the parties required to be served (Debtor and Trustee) were given at least 14 days to file objections or may appear to object at the hearing.

This matter will be called as scheduled to inquire whether any party in interest opposes. In the absence of opposition at the hearing, this motion will be GRANTED, and the Stipulation approved. The court will also order the 14-day stay of Rule 4001(a)(3) waived because the parties have consented to stay relief. Any proposed order shall attach the Stipulation as an exhibit.

¹ Since the stipulation relates to relief from the automatic stay, 21 days' notice is not necessary. See Rules 2002(a)(3), 4001(d).

3. [22-10947](#)-B-11 **IN RE: FLAVIO MARTINS**
[MB-7](#)

MOTION FOR COMPENSATION FOR HAGOP T. BEDOYAN, DEBTORS
ATTORNEY(S)
7-11-2022 [\[85\]](#)

HAGOP BEDOYAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted as modified.

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

McCormick, Barstow, Sheppard, Wayte & Carruth, LLP ("Applicant"), the law firm representing debtor-in-possession Flavio Almeida Martins dba Top Line Dairy ("Debtor") seeks interim compensation under 11 U.S.C. §§ 330 and 331 in the sum of \$42,092.50. Doc. #85. This amount consists of \$37,132.50 in fees as reasonable compensation and \$4,960.00 in reimbursement for actual, necessary expenses from June 1, 2022 through June 30, 2022. *Id.*

Debtor has reviewed the applications and statement for fees and costs, has no objection to the same, and declares that the budget approved by the court in the *Final Order Authorizing Use of Cash Collateral and Granting Adequate Protection* dated July 7, 2022 (Doc. #80; "Cash Collateral Order") provides for payment of professional fees in the total amount of \$90,000.00 through September 30, 2022. Doc. #87.

Western Milling, LLC ("WM") timely responded. Doc. #122. WM takes no position on the interim allowance of fees requested, but notes that after application of Applicant's pre-petition retainer, a balance of \$37,354.25 will remain to be paid by Debtor. And though the Cash Collateral Order will eventually allow for payment of the full amount of fees requested, Debtor is only authorized to pay professionals a total of \$30,000.00 through the week of September 11, 2022. Thus, WM does not object to payment of \$30,000.00 from funds on hand and argues that additional funds for professionals are pre-mature at this time. *Id.* WM says that it has discussed this issue with Applicant, who has agreed to limit its request for payment to \$30,000.00 with a reservation of rights to seek payment of the remaining balance later. *Id.*

No other parties in interest responded.

This matter will be called as scheduled to inquire whether Applicant agrees with this reduction. The court intends to GRANT AS MODIFIED the motion.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the United States trustee, or any other party in interest except WM 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 except WM are 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).

As a preliminary matter, the notice of hearing does not procedurally comply with the local rules. LBR 9014-1(d)(3)(B)(i) requires the notice to include the names and addresses of persons who must be served with any opposition. Here, the notice states that written opposition must be "filed with the Clerk of Court and served on the

moving Debtor via the name and address noted at the top of the 1st page of this notice." Doc. #86. Though Applicant's name and address is listed in the caption, Debtor's address is entirely omitted and should have been included.

Second, LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Here, respondents were directed to www.caed.uscourts.gov, which is the District Court's website, rather than to the Bankruptcy Court's website. *Id.* Since the Eastern District of California Bankruptcy Court's website can be found in the "Court Links" section on this page, this error is *de minimis*. However, Applicant should direct parties to the correct website in the future.

Applicant's employment as general bankruptcy counsel was authorized pursuant to 11 U.S.C. §§ 327(a) and 329-331 on June 22, 2022, effective June 1, 2022.² Doc. #60. No compensation was permitted except upon court order following application under § 330(a) and will be paid at the "lodestar rate" for attorney services applicable at the time that services are rendered in accordance with *In re Manoa Fin. Co., Inc.*, 853 F.2d 687 (9th Cir. 1988). All funds received by Applicant from Debtor are deemed to be an advanced payment of fees and shall be maintained in a trust account until prevailing on an application for compensation and the issuance of an order authorizing disbursement of a specific amount. *Id.* Monthly applications for interim compensation exceeding \$5,000.00 will be entertained under § 331.

Prior to filing bankruptcy, Applicant received a \$50,000.00 retainer. Doc. #88. Applicant was paid \$45,261.75 from the retainer prior to commencement of the case, so \$4,738.25 remains in trust. *Id.*

This is Applicant's first interim fee application. Applicant performed 84.60 billable hours of legal services at the following rates, resulting in **\$37,132.50** in fees:

Professional	Rate	Hours	Amount
Hagop T. Bedoyan	\$0	0.60	\$0.00
Hagop T. Bedoyan	\$475	75.00	\$35,625.00
Hilton A. Ryder	\$375	0.50	\$187.50
Amy G. Sherrick	\$160	4.50	\$720.00
Sebastian K. Wenthe	\$150	4.00	\$600.00
Total Hours & Fees		84.60	\$37,132.50

Doc. #89, Exs. A, B. Applicant also incurred **\$4,960.00** in expenses as follows:

Old Republic Title Company Fees	\$2,400.00
Credit Report	+ \$37.00
Chapter 11 Filing Fees	+ \$1,738.00
Certified Copy Fees	+ \$14.50
First Legal Network LLC Filing Fees	+ \$220.00
Photocopies (2202 @ \$0.25)	+ \$550.50
Total Costs	= \$4,960.00

Id., *Ex. C*. These combined fees and expenses total **\$42,092.50**. As noted by WM, after application of the \$4,738.25 retainer, **\$37,354.25** will remain to be paid by Debtor from cash collateral. *Id.*; Doc. #122. WM also correctly notes that the Cash Collateral Order authorizes payment of \$30,000 in professional fees through week 12, August 14, 2022. *Id.*; Doc. #80, *Ex. A*. An additional \$60,000 is authorized through week 17, which is September 18, 2022. *Id.* After discussion with Applicant, WM says that Applicant has agreed to limit its request for professional fees to \$30,000 and will reserve its right to seek further payment of the remaining balance at a later date. Doc. #122.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services included, without limitation: (1) preparing and filing Debtor's *Voluntary Petition*, all schedules, and the *Statement of Financial Affairs*; (2) preparing, filing, and attending interim and final hearings on several "first day" motions, including a motion to use cash collateral (MB-1), a motion to continue existing utility services with PG&E and establish deposits under § 366 (MB-2), and a motion to authorize the payment of priority pre-petition wage claims (MB-3); (3) preparing and filing employment applications for Debtor's professionals, including Applicant as general insolvency counsel (MB-4), accountants for the estate (MB-5), and a real estate broker (MB-6); assembling documents requested by the U.S. trustee as part of the Initial Debtor Interview, and preparing for and attending the Initial Debtor Interview; (4) attending to Debtor's ongoing business cash-flow issues, including the cancellation of his milk forward contract with Dairy Farmers of America and the expiration of his almond hulling contract with WM; and (5) preparing for the liquidation of Debtor's dairy operations by engaging with the real estate broker and listing all four dairy properties. Docs. #88; #89, *Exs. A, B*. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Debtor reviewed the fee application and consents to payment of the requested compensation.

No party besides WM opposed this motion. This matter will be called as scheduled to inquire about Applicant's position and whether the reduction in compensation should come from its fees for services rendered or from its reimbursement of expenses.³ The remaining amount of fees and/or expenses may be requested in future applications. The court intends to GRANT AS MODIFIED the motion as follows: Applicant will be awarded \$34,738.25 in compensation on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. Applicant will be authorized to draw down the remaining \$4,738.25 retainer and Debtor will be authorized to pay Applicant \$30,000.00 from cash collateral for services rendered and/or costs incurred between June 1, 2022 through June 30, 2022.

² The court notes that the order authorizing employment says that employment is effective as of June 1, 1022. Doc. #60. This is a typographical error and will be construed as June 1, 2022, which is the petition date.

³ The court could award \$29,778.25 in fees (\$25,040.00 paid from cash collateral and \$4,738.25 drawn from the retainer) and \$4,960.00 in expenses, which would leave \$7,354.25 in fees for future applications. Alternatively, the court could award \$34,738.25 in fees (\$30,000.00 paid from cash collateral and \$4,738.25 drawn from the retainer), which would leave \$2,394.25 in fees and \$4,960.00 in expenses for future applications.

4. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[MB-92](#)

OBJECTION TO CLAIM OF MANUEL DE LUNA, JESUS GARAY, FRANCISCO
HERNANDEZ, JOSE GARCIA, CLAIM NUMBER 73
6-22-2022 [[3329](#)]

RANDY SUGARMAN/MV
ELIZABETH HOWARD/ATTY. FOR DBT.
JOHN MACCONAGHY/ATTY. FOR MV.

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

DISPOSITION: Resolved and withdrawn by stipulation.

NO ORDER REQUIRED.

On or about July 26, 2022, the parties stipulated to resolve this objection as follows:

1. Proof of Claim No. 73-1 shall be deemed allowed as a general unsecured claim in the amount of \$875,000.00 and the trustee withdraws its objection.

2. The parties request an order providing that:

- (a) The Bankruptcy Court shall abstain from resolution, in favor of Kings County Superior Court, of all administrative details internal to the class, including without limitation, required notice to class members, any award of attorneys' fees and costs, and the proper distribution of settlement funds among class members;
- (b) To the extent applicable, the automatic stay set forth in 11 U.S.C. § 362 and/or the injunctive relief set forth in the confirmed plan shall be deemed modified to permit the Kings County Superior Court to resolve these matters, and the Kings County Superior Court shall be authorized to preside over the settlement approval process and enter a final judgment approving the parties' class action settlement;
- (c) The hearing on this objection shall be taken off calendar; and
- (d) The court shall reserve jurisdiction to enforce this stipulation.

Doc. #3336. The court approved the stipulation on July 29, 2022.

Therefore, the objection has been resolved and withdrawn by stipulation. Accordingly, this objection will be dropped and taken off calendar pursuant to the stipulation, withdrawal, and order.

1:30 PM

1. [20-13420](#)-B-7 **IN RE: CHRISTOPHER MARTENS**
[DMG-10](#)

MOTION FOR COMPENSATION FOR D. MAX GARDNER, TRUSTEES ATTORNEY(S)
7-19-2022 [[134](#)]

PETER FEAR/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.

D. Max Gardner ("Applicant"), general counsel for chapter 7 trustee Jeffrey M. Vetter ("Trustee"), seeks final compensation under 11 U.S.C. § 330 in the sum of \$3,481.20. Doc. #134. This amount consists of \$3,347.00 in fees as reasonable compensation for services rendered and \$134.20 in reimbursement of actual, necessary expenses incurred between June 3, 2022 and August 9, 2022. *Id.*

Trustee has reviewed the application and supporting documents and consents to the proposed payment. Doc. #138.

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 on more than 21 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 2002(a)(6) 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.

Christopher Robert Martens ("Debtor") filed chapter 7 bankruptcy on October 28, 2020. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors on December 4, 2020. Doc. #2; *see also* docket generally. Trustee moved to employ Applicant on December 1, 2020 pursuant to 11 U.S.C. §§ 327, 329-331. DMG-1. The court approved the employment December 9, 2020, effective on October 30, 2020. Doc. #26.

On December 8, 2021, the court approved payment of \$10,757.00 in fees and \$299.70 in costs (\$11,056.70) for services rendered and expenses

incurred between November 1, 2020 and December 8, 2021 on a final basis. Docs. #115; #117. However, after approval of that application, additional work was required to file a motion to compel turnover (DMG-9) due to Debtor's failure to complete payments on his purchase of estate property (DMG-5). Applicant filed a motion for relief from the *Order on First and Final Application for Payment of Fees and Expenses* to allow this second fee application, which is the subject of matter #2 below. See DMG-9. The court intends to grant that motion, which will allow this motion to proceed.

This is Applicant's second and final fee application. The source of funds for payment of the fees will be from those currently held by the bankruptcy estate. Doc. #136. Applicant provided 10.3 billable hours at a rate of \$325.00/hour, totaling **\$3,347.00** in fees. *Id.* Applicant also incurred **\$134.20** in expenses:

CourtCall	\$22.50
Postage	+ \$94.50
Photocopies	+ \$17.20
Total	= \$134.20

Id. The combined fees and expenses total **\$3,481.20**.

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." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services included, without limitation: (1) conferring with Trustee regarding the outstanding balance owed by Debtor from Trustee's previous motion to sell property (DMG-5); (2) preparing and filing a motion to compel turnover (DMG-8); (3) withdrawing the motion after Debtor completed the payments; (4) drafting and filing the motion for relief from order (DMG-9) and this fee application (DMG-10). Doc. #136. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Trustee consents to payment of the proposed additional fees to Applicant. Doc. #138.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, and provided that the court grants Applicant's motion for relief from order in matter #2 below, the court intends to GRANT this motion. Applicant will be awarded an additional \$3,347.00 in fees and \$134.20 in expenses on a final basis under 11 U.S.C. § 330. Additionally, the court will approve the \$10,757.00 in fees and \$299.70 in costs previously awarded on December 8, 2021. Trustee will be authorized, in his discretion, to pay

Applicant an additional \$3,481.20 in compensation for services rendered and costs incurred from June 3, 2022 to August 9, 2022, and the \$11,056.70 previously awarded on December 8, 2021 for services and costs from November 1, 2020 to December 8, 2021. The total amount of Applicant's fees in this case will be \$14,537.90.

2. [20-13420](#)-B-7 **IN RE: CHRISTOPHER MARTENS**
[DMG-9](#)

MOTION FOR RELIEF FROM ORDER
7-19-2022 [[129](#)]

JEFFREY VETTER/MV
PETER FEAR/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. The Moving Party shall submit a proposed order after hearing.

D. Max Gardner ("Movant"), general counsel for chapter 7 trustee Jeffrey M. Vetter ("Trustee"), requests relief from an order granting payment of attorney fees to Movant on a final basis under 11 U.S.C. § 330. Doc. #129; *cf.* Doc. #117.

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 motion was filed in connection with Movant's second and final fee application, which is the subject of matter #1 above. See DMG-10.

On December 8, 2021, the court approved payment of \$10,757.00 in fees and \$299.70 in costs (\$11,056.70) for services rendered and expenses incurred between November 1, 2020 and December 8, 2021 on a final basis. Docs. #115; #117. That motion was filed because it appeared that Movant's work was completed. Doc. #131. However, after approval of that application, Debtor failed to pay the outstanding balance of \$5,000.00 owed for the purchase of estate assets, the sale of which had been approved on November 1, 2021. *Id.*; *cf.* Doc. #93. As a result,

on June 3, 2022, Trustee requested Movant to file a motion to compel turnover because Debtor had not paid the balance owing after repeated contact. Doc. #131.

Movant subsequently prepared the motion to compel turnover, which was filed on June 9, 2022 and set for hearing on July 6, 2022. Doc. #122; DMG-8. Shortly after filing that motion, Debtor remitted the required payment to Trustee, which prompted its withdrawal on June 22, 2022. Doc. #127. Though withdrawn, additional work was required, and expenses incurred, to research, prepare, and file the motion to compel turnover.

As a result, Movant now seeks relief from an under Federal Rule of Civil Procedure ("Civ. Rule") 60(b), though Movant does not specify which provision of Civ. Rule 60(b) applies.

Federal Rule of Bankruptcy Procedure ("Rule") 9024 incorporates Civ. Rule 60(b) and permits the court to grant relief from a final judgment, order, or proceeding based on: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that could not have been discovered in time to move for a new trial under Civ. Rule 59(b); (3) fraud, misrepresentation, or misconduct; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; or (6) any other reason that justifies relief. Civ. Rule 60(b). Such request must be made "within a reasonable time" generally, and within one year when requested under Civ. Rule 60(b)(1), (2), or (3). Civ. Rule 60(c). The court construes Movant's request as one under Civ. Rule 60(b)(1).

Courts are permitted, where appropriate, to relieve a party or its legal representative from a judgment, order, or proceeding due to a party's "inadvertence, mistake, or carelessness, as well as intervening circumstances beyond the party's control." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 388 (1993). This determination is "an equitable one taking account of all relevant circumstances surrounding the party's omission." *Id.*, at 395. The factors to consider include:

1. Danger of prejudice to the debtor;
2. Length of delay and potential impact on judicial proceedings;
3. Reason for the delay, including whether it was in the movant's control; and
4. Whether the party acted in good faith.

1. Danger of Prejudice to Debtor: Here, Debtor will not be unfairly prejudiced because Debtor is responsible for failing to pay the final \$5,000 owing under his agreement to purchase estate assets. The circumstances requiring Movant to perform additional services were created by Debtor, which require additional fees and relief from the first and final compensation order.

2. Length of delay and potential impact on judicial proceedings:

Movant did not unreasonably delay in filing this motion. The order authorizing the sale of estate assets to Debtor was entered on November 1, 2021. Doc. #93. Under the terms of the sale, Debtor was required to make four monthly payments of \$2,500 beginning July 2021, with the final payment due October 22, 2021. Doc. #88. It appears that Debtor paid the first two \$2,500 payments and owed an outstanding balance of \$5,000 by October 22, 2021. Doc. #131. Trustee gave Debtor until June 2022 to pay off the remaining balance and eventually filed the motion to compel turnover on June 9, 2022. DMG-8. Sometime between then and June 22, 2022, Debtor paid off the balance and Trustee withdrew the motion. Doc. #127. Less than a month later, on July 19, 2022, Movant promptly filed this motion and a corresponding second final fee application. DMG-9; DMG-10. Any delay in these judicial proceedings was caused directly by Debtor and was no fault of Movant or Trustee.

3. Reason for the delay, including whether it was in the movant's control: As discussed above, the reason for the delay was Debtor's failure to comply with the terms of the sale of estate assets. The delay was not within Movant's control.

4. Whether the party acted in good faith: Nothing in the record suggests that Movant has not acted in good faith. Movant believed his services were complete upon filing, prosecuting, and prevailing on the first and final fee application. Doc. #131. Upon Debtor's failure to comply with the terms of the sale of estate assets, Movant was required to perform additional, unexpected work on behalf of Trustee to force Debtor's compliance with the sale or return of estate assets.

Movant's mistaken assumption that the last payment would be made is close to a "judgment call" which would not justify relief under Civ. Rule 60(b). But the court recognizes that under the circumstances, it was reasonable for Movant and his client to assume payment would be made. Similar "mistakes" have justified relief. *See, In re UAL Corp.*, 411 F.3d 818 (7th Cir. 2005) (holding airline's mistake in presuming assumed leases were current justified motion to vacate order authorizing lease assumption); *M.I.F. Realty v. Rochester Assocs.*, 92 F.3d 752, 757 (8th Cir. 1996) (mistake involving "misunderstanding among the parties resulting in lack of mutual assent to a settlement" justified relief).

Therefore, cause appears to exist under Civ. Rule 60(b) to relieve Movant of the court's order approving the first and final fee application to permit Movant to seek additional fees in matter #1.

Written opposition was not required and may be presented at the hearing. This matter will be called as scheduled to inquire whether any parties in interest oppose. In the absence of opposition, the court is inclined to GRANT the motion and VACATE the order approving the first fee application. The fees and expenses previously awarded will be considered in matter #1 above.

3. [22-10621](#)-B-7 **IN RE: MIGUEL MARIN**
[MOT-1](#)

MOTION TO AVOID LIEN OF TBF FINANCIAL 1, LLC.
7-12-2022 [\[16\]](#)

MIGUEL MARIN/MV
T. O'TOOLE/ATTY. FOR DBT.
T. O'TOOLE/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.

Miguel Angel Marin ("Debtor") seeks to avoid a judicial lien in favor of TBF Financial I, LLC ("Creditor") in the sum of \$42,645.86 and encumbering residential real property located at 8680 W. Christian Ave., Dos Palos, CA 93620 ("Property").⁴ Doc. #16.

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 Debtor Miguel Angel Marin aka Angel A. Marin in favor of Creditor in the amount of \$42,645.86 on November 9, 2021. Doc. #18, *Ex. A*. The abstract of judgment was issued on February 14, 2022 and recorded in Merced County on March 10, 2022. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #20.

As of the petition date, Property had an approximate fair market value of \$349,700.00. *Id.*; Doc. #1, *Sched. A/B*. Though not mentioned in the motion, it appears from the schedules that Debtor owns a 50% interest in Property. *Id.* The remaining 50% interest is owned by Debtor's ex-wife, Yolanda Betano. *Id.*

Property is solely encumbered by a \$149,157.01 deed of trust in favor of Freedom of Mortgage. *Id.*, *Sched. D*. Both Debtor and Betano appear to be jointly liable for the mortgage. *Id.* There do not appear to be any other encumbrances on Property other than the mortgage and this judicial lien. *Id.* Debtor claimed a \$300,000 homestead exemption in Property pursuant to Cal. Code Civ. Proc. § 704.730.⁵ *Id.*, *Sched. C*.

In the Ninth Circuit, the lien avoidance formula requires the deduction of all unavoidable, consensual encumbrances from the total value of the property before computing the debtor's fractional interest. *All Points Cap. Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007), citing *Wiget v. Nielsen (In re Nielsen)*, 197 B.R. 665 (B.A.P. 9th Cir. 1996). Using the *Meyer* approach, "one nets out consensual liens against the entire fee in co-owned property before determining the value of a debtor's fractional interest and excludes those liens from the calculation of 'all other liens on the property' under § 522(f)(2)." *Meyer*, 373 B.R. at 90.

Here, both Debtor and Betano are liable on the Freedom Mortgage deed of trust. So, the Freedom Mortgage deed of trust (\$149,157.01) is subtracted from Property's total value (\$349,700) because Freedom Mortgage has a consensual encumbrance against the entire co-owned Property. The result, \$200,542.99, is the equity split between Debtor and Betano, so Debtor's 50% interest in Property for the purposes of § 522(f) is \$100,271.50.⁶

Strict application of the § 522(f)(2) formula is as follows:

Amount of Creditor's judicial lien	\$42,645.86
Total amount of unavoidable liens. ⁷	+ \$74,578.505
Debtor's claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$417,224.365
Debtor's claimed value of interest absent liens	- \$174,850.00
Extent Creditor's lien impairs Debtor's exemption	= \$242,374.365

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property		\$349,700.00
Freedom Mortgage deed of trust	-	\$149,157.01
Remaining equity	=	\$200,542.99
Debtor's 50% interest	=	\$100,271.495
Homestead exemption	-	\$300,000.00
Remaining equity for judicial liens	=	(\$199,728.505)
Creditor's judicial lien	-	\$42,645.86
Extent Debtor's exemption impaired	=	(\$242,374.365)

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). This motion will be GRANTED. The proposed order shall include a copy of the abstract of judgment attached as an exhibit.

⁴ Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving via regular U.S. mail Timothy Krantz, Creditor's registered agent for service of process, at 2082 Michelson Drive, Irvine, CA 92612 on July 12, 2022. Doc. #21.

⁵ The motion and memorandum of points and authorities erroneously assert that Debtor claimed a \$100,000 exemption under CCP § 704.140(a)(2), and a \$100,000 exemption under CCP § 703, respectively. Docs. #16; #19. However, Debtor actually claimed a \$300,000 exemption under CCP § 704.730. See Doc. #1, *Sched. C*.

⁶ Debtor's fractional interest is \$100,271.495, which has been rounded up to \$100,271.50 for simplicity here.

⁷ This amount consists of half of the \$149,157.01 owing on the deed of trust, which is \$74,578.505. For the purposes of this calculation, the court did not round to ensure consistent results. Though Freedom Mortgage's deed of trust encumbers the entire co-owned Property, this is the amount that represents the encumbrance against Debtor's 50% portion of co-owned Property.

4. [14-15030](#)-B-7 **IN RE: DANIEL/SHELLEY SIMPSON**
[DMG-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT
7-18-2022 [\[36\]](#)

JEFFREY VETTER/MV
NEIL SCHWARTZ/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. The Moving Party shall submit a proposed order after hearing with a copy of the stipulation attached as an exhibit and shall separately file and docket it as a stipulation.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") requests an order approving a settlement agreement between the estate and Daniel Bruce Simpson and Shelley Leighann Simpson ("Debtors") pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #36.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion.

This motion was filed and served on at least 21 days' notice pursuant to Rule 2002(a)(3) and 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.

Debtors filed chapter 7 bankruptcy on October 15, 2014. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341 meeting of creditors on December 5, 2014. Doc. #2; docket generally. Debtors received an order of discharge on February 9, 2015 and the case was closed by final decree on February 13, 2015. Docs. #14; #16. Thereafter, Debtors moved to reopen the case on June 30, 2021 and the court issued an order reopening the case that same day. Docs. ##18-19. The United States Trustee then moved to appoint a successor trustee, which was granted. Docs. ##24-25. Trustee was subsequently appointed as successor trustee under 11 U.S.C. § 703(a) on July 15, 2021. Doc. #26.

Among the assets of the estate is a judgment entered against Wal-Mart Stores, Inc. ("Walmart") in favor of a plaintiff class in which joint debtor Daniel Bruce Simpson is a member. Doc. #21, *Sched. A/B*, ¶ 33. Trustee has been informed that the judgment was affirmed on appeal by the U.S. Court of Appeals for the Ninth Circuit, and a judgment amount was paid by Walmart to the class action administrator, Simpluris, Inc. Doc. #38. Under the District Court's findings and order, each individual share of the judgment award consists of 60% wages and 40% interest on wages. *Id.* Each individual award is based on a class member's actual payroll records, which cover an 11-year period running from October 2004 through October 31, 2015. *Id.* Similarly, interest on all wages accrued at the California pre-judgment rate of 10% through the date of the entry of the judgment in January 2017 and continued to accrue thereafter at the federal post-judgment rate until the judgment was paid to the class action administrator in the Spring of 2020. *Id.* The judgment funds were held in an interest-bearing account by the administrator, so the joint debtor's funds continued to accrue interest through the date of issuance of checks to most class members on March 15, 2021. *Id.* Therefore, Trustee says that a portion of the interest payments consists of interest earned after the date of his bankruptcy proceedings. *Id.* Trustee has been advised that the funds will not disburse in any case involving a worker who filed bankruptcy until a court order authorizing the disbursement has been obtained. *Id.*

In an effort to avoid litigation and resolve the estate's claim to a portion of the award, Trustee proposes a compromise wherein the disbursement will be split as follows: 75% will be paid to the Debtors and 25% will be paid to the estate. *Id.* Joint debtor's individual award was \$43,944.27, so Trustee says that the estate will receive \$10,986, and Debtors will receive approximately \$32,947. *Id.* Trustee now seeks approval of this settlement. Doc. #36.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. 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).

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

1. Probability of success in litigation: Though success in litigation is far from assured, Trustee contends that the settlement is consistent with Cal. Code Civ. Proc. § 704.070 in which 75% of a debtor's unpaid wages are exempt. Doc. #38. Thus, Trustee believes

that the settlement represents the maximum amount to which the estate would be entitled in the absence of this settlement. Additionally, the settlement will result in the payment of all allowed claims in full. This factor heavily weighs in favor of approving the settlement.

2. Difficulties in collection: Since the entire class settlement has been remitted to the class action administrator, collection would not be difficult. However, if Trustee were to succeed in litigation and attempt to collect more, it is unknown to what extent he would be successful in collecting additional proceeds. *Id.* This factor weighs in favor of approving the settlement.

3. Complexity of litigation: Litigation would be lengthy and uncertain as to whether the estate would be entitled to more than 25% of the joint debtor's individual class action award. *Id.* The settlement represents a speedy resolution to the matter, so this factor also weighs in favor of approving the settlement.

4. Interest of the creditors: Trustee believes that the settlement is in the best interest of the creditors. *Id.* As noted above, the proposed settlement will be sufficient to pay all allowed claims in full. *Id.* This settlement will avoid the risk and expense associated with trial while providing a guaranteed recovery for the bankruptcy estate.

The settlement appears to be fair, equitable, and a reasonable exercise of Trustee's business judgment.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT the motion and approve the settlement agreement. The court will conclude that the compromise is 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.*

Trustee shall separately file a copy of the settlement agreement as a stipulation. The proposed order shall attach the settlement agreement as an exhibit.

5. [22-10838](#)-B-7 **IN RE: FRANCISCO/JEZARELLA VILLANUEVA**
[CH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-7-2022 [\[13\]](#)

VOLVO FINANCIAL SERVICES/MV
D. GARDNER/ATTY. FOR DBT.
BRADFORD HUGHES/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Volvo Financial Services ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2012 Wabash National Corp. Aluminum Van ("Vehicle"). Doc. #13. Movant also requests waiver of the 14-day of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3).

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with Rule 4001(a)(1).

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") and Francisco Villanueva and Jezarella Villanueva ("Debtors") were not properly served. Rule 4001(a)(1) requires motions for relief from the automatic stay to be made in accordance with Rule 9014. Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. Since this motion will affect property of the estate, the Chapter 7 Trustee must be served in accordance with Rule 7004.

Rule 7004 allows service in the United States by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business[.]" Rule 7004(b)(1). Rule 7004(b)(9) requires service upon the debtor by mailing a copy of the pleadings to the address shown in the petition or to such other address as the debtor may designate in a filed writing. Electronic service is precluded here because Rule 9036 "does not apply to any paper required to be served in accordance with Rule 7004." Rule 9036(e).

Here, the certificate of service says that parties were served "by Electronic Service/ECF." Doc. #18. Though Trustee's mailing address is listed, the certificate states that the documents were served via "Electronic Service." *Id.*

Additionally, Debtors were not properly served in accordance with Rule 7004(b)(9). Under Rule 7004(b)(9), Debtors must be served by mailing a

copy of the motion documents to the debtors at the address shown in the petition or an address designated in a filed writing. Debtors were not served according to the certificate of service. Doc. #18. Movants did comply with Rule 7004(g) by serving Debtor's attorney, but that is insufficient. This defect alone is fatal.

Accordingly, this motion will be DENIED WITHOUT PREJUDICE because the Debtors and Trustee were not properly served in accordance with Rules 4001(a)(1) and 7004.

6. [21-10368](#)-B-7 **IN RE: SIMONA PASILLAS**
[JES-4](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
7-11-2022 [[92](#)]

JAMES SALVEN/MV
SCOTT LYONS/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.

James E. Salven ("Applicant"), his capacity as certified public accountant employed by himself in his capacity as chapter 7 trustee of the bankruptcy estate, seeks final compensation under 11 U.S.C. § 330 in the sum of \$3,049.75. Doc. #92. This amount consists of \$2,744.00 in fees as reasonable compensation for services rendered and \$305.75 in reimbursement of actual, necessary expenses from May 27, 2022 through July 6, 2022. *Id.*

Applicant, in his capacity as chapter 7 trustee, has reviewed the application and supporting documents, and consents to the proposed payment. Doc. #95

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) and Fed. R. Bankr. P. 2002(a)(6). 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 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.

Simona Pasillas ("Debtor") filed chapter 7 bankruptcy on February 12, 2021. Doc. #1. Applicant was appointed as interim trustee on that same date and became permanent trustee at the first § 341 meeting of creditors on March 11, 2021. Doc. #5; docket generally. Applicant, in his capacity as trustee, moved to employ himself as accountant on May 30, 2022 under 11 U.S.C. §§ 327, 330, and 331. Doc. #86. The court approved employment on June 7, 2022, effective May 15, 2022. Doc. #89. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for accounting services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Acceptance of employment was deemed to be an irrevocable waiver by Applicant of all pre-petition claims, if any, against the bankruptcy estate. *Id.* Applicant's services here were within the time period prescribed by the employment order.

This is Applicant's first and final fee application. Doc. #92. Applicant performed 9.8 billable hours of accounting services at a rate of \$280.00 per hour, totaling **\$2,744.00** in fees.⁸ Doc. #96, *Ex. A*. Applicant also incurred **\$305.75** for the following expenses:

Copies (163 @ \$0.20)	\$32.60
Envelopes (4 @ \$0.25)	+ \$1.00
Lacerte Tax Proc. (1 @ \$86.00)	+ \$86.00
Service (85 @ \$2.19)	+ \$186.15
Total	= \$305.75

Id., *Ex. B*. These combined fees and expenses total **\$3,049.75**.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services included, without limitation: (1) conflict review and preparing the employment application (JES-3); (2) using Passport to determine the tax basis in property; (3) analyzing an auction return on sale and an escrow closing statement and inputting data into

the system; (4) processing, reviewing, and printing tax returns; (5) preparing prompt determination letters for federal and state tax returns; and (5) preparing and filing this fee application (JES-3). Doc. #96, Exs. A, B. The court finds the services and expenses actual, reasonable, and necessary. As noted above, Applicant, in his capacity as chapter 7 trustee, has reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #95.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$2,744.00 in fees and \$305.75 in expenses on a final basis pursuant to 11 U.S.C. § 330. Applicant, in his capacity as chapter 7 trustee and in his discretion, will be authorized to pay Applicant, in his capacity as accountant, \$3,049.75 for services rendered to and costs incurred for the benefit of the estate from May 27, 2022 through July 6, 2022.

⁸ Applicant waived fees for conflict review, preparing, and filing the employment application. Doc. #96, Ex. A.

7. [20-10893](#)-B-7 **IN RE: JAIDYNN POWELL**
[NES-2](#)

MOTION TO WHY THEY SHOULD PAY DAMAGES FOR VIOLATION
7-13-2022 [[25](#)]

JAIDYNN POWELL/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

Jaidynn Leanne Powell ("Debtor") filed this *"Order to Show Cause Directed at Creditor, Creditor's Counsel as to Why They Should Pay Damages for Violation of the Bankruptcy Discharge Forcing Debtor to Sign Post Discharge Agreement"* seeking an order (1) against Daniel's Jewelers/Merchants [sic] and their counsel, Richard Snyder, to pay damages to Debtor, and (2) to void a post-discharge agreement executed by Debtor. Doc. #25.

Though not required, Sherwood Management Co. dba Daniel's Jewelers ("Daniel"), Merchants Acquisition Group LLC dba Merchants Credit Solutions ("MAG"), and Richard W. Snyder ("Snyder;" collectively, "Creditors") responded. Docs. ##29-31.

On August 4, 2022, Debtor filed a response with significant new evidence. Docs. ##33-34.

This matter will be called and proceed as scheduled. The motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR") and failure to make a *prima facie* showing of entitlement to the relief sought.

First, Debtor cannot issue an Order to Show Cause ("OSC"). The local rules define an "Order" as "any directive by the Court, including oral or telephonic as well as written directives, that is not a judgment." LBR 9001-1(o). Meanwhile, a "motion" "includes all motions, applications, objections, or other requests made to the Court for orders or other judicial activity. LBR 9001-1(n). Debtor does not have authority to issue orders or directives, including an OSC, because Debtor is not the court. Debtor may file a motion to request an order or other judicial action but cannot issue orders.

Second, LBR 9014-1(d)(3)(B)(i) requires the notice of hearing to advise potential respondents whether and when written opposition must be filed and served. When a motion is filed on fewer than 28 days' notice, LBR 9014-1(f)(2)(C) states that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit additional briefing and evidence.

Here, the motion was filed on July 13, 2022 and set for hearing on August 9, 2022. Docs. ##25-28. July 13, 2022 is 27 days before August 9, 2022. Therefore, this hearing was set on less than 28 days' notice under LBR 9014-1(f)(2). However, the notice stated:

Opposition, if any, to the granting of the Motion must be in writing and must be served and filed with the Clerk of Court no less than fourteen calendar days before the date of the hearing. A responding party who has no opposition to the granting of the Motion may serve and file a statement to that effect designating the Motion in question. No party will be heard in opposition to Motion [*sic*] at oral argument without good cause, if written opposition to the Motion has not been timely filed. Failure to timely file written opposition may be deemed a waiver of any opposition to the granting of the Motion or may result in the imposition of sanctions pursuant to Local Rule Number 9014-1. **Further, the Court may resolve the matter without oral argument unless written opposition and supporting evidence are filed with the Clerk of Court and served on the moving party and the Court may strike any written opposition that is not timely filed and served. . . .**

Doc. #26 (emphasis in original). This is incorrect. Even if the initial notice sent July 13, 2022 were considered, it is still 27 days before August 9, 2022. Since the hearing was noticed under the

procedure specified in LBR 9014-1(f)(2), Debtor was required to inform respondents that written opposition was not required, any opposition shall be presented at the hearing, and if opposition is presented, or if there is other good cause, the court may continue the hearing.

Third, LBR 9014-1(d)(3)(B)(i) requires the notice of hearing to include the names and addresses of persons who must be served with any opposition. Here, the notice says that "any and all objections to the granting of the Motion must be delivered to the Debtor and her attorney of record, the Chapter 7 Trustee, the United States Trustee and parties requesting special notice. Requests for further particulars concerning the Motion should be directed to the undersigned." Doc. #26. Though the address of Debtor's undersigned attorney is located in the header on the first page, the addresses of the Debtor, Chapter 7 Trustee, United States Trustee, or any other parties were excluded in the notice in violation of LBR 9014-1(d)(3)(B)(i).

Fourth, even if these procedural errors were addressed, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (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)).

Debtor's purported OSC seeks an order requiring Creditors to pay damages and voiding a post-petition discharge agreement. Doc. #25. Debtor contends that Creditors' counsel called Debtor to yell and threaten Debtor with lawsuit to the point of tears unless Debtor signed an agreement, which is attached as an exhibit. *Id.*; see Doc. #27, Ex. A. However, since Debtor already received an order of discharge on July 27, 2020 (Doc. #17) and Creditors were listed in *Schedule E/F* (Doc. #1), Debtor argues that the agreement is not enforceable because it has been discharged. Additionally, Debtor argues that the agreement is void and unenforceable because Debtor did not receive compensation for this to be a valid, post-bankruptcy contract. Doc. #25, citing *Bankr. Receivables Mgmt. v. Lopez (In re Lopez)*, 345 F.3d 701 (9th Cir. 2003), *cert. den.*, 541 U.S. 987 (2004); § 524(c). Lastly, Debtor argues that the attempt to collect a debt was a violation of the discharge injunction and the Fair Debt Collection Practices Act ("FDCPA"). Doc. #25.

Creditors argue that communications received from Debtor's counsel and the signed "*Post Discharge Forbearance Agreement*" establish that Debtor had possession of the jewelry at issue when the petition was filed and thereafter – as late as November 2020 when Debtor purportedly signed the *Post Discharge Forbearance Agreement*. Docs. #27, Ex. A; #29. They also urge that though the balance owed Debtor was nearly \$1,900 when that agreement was signed, they agreed to forbear from repossession for approximately \$220.00 less. Creditors do not dispute the numerous contacts made to debtor post-discharge or that they were notified of the bankruptcy case. In fact, there was

communication with Debtor's counsel post-petition concerning a potential reaffirmation agreement. Creditors also raise the Debtor's failure to accurately state in the schedules either the value of the jewelry, that the jewelry was stolen, Debtor's intention regarding the jewelry, nor that debtor did not have possession due to a loss.

Finally, Creditors assert that Debtor's claim for damages under the FDCPA is barred under *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502 (9th Cir. 2002).

In response, Debtor filed a printout from MAG's website and three new declarations from Debtor, Debtor's mother, and Debtor's ex-boyfriend. Docs. ##33-34.

Debtor has some credibility problems. The schedules do not reflect the jewelry at issue. Debtor asserted ownership of \$50.00 worth of jewelry and exempted only that amount. The closing of the case then did not result in the jewelry being abandoned to the debtor by operation of law under § 554(c) – it remains property of the estate under § 554(d).

Also, Debtor signed the schedules under penalty of perjury, which are apparently inaccurate, and a declaration prepared by Creditors stating in effect she had possession of the jewelry while the case was pending. Then, in support of this "OSC" Debtor states the jewelry was stolen from her ex-boyfriend in 2018. Doc. #27.

Another problem is § 524(f) permits a debtor to voluntarily repay any debt. This begs the question whether the "*Post Discharge Forbearance Agreement*" is even enforceable under state law independent of bankruptcy law.

Creditor also has many problems. There is no dispute Creditor made numerous contacts with the Debtor post-discharge. There is no dispute as to the content of Mr. Bucy's communication, nor any dispute that Mr. Bucy was acting for MAG when the alleged abusive contacts were made to Debtor. So, MAG knew that Debtor was represented by counsel at some time post-discharge. There may be questions about the extent of Mr. Snyder's contact.

Also, under *Lopez*, it makes no difference that Creditor reduced the amount payable for the jewelry under the post-discharge agreement. "The same might be said of every secured re-affirmation agreement. Any creditor could claim *in rem* rights in the collateral and thereby vitiate the protections of § 524(c)." *Lopez*, 345 F.3d at 709. Creditor still attempted to collect a debt that had been discharged without following the requirements of § 524.

Plus, *Walls* was somewhat limited by the Ninth Circuit in *Manikan v. Peters & Freedman, LLP*, 981 F.3d 712, 716 (9th Cir. 2020) (debt fully paid before discharge is entered as a basis for a claim under FDCPA). It is possible to plead a claim under FDCPA under appropriate facts. They may or may not be present here.

In addition, no redemption agreement was approved by the court under § 722 and Rule 6008.

The proper vehicle to assert contempt for the discharge injunction is under Rule 9020 or by adversary proceeding. If Debtor asserts another claim for relief either under FDCPA or other theories, they will have to be asserted in an adversary proceeding. The status of the pleadings now will not permit a meaningful or procedurally correct ventilation of the important issues here. Both parties should be provided a meaningful opportunity for discovery due to the factual nature of the dispute.

Proper pleadings should be filed by Debtor to initiate this proceeding.

The relief requested is DENIED WITHOUT PREJUDICE.

8. [22-10094](#)-B-7 **IN RE: POWERTECH ENGINES, INC.**
[FW-2](#)

MOTION FOR ADMINISTRATIVE EXPENSES
7-12-2022 [[55](#)]

PETER FEAR/MV
HAGOP BEDOYAN/ATTY. FOR DBT.
GABRIEL WADDELL/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 Peter L. Fear ("Trustee") seeks authority to pay state and federal taxes owed by the estate as administrative expenses: (a) \$2,914.00 in federal taxes, and (b) \$1,229.00 in state taxes. Doc. #55. Trustee also asks to pay any additional fees or penalties assessed by the taxing authority. *Id.*

No party in interest timely filed written opposition. This matter will be called and proceed as scheduled to determine the amount of additional fees or penalties authorized to be paid without further court approval. The court intends to GRANT this motion.

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). Therefore, the defaults of the above-mentioned parties in interest are 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).

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 and taxes. §§ 503(b)(1)(A) and (B).

Under 28 U.S.C. § 960(b), the trustee is required to pay bankruptcy estate taxes on or before the date they become due even if the respective tax agency does not file a request for administrative expenses. *Dreyfuss v. Cory (In re Cloobek)*, 788 F.3d 1243, 1246 (9th Cir. 2015).

Powertech Engines, Inc. ("Debtor") filed chapter 7 bankruptcy on January 25, 2022. Doc. #1. Trustee was appointed as interim trustee on that same day and became permanent trustee at the first meeting of creditors on February 28, 2022. Doc. #4; docket generally.

Trustee moved to employ James E. Salven as the estate's accountant on June 22, 2022, which was approved on June 28, 2022. Docs. #43; #46. Trustee had tax returns prepared and indicates that the estate owes \$2,914.00 for federal taxes and \$1,229.00 for state taxes. Trustee requests authority to pay these taxes as an administrative expense, plus any additional fees or penalties assessed by the taxing authorities.

The administrative expenses here are necessary to maintain and administer the estate. The motion was fully noticed and no party in interest timely opposed.

Accordingly, the motion will be GRANTED. Trustee will be authorized to pay, in Trustee's discretion, \$2,914.00 for federal taxes and \$1,229.00 for state taxes. This matter will be called and proceed as scheduled to determine an amount of additional fees or penalties, if any, to be authorized to be paid without further court approval.

9. [22-10094](#)-B-7 **IN RE: POWERTECH ENGINES, INC.**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
7-11-2022 [\[48\]](#)

JAMES SALVEN/MV
HAGOP BEDOYAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

James E. Salven ("Applicant"), the certified public accountant engaged by chapter 7 trustee Peter L. Fear ("Trustee"), seeks final compensation under 11 U.S.C. § 330 in the sum of \$3,843.81. Doc. #48. This amount consists of \$3,640.00 in fees as reasonable compensation for services rendered and \$305.75 in reimbursement for actual, necessary expenses from June 16, 2022 through July 3, 2022. *Id.*

Trustee has received and reviewed the application and supporting documents, believes they are reasonable and necessary for estate administration, and has no objection to the proposed payment. Doc. #52.

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) and Fed. R. Bankr. P. 2002(a)(6). 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 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.

Powertech Engines, Inc. ("Debtor") filed chapter 7 bankruptcy on January 25, 2022. Doc. #1. Trustee was appointed as interim trustee on

that same day and became permanent trustee at the first meeting of creditors on February 28, 2022. Doc. #4; docket generally.

Trustee moved to employ Applicant as the estate's accountant under 11 U.S.C. §§ 327, 330, and 331 on June 22, 2022. Doc. #43. The court approved employment on June 28, 2022, effective June 15, 2022.

Doc. #46. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for accounting services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Acceptance of employment was deemed to be an irrevocable waiver by Applicant of all pre-petition claims, if any, against the bankruptcy estate. *Id.* Applicant's services here were within the time period prescribed by the employment order.

This is Applicant's first and final fee application. Doc. #48. Applicant performed 13.0 billable hours of accounting services at a rate of \$280.00 per hour, totaling **\$3,640.00** in fees.⁹ Doc. #50, *Ex. A*. Applicant also incurred **\$203.81** for the following expenses:

Copies (143 @ \$0.20)	\$28.60
Envelopes (5 @ \$0.20)	+ \$1.00
Lacerte Tax Proc. (1 @ \$111.00)	+ \$111.00
Service (49 @ \$1.29)	+ \$63.21
Total	= \$203.81

Id., *Ex. B*. These combined fees and expenses total **\$3,843.81**.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services included, without limitation: (1) conflict review and preparing the employment application (JES-1); (2) reviewing case docket and filings to establish records as to sales; (3) communicating with Debtor's counsel and representative regarding accounting records and contact information; (4) collecting, analyzing, and reviewing data regarding funds collected and the return on sale of assets sold; (5) preparing balance sheet with income statements from the collected data; (6) reviewing corporate and Secretary of State records and seeking an e-file waiver; (7) inputting data into system and processing returns; and (8) preparing and filing this fee application (JES-2). Doc. #50, *Exs. A, B*. The court finds the services and expenses actual, reasonable, and necessary. As noted above, Trustee

has reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #52.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$3,640.00 in fees and \$203.81 in expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized to pay Applicant, in Trustee's discretion, \$3,843.81 for services rendered to and costs incurred for the benefit of the estate from June 16, 2022 through July 3, 2022.

⁹ Applicant waived fees for conflict review, preparing, and filing the employment application. Doc. #50, *Ex. A*.