UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, August 10, 2021
Place: Department B – Courtroom #13
Fresno, California

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. 20-10800-B-11 **IN RE: 4-S RANCH PARTNERS, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
3-2-2020 [1]

RENO FERNANDEZ/ATTY. FOR DBT.

NO RULING.

2. 20-10800-B-11 **IN RE: 4-S RANCH PARTNERS, LLC**
UST-1

MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7 (FILING FEE NOT PAID OR NOT REQUIRED), MOTION TO DISMISS CASE
6-14-2021 [435]

TRACY DAVIS/MV
RENO FERNANDEZ/ATTY. FOR DBT.
JASON BLUMBERG/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

Tracy Hope Davis, United States Trustee for Region 17 ("UST") moves for an order dismissing or converting this case pursuant to 11 U.S.C. § 1112(b)(1). Doc. #435. UST contends that dismissal is in the best interests of creditors because the debtor-in-possession does not have any assets that could be administered by a chapter 7 trustee. *Id.*

Debtor-in-possession 4-S Ranch Partners, LLC ("DIP") timely filed limited opposition. Doc. #484. DIP acknowledges that dismissal would be appropriate if there are no significant assets remaining but contends it may have an interest in certain abandoned floodwaters, which could be administered for the benefit of creditors and the estate. Despite sale by foreclosure of DIP's primary asset, a large parcel of real property in Merced County ("Property"), DIP claims it may have some interest in floodwaters not included in the foreclosure sale. DIP suggests either denying the motion without prejudice or continuing the matter pending a final determination on the floodwaters at issue. *Id.*

Creditor Sandton Credit Solutions Master Fund IV, LP ("Sandton") timely filed partial opposition to and partial joinder in UST's motion. Doc. #486. Sandton agrees that it would be proper to convert the case to chapter 7 but insists that it is premature to dismiss the case entirely until its related adversary proceeding concerning the floodwaters is resolved. *Id.* If Sandton prevails on the adversary proceeding, then dismissal will be appropriate. But if DIP does, in fact, have an interest in the floodwaters, then there would be additional assets that need to be liquidated by the chapter 7 trustee. *Id.* Sandton requests that the motion be denied as to dismissal but granted as to conversion to chapter 7.

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 or any other party in interest except DIP and Sandton 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 DIP and Sandton are entered.

11 U.S.C. § 1112(b) allows the court to dismiss a chapter 11 case. Absent "unusual circumstances," the court shall convert or dismiss a chapter 11 case for "cause," whichever is in the best interests of creditors and the estate. § 1112(b)(2). Section 1112(b)(4) includes a non-exhaustive list of "causes." Cause exists where creditors will not benefit from administration of the estate. *In re Brogdon Inv. Co.*, 22 B.R. 546 (Bankr. N.D. Ga. 1982) ("There is simply nothing to reorganize, no creditors to benefit from the administration of the estate in this court, and no reason to continue the reorganization."). Cause also exists if reorganization is no longer necessary or a debtor's circumstances have materially changed since the filing of the case. *In re OptInRealBig.com, LLC*, 345 B.R. 277, 283-84 (Bankr. D. Colo. 2006).

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

If reorganization or rehabilitation is unrealistic or futile, a chapter 11 case may be dismissed or converted at its outset. *In re Johnston*, 149 B.R. 158, 162 (B.A.P. 9th Cir. 1992). And if there is "cause" to convert or dismiss, the court must then decide: (1) whether dismissal is in the best interests of creditors and the estate; and (2) identify whether there are unusual circumstances that establish dismissal or conversion is not in the best interests of creditors and the estate. *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 612 (B.A.P. 9th Cir. 2001).

UST contends that cause exists because DIP cannot effectuate a plan. Doc. #438. DIP filed this case as a single asset real estate case and its single asset was sold by foreclosure. Since Property was sold, UST argues that DIP lacks the income and assets to confirm and

effectuate a plan. Further, UST says this is in the best interests of creditors and the estate because there are no other remaining assets to be liquidated.

As noted above, Sandton says that dismissal is premature, but conversion is appropriate to liquidate DIP's remaining assets. Doc. #486.

DIP requests denial or continuance until the adversary proceeding has concluded since it may still have a substantial interest in Property's stored floodwaters. Doc. #484.

This matter will proceed as scheduled.

3. 20-10800-B-11 **IN RE: 4-S RANCH PARTNERS, LLC**
21-1024

RESCHEDULED STATUS CONFERENCE RE: COMPLAINT
6-8-2021 [1]

SANDTON CREDIT SOLUTIONS
MASTER FUND IV, LP ET AL V.
KURT VOTE/ATTY. FOR PL.

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

DISPOSITION: Continued to August 31, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

The parties stipulated to extend the deadline to August 13, 2021 for debtor 4-S Ranch Partners, LLC ("Defendant") to respond to the complaint of Sandton Credit Solutions Master Fund IV, LP ("Plaintiff"). Doc. #11. The court approved the stipulation on August 2, 2021. Doc. #13. This status conference will be continued to August 31, 2021 at 9:30 a.m. subject to further order.

4. 21-11001-B-11 **IN RE: NAVDIP BADHESHA**
RMB-4

CONTINUED MOTION TO USE CASH COLLATERAL
6-14-2021 [52]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

This matter was originally heard on July 13, 2021. Doc. #102. At that hearing, the defaults of all parties in interest were entered except CGB Agri Financial Services, Inc. ("AFS") and the United States Department of Agriculture ("USDA"). *Id.*; Doc. #106.

Debtor-in-possession Navdip S. Badhesha ("DIP") was ordered to cure service on USDA under Federal Rule of Bankruptcy Procedure ("Rule") 7004(b)(5), serve all parties in interest the reply and exhibits in support of the reply, and file a declaration and certificate of service evidencing the same not later than July 23, 2021. *Id.*

The court authorized interim use of cash collateral in accordance with DIP's proposed budget and set the matter for final hearing on August 10, 2021. USDA was given until August 4, 2021 to file and serve any opposition to the motion. *Id.* If USDA opposed, the August 10, 2021 hearing would proceed as scheduled, but if there was no further opposition the hearing would be dropped from calendar. *Id.*

On July 19, 2021, the interim order authorizing use of cash collateral was entered. Doc. #110. DIP was authorized to deviate from the total expenses in the proposed budget by no more than 15% and to deviate by category without the need for further court approval. *Id.* The court also ordered adequate protection to lien holders in the form of: (1) a replacement lien on the revenue generated post-petition from DIP's real property to the extent that secured creditor's cash collateral was actually used; (2) segregation of all revenue exceeding the funds needed to pay operating expenses into DIP's cash collateral bank account; (3) expedited stay relief procedure in the event DIP fails to cure any default within 14-days of receiving written notice; and (4) reasonable reporting requirements to be determined by the parties. *Id.*

The order further modified cash collateral authorization to include expenses in the revised budget on a final basis from August 10, 2021 through November 30, 2021. *Id.* The final hearing on the cash collateral motion was scheduled for August 10, 2021 provided that USDA does not file opposition by August 4, 2021.

On July 23, 2021, Ja'Nita Fisher, a paralegal employed by DIP's attorney at Resnik Hayes Moradi, LLP, filed a declaration stating that she served the motion, declaration, and exhibits on USDA via regular mail. Doc. #119. DIP also filed two certificates of service. The first provided that all motion documents, the reply, and exhibits in support of the reply were served on USDA on July 23, 2021. Doc. #120. DIP served the USDA Farm Service Agency at its state office in Davis, CA, its service address in Fresno, CA, its Washington DC address, and its headquarters address in Saint Louis, MO. DIP also served the United States Attorney for this district while denoting that it is "for USDA," as well as the Attorney General in Washington, DC. *Id.* DIP has complied with Rule 7004(b)(5) and properly cured the previous service defects outlined at the last hearing. *Cf.* Doc. #102. DIP also served its reply and the exhibits in support of the reply on all parties in interest. Doc. #121.

USDA was given until August 4, 2021 to file any opposition to this motion. USDA did not oppose. In accordance with this court's previous order, this final hearing will be dropped from calendar. Doc. #106. The interim order authorizing use of cash collateral from August 10, 2021 through November 30, 2021 will remain in effect, and this matter will be dropped from calendar.

5. 20-10809-B-11 **IN RE: STEPHEN SLOAN**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
3-2-2020 [1]

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Continued to September 21, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

Debtor-in-possession Stephen William Sloan ("DIP") filed a status report as ordered on August 3, 2021. Doc. #395. DIP says he has substantial other assets and is working to pay all creditors in full. He plans to propose a modified plan and disclosure statement but was delayed due to the need to obtain employment approval for his accountant. DIP plans to have the new plan and disclosure statement filed no later than August 31, 2021 and set it for hearing on October 14, 2021 at 9:30 a.m.

This status conference will be CONTINUED to September 21, 2021 at 9:30 a.m. If DIP files, serves, and sets for hearing a new plan and disclosure statement, that status conference will be further continued to the same date and time as the hearing to approve the disclosure statement.

6. 21-11542-B-11 **IN RE: COMMUNITY REGIONAL ANESTHESIA MEDICAL GROUP, INC.**

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
6-15-2021 [1]

RILEY WALTER/ATTY. FOR DBT.
DISMISSED 7/19/21

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

DISPOSITION: Dropped from calendar.

ORDER: The court will issue an order.

On July 19, 2021, debtor-in-possession Community Regional Anesthesia Medical Group, Inc. moved to voluntarily dismiss this case pursuant to 11 U.S.C. § 1112(b). Doc. #52. The court granted this motion on July 19, 2021. Doc. #73. Accordingly, this status conference will be dropped from calendar as moot because the case has been dismissed.

11:00 AM

1. 21-11192-B-7 **IN RE: MARIA GARCIA**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION
7-22-2021 [22]

LEROY AUSTIN/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

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

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

1:30 PM

1. 11-10721-B-7 **IN RE: RUBEN/IRENE ARELLANO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-22-2021 [44]

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

A corrected Notice of Fees Due was filed and served on August 2, 2021, correcting the amount of the certification and copy charges to $11.50. Doc. #46. The record shows that the fees were paid in full on July 27, 2021. Therefore, the Order to Show Cause will be VACATED.

2. 20-12729-B-7 **IN RE: CHUCK/NICOLE COZZITORTO**
FW-1

FURTHER SCHEDULING CONFERENCE RE: MOTION TO AVOID LIEN OF SAN JOAQUIN VALLEY HAY GROWERS ASSOCIATION AND/OR MOTION TO AVOID LIEN OF QUALITY MILK SERVICE INC.
5-5-2021 [35]

NICOLE COZZITORTO/MV
PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued; date determined at the hearing.

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

Chuck Scott Cozzitorto and Nicole Ann Cozzitorto ("Debtors") seek to avoid two judicial liens: (1) $35,683.78 in favor of San Joaquin Valley Hay Growers Association ("SJVHGA"); and (2) $329,717.84 in favor of Quality Milk Service, Inc. ("QMS"). Doc. #35. Both liens encumber Debtors' 25% interest in real property located at 19569 Johnson Avenue, Hilmar, CA 95324 ("Property"). Doc. #35.

QMS timely filed written opposition. Doc. #40. QMS sought to conduct an appraisal to determine the value of Property.

At the last hearing on June 8, 2021, the court entered the defaults of SJVHGA and all other parties in interest except QMS. Doc. #43. The matter was deemed to be a contested matter to which the federal rules of discovery apply under Federal Rule of Bankruptcy Procedure ("Rule") 9014(c). *Id.* The matter was continued to August 10, 2021 so that QMS could obtain an appraisal report. Additional opposition from QMS was due not later than July 27, 2021, and any reply by Debtors was due by August 3, 2021. Doc. #44.

QMS filed its supplemental opposition, along with a supporting declaration by and appraisal from Janie Gatzman ("Appraiser") on July 27, 2021. Docs. ##51-53.

Debtors timely replied. Doc. #58.

This matter will proceed as scheduled. The court is inclined to CONTINUE the motion. The continued hearing date and filing deadlines will be determined at the hearing.

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)).

Debtors listed Property in the schedules with a $1.25 million valuation on the petition date. Doc. #1. Debtors claimed that there is a 15% pre-payment penalty if Property is sold before 2024, which reduces its petition-date value by approximately $100,000.00. Thus, Debtors declared Property's value was $1.15 million on the petition date. Doc. #37, ¶ 3.

Debtors own a 25% interest in Property. The remaining 75% is owned by Joint Debtor's mother, Kimberly Clarot. Debtors' formula for determining their equity interest in Property involved first subtracting the $692,441.92 deed of trust in favor of Steven and Shelly Fliflet. Debtors determined their fractional 25% interest from this amount. Then, Debtors subtracted the $3,919.40 senior tax lien and their $100,000 exemption, leaving $10,470.12 in equity for judicial liens to attach. On this basis, Debtors sought to fully avoid QMS' judicial lien and partially avoid SJVHGA's higher priority lien secured in this amount and leaving $25,213.66 unsecured.

Debtors' original calculation can be illustrated as follows:

DEBTORS PROPOSED LIEN AVOIDANCE CALCULATION

Fair market value of Property[1]		$1,150,000.00
Fliflet deed of trust	-	$692,441.92
Remaining Equity	=	$457,558.08
Debtors' 25% equity interest	**=**	**$114,389.52**
Senior tax lien[2]	-	$3,919.40
Exemption	-	$100,000.00
Equity available for SJVHGA lien	**=**	**$10,470.12**
SJVHGA judicial lien	-	$35,683.78
Unsecured portion of SJVHGA lien	=	$25,213.66
QMS judicial lien *(fully unsecured)*	=	$329,717.84

Doc. #35.

Since SJVHGA has priority over QMS' lien, under Debtors' valuation and analysis the QMS lien would be fully avoidable while the SJVHGA lien would be partially avoidable to the extent that it is unsecured.

However, QMS opposed arguing that Debtors understated Property's value. Doc. #40. QMS further contended that the 17-acre almond orchard attached to Property is not subject to the homestead exemption under C.C.P. § 704.710(a)(1). Instead, Creditor insisted that the exemption was limited to the residence and nearby land incidental to or part of the residence or dwelling. The court continued the matter pending QMS' appraisal. The sole factual issue was the value of Property on the petition date and the sole legal issue was the extent to which Property may be exempted under C.C.P. § 704.730. Doc. #43.

QMS retained Appraiser, an Accredited Rural Appraiser, to determine the retrospective fair market value of Property on August 18, 2020 ("Appraisal Report"). Doc. #51. Appraiser physically inspected Property on July 7, 2021. *Id.* The Appraisal Report determined that Property's fair market value on the petition date was $1,457,000.00. Doc. #53, Ex. 1. Of that amount, $765,000 is attributable to the 17-acre almond farm, and the remaining $692,000 is allocated to the farmstead and land. Doc. #52. The 3.5 acres of land had a value of $112,000 and the 2,900-square-foot residence had a value of $580,000. Doc. #52.

QMS maintains that its lien may only be partially avoided. Doc. #51. QMS argues that it is improper to decrease the value of Property based on the pre-payment penalty because this penalty is only triggered by the sale of Property. Since Debtors are only

[1] This amount is derived from subtracting $100,000 from the $1,250,000 *Schedule A/B* value to represent the 15% pre-payment penalty for selling Property before 2024.

[2] It is unclear whether this amount is accurate. Chuck Cozzitorto's declaration states that a tax lien of $2,621.67 was recorded on November 8, 2017. Doc. #37. Debtors claim this tax lien is approximately $3,919.40 in the motion based on a 1.5% interest rate per month. Doc. #35.

determining whether QMS' lien impairs Property, the penalty is not applicable here.

QMS' lien avoidance formula involves subtracting the $692,441.92 deed of trust, $2,621.67 senior tax lien, and $35,683.78 SJVGHA judicial lien from the $1,457 million appraised value. QMS then calculates Debtors' 25% interest and subtracts the homestead exemption, resulting in $81,563.15 remaining equity for QMS to attach its lien. QMS therefore insists that Debtors' equity in Property should be updated accordingly:

QMS PROPOSED LIEN AVOIDANCE CALCULATION

Fair market value of Property		$1,457,000.00
Fliflet deed of trust	-	$692,441.92
Senior tax lien	-	$2,621.67
SJVHGA judicial lien (fully unavoidable)	-	$35,683.78
Remaining equity	=	$726,252.63
Debtors 25% equity interest	**=**	**$181,563.15**
Homestead exemption	**-**	$100,000.00
Equity available for QMS lien	**=**	**$81,563.15**
QMS judicial lien	-	$329,717.84
Extent QMS judicial lien unsecured	=	$148,154.69

Id. QMS also concedes that it is the junior lienholder but suggests that SJVHGA's default should be entered because it provided no opposition to the motion. The court entered SJVHGA's default at the previous hearing, but it is undisputed that SJVHGA's lien has priority.

The *Meyer* court determined that fractional interests in lien avoidance motions are determined by subtracting all unavoidable liens from the fair market value before calculating a debtor's fractional interest in the property. *In re Meyer*, 373 B.R. 84 (B.A.P. 2007); *citing In re Nielsen*, 197 B.R. 665 (B.A.P. 1996). All nonavoidable encumbrances are first deducted from joint value of property before determining fractional interest. The *Meyer* court criticized the approach taken in *In re White*, 337 B.R. 686 (Bankr. N.D. Cal. 2005), where all liens were deducted after determining the debtor's partial interest, calling this approach absurd. Thus, QMS' method of subtracting the consensual unavoidable liens from the fair market value before determining the 25% interest is the correct formula used in the Ninth Circuit. However, the SJVHGA lien, while unavoidable, is only against the Debtors. Ms. Clarot was not a named defendant in that lawsuit. So, it appears that the SJVHGA lien should be subtracted after calculating Debtors' 25% equity interest.

Alternatively, QMS proposes that the court could rule that the 17-acre almond orchard is not subject to Debtors' homestead exemption. This would fully avoid both QMS and SJVHGA liens and allow them to attach only to the almond orchard. QMS provides no authority as a basis for severing or subdividing the property.

In reply, Debtors seek a continuance to conduct an evidentiary hearing. Doc. #58. Debtors wish to provide expert testimony that their 25% interest is less than one-quarter of the appraised value of Property. Debtors also insist that the 15% pre-payment penalty should at least be added to the value of the Flifet deed of trust. *Id.* Debtors include a copy of the note, which provides:

> In the event this loan is paid in full before March 3rd, 2023, a penalty of Fifteen percent (15%) of the outstanding principal balance at the time of prepayment shall be made as a prepayment charge in addition to the payments due hereunder. Such prepayment charge shall apply to any Trustor sale, conveyance, or alienation as outlined below that result in this loan being paid in full before March 3, 2023.

Doc. #59, Ex. E. However, Debtors do not provide authority that this penalty should apply for lien avoidance purposes.

Debtors also note that QMS provides no authority for avoiding the lien on part of the parcel but letting it remain on another. Doc. #58.

This matter shall proceed as a scheduling conference. The parties shall be prepared to schedule an early evidentiary hearing. As noted at the last hearing, this matter is a contested matter and the federal rules of discovery apply. Rule 9014(c).

The factual issues are:

1. The value of the Property.

2. Whether the value of Debtor's interest is less than 25% of the value of the Property.

The legal issues are:

1. The method of calculating Debtors' 25% equity interest in the Property.

2. Should the pre-payment penalty be used to reduce the value of the Property or increase the amount owing to the first deed of trust holder for purposes of determining the net amount available for judgment liens?

3. Can the court avoid a judgment lien under § 522(f) on part of one parcel but leave it entirely intact as to another part of the same parcel?

The court will CONTINUE this matter. An evidentiary hearing date and the parties' filing deadlines will be determined at the hearing.

3. 21-11643-B-7 **IN RE: GUADALUPE MARISCAL**
JHW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-8-2021 [12]

AMERICREDIT FINANCIAL
SERVICES, INC./MV
MARK ZIMMERMAN/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

Americredit Financial Services, Inc. ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2018 Chevrolet Trax ("Vehicle"). Doc. #12.

Debtor filed non-opposition on July 19, 2021. Doc. #21. 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 U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least nineteen (19) payments. The movant has produced evidence that debtor is delinquent at least $9,757.57. Doc. #18.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. *Id.* The Vehicle is valued at $20,125.00 and debtor owes $26,129.68. Doc. #15, #16.

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.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least nineteen (19) payments to Movant and the Vehicle is a depreciating asset. No other relief is awarded.

4. 20-13744-B-7 **IN RE: BILLY WILLIFORD**
DMG-1

MOTION TO AVOID LIEN OF HARCO NATIONAL INSURANCE COMPANY
7-26-2021 [16]

BILLY WILLIFORD/MV
D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Billy Ray Williford ("Debtor") seeks to avoid a judicial lien in favor of Harco National Insurance Company ("Creditor") in the amount of $3,584.67 and encumbering residential real property located at 5900 Lawsanne St., Bakersfield, CA 93308 ("Property"). Doc. #16.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Federal Rules of Bankruptcy Procedure ("Rules").

Rule 4003(d) requires that proceedings to avoid a lien under 11 U.S.C. § 522(f) "shall be commenced by motion in the manner provided in Rule 9014." Rule 9014(b) requires motion in contested matters to be served upon the parties against whom relief is being sought pursuant to 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 attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 7004(b)(3).

Here, Debtor attempted to serve Creditor by certified mail addressed to:

> Stephen Stephano
> President of Harco National Insurance
> 1701 Gold Rd, Suite 1-600
> Rolling Meadows, IL, 60008

Doc. #20. However, Stephano does not appear to Creditor's current President. Creditor's latest Statement of Information was filed with the California Secretary of State on April 2, 2021 and can be located at http://businesssearch.sos.ca.gov by searching for Creditor directly. This Statement indicates that Creditor's CEO is David Pirrung, whose mailing address is 4200 Six Forks Road, Suite 1400, Raleigh, North Carolina 27609.

Debtor also served Creditor's state court counsel in the underlying state court action at:

> Todd Hanes
> 30495 Conwood St #100
> Agoura Hille, CA 91301.

Ibid. However, Debtor has not provided any evidence that Hanes is either explicitly or implicitly appointed by Creditor to receive service of process on its behalf. It cannot be presumed that Hanes is implicitly or explicitly authorized to receive service of process simply because he represented Creditor in the state court action. *See Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93 (B.A.P. 9th Cir. 2004) ("An implied agency to receive service is not established by representing a client in an earlier action. We cannot presume from [state court attorney]'s handling the litigation that resulted in the judicial lien that he is also authorized to accept service for a motion to avoid judicial lien.") (internal citation omitted); *see also Rubin v. Pringle (In re Focus Media, Inc.)*, 387 F.3d 1077, 1083 (9th Cir. 2004) (a former attorney must have explicit or implicit authority from the client to accept service under Rule 7004(b)); *cf. Frates v. Wells Fargo, N.A. (In re Frates)*, 507 B.R. 298, 303-05 (B.A.P. 9th Cir. 2014) ("[F]ailure to serve the judgment creditor's attorney listed on the abstract of judgment with the notice and motion to avoid the judgment creditor's lien was not an appropriate basis for the bankruptcy court to deny their request for entry of an order by default.").

Debtor also could have served Creditor's registered agent for service of process, C T Corporation System (C0168406), to comply with Rule 7004(b). C T Corporation System's mailing address is 28 Liberty St., New York, NY 10005 and its service address at 330 N. Brand Blvd., Glendale, CA 91203. Either of these addresses would have been sufficient.

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

5. 21-11553-B-7 **IN RE: FRANCISCO VAZQUEZ MORENO**
KMM-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-8-2021 [15]

NISSAN-INFINITY LT/MV
VINCENT QUIGG/ATTY. FOR DBT.
KIRSTEN MARTINEZ/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.

Nissan-Infiniti LT ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2019 Nissan Maxima ("Vehicle"). Doc. #15.

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

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

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

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least three pre-petition payments. The movant has produced evidence that debtors are delinquent at least $1,886.48, including late fees. Doc. #17.

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

6. 15-11756-B-7 **IN RE: EPHRAIM AGUIRRE**
EJA-3

MOTION TO AVOID LIEN OF CALVARY SPV I, LLC
6-30-2021 [19]

EPHRAIM AGUIRRE/MV
ADRIAN WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Pro se debtor Ephraim Joe Aguirre ("Debtor") moves to avoid a judicial lien in favor of Cavalry SPV I, LLC ("Creditor") in the amount of $11,011.41 and encumbering residential real property located at 435 S. Monterey Avenue, Coalinga, CA 93210 ("Property"). Doc. #19.

Debtor properly served Creditor's registered agent for service of process, C T Corporation System, by certified mail on June 30, 2021. Doc. #23. Debtor has complied with Federal Rules of Bankruptcy Procedure ("Rules") 7004(b)(3) and (b)(8).

No party in interest timely filed written opposition. This matter will proceed as scheduled and the 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). 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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a

plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The court notes one procedural issue. Service on Creditor is sufficient under Rule 7004(b)(3) and (b)(8) because Creditor was served through its registered agent for service of process: C T Corporation System. Doc. #23. However, Debtor also directed service to Creditor's "Manager of CAVALRY SPV I, LLC" while attempting to serve creditor. *Id.* There is a split in authority regarding whether service on an unnamed officer is proper under Rule 7004(b)(3). *Addison v. Gibson Equip. Co. (In re Pittman Mech. Contractors)*, 180 B.R. 604 (Bankr. E.D. Va. 1995) ("Attn: President" is insufficient for service under Rule 7004(b)(3)); *cf. Schwab v. Assocs. Commercial Corp. (In re C.V.H. Transp., Inc.)*, 254 B.R. 331, 332-34 (Bankr. M.D. Pa. 2000) (finding that service directed to unnamed "officer, managing or general agent, or to any other agent authorized by law to receive service of process" was sufficient under Rule 7004(b)(3)).

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

Service here is sufficient because the registered agent for service of process was properly served. But addressing service merely to a "Manager of CAVALRY SPV I, LLC" by itself would not comply with Rule 7004(b)(3). Had the registered agent not been served, the motion would have been denied for failing to list the name of the officer authorized to receive service.

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

Here, a judgment was entered against Debtor in favor of Creditor in the sum of $11,011.41 on November 18, 2013. Doc. #22, Ex. 2. The abstract of judgment was issued and recorded in Fresno County on February 19, 2014. *Id.* That lien attached to Debtor's interest in Property. Doc. #21.

As of the petition date, Property had an approximate value of $167,753.00. Doc. #1, *Schedule A/B*. The unavoidable liens totaled

$233,318.33 on that same date, consisting of a deed of trust in favor of Beneficial Mortgage. Doc. #1, *Schedule D*. Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $19,939.00. Doc. #24, *Am. Schedule C*. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property		$167,753.00
Total amount of unavoidable liens	-	$233,318.33
Extent unavoidable liens under-secured	=	**($65,565.33)**
Debtor's wildcard exemption	-	$19,939.00
Creditor's judicial lien	-	$11,011.41
Extent Debtors' exemption impaired	=	**($96,515.74)**

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

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

7. 19-13569-B-7 **IN RE: JOHN ESPINOZA**
JES-2

MOTION FOR COMPENSATION FOR JAMES SALVEN, ACCOUNTANT(S)
6-30-2021 [112]

JAMES SALVEN/MV
JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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 amount of $4,056.84, consisting of $3,808.00 in fees and $248.84 in costs for services rendered from May 6, 2021 through June 28, 2021. Doc. #112.

Trustee declares that he has reviewed the fee application, believes that all fees and expenses are reasonable and necessary for the administration of the estate, and has no objection to those fees and expenses. Doc. #115.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the

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

The court notes that the exhibit document filed with this motion does not comply with LBR 9004-2(d)(2) and (3), which require exhibit pages to be consecutively numbered and include an exhibit index at the start of the document that lists and identifies each exhibit individually by exhibit number or letter and the page number at which each exhibit is found within the exhibit document. Here, the exhibit document contained neither an index nor consecutively numbered pages. While this error is *de minimis* in this instance because the exhibits consist of only three pages in total, Applicant should ensure strict procedural compliance with the local rules in future matters.

On June 1, 2021, the court approved Applicant's employment effective for services rendered on or after May 1, 2021 under 11 U.S.C. §§ 327, 330, and 331.[3] Doc. #111. No compensation was permitted except upon court order following application pursuant to § 330(a) and 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.

Applicant provided 13.60 hours of accounting services at an hourly rate of $280.00 per hour totaling **$3,808.00**. Doc. #116, Ex. A. Applicant also incurred **$248.84** in expenses as follows:

Copies (159 @ $0.25)		$39.75
Envelopes (5 @ $0.20)	+	$1.00
Lacerte Tax Proc	+	$181.00
Fee App Service (21 @ $1.29)	+	$27.09
Total Costs	**=**	**$248.84**

[3] The motion authorizing Applicant's employment was filed on May 21, 2021. Doc. #104. The presumptive 30-day time frame for employment orders prescribed in LBR 2014-1(b)(1) and Fed. R. Bankr. P. 2014(a) would have allowed employment to be effective as of April 21, 2021. This discrepancy is *de minimis* because Applicant did not begin accruing fees until May 6, 2021. Doc. #116, Ex. A.

Id., Ex. B. These combined fees and expenses total **$4,056.84.**

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."

Applicant's services included, without limitation: (1) conflict review and preparing the employment application[4] (JES-1); (2) reviewing documents filed in the bankruptcy case and related adversary proceeding to determine status; (3) determining tax basis and attributes and running tax planner under various assumptions to determine tax liability; (4) preparing and transmitting Form 593; (5) processing, finalizing, and transmitting tax returns; and (6) preparing and filing final fee application (JES-2). *Id.*, Ex. A. The court finds the services reasonable and necessary and the expenses actual and necessary. As noted above, Trustee reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #115.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded $3,808.00 in fees and $248.84 in costs on a final basis pursuant to 11 U.S.C. § 330. Trustee will be permitted in his discretion to pay Applicant $4,056.84 for services rendered to the estate between May 6, 2021 and June 28, 2021.

8. 19-13569-B-7 **IN RE: JOHN ESPINOZA**
THA-3

MOTION TO PAY
7-1-2021 [119]

PETER FEAR/MV
JERRY LOWE/ATTY. FOR DBT.
KELSEY SEIB/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.

Chapter 7 trustee Peter L. Fear ("Trustee") seeks authority to pay administrative tax claims in the amount of $999.00 to the Franchise Tax Board ("FTB") for the tax year ending May 31, 2021. Doc. #119. Trustee also requests to be authorized to pay up to $500.00 for any nominal accrued and assessed interest and fees without further court approval.

[4] Applicant did not charge for preparing, filing, and serving the employment application. Doc. #116, Ex. A.

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

11 U.S.C. § 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:

> (B) any tax—
> (i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title; or
> (ii) attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after commencement of the case;
> (C) any fine, penalty, or reduction in credit relating to a tax of a kind specified in subparagraph (B) of this paragraph; and
> (D) notwithstanding the requirements of subsection (a), a governmental unit shall not be required to file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense[.]

11 U.S.C. § 503(b)(1)(B-D). Under 28 U.S.C. § 960(b), trustees are required to pay estate taxes on or before the date they become due even if the respective tax agency does not file a request for

[5] The court notes that the original notice of hearing contained the wrong hearing date. Doc. #120. Trustee corrected the hearing date on July 6, 2021, but the amended notice still had the wrong courtroom listed. Doc. #125. Later that day, Trustee corrected the hearing location. Doc. #127. This error is *de minimis* because the corrected notice of hearing was still filed and served on 28 days' notice.

administrative expenses. *Dreyfuss v. Cory (In re Cloobeck)*, 788 F.3d 1243, 1246 (9th Cir. 2015).

John Espinoza ("Debtor") filed chapter 7 bankruptcy on August 21, 2019. 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 September 17, 2019. Doc. #2. Trustee moved to employ James E. Salven ("Accountant") to provide accounting services to the estate on May 21, 2021, which was approved by this court on June 1, 2021. Docs. #104; #111. Accountant has prepared the final administrative income tax returns for the bankruptcy estate and advised Trustee that the estate has tax liability of $999.00 due to FTB for Form 541 Income Taxes for the tax year ending May 31, 2021.[6] Doc. #121.

Trustee also believes that there may be nominal interest, fees, or other penalties owing on account of the administrative tax claim. *Id.* Thus, Trustee asks for an order allowing payment to FTB of $999.00, plus an additional $500.00 as a small buffer for any interest or fees so the estate will not need to incur further expense seeking additional approval for a nominal amount of tax liability.

This motion was fully noticed and no party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Trustee will be authorized to pay, in Trustee's discretion, $999.00 to FTB for Form 541 Income Taxes for the tax year ending May 31, 2021. Further, Trustee will be authorized to pay an additional amount not to exceed $500.00 for any unexpected tax liabilities without further court approval.

9. 20-12969-B-7 **IN RE: CARLOS CORTES AND BERTHA SPINDOLA**
ADJ-2

CONTINUED MOTION FOR TURNOVER OF PROPERTY
3-15-2021 [22]

IRMA EDMONDS/MV
SCOTT LYONS/ATTY. FOR DBT.
ANTHONY JOHNSTON/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The parties executed a settlement agreement resolving this matter in their related adversary proceeding on June 16, 2021. *Edmonds v. Cortes et al*, adv. proc. no. 21-01012, Doc. #23, Ex. A. The court

[6] Trustee also notes that the final administrative tax returns indicate that zero dollars ($0.00) are due and owing to the Internal Revenue Service. Doc. #121.

approved the agreement on July 30, 2021. Doc. #34. Accordingly, this motion will be dropped as moot.