

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, August 11, 2021
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court will begin in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [21-10853](#)-A-12 **IN RE: MIKE WEBER**

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION
4-6-2021 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

2. [21-10853](#)-A-12 **IN RE: MIKE WEBER**
[FW-2](#)

MOTION TO CONFIRM CHAPTER 12 PLAN
7-6-2021 [[28](#)]

MIKE WEBER/MV
PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

3. [21-10853](#)-A-12 **IN RE: MIKE WEBER**
[FW-3](#)

MOTION TO AVOID LIEN OF RAVEN FAMILY FARMS AND/OR MOTION TO
AVOID LIEN OF ROBERT TERAOKA
7-14-2021 [[45](#)]

MIKE WEBER/MV
PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Set discovery schedule over disputed valuation.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). On July 27, 2021, creditors Raven Family Farms ("Raven") and Robert Teraoka ("Teraoka") filed written opposition jointly opposing the valuation of the property asserted by Mike Henry Weber ("Debtor"). Doc. #75. On August 4, 2021, Debtor replied, contesting the valuation method employed by Raven and Teraoka. Doc. #103. The failure of other 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). Therefore, the defaults of the non-responding parties in interest are entered.

Debtor moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial liens of Raven and Teraoka on Debtor's real property located at 11921 South De Wolf Avenue, Selma, CA 93662 (the "Property"). Doc. #45; see Schedules A/B and C, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the 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). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)). A lien is considered to impair an exemption if the sum of the lien to be avoided, all other liens on the property, and the amount of exemption exceed the value the debtor's interest in the property would have in the absence of any liens. 11 U.S.C. § 522(f)(2). Section 522(a)(2) defines "value" as "fair market value as of the date of the filing of the petition." 11 U.S.C. § 522(a)(2); In re Meeks, 349 B.R. 19, 21 (Bankr. E.D. Cal. 2006). As the moving party, Debtor carries the burden of proof on all factors on a motion to avoid a judicial lien. Meeks, 349 B.R. at 21-22.

Debtor asserts a value of the Property of \$1,200,000. Schedule A/B, Doc. 1; Decl. of Debtor ¶ 3, Doc. #47. Debtor argues that under the arithmetical formula required by § 522(f)(2)(A), there is insufficient equity to support the judicial liens of Raven and Teraoka and the liens impair Debtor's exemption. Doc. #45.

Raven and Teraoka contend that the fair market value of the Property is \$1,730,000. Doc. #75; Decl. of Carole Laval, Doc. #76. With a value of \$1,730,000, under the arithmetical formula required by § 522(f)(2)(A) there is sufficient equity to support both Raven and Teraoka's judicial liens, and so the liens do not impair Debtor's exemption. Doc. #75.

For their valuation, Raven and Teraoka rely on the declaration of Carole Laval, a licensed real estate appraisal, and statements contained in motions filed by Debtor during this bankruptcy case. Doc. #75. Debtor argues that this valuation does not value the Property as of the petition date of April 6, 2021, which is required by the Bankruptcy Code. Doc. #103.

The value of the Property is a disputed material factual issue that must be resolved before the relief requested in the motion can be granted or denied. The court will treat the hearing date as a scheduling conference pursuant to LBR 9014-1(g)(4)(C).

To resolve the dispute over the value of the Property, Debtor suggests that the court provide a deadline for an appraiser hired by Raven and/or Teraoka to complete an appraisal "using the correct standards" raised by Debtor in his reply and serve that appraisal on counsel for Debtor. Doc. #75. Depending on the results of that appraisal, Debtor may then require additional time to obtain his own appraisal. Doc. #75. At the scheduled hearing, the parties should be prepared to address Debtor's proposed schedule to resolve the dispute over valuation of the Property.

MOTION TO VALUE COLLATERAL OF FAST AUTO LOANS, INC. DBA FAST
AUTO AND PAYDAY LOANS
7-14-2021 [\[56\]](#)

MIKE WEBER/MV
PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Mike Henry Weber ("Debtor"), the chapter 12 debtor, moves the court for an order valuing Debtor's 2011 GMC Sierra 2500 Crew Cab SLE ("Property"), which is the collateral of Fast Auto Loans, Inc. d/b/a Fast Auto and Payday Loans ("Creditor"). Doc. #58. Debtor values the Property at \$17,500.00. Decl. of Debtor, Doc. #58.

Although Creditor has not filed a proof of claim, Debtor's proposed chapter 12 plan places Creditor in Class 7 as the holder of a claim secured by the Property. Plan, Doc. #30. Creditor shall retain its lien until all payments required by the chapter 12 plan have been made. Doc. #30. Creditor's secured claim is valued at \$17,500.00, and any unsecured amount shall be treated as a general unsecured claim in Class 12. Doc. #30.

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

Debtor asserts a value of the Property of \$17,500.00 and asks the court for an order valuing the Property at \$17,500.00. Doc. #56; Doc. #58. Debtor is competent to testify as to the value of the Property. Given the absence of contrary evidence, Debtor's opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at \$17,500.00. The proposed order shall specifically identify the collateral, and if

applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the Chapter 12 plan.

5. [21-10853](#)-A-12 **IN RE: MIKE WEBER**
[FW-5](#)

MOTION TO SELL FREE AND CLEAR OF LIENS
7-14-2021 [\[39\]](#)

MIKE WEBER/MV
PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

6. [21-10853](#)-A-12 **IN RE: MIKE WEBER**
[FW-6](#)

MOTION TO BORROW
7-14-2021 [\[50\]](#)

MIKE WEBER/MV
PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

7. [20-13293](#)-A-11 **IN RE: PATRICK JAMES, INC.**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V
VOLUNTARY PETITION
10-9-2020 [\[1\]](#)

HAGOP BEDOYAN/ATTY. FOR DBT.

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

The status conference will be dropped as moot based on the granting of the motion for final decree. See #8 below.

MOTION FOR FINAL DECREE
7-13-2021 [\[341\]](#)

HAGOP BEDOYAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

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

Patrick James, Inc. ("Debtor") moves the court for entry of the final decree pursuant to 11 U.S.C. § 350 and Federal Rule of Bankruptcy Procedure ("Rule") 3022. Doc. #341. Debtor also requests termination of the service of the subchapter V trustee pursuant to 11 U.S.C. § 1183(c)(1).

"After an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on a motion of a party in interest, shall enter a final decree closing the case." Rule 3022.

Neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure define "full administration" of a chapter 11, subchapter V case, but the Advisory Committee Note to the 1991 amendments to Rule 3022 outline several factors the court should consider when making that determination. They include: (a) whether the confirmation order is final; (b) whether property proposed to be transferred under the plan has been transferred; (c) whether the debtor or successor to the debtor under the plan has assumed the business and management of the property dealt with under the plan; (d) whether the payments under the plan have commenced; and (e) whether all motions, contested matters, and adversary proceedings have been resolved.

The court finds that the order confirming the plan has become final, Debtor has assumed the business and management of the property dealt with under the plan, payments under the plan have commenced, and that all motions, contested matters, and adversary proceedings have been resolved. Decl. of Patrick M. Mon Pere, Doc. #343.

Walter R. Dahl, the subchapter V trustee, supports Debtor's motion and states that the plan has been substantially consummated. Doc. #345.

Accordingly, this motion is GRANTED and a final decree shall be entered closing this case pursuant to the subchapter V plan, Rule 3022, and 11 U.S.C. § 350. The plan has been substantially consummated and the service of the subchapter V trustee in this case is terminated pursuant to 11 U.S.C. § 1183(c).

1. [21-11215](#)-A-7 **IN RE: GABRIEL/LUXILA GALLEGOS**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION
7-16-2021 [\[22\]](#)

MONICA ROBLES/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

The debtors' counsel will inform the debtors that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. The debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), if a 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. Okla. 2009). The reaffirmation agreement, in the absence of a declaration by the debtors' counsel, does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

2. [21-11497](#)-A-7 **IN RE: SATISH KUMAR AND PAWANDEEP JANGHUUMAR**

REAFFIRMATION AGREEMENT WITH AMERICREDIT FINANCIAL SERVICES, INC.
7-22-2021 [\[22\]](#)

GLEN GATES/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

NO ORDER REQUIRED.

The debtors' counsel shall notify the debtors that no appearance is necessary.

No hearing or order is required. The form of the Reaffirmation Agreement complies with 11 U.S.C. §§ 524(c) and 524(k), and it was signed by the debtors' attorney with the appropriate attestations. Pursuant to 11 U.S.C. § 524(d), the court need not approve the agreement.

1. [18-14207](#)-A-7 **IN RE: ELMER/KATHLEEN FALK**
[FW-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
WITH ELMER LEROY FALK AND TANYA MOORE
7-13-2021 [\[118\]](#)

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

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

DISPOSITION: Granted.

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

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

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Elmer Leroy Falk and Kathleen Elizabeth Falk (together, "Debtors"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of all claims and disputes asserted in the adversary proceeding no. 20-01057 styled Salven v. Moore et al. ("Adversary Proceeding"). Doc. #118.

Trustee commenced the Adversary Proceeding against defendants Tanya Moore, Moore Law, and the probate estate of Elmer Leroy Falk, Jr. alleging a preference action under 11 U.S.C. § 547, recovery of actual and constructive fraudulent transfers pursuant to 11 U.S.C. §§ 548 and 542, avoidance of unauthorized post-petition transfers under 11 U.S.C. §§ 549 and 550, turnover pursuant to 11 U.S.C. § 542, and declaratory judgment. Decl. of Trustee, Doc. #120. The Adversary Proceeding was referred to the Bankruptcy Dispute Resolution Panel. Id. While claims in this bankruptcy case initially exceeded \$5 million, at the time of mediation, the claims pool had shrunk to approximately \$60,000. Id. As a result of the Bankruptcy Dispute Resolution Panel mediation, a settlement agreement has been proposed, pending bankruptcy court approval. Id.; Ex. A, Doc. #121. The settlement agreement calls for Moore Law to make 16 monthly payments to Trustee for the total sum of \$56,000. Ex. A, Doc. #121. The payment obligation of Moore Law will be secured by a junior deed of trust on real property of Tanya Moore. Id. Trustee shall dismiss the

Adversary Proceeding with prejudice after the effective date of the settlement agreement. Id.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #118. Trustee contends the probability of success is uncertain. Trustee Decl., Doc. #120. The debtor, who was Trustee's primary source for discovery other than the defendants, passed away after the Adversary Proceeding was initiated. Id. Trustee believes that the uncertainties favor settlement. Trustee believes that the terms of the settlement agreement reflect the best opportunity for a recovery in the Adversary Proceeding. Id. Should the Adversary Proceeding continue, contested discovery and dispositive motions would be certain, and litigation would likely continue for many months. Id. Trustee believes in his business judgment that the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Id. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id.

Accordingly, the motion is GRANTED, and the settlement of the Adversary Proceeding on the terms and conditions set forth in Exhibit A, Doc. #121, is approved. Trustee is authorized, but not required, to execute any and all documents necessary to effectuate and satisfy the terms of the proposed settlement agreement.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

2. [21-11017](#)-A-7 **IN RE: DAVID/DIANE EBEL**
[ADE-2](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
7-20-2021 [\[28\]](#)

ALAN EIGHMEY/ATTY. FOR DBT.
ORIGINALLY NOTICED FOR 8/25/21, WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on August 3, 2021. Doc. #35.

3. [21-10920](#)-A-7 **IN RE: CANDELARIA DE RUIZ**
[MOT-2](#)

MOTION TO AVOID LIEN OF WELLS FARGO FINANCIAL NATIONAL BANK
7-8-2021 [\[23\]](#)

CANDELARIA DE RUIZ/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.

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

Candelaria Canales De Ruiz ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Wells Fargo Financial National Bank fka Norwest Financial National Bank Inc. ("Creditor") on the residential real property commonly referred to as 2768 Merlot Street, Selma, CA 93662 (the "Property"). Doc. #23; Schedule C, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be

entitled under § 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtor filed the bankruptcy petition on April 14, 2021. Doc. #1. A judgment was entered against Candelaris C. Ruiz in the amount of \$724.76 in favor of Creditor on July 1, 2010 and renewed on February 13, 2020. Ex. A, Doc. #26. Debtor values Creditor's judgment lien at \$4,525.00. Schedule D, Doc. #1. The abstract of judgment was originally recorded pre-petition in Fresno County on August 1, 2011, and again on January 21, 2021. Ex. A, Doc. #26. The lien attached to Debtor's interest in the Property located in Fresno County. Doc. #25. The Property also is encumbered by a deed of trust in favor of Mr. Cooper in the amount \$29,771.04.00. Schedule D, Doc. #1. Debtor claimed an exemption of \$300,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$281,575.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$4,525.00
Total amount of all other liens on the Property (excluding junior judicial liens)	+	29,771.04
Amount of Debtor's claim of exemption in the Property	+	300,000.00
		\$334,296.04
Value of Debtor's interest in the Property absent liens	-	281,575.00
Amount Creditor's lien impairs Debtor's exemption		\$52,721.04

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

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

4. [21-11522](#)-A-7 **IN RE: JEFFREY MARQUEZ**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-13-2021 [\[12\]](#)

SANTANDER CONSUMER USA INC./MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.
NON-OPPOSITION

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

DISPOSITION: Granted.

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

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

The movant, Santander Consumer USA Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2013 Nissan Cube ("Vehicle"). Doc. #12. The debtor does not oppose the motion. Doc. #19.

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 any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least six complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$3,746.55, which includes late fees of \$682.93, recovery fees in the amount of \$415.00, storage fees in the amount of \$152.00 and fees for insufficient funds of \$15.00. Doc. #16.

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 the debtor is in chapter 7. Id. The Vehicle is valued at \$7,850.00 and the debtor owes \$11,105.42. Doc. #16.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. The Vehicle was recovered pre-petition on May 10, 2021 and is being held pending relief from stay. Doc. #12.

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

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-9-2021 [\[22\]](#)

VICKIE MULLINS/MV
JUSTIN HARRIS/ATTY. FOR DBT.
PAUL READY/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Debtor Esperanza Hansen Gonzalez ("Debtor") timely filed written opposition on July 28, 2021. Doc. #36. The movants Ron Mullins and Vickie Mullins (collectively, "Movants") replied to the opposition on July 30, 2021. Doc. #40. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered. This matter will proceed as scheduled.

The court has considered the motion and supporting pleadings, opposition and supporting pleadings, and reply and supporting pleadings. After due consideration, this motion will be GRANTED for cause shown to permit Movants to take the necessary actions to proceed to entry of final judgment in the state court action proceeding under the auspices of Ron and Vickie Mullins v. Esperanza Hansen, Case No. 17CV0030 (consolidated with 18CVP-0323), Superior Court of California, County of San Luis Obispo ("State Court Action") and to perfect Movants' prepetition attachment lien. Movants do not seek to take steps to enforce the judgment but will await the bankruptcy claims process. Doc. #25.

Factual Background

Movants commenced an unlawful detainer action against Debtor on September 26, 2018. Decl. of Martin P. Moroski ¶ 4, Doc. #26. After Debtor vacated the premises, Movants filed their operative first amended complaint for breach of contract on October 23, 2018. Moroski Decl. ¶ 4, Doc. #26. Concurrently, a separate civil case was pending against Debtor in the Superior Court of San Luis Obispo. Moroski Decl. ¶ 5, Doc. #26. On motion of Debtor, both cases were consolidated into the State Court Action in March 2019. Moroski Decl. ¶ 5, Doc. #26. No other party to the State Court Action has requested relief from the automatic stay. Decl. of Debtor ¶ 3, Doc. #37.

Prior to the trial of the State Court Action, Movants obtained and recorded a prejudgment writ of attachment against Debtor's Tulare County properties. Moroski Decl. ¶ 6, Doc. #26. Movants recorded the notice of attachment in Tulare County on January 15, 2020. Moroski Decl. ¶ 8, Doc. #26; Ex. B, Doc. #27.

Trial in the State Court Action began on December 17, 2019. Moroski Decl. ¶ 9, Doc. #26. In December 2020, Debtor filed a complaint with the Commission on Judicial Performance against Linda Hurst, the presiding judge in the State Court Action. Decl. of Debtor ¶ 4, Doc. #37. An investigation stemming from that complaint is ongoing. Id. After a full trial, the state court presented a proposed statement of decision to the parties of the State Court Action on February 8, 2021, giving the parties to the State Court Action ten days to comment. Decl. of Debtor ¶ 5, Doc. #37. On February 18, 2021, Debtor objected to the proposed statement of decision. Id. The state court considered Debtor's objection but made no changes to the proposed statement of decision, and on March 19, 2021, the Final Statement of Decision was entered in the State Court Action. Decl. of Debtor ¶ 6, Doc. #37; Moroski Decl. ¶¶ 9-10, Doc. #26; Ex. C, Doc. #27. The Final Statement of Decision, specifically addressing Movants' action against Debtor, awarded Movants \$106,484.96 plus attorney fees and costs. Ex. C, Doc. #27; Moroski Decl. ¶ 9, Doc. #26. Movants filed a motion for attorney's fees to be heard in the State Court Action on April 27, 2021, but the hearing on that motion was stayed by the filing of Debtor's bankruptcy petition on April 23, 2021. Moroski Decl. ¶ 11, Doc. #26.

Debtor's Opposition

Debtor opposes granting Movants relief from the automatic stay. Doc. #36. Debtor alleges that granting relief from the automatic stay would create a "procedural quagmire" because the state court would essentially have to bifurcate its judgment in the State Court Action to deal only with Movants' action against Debtor. Debtor's Opp'n 2:15, Doc. #36. Debtor acknowledges that the Final Statement of Decision provided as Exhibit C to Movants' request for judicial notice is a true and correct copy of the decision. Decl. of Debtor ¶ 6, Doc. #37. The court takes judicial notice of the Final Statement of Decision pursuant to Federal Rule of Evidence 201.

The Final Statement of Decision entered by the court in the State Court Action addresses Movants' action against Debtor as separate and distinct from any other action against Debtor. Ex. C, Doc. #27. Accordingly, the court finds that granting relief from the automatic stay would not cause a procedural quagmire or unnecessarily complicate the State Court Action.

Debtor also opposes granting relief from the automatic stay because a retrial of the State Court Action could be forthcoming once the judicial complaint investigation is resolved in Debtor's favor. Debtor's Opp'n 3:1, Doc. #36. Additionally, Debtor argues that the errors raised by Debtor's objection to the state court's proposed statement of decision have not been resolved and the entry of the Final Statement of Decision was in error. Debtor's Opp'n 3:14, Doc. #36; Decl. of Debtor ¶¶ 6-10, Doc. #37. Debtor also takes issue with the state court's handling of exhibits during the trial in the State Court Action. Id. Debtor argues that these errors are appealable and will be appealed, and therefore relief from the automatic stay should not be granted. The court finds, however, that the bankruptcy court is not the appropriate forum for Debtor to raise or resolve challenges to the proceedings of the ongoing State Court Action. In the words of the Supreme Court of California, "[f]or our justice system to function, it is necessary that litigants assume responsibility for the complete litigation of their cause during the proceedings." Silberg v. Anderson, 50 Cal. 3d 205, 214 (1990).

Finally, Debtor opposes granting relief from the automatic stay because the bankruptcy court can more efficiently adjudicate Movants' claims. Debtor's Opp'n 4:6, Doc. #36. As more fully discussed below, the state court has already conducted a full trial in the State Court Action. It simply would not be more efficient for the bankruptcy court to adjudicate Movants' state court claims.

The points raised by Debtor in opposition to this motion do not weigh against granting relief from the automatic stay.

Cause Exists to Lift the Stay

Movants request relief from the automatic stay under 11 U.S.C. § 362(d)(1). Doc. #22. Section 362(d)(1) allows the court to grant relief from the stay for cause. Movants seek relief from the automatic stay to enter a final judgment in the State Court Action and to perfect a pre-petition attachment lien. The court will first address relief from stay to allow the State Court Action to enter final judgment and award costs and fees. "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).

Movants seek relief from stay for cause based on permissive abstention pursuant to 28 U.S.C. § 1334(c)(1). "Where a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues, cause may exist for lifting the stay as to the state court trial." Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162, 1166 (9th Cir. 1990). Moreover, the legislative history of § 362(d)(1) states that "a desire to permit an action to proceed to completion in another tribunal may provide [] cause" for relief from a stay. H.R. No. 595, 95th Cong., 1st Sess. 343, 1977 U.S. Code Cong. & Admin. News 5787, 630.

In Tucson Estates, the Ninth Circuit set forth the following factors for a bankruptcy court to consider when deciding whether to abstain from exercising jurisdiction:

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention;
- (2) the extent to which state law issues predominate over bankruptcy issues;
- (3) the difficulty or unsettled nature of the applicable law;
- (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court;
- (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334;
- (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;
- (7) the substance rather than form of an asserted "core" proceeding;
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- (9) the burden of [the bankruptcy court's] docket;
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;

(11) the existence of a right to a jury trial; and

(12) the presence in the proceeding of nondebtor parties.

Tucson Estates, 912 F.2d at 1166-67 (quoting In re Republic Reader's Serv., Inc., 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987)). Applying the Tucson Estates factors, the court finds these factors support permissive abstention, and therefore relief from the automatic stay, as follows:

1. Effect on Administration of the Estate if Court Abstains: Granting relief from stay to permit the state court to enter final judgment, including the determination of attorney's fees and costs, in the State Court Action will permit final resolution of Movants' claims against Debtor. The State Court Action has proceeded beyond the trial stage and the state can quickly enter a final judgment. Withholding relief from the automatic stay would burden the administration of Debtor's bankruptcy estate. Abstention therefore would facilitate the administration of the estate. This factor weighs in favor of permissive abstention.
2. Extent to Which State Law Issues Predominate: The State Court Action sounds in contract and state law issues predominate over bankruptcy issues. This factor weighs in favor of permissive abstention.
3. Difficulty or Unsettled Nature of Applicable Law: The State Court Action does not include difficult or unsettled questions of law. However, Debtor has indicated a desire to appeal the decision in the State Court Action. This factor weighs in favor of permissive abstention.
4. Presence of Pending Related Proceeding: The State Court Action is pending in the California state court and could be finally resolved if the automatic stay is lifted. The State Court Action has conducted a full trial on the issues. This factor weighs in favor of permissive abstention.
5. The Jurisdictional Basis Other than 28 U.S.C. § 1334: The only basis for jurisdiction appears to be 28 U.S.C. § 1334. This factor weighs in favor of permissive abstention.
6. Degree of Relatedness or Remoteness of the Proceeding to the Bankruptcy Case: While the determination of Debtor's liability to Movants is directly related to the administration of Debtor's bankruptcy case by liquidating Movants' claim against Debtor, the causes of action to be resolved in the State Court Action are not otherwise connected to the bankruptcy estate or Debtor's bankruptcy-related conduct. Determination of Movants' claim against Debtor would be greatly facilitated by the issuance of a final award in the State Court Action, which has already progressed past trial. This factor weighs in favor of permissive abstention.
7. Substance of the Asserted Core Proceeding: The State Court Action does not involve a core proceeding. This factor weighs in favor of permissive abstention.
8. Feasibility of Severing State Law Claims from Core Bankruptcy Matters: The State Court Action involves only non-core state law claims. This factor weighs in favor of permissive abstention.

9. Burden of Bankruptcy Court's Docket: The State Court Action has already progressed beyond trial and is in the final stages. Lifting the automatic stay to permit the state court to enter a final judgment would ease the burden on this court's docket. This factor weighs in favor of permissive abstention.
10. Likelihood of Forum Shopping: Because Debtor filed a bankruptcy case on the eve of the state court finalizing the award and hearing Movants' motion for attorney's fees in the State Court Action, it appears Debtor may be forum shopping to have this court try anew the evidence already presented in the trial of the State Court Action. This factor weighs in favor of permissive abstention.
11. Existence of Right to Jury Trial: The right to a jury trial is not implicated with respect to the State Court Action because the State Court Action has already held a trial and a Final Statement of Decision has been filed by the state court. This factor is neutral with respect to permissive abstention.
12. Presence of Non-Debtor Parties in Related Proceeding: While the State Court Action was tried as a consolidated at the request of Debtor and involves non-debtor parties, Movants' claims are solely against Debtor and Movants are named as cross-defendants solely by Debtor. Ex. C at 12:19 - 16:15, Doc. #27 This factor weighs against permissive abstention.

Given that most of the Tucson Estates factors weigh in favor of this court abstaining from exercising its jurisdiction over the claims between Movants and Debtor that are already the subject of the State Court Action, the court finds that cause exists to lift the automatic stay to permit Movants to take the necessary actions to finalize the State Court Action and enter any award in the State Court Action.

In addition to the analysis under Tucson Estates, when a movant seeks relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court may consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in determining whether to grant relief from the automatic stay" to allow litigation in another forum. Id. The relevant Curtis factors include: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the non-bankruptcy forum has the expertise to hear such cases; (4) whether litigation in another forum would prejudice the interests of other creditors; (5) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; (6) whether the litigation in the other forum has progressed to the point where the parties are prepared for trial; and (7) the impact of the automatic stay and the "balance of hurt." In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984). Here, the Curtis factors support finding cause to grant relief from stay as requested in the motion.

Granting relief from stay to permit the state court to finalize the award in the State Court Action will finally resolve Movants' claims against Debtor. When that award is finalized, Movants can participate in the bankruptcy claims process. Moreover, the State Court Action has progressed past trial and the state court has the expertise to hear motions to finalize an award and determine attorney's fees and costs. The state court can readily finalize any award. It is in the interests of judicial economy and more expeditious and

economical to lift the automatic stay to permit the state court to finalize the award in the State Court Action before this court has to try anew all of the matters previously litigated. Because there are minimal additional proceedings that need to be undertaken in the State Court Action to finalize the award, lifting the automatic stay would benefit all parties by permitting the state court to determine fees and costs, enter a final judgment, and liquidate Movants' claims against the bankruptcy estate.

Cause also exists to lift the automatic stay to permit Movants to perfect their pre-petition attachment lien. "The lien created by exercise of the remedy of attachment continues to exist only to the extent authorized by statutory enactment." Arcturus Mfg. Corp. v. Superior Court of Los Angeles County, 223 Cal. App. 2d 187, 191 (1963). An attachment lien "is only a *potential* right or *contingent* lien that must be perfected by means of a judgment within the statutory period." Id. at 191-92 (emphasis in original). The attachment lien becomes "a judgment lien upon judgment for the creditor. The priority of the judgment lien relates back to the date of the attachment lien. Thus, an attachment lien acts as a placemaker, ensuring the creditor's spot in the priority line until the creditor can obtain judgment." Diamant v. Kasparian (In re Southern Cal. Plastics, Inc.), 165 F.3d 1243, 1246 (9th Cir. 1999).

In this case, Movants hold a valid attachment lien but have been prevented from entering a final judgment in the State Court Action by the automatic stay initiated when Debtor filed the bankruptcy petition on April 23, 2021. There is little uncertainty as to whether Movants can obtain judgment in their favor. After conducting a trial, the state court entered a Final Statement of Decision awarding damages and attorney's fees to Movants. This court is granting relief from the automatic stay to permit Movants to determine attorney's fees and costs and to enter a final judgment in the State Court Action. Because Movants have already obtained the potential right to the judgment lien that will relate back to the date of the attachment lien, it follows that, should Movants succeed in obtaining and entering a final judgment, Movants also should be allowed to perfect their attachment lien. Granting relief from the automatic stay to allow Movants to perfect their attachment lien will not adversely impact other creditors or the bankruptcy estate because Movants' pre-petition attachment lien, recorded in January 2020, is the placeholder of the judgment lien.

Accordingly, the court finds that cause exists to lift the stay and this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movants to take the necessary actions to enter any award in the State Court Action and perfect Movants' prepetition attachment lien. No other relief is awarded.

In the request for relief as part of the motion, Movants request waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3). However, Movants have provided no factual basis or legal analysis to support the requested waiver, and so the 14-day stay is not waived.

MOTION TO AVOID LIEN OF BMO HARRIS BANK, N.A.
7-12-2021 [\[19\]](#)

RUPINDERPAL KAUR/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Karmjit Singh and Rupinderpal Kaur (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of BMO Harris Bank N.A. ("Creditor") on their residential real property commonly referred to as 7313 W. Roberts Ave., Fresno, CA 93723 (the "Property"). Doc. #19; Schedule C, Doc. #1.

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

Debtors filed their bankruptcy petition on April 26, 2021. Doc. #1. A judgment was entered against Rupinderpal Kaur in the amount of \$507,849.46 in favor of Creditor on February 8, 2021. Ex. E, Doc. #22. The abstract of judgment was recorded pre-petition in Fresno County on March 30, 2021. Ex. E, Doc. #22. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #21. The Property also is encumbered by a deed of trust in favor of Wells Fargo Home Mortgage the amount \$300,924.00. Am. Schedule D, Doc. #8. Debtors claimed an exemption of \$300,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at \$544,000.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$507,849.46
Total amount of all other liens on the Property (excluding junior judicial liens)	+	300,924.00
Amount of Debtors' claim of exemption in the Property	+	300,000.00
		\$1,108,773.46
Value of Debtors' interest in the Property absent liens	-	544,000.00
Amount Creditor's lien impairs Debtors' exemption		\$564,773.46

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

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

7. [21-10748](#)-A-7 **IN RE: JAMES/PATRICIA FORRESTER**
[FW-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
WITH JAMES M. FORRESTER AND PATRICIA J. FORRESTER
7-7-2021 [\[36\]](#)

PETER FEAR/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
GABRIEL WADDELL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Peter L. Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of James M. Forrester and Patricia J. Forrester (together, "Debtors"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise between Trustee and Debtors regarding the treatment of Debtors' claimed exemption in an income stream based on Debtors' sale of their business in 2011 ("Sale Proceeds"). Doc. #36.

The Sale Proceeds consist of post-petition monthly payments owed to Debtors in the amount of \$3,600 from April 2021 through December 2022, with a final payment in the amount of \$216.05 due on January 1, 2023. Decl. of Trustee, Doc. #38. Debtors claimed an exemption in the Sale Proceeds totaling \$28,903.00. Id. The remaining value of the Sale Proceeds is not exempted. Id. Trustee demanded turnover of the Sale Proceeds. Id. Debtors wish to retain a monthly portion of the payments. Id. Trustee and Debtors have entered into a settlement agreement that permits Debtors to retain \$1,600 of the monthly payments for 9 months beginning July 1, 2021. Id.; Ex. A, Doc. #39. Sale Proceeds will be paid directly to Trustee, who will disburse a reduced amount to Debtors, and Debtors will reduce their claim of exemption to \$25,200, comprised of \$10,800 representing the first three months of post-petition monthly payments and \$14,400 representing Debtors' portion of the next nine post-petition payments. Id.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #36. Trustee would likely succeed in collecting non-exempt portions of the Sale Proceeds, but the settlement agreement provides for a reduced exemption as well as direct payment of the Sale Proceeds to Trustee, which streamlines the turnover process and provides for an increased recovery for the estate. Trustee Decl., Doc. #38. Trustee believes that the terms of the settlement agreement reflect the best opportunity at an efficient recovery of the Sale Proceeds. Id. Trustee believes in his business judgment that the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Id. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id.

Accordingly, the motion is GRANTED, and the settlement is approved on the terms and conditions set forth in Exhibit A, Doc. #39. Trustee is authorized, but not required, to execute any and all documents necessary to effectuate and satisfy the terms of the proposed settlement agreement.

8. [17-11261](#)-A-7 **IN RE: STEVEN/REBECCA COLDREN**
[WJH-2](#)

EVIDENTIARY HEARING RE: MOTION TO AVOID LIEN OF LEAF CAPITAL FUNDING
3-19-2021 [\[55\]](#)

REBECCA COLDREN/MV
RILEY WALTER/ATTY. FOR DBT.
RESOLVED BY STIP AND ORDER ECF #80

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The motion was resolved by stipulation and order entered
on June 25, 2021. Doc. #80.

9. [15-12382](#)-A-7 **IN RE: PARAMJIT/SURINDERPAL BARRING**
[DRJ-2](#)

MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB
7-7-2021 [\[62\]](#)

SURINDERPAL BARRING/MV
DAVID JENKINS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Paramjit Singh Barring and Surinderpal Kaur Barring (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of American Express Bank, FSB ("Creditor") on their residential real property commonly referred to as 5888 South Cherry Ave., Fresno, CA 93706 (the "Property"). Doc. #62; Schedule C, Doc. #1.

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

Debtors filed their bankruptcy petition on June 16, 2015. Doc. #1. A judgment was entered against Paramjit S. Barring a/k/a Jit Singh a/k/a Paramjit Singh Barring a/k/a Param S. Barring in the amount of \$49,229.90 in favor of Creditor on July 21, 2014. Ex. A, Doc. #65. The abstract of judgment was recorded pre-petition in Fresno County on March 2, 2015. Ex. A, Doc. #65. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #30.

The Property also is encumbered by a deed of trust in favor of Chase Manhattan Mortgage Corporation in the amount \$37,250.00. Schedule D, Doc. #1; Ex. C, Doc. #65. The Property is encumbered by a second deed of trust in favor of Chase Manhattan Bank in the amount of \$49,312.59. Schedule D, Doc. #1; Ex. D, Doc. #65. The Property is encumbered by a third deed of trust in favor of Community National Bank in the amount of \$842,500.00. Schedule D, Doc. #1; Ex. E, Doc. #65. Further, the Property is encumbered by a senior judicial lien in favor of Wells Fargo Bank, N.A. in the amount of \$102,978.77 recorded in Fresno County on September 9, 2014. Ex. F, Doc. #65.

Debtors claimed an exemption of \$100,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at \$274,788.00. Schedule A, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$49,229.90
Total amount of all other liens on the Property (excluding junior judicial liens)	+	1,032,041.36
Amount of Debtors' claim of exemption in the Property	+	100,000.00
		\$1,181,271.26
Value of Debtors' interest in the Property absent liens	-	274,788.00
Amount Creditor's lien impairs Debtors' exemption		\$906,483.26

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

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

MOTION TO AVOID LIEN OF MAIN STREET ACQUISITION CORP.
7-8-2021 [\[28\]](#)

ADRIANA ROSS/MV
JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Keith K. Ross and Adriana Ross (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of GLCS, LLC, assignee of Main Street Acquisition Corp ("Creditor"), on their residential real property commonly referred to as 1330 E. Portals Ave., Fresno, CA 93710 (the "Property"). Doc. #28; Am. Schedule C, Doc. #14.

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

Debtors filed their bankruptcy petition on March 10, 2021. Doc. #1. A judgment was entered against Adriana Ross in the amount of \$6,169.69 in favor of Creditor on December 3, 2012. Ex. A, Doc. #31. The abstract of judgment was recorded pre-petition in Fresno County on April 16, 2020. Ex. A, Doc. #31. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #30. The Property also is encumbered by a lien in favor of Arvest Central Mortgage in the amount \$278,469.00. Schedule D, Doc. #1. Debtors claimed an exemption of \$300,000.00 in the Property under California Code of Civil Procedure § 704.730. Am. Schedule C, Doc. #14. Debtors assert a market value for the Property as of the petition date at \$350,000.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$6,169.69
Total amount of all other liens on the Property (excluding junior judicial liens)	+	278,469.00
Amount of Debtors' claim of exemption in the Property	+	300,000.00
		\$584,638.69
Value of Debtors' interest in the Property absent liens	-	350,000.00
Amount Creditor's lien impairs Debtors' exemption		\$234,638.69

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

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

11. [14-10490](#)-A-7 **IN RE: VIOLETA ALVAREZ**
[FW-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
FOR PETER A. SAUER, TRUSTEES ATTORNEY(S)
7-12-2021 [\[69\]](#)

PHILLIP GILLET/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Fear Waddell P.C. ("Movant"), counsel for chapter 7 trustee Peter L. Fear ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from March 19, 2020 through July 9, 2021. Doc. #69. Movant provided legal services valued at \$8,44.50, and requests compensation for that amount. Doc. #69. Movant requests reimbursement for expenses in the amount of \$379.96. Doc. #69.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). The court authorized Movant's employment effective March 1, 2020. Order, Doc. #31. In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) preparing and moving for court authorization to approve a compromise of the estate's interest in a product defect litigation; (2) reviewing and analyzing the settlement agreement; (3) advising special purpose counsel on the necessity of having employment approved by the bankruptcy court; and (4) preparing employment applications for special purpose counsel. Exs. A, B, and C, Doc. #73. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows compensation in the amount of \$8,444.50 and reimbursement for expenses in the amount of \$379.96. Trustee is authorized to make a combined payment of \$8,824.46, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.