



**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

HONORABLE RENÉ LASTRETO II
Department B - Courtroom #13
Fresno, California

Hearing Date: Tuesday, August 29 2023

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

Post-Publication Changes: The court endeavors to publish its rulings as soon as possible. However, calendar preparation is ongoing, and these rulings may be revised or updated at any time prior to 4:00 p.m. the day before the scheduled hearings. Please check at that time for any possible updates.

9:30 AM

1. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[WF-5](#)

MOTION TO EMPLOY PEARSON REALTY AS REALTOR(S)
8-8-2023 [\[594\]](#)

TERRENCE LONG/MV
PETER FEAR/ATTY. FOR DBT.
DANIEL EGAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Terence J. Long ("Plan Administrator"), the duly appointed Plan Administrator under the Debtor's Fourth Amended Plan of Reorganization dated December 21, 2021 ("the Plan") asks the court to approve the retention of Pearson Realty ("Pearson") to act as real estate broker to assist in the sale of three properties (collectively "the Properties") owned by the Debtor, Stephen William Sloan ("Debtor"), the sale of which is directed pursuant to various provisions of the confirmed plan. Doc. #594.

The application is supported by the Declaration of Stanley Kjar ("Kjar"), a broker for Pearson, and by Listing Agreements for all three properties. Doc. # 596 and 597. The Declaration incorporates a verified statement of connections, and the declaration of Phil Souza. Docs. #596. Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion.

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

Debtor filed chapter 11 bankruptcy on March 2, 2020. Doc. #1. The Fourth Amended Plan, which appointed the Plan Administrator, was confirmed on February 2, 2022. Doc. #483. Sections 4.01.4, 4.01.7, and 4.06.4 of the confirmed plan call for selling the Properties. *Id.* Subject to this court's approval, the Plan Administrator has entered into listing agreements with Pearson for the sale of the properties. *Id.* These agreements retain Pearson to market the Properties and negotiate for their sale in exchange for a commission of 6% for Kjar (if he is the only broker involved in the transaction) or 3% (if another licensed real estate broker is

entitled to share in the total commission to be paid under the listing agreements). *Id.*

The motion avers that Plan Administrator selected Kjar and Pearson because they were known to be "knowledgeable and capable of performing under the listing agreements as negotiated by Plan Administrator." *Id.* Copies of the relevant listing agreements are attached as Exhibits to the motion. Doc. #597. The motion also contains a Statement of Disinterestedness which is incorporated into Kjar's Declaration, wherein Kjar states:

4. I directed my office to conduct a review of all creditors identified on the creditor matrix in this case. Except as set forth below, and to the best of my knowledge, neither I, nor Pearson Realty, (i) do not [sic] have any connections with the Debtor, with his creditors, or with any parties in interest, or with their attorneys and accountants, or with the office of the United States trustee, or with any person employed in the Office of the United States Trustee which would preclude employment, or (ii) do not now [sic] hold or represent any interest materially adverse to the interests of the estate or of any class of creditors or equity security holders. None of the connections set forth herein are disqualifying connections.

Doc. #596. The Declaration goes on to list three connections which Kjar asserts are not disqualifying: (a) Terrance J. Long provided consulting services for former business of Kjar, (b) Peter L. Fear represented a client in a bankruptcy proceeding in which Pearson assisted in marketing and selling real property, and (c) Riley C. Walter performed legal work for a previous business owned by Kjar's family. *Id.* While the syntactical errors noted in the quoted passage caused some confusion, the court interprets the Declaration to mean that the three listed connections are the only connections of which Kjar is aware, and the court agrees that they are not disqualifying.

11 U.S.C. § 1107 gives a chapter 11 debtor in possession all rights and powers of a trustee, other than the right to compensation under § 330, and requires the debtor in possession to perform all the functions and duties of a trustee, except those specified in § 1106(a)(2), (3), and (4). The authority of the Plan Administrator to perform the functions required for this are derived from Article 4.06 *et seq* of the Confirmed Plan. Doc. #483.

Under 11 U.S.C. § 327(a), a professional person, such as an accountant, can be employed by the estate with the court's approval to represent or assist the trustee [debtor in possession] in carrying out its duties provided that the proposed professional does not hold or represent an interest adverse to the estate and is a "disinterested person." In a chapter 11 case, a person is not disqualified for employment solely because of such person's employment by or representation of a creditor, unless there is an objection from the creditor or the UST. § 327(c).

11 U.S.C. § 328(a) permits employment of "a professional person under section 327" on "any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." Section 328(a) further "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.'" In re Circle K Corp., 279 F.3d 669, 671 (9th Cir. 2002).

Here, Applicant's verified statement of connections indicates that Applicant does not hold or represent an interest adverse to the estate and is a "disinterested person."

This matter will be called and proceed as scheduled. Written opposition was not required and may be presented at the hearing. Absent opposition, the court may find that Applicant does not hold or represent an interest adverse to the estate and is a "disinterested person," and this motion will be GRANTED.

2. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
3-10-2023 [\[1\]](#)

RILEY WALTER/ATTY. FOR DBT.

NO RULING.

1:30 PM

1. [23-10210](#)-B-7 **IN RE: KEVIN/DANIELLE FOUSE**
[PFT-1](#)

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITORS
7-11-2023 [\[47\]](#)

JOEL WINTER/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

Chapter 13 trustee Peter L. Fear ("Trustee") seeks dismissal of this case for the debtors' failure to appear and testify at the § 341(a) meeting of creditors held on August 10, 2023. Doc. #47.

Kevin Fouse and Danielle Fouse ("Debtors") timely opposed. Doc. #50. Joel Winter, Debtors' attorney, was assisting with a family medical emergency and failed to provide Debtors with the video conference information.

This motion to dismiss will be CONDITIONALLY DENIED.

Debtors shall attend the meeting of creditors rescheduled for September 11, 2023 at 3:00 p.m. See, Doc. #47. If Debtors fail to appear and testify at the rescheduled meeting, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The times prescribed in Fed. R. Bankr. P. 1017(e)(1) and 4004(a) for the Chapter 7 Trustee and U.S. trustee to object to Debtors' discharge or file motions for abuse, other than presumed abuse under § 707, are extended to 60 days after the conclusion of the meeting of creditors.

2. [23-11618](#)-B-7 **IN RE: MARLENE GUZMAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-10-2023 [\[18\]](#)

DISMISSED 8/14/23

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was already entered on August 14, 2023. (Doc. #20). The motion will be DENIED AS MOOT.

3. [23-10730](#)-B-7 **IN RE: ELENES AGUSTINA**
[JES-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
7-26-2023 [[32](#)]

JAMES SALVEN/MV
LAYNE HAYDEN/ATTY. FOR DBT.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

On August 4, 2023, the Debtor in the above-styled case filed an Amended Schedule C. Doc. #38. Accordingly, the instant motion shall be DENIED AS MOOT.

4. [14-10045](#)-B-7 **IN RE: MARIO NUNEZ**
[TMO-2](#)

MOTION TO AVOID LIEN OF BH FINANCIAL SERVICES, LLC
8-16-2023 [[32](#)]

MARIO NUNEZ/MV
T. O'TOOLE/ATTY. FOR DBT.
T. O'TOOLE/ATTY. FOR MV.

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

DISPOSITION: Continued to September 7, 2023.

ORDER: The court will issue an order.

On August 16, 2023, Debtor filed the instant motion and served Notice on less than 14 days. Doc. ##32,33. On August 20, 2023, Debtor filed an "Amended" Notice of Hearing resetting the hearing date for September 7, 2023. Doc. #41. Accordingly, this matter will be withdrawn from the August 29, 2023, calendar.

5. [17-11346](#)-B-7 **IN RE: DANIEL CANCHOLA**

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH OF A LITIGATION CLAIM AND/OR MOTION FOR
COMPENSATION FOR DAVID M. MOECK, SPECIAL COUNSEL(S)
8-4-2023 [\[154\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This case involves the unusual situation of two separate debtors Mario A. Guerra ("Guerra") and Daniel Canchola ("Canchola") (collectively "the Debtors") who were involved in a vehicle accident which resulted in litigation implicating both of their bankruptcy cases. Doc. #157 (the Fear Declaration). According to the representations made to the court, Canchola, while driving a vehicle owned by Guerra and insured under Guerra's insurance, rear-ended a vehicle driven by a third-party, resulting in one fatality and nonfatal injuries to other passengers in the third-party vehicle. *Id.* Suit was filed in state court by the injured parties ("the LaDuc Plaintiffs"), and Guerra's insurance provider ("Infinity") refused to accept a C.C.P. Section 998 offer of settlement proffered by the LaDuc Plaintiffs. *Id.* Canchola and Guerra then filed separate Chapter 7 petitions. *Id.* The LaDuc Plaintiffs, Canchola, Guerra, and the Chapter 7 Trustees in their respective cases (collectively "the Bankruptcy Plaintiffs") subsequently filed suit in state court against Infinity ("the Instant Action"). *Id.*

This court has previously approved settlement with some but not all Defendants in the Instant Action. *Id.* The Debtors and their respective Trustees now seek court approval of a settlement agreement with the remaining Defendant, Academy West Insurance Services, Inc. ("Academy West"). By the proposed settlement, Academy West will pay the Bankruptcy Plaintiffs the sum of \$250,000.00 including costs and attorneys' fees, an amount which the Trustees aver is sufficient to pay all creditors with allowed claims, a meaningful distribution to the Debtors, and payment of administrative expenses and swift closure of both bankruptcy cases. *Id.*

The instant motion also seeks approval to pay David M. Moeck ("Moeck"), the attorney who represented the Bankruptcy Plaintiffs in the Instant Action pursuant to the terms "Attorney-Client Contingency Fee Contract" which is included as an Exhibit accompanying the instant motion. *Id.*, Doc. #159. Specifically, the motion seeks approval to pay Moeck actual and necessary costs in the

amount of \$33,954.43, plus 40% of the net recovery of \$216,045.47 (or \$86,418.19) in fees, for a total fees/cost award of \$120,372.72. Doc. #154. This will leave a net recovery of \$129,627.28 to be divided between the Debtors and their estates. *Id.*

LBR 9014-1(f)(2)(C) states that motions filed on less than 28 days' notice, but at least 14 days' notice, require the movant to notify the respondent or respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs. The Trustees complied with this rule. While both Debtors and both Trustees support the settlement agreement, the court will hear objections from any other party in interest at the hearing.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Federal Rule of Bankruptcy Procedure ("FRBP") 9019(a). Absent from Rule 9019 is standing for the debtor to seek such approval. Typically, only the trustee may file a motion to approve a compromise or settlement.

In determining whether approval of a proposed settlement is proper, this court is guided by the standards set forth in *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1987) and *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986), which direct the court to consider:

- a. the probability of success in the litigation;
- b. the difficulties, if any, to be encountered in the matter of collection;
- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

The court concludes that the *Woodson* factors balance in favor of approving the compromise. The Declarations of the Trustees outline the potential difficulties in achieving a better result after litigation than the proposed settlement offers, particularly since rejecting the settlement will likely result in an extended appeals process even if the Bankruptcy Plaintiffs succeed at trial. Furthermore, the proposed settlement will be sufficient to pay all approved claims and all administrative expenses, and so the only parties who might have grounds to disapprove of the settlement are the two Debtors, both of whom are signatories to the Settlement Agreement. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.* Accordingly, the motion will be granted. Accordingly, the court concludes the compromise to be in the best interests of the creditors and the estate.

Turning to the attorney's fees, the Trustees note that in August of 2022 this court has already approved a stipulation between the Debtors and the Bankruptcy Estates as to how litigation would be divided, and the proposed award of attorney's fees and costs

is consistent with that Stipulation. Furthermore, even after the payment of the requested attorney's fees, there will still be sufficient funds to pay all timely filed claims and administrative fees and even provide a dividend to the Debtors.

Consequently, the court is of the opinion that the Trustees have met their burden in justifying both the terms of the Settlement Agreement and the requested award of attorney's fees and costs. Assuming there is no objection at the hearing, this motion will be GRANTED.

6. [17-11365](#)-B-7 **IN RE: MARIO GUERRA**
[RWR-9](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH OF A LITIGATION CLAIM AND/OR MOTION FOR
COMPENSATION FOR DAVID M. MOECK, SPECIAL COUNSEL(S)
8-4-2023 [\[163\]](#)

PETER FEAR/MV
JERRY LOWE/ATTY. FOR DBT.
RUSSELL REYNOLDS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This case involves the unusual situation of two separate debtors Mario A. Guerra ("Guerra") and Daniel Canchola ("Canchola") (collectively "the Debtors") who were involved in a vehicle accident which resulted in litigation implicating both of their bankruptcy cases. Doc. #157 (the Fear Declaration). According to the representations made to the court, Canchola, while driving a vehicle owned by Guerra and insured under Guerra's insurance, rear-ended a vehicle driven by a third-party, resulting in one fatality and nonfatal injuries to other passengers in the third-party vehicle. *Id.* Suit was filed in state court by the injured parties ("the LaDuc Plaintiffs"), and Guerra's insurance provider ("Infinity") refused to accept a C.C.P. Section 998 offer of settlement proffered by the LaDuc Plaintiffs. *Id.* Canchola and Guerra then filed separate Chapter 7 petitions. *Id.* The LaDuc Plaintiffs, Canchola, Guerra, and the Chapter 7 Trustees in their respective cases (collectively "the Bankruptcy Plaintiffs") subsequently filed suit in state court against Infinity ("the Instant Action"). *Id.*

This court has previously approved settlement with some but not all Defendants in the Instant Action. *Id.* The Debtors and their respective Trustees now seek court approval of a settlement agreement with the remaining Defendant, Academy West Insurance Services, Inc. ("Academy West"). By the proposed settlement, Academy

West will pay the Bankruptcy Plaintiffs the sum of \$250,000.00 including costs and attorneys' fees, an amount which the Trustees aver is sufficient to pay all creditors with allowed claims, a meaningful distribution to the Debtors, and payment of administrative expenses and swift closure of both bankruptcy cases. *Id.*

The instant motion also seeks approval to pay David M. Moeck ("Moeck"), the attorney who represented the Bankruptcy Plaintiffs in the Instant Action pursuant to the terms "Attorney-Client Contingency Fee Contract" which is included as an Exhibit accompanying the instant motion. *Id.*, Doc. #159. Specifically, the motion seeks approval to pay Moeck actual and necessary costs in the amount of \$33,954.43, plus 40% of the net recovery of \$216,045.47 (or \$86,418.19) in fees, for a total fees/cost award of \$120,372.72. Doc. #154. This will leave a net recovery of \$129,627.28 to be divided between the Debtors and their estates. *Id.*

LBR 9014-1(f)(2)(C) states that motions filed on less than 28 days' notice, but at least 14 days' notice, require the movant to notify the respondent or respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs. The Trustees complied with this rule. While both Debtors and both Trustees support the settlement agreement, the court will hear objections from any other party in interest at the hearing.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Federal Rule of Bankruptcy Procedure ("FRBP") 9019(a). Absent from Rule 9019 is standing for the debtor to seek such approval. Typically, only the trustee may file a motion to approve a compromise or settlement.

In determining whether approval of a proposed settlement is proper, this court is guided by the standards set forth in *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1987) and *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986), which direct the court to consider:

- a. the probability of success in the litigation;
- b. the difficulties, if any, to be encountered in the matter of collection;
- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

The court concludes that the *Woodson* factors balance in favor of approving the compromise. The Declarations of the Trustees outline the potential difficulties in achieving a better result after litigation than the proposed settlement offers, particularly since rejecting the settlement will likely result in an extended appeals process even if the Bankruptcy Plaintiffs succeed at trial. Furthermore, the proposed settlement will be sufficient to pay all approved claims and all administrative expenses, and so the only

parties who might have grounds to disapprove of the settlement are the two Debtors, both of whom are signatories to the Settlement Agreement. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.* Accordingly, the motion will be granted. Accordingly, the court concludes the compromise to be in the best interests of the creditors and the estate.

Turning to the attorney's fees, the Trustees note that in August of 2022 this court has already approved a stipulation between the Debtors and the Bankruptcy Estates as to how litigation would be divided, and the proposed award of attorney's fees and costs is consistent with that Stipulation. Furthermore, even after the payment of the requested attorney's fees, there will still be sufficient funds to pay all timely filed claims and administrative fees and even provide a dividend to the Debtors.

Consequently, the court is of the opinion that the Trustees have met their burden in justifying both the terms of the Settlement Agreement and the requested award of attorney's fees and costs. Assuming there is no objection at the hearing, this motion will be GRANTED.

7. [23-11667](#)-B-7 **IN RE: ROGER HERNANDEZ**
[BDB-1](#)

MOTION TO EXTEND AUTOMATIC STAY
8-10-2023 [\[14\]](#)

ROGER HERNANDEZ/MV
BENNY BARCO/ATTY. FOR DBT.

ENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Roger Hernandez ("Debtor") requests an order extending the automatic stay under 11 U.S.C. § 362(c)(3). Doc. #14.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will set a briefing schedule and final hearing unless there is no need to develop the record further. The court will issue an order if a further hearing is necessary.

Under 11 U.S.C. § 362(c)(3)(A), if the debtor has had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay under subsection (a) shall terminate with respect to the debtor on the 30th day after the latter case is filed. Debtors had one case pending within the preceding one-year period that was dismissed: Case No. 22-11488. That prior case was filed on August 28, 2022 (initially as a Chapter 7 proceeding before conversion to Chapter 13 on November 10, 2022) and was voluntarily dismissed on January 12, 2023, after Debtor lost his employment and no longer had sufficient disposable income to complete plan payments. The prior case was closed on March 13, 2023. The instant case was filed on July 31, 2023, Doc. #1, and the automatic stay will expire on August 31, 2023.

11 U.S.C. § 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor demonstrates that the filing of the latter case is in good faith as to the creditors to be stayed. Such request must be made within 30 days of the petition date.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.'" Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition.'" *Emmert v. Taggart (In re Taggart)*, 548 B.R. 275, 288, n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (vacated and remanded on other grounds by *Taggart v. Lorenzen*, 139 S. Ct. 1785 (2019)).

Here, Debtor has submitted a Declaration averring that none of the grounds listed in 11 U.S.C. § 362(c)(3)(B) exist such that the court should find there is a presumption of bad faith. Doc. #16. Debtor further avers that there was a material change in circumstance which justifies his belief that he can now complete the new case and obtain a Chapter 7 discharge: specifically, his continued loss of employment which resulted in dismissal of the prior case. *Id.*

In the absence of any objection at the hearing, the court is inclined to GRANT the motion and extend the automatic stay as to all creditors.

8. [17-11379](#)-B-7 **IN RE: STEPHEN/KATIE GONZALEZ**
[FW-5](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CIVIL CLAIMS AND/OR MOTION FOR COMPENSATION
BY THE LAW OFFICE OF THE JOHNSON LAW GROUP SPECIAL

COUNSEL(S)
8-1-2023 [59]

PETER FEAR/MV
PETER SAUER/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Moving Party will submit a proposed order.

Peter L. Fear ("Trustee") brings this motion to approve a compromise of a claim in a product liability action brought by Katie Gonzalez ("Debtor") that is presently pending in Alameda County Superior Court pursuant to Fed. R. Bankr. P. 9019, and to pay the fees and costs of special counsel. Doc. #59. Trustee avers that Debtor suffered a physical injury from an allegedly defective medical device prepetition, that she filed the instant voluntary Chapter 7 petition on April 13, 2017, and received a discharge prior to the case being closed on August 4, 2017, and that on or about October 24, 2018, she retained the Johnson Law Group ("JLG") to pursue a products liability claim against the manufacturer of the allegedly defective device ("the Liability Claim"). *Id.* Debtor was joined in the Liability Claim by many other plaintiffs, and the manufacturer eventually reached a settlement with JLG. *Id.* The terms of the settlement are set forth under a release signed under seal due to a confidentiality agreement. *Id.*

Trustee and Debtor have previously stipulated to the treatment of any proceeds from the Liability Claim. *Id.*; Doc. #48. Under the terms by which JLG became Special Counsel for the Trustee in the Liability Claim, JLG is to receive a contingency fee of 40% plus reimbursement of costs. *Id.* There is also a mandatory court-ordered assessment of 8% which reduces the gross settlement of \$43,319.53 down to \$39,853.97, with the 40% contingency applied to the smaller amount. *Id.* The motion breaks down the proposed disposition of proceeds as follows:

Gross Award	\$43,319.53
8% Alameda Co. Superior Court Ordered Assessment	(\$3,465.56)
Attorney Fee to JLG	(\$15,941.59)
Reimbursement of case specific costs	(\$2,345.29)
Net Proceeds	\$21,567.09
Debtor's Exemptions	(\$6,567.09)
Amount to the Estate	\$15,000.00

This Application was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1), pursuant to which the failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief

requested by the moving party, an actual hearing may be unnecessary in the absence of opposition. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No responses to the Application were filed, and so the defaults of the above-mentioned parties in interest are entered and the matter may be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Federal Rule of Bankruptcy Procedure ("FRBP") 9019(a). In determining whether approval of a proposed settlement is proper, this court is guided by the standards set forth in *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1987) and *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986), which direct the court to consider:

- a. the probability of success in the litigation;
- b. the difficulties, if any, to be encountered in the matter of collection;
- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

The Trustee addresses the *Woodson* factors in the motion and presents a *prima facie* case that they are satisfied. Of particular note is the fact that the settlement will provide a \$15,000.00 dividend to the estate, which is sufficient to pay the outstanding administrative claims and provide "a modest dividend to creditors," which is significant as this was originally a no-asset case in which unsecured creditors received nothing. The court concludes that the *Woodson* factors balance in favor of approving the compromise. Trustee also declares that he finds the proposed attorney fee award to be reasonable in light of the complexity of the cause and the successful resolution achieved by JLG. Consequently, the court is of the opinion that the Trustee has met the burden in justifying both the terms of the Settlement Agreement and the requested award of attorney's fees and costs. Accordingly, this motion will be GRANTED.

The court notes the settlement agreement was filed as a confidential document. Though there is no opposition here, counsel is advised that a much better showing will be needed in other cases under 11 U.S.C. §107 and Rule 9018.

CONTINUED MOTION TO AVOID LIEN OF DONALD HORN AND JUDITH
LINDA
5-20-2023 [\[13\]](#)

LISA ANDERSON/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to September 28, 2023.

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

On May 20, 2023, Lisa Mary Reardon Anderson ("Debtor") filed a
Motion to Avoid Judicial Lien of Creditors Donald Horn and Judith
Linda Horn ("the Horns"). Doc. #10. On the same day, Debtor filed a
separate Motion to avoid Judicial Lien of Creditors Chris and
Stephen Thorns ("the Thorns"). Doc. #18. Over the course of the next
two months, Oppositions/Responses and Replies passed back and forth,
and during the pendency of these proceedings, the matter has been
continued twice and is now set for August 24, 2023.

On August 14, 2023, the Thorns, the Horns, and two additional
parties, Lisa and Rick Hamilton (collectively "Respondents") filed a
motion for continuance in this matter requesting that the hearing
date be reset from August 29, 2023, to September 28, 2023. Doc. #70.
No proposed order was submitted with the motion, and Debtor has not
formally joined the motion (and, in fact, filed her latest responses
to the Motions to Avoid Lien after the filing of the instant motion
for continuance). However, Respondents aver in their motion that
they have consulted with Debtor's counsel, who agrees with the
requested continuance. Doc. #70.

Because of deficiencies in the filing of the instant motion, the
court will call this matter at the appointed time on August 29,
2023, to confirm the mutual desire for continuance before deciding
whether to formally grant the continuance motion.

10. [23-10886](#)-B-7 **IN RE: LISA ANDERSON**
[FW-2](#)

CONTINUED MOTION TO AVOID LIEN OF CHRIS THORNS AND STEPHEN
THORNS
5-20-2023 [\[18\]](#)

LISA ANDERSON/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to September 28, 2023.

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

On May 20, 2023, Lisa Mary Reardon Anderson ("Debtor") filed a Motion to Avoid Judicial Lien of Creditors Donald Horn and Judith Linda Horn ("the Horns"). Doc. #10. On the same day, Debtor filed a separate Motion to avoid Judicial Lien of Creditors Chris and Stephen Thorns ("the Thorns"). Doc. #18. Over the course of the next two months, Oppositions/Responses and Replies passed back and forth, and during the pendency of these proceedings, the matter has been continued twice and is now set for August 24, 2023.

On August 14, 2023, the Thorns, the Horns, and two additional parties, Lisa and Rick Hamilton (collectively "Respondents") filed a motion for continuance in this matter requesting that the hearing date be reset from August 29, 2023 to September 28, 2023. Doc. #70. No proposed order was submitted with the motion, and Debtor has not formally joined the motion (and, in fact, filed her latest responses to the Motions to Avoid Lien after the filing of the instant motion for continuance. However, Respondents aver in their motion that they have consulted with Debtor's counsel, who agrees with the requested continuance. Doc. #70.

Because of deficiencies in the filing of the instant motion, the court will call this matter at the appointed time on August 29, 2023, to confirm the mutual desire for continuance before deciding whether to formally grant the continuance motion.

11. [23-10792](#)-B-7 **IN RE: TORI/SOMNITH KHUNPHIXAY**
[JRL-3](#)

MOTION TO AVOID LIEN OF CAPITAL ONE (USA), N.A.
7-18-2023 [[34](#)]

SOMNITH KHUNPHIXAY/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.

Tori Xayavong Khunphixay and Somnith Khunphixay (collectively "Debtors") move for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of Capital One Bank (USA), N.A. ("Creditor") in the sum of \$3,198.68 and encumbering residential real property located at 21360 Glen Oaks Road, Madera, CA 93638 ("Property").

No party in interest timely filed written opposition. As an aside, the court notes that a prior motion to avoid Creditor's lien was denied by this court without prejudice due to Debtors' failure to serve the CEO of Creditor via certified mail as required by Rule 7004(h), a deficiency which was corrected in this filing. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

Here, a judgment was entered against Debtor in favor of Creditor in the amount of \$3,198.68 on January 21, 2020. *Ex. A*, Doc. #37. The abstract of judgment was issued on August 2, 2021, and was recorded in Madera County on September 7, 2021. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #34.

As of the petition date, Property had an approximate value of \$513,000.00. *Id.*; *cf. Sched. A/B*, Doc. #1. Debtor claimed a \$300,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Sched. C, id.*

Property is encumbered by a first deed of trust in favor of Carrington Mortgage Services ("CMS") in the amount of \$246,837.00. *Sched. D, id.* Property was previously encumbered by a second judgment lien in favor of Portfolio Recovery Associates, LLC which was avoided pursuant to an order of this court dated July 14, 2023. Doc. #33. Accordingly, the Property's remaining encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. CMS	\$246,837.00	12/2016	Unavoidable
2. Creditor	\$3,198.68	09/07/2118	Avoidable

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

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

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

Amount of judgment lien		\$3,198.68
Total amount of unavoidable liens	+	\$246,837.00
Debtor's claimed exemption in Property	+	\$300,000.00
<i>Sum</i>	=	\$550,035.68
Debtor's claimed value of interest absent liens	-	\$546,837.68
Extent lien impairs exemption	=	\$3,198.00

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

Fair market value of Property		\$513,000.00
Total amount of unavoidable liens	-	\$246,837.00
Homestead exemption	-	\$300,000.00
Remaining equity for judicial liens	=	(\$33,837.00)
Creditor's judicial lien	-	\$3,198.68
Extent Debtor's exemption impaired	=	(\$37,035.68)

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

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Accordingly, this motion will be GRANTED. The proposed order shall state that Creditor's lien is avoided from the subject Property only and include a copy of the abstract of judgment as an exhibit. The order shall also specifically describe or identify the subject Property.