

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, August 31, 2021
Place: Department B – Courtroom #13
Fresno, California

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [20-10800](#)-B-11 **IN RE: 4-S RANCH PARTNERS, LLC**
[21-1024](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-8-2021 [[1](#)]

SANDTON CREDIT SOLUTIONS
MASTER FUND IV, LP ET AL V.
KURT VOTE/ATTY. FOR PL.
DISMISSED 8/11/2021. DOC. #17.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Since the underlying chapter 11 bankruptcy case was dismissed, the parties stipulated to dismiss this adversary proceeding without prejudice on August 10, 2021. Doc. #17. The court approved the stipulation on August 11, 2021 and the case was dismissed without prejudice. Accordingly, this status conference will be dropped from calendar.

2. [21-11001](#)-B-11 **IN RE: NAVDIP BADHESHA**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
4-21-2021 [[1](#)]

MATTHEW RESNIK/ATTY. FOR DBT.

NO RULING.

3. [21-11001](#)-B-11 **IN RE: NAVDIP BADHESHA**
[RMB-7](#)

MOTION TO FIX BAR DATE FOR FILING PROOFS OF CLAIM AND/OR
PROOFS OF INTEREST AGAINST THE ESTATE
7-22-2021 [\[114\]](#)

NAVDIP BADHESHA/MV
MATTHEW RESNIK/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.

Debtor-in-possession Navdip S. Badhesha ("DIP") requests an order setting **November 8, 2021** as the date by which creditors and parties in interest must file proofs of claim or interest or be forever barred ("Bar Date") pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 3003(c)(3). Doc. #114. DIP proposes to effect service no later than September 7, 2021, which is more than 60 days before the Bar Date.

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

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

First, the court notes that the Notice of Hearing (Doc. #115) filed with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition. Counsel is advised to review the local rules to ensure procedural compliance in subsequent motions. Future violations of the local rules may result in the matter being denied without prejudice.

Under Rule 3003(c)(3), "[t]he court shall fix and for cause shown may extend the time within which proofs of claim or interest may be

filed." Notwithstanding expiration, a proof of claim may be filed under the conditions of Rules 3002(c)(2), (3), (4), and (6).

DIP argues that a Bar Date is necessary so he can use claims information to prepare a chapter 11 plan of reorganization with adequate information. Doc. #114.

DIP suggests setting November 8, 2021 as the Bar Date. *Id.* DIP will notify all creditors and parties in interest of the Bar Date by service via first class mail no later than September 7, 2021, which is 62 days before November 8, 2021. DIP included a copy of the proposed form informing parties of the Bar Date. Doc. #116, Ex. A.

No party in interest timely filed written opposition. This motion will be GRANTED. The court will set **November 8, 2021** as the date in which proofs of claim or interest may be filed or be forever barred. DIP shall notify all creditors and parties in interest no later than September 7, 2021 and file a certificate of service evidencing the same.

4. [21-11001](#)-B-11 **IN RE: NAVDIP BADHESHA**
[RMB-8](#)

MOTION TO EMPLOY REAL PROPERTY ANALYSTS AS APPRAISER(S)
8-3-2021 [[123](#)]

NAVDIP BADHESHA/MV
MATTHEW RESNIK/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.

Debtor-in-possession Navdip S. Badhesha ("DIP") moves to employ Kelly P. Stevens ("Applicant") to prepare a value appraisal report of real property located at 13570 W. McKinley Avenue, Kerman, CA 93630 ("Property"). Doc. #123.

DIP requests to pay Applicant a fee of \$2,500.00 in accordance with the terms of the executed service agreement under 11 U.S.C. §§ 327(a), 328, and Fed. R. Bankr. P. ("Rule") 2014(a). Doc. #125.

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

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

alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

First, the court notes that the Notice of Hearing (Doc. #124) filed with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition. Counsel is advised to review the local rules to ensure procedural compliance in subsequent motions. Future violations of the local rules may result in the matter being denied without prejudice.

11 U.S.C. § 1107 gives the DIP all of the rights and powers of a trustee and requires it to perform all functions and duties, certain exceptions notwithstanding.

Under 11 U.S.C. § 327(a), a professional person, such as an appraiser, may be employed by the estate with the court's approval if the proposed professional does not hold or represent an interest adverse to the estate and is "disinterested."

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).

DIP wants to employ Applicant to appraise Property. Doc. #123. The parties executed a flat fee service agreement wherein DIP would pay Appraiser \$2,500 in exchange for preparation of a real estate appraisal report. Doc. #127, Ex. 1. Per the agreement, the entire fee is due and payable at the time of property inspection but will only be paid upon order approving this application. *Id.* The source of the funds will be funds on hand in the general DIP bank account, which is funded by DIP's employment income. Doc. #125. The court notes that DIP addressed concerns raised in the previous ruling regarding the arbitration clause and liability limits in the Appraisal Agreement. DIP revised those terms so that, unless this case is dismissed, all disputes must be resolved by the bankruptcy court. Doc. #127, Ex. 1, Ex. A.

Applicant is a Senior Real Estate Appraiser and Vice President of Real Property Analysts ("RPA"). Doc. #126. Applicant is in good standing as a real estate appraiser in the state of California. *Id.* Applicant declares that both RPA and Applicant are disinterested persons as defined in 11 U.S.C. § 101(14) and do not hold any interests adverse to the estate as required by § 327(a). *Id.* RPA and Applicant do not hold any pre-petition claims against DIP or the estate, nor do they have any relationship or connection to DIP, his creditors, the U.S. Trustee, or other parties in interest or their attorneys. *Id.*

DIP will be authorized to employ Applicant to prepare a real estate appraisal report and compensate Applicant \$2,500 as a flat fee due at the time of property inspection. The court finds the proposed arrangement reasonable in this instance. If the arrangement proves improvident, the court may allow different compensation under § 328(a).

Property is DIP's principal residence. Doc. #125. Property includes a grape vineyard where DIP produces raisins and a small residential property which generates \$400 in monthly rent. Property is valued at \$1.2 million but is encumbered by five deeds of trust totaling more than \$1.4 million. Docs. #21, *Sched. A/B*; #113, *Am. Sched. D*. Under these circumstances, an appraisal is necessary to maximize potential recovery for the estate. Therefore, it is an appropriate exercise of DIP's business judgment.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. DIP will be authorized to employ and pay Applicant for the services as outlined above provided that payment is consistent with this court's order regarding use of cash collateral.

5. [21-11001](#)-B-11 **IN RE: NAVDIP BADHESHA**
[RMB-9](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF RESNIK HAYES
MORADI LLP FOR ROKSANA D. MORADI-BROVIA, DEBTORS ATTORNEY(S)
8-3-2021 [[129](#)]

MATTHEW RESNIK/ATTY. FOR DBT.
ROKSANA MORADI-BROVIA/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.

Roksana D. Moradi-Brovia ("Applicant") of Resnik Hayes Moradi, LLP ("Firm"), general bankruptcy counsel for debtor-in-possession Navdip S. Badhesha ("DIP"), requests interim compensation under 11 U.S.C. § 330, 331 in the amount of \$23,783.89. Doc. #129. This amount consists of \$21,665.00 in fees for reasonable compensation and

\$2,118.89 in expenses for actual, necessary services rendered from April 12, 2021 through July 12, 2021.

DIP declares that he has received and reviewed the fee applications and does not have any objections to Applicant's charges for professional services and expenses. Doc. #131. DIP understands that Applicant will draw down the \$12,000 retainer paid pre-petition and he will pay the remaining fees of \$11,783.89 owed from his employment income and general DIP bank account. No payment will be made from any secured creditor's cash collateral. DIP states that the June 2021 monthly operating report (Doc. #111) shows that he has about \$3,138.50 on hand in the DIP account and he will pay \$1,000 within seven days of entry of an order approving the application and \$1,000 per month thereafter until paid in full.¹ *Id.*

Applicant also filed a notice of errata on August 13, 2021. Doc. #147. Applicant states that the fee summary chart in the motion contained incorrect amounts of total hours billed by each timekeeper, so Applicant corrected the hours and amounts in those charts.

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

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

First, the court notes that the Notice of Hearing (Doc. #124) filed with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition. Counsel is advised to review the local rules to ensure procedural compliance in subsequent motions. Future violations of the local rules may result in the matter being denied without prejudice.

Applicant's employment as general bankruptcy counsel was authorized pursuant to 11 U.S.C. §§ 327 and 330 on June 9, 2021, effective as to services rendered on or before the April 21, 2021 petition date.

¹ The court notes that the July 2021 monthly operating report shows a balance of \$2,449.31 in the general DIP bank account. Doc. #152, at 10.

Doc. #49. The order incorporated by reference the terms of the employment application, which permits interim compensation under § 331 not more often than every 120-days. Doc. #23.

This is Applicant's first interim fee application. Applicant indicates that Firm performed 74.30 billable hours of legal services at the following rates, resulting in **\$21,665.00** in fees:

ADJUSTED FEE SUMMARY

Professional	Rate	Worked	Billed	Amount
Pardis Akhavan	\$300.00	0.50	0.50	\$150.00
Roksana D. Moradi-Brovia	\$500.00	27.20	22.00	\$11,000.00
Rosario Zubia	\$135.00	11.20	11.00	\$1,485.00
W. Sloan Youkstetter	\$350.00	35.40	25.80	\$9,030.00
Total Hours and Fees		74.30	59.30	\$21,665.00

Doc. #147. Pardis Akhavan, Roksana D. Moradi-Brovia, and W. Sloan Youkstetter are attorneys and Rosario Zubia is a paralegal. Resumes for each of Firm's seven attorneys and seven paralegals are included as an exhibit. Doc. #133, Ex. D. However, the summary listed in the Notice of Errata still includes hours for some services that were not billed. The time records indicate:

- Applicant Moradi-Brovia did not bill for 5.2 hours for services rendered on April 27, 2021; May 12, 2021; and June 4, 10, 15, and 16, 2021.
- Zubia did not bill for 0.2 hours for services rendered on May 13, 2021.
- Youkstetter did not bill for 9.6 hours for services rendered on April 30, 2021; May 5-6, 8, 11, 13, 21, 24-25, 2021; June 7-8, 11, 14, 17, 22, 30, 2021; and July 6, 2021.

Id., Ex. B. The fee summary was adjusted to include the amount of hours billed. Applicant also incurred costs of **\$2,118.89**:

Filing fees	\$1,738.00
Miscellaneous ²	+ \$73.60
Mailing/Postage	+ \$239.79
Court Call	+ \$67.50
Total Costs	= \$2,118.89

Id., Ex. C. These combined fees and expenses total **\$23,783.89**.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses."

² The miscellaneous fees were expenses relating to an employment application and a status report. Doc. #133, Ex. C.

Applicant and Firm's services included, without limitation, (1) corresponding with DIP's real estate appraiser regarding the value of DIP's real property; (2) preparing and submitting schedules, statements, required information, and other documents to the U.S. Trustee; (3) setting up DIP bank accounts; (4) preparing and filing monthly operating reports (Docs. #29; #84; #111; #152; (5) advising DIP of his continuing obligations as debtor-in-possession; (6) preparing and filing the motion for use of cash collateral, reviewing the objection, replying to the objection, and appearing at the hearings (RMB-4); (7) preparing employment and fee applications for the Firm (RMB-1, RMB-9 and this motion), accountant (RMB-2), and real estate appraiser (RMB-5, RMB-8 and matter #4 above) and appearing at the hearings; (8) corresponding with creditors and appearing at the meeting of creditors; (9) preparing and filing a motion to set proof of claim bar dates (RMB-6, RMB-7 and matter #3 above). Doc. #132. The court finds the services and expenses reasonable, actual, and necessary. As noted above, DIP reviewed the fee application and consents to payment of the requested compensation, after deduction of the \$12,000 retainer, from his separate employment income. Doc. #131. Cash collateral will not be used to fund this application.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant and Firm shall be awarded \$21,665.00 in fees and \$2,118.89 in expenses on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. Applicant and Firm are authorized to be paid \$23,783.89 for services rendered to and costs incurred by the estate between April 12, 2021 and July 12, 2021. After deduction of the \$12,000 retainer, DIP will be permitted to pay \$11,783.89 from his separate employment income and general DIP bank account provided that no payments will be made from cash collateral.

6. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A
[GL-1](#) CALIFORNIA LOCAL HEALTH CARE DISTRICT**

CONTINUED MOTION TO FILE AMENDED PROOF OF CLAIM
12-29-2020 [[669](#)]

DEPARTMENT OF HEALTH CARE
SERVICES/MV
RILEY WALTER/ATTY. FOR DBT.
GRANT LIEN/ATTY. FOR MV.

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

DISPOSITION: Continued to September 28, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

The parties stipulated to continue this matter due to ongoing settlement negotiations. Doc. #703. On August 6, 2021, the court approved the stipulation and continued the matter to September 28, 2021 at 9:30 a.m. Doc. #706. The deadlines to file and serve

9. [20-11992](#)-B-11 **IN RE: CHAR PHAR INVESTMENTS, LLC**
[WLC-12](#)

CHAPTER 11 DISCLOSURE STATEMENT FILED BY DEBTOR CHAR PHAR
INVESTMENTS, LLC
7-6-2021 [\[228\]](#)

WILLIAM COWIN/ATTY. FOR DBT.

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

DISPOSITION: Continued to September 28, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

Debtor-in-possession Char Phar Investments, LLC ("DIP"), the State Bank of India (California), and Fresno Truck Center stipulated to continue the hearing on approval of the Disclosure Statement. Doc. #249. On August 13, 2021, the court approved the stipulation and continued the matter to September 28, 2021 at 9:30 a.m. Doc. #254. Any objections to the Disclosure Statement will be timely if based on the new hearing date.

DIP filed a notice of the continued hearing on August 18, 2021. Doc. #229. This notice and the original notice (Doc. #229) both suffer from deficiencies and do not comply with the Local Rules of Practice ("LBR").

LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and that (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

LBR 9014-1(d)(3)(B)(i) requires the notice to include the names and addresses of persons who must be served with any opposition. The notice here states only that opposition "shall be served and filed with the Court" but does not say where or to whom it should be served. Names and addresses of the DIP or its attorney, the UST, and any other parties in interest required to be served the opposition must be specified.

Counsel is advised to review the local rules to ensure procedural compliance in subsequent motions. Future violations of the local rules may result in the matter being denied without prejudice.

10. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-18](#)

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

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to January 25, 2022 at 9:30 a.m.

ORDER: The court will issue an order.

The court previously continued the status conference and ordered Tulare Local Healthcare District ("District") to file a status report not later than five days before the continued hearing date. Doc. #2434. The District filed a status report on August 16, 2021 complying with the previous order. Doc. #2452.

The District notes that this objection is part of three related objections to the claims of Inpatient Hospital Group, Inc. (Claim #230), Tulare Hospitalist Group (Claim #231), and Gupta-Kumar Medical Practice (Claim #232), which are in matters ##11-12 below. All of these claimants are represented by Thomas Feher of LeBeau Thelen and controlled by Parmod Kumar, former District board president, director, and defendant in a suit brought by the District pending in Kern County Superior Court. All of these objections are intertwined with the Kern County lawsuit, which is currently awaiting the outcome of a pending Tulare County criminal case.

Due to the ongoing litigation upon which these objections are based, the District intends to appear at the hearing to request a continuance to January 25, 2022, and also request the parties to submit a status report by January 18, 2022. This matter will be called as scheduled. The court intends to continue the status conference to January 25, 2022 at 9:30 a.m. The parties shall file a status report not later than January 18, 2022.

11. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-19](#)

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

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to January 25, 2022 at 9:30 a.m.

ORDER: The court will issue an order.

The court previously continued the status conference and ordered Tulare Local Healthcare District ("District") to file a status report not later than five days before the continued hearing date. Doc. #2435. The District filed a status report on August 16, 2021 complying with the previous order. Doc. #2454.

The District notes that this objection is part of three related objections to the claims of Inpatient Hospital Group, Inc. (Claim #230), Tulare Hospitalist Group (Claim #231), and Gupta-Kumar Medical Practice (Claim #232), which are in matters #10 and #12, above and below. All of these claimants are represented by Thomas Feher of LeBeau Thelen and controlled by Parmod Kumar, former District board president, director, and defendant in a suit brought by the District pending in Kern County Superior Court. All of these objections are intertwined with the Kern County lawsuit, which is currently awaiting the outcome of a pending Tulare County criminal case.

Due to the ongoing litigation upon which these objections are based, the District intends to appear at the hearing to request a continuance to January 25, 2022, and also request the parties to submit a status report by January 18, 2022. This matter will be called as scheduled. The court intends to continue the status conference to January 25, 2022 at 9:30 a.m. The parties shall file a status report not later than January 18, 2022.

12. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-25](#)

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

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to January 25, 2022 at 9:30 a.m.

ORDER: The court will issue an order.

The court previously continued the status conference and ordered Tulare Local Healthcare District ("District") to file a status report not later than five days before the continued hearing date. Doc. #2432. The District filed a status report on August 16, 2021 complying with the previous order. Doc. #2456.

The District notes that this objection is part of three related objections to the claims of Inpatient Hospital Group, Inc. (Claim #230), Tulare Hospitalist Group (Claim #231), and Gupta-Kumar Medical Practice (Claim #232), which are in matters #10-11 above. All of these claimants are represented by Thomas Feher of LeBeau Thelen and controlled by Parmod Kumar, former District board president, director, and defendant in a suit brought by the District pending in Kern County Superior Court. All of these objections are intertwined with the Kern County lawsuit, which is currently awaiting the outcome of a pending Tulare County criminal case.

Due to the ongoing litigation upon which these objections are based, the District intends to appear at the hearing to request a continuance to January 25, 2022, and also request the parties to submit a status report by January 18, 2022. This matter will be called as scheduled. The court intends to continue the status conference to January 25, 2022 at 9:30 a.m. The parties shall file a status report not later than January 18, 2022.

11:00 AM

1. [21-11076](#)-B-7 **IN RE: ROMAN LINDAY**

CONTINUED REAFFIRMATION AGREEMENT WITH NAVY FEDERAL CREDIT UNION

7-1-2021 [[20](#)]

MARK ZIMMERMAN/ATTY. FOR DBT.

NO RULING.

2. [21-11192](#)-B-7 **IN RE: MARIA GARCIA**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION

8-13-2021 [[34](#)]

TRAVIS POTEAT/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

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

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

1:30 PM

1. [20-13708](#)-B-7 **IN RE: JUAN RIVERA AND DIANA ROMERO**
[JES-1](#)

MOTION TO COMPEL
7-24-2021 [\[23\]](#)

JAMES SALVEN/MV
T. O'TOOLE/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Chapter 7 trustee James E. Salven withdrew this motion on August 6, 2021. Doc. #27. Accordingly, this matter will be dropped from calendar.

2. [20-12717](#)-B-7 **IN RE: LAURA ROJAS**
[JES-3](#)

AMENDED MOTION TO COMPEL
8-6-2021 [\[58\]](#)

JAMES SALVEN/MV

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

DISPOSITION: Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") seeks an order compelling Laura Rojas ("Debtor") under 11 U.S.C. § 542(a) to turn over within seven days either: (1) Debtor's 2020 Federal and State tax returns ("Tax Returns") with any refunds received; or (2) data necessary to prepare the Tax Returns. Docs. #54; #58.³ Trustee estimates that the 2020 federal and state tax refunds may have value to the estate over and above any available exemption of at least \$5,200. Docs. #56; #59.

³ Trustee amended the motion, declaration, and exhibits and cured a separate filing defect under LBR 9004-2(d)(1) and (2) on August 8, 2021. Docs. ##58-60. The content of the amended documents is identical to the originals and all of the amended documents were served on the Debtor and U.S. trustee. Doc. #61. Even though the amended documents were filed less than 28 days before the hearing, the parties were timely served with the original documents. Doc. #57.

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

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

11 U.S.C. § 541 establishes Tax Returns and refunds as assets of the estate upon commencement of the case. Section 541(a) provides that the estate is comprised of the following property, wherever located and by whomever held, including but not limited to:

- (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.
- (2) All interest of the debtor and the debtor's spouse in community property as of the commencement of the case that is—
 - (A) under the sole, equal, or joint management and control of the debtor; or
 - (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

§ 541(a). Section 542(a) requires Debtor to deliver Tax Returns and refunds to Trustee:

- (a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

§ 542(a). If Debtor has not yet filed the 2020 Tax Returns, § 521(a)(4) requires Debtor to deliver data necessary to prepare the returns under 11 U.S.C. § 521:

(a) The debtor shall—

- . . .
(4) if a trustee is serving in the case or an auditor is serving under section 586(f) of title 28, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title[.]

§ 521(a)(4).

Trustee has demonstrated that the 2020 Tax Returns and any or all refunds exceeding Debtor's claimed exemptions are property of the estate and Trustee has the right to receipt for the benefit of the estate. Docs. #56; ##59-60. Therefore, this motion will be GRANTED.

It will be ordered that Debtor shall comply with Trustee's request for turnover of documents related to their 2020 Tax Returns and refund all or part of any refunds exceeding their claimed exemptions not later than seven calendar days after an order granting this motion is issued and served on Debtor. Failure to comply may result in an order imposing sanctions, including Trustee's attorney's fees, upon further motion.

3. [21-11324](#)-B-7 **IN RE: JULIO/RENEE PADA**
[UST-1](#)

MOTION TO APPROVE STIPULATION TO DISMISS CHAPTER 7 CASE
WITHOUT ENTRY OF DISCHARGE
7-30-2021 [\[14\]](#)

TRACY DAVIS/MV
ARASTO FARSAD/ATTY. FOR DBT.
JUSTIN VALENCIA/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.

Tracy Hope Davis, the United States Trustee for Region 17 ("UST") moves for an order (i) approving a stipulation to dismiss this chapter 7 case without entry of discharge; and (ii) dismissing the case. Doc. #14.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any

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

Julio Ceasar Pada and Renee Aquino Pada ("Debtors") filed bankruptcy on May 24, 2021. Doc. #1. The § 341(a) meeting of creditors was first scheduled for July 23, 2021 and continued to and concluded on August 13, 2021. See docket generally. The deadline to file a motion to dismiss under 11 U.S.C. §§ 707(b)(1-3) (presumed abuse, bad faith, and/or totality of circumstances abuse) or 727 is September 21, 2021. Doc. #8. UST is investigating this case under § 707(b)(2) or (3). However, Debtors, through their bankruptcy counsel Arasto Farsad, stipulated to voluntary dismissal without entry of discharge on July 28, 2021. Doc. #16.

A chapter 7 case may be dismissed only after a notice and hearing and only for "cause." 11 U.S.C. § 707(a) provides three statutorily enumerated grounds establishing cause, but these are not exclusive. *Sherman v. SEC (In re Sherman)*, 491 F.3d 948, 970 (9th Cir. 2007); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 840 (B.A.P. 9th Cir. 2008). Under 11 U.S.C. § 707(b), an individual chapter 7 consumer debtor's case may be dismissed for presumed abuse or where abuse is demonstrated by bad faith or the totality of the circumstances of the debtor's financial condition. 11 U.S.C. § 707(b)(1-3).

Here, UST is prepared to file a motion to dismiss under 11 U.S.C. § 707(b)(2) or (3), but Debtors have opted to voluntarily dismiss instead. Doc. #16. No creditors or other parties in interest timely filed written opposition and there does not appear to be any benefit to creditors in keeping the bankruptcy case open.

The motion to approve stipulation to dismiss Debtors' case without entry of discharge will be GRANTED and the case will be dismissed.

4. [21-11532](#)-B-7 **IN RE: SANTOS GONZALEZ AND ELIZABETH DE GONZALEZ**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
7-19-2021 [\[17\]](#)

T. O'TOOLE/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice. The debtors are ordered to
appear at the rescheduled creditor's meeting and
deadlines are extended as set forth below.

ORDER: The court will issue an order.

Chapter 7 trustee Peter L. Fear moves to dismiss Santos Gonzalez's and Elizabeth Iniguez De Gonzalez's ("Debtors") chapter 7 bankruptcy case for failure to appear at the § 341(a) meeting of creditors scheduled for July 19, 2021. Docs. ##17-18. The continued meeting of creditors is scheduled for September 7, 2021.

Debtors timely responded and say that they failed to appear due to a mandatory medical emergency. Doc. #20. Debtors' mother became ill, and they were required to fly to Mexico where they stayed from July 15 through July 23, 2021. Debtors did not have cell reception there and were unable to contact their attorney or the court. Debtors promise to appear at the continued meeting of creditors on September 7, 2021.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR"). The Debtors will nevertheless be ordered to appear at the continued meeting of creditors and appropriate deadlines will be extended.

LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

A Motion for Order Requiring Debtor to Shut Down Business was filed by Trustee on July 15, 2021 (Doc. #12) and granted on July 16, 2021. Doc. #14. The DCN for that motion was PFT-1. This motion also has a DCN of PFT-1 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

However, Debtors shall attend the meeting of creditors rescheduled for September 7, 2021 at 3:00 p.m. If Debtors fail to do so, Trustee may file an *ex parte* motion with a new DCN, and the case may be dismissed without further hearing.

The times prescribed in Federal Rules of Bankruptcy Procedure 1017(e)(1) and 4004(a) for the Trustee and U.S. trustee to object to Debtors' discharge or file motions for abuse, other than presumed

above under § 707, is extended to 60 days after the conclusion of the meeting of creditors.

5. [20-12833](#)-B-7 **IN RE: MA DEL CARMEN DE IBARRA**
[JES-3](#)

MOTION TO COMPEL
7-19-2021 [\[47\]](#)

JAMES SALVEN/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied if federal tax refund sent to Trustee.

ORDER: The minutes of the hearing will be the court's findings and conclusions. Order preparation determined at the hearing.

Chapter 7 trustee James E. Salven ("Trustee") seeks an order compelling Ma del Carmen Alcaraz De Ibarra ("Debtor") under 11 U.S.C. § 542(a) to turn over within seven days either: (1) Debtor's 2020 Federal and State tax returns ("Tax Returns") with any refunds received; or (2) data necessary to prepare the Tax Returns. Doc. #47. Trustee estimates that the 2020 federal and state tax refunds may have value to the estate over and above any available exemption of at least \$4,387. Docs. #49; #52.⁴

Debtor timely responded. Doc. #54. Debtor declares that she has filed the 2020 Tax Returns, which have been provided to Trustee, but she has not yet received any refund owed to her on account of the taxes. Doc. #55. Debtor states that the return is still pending but she intends to turn over all 2020 Tax Refund proceeds to Trustee as soon as they are received.

This matter will proceed as scheduled. The court may DENY the motion provided that Debtor sent her federal refund to Trustee.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. The failure of the creditors, the U.S. Trustee, or any other party in interest except Debtor 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. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered.

⁴ Trustee amended the declaration and exhibits and cured a separate filing defect under LBR 9004-2(d)(1) and (2) on August 2, 2021. Docs. ##51-52. All of the amended documents were served on the Debtor and U.S. trustee. Doc. #53.

11 U.S.C. § 541 establishes Tax Returns and refunds as assets of the estate upon commencement of the case. Section 541(a) provides that the estate is comprised of the following property, wherever located and by whomever held, including but not limited to:

- (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.
- (2) All interest of the debtor and the debtor's spouse in community property as of the commencement of the case that is—
 - (A) under the sole, equal, or joint management and control of the debtor; or
 - (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

§ 541(a). Section 542(a) requires Debtor to deliver Tax Returns and refunds to Trustee:

- (a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

§ 542(a). If Debtor has not yet filed the 2020 Tax Returns, § 521(a)(4) requires Debtor to deliver data necessary to prepare the returns under 11 U.S.C. § 521:

- (a) The debtor shall—
 - ...
 - (4) if a trustee is serving in the case or an auditor is serving under section 586(f) of title 28, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title[.]

§ 521(a)(4).

Trustee has demonstrated that the 2020 Tax Returns and any or all refunds exceeding Debtor's claimed exemptions are property of the estate and Trustee has the right to receipt for the benefit of the estate. Docs. #49; ##51-52.

However, Debtor responded. Docs. ##54-55. Debtor claims the refund is not in her possession because it is still pending and anticipates sending the full refund to Trustee upon receipt. Doc. #55.

This matter will be called as scheduled. The court may DENY the motion provided that Debtor sent her federal refund to Trustee.

6. [20-12936](#)-B-7 **IN RE: FOREST/SOPHIA MARCHESE**
[JES-1](#)

AMENDED MOTION FOR TURNOVER OF PROPERTY
8-6-2021 [\[29\]](#)

JAMES SALVEN/MV

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

DISPOSITION: Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") seeks an order compelling Forest Walter Marchese and Sophia Dominique Marchese ("Debtors") under 11 U.S.C. § 542(a) to turn over within seven days either: (1) Debtors' 2020 Federal and State tax returns ("Tax Returns") with any refunds received; or (2) data necessary to prepare the Tax Returns. Docs. #25; #29.⁵ Trustee estimates that the 2020 federal and state tax refunds may have value to the estate over and above any available exemption of at least \$5,905. Docs. #27; #30.

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

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

⁵ Trustee amended the motion, declaration, and exhibits and cured a separate filing defect under LBR 9004-2(d)(1) and (2) on August 8, 2021. Doc. ##30-31. The content of the amended documents is identical to the originals. All of the amended documents were served on the Debtors and U.S. trustee. Doc. #32 Even though the amended documents were filed less than 28 days before the hearing, the parties were timely served with the original documents. Doc. #28.

taken as true (except those relating to amounts of damages).
Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

11 U.S.C. § 541 establishes Tax Returns and refunds as assets of the estate upon commencement of the case. Section 541(a) provides that the estate is comprised of the following property, wherever located and by whomever held, including but not limited to:

- (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.
- (2) All interest of the debtor and the debtor's spouse in community property as of the commencement of the case that is—
 - (A) under the sole, equal, or joint management and control of the debtor; or
 - (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

§ 541(a). Section 542(a) requires Debtor to deliver Tax Returns and refunds to Trustee:

- (a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

§ 542(a). If Debtors have not yet filed the 2020 Tax Returns, § 521(a)(4) requires Debtors to deliver data necessary to prepare the returns under 11 U.S.C. § 521:

- (a) The debtor shall—
 - . . .
 - (4) if a trustee is serving in the case or an auditor is serving under section 586(f) of title 28, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title[.]

§ 521(a)(4).

Trustee has demonstrated that the 2020 Tax Returns and any or all refunds exceeding Debtors' claimed exemptions are property of the estate and Trustee has the right to receipt for the benefit of the estate. Docs. #27; ##30-31. Therefore, this motion will be GRANTED.

It will be ordered that Debtors shall comply with Trustee's request for turnover of documents related to their 2020 Tax Returns and refund all or part of any refunds exceeding their claimed exemptions not later than seven calendar days after an order granting this motion is issued and served on Debtors. Failure to comply may result in an order imposing sanctions, including Trustee's attorney's fees, upon further motion.

7. [21-11539](#)-B-7 **IN RE: GURNAM SINGH AND GURJIT SIDHU**
[PBB-1](#)

MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB
7-29-2021 [\[17\]](#)

GURJIT SIDHU/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Gurnam Singh and Gurjit Kaur Sidhu ("Debtors") move to avoid the lien of American Express National Bank ("Creditor") in the amount of \$6,161.88 and encumbering residential real property located at 4519 West Roberts Avenue, Fresno, California 93722 ("Property").⁶
Doc. #17.

This motion will be DENIED. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

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.

⁶ Creditor was properly served under Federal Rule of Bankruptcy Procedure 7004(h) by certified mail addressed to Anré Williams, CEO, at Creditor's main office address. Doc. #21.

2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtors in favor of American Express Bank, FSB⁷ in the sum of \$6,161.88 on April 11, 2011. Doc. #25, Ex. D. The abstract of judgment was issued on May 23, 2011 and recorded in Fresno County on June 13, 2011 ("Original Abstract"). *Id.* This judicial lien attached to Debtors' interest in Property. A duplicate abstract of judgment was issued on October 1, 2018 and recorded in Fresno County on October 15, 2018 ("Duplicate Abstract"). Doc. #20, Ex. D. The Duplicate Abstract was filed as an exhibit to this motion while the Original Abstract was filed as an exhibit to matter #8 below. Both motions and declarations only discuss the recording of the Original Abstract and request the court generally cancel and avoid Creditor's judgment lien. Docs. #17; #19; #22; #24. The Duplicate Abstract is only briefly listed in a table with a current balance of \$0.00 and a note that it is duplicative.

California Code of Civil Procedure § 697.310(b) states that "[u]nless the money judgment is satisfied or the judgment lien is released, subject to Section 683.180 (renewal of judgment), a judgment lien created under this section continues until 10 years from the date of entry of the judgment." The date of entry of the judgment was April 11, 2011. Docs. #20; #25, Exs. D. The 10-year deadline has passed, and the judgment has expired. No evidence is presented that the judgment was renewed, so the lien cannot be avoided. The Property at issue is not currently encumbered by either abstract based on movant's evidence. This motion will be DENIED.

The court also notes that the notice of hearing does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of any persons who must be served with any opposition. Doc. #18.

8. [21-11539](#)-B-7 **IN RE: GURNAM SINGH AND GURJIT SIDHU**
[PBB-2](#)

MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB
7-29-2021 [\[22\]](#)

GURJIT SIDHU/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Gurnam Singh and Gurjit Kaur Sidhu ("Debtors") move to avoid the lien of American Express National Bank ("Creditor") in the amount of

⁷ Creditor is the successor in interest to American Express Bank, FSB, which merged into or was acquired by Creditor on April 1, 2018. See <https://banks.data.fdic.gov/bankfind-suite/bankfind/details/35328>.

\$6,161.88 and encumbering residential real property located at 4519 West Roberts Avenue, Fresno, California 93722 ("Property").⁸ Doc. #22.

This motion will be DENIED. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

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

Here, a judgment was entered against Debtors in favor of American Express Bank, FSB⁹ in the sum of \$6,161.88 on April 11, 2011. Doc. #25, Ex. D. The abstract of judgment was issued on May 23, 2011 and recorded in Fresno County on June 13, 2011 ("Original Abstract"). *Id.* This judicial lien attached to Debtors' interest in Property. A duplicate abstract of judgment was issued on October 1, 2018 and recorded in Fresno County on October 15, 2018 ("Duplicate Abstract"). Doc. #20, Ex. D. The Original Abstract was filed as an exhibit to this motion while the Duplicate Abstract was filed as an exhibit to matter #7 above. Both motions and declarations only discuss the recording of the Original Abstract and request the court generally cancel and avoid Creditor's judgment lien. Docs. #17; #19; #22; #24. The Duplicate Abstract is only briefly listed in a table with a current balance of \$0.00 and a note that it is duplicative

California Code of Civil Procedure § 697.310(b) states that "[u]nless the money judgment is satisfied or the judgment lien is released, subject to Section 683.180 (renewal of judgment), a judgment lien created under this section continues until 10 years from the date of entry of the judgment." The date of entry of the judgment was April 11, 2011. Docs. #20; #25, Exs. D. The 10-year deadline has passed, and the judgment has expired. No evidence is presented that the judgment was renewed, so the lien cannot be avoided. The Property at issue is not currently encumbered by either abstract based on movant's evidence. This motion will be DENIED.

⁸ Creditor was properly served under Federal Rule of Bankruptcy Procedure 7004(h) by certified mail addressed to Anré Williams, CEO, at Creditor's main office address. Doc. #26.

⁹ Creditor is the successor in interest to American Express Bank, FSB, which merged into or was acquired by Creditor on April 1, 2018. See <https://banks.data.fdic.gov/bankfind-suite/bankfind/details/35328>.

The court also notes that the notice of hearing does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of any persons who must be served with any opposition. Doc. #23.

9. [19-10643](#)-B-7 **IN RE: JOSE PEREZ**
[WLG-4](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
7-27-2021 [\[53\]](#)

JOSE PEREZ/MV
NICHOLAS WAJDA/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.

Jose Trinidad Perez ("Debtor") seeks to avoid a judicial lien in favor of Capital One Bank (USA), National Association ("Creditor"), in the amount of \$3,781.98 and encumbering residential real property located at 2931 W. Country Ave., Visalia, CA 93277 ("Property"). Doc. #53.

Creditor is a National Bank insured by the Federal Deposit Insurance Corporation ("FDIC"), which makes it an insured depository institution. 11 U.S.C. § 101(35)(A); 12 U.S.C. § 1813(c)(2) ("insured depository institution" means any bank insured by the FDIC). Debtor complied with Federal Rule of Bankruptcy Procedure 7004(h) by serving Richard D. Fairbank, Creditor's CEO, by certified mail at Creditor's main office address on July 27, 2021. Doc. #57.

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

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

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

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$3,781.98 on August 6, 2018. Doc. #56, Ex. 1. The abstract of judgment was issued on August 22, 2018 and recorded in Tulare County on October 16, 2018. *Id.* That lien attached to Debtor's interest in Property. Doc. #55. Creditor also obtained a second, lower priority judgment that was recorded in November 2018, which is the subject of matter #10 below. WLG-5. However, liens are subtracted in order of reverse priority and avoidable liens are excluded from the calculation. *Bank of Am. Nat'l Trust & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997).

As of the petition date, Property had an approximate value of \$188,508.00. Doc. #1, *Sched. A/B*. The unavoidable liens totaled \$174,944.00 on that same date, consisting of a deed of trust in favor of PennyMac Loan Services. Doc. #46, *Am. Sched. D*. Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b) (1) in the amount of \$20,150.00. *Id.*, *Am. Sched. C*. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property		\$188,508.00
Total amount of unavoidable liens	-	\$174,944.00
Remaining available equity	=	\$13,564.00
Debtor's "wild card" exemption	-	\$20,150.00
Creditor's judicial lien	-	\$3,781.98
Extent Debtor's exemption is impaired	=	(\$10,367.98)

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

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). No party in interest timely filed written opposition. Therefore, this motion will be GRANTED.

10. [19-10643](#)-B-7 **IN RE: JOSE PEREZ**
[WLG-5](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
7-27-2021 [\[58\]](#)

JOSE PEREZ/MV
NICHOLAS WAJDA/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.

Jose Trinidad Perez ("Debtor") seeks to avoid a judicial lien in favor of Capital One Bank (USA), National Association ("Creditor"), in the amount of \$4,827.90 and encumbering residential real property located at 2931 W. Country Ave., Visalia, CA 93277 ("Property"). Doc. #58.

Creditor is a National Bank insured by the Federal Deposit Insurance Corporation ("FDIC"), which makes it an insured depository institution. 11 U.S.C. § 101(35)(A); 12 U.S.C. § 1813(c)(2) ("insured depository institution" means any bank insured by the FDIC). Debtor complied with Federal Rule of Bankruptcy Procedure 7004(h) by serving Richard D. Fairbank, Creditor's CEO, by certified mail on July 27, 2021. Doc. #62.

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

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

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a

non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$4,827.90 on October 3, 2018. Doc. #61, Ex. 1. The abstract of judgment was issued on October 31, 2018 and recorded in Tulare County on November 16, 2018. *Id.* That lien attached to Debtor's interest in Property. Doc. #60. Creditor also obtained an earlier, higher priority judgment that was recorded in October 2018, which is the subject of matter #9 above. WLJ-4. However, liens are subtracted in order of reverse priority and avoidable liens are excluded from the calculation. *Bank of Am. Nat'l Trust & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997).

As of the petition date, Property had an approximate value of \$188,508.00. Doc. #1, *Sched. A/B*. The unavoidable liens totaled \$174,944.00 on that same date, consisting of a deed of trust in favor of PennyMac Loan Services. Doc. #46, *Am. Sched. D*. Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$20,150.00. *Id.*, *Am. Sched. C*. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property		\$188,508.00
Total amount of unavoidable liens	-	\$174,944.00
Remaining available equity	=	\$13,564.00
Debtor's "wild card" exemption	-	\$20,150.00
Creditor's judicial lien	-	\$4,827.90
Extent Debtor's exemption is impaired	=	(\$11,413.90)

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

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). No party in interest timely filed written opposition. Therefore, this motion will be GRANTED.

11. [20-13744](#)-B-7 **IN RE: BILLY WILLIFORD**
[DMG-2](#)

MOTION TO AVOID LIEN OF HARCO NATIONAL INSURANCE COMPANY
8-10-2021 [\[22\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Billy Ray Williford, Jr. ("Debtor"), seeks to avoid a judicial lien in favor of Harco National Insurance Company ("Creditor") in the amount of \$3,584.67 and encumbering residential real property located at 5900 Lawsanne St., Bakersfield, CA 93308 ("Property"). Doc. #22.

Creditor is a corporation. Debtor complied with Federal Rule of Bankruptcy Procedure 7004(b)(3) by serving David Pirrung, Creditor's CEO, at Creditor's main office address, and CT Corporation System, Creditor's registered agent for service of process, as its service address. Doc. #26. Both were served by certified mail on August 10, 2021.

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

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

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

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$3,584.67 on April 4, 2020. Doc. #25, Ex. A. The abstract of judgment was issued on August 18, 2020 and recorded in Kern County on August 26, 2020. *Id.* That lien attached to Debtor's

interest in Property. Doc. #24. Debtor estimates that the balance on the judgment lien at the time of filing was approximately \$4,000, though Creditor's Proof of Claim only lists the \$3,584.67 judgment amount. *Id.*; cf. Claim #3-1 (§ 7 notes that this amount does not include interest or other charges).

As of the petition date, Property had an approximate value of \$330,000.00. Doc. #1, *Sched. A/B*. The unavoidable liens totaled \$265,043.06 on that same date, consisting of a deed of trust in favor of Freedom Mortgage. *Id.*, *Sched. D*. Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.950 in the amount of \$64,956.94. *Id.*, *Sched. C*. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property		\$330,000.00
Total amount of unavoidable liens	-	\$265,043.06
Remaining available equity	=	\$64,956.94
Debtor's "homestead" exemption	-	\$64,956.94
Creditor's judicial lien (approx.)	-	\$4,000.00
Extent Debtor's exemption is impaired	=	(\$4,000.00)

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

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Written opposition was not required and may be presented at the hearing. Therefore, in the absence of opposition, this motion will be GRANTED.

12. [20-12756](#)-B-7 **IN RE: DANIEL GUTIERRIZ AND NICOLE BALDERAS**
[JES-1](#)

MOTION TO COMPEL
7-26-2021 [\[33\]](#)

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

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Chapter 7 trustee James E. Salven withdrew this motion on August 11, 2021. Doc. #40. Accordingly, this matter will be dropped from calendar.

13. [21-11457](#)-B-7 **IN RE: EDGAR GAMA SALDANA**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
7-7-2021 [\[16\]](#)

VINCENT QUIGG/ATTY. FOR DBT.

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue an order.

Chapter 7 trustee Peter L. Fear ("Trustee") seeks dismissal for debtor's failure to appear and testify at the § 341(a) meeting of creditors held on July 6, 2021.

Edgar Erick Gama Saldana ("Debtor") timely filed opposition on July 14, 2021. Doc. #18. Debtor's attorney, Vincent J. Quigg, states that he received two notices about the meeting and Debtor received one notice. On the day of the hearing, Mr. Quigg tried to contact Debtor to connect to the meeting, but due to telephone errors and problems they were unable to attend the meeting. Mr. Quigg states that he has corrected the telephone issues and is ready to attend the next meeting scheduled for *June 14, 2021* (sic), but the next meeting of creditors is scheduled for **September 7, 2021 at 3:00 p.m.**

This motion will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for September 7, 2021 at 3:00 p.m. Doc. #15. If Debtor fails to do so, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The times prescribed in Rules 1017(e)(1) and 4004(a) for the Chapter 7 Trustee and U.S. Trustee to object to Debtor's 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.

The court notes that the opposition does not comply with Local Rule of Practice ("LBR") 9004-2(c)(1), (d)(4) and (e)(1), which require motions, declarations, proofs of service, and other specified pleadings to be filed as separate documents. Doc. #18. Further, Debtor did not use the proof of service form provided by Trustee and only served the documents electronically. *Id.*, at 7. Debtor checked the "Service information continued on attach page" box, but no additional pages containing service mailing addresses are included. Counsel is advised to review the local and federal rules and ensure procedural compliance in subsequent filings.

14. [20-10259](#)-B-7 **IN RE: JOSE URIBE RIZO AND LORENZA URIBE**

CONTINUED ORDER TO SHOW CAUSE
6-28-2021 [\[51\]](#)

OSCAR SWINTON/ATTY. FOR DBT.

NO RULING.

Jose Jaime Uribe Rizo and Lorenza Uribe ("Debtors") filed four motions to convert case from chapter 7 to chapter 13. See Docs. #20; #28; #34; #45. The first three were denied for procedural reasons. Docs. #27; #33; #39. The last was granted, but Debtors' attorney never submitted an order. Doc. #50.

On June 28, 2021, the court issued an Order to Show Cause ("OSC") requiring Oscar R. Swinton, Debtors' counsel, to show cause why this case should not be dismissed for:

- 1) unreasonable delay that is prejudicial to creditors;
- 2) non-compliance with the court's ruling made on May 5, 2021;
- 3) lack of prosecution.

Doc. #51. This matter was originally scheduled for July 27, 2021 and rescheduled to July 29, 2021. The court continued this hearing to August 31, 2021 because Mr. Swinton was on a family vacation outside of the continental United States that was scheduled last year and could not be refunded. Docs. ##62-63.

The original OSC required Mr. Swinton to respond not later than seven days before the hearing. As of August 26, 2021, Mr. Swinton has not responded. This matter will be called as scheduled to inquire about Mr. Swinton's failure to submit an order or otherwise prosecute this case.

15. [21-10066](#)-B-7 **IN RE: LAURA SALGUERO-AGUILAR**
[JES-1](#)

MOTION TO COMPEL
7-23-2021 [\[26\]](#)

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

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Chapter 7 trustee James E. Salven withdrew this motion on August 11, 2021. Doc. #33. Accordingly, this matter will be dropped from calendar.

16. [21-11468](#)-B-7 **IN RE: ROBERT/LESLEY SIERRA**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-20-2021 [\[17\]](#)

GLOBAL LENDING SERVICES LLC/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

The movant, Global Lending Services LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2016 Chevrolet Camaro ("Vehicle"). Doc. #17.

Debtors filed non-opposition on August 10, 2021. Doc. #23. No other party in interest timely filed written opposition. This motion will be GRANTED.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors have indicated in their Statement of Intention that they intend to surrender the Vehicle and have failed to provide proof of insurance to Movant. The Vehicle is valued at \$22,600.00 and debtors owe \$19,790.81. Doc. #19, #20.

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

17. [21-11675](#)-B-7 **IN RE: CHAD PETERSON**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-28-2021 [\[11\]](#)

SANTANDER CONSUMER USA INC./MV
SCOTT LYONS/ATTY. FOR DBT.
JENNIFER WANG/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.

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 2015 Mazda CX-9 ("Vehicle"). Doc. #11.

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

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

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least seven (7) payments. The movant has produced evidence that debtor is delinquent at least \$3,848.04, plus late fees of \$166.94. Doc. #14, #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 debtor is in chapter 7. *Id.* The Vehicle is valued at \$18,950.00 and debtor owes \$20,530.31. Doc. #14, #16.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least seven (7) payments to Movant and the Vehicle is a depreciating asset. No other relief is awarded.

18. [20-12979](#)-B-7 **IN RE: HECTOR/ROSA SUAREZ**
[JES-2](#)

MOTION TO COMPEL
7-23-2021 [\[24\]](#)

JAMES SALVEN/MV
T. O'TOOLE/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Chapter 7 trustee James E. Salven withdrew this motion on August 6, 2021. Doc. #31. Accordingly, this matter will be dropped from calendar.

19. [21-11485](#)-B-7 **IN RE: TODD/ERMA GRAHAM**
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-23-2021 [\[18\]](#)

U.S. BANK NATIONAL
ASSOCIATION/MV
PATRICIA CARRILLO/ATTY. FOR DBT.
SEAN FERRY/ATTY. FOR MV.

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

DISPOSITION: Granted in part and Denied in part.

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

U.S. Bank, National Association ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property located at 8399 South Englehart Avenue, Reedley, California 93654 ("Property"). Doc. #18.

No party in interest timely filed written opposition. This motion will be GRANTED IN PART and DENIED IN PART.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors have failed to make at least 3 complete payments. The movant has produced evidence that debtors are delinquent at least \$6,593.83 and the entire balance of \$335,578.44 is due. Doc. #20, #22.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The request for attorney's fees will be DENIED. Though debtor is over-secured under 11 U.S.C. § 506(b), movant must separately file and set for hearing a motion for compensation in compliance with the LBR and Federal Rules of Bankruptcy Procedure. If movant does, then the court will consider that motion on its merits at the appropriate time.

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

20. [20-13588](#)-B-7 **IN RE: RIGOBERTO/GUADALUPE BERNAL**
[JES-1](#)

MOTION TO COMPEL
7-19-2021 [\[42\]](#)

JAMES SALVEN/MV

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

DISPOSITION: Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") seeks an order compelling Rigoberto Bernal and Guadalupe G Bernal ("Debtors") under 11 U.S.C. § 542(a) to turn over within seven days either: (1) Debtors' 2020 Federal and State tax returns ("Tax Returns") with any refunds received; or (2) data necessary to prepare the Tax Returns. Doc. #42. Trustee estimates that the 2020 federal and state tax refunds may have value to the estate over and above any available exemption of at least \$3,001. Docs. #44; #47.¹⁰

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of

¹⁰ Trustee amended the declarations and exhibits and cured a separate filing defect under LBR 9004-2(d)(1) and (2). Docs. ##46-47. All of the amended documents were served on the Debtors and U.S. trustee. Doc. #48.

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

11 U.S.C. § 541 establishes Tax Returns and refunds as assets of the estate upon commencement of the case. Section 541(a) provides that the estate is comprised of the following property, wherever located and by whomever held, including but not limited to:

- (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.
- (2) All interest of the debtor and the debtor's spouse in community property as of the commencement of the case that is—
 - (A) under the sole, equal, or joint management and control of the debtor; or
 - (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

§ 541(a). Section 542(a) requires Debtors to deliver Tax Returns and refunds to Trustee:

- (a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

§ 542(a). If Debtors have not yet filed the 2020 Tax Returns, § 521(a)(4) requires Debtors to deliver data necessary to prepare the returns under 11 U.S.C. § 521:

- (a) The debtor shall—
 - • •
 - (4) if a trustee is serving in the case or an auditor is serving under section 586(f) of title 28, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating

to property of the estate, whether or not immunity is granted under section 344 of this title[.]

§ 521(a)(4).

Trustee has demonstrated that the 2020 Tax Returns and any or all refunds exceeding Debtors' claimed exemptions are property of the estate and Trustee has the right to receipt for the benefit of the estate. Docs. #44; ##46-47. Therefore, this motion will be GRANTED.

It will be ordered that Debtors shall comply with Trustee's request for turnover of documents related to their 2020 Tax Returns and refund all or part of any refunds exceeding their claimed exemptions not later than seven calendar days after an order granting this motion is issued and served on Debtors. Failure to comply may result in an order imposing sanctions, including Trustee's attorney's fees, upon further motion.

21. [21-10999](#)-B-7 **IN RE: ERIC/ROMANA JOHNSON**
[JES-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
7-21-2021 [\[14\]](#)

JAMES SALVEN/MV
JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

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

Chapter 7 trustee James E. Salven ("Trustee") objects to Eric Neal Johnson's and Romana Hanna Johnson's ("Debtors") claim of exemptions for certain assets described in the Debtors' schedules. Doc. #14.

No party in interest timely filed written opposition to this objection, but the Debtors did amend Schedule C on July 28, 2021, which was after this objection was filed. See Doc. #19, *Am. Sched. C*. But the amendment does not resolve Trustee's objections. This objection will be SUSTAINED.

This objection was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned

parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Federal Rule of Bankruptcy Procedure ("Rule") 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341(a) meeting of creditors is held or within 30 days after any amendment to Schedule C is filed, whichever is later.

The Eastern District of California Bankruptcy Court in *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [California law] and the extent to which that exemption applies." The exemption statutes are to be liberally construed in favor of the debtors. *In re Turner*, 186 B.R. 108, 113 (B.A.P. 9th Cir. 1995).

On Debtors' original schedules, exemptions were claimed for the following business assets under C.C.P. § 704.060:

\$190.00: Clover point sale system, Clover order printer, Dell MFP 1815dn printer/scanner/copier, cordless phone;

\$5,558.00: Atosa Refrigerator (x2), Amana Freezer, Desert Refrigerator, Silver King beverage refrigerator, Traeger pro smoker, Black Diamond six burner oven, Pitco deep fryer, American Range griddle, prep tables (x5), griddle table, rice cooker (x2), warming chafer (x5), Cambro, food scale, Avantco food warmer, Ninja mixer, 5-quart plastic containers (x10), 4-quart plastic containers (x10), 12-quart plastic containers (x2), 22-quart plastic containers (x2), sheet pans (x8), 8-quart lowboy pot, stock pot (x3), strainer (x5), fry pan (x4), mixing bowls (x3), knives (x12), mixing spoons (x15), mixing spatulas (x4), SS tongs (x6), SS ladles (x12), hot spatulas (x2), crock pots (x5), measuring cups, measuring spoons, measuring pitcher, mandoline, cutting boards (x4), plastic plates (x15), plastic squeeze bottles (x8), steam table inserts with lids (x14), plastic sandwich board inserts (x16), 100g ice coolers (x2), 4 burner outdoor griddles;

\$5,271.00: 2003 Ford F250 pickup truck, utility trailer, pop up tent, folding table (x3), champion generator, extension cord, power strip, electrical meter, moving dolly, storage containers (x10).

Doc. #1, *Sched. C*. Trustee objects to each of these exemptions because C.C.P. § 704.060 is only for assets used in the exercise of a trade or business, which is not the case here. Trustee states that Schedule I shows Mr. Johnson is not employed and Ms. Johnson is a

dog groomer, so she would not use the restaurant and catering assets listed above in her business. *Id.*, *Sched. I*; Doc. #14. Further, Debtors' statement of financial affairs indicates that the two businesses in which the assets were used closed in August 2019 and August 2020, which is more than eight months before the petition was filed. Doc. #1, Form 107, § 27. The Debtors testified as to the accuracy of this statement at the meeting of creditors scheduled on June 24, 2021.

So, when the case was filed, the Debtors were not using the assets claimed as exempt in a trade, business, or profession.

Trustee argues that these assets do not qualify for use under C.C.P. § 704.060 because they are not actually used by either of the Debtors in the exercise of a trade, business, or profession in which one of the debtors earns a livelihood. Doc. #14; *see also* C.C.P. § 704.060(a)(1), (2), and (3). Alternatively, if the exemptions are allowed, Trustee insists the exemption in the 2003 Ford F250 should be limited to \$4,850 under C.C.P. § 704.060(d)(1).

As noted above, Debtors amended Schedules A/B and C on July 28, 2021, after the objection was filed. Doc. #19. The court notes that the amended schedules were filed in reverse order.

Per the amended schedules, Debtors kept the \$190.00 and \$5,558.00 exemptions stated above. Doc. #19, *Am. Sched. C*. However, the Ford F250 was reclassified in Schedule A/B with a value of \$5,295.00. *Id.*, *Am. Sched. A/B*, ¶ 3.2. Debtors omitted any mention of the "utility trailer, pop up tent, folding table (x3), champion generator, extension cord, power strip, electrical meter, moving dolly, storage containers (x10)" that were previously listed with the Ford F250. Debtors increased the exemption for the Ford F250 to \$5,295.00 under C.C.P. § 704.060.

Debtors bear the burden, as the exemption claimant, of proving that they are entitled to their exemptions. Debtors did not file any opposition to the objection and their defaults are entered. Since Debtors' restaurant and catering businesses closed in August 2019 and August 2020, Mr. Johnson is now unemployed, and Ms. Johnson is self-employed at her dog walking business, it does not appear any of the above assets are used in the exercise of a trade, business, or profession by which either of the Debtors earns a livelihood.

Debtors have failed to meet their burden of proving that they are entitled to the exemptions listed above in the original or amended amounts. Accordingly, this objection will be SUSTAINED.