



UNITED STATES BANKRUPTCY COURT
Eastern District of California
HONORABLE RENÉ LASTRETO II
Department B – 510 19th Street
Bakersfield, California

Hearing Date: Wednesday September 6, 2023

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be as instructed below.

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) via **ZOOMGOV VIDEO**, (2) via **ZOOMGOV TELEPHONE**, and (3) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

Parties in interest and members of the public may connect to ZoomGov, free of charge, using the information provided:

Video web address: <https://www.zoomgov.com/j/1600066801?pwd=RjlTaXNwOEFZZ2VrYzRHT3JJQ0tWUT09>

Meeting ID: 160 006 6801

Password: 208505

ZoomGov Telephone: (669) 254-5252 (Toll Free)

Please join at least 10 minutes before the start of your hearing. You are required to give the court 24 hours advance notice on [Court Calendar](#).

To appear remotely for law and motion or status conference proceedings, you must comply with the following new guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Review the court's [Zoom Procedures and Guidelines](#) for these and additional instructions.
3. Parties appearing through CourtCall are encouraged to review the [CourtCall Appearance Information](#).

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screenshots" or other audio or visual copying of a hearing, is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:00 AM

1. [21-12802](#)-B-13 **IN RE: LATANYA LABLUE**
[MHM-2](#)

MOTION TO DISMISS CASE
8-4-2023 [\[35\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Unless the trustee's motion is withdrawn at the hearing the court intends to grant the motion to dismiss on the grounds stated in the motion.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case for cause under 11 U.S.C. § 1307(c)(1) and (c)(6) for unreasonable delay by LaTanya LaBlue ("Debtor") prejudicial to creditors and failure to make all payments due under the plan. Doc. #35.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the Debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay by the debtor that is prejudicial to creditors and failure to commence making plan payments.

Here, Debtor is delinquent in the amount of \$1,527.42. Doc. #37. Before this hearing, another payment in the amount of \$1,569.39 will also come due, resulting in a total delinquency of \$3,096.81. *Id.*

Debtor filed opposition on August 17, 2023, but it was not supported by admissible evidence. Debtor claims that the plan payment is now current. Doc. #39.

Trustee has reviewed the schedules and determined that this case has a liquidation value of \$1,265.25 after trustee compensation. Doc. #37. This value consists of the non-exempt equity in Debtor's 2015 Toyota Camry. Since a *de minimis* amount of proceeds could be realized for the benefit of unsecured claims, dismissal, rather than conversion, better serves the interests of creditors and the estate.

This matter will be called and proceed as scheduled to inquire whether Debtor is current under the plan. If so, this motion will be DENIED WITHOUT PREJUDICE; otherwise, this motion may be GRANTED, and the case dismissed.

2. [23-11502](#)-B-13 **IN RE: ERIN STEVENSON**
[MJD-1](#)

CONTINUED MOTION TO EXTEND AUTOMATIC STAY
7-26-2023 [\[9\]](#)

ERIN STEVENSON/MV
MATTHEW DECAMINADA/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

Erin David Stevenson ("Debtor") requests an order extending the automatic stay under 11 U.S.C. § 362(c)(3). Doc. #8. This motion was initially filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and a hearing was conducted on August 9, 2023. Written opposition was not required, but only the Trustee Michael H. Myer ("Trustee") presented any opposition at the hearing. Consequently, the defaults of the other respondents were entered. Because the Trustee has since filed a Non-Opposition to the motion effectively withdrawing the objections raised at the prior hearing, this motion is GRANTED.

As a preliminary matter, the notice of hearing does not refer respondents to the pre-hearing dispositions on the court's website. Doc. #10. 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 (c) parties

appearing telephonically must view the pre-hearing dispositions prior to the hearing. Here, the notice entirely omits the above disclosure.

Typically, this motion would be denied without prejudice for the above procedural deficiency. However, the automatic stay in this case was set to expire on August 12, 2023, and the court's next chapter 13 calendar was not until August 23, 2023. Denial of this motion for procedural reasons would have unduly prejudiced Debtor because the automatic stay cannot be reimposed after it expires. Accordingly, the court elected to overlook this procedural deficiency under LBR 1001-1(f). Debtor's counsel is advised to review the local rules and ensure procedural compliance in subsequent matter. Future violations of the local rules may result in a motion being denied without prejudice without a hearing.

Under 11 U.S.C. § 362(c)(3)(A), if the debtor has had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay under subsection (a) shall terminate with respect to the debtor on the 30th day after the latter case is filed. Debtor had one case pending within the preceding one-year period that was dismissed: Case No. 22-11720-B-13 (Bankr. E.D. Cal.). That case was filed on October 5, 2022, and was dismissed on June 8, 2023 for unreasonable delay by the debtor that was prejudicial to creditors, failure to confirm a plan, failure to file tax returns, and failure to file a complete and accurate *Schedule E/F*. The present case was filed on July 13, 2023. Doc. #1. The automatic stay will expire on August 12, 2023.

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

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

In this case, the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith as to all creditors because Debtor has more than one previous case under chapter 13 that was pending within the preceding one-year period and Debtor failed to file or amend the petition or other documents as required by the

Bankruptcy Code or the court without substantial excuse.
§ 362(c) (3) (C) (i) (I), (c) (3) (C) (i) (II) (aa) .

Debtor declares that the previous case was dismissed because Debtor failed to confirm a chapter 13 plan. Doc. #12. Debtor has worked to resolve the chapter 13 trustee's objections in the previous case and believes that she will be able to confirm a plan in this case and make the proposed plan payments. *Id.* Debtor further declares that the case was filed in good faith and the plan has been proposed in good faith.

The proposed *Chapter 13 Plan* dated July 15, 2023, provides for 60 monthly payments of \$2,200.00 with a 17.15% dividend to unsecured claims. Doc. #8. Debtor's *Schedules I* and *J* indicate that Debtor receives \$2,200.00 in monthly net income, which is sufficient for Debtor to afford the proposed plan payment. Doc. #1.

By way of comparison, Debtor in the prior case was receiving \$2,110.00 in monthly net income when the case was filed in October 2022, so Debtor's financial condition has changed slightly since the last case was filed. See, Case No. 22-11720-B-13 (Bankr. E.D. Cal.), Doc. #1. However, Debtor's *Amended Schedules I & J* filed on March 31, 2023, are nearly identical to those filed with this motion. Debtor's personal affairs have substantially changed through filing missing tax returns and adding Debtor's spouse's debts to *Schedule E/F*.

Based on the moving papers and the record, the presumption appears to have been rebutted by clear and convincing evidence because Debtor's financial circumstances and personal affairs have changed. Debtor's petition appears to have been filed in good faith and the proposed plan does appear to be feasible.

On the original August 9, 2023, hearing date, the Trustee raised concerns over whether Debtor's outstanding tax returns had been filed. The court continued this matter to September 6, 2023, and temporarily extended the automatic stay to the hearing date. On August 23, 2023, the Trustee filed a Non-Opposition to the instant motion which stated that the 341 meeting had been conducted and that based on Debtor's representations under oath pertaining to the tax returns, the Trustee's objection would be withdrawn. As no other opposition was presented at the August 9, 2023, hearing, the motion is GRANTED, and the automatic stay is extended to all creditors who were served notice subject to further order of the court.

3. [23-10722](#)-B-13 **IN RE: ADAM RIVERA**

ORDER TO SHOW CAUSE - FAILURE TO TENDER FEE FOR FILING
TRANSFER OF CLAIM
8-10-2023 [\[36\]](#)

RABIN POURNAZARIAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings and conclusions.

ORDER: The court will issue an order.

Creditor Lakeview Loan Servicing c/o Service Mac ("Creditor") filed a *Transfer of Claim Other than for Security* on July 27, 2023. Doc. #28. A fee of \$26.00 is required at the time of filing that document. A *Notice of Payment Due* was served on Creditor August 2, 2023. Doc. #31.

On August 10, 2023, the Clerk of the court issued an *Order to Show Cause re Dismissal of Contested Matter or Imposition of Sanctions* directing Creditor to appear at the hearing and show cause why the transfer pleadings should not be stricken, sanctions imposed on the party filer and/or their counsel, or other relief ordered for failure to comply with the provisions of 28 U.S.C. § 1930(b). Doc. #36.

This matter will proceed as scheduled. If the filing fee of \$26.00 is not paid prior to the hearing, the above-referenced pleading shall be stricken, sanctions imposed on the filer and/or its counsel, or other appropriate relief ordered for such failure to comply with the provisions of 28 U.S.C. Sec. 1930(b).

4. [22-11650](#)-B-13 **IN RE: ROY ZUBIA**
[MHM-3](#)

MOTION TO DISMISS CASE
8-4-2023 [[41](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED.

The chapter 13 trustee withdrew this Motion to Dismiss on August 28, 2023. Doc. #93. Accordingly, this matter will be dropped and taken off calendar pursuant to the withdrawal.

5. [22-12056](#)-B-13 **IN RE: SHANNON HAGER**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
6-13-2023 [[73](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

6. [22-12056](#)-B-13 **IN RE: SHANNON HAGER**
[RSW-3](#)

MOTION TO CONFIRM PLAN
7-25-2023 [\[82\]](#)

SHANNON HAGER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

7. [23-10685](#)-B-13 **IN RE: RAYSHAWN LYONS**
[RSW-2](#)

CONTINUED MOTION TO CONFIRM PLAN
6-5-2023 [\[20\]](#)

RAYSHAWN LYONS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: GRANTED.

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

Rayshawn Deon Lyons ("Debtor") moves for an order confirming the
Chapter 13 Plan dated April 2, 2023. Doc. #20.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected
because the plan provides for payments to creditors for a period
longer than five years under 11 U.S.C. § 1322(d). Doc. #39.
Specifically, the plan takes 73.37 months to fund based on the
stipulated value between Debtor and Freedom Truck Finance. To fund,
the plan payment would need to increase to \$1,120 per month for 59
months or \$1,100.53 per month for 60 months. *Id.*

On August 8, 2023, the court continued this matter to permit the
Debtor time to cure the matters raised by the Trustee's Objection.
On August 24, 2023, the Trustee filed a supplemental response
stating that he would prepare a confirmation order which resolved
Trustee's objections by increasing the Debtor's monthly payment to
\$1,100.53 per month and to extend the plan's duration to 60 months.
The court will call this matter at the appointed time to confirm on
the record that the Debtor consents to these proposed plan
modifications.

Additionally, in the pre-hearing disposition issued by this court in advance of the prior hearing date, the court noted that the original certificate of service does not comply with Local Rule of Practice ("LBR") 7005-1, which requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users to be documented using the Official Form. Doc. #24. Debtor partially resolved this issue by using the correct form for service of the amended notice of hearing, but Debtor has not yet proven service using the correct form for the motion and declarations. Doc. #27. If not timely corrected, this may be grounds for dismissal without prejudice of the instant motion notwithstanding the agreement of the Debtor and Trustee as to the aforementioned plan modifications.

8. [23-10290](#)-B-13 **IN RE: EMILY MARTIN**
[MHM-2](#)

MOTION TO DISMISS CASE
8-3-2023 [\[59\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 13, at 9:30 a.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to September 13, 2023, at 9:30 a.m., to be heard in connection with the debtors' motion to confirm second modified plan. See, Docs. ##63-71; RSW-3.

10:00 AM

1. [23-11003](#)-B-7 **IN RE: GIOVANNI FERGUSON**
[DMG-2](#)

MOTION TO COMPROMISE CONTROVERSY WITH DEBTOR AND STATE FARM
MUTUAL AUTOMOBILE INSURANCE CO, AND/OR MOTION APPROVE SALE
OF ESTATE'S INTEREST IN PROPERTY
8-4-2023 [\[25\]](#)

JEFFREY VETTER/MV

NEIL SCHWARTZ/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed for higher and better bids only.

DISPOSITION: GRANTED

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

Trustee Jeffrey M. Vetter ("Trustee") comes before the court on this Motion To Compromise Controversy And/Or Motion Approve Sale Of Estate's Interest In Property. Doc. #25. No party has filed an opposition, and the court is inclined to GRANT the motion. Nevertheless, the matter will proceed as scheduled solely for purposes of determining whether there are any higher or better bids for the asset at issue.

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 Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This matter arises out of an automobile accident involving Debtor Jiovanni Ferguson ("Debtor") and Maria and Itzel Mosqueda ("the Mosquedas"). The Mosqueda's unfortunately perished in the accident. Doc. #25. The heirs of the Mosquedas ("Plaintiffs") filed suit in state court against Debtor and a non-debtor named Anthony Larsen for damages arising from the accident. *Id.* On or about April 6, 2023, State Farm Insurance ("State Farm"), Debtor's insurance carrier, filed a complaint against Debtor and the Plaintiffs in the U.S. District Court for the Eastern District of California seeking declaratory relief regarding (1) whether State farm unreasonably failed to accept a reasonable settlement within policy limits and (2) whether State Farm should be liable for any consequential damages in excess of the policy limits, as well as other issues arising from State Farm's conduct vis a vis the underlying accident. *Id.*

In the instant motion, Trustee seeks approval of a settlement agreement whereby State Farm will pay the estate \$40,000.00 in exchange for "any and all of Debtor's contractual rights and extra

contractual exposure" for the accident. *Id.* Said "contractual rights" are not listed as an asset of Debtor's in Schedule B. *Id.* See also *Schedule B, Doc. #1*. Trustee asserts that the value of any such rights is not fully exempted by Debtor and cannot be exempted beyond the balance of Debtor's wildcard exemption under C.C.P. § 703.140(b)(5). In bringing the instant motion, Trustee requests that the court authorize the sale of the Chapter 7 estate's interest in the litigation described in the motion, that Trustee be authorized to enter into the settlement agreement attached as an exhibit to the motion, and that the proposed compromise be approved, as well as any other relief needed to effectuate the order.

As representative of the chapter 7 bankruptcy estate, Trustee has the authority to settle claims of Debtor subject to court approval. 11 U.S.C. § 323(a). On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Rule 9019. Approval of a compromise must be based upon considerations of fairness and equity. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

No creditor has timely opposed the motion. It appears from the moving papers that the Trustee has considered the *A & C Props.* and *Woodson* factors, which weigh in favor of approving the settlement agreement as follows:

1. Probability of success in litigation: Trustee avers that, in his experience, bad faith denial of claim lawsuits "are complicated, require expert testimony, are challenged strenuously by carriers, involve extensive discovery and are time consuming." Trustee opines that the facts of the underlying litigation do not create "a clear path to a successful judgment." This factor weighs in favor of settlement.

2. Collection: Trustee believes that collection would not be difficult if the litigation were successful. This factor weighs against settlement but not decisively.

3. Complexity of litigation: Trustee views the litigation to be "difficult," as it involves multiple witnesses, transactions and documentation that must be presented at trial. This factor weighs in favor of settlement.

4. Paramount interests of creditors: Though no creditors have made their views known, Trustee believes that creditors would support approval of the settlement because it provides a guaranteed recovery for the estate while avoiding the risk and expense of litigation. This factor supports approval of the settlement.

The *A & C Props.* and *Woodson* factors appear to weigh in favor of approving the settlement. Therefore, the settlement appears to be a fair, equitable, and reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.*

Accordingly, this Motion to Compromise Claims and Interest in Property will be GRANTED. The settlement between the estate and State Farm will be approved as presented subject to the factors below.

This ruling is not authorizing the payment of any fees or costs associated with the settlement. Additionally, Trustee shall attach a copy of the settlement agreement as an exhibit to the proposed order and shall separately file the settlement agreement and docket it as a stipulation.

Notwithstanding for foregoing, the court will allow the hearing to proceed solely to consider whether there are any higher and better bids than the \$40,000.00 offered by State Farm before making any final ruling on the accompanying Motion for Approval of the Sale of the estate's interest in the litigation. See, *Goodwin v. Mickey Thompson Entertainment Group, Inc.* (*In re Mickey Thompson Entertainment Group, Inc.*), 292 B.R. 415 (B.A.P. 9th Cir., 2003) (Holding section 363 and Rules 6004 and 9019 (a) may overlap when property of the estate is disposed of by way of settlement.)

The motion to compromise controversy is GRANTED subject to higher and better bids at the hearing.

2. [23-11205](#)-B-7 **IN RE: JOHN CORBETT**
[WSL-1](#)

MOTION TO AVOID LIEN OF DISCOVER BANK
8-8-2023 [\[20\]](#)

JOHN CORBETT/MV
RAJ WADHWANI/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.

John Ambrose Corbett ("Debtor") moves for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of Discover Bank ("Creditor") in the sum of \$3,198.68 and encumbering residential real property located at 1928 Keith Lane, Rosamund, CA 93560 ("Property").

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

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

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

Here, a judgment was entered against Debtor in favor of Creditor in the amount of \$11,006.74 on October 8, 2021. *Ex. A*, Doc. #23. The abstract of judgment was issued on February 1, 2022, and was recorded in Kern County on March 29, 2022. *Id.* That lien attached to Debtor's interest in Property. *Id.*

As of the petition date, Property had an approximate value of \$285,000.00. *Id.*; *cf. Sched. A/B*, Doc. #1. Debtor claimed a \$285,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Sched. C*, *Id.*

Property is unencumbered save for this lien and another held by JP Morgan Chase Bank which the Debtor also seeks to avoid. Doc. #1 (Schedule D); Doc. #25. Accordingly, the Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. JPM Lien	\$49,846.00	4/13/2021	Avoidable
2. Creditor	\$11,006.74	3/29/2022	Avoidable

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

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

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

Amount of judgment lien		\$11,006.74
Total amount of unavoidable liens	+	\$0.00
Debtor's claimed exemption in Property	+	\$285,000.00
<i>Sum</i>	=	\$296,006.74
Debtor's claimed value of interest absent liens	-	\$285,000.00
Extent lien impairs exemption	=	\$11,006.74

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

Fair market value of Property		\$285,000.00
Total amount of unavoidable liens	-	\$0.00
Homestead exemption	-	\$285,000.00
Remaining equity for judicial liens	=	\$0.00
Creditor's judicial lien	-	\$11,006.74
Extent Debtor's exemption impaired	=	(\$11,006.74)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support any judicial

liens. Therefore, the fixing of Creditor's judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

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

3. [23-11205](#)-B-7 **IN RE: JOHN CORBETT**
[WSL-2](#)

MOTION TO AVOID LIEN OF JPMORGAN CHASE BANK
8-8-2023 [\[25\]](#)

JOHN CORBETT/MV
RAJ WADHWANI/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.

John Ambrose Corbett ("Debtor") moves for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of JP Morgan Chase Bank ("Creditor") in the sum of \$3,198.68 and encumbering residential real property located at 1928 Keith Lane, Rosamund, CA 93560 ("Property").

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

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

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

Here, a judgment was entered against Debtor in favor of Creditor in the amount of \$49,946.00 on March 10, 2021. *Ex. A*, Doc. #23. The abstract of judgment was issued on March 30, 2021, and was recorded in Kern County on April 13, 2021. *Id.* That lien attached to Debtor's interest in Property. *Id.*

As of the petition date, Property had an approximate value of \$285,000.00. *Id.*; *cf. Sched. A/B*, Doc. #1. Debtor claimed a \$285,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Sched. C, Id.*

Property is unencumbered save for this lien and another held by JP Morgan Chase Bank which the Debtor also seeks to avoid. Doc. #1 (Schedule D); Doc. #25. Accordingly, the Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. Creditor	\$49,846.00	4/13/2021	Avoidable
2. Discover Bank	\$11,006.74	3/29/2022	Avoidable

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

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

This lien is the most junior lien subject to avoidance and there is not any equity to support the lien. Strict application of the

§ 522(f)(2) formula with respect to Creditor's junior lien is illustrated as follows:

Amount of judgment lien		\$49,846.00
Total amount of unavoidable liens	+	\$0.00
Debtor's claimed exemption in Property	+	\$285,000.00
<i>Sum</i>	=	\$334,846.00
Debtor's claimed value of interest absent liens	-	\$285,000.00
Extent lien impairs exemption	=	\$49,846.00

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

Fair market value of Property		\$285,000.00
Total amount of unavoidable liens	-	\$0.00
Homestead exemption	-	\$285,000.00
Remaining equity for judicial liens	=	\$0.00
Creditor's judicial lien	-	\$49,846.00
Extent Debtor's exemption impaired	=	(\$49,846.00)

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

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

4. [23-11175](#)-B-7 **IN RE: JASWINDER SINGH**
[SKI-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-25-2023 [[20](#)]

TD BANK, N.A./MV
VINCENT GORSKI/ATTY. FOR DBT.
SHERYL ITH/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.

TD Bank, N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2021 Chevrolet Colorado ("Vehicle"). Doc. #20. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). *Id.* Jaswinder Singh ("Debtor") did not oppose.

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 amount 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 Debtor has missed one pre-petition payment in the amount of \$494.52 and one post-petition payment in the amount of \$494.52 for a total default of \$989.04. Doc. #25.

The court declines finding that Debtor does not have any equity in the Property. Although this is a chapter 7 case and the Property is not necessary for an effective reorganization, the moving papers indicate that Debtor has approximately \$8,323.93 in equity. Doc. #21. Although costs of sale may entirely shrink that remaining equity, Movant has not established a basis for asserting "Other Fees." In the absence of those fees and after subtracting costs of sale, Debtor may have some equity in the Property. Regardless, relief under § 362(d)(2) is moot because there is "cause" to grant the motion under § 362(d)(1).

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.

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

11:00 AM

1. [22-12102](#)-B-13 **IN RE: ALAN BABB**
[23-1025](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-15-2023 [[1](#)]

BABB V. SN SERVICING
CORPORATION ET AL
WILLIAM EDWARDS/ATTY. FOR PL.

NO RULING.

2. [22-11149](#)-B-7 **IN RE: PAULO VILLAREAL-SALINAS**
[22-1024](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
10-10-2022 [[1](#)]

MEDINA V. VILLAREAL-SALINAS,
JR
D. GARDNER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

11:30 AM

1. [23-11054](#)-B-7 **IN RE: LARRY HOLMES AND ERICKA PHILLIPS**

PRO SE REAFFIRMATION AGREEMENT WITH LAKEVIEW LOAN SERVICING,
LLC

7-27-2023 [[18](#)]

NO RULING