UNITED STATES BANKRUPTCY COURT
Eastern District of California

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

Hearing Date: Tuesday, September 12, 2023

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

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/1616339191?pwd=ZFZOMVExdFYzTjJJNVFpZUtjbkhHdz09
Meeting ID:	161 633 9191
Password:	823398
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.

9:30 AM

1. 23-10457-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
HRR-1

MOTION FOR EXAMINATION AND FOR PRODUCTION OF DOCUMENTS
8-28-2023 [878]

AMERICAN ADVANCED MANAGEMENT,
INC./MV
RILEY WALTER/ATTY. FOR DBT.
HAMID RAFATJOO/ATTY. FOR MV.

NO RULING

American Advance Management, Inc. (AAM) asks the court for an order compelling the Debtor in Possession Madera Community Hospital ("Debtor") to produce five categories of documents under Rule 2004. The motion requests the documents be produced by September 19, 2023, seven (7) days after the scheduled hearing.

The motion was filed and served under LBR 9014-1 (f) (2), and no opposition needs to be presented until the date of the hearing. Should opposition be presented, the court will continue the matter to a new hearing date and set dates for further briefing and any replies.

First, the motion does not conform to the local rules. By default, all components of a motion must be filed and served separately. LBR 9014-1 (d)(4). One exception is a motion and memorandum of points and authorities may be filed together as a single document when not exceeding six (6) pages in length including the caption page. *Id.* AAM combined its motion and points and authorities here, but the document exceeds 6 pages in length. It is eleven (11) pages long with the exhibit. Doc. # 878. This is a ground to strike the motion and require a new conforming motion.

Second, Mr. Rafatjoo's declaration contains argumentative and conclusionary statements and closely parallels the points and authorities – the more appropriate forum for opinion and argument. Other than restating what Debtor has previously reported (a helpful summary to be sure) there is little factual support other than AAM's conjecture regarding previous asset acquisition and management overtures. Doc. # 880.

Even though these flaws exist, the court will consider the motion at the hearing as well as any stated opposition. The court reminds the parties of the remedies available should a subpoenaed party object to the breadth of a document request.

2. 23-10457-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
KMR-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-9-2023 [778]

BANK OF AMERICA, N.A./MV
RILEY WALTER/ATTY. FOR DBT.
WILLIAM FREEMAN/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order with a copy of the stipulation attached as an exhibit. The stipulation shall also be separately filed and docketed as a stipulation.

Bank of America, N.A. ("BoA") brings this Motion for Relief from the Automatic Stay (Doc. #778), which asks the court to lift the automatic stay to allow BoA to reimburse itself from a cash collateral account for a draw on a letter of credit issued by BoA on behalf of Madera Community Hospital ("Debtor"). No parties filed a response to the motion, but on August 22, 2023, BoA and Debtor (collectively "the Parties") filed a joint Stipulation for Relief from Automatic Stay. Doc. #833.

The Stipulation avers the following facts: Prior to the filing of this case, BoA issued a Letter of Credit to Debtor in the original amount of $250,000, which was later increased to a final amount of $450,000 pursuant to an amendment dated October 6, 2015. *Id.* The Letter of Credit is secured by a security interest in a collateral deposit account maintained at Bank of America ("the Account"), and the Account is otherwise unencumbered. *Id.* On July17, 2023, BoA honored a draw made by Debtor in accordance with the terms of the Letter of Credit. *Id.* BoA has not previously reimbursed itself and cannot do so while the automatic stay is in place. *Id.* Debtor has no equity in the Account, as the funds are fully encumbered and moreover are not needed for an effective reorganization. *Id.* Debtor consents to the withdrawal of $475,000.00 from the Account to reimburse itself. *Id.*

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima

facie case for the requested relief. *See Boone v. Burk (In re Eliapo*), 468 F.3d 592 (9th Cir. 2006).

As noted, no party filed any opposition, and the Debtor has joined a Stipulation that would grant the requested relief.

BoA is a secured creditor of Debtor with a perfected security interest in the collateral account. Under the terms of the Stipulation, BoA and Debtor agreed to grant Movant relief from the automatic stay to permit Movant to withdraw the funds from the collateral account to reimburse itself for the draw. While the parties have not formally requested approval of the Stipulation, the court interprets its filing under the same DCN as the instant motion as an implicit request to do so.

Under Rule 4001(d)(1)(A)(iii), a party may file a motion for approval of an agreement to modify or terminate the stay provided in § 362. The motion contains the required contents outlined in Rule 4001(d)(1)(B) and was properly served on all creditors as required by Rule 4001(d)(1)(C). Pursuant to Rule 4001(d)(1), (2), and (3), a hearing was set on at least seven days' notice and the parties required to be served (Debtor and Trustee) were given at least 14 days to file objections or may appear to object at the hearing. No objections were filed.

Accordingly, this motion will be GRANTED, and the Stipulation approved. The automatic stay in this matter will be lifted to the limited extent of permitting BoA to withdraw the funds from the collateral account. The court will also order the 14-day stay of Rule 4001(a)(3) waived because the parties have consented to stay relief.

3. 23-11332-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA NON-PROFIT CORPORATION**
WJH-17

MOTION TO EXTEND TIME
8-31-2023 [175]

TWILIGHT HAVEN, A CALIFORNIA NON-PROFIT CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.
OST 8/30/23

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted subject to opposition at hearing.

ORDER: Moving party to prepare order.

Debtor-in-possession Twilight Haven ("TH") wants an extension of time to file its reorganization plan under § 1189 (b) from September 20, 2023, the current deadline to November 30, 2023.

The motion is set under an Order Shortening Time. Doc # 174 The order required service of the moving papers by August 31, 2023. *Id.*

Objections may be made until the commencement of the hearing. *Id.* TH appears to have complied with the order setting the hearing. Any opposition may be stated at the hearing.

This Chapter 11 case is proceeding under Subchapter V. The pertinent code provision is § 1189 (b). Without an extension, TH would need to file its' plan on or before September 30, 2023.

Kristine Williams, TH's CEO, testified in declaration (Doc. # 169) that in late August TH received an offer to purchase TH's assets for $7.3 million and an offer for a proposed loan to the debtor-in-possession and for provision of other financing. TH needs time to evaluate these offers to determine its course of action. *Id.* Ms. Williams testified that substantial progress has been made on TH's plan, but this turn of events will require consideration of long-range prospects. *Id.*

The court may extend the period for the subchapter V debtor to file a plan "if the need for the extension is attributable to circumstances for which the debtor should not be held accountable." § 1189. The issue is a discretionary one for the court. *In re Online King LLC*, 629 B.R. 340, 349 (Bankr. E.D.N.Y. 2021). The debtor must meet a "stringent burden" to clearly demonstrate "that the inability to file a plan was due to circumstances beyond the debtor's control" *In re Baker*, 625 B.R. 27, 33 (Bankr. S.D. Tex. 2020).

A four part "test" was applied by the *Baker* court. 1. Are the circumstances raised within the debtor's control? 2. Has the debtor made progress drafting a plan? 3. Are the reasons the deadline was not met attributable to the circumstances raised? 4. Has any party in interest moved to dismiss or convert or object to the extension?

We will not know the complete answer to the last question until the hearing. But here the application of the remaining parts of the test are relatively straight forward. The sale and loan offers were not within the debtor's control based on this record. According to Ms. Williams, the debtor was making progress preparing the Plan. The significant change in the focus of the case (sale of assets or maintenance of the facility) are the circumstances connected to the debtor's need for more time.

Based on the record so far, it appears the debtor has met its more stringent burden to establish the need for an extension.

Absent opposition at the hearing, the motion will be GRANTED.

4. 23-10457-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
WJH-63

MOTION TO SELL AND/OR MOTION TO PAY
9-5-2023 [899]

MADERA COMMUNITY HOSPITAL/MV

RILEY WALTER/ATTY. FOR DBT.
OST 9-1-23

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted subject to higher and better bids.

ORDER: Moving party to prepare order.

Debtor-in-possession Madera Community Hospital ("MCH") seeks court orders approving the sale of 35.58 acres planted to almonds to S & K Management for $569,280.00 subject to higher and better bids, authorizing the execution of documents and payment of MCH's share of the closing costs, and authorizing payment of net proceeds to Saint Agnes Medical Center (SAMC).

This motion is set under an Order Shortening Time entered September 1, 2023. Doc. # 897 It appears MCH complied with the order's requirements. But objections may be made up to one day before commencement of the hearing. This tentative ruling may not consider those objections. Thus, this ruling may be changed.

The property to be sold is located on Ave. 12 in Madera County ("Property"). S & K Management ("Buyer") is also the current lessee of the property. MCH essentially "owns the dirt." Buyer has installed irrigation and planted the almond trees. The lease will expire in about 10 years. It is a crop share lease with MCH receiving 20% of crop share proceeds as defined under the lease attached as an exhibit to the motion.

11 U.S.C. § 363(b)(1) allows the trustee (or debtor-in-possession) to "sell or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018), citing *240 North Brand Partners v. Colony GFP Partners, Ltd. P'Ship (In re 240 N. Brand Partners)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer, 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference." *Id.*, citing *In re Psychometric Sys.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Karen Paolinelli, MCH's CEO, states that Property is not needed. Doc. # 903. Property is encumbered by a first deed of trust securing an obligation owed SAMC which will be partially paid by distribution from escrow. *Id.* MCH's Board of Trustees approved the

sale in June 2023 and escrow will close on or before September 30, 2023. *Id.*

The price –$16,000 per acre – is supported by two declarations: one from 20-year almond farmer and MCH Trustee Jay Mahil (Doc. # 901) and real estate agent Adam Basila with 17 years of experience selling over $600 million worth of farm properties (Doc. # 904). Both opine the existence of the crop share lease with approximately ten (10) years of remaining term impacts the price. *Id.*

The sale is subject higher and better bids, if any, at the hearing. MCH has suggested over bids of at least $2,500.

Based on the record before the court, the sale appears to be for an adequate price, at arms-length, and a valid exercise of MCH's business judgment. The potential for overbids supports the sale. The sale is also without a real estate commission which is another estate benefit.

Subject to any opposition presented under the Order Shortening Time, the motion will be GRANTED.

11:00 AM

1. 23-11536-B-7 **IN RE: ROBERTO RAMIREZ**

PRO SE REAFFIRMATION AGREEMENT WITH ONEMAIN FINANCIAL GROUP, LLC
8-23-2023 [16]

1:30 PM

1. 19-10708-B-7 **IN RE: ANTONIO/MARTHA AVILES**
TMO-1

MOTION TO RECONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
8-12-2023 [57]

T. O'TOOLE/ATTY. FOR DBT.
T. O'TOOLE/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Debtors Antonio and Martha Aviles ("Debtors") come before the court on a motion for relief from the court's prior order converting their case from Chapter 13 to Chapter 7. Doc. 57. Debtors filed their Chapter 13 case on February 28, 2019, with attorney Thomas O. Gillis ("Gillis") representing them. *Id.* According to the motion, Debtors made all plan payments until March 2023, at which point they "became upset with paying for solar panels that never worked" by virtue of the unsecured claim of Greensky, LLC, the solar creditor. *Id.* Debtors apparently were unable to contact Gillis, who had at some point been disbarred, and, on the advice of "friends," the Debtors elected to simply stop making plan payments "to see if the solar company would give up on their claim." *Id.*

Unsurprisingly, this led to a motion by the Chapter 13 Trustee on May 31, 2023, to dismiss or convert the case due to failure to make plan payments. Doc. 32. The Debtors did not submit any response to the motion, which was granted on June 29, 2023, and the case was converted to Chapter 7. Doc. #37. The instant motion avers that neither Debtor speaks English and that they relied on their minor child to sort their mail and bring any important mail (such as matters pertaining to their ongoing bankruptcy case, apparently) to their attention. Doc. #57. The Debtors speculate that either the Chapter 13 Trustee failed to send the Notice of the Motion to Dismiss/Convert or else that their son mistakenly discarded it. *Id.* The Debtors submit no evidence to support this speculation.

On July 31, 2023, attorney T. Mark O'Toole ("O'Toole") made his entry of appearance on behalf of Debtors and was substituted for Gillis as Debtors' counsel. Doc. #46, 49. O'Toole filed the instant motion on August 12, 2023, arguing that the order for conversion should be vacated on grounds of "mistake, inadvertence, surprise or

excusable neglect" pursuant to Rule 60(b)(1). Doc. #57. The motion asserts, *inter alia*, that the Chapter 13 Trustee had an affirmative duty to translate the Motion to Dismiss/Convert into Spanish for the benefit of Debtors, that this court had an affirmative duty to make a special inquiry of "whether debtors received adequate notice, equal treatment, and a meaningful opportunity to be heard" simply because the court "was aware [Gillis] is no longer active, and that debtors' names indicate they are Hispanic, and that if converted they would lose their property." *Id.* While the motion is accompanied by a Memorandum of Authorities (Doc. #60), the court does not find O'Toole's arguments persuasive for his proposed heightened Due Process and Equal Protection requirements when the court is dealing with Debtors who do not speak English.

On August 28, 2023, newly-appointed Chapter 7 Trustee filed a Response to this motion which argued that Debtors failed to show good legal grounds for the relief requested. Doc. #71. The Chapter 7 Trustee also noted that if the case is re-converted back to Chapter 13, Debtors should understand that they will be responsible for Chapter 7 Trustee fees. *Id.* In his reply to this Response, O'Toole states that the Debtors are willing to include any outstanding Chapter 7 Trustee fees in an amended plan which will be filed as soon as the case is reinstated as a Chapter 13 case. Doc. #76.

On August 29, 2023, the Chapter 13 Trustee filed a document styled as "Chapter 13 Trustee's Comments On Debtor's Motion For The Court To Grant Relief To Debtors From The Order Converting Their Case To Chapter 7" in which the Chapter 13 Trustee responded to "any accusations that the Trustee's office would not accommodate Spanish speaking debtors" but otherwise does not have a preference on the court's ruling in this matter. *Id.* O'Toole replied to the Chapter 13 Trustee's filing, but frankly, the court finds much of this reply to be baffling, devoid of any persuasive authority, and inappropriate in some of the aspersions its casts on both the Chapter 13 and Chapter 7 Trustee.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo*), 468 F.3d 592 (9th Cir. 2006).

As noted, both the Chapter 7 and Chapter 13 trustees responded to the motion, and Debtors timely filed a reply (of a sort, at least).

Accordingly, this matter will proceed to a hearing at the appointed time so that the Trustees will have opportunity to respond to O'Toole's comments in his reply filings. Because both the Chapter 7 and Chapter 13 Trustees appear to be amenable to the motion so long as all outstanding Chapter 7 fees are paid (a condition to which Debtors have agreed), the court is inclined to GRANT the motion and allow this case to reconvert back to Chapter 13.

That said, the court would note that the motion is based on Rule 60, which requires a showing of "mistake, inadvertence, surprise or excusable neglect." And in the court's view, the Debtors' decisions (1) to simply stop making plan payments in the hopes that one particular creditor would abandon its claim, (2) to not seek alternative advice from a legal professional when they were unable to contact Gillis after his disbarment and instead rely on the advice of "friends" regarding how to proceed in a legal matter, and (3) to delegate to a fourteen-year-old child the task of sorting through and translating any English-language mail they received all stretch the bounds of "excusable neglect" nearly to its breaking point. The unfortunate loss of counsel was not debtor's fault. Yet debtors who are represented still have duties to the court they have chosen to rely upon for relief.

Finally, for future reference, the court would caution Mr. O'Toole against using public legal filings to cast aspersions on the character of fellow members of the bar such as by insinuating that the Chapter 7 Trustee's primary motivation in responding to the instant motion was a desire to "obtain a large fee for selling debtors' home." *See* Doc. 82. While the court expects debtor's counsel to be zealous in advocating for their clients, that duty must be balanced against an attorney's duty of professional civility as required by the *California Attorney Guidelines of Civility and Professionalism* as promulgated by the California State Bar. *See* http://calbar.ca.gov/calbar/pdfs/reports/Atty-Civility-Guide.pdf.

2. 14-12051-B-7 **IN RE: JOSE REYNA**
TMO-6

MOTION TO AVOID LIEN OF WESTERN UNION FINANCIAL SERVICES, INC.
8-25-2023 [80]

JOSE REYNA/MV
T. O'TOOLE/ATTY. FOR DBT.
T. O'TOOLE/ATTY. FOR MV.

TENTATIVE RULING: This hearing 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 in conformance with the ruling below.

Jose Reyna ("Debtor") moves for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of Western Union Financial Services ("Creditor") in the sum of $10,699.42. and encumbering residential real property located at 759 and 759½ Prusso Street, Livingston, California ("Property"). Doc. #82. (The 759½ property is apparently a cottage on the same lot as the main house.) According to the filings and moving papers, the Property has a fair market value of $130,000.00. Doc. #82.

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 amount of $10,324.16 on December 6, 2013. Ex A, Doc. #83. The abstract of judgment was issued on January 8, 2014, and was recorded in Merced County on January 22, 2014. *Id.* That lien attached to Debtor's interest in Property. *Id.*

As of June 23, 2014 (the date of Debtor's Amended Schedule A/B and Schedule C), Property had an estimated fair market value of $130,500.00. Amend. Sch. A/B, Doc. #18. Debtor claimed a $75,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730(a)(1). Sch. C, *Id.*

The Debtor avers that the Property is encumbered by a mortgage in favor of Fidelity Bank in the amount of $74,853.00. Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. Fidelity Bank	$74,853,99	Unknown	Unavoidable
2. Creditor's Lien	$10,699.42	1/22/14	Avoidable

"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).

Strict application of the § 522(f)(2) formula with respect to ABC's lien is illustrated as follows:

Amount of judgment lien		$10,699.42
Total amount of unavoidable liens	+	$74,853.99
Debtor's claimed exemption in Property	+	$75,000.00
Sum	=	$160,553.41
Debtor's claimed value of interest absent liens	-	$130,000.00
Extent lien impairs exemption	=	$30,553.41

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		$130,000.00
Total amount of unavoidable liens	-	$74,853.99
Homestead exemption	-	$75,000.00
Remaining equity for judicial liens	=	($19,853.99)
Creditor's judicial lien	-	$10,699.42
Extent Debtor's exemption impaired	=	($30,553.41)

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, absent any objection at the hearing, 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.

3. 15-14892-B-7 **IN RE: ROSA CABRERA**
ADJ-7

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FORES MACKO JOHNSTON & CHARTRAND FOR ANTHONY D. JOHNSTON, TRUSTEES

ATTORNEY(S)
8-4-2023 [64]

MARIO LANGONE/ATTY. FOR DBT.
ANTHONY JOHNSTON/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This hearing 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 in conformance with the ruling below.

Anthony D. Johnston ("Applicant"), attorney for Chapter 7 Trustee Irma C. Edmonds ("Trustee"), requests final compensation under 11 U.S.C. § 330 in the sum of $9,286.38. Doc. #64. This amount consists of $8,962.50 in fees and $323.88 in expenses from August 13, 2022, through August 7, 2023. *Id.* This is Applicant's first and final application for compensation. *Id.*

On August 24, 2023, Rosa Cabrera ("Debtor"), the debtor in the underlying Chapter 7 case, filed pro se a document which the court interprets to be an Opposition/Objection to the Application (hereinafter "the Objection"). Doc. #70. While there are several procedural deficiencies in the Objection which would serve as grounds for striking it had it been filed by an attorney, the court must treat *pro se* litigants "with great leniency when evaluation compliance with the technical rules of civil procedure." *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992) (citing *Draper v. Coombs*, 795 F.2d 915, 924 (9th Cir. 1986)).

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

Other than the Debtor, no party filed a response to the Application, and so the defaults of all other parties in interest are entered.

Debtor filed the underlying voluntary Chapter 7 petition on December 23, 2015, and received a discharge on April 25, 2016, with the case closing four days later. Doc. #66. Upon motion of the United States Trustee, the case was reopened on August 11, 2021, and the court entered an order authorizing Trustee to employ Applicant on September 14, 2021. *Id.* The rationale for both the reopening of the case and the retention of Applicant, according to the Trustee's Declaration, was that prior to the petition date, Debtor was allegedly exposed to a toxic substance which caused her to be diagnosed with Non-Hodgkin's Lymphoma and gave her a potential claim for damages against the manufacturer which she did not disclose in her Schedules. Doc. #67. After receiving her discharge, Debtor hired an attorney on a contingency fee basis and began to pursue a claim against the manufacturer ("the Roundup litigation" or "the Claim"). Doc. #70 (*Debtor's Declaration).*

Trustee avers that during Applicant's employment in this matter, he performed legal services necessary to assist the Trustee in administration of this case by performing services in connection with:

a) Review of the Debtor's fee contingency fee agreement with one of her attorneys, NSL Law Firm, with respect to the Claim (there was no fee agreement with the other law firm, Weitz & Luxenberg, P.C.)
b) Review and preparation of revisions to a new contingency fee agreement entered into between special counsel and Trustee;
c) Preparation of two applications which resulted in the Court's appointment of joint special counsel to pursue the Claim;
d) Work with special counsel which resulted in the Trustee's approval of a confidential settlement agreement to settle the Claim;
e) Preparation of a motion to file the confidential settlement agreement under seal, which was approved by this court;
f) Preparation of a motion to approve the estate's settlement of the Claim, which was approved by this court;
g) Preparation of a motion to file the order approving the settlement agreement under seal, which was approved by thisc;
h) Preparation of a motion to approve compensation for the special counsel, which was approved by this court (this motion was included in the motion to approve the settlement agreement); and
i) Preparation of the Attorney's employment and fee applications.

Doc. #67. Trustee avers that because of the settlement of the Claim, the bankruptcy estate currently has funds on hand in the amount of $79,777.00 and only one creditor's claim to pay in the amount of $9,995.42 owed to the Franchise Tax Board. *Id.*

The Application is accompanied by Exhibits itemizing the billing entries both chronologically and by project and also the costs advanced. Doc. #68. Applicant requests fees for 23.90 billable hours of legal services at $375.00 per hour for a total of $8,962.50. Doc. ##66, 68. Applicant also incurred $323.88 in expenses, with $79.29 billed for the filing fee for the Motion to Approve Compromise and the rest for copies and postage. Doc. #68. These combined fees and expenses total $9,286.38.

Debtor's pro se Objection is very short on facts and devoid of legal authority, and it appears mainly to be a complaint that Applicant's services as delivered were "not worth" the fee award he seeks, that his work on behalf of the Trustee and the estate needlessly complicated resolution of her Claim, and that he was rude and condescending to her in their communications. Doc. #70. In response, Applicant submitted a Reply which noted the procedural deficiencies in the Objection and also averred that Debtor engaged in a pattern of abusive and obstructionist behavior towards Applicant and his staff throughout the pendency of his employment. Doc. #71. The Reply also asks that an additional $750.00 in fees be added to the award sought due to time spent responding to the Objection, thus raising the total award sought to $10,036.38. *Id.* The Trustee also filed a separate short Reply stating that she was familiar with Debtor and confirming that Debtor regularly received abusive calls from Debtor regarding the Claim's status and that she repeatedly told Debtor to no avail that any delays were due to the failure of Debtor's own counsel to provide Trustee with documentation needed to move forward towards settlement approval. Doc. #72.

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." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

The court finds the services and expenses as outlined above reasonable, actual, and necessary, and the court is inclined to GRANT the application. Nevertheless, because Debtor filed a pro se Objection and because Applicant seeks an additional $750.00 above what was requested in the original Application, this matter will be called for hearing.

4. 23-11831-B-7 **IN RE: MIGUEL PARRAS**
FAT-1

MOTION TO EXTEND AUTOMATIC STAY
8-30-2023 [12]

MIGUEL PARRAS/MV

FLOR DE MARIA TATAJE/ATTY. FOR DBT.
13 DAY NOTICE

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.

The Debtor Miquel Parras ("Debtor") requests an order extending the automatic stay under 11 U.S.C. § 362(c)(3). Doc. #10.

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

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

As a preliminary matter, the court notes a procedural deficiency with this motion. While the Notice avers that the motion was filed and served pursuant to LBR 9014-1(f)(2), that rule requires at least fourteen (14) days' notice. Here, the Notice was filed on August 30, 2023, for a hearing set for September 12, 2023, which is only *thirteen* days. Doc. #13. The next day, on August 31, 2023, Debtor filed an *Ex Parte Application to Shorten Time* so that the instant motion could be heard on its scheduled hearing date, and the court granted that motion on September 1, 2023. Doc. ##16, 20. However, in that order, the court directed that Debtor serve the order itself on all parties on or before September 5, 2023. Doc. #20. The docket does not reflect a certificate of service indicating that such service was made.

Typically, this motion would be denied without prejudice for the above procedural deficiency. However, the automatic stay in this case will expire prior to the court's next scheduled date for hearing motions in chapter 13 cases. Denial of this motion for procedural reasons would unduly prejudice Debtor because the automatic stay cannot be reimposed after it expires. Accordingly, the court will overlook this procedural deficiency in this instance under LBR 1001-1(f). Debtor's counsel is advised in the future to pay closer attention to the court's directives, especially when the court is indulging counsel's request for a deviation from the Local Rules that would have been unnecessary had counsel been more attentive to the court's calendar and the requirements of the Bankruptcy Code where repeat filers are concerned.

Under 11 U.S.C. § 362(c)(3)(A), if the debtor has had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay under subsection (a) shall

terminate with respect to the debtor on the 30th day after the latter case is filed. Debtors have had one case both filed and dismissed within the preceding one-year period: Case No. 22-11546 (Bankr. E.D. Cal.). That Chapter 13 case was filed on September 5, 2022, and was dismissed on March 2, 2023, for failure to make plan payments. The instant Chapter 7 case was filed on August 21, 2023. Doc. #1. Consequently, the automatic stay will expire on September 20, 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 the Debtor through 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)).

This case is presumed to be filed in bad faith as to all creditors because Debtor has a previous case under chapter 13 that was pending within the preceding one-year period. § 362(c)(3)(C)(i)(I).

Debtor declares that the previous case was dismissed because he failed to timely make plan payments as required. Doc. #14. Debtor avers that he stopped making plan payments because the Chapter 13 Trustee advised him at the 341 meeting that he would have to commit to paying 100% to general creditors for his plan to be confirmed, and he felt he could not pay such a dividend while caring for his father and paying his secured debtors. *Id.* Debtor further avers that his attorney later advised him that he qualified for Chapter 7, though he would have to pay his outstanding tax obligations outside of bankruptcy. *Id.* Debtor indicates that he only filed Chapter 13 instead of Chapter 7 initially because he desired to pay his tax debts through a Chapter 13 plan. *Id.* According to the Schedule I & J filed with Debtor's petition, he has a net monthly income of only $5.12. *Schedule I& J,* Doc. #1. Debtor further declares that the instant case was filed in good faith and the plan has been proposed in good faith. *Id.*

Debtor's filings reflect an apparent eligibility for Chapter 7, and the court acknowledges Debtor's declaration that he is entitled to discharge of his nonpriority unsecured debts and that he will deal with his priority unsecured debts outside of bankruptcy. 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 demonstrate an apparent eligibility for Chapter 7 relief. Debtor's petition appears to have been filed in good faith.

This matter will be called and proceed as scheduled. In the absence of opposition at the hearing, this motion may be GRANTED. 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).