UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, September 14, 2022
Place: Department A – Courtroom #11
Fresno, California

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. 20-10010-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
LKW-41

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
8-24-2022 [1138]

LEONARD WELSH/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 the hearing.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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.

The Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtors and debtors in possession Eduardo Zavala Garcia and Amalia Perez Garcia (collectively, "DIP"), requests allowance of interim compensation in the amount of $8,540.00 and reimbursement for expenses in the amount of $339.05 for services rendered from July 1, 2022 through July 30, 2022. Doc. #1138. This is Movant's sixteenth fee application in this case. The court has previously approved a total of $191,588.89 in interim fees and expenses, of which $167,402.20 have been paid to Movant. Doc. #1138.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a professional person. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #33. In determining the amount of reasonable compensation to be awarded to counsel, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing general case administration; (2) preparing DIP's eighth chapter 11 status conference statement; (3) preparing motion for authority to sell real property; (4) preparing for court appearances; (5) preparing for motion for relief from automatic stay; (6) preparing and filing declarations in support of motion to borrow; (7) preparing and filing fee application; (8) reviewing and researching claim secured by deed of trust and settlement of dispute with creditor; and (9) conducting various conferences between parties. Decl. of Leonard K. Welsh, Doc. #1141; Ex. B, Doc. #1140. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of $8,540.00 and reimbursement of expenses in the amount of $339.05. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consisted with the priorities of the Bankruptcy Code.

2. 22-10416-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**

CONTINUED CONFIRMATION HEARING RE: CHAPTER 11 SMALL BUSINESS SUBCHAPTER V PLAN
6-16-2022 [138]

RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant filed an amended plan on August 17, 2022 that is set for confirmation hearing on September 28, 2022. Doc. #221.

3. 22-10416-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
3-18-2022 [1]

RILEY WALTER/ATTY. FOR DBT.

NO RULING.

4. 22-10416-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**
WJH-1

CONTINUED MOTION TO USE CASH COLLATERAL
3-21-2022 [14]

KR CITRUS, INC., A CALIFORNIA CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted on an interim basis through December 20, 2022.

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

This motion was set for hearing pursuant to an interim order authorizing use of cash collateral and granting adequate protection (the "Interim Order"). Doc. #185. The motion was heard initially on March 24, 2022, again on March 30, 2022, again on April 27, 2022, and again on July 13, 2022, and each time was granted on an interim basis. See Doc. ##49, 65, 95, 185. A continued hearing for interim use of cash collateral was set for September 14, 2022. Interim Order, Doc. #185. Pursuant to the Interim Order, opposition to the continued use of cash collateral may be raised at the hearing. Id. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion on an interim basis. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper. The court will issue an order if a further hearing is necessary.

KR Citrus Inc. ("Debtor" or "DIP") moves the court for a further interim order authorizing DIP to use the cash collateral of (1) PTF, a partnership; (2) California FarmLink; (3) Small Business Administration ("SBA"); and (4) Vox Funding LLC from September 20, 2022 through December 20, 2022 ("Subject Period"). Fourth Suppl. Decl. of James Reed in Support of Mot. for Authority to Use Cash Collateral ("Reed 4th Suppl. Decl."), Doc. #235.

DIP asserts PTF has a producer's lien on dragon fruit plants and proceeds to secure a debt of approximately $234,000. Reed 4th Suppl. Decl. ¶ 14, Doc. #235. PTF has consented to allow the budgeted uses of cash collateral without any adequate protection payments. Id.

California FarmLink is owed about $203,361. Reed 4th Suppl. Decl. ¶ 15, Doc. #235. California FarmLink holds a duly perfected security interest in nearly all of Debtor's personal property and farm products. Id. All payments owed to California FarmLink are current through June 2022. Id. The proposed budget proposes monthly payments to California FarmLink to keep the loan current. Ex. A, Doc. #236.

SBA holds a junior security interest to California FarmLink to secure a debt of approximately $500,000. Reed 4th Suppl. Decl. ¶ 16, Doc. #235. No payment is due on the SBA loan until December 2022. Id. SBA does not have a security interest in farm products, but does have a security interest in accounts. Id. No payments are to be made to SBA during the Subject Period. Id.

DIP disputes the claims and liens of Vox Funding. Vox Funding claims to own 16% of all gross revenues received by Debtor. Reed 4th Suppl. Decl. ¶ 18, Doc. #235. DIP contends that Vox Funding loaned money to Debtor and Debtor did

not sell its accounts. DIP proposes to provide a replacement lien to Vox Funding as adequate protection for use of cash collateral pending a resolution of the legal dispute over the transaction between Debtor and Vox Funding. Id.

Pursuant to 11 U.S.C. § 363, a debtor in possession can use property of the estate that is cash collateral by obtaining either the consent of each entity that has an interest in such cash collateral or court authorization after notice and a hearing. 11 U.S.C. § 363(c)(2). "The primary concern of the court in determining whether cash collateral may be used is whether the secured creditors are adequately protected." In re Plaza Family P'ship, 95 B.R. 166 (E.D. Cal. 1989); see 11 U.S.C. § 363(e). Bankruptcy Code § 361(1) states that adequate protection may be provided by "requiring the [debtor in possession] to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property." 11 U.S.C. § 361(1). DIP carries the burden of proof on the issue of adequate protection. 11 U.S.C. § 363(p).

When, as here, the motion requests a hearing before 14 days after service of the motion, Federal Rule of Bankruptcy Procedure 4001(b)(2) permits the court to "authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(b)(2).

DIP moves the court for an order authorizing DIP to use cash collateral through December 20, 2022, consistent with the budget filed as Ex. A, Doc. #236. DIP seeks court authorization to use cash collateral to pay expenses incurred by DIP in the normal course of its business. Reed 4th Suppl. Decl., Doc. #235. As adequate protection for DIP's use of cash collateral, DIP will grant a replacement lien against its post-petition accounts receivable for those creditors with valid liens to extent cash collateral is actually used as well as adequate protection payments to California FarmLink. Ex. A, Doc. #236.

Bankruptcy Code § 361 requires DIP to provide adequate protection to the secured creditors for DIP's use of cash collateral for any decrease in the value of the secured creditors' interest in the accounts receivable due to DIP's use of cash collateral. Based on the evidence before the court, the new crops and proceeds produced and generated by Debtor through the use of cash collateral will be greater than the amount of cash collateral sought to be used. Reed 4th Suppl. Decl. ¶ 22, Doc. #235.

Accordingly, the Motion will be GRANTED. The court grants DIP's request for use of cash collateral through December 20, 2022, consistent with the budget attached as Exhibit A to Doc. #236.

5. 22-10416-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**
WJH-10

CONTINUED OBJECTION TO CLAIM OF VOX FUNDING, LLC, CLAIM NUMBER 23
6-9-2022 [130]

KR CITRUS, INC., A CALIFORNIA CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to December 14, 2022 at 9:30 a.m.

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

Pursuant to the debtor's status report filed on September 1, 2022, the scheduling conference on this objection to claim will be continued to December 14, 2022. Doc. #233.

6. 22-10416-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**
WJH-6

CONTINUED MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
6-7-2022 [112]

KR CITRUS, INC., A CALIFORNIA CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 9/28/22 PER ECF ORDER #219

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

DISPOSITION: Continued to September 28, 2022 at 9:30 a.m.

NO ORDER REQUIRED.

On August 16, 2022, the court issued an order continuing the hearing on the motion to assume farmland lease to September 28, 2022 at 9:30 a.m. Doc. #219.

7. 22-10416-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**
WJH-9

AMENDED CHAPTER 11 SMALL BUSINESS SUBCHAPTER V PLAN
7-20-2022 [190]

RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 9/28/22 PER ECF ORDER #220

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant filed an amended plan on August 17, 2022 that is set for confirmation hearing on September 28, 2022. Doc. #221.

8. 22-11226-A-11 **IN RE: ALVARENGA TRANSPORT, LLC**
CAE-1

STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
7-18-2022 [1]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

9. 22-10778-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**

CONTINUED STATUS CONFERENCE RE: AMENDED CHAPTER 11 VOLUNTARY PETITION
5-8-2022 [1]

NOEL KNIGHT/ATTY. FOR DBT.

NO RULING.

10. 22-10778-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
FW-1

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
7-13-2022 [58]

DAKOTA NOTE, LLC/MV
NOEL KNIGHT/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

11. 22-10778-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
NCK-6

MOTION TO CONFIRM CHAPTER 11 PLAN
8-3-2022 [106]

COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC/MV
NOEL KNIGHT/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion to confirm the plan on August 7, 2022. Doc. #128.

12. 22-10778-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
NCK-7

CHAPTER 11 DISCLOSURE STATEMENT FILED BY DEBTOR COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC
8-3-2022 [113]

NOEL KNIGHT/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

13. 22-10778-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
NCK-8

AMENDED MOTION TO INCUR DEBT
8-3-2022 [115]

COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC/MV
NOEL KNIGHT/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

1:30 PM

1. 22-10308-A-7 **IN RE: LEO AGUILAR**
KMM-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-4-2022 [31]

WELLS FARGO BANK, N.A./MV
KIRSTEN MARTINEZ/ATTY. FOR MV.
DISCHARGED 07/26/2022

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

DISPOSITION: Granted in part and denied as moot in part.

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

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

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on July 26, 2022. Doc. #29. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Wells Fargo Bank, N.A., d/b/a Wells Fargo Auto ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2016 Mini Cooper Clubman ("Vehicle").

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least seven complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least $2,764.53. Doc. ##34, 35.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. Movant values the Vehicle at $16,625.00 and the amount owed to Movant is $23,441.35. Doc. #34. The debtor's statement of intention indicates that the debtor intends to surrender the property. Doc. #1.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

2. 12-16816-A-7 **IN RE: DANIEL/BRENDA KENNER**
FW-1

MOTION TO AVOID LIEN OF CREDITORS BUREAU USA, MOTION TO AVOID LIEN OF GRANITE STATE INSURANCE COMPANY, MOTION TO AVOID LIEN OF ALLIED PROPERTY & CASUALTY INSURANCE COMPANY
8-9-2022 [32]

BRENDA KENNER/MV
PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Daniel Anthony Kenner and Brenda Lynn Kenner ("Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial liens of (i) Creditors Bureau USA ("CBU"), (ii) Granite State Insurance Company ("Granite"), and (iii) Allied Property & Casualty Insurance ("Allied") on Debtors' residential real property commonly referred to as 17740 Lacey Boulevard, Lemoore, CA 93245 (the "Property"). Doc. #32; Schedule C, Doc. #1.

As a procedural matter, the motion does not comply with LBR 9014-1(d)(5), which requires every request for an order to be filed separately from every other request. Under the court's interpretation of LBR 9014-1(d)(5), the request to avoid a judicial lien held by one lienholder is a separate request from the request to avoid the judicial lien of another lienholder, even if both judicial

liens are against the same property. Here, the motion filed by Debtors requests avoidance of three separate judicial liens held by three separate lienholders. Doc. #32. Accordingly, Debtors should have filed three separate motions instead of asking for avoidance of three separate liens in a single motion.

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

Debtors filed their bankruptcy petition on August 3, 2012. Doc. #1. A judgment was entered against Danny Kenner dba Kenner Construction in the amount of $14,001.06 in favor of CBU on June 6, 2011. Ex. A, Doc. #35. The abstract of judgment was recorded pre-petition in Kings County on July 7, 2011 as document number 1111704. Ex. A, Doc. #35. A second separate judgment was entered against Danny Kenner aka Danny A. Kenner dba Kenner Construction in the amount of $181,946.74 in favor of Granite on February 21, 2012. Ex. B, Doc. #35. The abstract of judgment was recorded pre-petition in Kings County on April 11, 2012 as document number 1206536. Ex. B, Doc. #35. The judgment was renewed on March 10, 2022 and recorded in Kings County on April 18, 2022 as document number 2207276. Ex. C, Doc. #35. A third separate judgment was entered against Danny Kenner aka Danny Anthony Kenner in the amount of $2,315.35 in favor of Allied on April 20, 2012. Ex. D, Doc. #35. The abstract of judgment was recorded pre-petition in Kings County on May 15, 2012 as document number 1208910. Ex. D, Doc. #35. The liens attached to Debtors' interest in the Property located in Kings County. Ex. A-D, Doc. #35.

In the motion, Debtors' assert that the Property is encumbered by a property tax lien in the amount $13,514.92, a federal tax lien in the amount of $29,476.69, a second federal tax lien in the amount of $49,952.92 and a state tax lien in the amount of $28,042.59. Doc. #34. However, the federal and state tax liens were not listed on Debtors' Schedule D. Schedule D, Doc. #1. For purposes of the court's analysis of this motion, the court will only include the lien listed on Debtors' Schedule D, which is a property tax lien in the amount of $13,914.52. Id. Debtors claimed an exemption of $100,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at $100,000.00. Schedule A, Doc. #1.

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, 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). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Applying the statutory formula first to the most junior lien, held by Allied:

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Amount of Allied's judicial lien		$2,315.35
Total amount of all other liens on the Property (including senior judicial liens)	+	$209,862.32
Amount of Debtors' claim of exemption in the Property	+	$100,000.00
		$312,177.67
Value of Debtors' interest in the Property absent liens	-	$100,000.00
Amount Allied's lien impairs Debtors' exemption		$212,177.67

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Allied's judicial lien.

Continuing in reverse order of priority and applying the statutory formula to Granite's judicial lien:

Amount of Granite's judicial lien		$181,946.74
Total amount of all other liens on the Property (including senior judicial liens and excluding junior judicial liens)	+	$27,915.58
Amount of Debtors' claim of exemption in the Property	+	$100,000.00
		$309,862.32
Value of Debtors' interest in the Property absent liens	-	$100,000.00
Amount Granite's lien impairs Debtors' exemption		$209,862.32

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Granite's judicial lien.

Continuing in reverse order of priority and applying the statutory formula to CBU's judicial lien:

Amount of CBU's judicial lien		$14,001.06
Total amount of all other liens on the Property (excluding junior judicial liens)	+	$13,914.52
Amount of Debtors' claim of exemption in the Property	+	$100,000.00
		$127,915.85
Value of Debtors' interest in the Property absent liens	-	$100,000.00
Amount CBU's lien impairs Debtors' exemption		$27,915.85

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support CBU's judicial lien. Therefore, the fixing of the judicial liens of CBU, Allied and Granite impair Debtors' exemption in the Property and their fixing will be avoided.

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

3. 22-10921-A-7 **IN RE: JOSE URIBE-PRIETO**
PPR-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-12-2022 [39]

U. S. BANK NATIONAL ASSOCIATION/MV
DIANA TORRES-BRITO/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, U.S. Bank National Association as trustee for CRMSI REMIC SERIES 2007-02 – REMIC Pass-Through Certificates 2007-02, a holder in due course, its assignees and/or successors ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(4) with respect to real property located at 1112 Fairfax Rd., Bakersfield, California ("Property"). Doc. #39. Movant also seeks an order annulling the automatic stay effective as of May 31, 2022, the date the debtor's bankruptcy case was filed. Id.

I. RELEVANT FACTS

Jose Uribe-Prieto ("Debtor") filed a chapter 7 petition without an attorney on May 31, 2022. Doc. #1. With his bankruptcy petition, Debtor filed schedules and did not list an interest in any real property, including the Property. Id.

Debtor is not the borrower on Movant's loan. Decl. of Gina Miner ¶ 7, Doc. #42. James G. Zaragoza and Christena Zaragoza ("Borrowers") are the borrowers on Movant's loan dated March 14, 2007. Id. ¶¶ 4, 7.

Prior to Debtor's bankruptcy case being filed, Borrowers transferred an interest in the Property to Theresa Tejeda through a Short form Deed of Trust dated February 22, 2008. Miner Decl. ¶ 7, Doc. #42; Ex. D, Doc. #43. On March 15, 2022, Theresa Tejeda filed a chapter 13 bankruptcy case that was subsequently dismissed on April 4, 2022. Id. ¶ 8. Fifteen days later, on April 19, 2022, Theresa Tejeda filed a second chapter 13 bankruptcy case. Id. ¶ 9. The second bankruptcy case was dismissed with a 180-day bar against refiling on May 11, 2022. Id.

Also prior to Debtor's bankruptcy case being filed, Borrowers allegedly transferred an interest in the Property to Debtor and Adilene De La Rosa through an unrecorded Short Form Deed of Trust dated February 22, 2013 ("Alleged DOT"). Miner Decl. ¶ 10, Doc. #42; Ex. E, Doc. #43. The Alleged DOT was submitted for recordation on June 6, 2022. Ex. E, Doc. #43.

On June 8, 2022, a foreclosure sale of the Property was conducted and Movant sold the Property to a bona fide purchaser ("Purchaser"). Miner Decl. ¶ 11, Doc. #42. At the time of the foreclosure sale, Movant was not aware of Debtor's bankruptcy case or of any asserted interest of Debtor in the Property. Id. ¶ 12. After the foreclosure sale was completed, Movant was contacted by the foreclosure trustee who advised Movant that notice had been received of Debtor's chapter 7 bankruptcy case and that Debtor allegedly held a junior deed of trust in the Property through the Alleged DOT. Id. ¶¶ 10, 12; Ex. F, Doc. #43.

Movant has not yet recorded the Trustee's Deed Upon Sale. Miner Decl. ¶ 13, Doc. #42.

II. LEGAL ANALYSIS

A. 11 U.S.C. § 362(d)(1) Analysis

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).

Debtor did not schedule an interest in the Property. Doc. #1. Further, the Alleged DOT appears to be back dated because the text box beneath Borrower's signature above the notarial block includes language that was only required to be added to notarial blocks in 2015, after California Civil Code § 1189 was amended by legislation that was enacted on August 15, 2014, and became effective on January 1, 2015. See 2014 Cal. Stats. Ch. 197, Sec. 1 (Senate Bill 1050).

Based on the evidence before the court, it appears that Debtor does not have an interest in the Property. Rather, it appears that:

> this case is consistent with the pattern in so-called "hijacked" or "dumping" cases – *i.e.*, cases in which a transferor of property, acting *without* the debtor's participation or acquiescence, seeks to implicate the automatic stay for the transferor's *own* benefit by purporting to transfer property into a random bankruptcy estate, or by back-dating or falsifying a grant deed to make it appear that such a transfer has occurred.

In re 4th St. E. Investors, Inc., 474 B.R. 709, 711 (Bankr. C.D. Cal. 2012) (emphasis in original). Because it appears that Borrowers have "hijacked" the automatic stay in Debtor's bankruptcy case, cause exists to grant relief from the automatic stay.

B. Retroactive Annulling of the Automatic Stay

A request for retroactive relief from the automatic stay should be granted sparingly and should be the long-odds exception not the general rule. In re Skylar, 626 B.R. 750, 754 (Bankr. S.D.N.Y. 2021). When deciding whether to

retroactively annul the automatic stay, the court should consider the following twelve factors, known as the Fjeldsted factors:

(1) the number of bankruptcy filings;
(2) whether, in a repeat filing case, the circumstances indicate an intent to delay and hinder creditors;
(3) a weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;
(4) the debtor's overall good faith (totality of circumstances test);
(5) whether the creditor knew of the stay but nonetheless took action, thus compounding the problem;
(6) whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;
(7) the relative ease of restoring the parties to the *status quo ante*;
(8) the costs of annulment to the debtor and the creditor;
(9) how quickly the creditor moved for annulment, or how quickly the debtor moved to set aside the sale or violative conduct;
(10) whether, after learning of the bankruptcy, the creditor proceeded to take steps in continued violation of the stay, or whether the creditor moved expeditiously to gain relief from the stay;
(11) whether annulment of the stay will cause irreparable injury to the debtor; and
(12) whether stay relief will promote judicial economy or other efficiencies.

Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 24-25 (B.A.P. 9th Cir. 2003). A single Fjeldsted factor may be of such import that it is dispositive on the issue. Id.

With respect to Fjeldsted factors 1 and 2, this is Debtor's only bankruptcy filing. However, there were two prior bankruptcy cases filed by Theresa Tejeda that presumably delayed Movant's foreclosure sale, and the record indicates that Debtor's bankruptcy case was "hijacked" by Borrowers in order to assert an automatic stay with respect to Movant's foreclosure sale conducted on June 8, 2022. Factor 1 weighs in favor of Debtor and factor 2 weighs in favor of Movant.

Fjeldsted factors 4, 6, and 11 focus on Debtor and Debtor's actions. Debtor's bankruptcy case was "hijacked" by Borrowers, and there is no evidence that Debtor, in filing his bankruptcy case, lacked good faith or is not complying with the Bankruptcy Code and Rules. Further, Debtor's purported interest in the Property is the Alleged DOT that Debtor has not scheduled and appears to be back dated. Debtor does not own the Property and the Property is not Debtor's primary residence, so there is no irreparable harm to Debtor if retroactive annulment of the stay is granted. Factors 4 and 6 weigh in favor of Debtor and factor 10 weighs in favor of Movant.

Fjeldsted factors 3, 5, and 10 focus on Movant and Movant's actions. Movant did not know about Debtor's bankruptcy filing or the alleged automatic stay based thereon on June 8, 2022, when Movant sold the Property to a bona fide purchaser for value at a nonjudicial foreclosure sale. Miner Decl. ¶ 12, Doc. #43. Because the Property has been sold to a bona fide purchaser, both Movant and Purchaser would be prejudiced if the court does not grant retroactive relief from stay. Movant has moved for retroactive relief from the automatic stay and has not yet recorded the Trustee's Deed upon Sale. Factors 3, 5, and 10 each weigh in favor of Movant.

Fjeldsted factors 7, 8, and 9 focus on both Debtor and Movant. Movant contends that it would be difficult to restore the parties to *status quo ante* because Debtor would need to reimburse Movant for the economic loss Movant has suffered on the $154,00.00 bid by Purchaser plus interest for delay as well as attorneys' fees to file this motion and, based on Debtor's schedules, Debtor does not have the resources to pay these amounts. Movant also states that there will be significant costs related to rescinding the sale because Movant will be required to record a new notice of sale, comply with advertising requirements, and provide various notices and disclosures required by foreclosure statutes. Movant moved promptly by filing this motion to obtain stay relief. Factors 7, 8, and 9 each weigh in favor of Movant.

Finally, Fjeldsted factor 12 looks to judicial interests. Here, retroactive annulment of the automatic stay will promote judicial economy and other efficiencies because (i) it appears that Debtor's bankruptcy case was "hijacked" and Debtor has no interest in the Property, (ii) Movant has already completed a foreclosure sale to a bona fide purchaser without any knowledge of the automatic stay, and (iii) requiring Movant to restart the procedures for a foreclosure sale of the Property would not keep court costs and proceedings down. This factor weighs in favor of Movant.

Because most of the Fjeldsted factors weigh in favor of Movant, the court retroactively annuls the automatic stay to May 31, 2022, the date Debtor's bankruptcy case was filed. The court finds retroactive relief from the automatic stay is particularly appropriate because the Alleged DOT appears to be back dated, Debtor's bankruptcy case was "hijacked" by Borrowers, the Property was sold at a foreclosure sale to a bona fide purchaser before Movant learned of the possible automatic stay, and Movant has not taken further action to finalize the foreclosure sale prior to seeking retroactive relief from stay.

C. 11 U.S.C. § 362(d)(4) Analysis

Section 362(d)(4) allows the court to grant relief from the stay with respect to real property

> if the court finds that the filing of the [bankruptcy] petition was part of a scheme to delay, hinder, or defraud creditors that involved either [] a transfer of all or part ownership of, or other interest in such real property without the consent of the secured creditor or court approval; or [] multiple bankruptcy filings affecting such real property.

11 U.S.C. § 362(d)(4). To obtain relief under § 362(d)(4), the court must affirmatively find: (1) the debtor's bankruptcy filing is part of a scheme; (2) the object of the scheme is to delay, hinder, or defraud creditors; and (3) the scheme involves either (i) the transfer of some interest in real property without the secured creditor's consent or court approval or (ii) multiple bankruptcy filings affecting the property. First Yorkshire Holdings, Inc. v. Pacifica L 22 (In re First Yorkshire Holdings, Inc.), 470 B.R. 864, 870-71 (B.A.P. 9th Cir. 2011). "[T]he multiple filings thus must somehow be connected with or included in the scheme to delay, hinder and defraud creditors." In re Muhaimin, 343 B.R. 159, 168 (Bankr. D. Md. 2006).

"A scheme is an intentional construct. It does not happen by misadventure or negligence." In re Duncan & Forbes Dev., Inc., 368 B.R. 27, 32 (Bankr. C.D. Cal. 2007). Because direct evidence of a scheme is uncommon, "the court must infer the existence and contents of a scheme from circumstantial evidence. The party claiming such a scheme must present evidence sufficient for the trier of

fact to infer the existence and content of the scheme." Id.; see Jimenez v. ARCPE 1, LLP (In re Jimenez), 613 B.R. 537, 545 (B.A.P. 9th Cir. 2020).

Section 362(d)(4) "does not require that it be the debtor who has created the scheme or carried it out, or even that the debtor be a party to the scheme at all." Duncan & Forbes, 368 B.R. at 32. "The language of § 362(d)(4) is likewise devoid of any requirement of a finding of bad faith by the Debtor." In re Dorsey, 476 B.R. 261, 267 (Bankr. C.D. Cal. 2012).

The court finds that Movant has made the requisite showing under § 362(d)(4). Based on the evidence before the court, it appears that Debtor does not have an interest in the Property. Rather, it appears that Borrowers have "hijacked" the automatic stay in Debtor's bankruptcy case. In re 4th St. E. Investors, Inc., 474 B.R. 709, 711 (Bankr. C.D. Cal. 2012). Accordingly, the court finds that Debtor's bankruptcy case is part of a scheme to delay, hinder, or defraud Movant and Movant's scheduled foreclosure sale of the Property. Further, based on the two prior bankruptcy cases filed by Theresa Tejeda, the scheme involves multiple bankruptcy filings affecting the Property.

Accordingly, in rem relief from stay as to Movant is warranted under 11 U.S.C. § 362(d)(4).

D. Waiver of 14-Day Stay

Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3) provides for a 14-day stay of an order granting a motion made in accordance with Rule 4001(a)(1) unless the court orders otherwise. Fed. R. Bankr. P. 4001(a)(3). The court finds cause exists to waive the 14-day stay under Rule 4001(a)(3) because it appears that Borrowers improperly "hijacked" the automatic stay in Debtor's bankruptcy case.

III. Conclusion

For the reasons set forth above, the motion is granted pursuant to 11 U.S.C. § 362(d)(1) to retroactively annul the automatic stay in Debtor's bankruptcy case to May 31, 2022, to permit Movant to foreclose on and obtain possession of the Property pursuant to applicable law. Further, pursuant to 11 U.S.C. § 362(d)(4), the order shall be binding in any other case under Title 11 of the United States Code purporting to affect the Property for two years after the date of the entry of the order. In addition, the 14-day stay of Rule 4001(a)(3) is ordered waived.

4. 22-11328-A-7 **IN RE: GILBERTO/ALMA QUINTEROS**
SKI-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-12-2022 [12]

MECHANICS BANK/MV
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.

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

The movant, Mechanics Bank ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2010 Dodge Challenger ("Vehicle"). Doc. #12.

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 the debtors have failed to make at least 3 complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least $1,490.75. Doc. #15.

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

5. 22-10630-A-7 **IN RE: HEATHER WILBOUR**
APN-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-11-2022 [29]

TOWD POINT MORTGAGE TRUST ASSET-BACKED SECURITIES,
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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 a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Towd Point Mortgage Trust Asset-Backed Securities, Series 2019-SJ2, U.S. Bank National Association, as Indenture Trustee, as serviced by Specialized Loan Servicing LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property located at 47534 Willow Pond Road in Coarsegold, California ("Property"). Doc. #29.

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 the debtor has failed to make at least 42 complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least $9,736.65. Doc. #31.

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

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

6. 21-11034-A-7 **IN RE: ESPERANZA GONZALEZ**
DMG-4

CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH TED AND IRIS JACOBSON, MOTION TO SELL, MOTION TO APPROVE CORPORATION LIQUIDATION
7-13-2022 [152]

JAMES SALVEN/MV
D. GARDNER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor, Esperanza Hansen Gonzalez ("Debtor"), filed a late opposition to the motion on September 7, 2022. Doc. #176. The failure of creditors, the U.S. Trustee, or any other party in

interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. This matter will proceed as scheduled.

James Salven ("Trustee"), as chapter 7 trustee of Debtor's bankruptcy estate, moves to approve the compromise of claims and interests in state court litigation, sell the estate's assets in property, and authorize Trustee to enter into the settlement agreement on behalf of two corporations for which Debtor was the sole shareholder ("Motion"). Doc. #152. The proposed sale is subject to higher and better offers. Doc. ##152, 167. To overbid on the proposed sale of the bankruptcy estate's interest in a lawsuit against Ted Jacobson and Iris Jacobson (together, the "Jacobsons"), the proposed overbidder was required, among other things, to provide certified funds to the chapter 7 trustee in the amount of $15,000 plus the initial over-bid amount no later than the close of business on September 7, 2022. Doc. #167.

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

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 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 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Debtor filed a voluntary petition under chapter 7 of the Bankruptcy Code on April 23, 2021. Doc. #1. Debtor scheduled a 100% ownership interest in The Magnolia Group, Inc., a Delaware corporation ("Magnolia Group"), valued at $0. Schedule A/B, Doc. #21. Debtor scheduled a 100% ownership interest in Magnolia Park, a Nevada corporation ("Magnolia Park"), valued at $0.[1] Id. Debtor also scheduled, as a contingent and unliquidated claim, a lawsuit against the Jacobsons as well as others pending in Tulare County Superior Court as case number VCU284145, valued at $5 million ("State Court Litigation"). Id. Debtor

[1] Debtor scheduled Magnolia Park as a Nevada corporation while Trustee's motion identifies Magnolia Park as an LLC. It does not appear that the specific corporate structure is at issue.

also scheduled a verified cross-complaint for damages against the Jacobsons pending in San Luis Obispo County Superior Court as case number 17CVP-0145 in an unknown amount ("Jacobson Litigation"). Id. Debtor did not exempt either the State Court Litigation or Jacobson Litigation. Schedule C, Doc. #21.

Debtor scheduled the Jacobsons as having a contingent, unliquidated and disputed unsecured claim of $379,890.16 based on a lawsuit for damages for breach of lease, presumably the Jacobson Litigation. Schedule E/F, Doc. #21. On October 18, 2021, the Jacobsons filed two proofs of claim, each proof of claim asserting a claim of $302,640.54. Claim 5 and 6.

Trustee testifies that Magnolia Group's business consisted of the ownership of real properties located at 2948 and 2950 East Douglas Ave., Visalia, CA, and 1331 Lewis Lane, Tulare, CA. Tr. Decl. ¶ 11, Doc. #154. Trustee testifies that the East Douglas property was foreclosed in November 2019, and the Lewis Lane property was foreclosed on June 30, 2020. Id. Trustee states that Magnolia Group has no assets and no value. Id. ¶¶ 4, 14. Trustee does not believe Magnolia Park has any value. Id. ¶ 4.

The Settlement Agreement involves the State Court Litigation and the Jacobson Litigation. Decl. of Trustee ¶ 10, Doc. #154.

Trustee states that the main points of the settlement agreement are:

(a) Payment of $15,000 to the estate. Tr. Decl., ¶ 13.a, Doc. #154.

(b) A stipulated judgment in both the State Court Litigation and the Jacobson Litigation in favor of Jacobsons in the amount of $379,890.16 that is discharged in Debtor's chapter 7 case and is unenforceable. Tr. Decl., ¶ 13.b, Doc. #154; Stipulated Judgment, Ex. D, ¶ 1, Doc. #155.

(c) The Jacobsons will have a judgment against Debtor but will waive any claim against the chapter 7 bankruptcy estate. Tr. Decl., ¶ 12.c, Doc. #154.

(d) Trustee and the Jacobsons will file requests for dismissal of all Debtor's claims in both the State Court Litigation and the Jacobson Litigation. Settlement Agreement, Ex. D, ¶ 2, Doc. #155.

The sale of the estate's interest in the Jacobson Litigation to the Jacobsons for $15,000 is subject to higher and better offers. Doc. ##152, 167.

A & C Properties Analysis

As stated above, approval of a compromise must be based upon considerations of fairness and equity. A & C Properties, 784 F.2d at 1381. The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson, 839 F.2d at 620.

Probability of success. Trustee testifies that the facts giving rise to the State Court Litigation and Jacobson Litigation are complicated and span several years in time. Tr. Decl. ¶ 16(a), Doc. #154. Trustee also is faced with trying to find qualified counsel to take the case on a contingency fee. Id. Trustee testifies that he consulted with two experienced attorneys and a fellow chapter 7 trustee about finding representation but was unable to find any attorneys willing to take the case. Id. ¶ 18. Trustee also testifies that

Trustee likely would be responsible for costs of litigation if the estate lost the case and, in Trustee's estimation, the estate should not risk the $50,000 in hand to pay for litigation costs at the expense of other administrative claims and the claims of general unsecured creditors. Id. ¶ 18.a. Further, ABLP Properties Visalia LLC ("ABLP Properties") had successfully completed two non-judicial foreclosures that would need to be set aside in order for Trustee to succeed on the merits in the State Court Litigation, and Trustee's experience, as well as the experience of those he spoke with, indicates that would create a heavy evidentiary burden. Id. ¶ 18.b. Additionally, Debtor would be Trustee's primary witness in any litigation undertaken on behalf of the estate, and Trustee has substantial concerns about Debtor's credibility as a witness given a state-led investigation into Debtor's accounting of funds received by Debtor from potential assisted living or elderly nursing care residents. Id. ¶ 4.c.

Difficulties of collection. Trustee testifies that collection would not be difficult were he to prevail. Tr. Decl. ¶ 16(b), Doc. #154.

Complexity of the litigation. Trustee "view[s] the litigation to be difficult involving multiple witnesses, transactions and documentation to present at the time of trial." Tr. Decl. ¶ 16(c), Doc. #154. As stated above, ABLP Properties had successfully completed two non-judicial foreclosures that would need to be set aside, which would be fact intensive and burdensome to prove. Id. ¶ 18.b.

Interest of the creditors. Trustee believes "that the settlement serves the interests of the creditors because it obtains a sum certain for the estate without the expenditure of attorneys' fees that would be paid out as administrative expenses." Tr. Decl. ¶ 16(d), Doc. #154. Trustee is unaware of any contingency fee attorneys who would not require the payment of costs if the estate lost the State Court Litigation and/or the Jacobson Litigation. Id. ¶ 18.a. Trustee does not believe the estate should risk the approximately $50,000 in funds available to the estate to pay for litigation costs at the expense of other administrative claims and the claims of general unsecured creditors. Id. Because the Jacobsons waive their claims against the chapter 7 bankruptcy estate as part of the settlement, the resulting share of funds distributed to the other general unsecured creditors increases. Id. ¶ 16(d).

The court is satisfied with Trustee's evidence in support of the Motion and is inclined to find that Trustee has demonstrated that the compromise is fair and equitable under A & C Properties. Trustee adequately explains his attempts to find competent counsel to represent the estate and the difficulties in succeeding on the merits of the State Court Litigation and the Jacobson Litigation. Trustee also explains why the settlement is in the best interests of creditors and the estate.

Debtor's Opposition

Although filed late, the court will consider Debtor's opposition. From what the court can glean, Debtor opposes the Motion on the following two grounds. First, Magnolia Group and Magnolia Park cannot be dissolved because those two corporations "made and renewed new contracts with the elderly who are to receive life care after November 15, 2021." Debtor's Opp'n 2:21-22, Doc. #176. While the caption of the Motion purports to seek approval of corporate liquidation, the Motion itself only seeks authority for Trustee to act on behalf of Magnolia Group and Magnolia Park to enter into the settlement agreement with the Jacobsons. Motion, Doc. #152. To the extent that Debtor is concerned with the ongoing operations of the business operated by Magnolia Group and Magnolia Park, the business is being operated by a licensed nursing home operator and neither Magnolia Group nor Magnolia Park will be dissolved until the business being operated by them is transferred to an operational

entity that will operate and maintain the business. Tr. Decl. ¶ 19, Doc. #154. Debtor's objection on this ground is not a reason to deny the Motion.

Second, Debtor asserts new information suggests wrongdoing and breach of fiduciary duty by Trustee. Debtor alleges that Trustee has breached a fiduciary duty owed to Debtor "by acting collusively with counsel for a creditor." Debtor's Opp'n 3:1-2, Doc. #176. As an initial matter, Trustee does not owe a fiduciary duty to Debtor. Wisdom v. Gugino (In re Wisdom), 490 B.R. 412, 417 (D. Idaho 2013), aff'd sub nom. Wisdom v. Gugino, 649 F. App'x 583 (9th Cir. 2016). "Rather, a Chapter 7 trustee is 'the 'legal representative' and 'fiduciary' *of the estate*.'" Wisdom, 490 B.R. at 417 (emphasis in original) (quoting In re AFI Holding, Inc., 530 F.3d 832, 844 (9th Cir. 2008)). "As such, the trustee's primary job is to marshal and sell assets for the benefit of creditors." Wisdom, 490 B.R. at 417.

Debtor asserts that Trustee had agreed to sell the Jacobson Litigation to Debtor for $20,000.00 on or about June 2, 2022, but failed to perfect the transaction and instead agreed to enter into the transaction with the Jacobsons for $5,000.00 less. While Debtor asserts Trustee should have informed Debtor that the state court trial set to commence on June 27, 2022 was not going to proceed, that is not necessarily the case. When Debtor filed her chapter 7 bankruptcy petition on April 23, 2021, Debtor's alleged claims in the State Court Litigation and the Jacobson Litigation became property of the chapter 7 bankruptcy estate and Trustee became the representative of those claims. 11 U.S.C. § 323(a); 11 U.S.C. § 541(a)(1); Jones v. Harrell, 858 F.2d 667, 669 (11th Cir. 1988) ("A trustee in bankruptcy succeeds to all causes of action held by the debtor at the time the bankruptcy petition is filed."). Trustee could sell Debtor's claims to Debtor or to the Jacobsons, subject to bankruptcy court approval. 11 U.S.C. § 363(b). The proposed sale of Debtor's claims in the State Court Litigation and the Jacobson Litigation to the Jacobsons is subject to a higher and better offer, which Debtor could have done by September 7, 2022. Notice, Doc. #167. Contrary to Debtor's assertions in her opposition, Debtor was not excluded from purchasing Debtor's claims against the Jacobsons in the State Court Litigation and the Jacobson Litigation from Debtor's bankruptcy estate. Debtor's objection on this ground is not a reason to deny the Motion.

Conclusion

It appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id.

It appears that the sale of the estate's interest in the State Court Litigation and the Jacobson Litigation is in the best interests of the estate and the sale is supported by a valid business judgment and proposed in good faith. The sale is subject to auction upon compliance with the overbid requirements.

Accordingly, subject to qualified overbids made at the hearing, the court will GRANT Trustee's motion and authorize the sale of the estate's interest in the State Court Litigation and Jacobson Litigation to the Jacobsons on the terms set forth in the motion and revised Settlement Agreement. See Ex. D, Doc. #155.

7. 08-16938-A-7 **IN RE: PAUL KLIMEK AND CHARLENE MARCUM**
FW-4

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
7-8-2022 [61]

PETER FEAR/MV
GARY FRALEY/ATTY. FOR DBT.
PETER SAUER/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice 9014-1(f)(1). Paul Gerald Klimek ("Debtor") filed timely opposition. Doc. #77. This matter will proceed as scheduled.

Peter L. Fear ("Trustee"), the chapter 7 trustee in the reopened bankruptcy case of Debtor and Charlene Joan Marcum, objects ("Objection") to Debtor's claim of a personal injury cause of action against Monsanto Corporation ("Liability Claim"). Tr.'s Obj., Doc. #61; see Am. Schedule C, Doc. #54. Debtor claims the exemption under California Code of Civil Procedure ("C.C.P.") § 704.140(a). Am. Schedule C, Doc. #54.

At a prior hearing regarding the Objection held on August 10, 2022, the court continued the matter and asked for simultaneous briefing as to whether equitable estoppel and/or judicial estoppel preclude Debtor's newly claimed exemptions under Guevarra v. Whatley (In re Guevarra), 638 B.R. 120 (B.A.P. 9th Cir. 2022), and In re Stoller, 630 B.R. 412 (Bankr. C.D. Cal. 2022), two recent cases that neither party addressed in their original moving papers and the court believes apply to this matter.

EVIDENTIARY OBJECTIONS

As an initial matter, Trustee filed evidentiary objections to the declaration of Debtor filed in opposition to Trustee's Objection. Doc. #86. Trustee objects to Debtor's declaration on three grounds.

First, Trustee objects to Debtor's declaration *in toto* on the grounds that the declaration is irrelevant. Doc. #86. According to Trustee, Trustee's Objection involves whether Debtor can amend his exemptions when the amendment results in prejudice to third parties, such as the bankruptcy estate, and Debtor's declaration, which sets forth Debtor's personal financial and medical situation in detail, is not relevant and is inadmissible under Federal Rule of Evidence ("FRE") 402.

FRE 402 states that irrelevant evidence is not admissible, and FRE 401 sets forth the test for relevance. FRE 401 states that:

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Evidence is relevant if:

(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and

(b) the fact is of consequence in determining the action.

Fed. R. Evid. 401. Substantive law determines which facts are of consequence in a given action. Telum, Inc. v. E.F. Hutton Credit Corp., 859 F.2d 835, 838 (10th Cir. 1988). The court will overrule this evidentiary objection because portions of Debtor's declaration contain facts that are of consequence in determining the matter before the court, so the entire declaration is not inadmissible.

Second, assuming the court determines that Debtor's declaration is relevant for some purpose, Trustee seeks to exclude Debtor's declaration in its entirety under FRE 403 because its probative value is substantially outweighed by a danger of unfair prejudice and confusing the issues. Because this matter is to be determined by a judge and not a jury, the court will overrule this evidentiary objection. See, e.g., Tracinda Corp. v. DiamlerChrysler AG, 362 F. Supp. 2d 487, 497 ("Courts have recognized that in the context of a bench trial, evidence should not be excluded under Rule 403 on the grounds that it is unfairly prejudicial, because the Court is capable of assessing the probative value of the article and excluding any inarguably improper inferences." (Citations omitted)).

Finally, Trustee objects to certain portions of Debtor's declaration on hearsay grounds. Fed. R. Evid. 801, 802, 803. The court has reviewed the relevant portions of Debtor's declaration and agrees that the portions of Debtor's declaration identified in Trustee's evidentiary objection from page 2, line 18 through page 3, line 9 should be excluded under FRE 802 because no exception provided in FRE 803 applies to the relevant testimony.

RELEVANT FACTS

On or about May 31, 2002, Debtor was diagnosed with non-Hodgkins lymphoma. Declaration of Laura Mullins in support of application to be employed as special counsel ("Mullins Decl.") ¶ 3, Doc. #36; Declaration of Paul Gerald Klimek in opposition to Objection ("Debtor's Decl.") 1:25-26, Doc. #78.

On October 29, 2008, Debtor and his wife filed a voluntary chapter 7 bankruptcy petition. Doc. #1. With their bankruptcy petition, Debtor and his wife claimed exemptions pursuant to C.C.P. § 703.140(b) ("§ 703 Exemptions"). Schedule C, Doc. #1. A meeting of creditors was conducted and concluded on December 5, 2008, and the original chapter 7 trustee reported a no-asset case. Doc. ##11, 12. Debtor received a discharge on February 9, 2009, and the bankruptcy case was closed on February 13, 2009. Doc. #14, 16.

Sometime in August 2019, Debtor first learned that there was a link between Debtor's use of a product and Debtor's cancer. Debtor's Decl. 2:8-10, Doc. #78. On or about September 16, 2019, Debtor engaged counsel to pursue the Liability Claim. Mullins Decl. ¶ 4, Doc. #36.

On November 2, 2021, the Office of the United States Trustee filed an application to reopen Debtor's bankruptcy case based on the failure of Debtor to schedule the Liability Claim. Doc. #18. Debtor's bankruptcy case was reopened and a notice to file proofs of claim was generated and mailed to creditors. Doc. ##19, 23, 24. On November 30, 2021, Trustee filed an

application to employ general bankruptcy counsel. Doc. #25. An order approving that employment was entered on December 8, 2021. Doc. #30.

On January 18, 2022, Trustee filed a motion to employ special counsel to finalize settlement of the Liability Claim on behalf of the bankruptcy estate. Doc. #32. Employment of special counsel was approved at a hearing held on March 30, 2022, and written order on June 13, 2022. Doc. ##49, 56.

On June 10, 2022, Debtor amended his bankruptcy Schedule C to choose exemptions under a different exemption scheme than the one used in his original schedules ("§ 704 Exemptions") and exempt the Liability Claim in full under C.C.P.§ 704.140(a). Am. Schedule C, Doc. #54. Debtor also moved to compel Trustee to abandon the Liability Claim. Doc. #50. Trustee opposed Debtor's motion to compel abandonment, and the hearing was dropped without prejudice at the request of the parties. Doc. ##57, 60, 76. On July 8, 2022, Trustee filed his objection to Debtor's amended exemption of the Liability Claim. Doc. #61.

LEGAL ANALYSIS

Without deciding whether Debtor has an automatic right to amend his bankruptcy schedules under Federal Rule of Bankruptcy Procedure ("FRBP") 1009(a) in a reopened bankruptcy case, the court determines that, under the facts before the court, judicial estoppel precludes Debtor from amending his bankruptcy schedules to switch exemption schemes from § 703 Exemptions to § 704 Exemptions. In re Stoller, 640 B.R. 412 (Bankr. C.D. Cal. 2022).

The doctrine of judicial estoppel, sometimes referred to as the doctrine of preclusion of inconsistent positions, is invoked to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment. New Hampshire v. Maine, 532 U.S. 742, 749-50 (2001); Rissetto v. Plumbers and Steamfitters Local 343, 94 F.3d 597, 600 (9th Cir. 1996). "Courts have observed that the circumstances under which judicial estoppel may appropriately be invoked are probably not reducible to any general formulation of principle." New Hampshire, 532 U.S. at 750. Judicial estoppel is an equitable doctrine invoked by a court at its discretion. New Hampshire, 532 U.S. at 750 (quoting Russell v. Rolfs, 893 F.2d 1033, 1037 (9th Cir. 1990)).

The factors for a court to consider in applying judicial estoppel judicial estoppel are:

(1) whether a party's later position is clearly inconsistent with the party's earlier position;

(2) whether a party successfully persuading a court to accept the later position would create the perception that either the first or second court was misled; and

(3) whether the party asserting the inconsistent position would derive an unfair advantage on the opposing party if not estopped.

New Hampshire, 532 U.S. at 750-51.

Turning to the first factor, Debtor's earlier position is that exemptions in property of the bankruptcy estate should be considered under the § 703 Exemptions. Schedule C, Doc. #1. Debtor's current position is that exemptions in property of the bankruptcy estate should be considered under the § 704 Exemptions. Am. Schedule C, Doc. #54. Exempting the Liability Claim under the § 704 Exemptions causes the Liability Claim to be exempt in full, leaving no

amounts from settlement of the Liability Claim to be available to the reopened chapter 7 bankruptcy estate. Exempting the Liability Claim under the § 703 Exemptions causes the Liability Claim to be exempt in part, leaving some amount from settlement of the Liability Claim to be available to the reopened chapter 7 bankruptcy estate. The court finds that Debtor now seeking to exempt the Liability Claim under the § 704 Exemptions is clearly inconsistent with Debtor exempting the Liability Claim under the originally claimed § 703 Exemptions.

The second factor of the judicial estoppel analysis "is whether the party has successfully persuaded the court of its earlier position." Stoller, 640 B.R. at 424. Here, the original bankruptcy trustee reviewed Debtor's schedules using exemptions claimed under the § 703 Exemptions and closed the bankruptcy case as a no-asset case. Doc. #12, 16. Debtor successfully persuaded the original chapter 7 trustee, and by extension the court, to analyze the property of the estate under the § 703 Exemptions. Debtor received a discharge on February 9, 2009, and, upon the closing of Debtor's bankruptcy case a few days later, all scheduled property was abandoned back to Debtor. Stoller, 640 B.R. at 423; 11 U.S.C. § 554(c). Permitting Debtor to amend his exemptions in this reopened bankruptcy case to now switch exemption schemes and claim exemptions under the § 704 Exemptions would create the perception that the original trustee, who relied on exemptions claimed under the § 703 Exemptions, was misled.

A final consideration in the judicial estoppel analysis is "whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped." New Hampshire, 532 U.S. at 751. As noted above, permitting the Liability Claim to be exempt under the § 704 Exemptions causes the Liability Claim to be exempt in full. The result is that Debtor would receive all settlement funds resulting from the Liability Claim and the bankruptcy estate would receive none. The court finds this to be an unfair advantage for Debtor and an unfair detriment to Trustee if Debtor is not estopped from amending his exemption schedule to switch exemption schemes. Trustee reopened the bankruptcy case in November 2021, employed both general and special counsel, and worked on obtaining the settlement funds for the benefit of creditors before Debtor amended his schedules to switch exemption schemes and seek to exempt the settlement funds arising out of the Liability Claim in full.

Accordingly, the court holds that judicial estoppel precludes Debtor from amending his bankruptcy schedules to switch exemption schemes from § 703 Exemptions to § 704 Exemptions, and the Objection will be SUSTAINED. Because the court determines that judicial estoppel precludes Debtor from amending his bankruptcy schedules to assert a different exemption scheme in a reopened bankruptcy case, the court does not analyze whether Debtor is equitably estopped from doing the same.

8. 20-11367-A-7 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**
DMG-9

MOTION TO SELL
8-10-2022 [422]

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

At the hearing, the chapter 7 trustee should be prepared to explain to the court to what extent, if any, the property that the trustee seeks to sell in the motion, identified in the motion as "Temblor Petroleum Company LLC's Oil and Gas Working Interest, Witter Field, AKA West Five Points", Doc. #422, is the same as the "120 Acres more or less located in the NW ¼ of Section 21, Township 17 South, Range 17 East" that is the subject of an Oil, Gas and Mineral Lease between Temblor Petroleum Company LLC and Kings County Development Limited, Ex. A, Doc. #435.

9. 20-11367-A-7 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**
JMV-1

NOTICE OF INTENT TO ABANDON
6-1-2022 [408]

LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

10. 17-11186-A-7 **IN RE: JAVIER GARCIA AND ARELI ZAVALA**
MAZ-2

CONTINUED MOTION TO AVOID LIEN OF KINGS FEDERAL CREDIT UNION
6-10-2022 [29]

ARELI ZAVALA/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING WITHDRAWN

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Kings Federal Credit Union ("Creditor") timely filed written opposition on June 29, 2022. Doc. #36. At the initial hearing on July 14, 2022, this motion was continued to allow Creditor to

conduct an appraisal to determine the value of the property. Doc. #49. On August 18, 2022, Creditor withdrew its opposition. Doc. #57. The failure of the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

Javier A. Garcia and Areli Zavala (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Creditor on their residential real property commonly referred to as 616 W. Florinda Street, Hanford, CA 93230 (the "Property"). Doc. #29; Schedules C and D, Doc. #1.

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

Debtors filed their bankruptcy petition on March 31, 2017. A judgment was entered against Javier A. Carrillo aka Javier A. Garcia C. aka Javier A. Garcia Carrillo in the amount of $11,533.07 in favor of Creditor on December 16, 2015. Ex. D, Doc. #31. The abstract of judgment was recorded pre-petition in Kings County on July 5, 2016 as document number 1611414. Ex. D, Doc. #31. The lien attached to Debtors' interest in the Property located in Kings County. Doc. #31. The Property also is encumbered by a first deed of trust held by Chase in the amount $75,660.00. Schedule D, Doc. #1. Debtors claimed an exemption of $100,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at $120,000.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		$11,533.07
Total amount of all other liens on the Property (excluding junior judicial liens)	+	$75,660.00
Amount of Debtors' claim of exemption in the Property	+	$100,000.00
		$187,193.07
Value of Debtors' interest in the Property absent liens	-	$120,000.00
Amount Creditor's lien impairs Debtors' exemption		$67,193.07

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

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

11. 22-11019-A-7 **IN RE: CATHRYN SMITH**
AP-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-31-2022 [30]

WILMINGTON TRUST, NATIONAL ASSOCIATION/MV
PETER BUNTING/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 14 days' notice 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.

The movant, Wilmington Trust, National Association ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to real property located at 34201 Natoma Road, Auberry, CA ("Property"). Doc. #30.

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 the debtor has failed to make at least 29 complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least $52,108.10. Doc. #36.

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have any equity in such property and such property is not necessary to an effective reorganization. A review of the motion shows that the debtor has equity in the Property, so relief from stay is not granted under 11 U.S.C. § 362(d)(2). Doc. #30.

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

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least 29 payments, both pre- and post-petition to Movant.