

**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Tuesday, September 20, 2022
Department B – Courtroom #13
Fresno, California**



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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [22-10947](#)-B-11 IN RE: FLAVIO MARTINS
[MB-10](#)

MOTION TO MODIFY FINAL ORDER AUTHORIZING USE OF CASH
COLLATERAL AND/OR MOTION TO MODIFY FINAL ADEQUATE PROTECTION
8-29-2022 [[152](#)]

FLAVIO MARTINS/MV
HAGOP BEDOYAN/ATTY. FOR DBT.

NO RULING.

Debtor-in possession Flavio Martins ("Debtor") asks to modify this court's Final Cash Collateral Order (Doc. #80) to provide for a September 2022 payment to Bank of the Sierra ("BOTS") of \$279,011.00. Doc. #152. There is no dispute that cash collateral of both BOTS and Western Milling ("WM") would be used to make the payment.

Debtor claims the secured creditors are adequately protected by an equity cushion in the dairy facilities and by Debtor's continued care for the collateral and replacement liens.

Debtor does not state what basis for modification of the Final Cash Collateral exists under Fed. R. Civ. P. ("Civ. Rule") 60(b) (Fed. R. Bankr. P. ("Rule") 9024). The motion states no ground under Civ. Rule 60(b) that would apply.

Since the motion is not specific, the court surmises that Debtor seeks relief under Civ. Rule 60(b)(6). That provision permits relief from a judgment for "any other reason that justifies relief." Civ. Rule 60(b)(6). But relief under that statute "is to be used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment." *Latshaw v. Trainer Wortham & Co.*, 452 F.3d 1097, 1103 (9th Cir. 2006). "A motion for reconsideration should not be granted, absent highly unusual circumstances, unless the court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009).

The motion does not present any newly discovered evidence establishing the reason for the change in budget. It appears Debtor and BOTS have agreed that BOTS should receive payment starting in September 2022 though no post-petition payments have thus far been made to BOTS. Debtor claims BOTS collateral is diminishing in value so payments should start now instead of when the next cash collateral budget is

effective. Assuming that is true, it is not a basis to modify a previous ruling.

That said, Debtor's "true-up" budget shows a substantial rollover for the final week. This shows cash remaining to service the proposed BOTS payment. It is unclear whether this additional cash was "newly discovered." Also, if WM and BOTS both agree, cash collateral could be used without a court order. § 363(c)(2)(A).

This matter will be called to determine whether all parties consent to this proposed use of cash collateral and whether WM or another party in interest opposes the proposed use.

2. [22-10885](#)-B-11 **IN RE: SYNCHRONY OF VISALIA, INC.**
[UST-1](#)

MOTION TO APPOINT A PATIENT CARE OMBUDSMAN
8-16-2022 [[64](#)]

TRACY DAVIS/MV
LEONARD WELSH/ATTY. FOR DBT.
JASON BLUMBERG/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

Tracy Hope Davis, the United States Trustee for Region 17 (the "UST"), moves for an order directing the appointment of a patient care ombudsman pursuant to 11 U.S.C. § 333. Doc. #64.

Synchrony of Visalia, Inc. ("Debtor") timely filed written opposition and a supplemental declaration. Docs. #69; #88. Debtor claims that appointment of a patient care ombudsman is not necessary because Debtor does not provide any inpatient services.

UST responded. Doc. #98.

Debtor filed a second supplemental declaration in reply. Doc. #100.

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

BACKGROUND

Debtor filed chapter 7 bankruptcy on May 25, 2022. Doc. #1. On July 11, 2022, the court granted Debtor's motion and converted the case to a case under subchapter V of chapter 11 of the Bankruptcy Code. Doc. #40. Lisa Holder was appointed as subchapter V trustee on July 14, 2022. Doc. #46.

Debtor is a small business and debtor in possession under 11 U.S.C. §§ 1182(2), 1184, and has described itself in the petition as a "health care business" under 11 U.S.C. § 101(27A). Doc. #1. According to Debtor's *Statement of Financial Affairs*, Debtor operates a "Mental Health and Wellness Clinic." Doc. #23.

In chapters 7, 9, or 11 cases in which the debtor is a health care business, Fed. R. Bankr. P. ("Rule") 2007.2(a) requires the court to order the appointment of a patient care ombudsman under 11 U.S.C. § 333(a)(1), unless, on motion of the UST or another party in interest filed within 21 days of the petition date or another time fixed by the court, the court finds that appointment of a patient care ombudsman is not necessary under the specific circumstances of the case and for the protection of patients. Under § 333(a)(1), the court shall order within 30 days of the petition the appointment of an ombudsman to monitor the quality of patient care and represent the interests of the patients, unless such appointment is not necessary for the protection of patients under the circumstances of the case.

The term "health care business" is broadly defined under 11 U.S.C. § 101(27A) as:

- (A) . . . any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for—
 - (i) the diagnosis or treatment of injury, deformity, or disease; and
 - (ii) surgical, drug treatment, psychiatric, or obstetric care; and
- (B) includes—
 - (i) any—
 - (I) general or specialized hospital;
 - (II) ancillary ambulatory, emergency, or surgical treatment facility;
 - (III) hospice;
 - (IV) home health agency; and
 - (V) other health care institution that is similar to an entity referred to in subclause (I), (II), (III), or (IV); and
 - (ii) any long-term care facility, including any—
 - (I) skilled nursing facility;
 - (II) intermediate care facility;
 - (III) assisted living facility;

(IV) home for the aged;
(V) domiciliary care facility; and
(VI) health care institution that is related to a facility referred to in subclause (I), (II), (III), (IV), or (V), if that institution is primarily engaged in offering room, board, laundry, or personal assistance with activities of daily living and incidentals to activities of daily living.

§ 101(27A) (A) & (B) .

Since Debtor has described itself as a "health care business," UST argues that the court should order the appointment of a patient care ombudsman unless the Debtor can demonstrate that such appointment is not necessary for the protection of patients under the specific circumstances of this case. Doc. #64.

Debtor objected to UST's motion. Doc. #69. Debtor acknowledges that it operates a mental health and wellness clinic in Visalia, California, but states that it neither provides inpatient care or services for its patients, nor prescribes or administers medication. *Id.* Debtor also claims that it cares for and protects its patients' medical and personal information as required by law, and Debtor is licensed to operate its business by the State of California, which makes it subject to review and inspection by the State of California for the care and protection of its patients. *Id.*

Debtor's executive, Maria Ortiz-Nance, declares that a patient care ombudsman is not necessary for the protection of patients because:

- a. Debtor's business does not provide inpatient care or services for patients;
- b. Debtor does not prescribe or administer medication to patients;
- c. Debtor cares for and protects its patients' medical and personal information as required by law;
- d. Debtor is licensed to operate its business by the State of California;
- e. as a licensed mental health and wellness clinic, Debtor's business is subject to review and inspection by the State of California; and
- f. appointment of a patient care ombudsman will impose an unnecessary cost to Debtor and the estate and will make confirmation of a plan more difficult.

Doc. #70. Ortiz-Nance supplemented the declaration to correct the accuracy of the first: Debtor's business license was issued by the City of Visalia, not the State of California, and Debtor operates its business within the requirements set by the business license.

Doc. #88; see also Business License, Doc. #89, *Ex. A*. Debtor is not licensed by the California Department of Consumer Affairs—Board of

Psychology (the "Board of Psychology"), but Debtor is not required to be licensed by the Board of Psychology to do business as a mental health and wellness clinic. Doc. #88. Ortiz-Nance declares that all of the clinicians who provide professional services for Debtor's patients are licensed by the Board of Psychology and provide services to patients within the rules and regulations promulgated by the Board of Psychology. As a result, Ortiz-Nance believes that appointment of a patient care ombudsman is not necessary because all of Debtor's patients are protected. As evidence, Debtor includes a print-out of Frequently Asked Questions ("FAQ") regarding psychology licensure requirements prepared by the Board of Psychology. Doc. #89, *Ex. B*.

In response, UST claims that Debtor has not met its burden of demonstrating that an ombudsman is not necessary. Doc. #98. Namely, Debtor does not appear to be subject to direct supervision by the Board of Psychology, and Debtor has not described (i) internal safeguards to ensure high quality patient care, (ii) Debtor's history of patient care, and (iii) how Debtor maintains patient records.

In reply, Debtor filed a second declaration of Ortiz-Nance to provide additional information about Debtor's internal safeguards, history of patient care, and how Debtor maintains records. Doc. #100. Specifically, Debtor takes the following steps to resolve any issues that may arise with patients:

- a. If the issue pertains to a trainee (unlicensed clinician), matters are initially taken up by their supervisor (a licensed psychology) due to the trainee providing services under their license number.
- b. If the issue is more serious or an agency issue, the matter is taken up by the Clinical Administrator. If disciplinary action is needed on behalf of Debtor, the Clinical Administrator will discipline with approval from Debtor's Board of Directors.
- c. The Board of Psychology can be contacted at any time by the patient. Debtor or Debtor's staff members cannot report or disclose most complaints to the Board of Psychology without patient consent and Debtor's clinical staff are bound by law and ethics to report unlawful complaints to the proper authorities.
- d. Patients are provided with the Clinical Administrator's name and instructions on how to file a complaint at the time in which the matter is first reported. Patients are allowed to request an appointment to consult with the Clinical Administrator at any time.

Id. Debtor keeps records in an electronic system to comply with HIPPA. Progress notes are minimal or non-existent, but if paper notes are needed for any reason, they are kept in locked filing cabinets behind locked doors in compliance with Board of Psychology regulations. *Id.* The electronic notes are submitted to an Electronic Medical Record

System ("EHR System") using AdvancedMD software, which also is for billing, insurance, and maintaining and backing up patient records. Debtor's Office Manager is the holder of records and maintains the records in the software. Debtor can provide these records or notes to entities or the patient on request of a patient. *Id.*

DISCUSSION

When determining whether appointment of a patient care ombudsman is necessary, courts are to consider the nine *Alternate Family Care* factors:

1. The cause of the bankruptcy;
2. The presence and role of licensing or supervising entities;
3. Debtor's past history of patient care;
4. The ability of the patients to protect their rights;
5. The level of dependency of the patients on the facility;
6. The likelihood of tension between the interests of the patients and the debtor;
7. The potential injury to the patients if the debtor drastically reduced its level of patient care;
8. The presence and sufficiency of internal safeguards to ensure appropriate level of care; and
9. The impact of the cost of an ombudsman on the likelihood of a successful reorganization.

In re Valley Health Sys., 381 B.R. 756, 761 (Bankr. C.D. Cal. 2008), citing *In re Alternate Family Care*, 377 B.R. 754, 758 (Bankr. S.D. Fla. 2007); see also *In re Flagship Franchises of Minn., LLC*, 484 B.R. 759, 762 (Bankr. D. Minn. 2013) (collecting cases).

No single factor is determinative. *Id.*, 484 B.R. at 762. The weight attributed to each factor is discretionary. Other important factors to consider include: (1) the high quality of the debtor's existing patient care; (2) the debtor's financial ability to maintain high quality patient care; (3) the existence of an internal ombudsman program protecting the rights of patients; and (4) the level of monitoring and oversight by federal, state, local, or professional association program rendering appointment of such ombudsman redundant. *Valley Health Sys.*, 381 B.R. at 761, citing 3 Collier on Bankruptcy P. 333.02, at 333-4 (Alan N. Resnick & Henry J. Sommer eds., 15th ed. 2007).

Debtor acknowledges these factors, claiming that there is no evidence that appointment of a patient care ombudsman is necessary. But Debtor misconstrues the standard for forgoing appointment under Rule 2007.2(a) and § 333(a)(1). The test is not that the court shall appoint a patient care ombudsman only if there is evidence such appointment is necessary. Rather, the court shall appoint a patient care ombudsman *unless* such appointment is not necessary. By default, the court shall appoint a patient care ombudsman. The burden rests on the UST, Debtor, or any other party in interest to demonstrate that a

patient care ombudsman is not needed. *In re Smiley Dental Arlington, PLLC*, 503 R.R. 680, 688 (B. Ct. N.D. Tex. 2013) ("Party opposing the appointment of the ombudsman bears the burden of overcoming the mandatory appointment") (*citations omitted*).

1. Cause of the bankruptcy: Debtor filed bankruptcy on May 25, 2022 after the Fifth District Court of Appeal reversed a judgment entered in Debtor's favor by the Tulare County Superior Court. Doc. #69. This lawsuit is based on wage and hour claims asserted against Debtor. Remand of the lawsuit may result in a monetary judgment against Debtor, which Debtor could not satisfy without the protection of bankruptcy. *Id.*

Since the lawsuit relates to a wage and hour claim, it does not appear that the bankruptcy was precipitated by claims of inadequate patient care. Instead, those claims relate to employee compensation.

2. Presence and role of licensing or supervising entities: Debtor is in possession of a business license issued by the City of Visalia. Docs. #88; #89, *Ex. A*. Though Debtor claims to operate its business within the requirements of its business license, it is unclear whether Debtor is subject to oversight from licensing or supervising entities. Debtor's clinicians who provide professional services to patients are licensed by the Board of Psychology, so they presumably have complied with all of the training, education, and other licensure requirements outlined in the Board of Psychology FAQ provided by Debtor. Doc. #89, *Ex. B*. Failure to comply with the Board of Psychology's licensure requirements would result in the loss of the individual employee's license. But does Debtor monitor its employees' license status and continuing education requirements?

Also, the motion claims that Debtor is subject to review and inspection by the State of California. Doc. #70. But that claim appears to be based on the allegation that Debtor is licensed by the State of California to operate its business. Ortiz-Nance's supplemental declaration disavows that Debtor is licensed by the State of California, and instead possesses a license issued by the City of Visalia. Doc. #88. Since Debtor is not in fact licensed by the State, it is unclear which, if any, entities supervise Debtor, and whether Debtor is subject to review and inspection.

Ortiz-Nance's second supplemental declaration states that patient safeguards and handling of complaints are the responsibility of the Clinical Administrator. But little information is provided about this Clinic Administrator. Even if Debtor can prove by admissible evidence some regular supervision/inspection by a licensing or regulatory agency, there is no evidence as to how often the inspections/reviews occur or when the last inspection occurred.

3. Debtor's past history of patient care: Few details about Debtor's past history of patient care are provided. Debtor only states that it (a) does not provide inpatient care or services, (b) does not

prescribe or administer medication, (c) does care for and protect medical and personal information, and (d) is licensed to operate its business.

Under the issue-resolution procedure specified in the second supplemental declaration, Ortiz-Nance declares that Debtor has never been sued by a patient or had any complaints filed against it by a patient. Doc. #100. But has Debtor ever been subject to regulatory action, from the Clinical Administrator or other entities due to deficiencies in patient care?

4. Ability of patients to protect their rights: Here, Ortiz-Nance declares that Debtor cares for and protects its patients' medical and personal information as required by law. Doc. #70. This assertion is repeated in the supplemental declaration with the addendum that all of Debtor's clinicians who provide professional services to patients are licensed by the Board of Psychology. Doc. #88.

As noted above, patients are advised that they can file a complaint with the Clinical Administrator upon reporting the complaint and may request an appointment to consult with the Clinical Administrator at any time. Doc. #100. But are patients advised of their rights only upon reporting a complaint, or does Debtor provide information advising them of their rights upon initiation of services? See, e.g., *Flagship*, 484 B.R. at 764 (finding that the debtor protected its clients' rights by providing a handbook to all clients and requiring execution of a service agreement, civil rights compliance documents, a client bill of rights, a notice of privacy practices, a consent form for use and/or disclosure of health information to carry out treatment, and HIPAA disclosure documents prior to the initiation of services).

Though Debtor engages in outpatient services only, those services relate to mental, emotional, and psychological health. Debtor's license describes the business as family and child psychology. Doc. #89, *Ex. A*. With respect to the rights of children patients, one court reasoned this factor supported appointment of an ombudsman, but limited this factor's weight due to likely involvement of parents and guardians:

It is unlikely that minors, particularly those with emotional or psychological issues, would be able to protect their rights as health care patients. . . . However, most of these children have parents or guardian ad litem[sic] who are involved in their care. Presumably, they are able to protect their children's rights, particularly because [the debtor's] services are provided on an outpatient basis, giving them the ability to monitor the care given.

In re Denali Family Servs., No. A13-00114-GS, 2013 Bankr. LEXIS 1713, at *7 (Bankr. D. Alaska Apr. 24, 2013) (appointing patient care

ombudsman for a health care business that provided mental health services for troubled children).

5. Level of dependency of the patients on the facility: Debtor provides outpatient services only and does not administer or prescribe medication, but the extent to which Debtor's patients depend on Debtor's service is not stated. It is unclear whether patients would be harmed if Debtor were to drastically reduce its services, and if so, the extent of such harm. For example, Debtor may reorganize and reduce the number of clinicians for any number of reasons. How will the patients be harmed by a turnover of personnel?

6. Likelihood of tension between the interests of the patients and the debtor: Presumably, both Debtor and its patients share an interest in high quality care. The bankruptcy was filed as part of a wage and hour dispute, not a dispute with patients, so there do not appear to be any conflicting interests based on the current record.

7. Potential injury to the patients if the debtor drastically reduced its level of patient care: As with the fifth factor, Debtor provides outpatient services and does not prescribe medication, but the extent to which Debtor's patients depend on Debtor's services is not stated. It is unclear whether patients would be harmed if Debtor were to drastically reduce its services, and if so, the extent of such harm. How will patients be harmed if Debtor reduces its number of clinicians?

8. Presence and sufficiency of internal safeguards to ensure appropriate level of care: Ortiz-Nance's supplemental declaration says the clinicians who provide professional service to patients are licensed by the Board of Psychology. Doc. #88. The supplemental declaration also appears to rescind the claim that Debtor is subject to review and inspection by the State of California, which seems to imply there may be an absence of external safeguards as well.

In the second supplemental declaration, Ortiz-Nance does provide additional information regarding resolution of issues that arise with patients, which may be taken up by the Clinical Administrator. Doc. #100. Debtor also describes its record-keeping procedure.

9. Impact of the cost of an ombudsman on the likelihood of a successful reorganization: Ortiz-Nance declares that appointment of an ombudsman will impose an unnecessary cost to Debtor and the estate and will make confirmation of a Plan of Reorganization more difficult. Doc. #70. Ortiz-Nance does not explain why a patient care ombudsman would make reorganization more difficult.

Though some factors do suggest that appointment of a patient care ombudsman may not be necessary, there are still unanswered questions about the health care services offered by Debtor. This matter will be called and proceed as scheduled.

11:00 AM

1. [22-11152](#)-B-7 **IN RE: BRANDON PEKAREK**

PRO SE REAFFIRMATION AGREEMENT WITH UNIFY FINANCIAL FEDERAL
CREDIT UNION
9-1-2022 [[17](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

A Reaffirmation between debtor Brandon Pekarek and Unify Financial Federal Credit Union for a 2017 Keystone RV Hideout Travel Trailer was filed on September 1, 2022. Doc. #17. Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. In this case, the debtor's attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

The Reaffirmation Agreement between debtor Brandon Pekarek and Unify Financial Federal Credit Union will be DENIED.

2. [22-11152](#)-B-7 **IN RE: BRANDON PEKAREK**

PRO SE REAFFIRMATION AGREEMENT WITH UNIFY FINANCIAL FEDERAL
CREDIT UNION
9-1-2022 [[19](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

A Reaffirmation between debtor Brandon Pekarek and Unify Financial Federal Credit Union for a 2016 Trackr Targa V-18 Combo Boat and Trailer was filed on September 1, 2022. Doc. #19. Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. In this case, the debtor's attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

The Reaffirmation Agreement between debtor Brandon Pekarek and Unify Financial Federal Credit Union will be DENIED.

3. [22-11170](#)-B-7 **IN RE: DOUA YANG**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
8-26-2022 [\[21\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

A Reaffirmation between debtor Doua Yang and Toyota Motor Credit Corporation for a 2017 Lexus RX350 was filed on August 26, 2022. Doc. #21. Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. In this case, the debtor's attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

The Reaffirmation Agreement between debtor Doua Yang and Toyota Motor Credit Corporation will be DENIED.

4. [22-11170](#)-B-7 **IN RE: DOUA YANG**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
8-26-2022 [[22](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

A Reaffirmation between debtor Doua Yang and Toyota Motor Credit Corporation for a 2021 Toyota Camry H was filed on August 26, 2022. Doc. #22. Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. In this case, the debtor's attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

The Reaffirmation Agreement between debtor Doua Yang and Toyota Motor Credit Corporation will be DENIED.

1:30 PM

1. [22-11107](#)-B-7 **IN RE: FREDDIE/LORRAINE POTTER**
[MAZ-1](#)

MOTION TO AVOID LIEN OF CITIBANK, N.A.
8-10-2022 [[22](#)]

LORRAINE POTTER/MV
MARK ZIMMERMAN/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.

Freddie S. Potter and Lorraine L. Potter ("Debtors") seek to avoid a judicial lien in favor of Citibank, N.A. ("Creditor") in the sum of \$4,047.73 and encumbering residential real property located at 16135 W. Ashli Avenue, Kerman, California 93630 ("Property").¹ Doc. #22.

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

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

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

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

Here, a judgment was entered against joint debtor Freddie S. Potter in favor of Creditor in the amount of \$4,047.73 on August 25, 2021. Doc. #25, *Ex. D*. The abstract of judgment was issued on September 7, 2021 and recorded in Fresno County on November 9, 2021. *Id.* That lien attached to Debtors' interest in Property and appears to be the only non-consensual judgment lien encumbering Property. *Id.*; Docs. #1, *Sched. D*; #24.

As of the petition date, Property had an approximate value of \$400,000.00. *Id.*; Doc. #1, *Sched. A/B*. Property is encumbered by a single deed of trust in favor of LoanCare, LLC in the amount of \$229,249.00. *Id.*, *Sched. D*. Debtors claimed a "homestead" exemption in Property in the amount of \$300,000.00 pursuant to Cal. Code Civ. Proc. § 704.730. *Id.*, *Sched. C*.

Strict application of the § 522(f)(2) formula indicates that Debtors' exemption is impaired as follows:

Amount of Creditor's judicial lien	\$4,047.73
Total amount of unavoidable liens	+ \$299,249.00
Debtors' claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$603,296.73
Debtors' claimed value of interest absent liens	- \$400,000.00
Extent Creditor's lien impairs Debtor's exemption	= \$203,296.73

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property	\$400,000.00
Total amount of unavoidable liens	- \$299,249.00
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$199,249.00)
Creditor's judicial lien	- \$4,047.73
Extent Debtors' exemption impaired	= (\$203,296.73)

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

Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). This motion will be GRANTED. The proposed order shall include a copy of the abstract of judgment attached as an exhibit.

¹ Debtors complied with Fed. R. Bankr. P. 7004(h) by serving Creditor's CEO, Sunil Garg, by certified mail on August 10, 2022. Doc. #26.

2. [21-10316](#)-B-7 **IN RE: CABLE LINKS CONSTRUCTION GROUP, INC.**
[ADJ-2](#)

MOTION TO PAY
9-2-2022 [[77](#)]

IRMA EDMONDS/MV
HAGOP BEDOYAN/ATTY. FOR DBT.
IRMA EDMONDS/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.

Chapter 7 trustee Irma C. Edmonds ("Trustee") seeks authority to pay administrative tax claims in the amounts of \$822.00 and \$800.00 to the California Franchise Tax Board ("FTB") for income taxes for tax years 2021 and 2022. Doc. #77.

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.

11 U.S.C. § 503 allows an entity to file a request for payment of administrative expenses. After notice and a hearing, payment of certain administrative expenses shall be allowed, other than those specified in § 502(f), including taxes. § 503(b)(1)(B). Trustee has an obligation to pay taxes due on behalf of the bankruptcy estate. § 346. Under 28 U.S.C. § 960(b), trustees are required to pay estate taxes on or before the date they become due even if the respective tax agency

does not file a request for administrative expenses. *Dreyfuss v. Cory (In re Cloobek)*, 788 F.3d 1243, 1246 (9th Cir. 2015).

Cable Links Construction Group, LLC ("Debtor") filed chapter 7 bankruptcy on February 9, 2021. Doc. #1. Trustee was appointed as interim trustee and became permanent trustee at the first § 341 meeting of creditors on March 15, 2021. Doc. #2.

On November 15, 2021, the court authorized employment of Ratzlaff Tamberi & Wong ("Accountant") as the estate's accountant. Doc. #62. Accountant determined that the estate has a tax liability due to the FTB in the amount of \$822.00 and \$800.00 for the 2021 and 2022 tax years, respectively. Docs. #79; #80, *Ex. A*. Trustee now seeks authorization to pay those amounts due and owing. Doc. #77.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED. Trustee will be authorized to pay, in Trustee's discretion, \$822.00 and \$800.00 to FTB for tax years 2021 and 2022, respectively.

3. [10-12725](#)-B-7 **IN RE: LEONARD/DEANNA RAGLE**
[FW-5](#)

MOTION TO APPROVE STIPULATION RESOLVING TRUSTEE'S OBJECTION
TO DEBTOR'S CLAIM OF EXEMPTIONS AND SETTING AMOUNT OF THE
SAME
8-17-2022 [[63](#)]

JAMES SALVEN/MV
R. BELL/ATTY. FOR DBT.
PETER FEAR/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.

Chapter 7 trustee James E. Salven ("Trustee") requests an order approving a stipulation between the estate and Leonard A. Ragle and Deanna K. Ragle (collectively "Debtors") to resolve Trustee's objection to Debtors' claim of exemptions pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Docs. #55; #63.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(3). The failure of the 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Debtors filed chapter 7 bankruptcy on March 16, 2010. Doc. #1. Randall Parker was appointed as the trustee and filed a Report of No Distribution on May 13, 2010. Doc. #2. Debtors received an order of discharge on July 15, 2010 and the bankruptcy case was closed by final decree. Docs. ##14-15.

Eleven years later, the U.S. Trustee moved to reopen the case after learning that the Debtors failed to schedule an interest in a lawsuit ("Claim"), which was property of the estate. Doc. #18. The case was reopened July 27, 2021. Doc. #19.

Thereafter, Debtors filed *Amended Schedules B & C*, which listed the Claim as an interest in "Personal Injury Compensation" valued at \$100,000. Doc. #48. Meanwhile, Debtors claimed \$25,500 in exemptions under Cal. Code Civ. Proc. § 703.140(b) (5):

Asset	Exempted
Bank of the Sierra Checking and Savings	\$1,500.00
Bank of the Sierra Checking and Savings	\$3,700.00
Chase Checking Account	\$20.00
Chase Checking and Savings Account	\$300.00
1999 Ford F150	\$3,425.00
Personal Injury Compensation	\$16,555.00
Total CCP § 703.140(b) (5) exemptions	\$25,500.00

Id. On January 3, 2022, Trustee objected to Debtor's claim of exemptions due to (i) procedural defects under Rule 1009(a); (ii) the maximum amount exemptible under CCP § 703.140(b) (5) as of March 16, 2010 was \$21,825.00, not \$25,500.00; and (iii) the Claim for which the case was reopened is a mass tort product liability claim, not a personal injury claim. Doc. #51. In an effort to amicably resolve Trustee's objection, the parties stipulated:

1. Trustee withdraws the procedural objection under Rule 1009(a);

2. The parties agree that the Claim is a product liability claim, not a personal injury claim; and
3. The total sum of Debtors' CCP 703.140(b)(5) exemption shall be \$21,825.00.

Doc. #66, Ex. A. The stipulation is separately filed and docketed as a stipulation. Doc. #55. Trustee now seeks approval of the stipulation.

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

The court concludes that the *Woodson* factors balance in favor of approving the compromise. That is,

1. Probability of success in litigation: Though success in litigation is far from assured, Trustee believes that he would prevail if the letter of the law were followed. Given that the settlement sets Debtors' CCP 703.140(b)(5) exemption at the maximum available, the settlement represents the maximum amount to which the estate would be entitled in the absence of this settlement. This factor supports approval.
2. Difficulties in collection: Collection is not at issue here. A third-party settlement administrator is responsible for handling the funds subject to the exemption with the remaining balance remitted to the bankruptcy estate. This factor is therefore neutral.
3. Complexity of litigation: Litigation on the objection would not be complex. The facts are largely undisputed, so the primary question would be the effect of the law. The parties believe that resolution by stipulation fairly addresses the concerns of both parties and obviates the need for litigation. This factor supports approving the stipulation.
4. Interests of creditors: This case was previously closed as a "no asset" case. If forced to litigate the objection, funds coming into the estate would be spent on litigation expenses. Trustee believes that there will be sufficient funds from the settlement to pay a dividend to general unsecured creditors, but that recovery could be diminished if there are litigation expenses.

The settlement appears to be fair, equitable, and a reasonable exercise of Trustee's business judgment.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED, and the stipulation approved. The court concludes that the compromise is in the best interests of the creditors and the estate. 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.* The proposed order shall include an attached copy of the stipulation as an exhibit.

4. [22-10835](#)-B-7 **IN RE: KRISTINA KATO-CLAREY**
[PFT-1](#)

MOTION TO SELL
8-16-2022 [[13](#)]

JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order after hearing.

Chapter 7 trustee Peter L. Fear ("Trustee") requests an order authorizing the sale of the estate's interest in a 2016 Fiat 500X ("Estate Asset") to Kristina Kato-Clarey ("Debtor") for \$13,625.00, subject to higher and better bids at the hearing. Doc. #13. Trustee also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 6004(h).

No party in interest timely filed written opposition. This motion will be GRANTED and proceed for higher and better bids only.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(2). The failure of the creditors, the Debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

11 U.S.C. § 363(b)(1) allows the trustee 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 eds., 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).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887, citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to the Debtor.

The Estate Asset is listed in the schedules as a 2016 Fiat 500X with 49,584 miles and valued at \$12,551.00 with no encumbrances. Doc. #1, *Scheds. A/B*, D. Debtor claimed a \$3,625.00 exemption in the vehicle pursuant to Cal. Code Civ. Proc. § 704.010. *Id.*, *Sched. C*. Debtor will receive a \$3,625.00 exemption credit towards the purchase price, resulting in \$10,000.00 in net proceeds if the sale is completed as proposed.

Trustee received an offer from Debtor to purchase the Estate Asset at the sale price indicated, which he accepted subject to court approval and higher and better bids. Doc. #15. The source of payment is Debtor's relative. Trustee has received the funds. There will be no tax consequences to the estate as a result of this sale. Trustee believes the sale price is fair when considering the cost of obtaining court approval to hire an auctioneer for the estate, plus commissions and costs.

The sale appears to be in the best interests of creditors and the estate, for a fair and reasonable price, supported by a valid exercise of Trustee's business judgment, and was proposed in good faith. The sale subject to higher and better bids will maximize estate recovery and yield the best possible sale price. No party has filed opposition to the sale. Accordingly, this motion will be GRANTED, and the sale will proceed for higher and better bids only. Trustee will be authorized to sell the Estate Asset to the highest bidder as determined at the hearing.

Any party wishing to overbid must appear at the hearing, acknowledge that the sale is "as-is, where-is," and the winning bidder is responsible for obtaining possession of the asset and changing title to the asset with no assistance from Trustee. Winning bidders must pay the Trustee in certified funds to be received in Trustee's office no later than five business days following conclusion of the auction. Back-up bids will be taken and once a back-up bidder is notified that the prior bidder has failed to perform, payment of the purchase price must be received by the Trustee from the back-up bidder within five business days of the back-up bidder being notified that the back-up bid is now the winning bid.

Trustee's request for waiver of the 14-day stay of Rule 6004(h) will be DENIED because Trustee presents no legal or factual bases in support of such waiver. See *Paladino v. S. Coast Oil Corp. (In re S. Coast Oil Corp.)*, 566 F. App'x 594, 595 (9th Cir. 2014) (affirming waiver of 14-day stay because time was of the essence due to regulatory deadlines); *In re Ormet Corp.*, 2014 LEXIS 3071 (Bankr. D. Del. July 17, 2014) (finding cause to lift 14-day stay because the buyer required closing before the stay would expire). There do not appear to be any circumstances warranting waiver of the stay under Rule 6004(h).

5. [22-10842](#)-B-7 **IN RE: RICHARD/CHRISTINA OVERTON**
[PFT-1](#)

MOTION TO SELL
8-16-2022 [\[19\]](#)

PETER FEAR/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order after hearing.

Chapter 7 trustee Peter L. Fear ("Trustee") requests an order authorizing the sale of the estate's interest in a 2009 Mercedes Benz E-Class ("Estate Asset") to Richard A. Overton and Christina J. Overton (collectively "Debtors") for \$7,000.00, subject to higher and better bids at the hearing. Doc. #19. Trustee also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 6004(h).

No party in interest timely filed written opposition. This motion will be GRANTED and proceed for higher and better bids only.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(a)(2). The failure of the 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). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

11 U.S.C. § 363(b)(1) allows the trustee 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 eds., 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).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887, citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to the Debtors.

The Estate Asset is listed in the schedules as a 2009 Mercedes Benz E-Class with 92,000 miles and valued at \$5,315.00 with no encumbrances. Doc. #1, *Scheds. A/B, D*. Debtor did not exempt any equity in the vehicle. *Id.*, *Sched. C*. Therefore, the estate will receive \$7,000.00 in net proceeds if the sale is completed as proposed.

Trustee received an offer from Debtor to purchase the Estate Asset at the sale price indicated, which he accepted subject to court approval and higher and better bids. Doc. #21. Debtor will make payments until paid in full by December 2022. The source of payment is Debtor's ongoing income. There will be no tax consequences to the estate as a result of this sale. Trustee believes the sale price is fair when

considering the cost of obtaining court approval to hire an auctioneer for the estate, plus commissions and costs.

The sale appears to be in the best interests of creditors and the estate, for a fair and reasonable price, supported by a valid exercise of Trustee's business judgment, and was proposed in good faith. The sale subject to higher and better bids will maximize estate recovery and yield the best possible sale price. No party has filed opposition to the sale. Accordingly, this motion will be GRANTED, and the sale will proceed for higher and better bids only. Trustee will be authorized to sell the Estate Asset to the highest bidder as determined at the hearing.

Any party wishing to overbid must appear at the hearing, acknowledge that the sale is "as-is, where-is," and the winning bidder is responsible for obtaining possession of the asset and changing title to the asset with no assistance from Trustee. Winning bidders must pay the Trustee in certified funds to be received in Trustee's office no later than five business days following conclusion of the auction. Back-up bids will be taken and once a back-up bidder is notified that the prior bidder has failed to perform, payment of the purchase price must be received by the Trustee from the back-up bidder within five business days of the back-up bidder being notified that the back-up bid is now the winning bid.

Trustee's request for waiver of the 14-day stay of Rule 6004(h) will be DENIED because Trustee presents no legal or factual bases in support of such waiver. See *Paladino v. S. Coast Oil Corp. (In re S. Coast Oil Corp.)*, 566 F. App'x 594, 595 (9th Cir. 2014) (affirming waiver of 14-day stay because time was of the essence due to regulatory deadlines); *In re Ormet Corp.*, 2014 LEXIS 3071 (Bankr. D. Del. July 17, 2014) (finding cause to lift 14-day stay because the buyer required closing before the stay would expire). There do not appear to be any circumstances warranting waiver of the stay under Rule 6004(h).

6. [22-11170](#)-B-7 **IN RE: DOUA YANG**
[TCS-1](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA) N.A.
8-17-2022 [\[16\]](#)

DOUA YANG/MV
TIMOTHY SPRINGER/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.

Doua Yang ("Debtor") seeks to avoid a judicial lien in favor of Capital One Bank (USA), N.A. ("Creditor") in the sum of \$4,089.76 and encumbering residential real property located at 3920 N. Hughes, Fresno, CA 93705 ("Property").² Doc. #16.

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

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

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

Here, a judgment was entered against Debtor in favor of Creditor in the amount of \$4,089.76 on May 29, 2020. Doc. #19, *Ex. B*. The abstract of judgment was issued on September 24, 2020 and recorded in Fresno County on November 17, 2020. *Id.* That lien attached to Debtor's interest in Property and appears to be the only non-consensual judgment lien encumbering Property. *Id.*; Docs. #1, *Sched. D*; #18.

As of the petition date, Property had an approximate value of \$288,900.00. *Id.*; Doc. #1, *Sched. A/B*. Property is encumbered by a single deed of trust in favor of Guidance Residential, LLC in the amount of \$98,482.00. *Id.*, *Sched. D*. Debtor claimed a "homestead" exemption in Property in the amount of \$190,418.00 pursuant to Cal. Code Civ. Proc. § 704.730. Doc. #12, *Am. Sched. C*.

Strict application of the § 522(f)(2) formula indicates that Debtor's exemption is impaired as follows:

Amount of Creditor's judicial lien	\$4,089.76
Total amount of unavoidable liens	+ \$98,482.00
Debtor's claimed exemption in Property	+ \$190,418.00
<i>Sum</i>	= \$292,989.76
Debtor's claimed value of interest absent liens	- \$288,900.00
Extent Creditor's lien impairs Debtor's exemption	= \$4,089.76

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property	\$288,900.00
Total amount of unavoidable liens	- \$98,482.00
Homestead exemption	- \$190,418.00
Remaining equity for judicial liens	= \$0.00
Creditor's judicial lien	- \$4,089.76
Extent Debtor's exemption impaired	= (\$4,089.76)

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

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). This motion will be GRANTED. The proposed order shall include a copy of the abstract of judgment attached as an exhibit.

² Debtor complied with Fed. R. Bankr. P. 7004(h) by serving Creditor's CEO, Richard Fairbank, by certified mail on August 17, 2022. Doc. #20. The motion says that Property's zip code is 95301, but the grant deed and schedules indicate that it is actually 93705. Docs. #1, *Sched. A/B*; #19, *Ex. A*.

7. [22-10975](#)-B-13 **IN RE: MIRALDA GOMEZ**
[SL-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
7-22-2022 [[17](#)]

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Dropped and taken off calendar.

NO ORDER REQUIRED.

After setting this motion for hearing, the debtor sought and obtained approval to advance the hearing to August 30, 2022. Doc. #28. At that hearing, the motion was granted, and the case converted to chapter 13. Docs. #29; #31. Accordingly, this hearing will be dropped and taken off calendar because the motion has already been granted.

8. [18-14689](#)-B-7 **IN RE: JAVIER GONZALEZ**
[JES-4](#)

MOTION FOR COMPENSATION FOR JAMES E SALVEN, CHAPTER 7
TRUSTEE(S)
8-10-2022 [[162](#)]

JAMES SALVEN/MV
THOMAS GILLIS/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.

Chapter 7 trustee James E. Salven ("Trustee") requests statutory compensation of \$10,630.69 under 11 U.S.C. §§ 326, 330. Doc. #162 This amount consists of \$10,391.78 as statutory fees for services rendered to the estate and \$238.91 in actual, necessary expenses from November 20, 2018 through September 20, 2022. *Id.*

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further,

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

Javier Ramirez Gonzalez ("Debtor") filed chapter 7 bankruptcy on November 20, 2018. Doc. #1. Trustee was appointed as interim trustee that same day and became permanent trustee at the meeting of creditors on December 27, 2018. Doc. #4; see also docket generally. Trustee administered the estate, submitted the final report to the U.S. Trustee on June 11, 2022, and now seeks final compensation. Doc. #162. The final report was approved by the U.S. Trustee and filed on July 29, 2022. Doc. #155.

11 U.S.C. § 326 permits the court to allow reasonable compensation to the chapter 7 trustee under § 330 for the trustee's services. Section 326(a) states:

In a case under chapter 7 or 11, other than a case under subchapter V of chapter 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including all holders of secured claims.

11 U.S.C. § 326(a). Here, Trustee has requested:

- (a) \$1,250.00 (25%) of the first \$5,000.00;
- (b) \$4,500.00 (10%) of the next \$45,000.00; and
- (c) \$4,641.78 (5%) of the next \$92,835.67.

Docs. #155; #165, *Ex. A*. These percentages comply with the restrictions imposed by § 326(a) and total **\$10,391.78**. The total disbursements were \$142,835.60. *Id.* Trustee also incurred \$238.91 in expenses as follows:

Copies (436 @ \$0.20)	\$87.20
Distribution (12 @ \$1.00)	+ \$12.00
Postage (4 @ \$1.96)	+ \$7.84
Postage (4 @ \$2.00)	+ \$8.00
Other	+ \$10.11
Other	+ \$113.76
Total Costs	= \$238.91

Id. These combined fees and requested expenses total **\$10,630.69**.

11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses. 11 U.S.C. § 330(a)(1)(A) & (B). 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).

Trustee's services included but were not limited to: (1) conducting the meeting of creditors; (2) employing general counsel, compelling the debtor to turnover property, and negotiating a settlement agreement with the debtor; (3) preparing the Final Report; and (4) preparing and filing this fee application. The court finds Trustee's services and expenses actual, reasonable, and necessary to the estate.

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be awarded \$10,630.69 as final compensation pursuant to §§ 326, 330.