

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, September 21, 2021
Place: Department B – Courtroom #13
Fresno, California

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
3-2-2020 [\[1\]](#)

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Continued to October 14, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

Debtor-in-possession Stephen William Sloan's chapter 11 disclosure statement is set for an approval hearing on October 14, 2021. Accordingly, this status conference will be continued to October 14, 2021 at 9:30 a.m. to be heard in connection with the disclosure statement.

2. [19-10423](#)-B-12 **IN RE: KULWINDER SINGH AND BINDER KAUR**
[FRB-11](#)

MOTION TO ADD ATTORNEYS FEES AND COSTS TO PRIOR CLAIM OF
FARM CREDIT SERVICES OF AMERICA, PCA
8-12-2021 [\[286\]](#)

FARM CREDIT SERVICES OF
AMERICA, PCA/MV
DAVID JOHNSTON/ATTY. FOR DBT.
MICHAEL GOMEZ/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.

Farm Credit Services of America, PCA ("Creditor") requests an order allowing the addition of \$11,262.50 in attorney's fees and \$1,716.82 in costs to its claim under 11 U.S.C. § 506(b) and Class 4.1 of the confirmed chapter 12 plan ("Plan") of Kulwinder Singh and Binder

Kaur ("Debtors"). Doc. #286. Creditor also seeks to include \$1,802.00 in fees for preparing and filing this motion, totaling \$14,781.32.

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 Debtors, the chapter 12 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.

Creditor filed a notice of errata on August 31, 2021 to include the names and addresses to where opposition, if any, must be sent. Doc. #291. This notice of errata cures a defect under LBR 9014-1(d)(3)(B)(i).

Debtors filed the Plan on February 25, 2020. Doc. #202. It was confirmed on December 3, 2020. Doc. #276. Creditor's claim under § 506(b) is listed in Class 4.1 of the Plan, which allows it to file additional motions or stipulations with the Debtors no more than once annually to have fees, costs, or expenses deemed allowable under § 506. These fees, costs, or expenses incurred after the effective date of the plan may be added to Creditor's Class 4.1 claim. Plan, Doc. #202, § 2.06.2.

Creditor's claim arises from a judgment against the Debtors in the sum of \$211,286.31 entered in Fresno County Superior Court, Case No. 17CECG02053, on March 23, 2018. Doc. #290, Ex. 5 to Ex. 1. Creditor filed Proof of Claim No. 7-1 in a "to be determined" amount on April 8, 2019. The claim was amended to \$267,696.22 on July 17, 2019. Claim #7-2. Creditor previously added fees and costs to its claim on October 23, 2019 pursuant to Cal. Code Civ. Proc. § 685.040. FRB-10.

Since those fees and costs were added, from November 1, 2019 through July 31, 2021, Creditor incurred additional fees of \$11,262.50 and costs of \$1,716.82 for a total of \$12,979.32. Doc. #290, Ex. 3. Additionally, Creditor seeks fees of \$1,802 incurred in preparing and prosecuting this motion and reserves the right to add additional fees and costs should there be any opposition to the motion.

Michael J. Gomez, Creditor's attorney, declares that his firm has billed 29.30 hours at the following rates, and totaling **\$11,262.50** in fees:

FEE SUMMARY

Professional	Rate	Billed	Amount
Ronnie Aucedo	\$210	0.80	\$168.00
Michael Gomez (2019)	\$415	1.20	\$498.00
Michael Gomez (2020-21)	\$425	14.10	\$5,992.50
Chanel Oldham	\$385	1.60	\$616.00
Gerrick Warrington	\$350	4.40	\$1,540.00
Reina Clark	\$340	7.20	\$2,448.00
Total Hours Billed & Fees		29.30	\$11,262.50

Docs. #290. Ex. 3; #288. Gomez declares that 0.2 hours of services were not billed. *Id.* Ronnie Aucedo is the firm's paralegal and has over 15 years of experience. Creditor also incurred expenses of **\$1,716.82**. The combined fees and expenses total **\$12,979.32**. In addition to those fees and expenses, Creditor further requests \$1,802.00 for preparing and filing this motion, which consists of 2.8 hours at \$425 per hour by Gomez (\$1,190) and 1.8 hours at \$340 per hour by Clark (\$612).

11 U.S.C. § 506(b) allows the holder of a secured claim, after recovery by the trustee under § 506(c), to be allowed interest on the claim, as well as any reasonable fees, costs, or charges provided for under the agreement or statute by which the claim arose. Here, Creditor is authorized under C.C.P. § 685.040 and the Plan to add fees and costs to its claim as allowable expenses under § 506(b) not more than once per year.

No party in interest timely filed written opposition. This motion will be GRANTED. Creditor shall be authorized to amend its claim to include \$11,262.50 in fees and \$1,716.82 in costs (\$12,979.32 total) as an allowable expense under § 506(b) for reasonable fees, costs, or charges incurred between November 1, 2019 and July 31, 2021. Additionally, Creditor shall be authorized to include \$1,802.00 in fees for preparing and filing this motion. In total, Creditor is authorized to add \$14,781.32 to its claim as an allowable expense.

3. [21-12134](#)-B-11 **IN RE: WALTER C. SMITH COMPANY, INC.**
[FW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-7-2021 [\[19\]](#)

DEBENEDETTO PROPERTIES, LTD/MV
RILEY WALTER/ATTY. FOR DBT.
PETER FEAR/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.

Debenedetto Properties, Ltd. ("Movant") requests modification of the automatic stay under 11 U.S.C. § 362 to allow it to exercise its state law remedies to recover possession of real property located at 849 Osmun Circle, Clovis, California ("Property"). The court notes that the debtor is seeking authorization to conduct an auction at Property on September 25, 2021, which is the subject of matter #4 below. See WJH-1.

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.

Debtor-in-possession Walter C. Smith Company, Inc. ("DIP") filed chapter 11, subchapter V bankruptcy on September 2, 2021. Doc. #1. DIP's principal place of business is located at Property.

Movant is the owner of Property, which is commercial real property located in Clovis, California. Movant alleges that DIP is a holdover tenant with no legal basis to maintain possession of Property, other than its bare possessory interest. Doc. #19.

Movant indicates that DIP's last payment on its month-to-month tenancy was on September 1, 2019. Doc. #21. Since then, DIP has missed 24 pre-petition payments of \$5,000 each, which would total approximately \$120,000. *Id.* After netting out mutual obligations, the total amount owed by DIP as of August 20, 2021 was \$104,369.17, with an additional payment of \$5,000 due on September 1, 2021. Doc. #22.

Per the underlying agreement between the DIP and Movant, DIP agreed to pay the full amount owed to Movant through an escrow holder. Doc.

#23, Ex. A. The final payment to the escrow holder was due no later than August 20, 2021. *Id.*, Ex. B. Both parties agreed that DIP would vacate Property no later than November 30, 2021, and Movant would refrain from terminating DIP's tenancy sooner provided that DIP was not in default of the agreement. *Id.*, Ex. A, Art. II, ¶ 2.03(c). Movant was notified by the escrow holder on August 20, 2021 that DIP failed to pay the amount required to close escrow and was in breach of the agreement. Doc. #22.

Movant insists that there is no way that DIP could use a plan to maintain possession of Property and alleges that DIP filed this case to keep Movant from regaining possession. Doc. #19. Movant also states that DIP has an auction scheduled for September 25, 2021 to auction off and liquidate all of its assets. Doc. #22.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because DIP has failed to make at least 24 pre-petition payments. Movant has produced evidence that DIP is delinquent at least \$104,369.17, with an additional payment of \$5,000 due before this hearing. Docs. ##21-22.

The court also finds that the DIP does not have any equity in the property and the property is not necessary to an effective reorganization. This motion concerns the lease of real property and DIP has no equity in Property. After liquidation of DIP's personal property located at Property, it will not be necessary for an effective reorganization. Doc. #22.

Accordingly, in the absence of opposition at the hearing, this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit the Movant to exercise its rights pursuant to applicable law. As to Movant's request for authorization to seek recovery of money damages against DIP in this bankruptcy case: Movant may file a proof of claim, but the court is not modifying the stay to allow for litigation of a pre-petition claim absent a further showing of cause. *See In re Kronemyer*, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009); *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984).

The request for waiver of the 14-day stay under Fed. R. Bankr. P. 4003(a)(3) will be DENIED because DIP has an auction scheduled for September 25, 2021 and appears to be soon vacating Property.

4. [21-12134](#)-B-11 **IN RE: WALTER C. SMITH COMPANY, INC.**
[WJH-1](#)

MOTION TO SELL
9-7-2021 [\[26\]](#)

WALTER C. SMITH COMPANY,
INC./MV
RILEY WALTER/ATTY. FOR DBT.
OST 9/7/21

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.

Debtor-in-possession Walter C. Smith Company, Inc. ("DIP") moves for an order authorizing DIP to sell certain personal property ("Business Assets") pursuant to 11 U.S.C. § 363 and Federal Rule of Bankruptcy Procedure ("Rule") 9014 at public auction. Doc. #26. DIP requests the sale to be free and clear of all encumbrances. The auction will be held on September 25, 2021 at 849 Osmun Circle, Clovis, CA 93612 and conducted by Mulrooney Auction Company ("Auctioneer").

DIP requests to pay Auctioneer 10% of gross proceeds from the sale as compensation under 11 U.S.C. §§ 327(a) and 328, along with payment of auction expenses up to \$21,000.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, and provided that Auctioneer's employment is authorized on September 24, 2021, this motion will be GRANTED.

This motion was filed and served on 14 days' notice with an order shortening time ("OST") pursuant to Local Rule of Practice 9014-1(f)(2) and (3) and will proceed as scheduled. Consequently, no party in interest was required to file a written response or opposition to the motion. If any respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is presented at the hearing, the court will enter the respondents' defaults and grant the motion.

Though Rules 2002(a)(2) and (a)(6) require at least 21 days' notice to all parties in interest for proposed sales of personal property of the estate other than in the ordinary course of business and any entity's request for compensation or reimbursement of expenses if the request exceeds \$1,000, DIP requested an OST on September 7, 2021. Doc. #10. For good cause existing, the court granted the application on that same day and reduced the period of notice required for the motion. Doc. #18. DIP was ordered to give notice by first class mail to all creditors, the U.S. Trustee's Office, DIP,

and any other parties in interest no later than September 7, 2021. *Id.* Objections to the motion may be made up to two days before the hearing. *Id.*

On September 7, 2021, DIP served all parties in interest the OST and all motion documents by first class mail and also by email, if known. Doc. #33. DIP has complied with the OST.

11 U.S.C. § 1184 gives a subchapter V debtor-in-possession all of the rights and powers of a trustee, other than the right to compensation. The debtor-in-possession is required to perform all functions and duties of a trustee, including operation of a business, except those duties specified in § 1106(a)(2), (3), & (4).

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." Therefore, under § 1184, DIP has the authority to sell estate property free and clear of liens under § 363(b).

Within 21 days after the filing of the petition, the court is prohibited from issuing an order granting an employment application under Rule 2014, except to the extent that relief is necessary to avoid immediate and irreparable harm. Rule 6003(a).

DIP filed bankruptcy on September 2, 2021. Doc. #1. On September 7, 2021, the DIP filed an *ex parte* application to employ Auctioneer concurrently with this motion to sell and the motion for an OST. WJH-2. Under Rule 6003(a), the 21st day after the petition date is September 23, 2021. If no opposition to the employment application is submitted, the court will enter an order approving Auctioneer's employment on September 24, 2021.

In the employment application, DIP seeks to employ Auctioneer under 11 U.S.C. §§ 327(a), 328, 330, and Rules 2013, 2014, 2016, 5002, 5004, and 9001. Doc. #14. Auctioneer declares that he is a disinterested person as defined in § 101(14) and does not hold interests adverse to the estate in accordance with § 327(a). Doc. #15.

Provided that Auctioneer's employment is approved, DIP seeks to sell the Business Assets under § 363 by public auction on September 25, 2021. Doc. #28. The Business Assets include two trucks, fifteen trailers, five cranes, two telehandlers & force feed loaders, six attachments, two buildings, two storage containers, a variety of horizontal boring & support equipment, four air compressors & generators, and an assortment of shop equipment and miscellaneous equipment. See Equip. List, Doc. #30, Ex. A.

DIP filed schedules on September 16, 2021, which included an itemized list of all of its personal property assets in the attachment to Schedule A/B, ¶¶ 47.1, 50. Doc. #69, *Sched. A/B*. DIP owns 14 vehicles, 26 trailers, a large supply of boring and related equipment, and office, service and welding shop equipment. *Id.*, at 5-14. DIP's personal assets are broken down as follows:

SCHEDULE A/B - ALL BUSINESS PROPERTY

Vehicles	\$292,500.00
Trailers	\$196,000.00
Boring/Related Equipment	\$2,118,500.00
Office	\$23,900.00
Service Shop	\$14,100.00
Welding Shop	\$59,300.00
Total	\$2,704,300.00

DIP also filed a balance sheet estimating the value of its current assets. Doc. #4. The list provides for estimated depreciation for each category, but it is not itemized, so it is unclear which category each of the Business Assets fall under and the net amount of proceeds to the estate. The balance sheet lists the following estimates:

BALANCE SHEET

Asset	Value	Accum. Depr.	Net
Inventory	\$18,750.00	N/A	\$18,750.00
Furniture and Equipment	\$45,590.85	(\$8,216.93)	\$37,373.92
Vehicles	\$770,966.00	(\$768,406.00)	\$2,560.00
Equipment	\$1,805,484.00	(\$1,632,821.80)	\$172,662.20
Shop	\$6,912.00	(\$6,912.00)	\$0.00
Leasehold Improvements	\$6,581.00	(\$5,740.93)	\$840.07
Total:	\$2,654,283.85	(\$2,422,097.66)	\$232,186.19

Id. The Attachment to Schedule A, #13.2, states that all of DIP's assets are free and clear of liens and encumbrances. Doc. #69, at 55. This is reaffirmed in Schedule D. *Id.*, *Sched. D.*

It is still unclear exactly how much in net proceeds the estate anticipates receiving through this sale. However, Michael A. DeBenedetto declares that a return of sale will be filed within seven court days after conclusion of the auction and the net proceeds of the sale, after payment of auction expenses, will be deposited into the DIP bank account. Doc. #29. Further, DeBenedetto states that sale of the assets will allow DIP to no longer maintain or insure the assets and shrink its core operations.

The auction has been widely advertised to Machinery Trader, Ag Source Magazine, Farm Bureau Ag Alert, Mulrooneyauction.com, and sent in an email blast to Auctioneer's customer base. Docs. #31; #32, Ex. A. Auctioneer filed a supplemental declaration confirming to the court that if the auction does not go forward on September 25, 2021, it will have to be re-advertised at a cost of at least \$81,000.00 and be delayed until at least December 4, 2021. Doc. #43.

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).

This sale of assets appears to be an appropriate exercise of DIP's business judgment. Sale by auction under these circumstances should maximize potential recovery for the estate, reduce DIP's business operations and expenses, and allow DIP to vacate possession of its secured creditor's real property.

This matter will be called as scheduled. The court will inquire whether any party in interest opposes the sale of the Business Assets. If no opposition is presented, this motion will be GRANTED subject to approval of Auctioneer's employment.

11:00 AM

1. [21-11355](#)-B-7 **IN RE: JAMMIE WILSON**

PRO SE REAFFIRMATION AGREEMENT WITH LOANCARE, LLC
8-23-2021 [\[17\]](#)

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

This matter was automatically set for a hearing because the reaffirmation agreement is not signed by an attorney. However, this reaffirmation agreement appears to relate to a consumer debt secured by real property. Pursuant to 11 U.S.C. §524(c)(6)(B), the court is not required to hold a hearing and approve this agreement. Accordingly, the hearing will be DROPPED FROM CALENDAR.

2. [21-11076](#)-B-7 **IN RE: ROMAN LINDAY**

CONTINUED REAFFIRMATION AGREEMENT WITH NAVY FEDERAL CREDIT
UNION
7-1-2021 [\[20\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

NO RULING.

3. [21-10785](#)-B-7 **IN RE: CLAUDIA LUCKEY**

PRO SE REAFFIRMATION AGREEMENT WITH JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION
8-17-2021 [\[29\]](#)

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

This matter was automatically set for a hearing because the reaffirmation agreement is not signed by an attorney. However, this reaffirmation agreement appears to relate to a consumer debt secured by real property. Pursuant to 11 U.S.C. §524(c)(6)(B), the court is not required to hold a hearing and approve this agreement. Accordingly, the hearing will be DROPPED FROM CALENDAR.

1:30 PM

1. [21-11106](#)-B-7 **IN RE: ANA AGUILERA**
[SL-1](#)

AMENDED MOTION TO AVOID LIEN OF KINGS CREDIT SERVICES
8-18-2021 [\[31\]](#)

ANA AGUILERA/MV
SCOTT LYONS/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.

Ana Maria Aguilera ("Debtor") seeks to avoid a judicial lien in favor of Kings Credit Services ("Creditor") in the amount of \$17,622.94 and encumbering residential real property located at 1210 E. Kenneth Ave., Earlimart, CA 93219 ("Property"). Doc. #31.

Creditor is a corporation. Debtor complied with Federal Rule of Bankruptcy Procedure 7004(b)(3) by serving Vicki Callahan, Creditor's registered agent for service of process, at Creditor's registered agent address on August 18, 2021. Doc. #32.

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.

The court notes that the Notice of Hearing (Doc. #27) filed with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition. Debtor's counsel's address is included in the notice, as well as the U.S. Trustee ("UST").

UST's address does not include the suite number and the chapter 7 trustee is entirely omitted. The full address for the UST (including Suite 1401) and the chapter 7 trustee should have been included in the notice. Counsel is advised to review the local rules to ensure procedural compliance in subsequent matters. Future violations of the local rules may result in the motion being denied without prejudice.

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

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$17,622.94 on June 27, 2014. Doc. #28, Ex. D. The abstract of judgment was issued on July 2, 2014 and recorded in Tulare County on September 3, 2014. *Id.* That lien attached to Debtor's interest in Property. Doc. #29.

As of the petition date, Property had an approximate value of \$198,640.00. *Id.*; Doc. #1, *Sched. A/B*. The only unavoidable lien is a deed of trust in favor of "WFHM" in the amount of \$30,790.30. Doc. #19, *Am. Sched. D*. Debtor claimed a homestead exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$300,000.00. Doc. #1, *Am. Sched. C*. Property's encumbrances can be illustrated as follows:

SALE OF PROPERTY

Fair Market Value of Property		\$198,640.00
WFHM deed of trust	-	\$30,790.30
Remaining unencumbered equity	=	\$167,849.70
Debtor's "homestead" exemption	-	\$300,000.00
Extent over-exempted	=	(\$132,150.30)
Creditor's judicial lien	-	\$17,622.94
Extent exemption impaired	=	(\$149,773.24)

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.

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

2. [19-14015](#)-B-7 **IN RE: MAXIMUS III COMPANY**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
8-23-2021 [\[64\]](#)

JAMES SALVEN/MV
D. GARDNER/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.

James E. Salven ("Applicant"), the certified public accountant of chapter 7 trustee Jeffrey M. Vetter ("Trustee"), requests final compensation under 11 U.S.C. § 330 in the amount of \$2,704.07. Doc. #64. This amount consists of \$2,550.00 in fees for reasonable compensation for services and \$154.07 for reimbursement of actual, necessary expenses rendered to the estate from June 15, 2021 through August 15, 2021.

Trustee filed a statement consenting to the application. Doc. #67. Trustee has reviewed the application and believes that the professional fees and incurred costs are reasonable and necessary for the administration of the estate. *Id.* Trustee has no objection to the application. *Id.*

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

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

First, the notice of hearing (Doc. #64) does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of parties who must be served with any written opposition. Although the address includes Applicant's PO Box, Applicant refers to himself as the chapter 7 trustee, which he is

not. Trustee Vetter's name and address should have been included in the notice.

Applicant's employment as accountant was authorized pursuant to 11 U.S.C. §§ 327, 330-31 on June 29, 2021, effective as to services rendered on or after June 1, 2021.¹ Doc. #63; JES-1. As a condition precedent to employment, Applicant was required to irrevocably waive any pre-petition claims against Debtor's bankruptcy estate. *Id.* The order further provided that no compensation would be permitted except upon court order under § 330(a) and compensation would be set at the "lodestar rate" for accounting services applicable at the time services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). *Id.* Interim compensation under § 331 was permitted. *Id.*

This is Applicant's first and final fee application. Applicant provided 10.20 billable hours of accounting services at a rate of \$250.00 per hour, totaling **\$2,550.00** in fees. Docs. #66; #68, Ex. A. Applicant also requests reimbursement for the following expenses:

EXPENSES	
Copies (210 @ \$0.15)	\$31.50
Envelopes (4 @ \$0.20)	+ \$0.80
Lacerte Tax Proc.	+ \$105.00
Service (13 @ \$1.29)	+ \$16.77
Total Costs	= \$154.07

Id., Ex. B. These combined fees and expenses total **\$2,704.07**.

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

Applicant's services included, without limitation: (1) conflict review and preparation of the employment application (JES-1); (2) correspondence with the debtor's attorney, the IRS, and Trustee regarding the debtor's prior tax returns and the preparation of 2020 and 2021 returns; (3) preparation of the 2020 and 2021 returns; and (4) transmitting and mailing the final returns. Docs. #66; #68, Ex. B. Trustee reviewed the application and consents to payment of the requested fees and expenses. Doc. #67. The court finds the services and expenses reasonable, actual, and necessary.

No party in interest timely filed written opposition. This motion will be GRANTED. Applicant shall be awarded \$2,550.00 in fees and \$154.07 in expenses. Trustee will be permitted in his discretion to pay Applicant \$2,704.07 for services rendered to the estate from June 15, 2020 through August 15, 2021.

¹ The effective date of employment is presumed to be May 22, 2021 under LBR 2014-1(b)(1) because the employment application was filed on June 21, 2021. Doc. #60. This discrepancy is *de minimis* because Applicant's services did not begin accruing until June 15, 2021. Doc. #68, Ex. A.

3. [20-13420](#)-B-7 **IN RE: CHRISTOPHER MARTENS**
[DMG-4](#)

MOTION TO SELL
8-13-2021 [\[79\]](#)

JEFFREY VETTER/MV
PETER FEAR/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

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

A Chapter 7 Trustee's Motion to Enlarge Time to File Complaint to Deny Discharge to March 11, 2021 was previously filed on January 29, 2021 (Doc. #52) and granted on April 8, 2021. Doc. #75. The DCN for that motion was DMG-4. This motion also has a DCN of DMG-4 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

Second, the notice of hearing (Doc. #80) does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition. Counsel is advised to review the local rules to ensure procedural compliance in subsequent motions.

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE.

4. [20-12023](#)-B-7 **IN RE: GABRIELA COVARRUBIAS**
[RH-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH GUADALUPE MEDINA FERRER
8-9-2021 [\[38\]](#)

JAMES SALVEN/MV
MARK HANNON/ATTY. FOR DBT.
ROBERT HAWKINS/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 and as limited by the ruling below.

Chapter 7 trustee James E. Salven ("Trustee") requests an order approving the compromise of a controversy with Gabriela Covarrubias ("Debtor") and non-debtor Guadalupe Medina Ferrer ("Ferrer") pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #38.

No party in interest timely filled written opposition to this motion. 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 Debtor, Ferrer, the creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo 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.

The court notes that Debtor substituted T. Mark O'Toole in place of Mark J. Hannon as her attorney on September 14, 2021. Doc. #49. The substitution was granted on September 17, 2021. Doc. #51.

Debtor filed chapter 7 bankruptcy on June 15, 2020. Doc. #1. Debtor's discharge was entered on September 14, 2020. Doc. #31. In the schedules, Debtor listed an interest in residential real property located at 36001 Road 196, Woodlake, CA 93286 ("Property") valued at \$90,078.00 on the petition date.² Doc. #1, *Sched. A/B*, ¶ 1.2. Debtor's portion of value owned is \$0.00 and the schedule entry states: "Debtor Co-sign [sic] for Guadalupe Medina Ferrer Ex-

Boyfriend Debtor has no interest in property." *Ibid.* Property is neither exempted by Debtor nor encumbered by any security interests. *Id.*, *Scheds. C-D*. Ferrer is not listed as an unsecured creditor or a co-debtor. *Id.*, *Scheds. E/F, H*. Property is entirely omitted from the Statement of Intention. *Id.*, *Form 108*.

Trustee determined that Debtor has an interest in Property because Debtor is on title with Ferrer as a joint tenant. Doc. #40. Property is the residence of Ferrer, who resides there with his daughter and other family members. *Id.* Trustee estimates that the fair market value of Property is not less than \$200,000. Based on a 2004 examination of Ferrer, all available title information on both Property and Debtor's residence in Visalia, and Debtor's previous bankruptcy in 2010, Trustee determined that Debtor has a joint ownership interest in Property. Doc. #38.

Furthermore, Debtor and Ferrer previously have held themselves out as legally being married, including by filing a joint bankruptcy petition on September 6, 2010, as husband and wife.³ Debtor and Ferrer both resided in Property jointly as a family unit and both contributed to its maintenance and upkeep. Later, on August 17, 2006, Ferrer signed a waiver to any potential community interest in Debtor's other property in Visalia. Trustee identifies a "common theme" in this case where Ferrer and Debtor are married for some transactions, but not married for others. Doc. #41.

Due to their domestic relationship, Trustee's position is that Debtor has an ownership interest in Property that can be liquidated for the benefit of the estate. Doc. #40. Since liquidation would require further litigation involving factual and legal issues of domestic partner relationships and real property law, Trustee has opted to compromise this dispute with Ferrer to minimize administrative costs and maximize the distribution to creditors. Doc. #38.

Under the terms of the agreement, Ferrer will pay the estate \$15,000.00 in exchange for resolution of Trustee's asserted claim against Property on behalf of the estate. Trustee is holding the \$15,000 in his fiduciary accounts. *Id.*

No copy of the settlement agreement was filed with this motion.

On 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 to it; and (4) the paramount interests 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) the probability of success is

uncertain given the factual nature of the issues involved. Though Trustee has legal representation, there is a high degree of uncertainty given the lack of documentary evidence. Doc. #41. (2) Trustee does not believe there would be any difficulties in the matter of collection other than a substantial delay in administration and increasing costs due to the procedural requirements to sell Property. If the estate prevails, there could be a higher net recovery between \$20,000 and \$75,000, but this would come with expenses associated with the litigation, real estate fees, escrow and title costs, property taxes, federal and state capital gains taxes, and administrative legal fees. Doc. #40. (3) Litigation is complex, involves state domestic partnership and real property law, and will be highly dependent on factual issues requiring an extensive and prolonged resolution. Doc. #38. Doc. #41. (4) Trustee believes that the primary interests of creditors will be served by the sale of Property, but given the uncertainty of litigation, creditors will receive nothing if Trustee does not prevail, whereas creditors will be guaranteed a reasonable return with this settlement. *Id.*

Trustee declares that the settlement is fair, equitable, and reasonable given the issues and facts presented in this case. *Id.* The settlement appears to be fair, equitable, and a reasonable exercise of Trustee's business judgment.

No party in interest timely filed written opposition. The court concludes the compromise to be in the best interests of the creditors and the estate. Further, the law favors compromise and not litigation for its own sake. This motion will be GRANTED.

The order shall provide only that the motion to approve compromise is granted. The court will not order or approve anything further because no settlement agreement was submitted with the motion.

² Debtor also owns property located at 612 E. Sequoia Ave., Visalia, CA 93292, which is Debtor's residence. That property is not implicated by this motion.

³ Case No. 10-60653. Ferrer was eventually dismissed from the case and Debtor received a chapter 7 discharge on March 11, 2011.

5. [21-11635](#)-B-7 **IN RE: JUAN CORDERO**
[JES-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
8-20-2021 [\[18\]](#)

JAMES SALVEN/MV
MONICA ROBLES/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

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

Chapter 7 trustee James E. Salven ("Trustee") objects to the claimed exemptions of Juan Cordero ("Debtor") under California Code of Civil Procedure ("C.C.P.") §§ 704, et seq., amended on August 11, 2021. Doc. #18. Debtor and his non-filing spouse, Maria Elvia Hernandez-Rizallo ("Hernandez-Rizallo"), filed a waiver of right to claim exemptions, other than those under C.C.P. § 703.140(b), on August 2, 2021. Doc. #12.

No party in interest timely filed written opposition to this objection. This objection will be SUSTAINED.

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

Federal Rule of Bankruptcy Procedure 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 meeting of creditors is held or within 30 days after any amendment to Schedule C is filed, whichever is later. In this case, Debtor amended Schedule C on August 11, 2021 and this objection was filed on August 20, 2021, which is within the 30-day timeframe.

The Eastern District of California Bankruptcy Court in *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) held that "the

debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [California law] and the extent to which that exemption applies."

Debtor filed bankruptcy on June 28, 2021. Doc. #1. On July 30, 2021, Debtor and his non-filing spouse, Hernandez-Rizallo, both executed a waiver of exemptions, which was filed on August 2, 2021. Doc. #12. Per the waiver, Debtor and Hernandez-Rizallo waived the right to claim, in any bankruptcy proceeding while this case is pending, "the exemptions provided by the applicable exemption provisions of [C.C.P.], Chapter 4, other than those under C.C.P. § 703.140(b)." Doc. #12.

C.C.P. § 703.140(a)(2) requires, if a husband or wife files a petition individually rather than jointly, the debtor to use the "regular" exemptions in C.C.P. §§ 703.010-704.995, other than the "special exemptions" in subsection (b), unless both spouses effectively waive the regular exemptions in writing. See *In re Geisenheimer*, 530 B.R. 747, 750-51 (Bankr. E.D. Cal. 2015). Debtor used Official Form EDC 3-060 (Rev. Dec. 19, 2001) to effectively waive the regular exemptions in writing, and both Debtor and Hernandez-Rizallo signed the waiver. Trustee has made a "clear showing" that Debtor intended to waive the right to the regular exemptions by executing the waiver of exemptions form. *Pac. Valley Bank. v. Schwenke*, 189 Cal. App. 3d 134, 145 (1987).

Despite the waiver, Debtor amended Schedule C on August 11, 2021 to claim the following exemptions under C.C.P. § 704:

EXEMPTIONS

Asset	Amount	C.C.P. §
156 Solano St., Madera, CA 93638	\$290,000.00	704.730(a)(1)
2014 Chevrolet Cruze	\$3,325.00	704.010
House furniture	\$1,100.00	704.020
TV and phones	\$800.00	704.020
Clothing and shoes	\$200.00	704.020
BoA Checking Acct.	\$1,175.00	704.080
BoA Savings Acct.	\$52.00	704.080
BoA Business Checking Acct.	\$1,194.00	704.080
BoA Business Savings Acct.	\$97.00	704.080
GCU Checking Acct.	\$376.00	704.080
GCU Savings Acct.	\$101.00	704.080

Doc. #15. In addition to real and personal property, Debtor claimed the amounts stored in six bank accounts under C.C.P. § 704.080: four Bank of America ("BoA") accounts and two Golden1 Credit Union ("GCU") accounts.

Since Debtor waived the use of the regular exemptions in this case, Trustee argues that all of his exemptions should be disallowed, but Debtor should be permitted to amend exemptions allowed under C.C.P. § 703.140(b). Doc. #18.

Alternatively, if the court allows Debtor to use C.C.P. § 704 exemptions despite the waiver, Trustee prays that usage of C.C.P. § 704.080 to exempt the six bank accounts be disallowed because Debtor does not qualify for that exemption.

C.C.P. § 704.080 allows for an exemption of specific amounts for "Public Benefits" or "Social Security Benefits" stored in a deposit account. C.C.P. § 704.080(a)(2), (b). Since Debtor's Schedules I, J, and Statement of Financial Affairs do not indicate receipts of Public Benefits or Social Security Benefits, Trustee argues that Debtor does not qualify to use this exemption.

Debtor did not timely file written opposition. In the absence of opposition, the court finds that Debtor waived the use of all C.C.P. exemptions, except those under C.C.P. § 703.140(b). Debtor has failed to meet his burden that he is entitled to the use of exceptions under C.C.P. § 704. Trustee's objection will be SUSTAINED, and Debtor's objections will be disallowed.

Debtor is permitted to amend Schedule C with exemptions under C.C.P. § 703.140(b).

6. [20-12036](#)-B-7 **IN RE: SANDRA SANCHEZ**
[ADJ-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH SANDRA SANCHEZ, JAIME SANCHEZ, AND GLADYS
SANCHEZ
7-29-2021 [\[58\]](#)

JAMES SALVEN/MV
MARK HANNON/ATTY. FOR DBT.
ANTHONY JOHNSTON/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.

Chapter 7 trustee James E. Salven ("Trustee") requests an order approving the compromise of a controversy with Sandra Sanchez ("Debtor") pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #58.

No party in interest timely filled written opposition to this motion. 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 Debtor, the creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any

opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo 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.

The court notes that the exhibits do not comply with the local rules. LBR 9004-2(d)(2) and (3) require exhibit indices to state the page number at which each exhibit is found within the exhibit document and use consecutively numbered exhibit pages throughout the exhibit document, including any separator, cover, or divider sheets. Here, the index omits the page number where each exhibit is located. Moreover, although the exhibit index and exhibit are separately numbered, the entire document is not. The local rules require the entire document to be consecutively numbered and the exhibit index to identify by page number each exhibit's placement. Counsel is advised to review the local rules and ensure procedural compliance in subsequent matters. Future violations of the local rules may result in the motion being denied without prejudice.

Debtor filed chapter 7 bankruptcy on June 15, 2020. Doc. #1. Debtor's discharge was entered on October 26, 2020. Doc. #17. In the schedules, Debtor listed an interest in residential real property located at 3562 W. Amherst Ave., Fresno, CA 93722 ("Property") valued at \$147,786.00 on the petition date.⁴ Doc. #1, *Sched. A/B*, ¶ 1.2. Debtor's portion of value owned is \$0.00 and the schedule entry states: "Debtor husband Co-sign [sic] for Daughter. Debtor has no interest in property." *Ibid.* Property is not exempted, but it is encumbered by a deed of trust in favor of PennyMac in the amount of \$89,433.69. *Id.*, *Scheds. C-D*. Debtor's husband, Jaime Sanchez, is listed as a co-debtor with respect to this debt, but Debtor's daughter is omitted. *Id.*, *Scheds. E/F, H*. Property is entirely omitted from the Statement of Intention. *Id.*, *Form 108*.

Trustee determined that Debtor has an interest in Property because Debtor is on title with her husband, Jaime Sanchez, and her daughter, Gladys Sanchez, as a joint tenant. Doc. #61. Property is the residence of Gladys Sanchez, but Debtor and her husband are both included on the mortgage loan owed to PennyMac. *Id.* As result, Trustee's position is that Debtor owns an interest in Property that can be liquidated for the benefit of the estate and creditors. Trustee filed an adversary proceeding against Debtor, Jaime Sanchez, and Gladys Areli Sanchez on March 30, 2021.⁵

Trustee has decided to compromise this dispute with Debtor, Jaime Sanchez, and Gladys Sanchez to minimize administrative costs and maximize the distribution to creditors. Doc. #58.

Under the terms of the settlement agreement:

1. Debtor will pay Trustee \$5,100.00 within five business days of the effective date of the agreement.
2. Upon receipt of the \$5,100.00 consideration, the Trustee will waive any and all claims of the estate with respect to Property.
3. This agreement is conditioned on approval by this court.

Doc. #60, Ex. A. The agreement is executed by Trustee, Debtor, Jaime Sanchez, and Gladys Sanchez. In the settlement agreement, the parties reaffirmed the following:

The Defendants [Debtor and Jaime Sanchez] acquired legal title to the Property via a purchase from the Federal National Mortgage Association in June 2013. At the time of purchase, Gladys could not solely qualify for a home purchase loan, so Jaime and the Debtor also borrowed funds with Gladys to purchase the Property. Gladys paid the entire down-payment and escrow/title costs for the purchase of the Property. Since the time of the purchase of the Property, Gladys has paid all expenses associated with the Property, including but not limited to mortgage payment, property taxes, insurance premiums, maintenance and repairs, improvements, and utilities. Debtor and Jaime have not contributed any funds for the benefit of the Property at any time.

Id., Recital D.

On 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 to it; and (4) the paramount interests 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) Debtor and her co-defendants contend that the Property is the subject of a trust for the benefit of Gladys, who is the sole equitable owner of Property. Doc. #58. Debtor maintains that she and her husband hold bare legal title, with no equitable interest. Thus, the outcome of the claim would depend on whether Debtor and her husband intended Gladys to receive beneficial ownership of Property. Since Gladys paid all obligations related to Property, she is the presumed equitable owner. Further, Debtor and Jaime do not reside at Property. (2) If the estate were to prevail at trial, Trustee does not believe there would be any difficulties in the matter of collection other than a substantial delay in administration and increasing costs due to the procedural

requirements to sell Property. If the estate prevails, there could be a higher net recovery to the estate, but this would come with expenses associated with the litigation, real estate fees, escrow and title costs, property taxes, federal and state capital gains taxes, and administrative legal fees. (3) Litigation is not very complex because many material facts are not in dispute. However, litigation would be expensive and delay administration of the estate. 4) Trustee believes that the primary interests of creditors will be served by the sale of Property, but given the uncertainty of litigation, creditors will receive nothing if Trustee does not prevail, whereas creditors will be guaranteed a reasonable return with this settlement. *Id.*

Trustee declares that the settlement is fair, equitable, and reasonable given the issues and facts presented in this case. Doc. #61. The settlement appears to be fair, equitable, and a reasonable exercise of Trustee's business judgment.

No party in interest timely filed written opposition. The court concludes the compromise to be in the best interests of the creditors and the estate. Further, the law favors compromise and not litigation for its own sake. This motion will be GRANTED.

⁴ Debtor also owns property located at 2304 N. Wapona Ave., Fresno, CA 93722, which is Debtor's residence. That property is not implicated by this motion.

⁵ Case No. 21-01016. Plaintiff Trustee seeks to sell the estate's interest and the interests of the co-defendants in Property pursuant to 11 U.S.C. § 363(h), with the fees and costs incurred prosecuting the adversary proceeding, as well as the marketing and sale of Property paid through escrow under § 363(j).

7. [21-11539](#)-B-7 **IN RE: GURNAM SINGH AND GURJIT SIDHU**
[PBB-3](#)

MOTION TO COMPEL ABANDONMENT
9-7-2021 [\[31\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Gurnam Singh and Gurjit Kaur Sidhu ("Debtors") ask this court for an order compelling chapter 7 trustee James E. Salven ("Trustee") to abandon the estate's interest in Debtors' real property located at 4519 West Roberts Avenue, Fresno, CA 93722 ("Property"). Doc. #31.

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. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). *In re Galloway*, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at *16-17 (B.A.P. 9th Cir. 2014).

Debtors seek to compel Trustee to abandon the estate's interest in Property. Property was listed in the schedules with a petition-date value of \$360,000.00. Doc. #1, *Sched. A/B*, ¶ 1.1. Property is encumbered by a deed of trust in favor of Bank of America in the amount of \$232,629.00. *Id.*, *Sched. D*. Debtors exempted Property for \$300,000.00 under Cal. Code Civ. Proc. § 704.730. *Id.*, *Sched. C*. Joint debtor Gurjit Kaur Sidhu declares and reaffirms that Property was valued at \$360,000 on the petition date. Doc. #33. Sidhu says there would be zero proceeds available for Trustee to disburse to creditors if Property were sold after payment of the secured lien and Debtors' exemption as follows:

SALE OF PROPERTY

Fair market value of Property		\$360,000.00
Bank of America deed of trust	-	\$232,629.00
Debtors' homestead exemption	-	\$300,000.00
Net to the estate	=	\$0.00

The court finds that Property is of inconsequential value and benefit to the estate. Property was accurately scheduled and exempted in its entirety. Therefore, in the absence of opposition, this motion will be GRANTED.

The order shall specifically include the property to be abandoned.

8. [21-11643](#)-B-7 **IN RE: GUADALUPE MARISCAL**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
8-30-2021 [\[30\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

Chapter 7 trustee James E. Salven ("Trustee") seeks dismissal for debtor's failure to appear and testify at the § 341(a) meeting of creditors. Doc. #28.

Guadalupe F. Mariscal ("Debtor") timely filed written opposition. Doc. #30. Debtor declares, "no pude asistir a la audiencia desio a que yo estaba encarcelado el dia que tuve mi audiencia." *Id.* This translates to "I could not attend the hearing because I was incarcerated the day I had my hearing."

This motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for September 27, 2021 at 1:00 p.m. If Debtor fails to do so, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The times prescribed in Rules 1017(e)(1) and 4004(a) for the Chapter 7 Trustee and U.S. Trustee to object to Debtor's discharge or file motions for abuse, other than presumed abuse under § 707, are extended to 60 days after the conclusion of the meeting of creditors.

9. [21-10762](#)-B-7 **IN RE: STEVEN/SANDRA SLUMBERGER**
[RJB-1](#)

MOTION TO COMPEL
8-19-2021 [\[43\]](#)

LIBERTY MUTUAL INSURANCE
COMPANY/MV
PETER FEAR/ATTY. FOR DBT.
ROBERT BERENS/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.

Creditors Liberty Mutual Insurance Company ("Liberty") and The Ohio Casualty Insurance Company ("OCIC"; collectively "Creditors") move for an order compelling Steven Norman Slumberger and Sandra Sims Slumberger ("Debtors") to produce documents under Federal Rule of Bankruptcy Procedure ("Rule") 2004. Doc. #43.

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 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.

Here, third party Developers Surety and Indemnity Insurance Company ("DSIC") and OCIC issued various bonds (collectively "Bonds") on behalf of the Cable Links Construction Group, Inc. ("Cable Links").⁶ Doc. #43. Next, the Debtors, Cable Links, and third parties Daniel Payne and Mary Lynn Payne (the "Paynes") executed an indemnity agreement on February 12, 2019 in favor of DSIC and OCIC.

Liberty received a written assignment of all of DSIC's rights, privileges, benefits, and other interests arising under the indemnity agreement, and any of DSIC's collateral, lien rights, and

liens. Creditors' total claim under the indemnity agreement was approximately \$1,263,572.93 on the petition date. Claim No. 12.

Creditors assert that its claim is partially secured by a UCC Financing Statement filed with the California Secretary of State. *Id.*, Ex. B.

Creditors request an order under Rule 2004 to compel Debtors to produce four documents referenced in the Purchase and Sale Agreement between joint debtor Steven Slumberger and his sister, Desiree Lutz, which was executed on February 17, 2021 ("Purchase Agreement"). The Purchase Agreement was executed a month and one half before the Debtors filed bankruptcy wherein the following assets were sold to Lutz:

1. 50% interest in Slumberger Rentals, a general partnership ("Partnership");
2. 50% interest in Slumberger Lumber, Inc., a corporation; and
3. 15% interest in real property located at 14679 W. Whitesbridge Ave., Kerman, CA 93630 ("Property").

Doc. #45, Ex. A. The Purchase Agreement provided that the sale prices were determined as follows:

1. Partnership Interest = \$216,140 (50% of the appraised value, minus 7% cost of sale and \$340,000 debt);
2. Property = \$124,155 (15% of appraised value, minus 7% cost of sale); and
3. Slumberger Lumber = \$25,000 (50% of a best estimated value "which would be difficult to liquidate, makes no distributions and has minimal to no profit after payment of salaries, accounts payable and purchases of revolving inventory.").

Id., ¶ F. Combined, the sale price for the three assets was \$365,295.00. *Id.*, Art. I, § 1.2. Per the Purchase Agreement, Lutz was to pay a down payment of \$200,000 in cash and execute a promissory note for the remaining \$165,295. *Id.*, § 1.3. The promissory note provided for interest at 1.45 percent per year with payments of \$1,480.57 over a 10-year period. *Id.*, Ex. A to Ex. A, at 10-11. The promissory note is not secured by any of the assets included in the Purchase Agreement.

Creditors requested by letter on July 28, 2021, that the Debtors produce the following four documents referenced in the Purchase Agreement:

- a. The Partnership Agreement dated January 1, 2020;
- b. The Buy-Sell Agreement dated January 1, 2020;
- c. The appraisal of the Partnership assets; and
- d. The appraisal of Property.

Id., Ex. B, at 18. Creditors claim that Debtors' counsel explicitly refused to produce the four documents unless the court issues a Rule 2004 order. Doc. #43.

On motion of any party in interest, the court may order the examination of any entity. Rule 2004(a). The examination may relate only to the acts, conduct, or property, or to the liabilities and financial condition of the debtor, or to any matter which may affect administration of the estate or the debtor's right to a discharge. Rule 2004(b).

Under Rule 2004(c), the court may compel the production of documents as provided in Rule 9016. Rule 9016 incorporated Fed. R. Civ. P. ("Civil Rule") 45, which allows a party to subpoena the production of documents, electronically stored information, or tangible things, at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person. Civil Rule 45(c) (2) (A).

Creditors insist that the four documents are covered within the scope of a Rule 2004 examination. Doc. #43, citing *In re GHR Energy Corp.*, 33 B.R. 451, 453 (Bankr. D. Mass. 1983); *In re Mittco, Inc.*, 44 B.R. 35, 36 (Bankr. E.D. Wis. 1984); *In re Vantage Petroleum Corp.*, 34 B.R. 650, 651 (Bankr. E.D.N.Y. 1983). Rule 2004 examinations can "legitimately be in the nature of a fishing expedition." *In re Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985); *In re Johns-Manville Corp.*, 42 B.R. 362, 364 (Bankr. S.D.N.Y. 1984); *Matter of Frigitemp Corp.*, 15 B.R. 263, 264 n.3 (Bankr. S.D.N.Y. 1981). Rule 2004 examinations may include any matter which may relate to the property and assets of the estate, the financial condition of the debtor, and any matter which may affect the administration of the estate. Rule 2004(b). Although examinations under Rule 2004 can be "unfettered and broad", Creditors insist that they narrowly tailored their examination to the four documents related to the Purchase Agreement wherein Debtors sold assets with significant equity to joint debtor's sister a month and a half before the petition date. Doc. #43.

Creditors pray that this Rule 2004 motion be granted in its entirety to compel the Debtors to produce the four documents within 20 days from the entry of an order.

No party in interest timely filed written opposition. The court will issue an order compelling the Debtors to produce the four documents specified above in the manner provided in Rule 9016. The production shall be due not earlier than **30 days** after service of the order under Rule 9016.

⁶ Cable Links filed chapter 7 bankruptcy on February 9, 2021. See Case No. 21-10316.

10. [21-10975](#)-B-7 **IN RE: ENRIQUE ORTEGA JR. BARAJAS**
[JES-1](#)

MOTION TO EMPLOY BAIRD AUCTION AND APPRAISALS AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
8-9-2021 [\[20\]](#)

JAMES SALVEN/MV
SHAWN GEORGE/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") asks the court to employ Baird Auctions & Appraisals ("Auctioneer") to sell property of the estate consisting of a 2020 Harley Davidson Motorcycle ("Property") at public auction. Doc. #20. The auction will be held on or after October 5, 2021 at Baird Auctions & Appraisals, 1328 N. Sierra Vista, Suite B, Fresno, California.

Trustee requests to pay 15% of gross proceeds from the sale as compensation under 11 U.S.C. §§ 327(a) and 328, along with expenses of up to \$500.00 for anticipated sale preparation and storage expenses. Doc. #22. In addition to those fees and expenses, Auctioneer charges buyers a 10% premium on the purchase price. *Id.* Trustee and Jeffrey Baird, Auctioneer's owner, filed declarations attesting that Auctioneer is a disinterested person as defined in § 101(14) and does not hold interests adverse to the estate in accordance with § 327(a). *Id.*; Doc. #23.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo 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. § 327 allows the trustee, with the court's approval, to employ one or more attorneys, accountants, auctioneers, or other professional persons to represent or assist the trustee in carrying out trustee's duties. Section 327 requires that the professional does not hold or represent interests adverse to the estate and be a disinterested person. § 327(a).

11 U.S.C. § 328(a) permits employment of "a professional person under section 327" on any reasonable terms and conditions, including on a retainer, hourly basis, fixed or percentage fee basis, or contingent fee basis. Section 328(a) further "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.'" *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002).

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 § 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, v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 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., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Trustee wishes to sell Property under § 363(b). Doc. #20. Enrique Ortega Jr. Barajas ("Debtor") listed Property in Schedule A/B with a petition date value of \$23,099.00. Doc. #1, Sched. A/B, ¶ 3.1. Debtor claimed a \$3,325.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("C.C.P.") § 704.010. *Id.*, Sched. C. Property does not appear to be encumbered by any security interests. *Id.*, Sched. D. If sold for Schedule A/B value, the sale would be as follows:

SALE OF PROPERTY

Property (Schedule A/B value)	\$23,099.00
Auctioneer compensation (15%)	- \$3,464.85
Auctioneer expenses (≤ \$500)	- \$500.00
Debtor's exemption	- \$3,325.00
Net to the estate	≤ \$10,100.00

Trustee believes that using the auction process to sell Property will result the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #22. Based on Trustee's experience, this will yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.* Trustee intends to sell Property on or after October 5, 2021. *Id.*

Sale by auction under these circumstances should maximize potential recovery for the estate. Therefore, this sale is an appropriate exercise of Trustee's business judgment.

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be authorized to employ Auctioneer to sell Property at public auction and pay Auctioneer for its services as outlined above. Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale, and reimbursement of reasonable expenses of up to \$500.00.

11. [21-11181](#)-B-7 **IN RE: ELISSA GARCIA**
[MAZ-2](#)

MOTION TO AVOID LIEN OF NDS, LLC.
7-30-2021 [\[31\]](#)

ELISSA GARCIA/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Elissa A. Garcia ("Debtor") seeks to avoid a judicial lien in favor of NDS, LLC ("Creditor") in the amount of \$11,606.05 and encumbering residential real property located at 1219 E. Ferguson Ave., Visalia, CA 93292 ("Property").⁷ Doc. #31.

Debtor omitted page 2 of the application for and renewal of judgment. Doc. #34, Ex. D. The exhibit includes the last page of "Schedule B - Part II" from a guarantee prepared by Chicago Title Insurance Company. This is not the best evidence proving the existence of the judgment lien. Fed. R. Evid. 1002. Since the second page of the judgment is omitted, it is unclear by whom or when the judgment was entered, or the abstract issued. Furthermore, the only page from the application states that the original judgment was entered on April 7, 2006 and recorded on August 31, 2015. Doc. #34, Ex. D. The lone page from "Schedule B" says that the "Amended Abstract of Judgment" was entered on December 14, 2005 and recorded on August 31, 2015. Although the case number (05-109835) and date recorded are the same on each page, the documents contradict each other on the date the judgment was entered.

Additionally, the individual exhibits do not state the exhibit number or letter on the first page of each exhibit as required by LBR 9004-2(d)(3).

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE.

⁷ Creditor is a limited liability company. Debtor complied with Federal Rule of Bankruptcy Procedure 7004(b)(3) by serving Michael David Schulman, Creditor's CEO and registered agent for service of process, at Creditor's main office and mailing address on July 30, 2021. Doc. #35.

12. [21-11190](#)-B-7 **IN RE: ELIZABETH TRUJILLO**
[JDR-1](#)

MOTION TO AVOID LIEN OF KELSTIN GROUP, INC.
8-12-2021 [\[13\]](#)

ELIZABETH TRUJILLO/MV
JEFFREY ROWE/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.

Elizabeth Elaine Trujillo ("Debtor") seeks to avoid a judicial lien in favor of Kelstin Group, Inc. dba Pacific Credit Service ("Creditor") in the amount of \$7,481.14 and encumbering residential real property located at 1050 W. 11th Street, Merced, CA 95341 ("Property"). Doc. #13.

Creditor is a corporation. Debtor complied with Federal Rule of Bankruptcy Procedure 7004(b)(93) by serving Kelly J. O'Brien (Creditor's CEO) and Justin R. Callum (Creditor's CFO, Secretary, and registered agent for service of process) at Creditor's main office and mailing address on August 12, 2021. Docs. ##17-18.

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.

The court notes Exhibits "A" and "B" are transposed in the exhibit index. Doc. #16. The index states that Exhibit "A" (an abstract of judgment) is a deed of trust, and "B" (a deed of trust) is an abstract of judgment, but the exhibits are interchanged.

LBR 9004-2(d)(2) and (3) require exhibit indices to state the page number at which each exhibit is found within the exhibit document and use consecutively numbered exhibit pages throughout the exhibit document, including any separator, cover, or divider sheets. Here, the index includes the number of pages in each exhibit (not required) but omits the page number where each exhibit is located (required). Moreover, although the exhibit index is numbered, the remaining document is not. Exhibits "B" and "C" are individually numbered (since the originals were numbered). The local rules require the entire document to be consecutively numbered and the exhibit index to identify by page number each exhibit's placement. Counsel is advised to review the local rules and ensure procedural compliance in subsequent matters. Future violations of the local rules may result in the motion being denied without prejudice.

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

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$7,481.14 on September 9, 2019. Doc. #16, Ex. A. The abstract of judgment was issued on November 12, 2019 and recorded in Merced County on December 30, 2019. *Id.* That lien attached to Debtor's interest in Property. Doc. #15.

As of the petition date, Property had an approximate value of \$310,093.36. *Id.*; Doc. #1, *Sched. A/B*. The schedules state "Debtor believes the value of the home is \$337,058.00. At 8% cost sale [*sic*] (\$26,965.64), the value of the estate is \$310,093.36." *Ibid.* Debtor owns a 50% interest in Property, and her mother, Hope Andrade Trujillo, owns the other 50% interest. Docs. #16, Ex. B; #15. On this valuation after 8% costs of sale, Debtor claims a \$155,046.68 interest in Property. *Id.*

The only unavoidable lien encumbering Property is a deed of trust in favor of Freedom Mortgage in the amount of \$195,000.00. Doc. #1, *Sched. D*. Debtor claimed a homestead exemption pursuant to Cal. Civ.

Proc. Code § 704.730 in the amount of \$57,546.68. *Id.*, *Sched. C*. Property's encumbrances can be illustrated as follows:

SALE OF PROPERTY

Fair market value of Property	\$310,096.36
Freedom Mortgage deed of trust	- \$195,000.00
Remaining unencumbered equity	= \$115,096.36
Debtor's 50% interest	= \$57,548.18
Debtor's "homestead" exemption	- \$57,548.18
Remaining equity for judicial liens	= \$0.00
Creditor's judicial lien	- \$7,481.14
Extent exemption impaired	= (\$7,481.14)

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.

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