



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Tuesday, September 27, 2022
Department B – Courtroom #13
Fresno, California**

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

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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. [22-11403](#)-B-11 IN RE: STANFORD CHOPPING, INC.
[BJ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
9-12-2022 [[23](#)]

FARM CREDIT SERVICES OF
AMERICA, PCA/MV
DAVID JOHNSTON/ATTY. FOR DBT.
THOMAS MOUZES/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.

Farm Credit Services of America ("Movant") seeks relief from the
automatic stay with for cause pursuant to 11 U.S.C. § 362(d)(1) and
(d)(2) against debtor and debtor-in-possession Stanford Chopping, Inc.
("Debtor") and chapter 11 subchapter V trustee Lisa A. Holder
("Trustee") to allow it to continue litigating to a final judgment and
resolve a state court action filed in Madera County Superior Court,
including for full enforcement against Debtor and certain equipment
securing its claim. Doc. #23. Alternatively, Movant asks for adequate
protection if this motion is denied. Movant also requests waiver of
the 14-day stay Federal Rule of Bankruptcy Procedure ("Rule")
4001(a)(3). *Id.*

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

BACKGROUND

Prior to filing its first bankruptcy, Debtor, Jack Stanford, and Larry
Stanford executed a commercial *Retail Installment Contract and*

Security Agreement dated February 4, 2019 to purchase the following equipment ("Equipment"):

Make	Model	Description	Serial No.
MacDon	M1240	Windrower/Swather: Self Propelled	308061-17
MacDon	R85-16	Header	306122-17
MacDon	C2006-17	DWA	312226-17
CASE IH	STEIGER 500	Tractor	JEEZ0500PJF315753
Grouser	16FT BLADE	Blade	10205530
VERSA	ID1014-12'	BAGGER	2017

Docs. #25; #29, *Ex. 1*. Under the terms of the contract, the original purchase price of the Equipment and Debtor, Jack Stanford, and Larry Stanford agreed to pay the financed purchased price as follows:

- (a) One annual payment of \$248,000 principal and interest due on June 1, 2019.
- (b) Nine equal semiannual payments of \$79,456.62 principal and interest shall be paid beginning on December 1, 2019 with payments due each December 1 and June 1 until December 1, 2023.
- (c) The interest applied will be 4.74% per year.
- (d) Liability is joint and several.
- (e) Movant is the servicer under the contract
- (f) Debtor, Jack Stanford, and Larry Stanford granted to the seller and Movant a continuing security interest and lien in the Equipment to secure payment and performance under the contract.

Id. Other terms were included, such as an acceleration clause in the event of non-payment. Movant perfected its security interest by filing a UCC-1 financing statement with the Secretary of State, File No. 197697204217, filed on February 12, 2019. *Id.*, *Ex. 2*.

Movant alleges that Debtor, Jack Stanford, and Larry Stanford breached the contract by failing to make the installment payment in July 2021. Doc. #25. Movant demanded payment. Docs. #29, *Exs. 3-4*; #32, *Ex. 5*. Debtor received additional time to make the payments not later than January 21, 2022. *Id.*, *Ex. 6*. The payments were not made, so Movant filed a complaint on February 17, 2022 styled *Farm Credit Services of America, PCA, d/b/a Agdirect v. Stanford Chopping, Inc., et al.* in the Madera County Superior Court, Case No. MCV086543 ("State Court Action"). Doc. #30, *Ex. 9*.

On March 24, 2022, Debtor filed its first chapter 11 subchapter V bankruptcy, Case No. 22-10472 ("First Bankruptcy") without an attorney. The case was dismissed on April 8, 2022 for failure to timely file documents. First Bankr. Doc. #18. On April 18, 2022, Debtor filed an *Ex-Parte Application to Reopen a Closed Case Under 11 U.S.C. § 350(b)*, which Movant opposed because the case had been dismissed but not closed, so there was nothing to reopen. First Bankr. Docs. ##22-23.

Thereafter, Debtor filed its second chapter 11 subchapter V case, Case No. 22-11080 ("Second Bankruptcy") on June 29, 2022. Debtor retained David. C. Johnston as counsel, but the Second Bankruptcy was dismissed on July 18, 2022 for failure to timely file documents. Second Bankr. Doc. #16.

Debtor filed this chapter 11 subchapter V case on August 17, 2022. Doc. #1. As a result, the Equipment owned by Movant and the State Court Action became subject to the automatic stay of 11 U.S.C. § 362(a).

DISCUSSION

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.

11 U.S.C. § 362(d)(1)

Movant first seeks relief from the stay with respect to the Equipment for cause under § 362(d)(1), including lack of adequate protection, because Debtor failed to pay in full or surrender possession of the Equipment. Doc. #26. Debtor is delinquent under the contract in the amount of \$497,452.05, which consists of a principal sum of \$405,766.88, accrued interest of \$57,400.58, and attorney fees of \$43,284.67. Doc. #25. The default interest rate of 15% results in daily accruing interest of \$169.07. *Id.* Additionally, Debtor has filed three bankruptcies purporting to affect Property.

Movant also seeks relief from the stay for cause based on abstention under 11 U.S.C. § 1334(c)(1). "Where a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues, cause may exist for lifting the stay as to the state court trial." *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990).

The Ninth Circuit in *Tucson Estates* set forth the following factors to consider when deciding whether to abstain from exercising jurisdiction:

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,
- (2) the extent to which state law issues predominate over bankruptcy issues,
- (3) the difficulty or unsettled nature of the applicable law,

(4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of the bankruptcy court's docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

Id., at 1167 quoting *In re Republic Reader's Serv., Inc.*, 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987). The *Tucson Estates* factors appear to support permissive abstention and stay relief as follows:

1. Effect on administration of the estate if the court abstains:

Movant contends that enforcement of the State Court Action in state court is efficient because the Madera County Superior Court is experienced in state law. Doc. #26. However, it is unclear whether the Equipment subject to this motion could be necessary to an effective reorganization provided that a proposed plan provides for curing Debtor's default. This factor appears to slightly weigh in favor of abstention.

2. Extent to which state law issues predominate: All claims in the State Court Action are based upon state law. The State Court Action seeks to enforce routine contract and repossession rights concerning commercial farm Equipment. There do not appear to be any bankruptcy law-specific issues. This factor weighs in favor of abstention.

3. Difficulty or unsettled nature of the applicable law: The applicable law at issue in the State Court Action does not appear to be difficult or unsettled. This factor appears to be neutral or weigh slightly against abstention.

4. Presence of a related proceeding commenced in state court: Though the State Court Action is pending in Madera County Superior Court it was filed shortly before Debtor's First Bankruptcy. While it could proceed if the automatic stay is modified, it has not yet progressed very far. This factor appears to be neutral.

5. Jurisdictional basis other than 28 U.S.C. § 1334: 28 U.S.C. § 1334 appears to be the only basis for jurisdiction here. This factor weighs in favor of abstention.

6. Degree of relatedness or remoteness to the bankruptcy case: The State Court Action is not related to any bankruptcy issues and

involves state law issues only. This factor weighs in favor of abstention.

7. Substance rather than form of the asserted "core" proceeding: Though administration of the estate and claim litigation are core proceedings, allowing the State Court Action to proceed in state court would facilitate the resolution of Movant's claim. The substance of the State Court Action does not appear to directly affect any core bankruptcy matters. This factor weighs in favor of abstention.

8. Feasibility of severing state law claims from core bankruptcy matters: There are no core bankruptcy issues in the State Court Action that could be severed from state law claims. This factor weighs in favor of abstention.

9. Burden on the bankruptcy court's docket: Modifying the stay to permit Movant to proceed in state court would eliminate the need for this court to adjudicate any ongoing dispute between Movant and Debtor. This factor weighs in favor of abstention.

10. Likelihood of forum shopping: Debtor's three bankruptcy cases shortly after the State Court Action commenced suggests that there may be forum shopping or an effort to delay and hinder Movant. This is the third bankruptcy case pending that has affected the Equipment and State Court Action in one year. This factor weighs in favor of abstention.

11. Existence of a right to a jury trial: The right to a jury trial does not appear to be applicable here. This factor is neutral or inapplicable.

12. Presence of non-debtor parties in related proceedings: The State Court action involves two non-debtor parties. This factor slightly favors abstention.

In sum, the *Tucson Estates* factors appear to weigh in favor of this court abstaining from exercising jurisdiction over the State Court Action. There appears to be cause to abstain from exercising jurisdiction, and to modify the automatic stay to permit Movant to take necessary actions, to proceed with the State Court Action to final judgment, and to seek recovery against the Equipment only.

When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court must consider the "Curtis factors" in making its decision. *Kronemyer v. Am. Contractors Indem. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). The relevant factors in this case include:

1. Whether the relief will result in a partial or complete resolution of the issues;
2. The lack of any connection with or interference with the bankruptcy case;

3. Whether the foreign proceeding involves the debtor as a fiduciary;
4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee, and other interested parties;
8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
12. The impact of the stay on the parties and the "balance of hurt."

Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.), 311 B.R. 551 (Bankr. C.D. Cal. 2004), citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984); see also *Kronemyer*, 405 B.R. at 921.

Here, the *Curtis* factors appear to support modification of the automatic stay:

1. Partial or complete resolution of the issues: The issues to be tried in the State Court Action pertain to breach of contract and recovery of the Equipment. If the State Court Action proceeds, Movant could satisfy its claim against the Equipment.
2. Lack of connection with or interference with the bankruptcy case: If Movant seeks recovery from the Equipment only, there does not appear to be a connection with or interference with the bankruptcy case.
3. Debtor as a fiduciary: Debtor does not appear to be operating as a fiduciary, so this factor appears to be inapplicable.
4. Specialized tribunal: Madera County Superior Court has expertise in state court causes of action. This factor weighs in favor of modifying the automatic stay.

5. Insurance carrier's assumption of responsibility in defending: There is no indication that insurance is at issue here, so this factor is inapplicable.

6. Whether the action involves third parties and debtor functions only as a bailee for goods or proceeds: This action does involve two third parties, but they do not appear to be functioning as a bailee for goods or proceeds. This factor appears either be neutral or slightly favor modification.

7. Prejudice to other creditors and interested parties: If Movant enforces the State Court Action against the Equipment only, there will not appear to be prejudice to other creditors or interested parties. This factor appears to favor modification.

8. Equitable subordination: Equitable subordination appears to be inapplicable here.

9. Whether the outcome in the foreign proceeding would result in an avoidable judicial lien: If Movant only seeks recovery from the Equipment only, the State Court Action will not result in an avoidable judicial lien. This factor supports modifying the automatic stay.

10. Interests of judicial economy and expeditious and economical determination of litigation for the parties: Judicial economy weighs in favor of allowing the State Court Action to proceed in Madera County Superior Court. This factor appears to favor modifying the automatic stay.

11. Progressed to the point of trial: The State Court Action has just commenced and is not ready for trial. This factor weighs against modifying the automatic stay.

12. Impact of the stay and the "balance of hurt": If the stay was not modified as requested, Movant would not be able to proceed with the State Court Action and would be unable to enforce its rights and remedies against the Equipment. However, if the Equipment is necessary to a reorganization, Debtor may require the benefit of the automatic stay while it prepares and prosecutes a plan. The court will inquire at the hearing whether Debtor intends to retain or surrender the Equipment.

In sum, the *Curtis* factors appear to weigh in favor of modifying the automatic stay to permit the State Court Action to proceed in Madera County Superior Court.

11 U.S.C. § 362(d) (2)

With respect to § 362(d) (2), Movant indicates that Debtor valued the Equipment in the schedules with a market value of \$450,000. Meanwhile, the amount owed to Movant under the terms of the contract as of August 17, 2022 is \$497,452.05. Therefore, it does not appear that Debtor has

any equity in the Equipment. The court will inquire whether the Equipment is necessary to an effective reorganization at the hearing.

CONCLUSION

Written opposition was not required and may be presented at the hearing. If opposition is presented, the court may set a briefing schedule and continue the stay in effect pending the outcome of a final hearing.

In the absence of opposition, this motion may be GRANTED pursuant to 11 U.S.C. § 362(d) (1) and (d) (2). The court will find that cause exists to modify the automatic stay to permit Movant to proceed with the State Court Action in Madera County Superior Court. Movant will be permitted to liquidate any judgment against the Equipment only. No action may proceed against the Debtor or any remaining assets of the bankruptcy estate without further order of this court.

The request for waiver of the 14-day stay of Rule 4001(a) (3) will be denied because Movant presents no factual or legal basis for such waiver.

2. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[KL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-13-2022 [\[34\]](#)

ANDREW MENDOZA/MV
RILEY WALTER/ATTY. FOR DBT.
LIOR KATZ/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.

Andrew Mendoza ("Movant") seeks relief from the automatic stay for cause under 11 U.S.C. § 362(d) (1) and/or abstention under 28 U.S.C. § 1334(c) (1) so that Movant can proceed with his wrongful termination state court lawsuit pending in Fresno County Court, Case No. 22CECG01786 ("State Court Action"). Doc. #34. Movant also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a) (3).

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

As a preliminary matter, the notice of hearing (Doc. #36) does not procedurally comply with the local rules. LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Typically, this defect would result in the motion being denied without prejudice. However, Movant is suffering from a terminal illness, has limited time to prosecute the State Court Action, and would be unduly delayed and prejudiced if this motion were denied. Therefore, under LBR 1001-1(f), the court will *sua sponte* suspend LBR 9014-1(d)(3)(B)(iii) in this instance only. Counsel is advised to review the local rules and ensure procedural compliance in subsequent matters.

BACKGROUND

Movant is a former employee of Valley Transportation, Inc. ("Debtor") who alleges that he was wrongfully terminated from his employment after notifying Debtor's agents that he was diagnosed with Stage IV kidney cancer while also being diagnosed with COVID-19. Doc. #37, Ex. A.

As a result of the purported wrongful termination, Movant filed the State Court Action against Debtor and DOES 1-100 on March 4, 2022, amended August 11, 2022, alleging wrongful termination and other related causes of action. *Id.*, Ex. B. Debtor has apparently responded to written discovery, but no depositions have occurred, and expert discovery has not been completed. Doc. #38.

Movant obtained permission from the state court to voluntarily dismissed the original complaint without prejudice to allow Movant to refile the suit and preserve Movant's past non-economic damages should Movant pass away during litigation. *Id.*

The state court granted Movant's motion for trial by preference under Cal. Code Civ. Proc. § 36 and set an initial trial date of November 28, 2022 before the Honorable Kimberly Gaab. Doc. #37, Ex. C. The reason for granting the trial preference is due to Movant's stage IV kidney cancer. Doc. #38. Debtor's expert witness, oncologist Phillip Beron, M.D., states that as of June 16, 2022, there was "substantial

medical doubt that [Movant] would survive longer than six months . . .” Doc. #37, *Ex. D*.

The parties engaged in mediation on August 29, 2022 but were unable to resolve the case. *Id.*, *Ex. C*. Zachary Lynch, Movant’s attorney, declares that shortly after the mediation, Debtor’s counsel threatened that Debtor would file bankruptcy if Movant refused its settlement offer, and if it filed bankruptcy, Movant “would never see the money” because “he would die.” Doc. #38. However, this is hearsay and Movant does not cite any exceptions. Fed. R. Evid. 802-803.

On September 1, 2022, Debtor filed chapter 11 subchapter V bankruptcy, which resulted in the trial being vacated. Doc. #37, *Ex. C*. Lynch declares that the bankruptcy occurred at the close of business the day before key depositions were set to commence in the State Court Action. Doc. #38.

On September 2, 2022, Movant also filed lawsuits in Fresno County Superior Court against the principal agents of Debtor, Rodney Heintz and Deborah Simpson, and against Debtor’s third-party administrator, Barrett Business Services, Inc. (collectively “Related Third Parties”). *Id.*

Movant now seeks stay relief. If this motion is granted, Movant says that it will attempt to consolidate the two lawsuits so that all matters could be tried together. *Id.*

DISCUSSION

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)(1)

Here, Movant contends cause exists to allow the State Court Action to proceed to conclusion in another forum based on abstention under 11 U.S.C. § 1334(c)(1). “Where a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues, cause may exist for lifting the stay as to the state court trial.” *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990).

The Ninth Circuit in *Tucson Estates* set forth the following factors to consider when deciding whether to abstain from exercising jurisdiction:

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues,

(3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of the bankruptcy court's docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

Id., at 1167 quoting *In re Republic Reader's Serv., Inc.*, 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987). The *Tucson Estates* factors appear to support permissive abstention and stay relief as follows:

1. Effect on administration of the estate if the court abstains:

Movant contends that abstention would promote the efficient administration of the estate by relieving this court of the burden of its lawsuit that Movant had already filed and can be resolved expeditiously because it is expected to be set on preference. This factor weighs in favor of abstention.

2. Extent to which state law issues predominate: All claims in the State Court Action are based upon state law, of which the state court has expertise. There do not appear to be any bankruptcy law-specific issues. This factor weighs in favor of abstention.

3. Difficulty or unsettled nature of the applicable law: The applicable law at issue in the State Court Action is employment law. Though it does not appear to be difficult or unsettled, it is likely that the State Court Action will be highly fact intensive, require expert discovery, and potentially even a jury trial. This factor appears to weigh in favor of abstention.

4. Presence of a related proceeding commenced in state court: The State Court Action is to be joined with a related proceeding against the Related Third Parties, which is already commenced in state court. This factor supports abstention.

5. Jurisdictional basis other than 28 U.S.C. § 1334: 28 U.S.C. § 1334 appears to be the only basis for jurisdiction here. This factor weighs in favor of abstention.

6. Degree of relatedness or remoteness to the bankruptcy case: The State Court Action does not appear to be related to any bankruptcy issues and appears to involve state law issues only. This factor weighs in favor of abstention.

7. Substance rather than form of the asserted "core" proceeding: Though administration of the estate and claim litigation are core proceedings, allowing the State Court Action to proceed in state court would facilitate the resolution of Movant's claim. The substance of the State Court Action does not appear to directly affect any core bankruptcy matters. This factor weighs in favor of abstention.
8. Feasibility of severing state law claims from core bankruptcy matters: There are no core bankruptcy issues in the State Court Action that could be severed from state law claims. This factor weighs in favor of abstention.
9. Burden on the bankruptcy court's docket: Modifying the stay to permit Movant to proceed in state court would eliminate the need for this court to adjudicate any ongoing dispute between Movant and Debtor. This factor weighs in favor of abstention.
10. Likelihood of forum shopping: Movant contends that the tenth factor does not apply. However, if the hearsay regarding Debtor's filing of bankruptcy to hinder or delay Movant were to be admitted, it would suggest that some forum shopping could exist. This factor appears to weigh in favor of abstention.
11. Existence of a right to a jury trial: All parties have a right to a jury trial, so this factor supports abstention.
12. Presence of non-debtor parties in related proceedings: The State Court Action is related to the lawsuit against the Related Third Parties and Movant intends to consolidate the two actions if this motion is granted, so there are non-debtor parties in related proceedings. This factor supports abstention.

In sum, the *Tucson Estates* factors appear to weigh in favor of this court abstaining from exercising jurisdiction over the State Court Action. There appears to be cause to abstain from exercising jurisdiction, and to modify the automatic stay to permit Movant to proceed with the State Court Action to final judgment.

When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court must consider the "Curtis factors" in making its decision. *Kronemyer v. Am. Contractors Indem. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). The relevant factors in this case include:

1. Whether the relief will result in a partial or complete resolution of the issues;
2. The lack of any connection with or interference with the bankruptcy case;
3. Whether the foreign proceeding involves the debtor as a fiduciary;

4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee, and other interested parties;
8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
12. The impact of the stay on the parties and the "balance of hurt."

Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.), 311 B.R. 551 (Bankr. C.D. Cal. 2004), citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984); see also *Kronemyer*, 405 B.R. at 921.

Here, the *Curtis* factors appear to support modification of the automatic stay:

1. Partial or complete resolution of the issues: Movant claims that allowing him to proceed with the State Court Action would result in a complete resolution of the matter. Doc. #39. The "heart" of Movant's lawsuit is a wrongful termination claim that has been pending in state court. Movant has conducted discovery and seeks to complete discovery and proceed to trial. A trial date was previously set and vacated due to this bankruptcy. Additionally, Movant wishes to join the State Court Action with a related lawsuit against the Related Third Parties. This factor appears to support modification of the stay.

2. Lack of connection with or interference with the bankruptcy case: The State Court Action does not appear to be a core proceeding under 28 U.S.C. § 157(b)(2). Movant claims it will not interfere with the bankruptcy case but instead do the opposite. The state court will likely allow the State Court Action to proceed with a preference trial at an early date as it did prior to the trial date vacatur. This factor weighs in favor of modification.

3. Debtor as a fiduciary: Debtor does not appear to be operating as a fiduciary, so this factor appears to be inapplicable.

4. Specialized tribunal: The Fresno County Superior Court has expertise in state court causes of action. This factor weighs in favor of modifying the automatic stay.

5. Insurance carrier's assumption of responsibility in defending: There is no indication that insurance is at issue here, so this factor is inapplicable.

6. Whether the action involves third parties and debtor functions only as a bailee for goods or proceeds: The Related Third Parties are defendants in a related lawsuit, which Movant seeks to consolidate with the State Court Action. However, Debtor does not appear to be functioning as a bailee for goods or proceeds. This factor is either inapplicable or slightly favor modification.

7. Prejudice to other creditors and interested parties: Movant claims other creditors and parties would not be prejudiced because this case would no longer be burdened with trying Movant's claim, allowing the court to deal with the other claims against Debtor more easily. This factor appears to favor modification.

8. Equitable subordination: Equitable subordination appears to be inapplicable here.

9. Whether the outcome in the foreign proceeding would result in an avoidable judicial lien: The court will not authorize the state court to take any action against the Debtor or any assets in the bankruptcy estate without further order of this court. Though weighing against modification, this factor is neutralized by this prohibition.

10. Interests of judicial economy and expeditious and economical determination of litigation for the parties: Judicial economy weighs in favor of allowing the State Court Action to proceed in Fresno County Superior Court because a trial date had been set before this bankruptcy was filed and Movant has previously succeeded in obtaining a preference trial date. This factor supports modification.

11. Progressed to the point of trial: The State Court Action was previously set for trial, but that trial date was vacated. The State Court Action appears to be rapidly moving towards a trial. This factor supports modification.

12. Impact of the stay and the "balance of hurt": If the stay was not modified as requested, Movant would be hindered or delayed from prosecuting his wrongful termination claims in the State Court Action. Further, Movant has a terminal illness and has limited time to prosecute the State Court Action. This factor appears to heavily support modification.

In sum, the *Curtis* factors appear to weigh in favor of modifying the automatic stay to permit the State Court Action to proceed in Fresno County Superior Court.

CONCLUSION

Written opposition was not required and may be presented at the hearing. If opposition is presented, the court may set a briefing schedule and continue the stay in effect pending the outcome of a final hearing.

In the absence of opposition, this motion may be GRANTED pursuant to 11 U.S.C. § 362(d)(1) and (d)(2). The court will find that cause exists to modify the automatic stay to permit Movant to proceed with the State Court Action in Fresno County Superior Court. Movant will be permitted to reduce his claim to a final judgment against Movant. No action may proceed against the Debtor or any remaining assets of the bankruptcy estate without further order of this court.

If this motion is granted, the request for waiver of the 14-day stay of Rule 4001(a)(3) may be GRANTED because Movant has a terminal illness and will be prejudiced by further delay.

3. [22-10947](#)-B-11 **IN RE: FLAVIO MARTINS**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION CAE-1
6-1-2022 [[1](#)]

HAGOP BEDOYAN/ATTY. FOR DBT.

NO RULING.

The court is in receipt of the *Debtor's Second Chapter 11 Status Conference Statement* dated September 19, 2022. Doc. #181. This status conference will be called and proceed as scheduled.

4. [22-10947](#)-B-11 **IN RE: FLAVIO MARTINS**
[MB-11](#)

MOTION TO SELL FREE AND CLEAR OF LIENS
9-6-2022 [[162](#)]

FLAVIO MARTINS/MV
HAGOP BEDOYAN/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.

Debtor-in-possession Flavio Almeida Martins dba Top Line Dairy ("Debtor") requests authorization to sell 300 Jersey "Dry Cows" (the "300 Dry Cows") currently located at Debtor's Top Line Dairy West at 13891 Kent Avenue, Hanford, CA, to Debtor's brother, Christiano Martins dba "Middle Lup Dairy" ("Buyer") at a rate of \$1,050 per head for a total sales price of \$315,000, subject to higher and better bids, and free and clear of liens pursuant to 11 U.S.C. § 363(b), (f)(2), and (f)(4). Doc. #162. Debtor will pay the net proceeds of the sale to the senior lien holder, Bank of the Sierra ("BOTS") on account of its secured claims. *Id.*

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion may be GRANTED and may proceed for higher and better bids.

This motion was filed and served on 21 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure ("Rule") 2002(a)(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.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT the motion and solicit higher and better bids.

Debtor filed chapter 11 bankruptcy on June 1, 2022. Doc. #1. Debtor has concluded that it is in the best interests of the estate to sell his four dairies and has listed them for sale with Schuil & Associates. Doc. #162. One such prospective buyer offered to purchase Debtor's Top Line Dairy West and Top Line Dairy East and has also offered to purchase all of Debtor's remaining mature milk and dry cows, rolling stock, feed, and Debtor's retains with the Dairy Farmers of America and Land O'Lakes. Doc. #164. Debtor anticipates this sale will be completed by the end of the year. *Id.*

In addition to Debtor's productive milking herd, there are approximately 685 dry Jersey cows, which are in different milking cycles, but are not currently productive. *Id.* Debtor estimates that the cost of maintaining these cows is approximately \$2.30 per head per day. Given Debtor's plan to sell the dairies as quickly as possible, it is in the best interests of the estate to eliminate the cost of maintaining the dry cows and to generate funds to pay down the secured claim of BOTS by selling the cows. Sale of the 300 Dry Cows should result in at least \$315,000 that can be used to pay the blanket lien of BOTS and free up equity in other assets for Western Milling, LLC ("WM") and other creditors. *Id.*

11 U.S.C. § 1107 gives a debtor-in-possession all of the rights and powers of a trustee and requires the debtor-in-possession to perform all functions and duties, notwithstanding certain exceptions inapplicable 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." Therefore, under § 1107, Debtor has the authority to sell estate property free and clear of liens under § 363(b).

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 Buyer, who is Debtor's brother. Buyer is therefore an insider and this sale required additional scrutiny.

Debtor has determined that the best way to sell the 300 Dry Cows is by private sale, but subject to higher and better bid, rather than public auction. Doc. #164. Buyer will assume all costs of sale and the estate will receive 100% of the sale proceeds, which will be paid over to BOTS. Additionally, Debtor says that if the 300 Dry Cows are sold at auction, the dairy community will know that the herd is "broken" and that knowledge may devalue the remaining herd when it is later sold. *Id.* Debtor will file a return of sale as required by Rule 6004(f)(1).

Absent any overbidders, the sale of the 300 Dry Cows will net \$315,000, but that amount will be entirely turned over to BOTS.

It is unclear how the sale price to Buyer was determined. The court will inquire as to the valuation at the hearing. Regardless, liquidating the cows will decrease Debtor's monthly expenses and free up assets to be paid to BOTS, WM, and unsecured creditors. The sale appears to be in the best interests of creditors and the estate, supported by a valid exercise of Debtor's business judgment, and

appears to be proposed in good faith. The sale subject to higher and better bids should maximize estate recovery and yield the best possible sale price.

Based on a search of the records of the California Secretary of State, Debtor believes the following creditors have consensual lien interests in the 300 Dry Cows in the following order of priority:

1. BOTS: BOTS has a "blanket" UCC-1 Financing Statement recorded on August 14, 2014, continued March 9, 2020.
2. WM: WM has a "blanket" UCC-1 Financing Statement recorded on March 21, 2018.

Id. Debtor declares that both BOTS and WM have consented to the sale of the 300 Dry Cows provided that the Buyer wires the purchase price directly to BOTS prior to the Buyer accepting delivery of the 300 Dry Cows. *Id.* Debtor anticipates that BOTS and WM will consent at the hearing.

Under 11 U.S.C. § 363(f)(2), the 300 Dry Cows may be sold free and clear of any interest in such property if BOTS and WM consent to the sale.

Written opposition was not required and may be presented at the hearing. In the absence of opposition at the hearing, the court is inclined to GRANT this motion and solicit higher and better bids at the hearing. Debtor will be authorized to sell the 300 Dry Cows to the highest bidder as determined at the hearing.

Any party wishing to overbid must appear at the hearing and acknowledge that the sale of the 300 Dry Cows is "as is; where is." Winning bidders will assume all costs of sale.

5. [22-10947](#)-B-11 **IN RE: FLAVIO MARTINS**
[MB-12](#)

MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR ADEQUATE
PROTECTION
9-9-2022 [[171](#)]

FLAVIO MARTINS/MV
HAGOP BEDOYAN/ATTY. FOR DBT.
OST 9/9/2022

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 Flavio Almeida Martins dba Top Line Dairy ("Debtor") requests an order authorizing it to further use cash collateral in the form of bank deposits, milk proceeds, feed and growing crops, and the proceeds received from the disposition of livestock in the ordinary course of business ("Cash Collateral"), and to grant adequate protection to the secured creditors asserting an interest in the Cash Collateral. Doc. #171.

Written opposition was not required and may be presented at the hearing. In the absence of opposition at the hearing, the court is inclined to GRANT the motion on an interim basis pending a final hearing and grant the adequate protection requested.

This motion was filed on shortened notice with an *Order Shortening Time* ("OST") pursuant to the procedure specified in Local Rule of Practice ("LBR") 9014-1(f)(3). Doc. #170; #176. Consequently, no parties in interest were 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 offered at the hearing, the court will take up the merits of the motion.

The OST reduced the notice period for a preliminary hearing on Debtor's motion to 18 days provided that Debtor serves not later than 5:00 p.m. on September 9, 2022 by First Class Mail to the United States Trustee ("UST"), Debtor's two secured creditors, Bank of the Sierra ("BOTS") and Western Milling, Inc. ("WM"), the Debtor's 20 largest unsecured creditors, applicable governmental taxing agencies, and parties that have requested special notice, unless they are on the Court's Matrix of Registered Users of the Electronic Filing System in which case Debtor can serve such parties electronically. Doc. #176. Debtor appears to have complied with the OST by serving the required via mail on September 9, 2022. Doc. #175.

The court previously issued the *Final Order Authorizing Use of Cash Collateral and Granting Adequate Protection* on July 7, 2022 ("First CC Order"). Doc. #80. The First CC Order authorized Debtor to use Cash Collateral through September 25, 2022. Recently, Debtor sought and obtained an *Order Modifying Final Order Authorizing Use of Cash Collateral and Granting Adequate Protection* on September 21, 2022, which modified the First CC Order in accordance with Debtor's true-up budget. Doc. #189.

Now, Debtor seeks authorization to further use Cash Collateral through December 31, 2022 and further adequate protection to BOTS and WM. Doc. #170. To avoid immediate and irreparable harm pending a final hearing, Debtor requests interim authorization to use Cash Collateral on a weekly basis beginning October 1, 2022 with a 10% variance per week as set forth in the budget attached as Exhibit "A" ("Second Budget"). Docs. #171; #174, Ex. A. This Second Budget authorizes

Debtor to use Cash Collateral on a weekly revolving basis from October 1, 2022 through December 31, 2022. *Id.*

Debtor offers to give BOTS and WM (collectively "Secured Parties") adequate protection by:

- a. Caring for and maintaining the Secured Parties' collateral;
- b. Granting replacement liens on accounts receivable and other property generated by Debtor of the same type and nature as existed when Debtor filed the case;
- c. Making \$279,117 per month adequate protection payments to BOTS as provided in the Second Budget and also making the December installment of the 2022-23 real property taxes as provided in the Second Budget.

11 U.S.C. § 1107 gives the debtor-in-possession all the rights and powers of a trustee and shall perform all the functions and duties, with certain exceptions inapplicable here.

11 U.S.C. § 363(c) provides:

- (1) If the business of the debtor is authorized to be operated under section 721, 1108, 1183, 1184, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice and a hearing.
- (2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless—
 - (A) each entity that has an interest in such cash collateral consents; or
 - (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

This matter will be called and proceed as scheduled. The court is inclined to GRANT the motion and authorize Debtor to use Cash Collateral on an interim basis beginning October 1, 2022 and in accordance with the Second Budget. The court will determine the duration of the cash collateral order at the time of the hearing. Any order may need to be approved as to form by the Secured Parties.

The court may approve Cash Collateral use on a very short-term basis to allow all parties to augment the record or to reach an agreement as to use of Cash Collateral.

1:30 PM

1. [22-11201](#)-B-7 **IN RE: SITAL SINGH**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-6-2022 [\[20\]](#)

MARCUS TORIGIAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

This matter will proceed as scheduled. Debtor filed an Amended Master Address List on August 20, 2022 without paying the amendment fee of \$32.00. Doc. #13. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

2. [21-11211](#)-B-7 **IN RE: BRANDON BIGELOW**
[WJH-2](#)

MOTION TO AVOID LIEN OF MODERN HUMAN RESOURCES, INC.,
MOTION TO AVOID LIEN OF CORTNEY HINKLE, MOTION TO AVOID
LIEN OF LIEN NGUYEN, MOTION TO AVOID LIEN OF NGOC TRAN,
MOTION TO AVOID LIEN OF SHAHIM ALI, MOTION TO AVOID LIEN OF
CHIEF DIVISION OF LABOR STANDARDS ENFORCEMENT
8-29-2022 [\[58\]](#)

BRANDON BIGELOW/MV
RILEY WALTER/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.

Brandon D. Bigelow ("Debtor") seeks to avoid the following judicial liens encumbering residential real property located at 4616 West Modoc Court, Visalia, CA 93291 ("Property"):

- i. Abstract of judgment in favor of Modern Human Resources, Inc. ("MHR") in the amount of \$69,835.98;
- ii. Recorded lien in favor of the Labor Commissioner, Chief Division of Labor Standards Enforcement ("Labor Commissioner") in the amount of \$17,287.56;
- iii. Recorded lien in favor of the Labor Commissioner in the amount of \$16,576.60;
- iv. Recorded lien in favor of the Labor Commission in the amount of \$12,844.18; and
- v. Recorded lien in favor of the Labor Commission in the amount of \$8,915.21.¹

No party in interest timely filed written opposition. However, Debtor has not submitted admissible evidence of the existence of the above liens. This matter will be called and proceed as scheduled. The motion may be granted provided that (a) the liens have not expired, and (b) Debtor attaches copies of the abstracts of judgment or recorded liens to the proposed order.

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). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

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, MHR recorded in Tulare County an abstract of judgment against Debtor in the amount of \$69,835.98 on November 30, 2020 as instrument no. 20-77086. The Labor Commissioner recorded in Tulare County four liens against Debtor for owed wages, damages, and penalties in the amounts of: (i) \$17,287.56 on April 19, 2021 as instrument no. 21-27370; (ii) \$16,576.60 on April 21, 2021 as instrument no. 21-28462; (iii) \$12,844.18 on April 21, 2021 as instrument no. 21-28463; and (iv) \$8,915.21 on April 21, 2021 as instrument no. 21-28467. The four Labor Commissioner liens appear to be in favor of Liem Nguyen, Shamim

Ali, Cortney Hinkle, and Ngoc Tran, but it is unclear which lien is attributed to each individual.

As evidence, Debtor did not include copies of the abstracts of judgment for each respective lien. Rather, Debtor included a *Guarantee* prepared by First American Title Company ("Guarantee"). Doc. #61, *Ex. D*. The *Guarantee* lists Property's encumbrances on Schedule B, pages 7-8. This is hearsay. There is no foundation for allowing the evidence as an exception to the hearsay rule. Fed. R. Evid. 803(17). Additionally, since the original writings were not submitted to prove their contents, Debtor has not complied with the best evidence rule. Fed. R. Evid. 1002. There is also no discussion as to the availability of the original writings. Yet, there is no objection to the admission of the evidence. In the absence of objection, the court will admit the evidence provided that Debtor attaches to any proposed order copies of each respective abstracts of judgment.

As of the petition date, property had an approximate value of \$970,000.00. Doc. #1, *Sched. A/B*. Debtor claimed a homestead exemption in Property pursuant to Cal. Code Civ. Proc ("CCP") § 704.730. *Id.*, *Sched. C*.

Property is encumbered by a deed of trust in favor of SLS Mortgage ("SLS") in the amount of \$692,446.00. *Id. Sched. D*. The SLS deed of trust was originally recorded on July 31, 2015 in the amount of \$728,000.00. Doc. #61, *Ex. D*. Property's security interests are illustrated with the following orders of priority:

Creditor	Amount	Recorded	Status
1. SLS	\$692,446.00	07/31/15	Unavoidable
2. MHR	\$69,835.98	11/30/20	Avoidable
3. Labor Commissioner	\$17,287.56	04/19/21	Avoidable
4. Labor Commissioner	\$16,576.60	04/21/21	Avoidable
5. Labor Commissioner	\$12,844.18	04/21/21	Avoidable
6. Labor Commissioner	\$8,915.21	04/21/21	Avoidable

Id., *Ex. D*; Doc. #60.

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

Here, the Labor Commissioner liens must be avoided in reverse order of priority. Strict application of the § 522(f) formula for each lien is as follows, starting first with the Labor Commissioner's fourth \$8,914.21 lien:

Amount of Labor Commissioner's fourth lien	\$8,915.21
Total amount of unavoidable liens ²	+ \$808,990.32
Debtor's claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$1,117,905.53
Debtor's claimed value of interest absent liens	- \$970,000.00
Extent lien impairs exemption	= \$147,905.53

Second, the Labor Commissioner's third \$12,844.18 lien may be avoided:

Amount of Labor Commissioner's third lien	\$12,844.18
Total amount of unavoidable liens ³	+ \$796,146.14
Debtor's claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$1,108,990.32
Debtor's claimed value of interest absent liens	- \$970,000.00
Extent lien impairs exemption	= \$138,990.32

Third, the Labor Commissioner's second \$16,576.60 lien may be avoided:

Amount of Labor Commissioner's second lien	\$16,576.60
Total amount of unavoidable liens ⁴	+ \$779,569.54
Debtor's claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$1,096,146.14
Debtor's claimed value of interest absent liens	- \$970,000.00
Extent lien impairs exemption	= \$126,146.14

Fourth, the Labor Commissioner's first \$17,287.56 lien may be avoided:

Amount of Labor Commissioner's first lien	\$17,287.56
Total amount of unavoidable liens ⁵	+ \$762,281.98
Debtor's claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$1,079,569.54
Debtor's claimed value of interest absent liens	- \$970,000.00
Extent lien impairs exemption	= \$109,569.54

Lastly, MHR's \$69,835.98 lien may be avoided:

Amount of MHR's lien	\$69,835.98
Total amount of unavoidable liens	+ \$692,446.00
Debtor's claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$1,062,281.98
Debtor's claimed value of interest absent liens	- \$970,000.00
Extent lien impairs exemption	= \$92,281.98

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	\$970,000.00
SLS deed of trust	- \$692,446.00
Remaining equity	= \$277,554.00
Debtor's homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$22,446.00)
MHR lien	- \$69,835.98
Extent Debtor's exemption impaired by MHR lien	= (\$92,281.98)
First Labor Commissioner lien	- \$17,287.56
Extent exemption impaired by the above two liens	= (\$109,569.54)
Second Labor Commissioner lien	- \$16,576.60
Extent exemption impaired by the above three liens	= (\$126,146.14)
Third Labor Commissioner lien	- \$12,844.18
Extent exemption impaired by the above four liens	= (\$138,990.32)
Fourth Labor Commissioner lien	- \$8,915.21
Extent exemption impaired by all five liens	= (\$147,905.53)

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

This matter will be called as scheduled to confirm that none of the liens have expired. If so, Debtor will have established the four elements necessary to avoid a lien under § 522(f)(1), and this motion will be GRANTED. The proposed order shall state that the subject liens are avoided from the subject Property only and include copies of the abstracts of judgment attached as exhibits.

¹ Debtor appears to have complied with Fed. R. Bankr. P. 7004(b) by serving via regular U.S. mail on August 29, 2022: (i) Faith Bravold, the President of MHR; (ii) Liem Nguyen c/o Michael Espino Teles for the Labor Commissioner; (iii) Shamim Ali c/o Michael Espino Teles for the Labor Commissioner; (iv) Cortney Hinkle c/o Michael Espino Teles for the Labor Commissioner; and (v) Ngoc Tran c/o Michael Espino Teles for the Labor Commissioner.

² This amount consists of the sum of the \$692,446.00 SLS deed of trust, the \$69,835.98 MHR lien, the \$17,287.56 Labor Commissioner lien, the \$16,576.60 Labor Commissioner lien, and the \$12,844.18 Labor Commissioner lien. Although the liens are avoidable, they remain unavoidable until junior liens are avoided.

³ This amount consists of the sum of the \$692,446.00 SLS deed of trust, the \$69,835.98 MHR lien, the \$17,287.56 Labor Commissioner lien, and the \$16,576.60 Labor Commissioner lien.

⁴ This amount consists of the sum of the \$692,446.00 SLS deed of trust, the \$69,835.98 MHR lien, and the \$17,287.56 Labor Commissioner lien.

⁵ This amount consists of the \$692,446.00 SLS deed of trust plus the \$69,835.98 MHR lien.

3. [21-10338](#)-B-7 **IN RE: HARBHAJAN SINGH**
[RSW-1](#)

MOTION TO AVOID LIEN OF PACCAR FINANCIAL CORP.
8-9-2022 [\[20\]](#)

HARBHAJAN SINGH/MV
ROBERT WILLIAMS/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.

Harbhajan Singh ("Debtor") seeks to avoid a judicial lien under 11 U.S.C. § 522(f) in favor of PACCAR Financial Corp. ("Creditor") in the sum of \$52,802.44 and encumbering residential real property located at 4605 Cherry Rock Avenue, Bakersfield, CA ("Property").⁶ Doc. #20.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

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

Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of Creditor in the amount of \$52,802.44 on March 8, 2019. Doc. #23, *Ex. 4*. The abstract of judgment was issued on June 3, 2020 and recorded in Kern County on June 9, 2020. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #22.

As of the petition date, Property had an approximate value of \$375,000.00. Doc. #1, *Sched. A/B*. Debtor claimed a homestead exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730 in the amount of \$300,000.00. *Id.*, *Sched. C*.

Property is encumbered by a first deed of trust in favor of Guild Mortgage Company ("Guild Mortgage") in the amount of \$269,879.00.⁷ *Id.*, *Sched. D*. Property is also encumbered by a junior judgment lien in favor of Capital One Bank (USA), N.A. ("Capital One") in the amount of \$7,357.00, which was entered on January 24, 2020, recorded in Kern County on August 10, 2020, and is the subject of matter #4 below. See Doc. #27, *Ex. 4*.

Property's security interests are illustrated with the following order of priority:

Creditor	Amount	Recorded	Status
1. Guild Mortgage	\$269,879.00	2015	Unavoidable
2. Creditor	\$52,802.44	06/09/20	This matter (RSW-1)
3. Capital One	\$7,357.00	08/10/20	Avoided; matter #4 (RSW-2)

Docs. #22; #23, *Ex. 4*; 27, *Ex. 4*.

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

The Capital One lien has to be avoided first because it is junior to this lien. In matter #4 below, the court intends to GRANT Debtor's motion to avoid Capital One's lien because the Capital One lien impairs Debtor's exemption. After the Capital One lien has been avoided, strict application of the § 522(f)(2) formula with respect to Creditor's lien is as follows:

Amount of Creditor's judicial lien	\$52,802.44
Total amount of unavoidable liens	+ \$269,879.00
Debtor's claimed exemption in Property	+ \$300,000.00
Sum	= \$622,681.44
Debtor's claimed value of interest absent liens	- \$375,000.00
Extent Creditor's lien impairs Debtor's exemption	= \$247,681.44

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	\$375,000.00
Total amount of unavoidable liens	- \$269,879.00
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$194,879.00)
Creditor's judicial lien	- \$52,802.44
Extent Debtor's exemption impaired	= (\$247,681.44)

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 state that the lien is avoided from the subject Property only and include a copy of the abstract of judgment attached as an exhibit.

⁶ Debtor appears to have complied with Fed. R. Bankr. P. 7004(b)(3) by serving The Prentice-Hall Corporation System, Inc., Creditor's registered for service of process, by regular U.S. mail on August 9, 2022 and September 13, 2022. Docs. #24; #36.

⁷ Tesla also holds a UCC financing statement in the amount of \$37,687.00, but it appears to be secured by Property's rooftop solar panels system only, so it is omitted here. Doc. #1, Sched. D.

4. [21-10338](#)-B-7 **IN RE: HARBHAJAN SINGH**
[RSW-2](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
8-9-2022 [\[25\]](#)

HARBHAJAN SINGH/MV
ROBERT WILLIAMS/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.

Harbhajan Singh ("Debtor") seeks to avoid a judicial lien under 11 U.S.C. § 522(f) in favor of Capital One Bank (USA), N.A. ("Creditor") in the sum of \$7,357.00 and encumbering residential real property located at 4605 Cherry Rock Avenue, Bakersfield, CA ("Property").⁸ Doc. #25.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

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

Here, a judgment was entered against Debtor in favor of Creditor on January 24, 2020. Doc. #27, *Ex. 4*. The abstract of judgment was issued on May 14, 2020 and recorded in Kern County on August 10, 2020. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #28.

As of the petition date, Property had an approximate value of \$375,000.00. Doc. #1, *Sched. A/B*. Debtor claimed a homestead exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730 in the amount of \$300,000.00. *Id.*, *Sched. C*.

Property is encumbered by a first deed of trust in favor of Guild Mortgage Company ("Guild Mortgage") in the amount of \$269,879.00.⁹ Property is also encumbered by a senior judgment lien in favor of PACCAR Financial Corp. ("PACCAR") in the amount of \$52,802.44, which was entered on January 24, 2020, recorded in Kern County on June 9, 2020, and is the subject of matter #3 above. See Doc. #23, *Ex. 4*.

Property's security interests are illustrated with the following order of priority:

Creditor	Amount	Recorded	Status
1. Guild Mortgage	\$269,879.00	2015	Unavoidable
2. PACCAR	\$52,802.44	06/09/20	Avoidable; matter #3 (RSW-1)
3. Creditor	\$7,357.00	08/10/20	This matter (RSW-2)

Docs. #23, *Ex. 4*; #27, *Ex. 4*; #28.

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

This lien has to be avoided first because it is junior to PACCAR's judgment lien. There do not appear to be any other avoidable liens more junior than this lien. Strict application of the § 522(f)(2) formula with respect to Creditor's lien is as follows:

Amount of Creditor's judicial lien	\$7,357.00
Total amount of unavoidable liens ¹⁰	+ \$322,681.44
Debtor's claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$630,038.44
Debtor's claimed value of interest absent liens	- \$375,000.00
Extent Creditor's lien impairs Debtor's exemption	= \$255,038.44

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	\$375,000.00
Total amount of unavoidable liens	- \$322,681.44
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$247,681.44)
Creditor's judicial lien	- \$7,357.00
Extent Debtor's exemption impaired	= (\$255,038.44)

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 state that the lien is avoided from the subject Property only and include a copy of the abstract of judgment attached as an exhibit.

⁸ Debtor appears to have complied with Fed. R. Bankr. P. 7004(h) by serving Jory A. Berson, Creditor's President, by certified mail on August 9, 2022 and September 13, 2022. Docs. #29; #38.

⁹ Tesla also holds a UCC financing statement in the amount of \$37,687.00, but it appears to be secured by Property's rooftop solar panels system only, so it is omitted here. Doc. #1, *Sched. D*.

¹⁰ This amount consists of the \$269,879.00 deed of trust in favor of Guild Mortgage and the

5. [01-61942](#)-B-7 **IN RE: RICHARD WARREN**
[FW-2](#)

MOTION TO EMPLOY CHUCK FARAH AS SPECIAL COUNSEL AND/OR
MOTION TO EMPLOY MARIE IANIELLO-OCCHIGROSSI AS SPECIAL
COUNSEL
8-26-2022 [[24](#)]

JAMES SALVEN/MV
DAVID ADALIAN/ATTY. FOR DBT.
PETER SAUER/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") asks the court to approve the estate's retention of Weitz & Luxenberg, P.C. ("W&L") and Farah & Farah, P.A. ("F&F") (jointly "Special Counsel") as special counsel for matters relating to products liability claim derived from

an exposure to an allegedly toxic chemical that resulted in a Non-Hodgkins Lymphoma diagnosis. Doc. #24. Trustee proposes to pay Special Counsel on a 33.33% contingency fee basis under 11 U.S.C. § 328(a). *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 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.

Richard Llewellyn Warren and Karen Sue Warren (collectively "Debtors") filed chapter 7 bankruptcy on December 28, 2001. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341 meeting of creditors held on January 31, 2002. Doc. #2; docket generally. Debtors received an order of discharge on April 4, 2002 and the case was closed by final decree on April 9, 2002. Docs. ##8-9.

Prior to filing bankruptcy, joint debtor Richard Llewellyn Warren was exposed to an allegedly toxic chemical in the 1970's. Doc. #26. Debtor alleges that this exposure resulted in a diagnosis of Non-Hodgkins Lymphoma in the 2010's. Thereafter, Debtor retained F&F to pursue a product liability claim against the manufacturer of the allegedly toxic chemical, the exposure to which resulted in his diagnosis of Non-Hodgkin's Lymphoma ("Liability Claim"). Debtor's retainer agreement with F&F provides that F&F is entitled to a 33.3% contingency fee of the gross recovery of proceeds, if any, made from the prosecution of the Liability Claim, plus costs. It also provides that F&F is authorized to associate co-counsel to effectuate its representation. F&F opted to associate W&L as co-counsel. *Id.* W&L will share any contingency fee with F&F on a 60/40 basis.

The Liability Claim is being resolved through the W&L Private Resolution Program, which is overseen by an independent claim administrator that evaluates each individual claimant's claim and assigns a point value based on a variety of proprietary factors.

Doc. #27. Each point awarded by the administrator carries a specific point value. W&L's representative cannot disclose any more details about the program because most of the terms establishing the fund or the facts used by the claims administrator are strictly confidential by the terms of the settlement. *Id.* The Claims Administrator has determined that Debtor's claim is eligible for inclusion in the W&L Private Resolution Program, but the details of the settlement appear to be confidential. Doc. #24.

Following disclosure of the settlement, the United States Trustee moved to reopen the case on December 17, 2021, which was reopened on that same day. Docs. ##10-11. Trustee was appointed as successor trustee on December 20, 2021. Doc. #13. Trustee filed a *Notice of Assets* on December 31, 2021. Docket generally. Since both Debtor's exposure to the toxic chemical and the diagnosed non-Hodgkin's Lymphoma is alleged to be the result of that pre-petition exposure, any monies offered to settle the Liability Claim are offered to resolve a pre-petition injury. Doc. #28. Therefore, Trustee believes that the proceeds offered to resolve this litigation are proceeds of the bankruptcy estate. *Id.*

Since the involvement of W&L is the cornerstone of the settlement offered through the W&L Private Resolution Program, Trustee seeks to employ both W&L and F&F as special counsel to bring the proceeds of any point award into the estate. Doc. #24. A motion seeking approval of the final terms of the compromise will be filed at a later date when the process for evaluating and paying out liens is complete, and the final terms of the settlement are clear. *Id.* Since W&L's involvement came about as co-counsel to F&F, and because both firms contemplate splitting the contingency fee 60/40, Trustee deems it appropriate to hire both firms as special purpose counsel to the estate. Doc. #28.

Trustee seeks authorization to employ of Special Counsel under 11 U.S.C. § 327(e) to (i) enable Trustee to realize, for the benefit of the estate, the "points award" attributed to the debtor's claim, which will (ii) enable the Trustee to administer the estate for the benefit of creditors, and (iii) enable Trustee and the court to close this case. Special Counsel will assist the Trustee with resolving liens, performing the necessary terms to complete the settlement, and obtaining bankruptcy court approval of any settlement offered (or continuing the litigation). Additionally, Trustee requests that authorization to include that Special Counsel is employed on a contingency basis under 11 U.S.C. § 328(a). Doc. #24.

Under 11 U.S.C. § 327(e), an attorney that has represented the debtor can be employed by the estate for a specified special purpose other than to conduct the case, with the court's approval if it is in the best interest of the estate, the proposed attorney does not hold or represent an interest adverse to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 328(a) permits employment of "a professional person under section 327" on "any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a 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 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).

LBR 2014-1(a) provides that an application for an order approval employment pursuant to Fed. R. Bankr. P. 2014(a) shall be presumed to relate back to the later of 30 days before the filing of the application or the order for relief. The order approving employment shall state the effective date on or after which the employment is authorized and effective for services rendered.

Chuck Farah, a senior partner of F&F, and Marie Ianiello-Occhigrossi, associated with W&L, both declare that neither of their firms have any connection with the Debtors, creditors, or any party in interest, their attorneys, accountants, or the U.S. Trustee, or any employee of the U.S. Trustee. Docs. ##26-27. Further, Ianiello-Occhigrossi declares that W&L's partner and managing attorney, Gary R. Klein, has reviewed the mailing matrix and confirmed that there are no conflicts of interest. Doc. #27. Though hearsay, no party has objected to this representation and Ianiello-Occhigrossi is authorized to make the declaration on behalf of W&L. Both firms acknowledge that they are not entitled to a contingency fee until further bankruptcy court approval is obtained. *Id.* Since the fee is contingent, if the settlement is not completed for any reason, Special Counsel will not be entitled to any fees.

No party in interest timely filed written opposition. The court finds that the Special Counsel does not hold or represent an adverse interest to the estate and is disinterested.

Accordingly, this motion will be GRANTED, and the employment application will be APPROVED. Special Counsel's compensation will be fixed at 33.33% of the gross settlement proceeds, if any, plus costs subject to approval of the settlement under Fed. R. Bankr. P. 9019 and a request for compensation under § 330.

6. [01-61942](#)-B-7 **IN RE: RICHARD WARREN**
[FW-3](#)

MOTION TO APPROVE STIPULATION RESOLVING TRUSTEE'S OBJECTION
TO DEBTOR'S CLAIM OF EXEMPTIONS AND SETTING AMOUNT OF THE
SAME

8-29-2022 [[31](#)]

JAMES SALVEN/MV
DAVID ADALIAN/ATTY. FOR DBT.
PETER SAUER/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") requests an order approving a stipulation between the estate and Richard Llewellyn Warren ("Debtor") to resolve Trustee's objection to Debtor's claim of exemptions pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #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.

Richard Llewellyn Warren and Karen Sue Warren (collectively "Debtors") filed chapter 7 bankruptcy on December 28, 2001. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341 meeting of creditors held on January 31,

2002. Doc. #2; docket generally. Debtors received an order of discharge on April 4, 2002 and the case was closed by final decree on April 9, 2002. Docs. ##8-9.

Twenty years later, the United States Trustee moved to reopen the case after learning that the Debtors failed to schedule an interest in a pre-petition claim ("Liability Claim"), which was property of the bankruptcy estate. Doc. #10. The case was reopened on December 17, 2021. Doc. #11. Trustee was appointed as successor trustee on December 20, 2021. Doc. #13. Trustee filed a *Notice of Assets* on December 31, 2021. Docket generally.

The Liability Claim appears to have resulted in a potential settlement, but the amount is not presently known. As a result, it is unknown how much money will be netted after certain required expenses and liens related to the claim are paid. Doc. #33. Trustee not knowing the net amount means he does not know whether any available exemption would yield anything to the estate after incurring administrative expenses. *Id.* If Debtor amended his exemptions, Trustee would likely have to object. Doc. #21.

In an effort to avoid costly litigation and resolve all possible issues as efficiently as possible, Trustee and Debtor executed a stipulation that provides for a precise formula by which the Debtor will be entitled to claim a certain exemption, but also provides for the administrative costs and a dividend to creditors of the estate. See Doc. #34, *Ex. A*. The terms of that stipulation provide:

1. All parties acknowledge that the Liability Claim is property of the estate.
2. The "Net Proceeds" of the Liability Claim are defined as the sum remaining from (i) the gross amount paid to resolve the Liability Claim (by settlement, judgment, collection, or otherwise); (ii) minus attorneys fees and costs to be paid to the special counsel of the estate (matter #6 above, FW-2); and (iii) minus any liens, court-imposed costs, administration fees, and assessments as may be imposed by the court in which the Liability Claim is pending.
3. Debtor may exempt one-half of the Net Proceeds.
4. Debtor and Trustee agree that they are relying on this stipulation to resolve the issue of whether proceeds from the Liability Claim are subject to exemption, and if so, how much.
5. Debtor and Trustee agree that Debtor's one-half portion of the Net Proceeds are his sole and separate property.
6. This stipulation is conditioned on court approval.

Id. The stipulation has not been separately filed and docketed as a stipulation but is attached as an exhibit to this motion.

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: Trustee believes that the estate would prevail on an objection to Debtor's exemption if he were to amend it to include the Liability Claim. However, Trustee acknowledges that Debtor may be entitled to exempt a portion of the proceeds of the Liability Claim. Since the estate would incur administrative expenses from litigation and those costs could outstrip the value contemplated by the stipulation, this factor slightly favors 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, the balance of which will be 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 issue would be the effect of the law and whether Debtor is entitled to a "personal injury" exemption when the claim relates to products liability. Litigation would require discovery on a 20-year-old case. 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 to pay a dividend to general unsecured claims, which would not result but for the underlying settlement. That recovery could be diminished if there are litigation expenses. Trustee therefore believes approval of the settlement is in the best interests of creditors. This factor favors approving the settlement.

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. A copy of the stipulation shall also be filed separately and docketed as a stipulation.

7. [22-11245](#)-B-7 **IN RE: DAWSON/RAYNIE HARRIS**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY/TO ANNUL AUTOMATIC
STAY
8-29-2022 [\[20\]](#)

YAMAHA MOTOR FINANCE
CORPORATION, U.S.A./MV
D. GARDNER/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part; denied without prejudice in
part.

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

Yamaha Motor Finance Corporation, U.S.A. ("Movant") seeks to retroactively annul the automatic stay as of August 4, 2022 under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a Yamaha YXZ10YESMB ("Vehicle"). Doc. #20. Movant also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3).

No party in interest timely filed written opposition. Since Movant seeks retroactive relief from the automatic stay, this matter will be called and proceed as scheduled. The court is inclined to GRANT IN PART and DENY IN PART the motion.

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 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). Therefore, the

defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

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: (i) Debtors' *Statement of Intention* indicates that Debtors intend to surrender Vehicle, (ii) Debtors surrendered Vehicle on August 4, 2022, and (iii) Debtors failed to tender a periodic payment of \$377.00 and are delinquent in that amount as of August 12, 2022. Docs. #1; #22.

Additionally, the court finds that Debtor does not have an equity interest in Vehicle, and this is a chapter 7 case, so Vehicle is not necessary to an effective reorganization. *Id.*

Though "cause" exists to lift the stay, Movant here seeks retroactive annulment of the automatic stay effective as of August 4, 2022, which is the date that Vehicle was surrendered to Movant.

The Ninth Circuit Court of Appeals has warned that retroactive relief should only be "applied in extreme circumstances." *In re Aheong*, 276 B.R. 233, 250 (B.A.P. 9th Cir. 2002) (citations omitted). When deciding a motion to annul the automatic stay, the court may consider the "*Fjeldsted*" factors:

1. Number of filings;
2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;
3. A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;
4. The Debtor's overall good faith (totality of circumstances test);
5. Whether creditors knew of the stay but nonetheless took action, thus compounding the problem;
6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;
7. The relative ease of restoring parties to the *status quo ante*;
8. The costs of annulment to debtors and creditors;

9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative contract;
10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;
11. Whether annulment of the stay will cause irreparable injury to the debtor;
12. Whether stay relief will promote judicial economy or other efficiencies.

In re Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 24-25 (B.A.P. 9th Cir. 2003). One factor alone may be dispositive. *Id.*

Here, Movant has not discussed the *Fjeldsted* factors and requests retroactive relief because Debtor surrendered the Vehicle on August 4, 2022.

1. Number of bankruptcy filings: This appears to be Debtors' first bankruptcy in this district, so this factor is inapplicable.
2. Whether, in a repeated filing, circumstances indicate an intent to delay and hinder creditors: Since this appears to be the first filing, this factor is inapplicable.
3. Extent of prejudice to creditors, third parties, including bona fide purchases: There is no indication of any prejudice to creditors or third parties if the stay was not modified retroactive to August 4, 2022.
4. Debtors' overall good faith: There is nothing in the record suggesting that Debtors have acted in bad faith.
5. Whether creditors knew of the stay but took action regardless: There is no indication that Movant knew of the stay or took any action. The record shows only that Debtors surrendered Vehicle.
6. Debtors' compliance with the Code: There is no indication that Debtors have not complied with the Bankruptcy Code.
7. Relative ease of restoring the parties to the status quo ante: There does not appear to be any need to restore parties to the *status quo ante* because Debtors intended to surrender vehicle and surrendered vehicle. This factor appears to be inapplicable.
8. Costs of annulment to the debtors and creditors: Annulling the stay does not appear to cost any party anything. Not annulling the stay also does not appear to cost any party anything.
9. How quickly the creditor moved for annulment, and how quickly the debtor moved to set aside the sale: Movant filed this motion less than a month after Debtors surrendered Vehicle. Debtors have not moved to set aside the sale and intended to surrender Vehicle.

10. After learning of the bankruptcy, whether creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief: There are no allegations of a violation of the stay here, only that Debtors surrendered Vehicle. Movant has acted expeditiously to seek stay relief, but there does not appear to be any need for retroactive annulment because Movant does not appear to have taken any actions in violation of the stay.

11. Whether annulment of the stay would cause irreparable injury to the debtor: There is no indication that Debtors would be harmed by retroactive annulment of the stay because Debtors intended to and did surrender the Vehicle.

12. Whether stay relief will promote judicial economy or other efficiencies: Stay relief will promote judicial economy by allowing Movant to liquidate Vehicle and satisfy its claim. But retroactive annulment of the stay appears to serve no purpose.

Since there does not appear to be any need to retroactively annul the stay effective August 4, 2022, this motion will be DENIED IN PART as to the request for retroactive relief.

This motion will be GRANTED IN PART. The court finds that "cause" exists to grant relief from the automatic stay pursuant to 11 U.S.C. § 362(d) (1) and (d) (2) because Debtors surrendered Vehicle to Movant and have no equity in Vehicle.

The 14-day stay of Rule 4001(a) (3) will be ordered waived because Debtors already surrendered Vehicle to Movant.

8. [22-11245](#)-B-7 **IN RE: DAWSON/RAYNIE HARRIS**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY/TO ANNUL AUTOMATIC
STAY
8-25-2022 [[13](#)]

YAMAHA MOTOR FINANCE
CORPORATION, U.S.A./MV
D. GARDNER/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

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

DISPOSITION: Dropped as moot; taken off calendar.

NO ORDER REQUIRED.

The motion will be DROPPED AS MOOT, because the Movant filed a duplicate/identical motion on August 29, 2022. Doc. #20.

9. [22-11245](#)-B-7 **IN RE: DAWSON/RAYNIE HARRIS**
[KR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-13-2022 [\[29\]](#)

THE GOLDEN 1 CREDIT UNION/MV
D. GARDNER/ATTY. FOR DBT.
KAREL ROCHA/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The Golden 1 Credit Union ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2020 GMC Sierra 1500 ("Vehicle"). Doc. #29. Movant also requests waiver of the 14-day of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3).

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with Rule 4001(a)(1) and Local Rules of Practice ("LBR").

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") was not properly served. Rule 4001(a)(1) requires motions for relief from the automatic stay to be made in accordance with Rule 9014. Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. Since this motion will affect property of the estate, the Chapter 7 Trustee must be served in accordance with Rule 7004.

Rule 7004 allows service by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business[.]" Rule 7004(b)(1). Electronic service is precluded here because Rule 9036 "does not apply to any paper required to be served in accordance with Rule 7004." Rule 9036(e).

Here, the certificate of service says that parties were "Served Electronically" or "Served Via U.S. Mail." Doc. #35. In contrast, the certificate clearly states that Dawson Noah Harris and Raynie Dawn Harris ("Debtors") were served by U.S. mail. Debtors' attorney, D. Max Gardener, was also served by electronically in compliance with Local Rule of Practice 7005-1, but this is permissible under Rule 7004(g).

Also, the notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii), which requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the

Court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing.

Accordingly, this motion will be DENIED WITHOUT PREJUDICE because Trustee was not properly served in accordance with Rule 4001(a)(1) and for failure to include language as required under LBR 9014-1(d)(3)(B)(iii).

10. [22-10262](#)-B-7 **IN RE: NAVDEEP KANG AND HARVINDER KAUR**
[PSC-2](#)

MOTION TO AVOID LIEN OF ENG COMMERCIAL FINANCE CO.
8-4-2022 [\[35\]](#)

HARVINDER KAUR/MV
PATRICIA CARRILLO/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Navdeep S. Kang and Harvinder Kaur (collectively "Debtors") seek to avoid a judicial lien in favor of ENG Commercial Finance Co. ("Creditor") in the sum of \$22,822.99 and encumbering residential real property located at 6044 N. McCaffrey Ave., Fresno, CA 93722..¹¹
Doc. #35.

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 a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Here, on June 3, 2022, Debtors filed a motion to avoid the lien of Capital One Bank, N.A., which was set for hearing on July 21, 2022. Doc. #22. That motion was denied without prejudice for failure to serve the creditor in accordance with Fed. R. Bankr. P. 7004(h). Docs. #32; #34. The DCN for that motion was PSC-2.

On August 4, 2022, Debtors filed this motion to avoid Creditor's lien. Doc. #35. The DCN for this motion is also PSC-2 and therefore it does not comply with the local rules. Since this is a separate motion for a different lien, it is a separate matter that should have contained a different DCN.

Second, the abstract of judgment is derived from a lawsuit filed by Engs Commercial Financial Co. against 75th Regiment, Inc., a Calif. corp. ("75th Regiment") and joint debtor Navdeep Singh Kang. Doc. #38, *Ex. A*. Debtors appear to be the 100% owners of this corporation, which operated from January 1, 2013 to October 5, 2018. Doc. #1, *Stmt. Fin. Affairs*. However, it is unclear whether this lien encumbers Property. The second page lists the judgment debtor as 75th Regiment. The third page is missing, so there is inadequate evidence of the existence of a lien against Debtors and encumbering Property. If Debtors attempt to avoid this lien again by refiling this motion, they should file a complete copy abstract of judgment and include page 3 of the document.

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

¹¹ Debtors have complied with Fed. R. Bankr. P. 7004(b)(3) by serving via first class mail CT Corporation System, Creditor's registered agent for service of process, on August 4, 2022. Doc. #39.

11. [22-10262](#)-B-7 **IN RE: NAVDEEP KANG AND HARVINDER KAUR**
[PSC-3](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK N.A.
8-4-2022 [[40](#)]

HARVINDER KAUR/MV
PATRICIA CARRILLO/ATTY. FOR DBT.

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

DISPOSITION: Continued to November 8, 2022 at 1:30 p.m.

ORDER: The court will issue an order.

Navdeep S. Kang and Harvinder Kaur (collectively "Debtors") seek to avoid a judicial lien in favor of Capital One Bank, N.A. ("Creditor") in the sum of \$22,822.99 and encumbering residential real property located at 6044 N. McCaffrey Ave., Fresno, CA 93722 ("Property").¹² Doc. #40.

No party in interest timely filed written opposition. However, since Debtors' motion to avoid the lien of ENG Commercial Finance Co. ("ENG") in matter #10 above is being denied without prejudice, relief here would result in liens being avoided from Property in the wrong

order of priority. See PSC-2. Therefore, this motion will be CONTINUED to November 8, 2022 at 1:30 p.m.

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)).

Property appears to be subject to the following encumbrances with the following priorities:

Creditor	Amount	Recorded	Status
1. Chase Mortgage	\$175,000.00	?	Unavoidable deed of trust
2. Kanail Sidhu	\$65,000.00	?	Unavoidable deed of trust
3. Creditor	\$22,822.99	09/11/19	Avoidable judgment lien
4. ENG ¹³	\$58,683.60	11/14/19	Avoidable (matter #10; PSC-2)

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

As noted in matter #10 above (PSC-2), the ENG lien is the result of a judgment against 75th Regiment, Inc. It unclear whether joint debtor Navdeep S. Kang is personally liable for this judgment, and whether the lien encumbers Property. If the ENG lien does in fact encumber Property, it must be avoided first. The court predisposed matter #10 above as a denial without prejudice because Debtors reused Docket Control No. PSC-2 in violation of the local rules and failed to prove the existence of the lien against the Debtors individually. As a result, the court is unable to avoid Creditor's senior judgment lien before the junior ENG judgment lien.

While true that if the ENG judgment lien does not encumber Property, then Creditor's lien would be avoidable. But on this record, it appears likely that the ENG judgment lien may encumber Property. Though the existence of the ENG judgment has not been proven, this is easily remedied by filing page 3 of the abstract of judgment. Thus, there is doubt that Creditor's lien can be avoided now since Debtors allege the existence of the junior priority lien. For this reason, Debtors have failed to make a *prima facie* showing of entitlement to

the relief sought. *Tracht Gut, LLC v. County of L.A. (In re Tracht Gut, LLC)*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014).

This matter will be CONTINUED to November 8, 2022 at 1:30 p.m. If Debtors prevail on a motion to avoid the ENG judgment lien at or before the date of the continued hearing, this motion may be GRANTED. If Debtors do not file, serve, and set for hearing a motion to avoid the ENG lien by the date of the continued hearing, this motion will be DENIED WITHOUT PREJUDICE for the reasons stated above.

¹² Debtors have complied with Fed. R. Bankr. P. 7004(h) by serving via certified mail Richard D. Fairbank, Creditor's Chair, and the President, CEO, and Chairman of Capital One Financial Corporation, Creditor's parent company, on August 4, 2022. Doc. #44.

¹³ This lien may or may not encumber Property.

12. [14-14569](#)-B-7 **IN RE: HENRY/KRISTI GARCIA**
[PK-3](#)

AMENDED MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY
ASSOCIATES, LLC
9-13-2022 [\[48\]](#)

KRISTI GARCIA/MV
PATRICK KAVANAGH/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.

Henry Diaz Garcia and Kristi Kay Garcia (collectively "Debtors") seek to avoid a judicial lien in favor of Portfolio Recovery Associates, LLC ("Creditor") in the sum of \$2,870.15 and encumbering residential real property located at 301 Seaforth Dr., Bakersfield, CA 93312 ("Property").¹⁴ Doc. #48.

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

This matter was noticed and set for hearing 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 respondent's default and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

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

Here, a judgment was entered against joint debtor Kristi K. Garcia in favor of Creditor in the sum of \$2,870.15 on April 30, 2014. Doc. #44, *Ex. D*. The abstract of judgment was issued on May 16, 2014 and recorded in Kern County on June 13, 2014. *Id.* That lien attached to Debtors' interest in Property and appears to be the only non-consensual judgment lien encumbering Property. Docs. #18, *Sched. D*; #45.

As of the petition date, Property had an approximate value of \$530,000.00. *Id.*; Doc. #18, *Sched. A*. According to the schedules, Property is jointly owned between Debtors and Diane Golledge. *Id.*, *Scheds. A, D, H*. The motion and memorandum of points and authorities do not discuss this joint ownership, so the allocated fractional ownership interests between the three parties is unclear.

Debtors claimed a \$1.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 703.140(b)(1). *Id.*, *Sched. C*.

Property is encumbered by two deeds of trust: a deed of trust in favor of Wells Fargo Bank, N.A. in the amount of \$202,049.12 and a deed of trust in favor of Wells Fargo Home Mortgage in the amount of \$532,280.17. *Id.*, *Sched. D*. Debtors and Golledge all appear to be listed on the deeds of trust as though all three were borrowers who executed the underlying note. *Id.*, *Sched. H*.

In the Ninth Circuit, the lien avoidance formula requires the deduction of all unavoidable, consensual encumbrances from the total value of the property before computing the debtor's fractional interest. *All Points Cap. Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007), citing *Wiget v. Nielsen (In re Nielsen)*, 197 B.R. 665 (B.A.P. 9th Cir. 1996). Using the *Meyer* approach, "one nets out consensual liens against the entire fee in co-owned property before determining the value of a debtor's fractional interest and excludes those liens from the calculation of 'all other liens on the property' under § 522(f)(2)." *Meyer*, 373 B.R. at 90.

Since both Debtors and Golledge are liable on the two deeds of trust, the deeds of trust (totaling \$734,329.29) are subtracted from Property's total value (\$532,280.17) because Wells Fargo Bank, N.A. and Wells Fargo Home Mortgage have consensual encumbrances against the

entire co-owned Property. The result is negative equity, which, if positive, would be split between Debtors and Golledge to determine their factional interest in Property for the purposes of § 522(f).

Additionally, Property appears to be subject to a senior judgment lien against joint debtor Henry Garcia in favor of H Squared Holdings, Inc., in the amount of \$176,980.00. This lien is the subject of matter #13 below, which was withdrawn for unknown reasons. See PK-4.

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

Although the motion to avoid the lien of H Squared Holdings, Inc. was withdrawn, that lien is senior to Creditor's lien. Therefore, Creditor's lien must be avoided first. For the purposes of § 522, the H Squared Holdings lien is unavoidable until this lien has been avoided. Strict application of the § 522(f)(2) formula with respect to Creditor's lien is as follows:

Amount of judgment lien	\$2,870.15
Total amount of unavoidable liens ¹⁵	+ \$911,309.29
Debtors' claimed exemption in Property	+ \$1.00
<i>Sum</i>	= \$914,180.44
Debtors' claimed value of interest absent liens	- \$530,000.00
Extent lien impairs exemption	= \$384,180.44

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	\$530,000.00
Wells Fargo Bank, N.A.	- \$202,049.12
Wells Fargo Home Mortgage	- \$532,280.17
Remaining co-owned equity	= (\$204,329.29)
Debtors' fractional interest (??) ¹⁶	= (\$204,329.29)
Debtors' exemption	- \$1.00
H Squared Holdings, Inc.	- \$176,980.00
Extent exemption impaired by H Squared lien	= (\$381,310.29)
Creditor's judicial lien	- \$2,870.15
Extent exemption impaired by both liens	= (\$384,180.44)

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 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.

¹⁴ Debtors complied with Fed. R. Bankr. P. 7004(b)(3) by serving via regular U.S. mail CSC-Lawyers Incorporating Service, Creditor's registered agent for service of process, on September 13, 2022. Docs. #47; #49.

¹⁵ This amount consists of the sum of the \$202,049.12 Wells Fargo Bank deed of trust, the \$532,280.17 deed of trust, and the \$176,980.00 H Squared Holdings judgment lien. The H Squared Holdings judgment lien is treated as being unavoidable until Creditor's lien has been avoided.

¹⁶ Debtors' fractional interest in Property is unclear because we do not know what percentage of the Property they own in joint tenancy with Golledge. However, since Property is undersecured, there is no equity to be split between Debtors and Golledge. Thus, for simplicity due to Debtors' lack of equity, their fractional interest is treated as a 100% ownership interest.

13. [14-14569](#)-B-7 **IN RE: HENRY/KRISTI GARCIA**
[PK-4](#)

MOTION TO AVOID LIEN OF H SQUARED HOLDINGS, INC.
9-13-2022 [\[50\]](#)

KRISTI GARCIA/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

The debtors withdrew this motion to avoid lien on September 20, 2022. Doc. #57. Accordingly, this motion will be taken off calendar pursuant to the withdrawal.

14. [19-13569](#)-B-7 **IN RE: JOHN ESPINOZA**
[PFC-1](#)

TRUSTEE'S FINAL REPORT
8-15-2022 [\[183\]](#)

JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION: Granted. The report is approved.

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

Chapter 7 trustee Peter L. Fear ("Trustee") filed *Trustee's Final Report* (the "Final Report") report on August 15, 2022 and requests final statutory compensation in the total amount of \$13,155.76 under 11 U.S.C. §§ 326, 330. Doc. #183. This amount consists of \$13,068.66 in statutory fees for services rendered to the estate and \$87.10 in reimbursement for reasonable and necessary expenses from August 21, 2019 through May 11, 2022. Doc. #189.

No party in interest timely filed written opposition. The request for final compensation will be GRANTED and the Final Report will be approved.

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.

John Espinoza ("Debtor") filed chapter 7 bankruptcy on August 21, 2019. Doc. #1. Peter L. Fear was appointed as the interim trustee on that same day and became permanent trustee at the first § 341 meeting of creditors on September 16, 2019. Doc. #2; docket generally.

Trustee administered the estate and made disbursements totaling \$196,373.14. Doc. #189. On August 15, 2022, Trustee filed the Final

Report, which included this request for statutory compensation, and a corresponding notice regarding the filing of the Final Report.

Docs. #183. That same day, the clerk of the court issued an *Order Fixing Deadline for Filing Objections to Trustee's Final Report and Applications for Final Compensation and/or Reimbursement of Expenses and Notice Thereof*, which fixed a 21-day deadline to object to the Final Report. Doc. #185. No party in interest objected.

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:

- i. \$1,250.00 (25%) of the first \$5,000.00;
- ii. \$4,500.00 (10%) of the next \$45,000.00; and
- iii. \$7,318.66 (5%) of the next \$146,373.14.

Doc. #189, at 3. These percentages comply with the restrictions imposed by § 326(a) with respect to the total disbursements of \$196,373.14, totaling **\$13,068.66**. Trustee also requests reimbursement of **\$87.10** in expenses:

Claims Register (3 @ \$0.50)	\$1.50
Distribution (40 @ \$1.00)	+ \$40.00
Postage, Copies, Service	+ \$38.10
Miscellaneous	+ \$7.50
Total Costs	= \$87.10

Ibid. These combined fees and expenses total **\$13,155.76**.

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) obtaining an order requiring Debtor to shut down business (PFT-1); (3) employing professionals (KAS-1; PFT-2; THA-1), selling real property, and compensating professionals (THA-2; THA-4); (4) obtaining approval to pay administrative expenses (THA-3); (5) objecting to the claim of Jon P. Maroot, Claim No. 6 (PFT-3); (6) prosecuting an adversary proceeding to final judgment against Debtor and others to seek turnover of property (Case No. 20-01021); (7) reviewing and reconciling financial records and administering the estate; and (8) preparing and filing the Final Report (PFC-1). Doc. #189. 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 \$13,155.76 as final compensation pursuant to 11 U.S.C. §§ 326, 330.

15. [22-10677](#)-B-7 **IN RE: JUAN HERNANDEZ**
[JES-1](#)

MOTION TO SELL
8-17-2022 [[20](#)]

JAMES SALVEN/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
JAMES SALVEN/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 James E. Salven ("Trustee") requests an order authorizing the sale of the estate's interest in a 2007 Chevy Colorado (salvaged title) and a 2012 Nissan Altima (collectively "Estate Assets") to Juan C. Hernandez ("Debtor") for a combined \$6,625.00, subject to higher and better bids at the hearing. Doc. #20.

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 Assets have the following values and exemptions:

Estate Asset	A/B Value	Exempt	Sale Price	Net
2007 Chevy Colorado	\$1,887	\$0	\$2,500	\$2,500
2012 Nissan Altima	\$3,276	\$3,625	\$4,125	\$500
Totals	\$5,163	\$3,625	\$6,625	\$3,000

Doc. #1, Sched. A/B, C; Doc. #22. The Chevy Colorado is listed as having a salvaged title and 225,000 miles, and the Nissan Altima has 290,000 miles. Doc. #1. Notably, Debtor claimed a \$3,325.00 exemption in the Nissan Altima, but Trustee is giving Debtor a \$3,625.00 exemption credit towards the purchase price because that is the maximum allowable exemption to which Debtor is entitled. If the sale

is completed at the proposed sale price, the estate will receive \$3,000.00 in net proceeds.

Trustee received an offer from Debtor to purchase the Estate Assets at the sale price indicated, which he accepted subject to court approval and higher and better bids. Doc. #22. Trustee has received the \$3,000.00 in funds and is awaiting court approval. Trustee has not agreed to pay any commissions in connection with the sale. The sale is subject to any liens and encumbrances of record, known or unknown. Trustee believes the sale price is fair and that the sale is in the best interests of creditors and the estate.

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 Assets to the highest bidder as determined at the hearing.

Any party wishing to overbid must appear at the hearing and acknowledge that the sale is "as-is, where-is."

16. [22-10078](#)-B-7 **IN RE: ANGELA/IBETHE AGUILAR**
[UST-1](#)

FURTHER SCHEDULING CONFERENCE RE: MOTION TO DISMISS CASE
PURSUANT TO 11 U.S.C. SECTION 707(B)
5-3-2022 [\[20\]](#)

TRACY DAVIS/MV
D. GARDNER/ATTY. FOR DBT.
JASON BLUMBERG/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

The United States Trustee withdrew this motion to dismiss pursuant to Fed. R. Bankr. P. 7041(a)(2) on September 20, 2022. Doc. #46. Accordingly, this motion will be taken off calendar pursuant to the withdrawal.

17. [22-10987](#)-B-7 **IN RE: JOHN MASTRO**
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-25-2022 [\[17\]](#)

ONSLOW BAY FINANCIAL LLC/MV
JUSTIN HARRIS/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.

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

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

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

Onslow Bay Financial LLC ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 992 E. Richmond Ave., Fresno, California 93720 ("Property"). Doc. #17.

No party in interest timely filed written opposition. This motion will be GRANTED IN PART and DENIED AS MOOT IN PART.

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

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The debtor's discharge was entered on September 19, 2022. Doc. #24. Therefore, the automatic stay terminated with respect to the debtor on September 19, 2022. This motion will be DENIED AS MOOT IN PART as to the debtor's interest and will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there

is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has been in default since October 1, 2021. Doc. #21.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor intends to surrender the property.

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