



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Wednesday, October 5, 2022
Department B – Courtroom #13
Fresno, California**

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:00 AM

1. [21-12702](#)-B-13 **IN RE: GABRIEL/GINA BENAVIDES**
[MHM-1](#)

CONTINUED MOTION TO RECONVERT CASE FROM CHAPTER 13 TO
CHAPTER 7
7-7-2022 [[64](#)]

PATRICK KAVANAGH/ATTY. FOR DBT.
MICHAEL MEYER/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was originally heard on August 10, 2022. Doc. #82.

Chapter 13 trustee Michael H. Meyer ("Trustee") moved to re-convert this case to chapter 7 for cause under 11 U.S.C. § 1307(c) for unreasonable delay by the debtors that is prejudicial to creditors and under § 1326 for failure to commence making timely plan payments. Doc. #64. Trustee's attorney, Kelsey A. Seib, declared that the debtors have failed to file *Amended Schedules I* and *J* or a plan as a separate document, and plan payments are delinquent \$2,900.00 through June 2022. Doc. #66. Presumably, additional payments of \$1,300.00 will become due in July, August, and September 2022. Additionally, Trustee said that the debtors previously agreed to pay not less than a 100% dividend to allowed, non-priority unsecured claims. Doc. #66.

Gabriel Benavides and Gina Michelle Benavides ("Debtors") timely responded. Doc. #68. First, Debtors separately filed the plan. Doc. #71. Second, Debtors' attorney, Patrick Kavanagh declared that he had drafted an objection to claim and will file it "shortly," and Debtors will sign a modified plan and *Amended Schedules I* and *J* "within the next few days." Doc. #69. The motion stated that the objection will result in unsecured claims totaling less than expected, so Debtors will be able to propose a confirmable, modified plan with a 100% dividend to allowed unsecured claims. Doc. #68.

Debtors filed the *First Modified Chapter 13 Plan* dated August 6, 2022 with *Amended Schedules I* and *J* and moved to confirm the same, which is set for hearing in matter #2 below. See PK-4; Doc. #81. As a result, the court continued this motion to be heard with Debtors' motion to confirm plan. Docs. ##82-83. However, Trustee has objected to plan

confirmation and Debtor has not yet filed any objections to proofs of claim.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011).

The record shows that there has been unreasonable delay by the debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). Debtors filed this bankruptcy on November 24, 2021. Doc. #1. The case was converted to chapter 13 on February 3, 2022. Doc. #42. By the time of the hearing on this motion, 8 months and 2 days (244 days) will have passed since this case was converted to chapter 13 without confirming a plan, and 10 months and 11 days (315 days) will have passed since this case was filed.

Debtors' response and declaration filed on July 27, 2022 say that objections to proofs of claim will be filed shortly, but no such objections have been filed. Further, the Trustee's objection to Debtors' pending motion to confirm plan in matter #2 below indicates that Debtors have not filed 2019 tax returns with the Franchise Tax Board, so a plan does not appear to be confirmable in this case. See, 11 U.S.C. § 1325(a)(9).

Trustee requests this case be converted to chapter 7 because it was originally filed under chapter 7 and converted to chapter 13. But according to the schedules, Debtors do not appear to have any non-exempt assets that could be liquidated to provide a distribution to unsecured claims. Doc. #1. Therefore, dismissal, rather than conversion, appears to serve the interests of creditors and the estate.

This matter will be called and proceed as scheduled. Unless the Trustee's motion is withdrawn before the hearing, the court is inclined to GRANT this motion and either RE-CONVERT TO CHAPTER 7 or DISMISS this case.

2. [21-12702](#)-B-13 **IN RE: GABRIEL/GINA BENAVIDES**
[PK-4](#)

MOTION TO CONFIRM PLAN
8-6-2022 [\[72\]](#)

GINA BENAVIDES/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied or continued.

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

Gabriel Benavides and Gina Michelle Benavides (collectively "Debtors") request an order confirming the *First Modified Chapter 13 Plan* dated August 6, 2022. Doc. #72. The plan proposes that Debtor shall pay \$1,300.00 in month 2, \$1,000.00 in month 4, and \$900.00 per month in months 6-60 with a 100% dividend to allowed, non-priority unsecured claims. Doc. #80. Debtors' *Amended Schedules I and J* indicate that Debtors receive \$899.93 in monthly net income. Doc. #81.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1322(a) because the plan fails to provide for submission of all or such portion of future earnings or other future income to the supervision and control of the Trustee as is necessary to execute the plan, and § 1325(a)(9) because the Debtors have failed to file all applicable tax returns. Doc. #92. Trustee says that the plan fails to list plan payments and monthly dividends for months 1, 3, and 5. Assuming that the plan payments are \$0.00 for those months, the plan will take 67.38 months to fund, and Debtors will need to pay an additional \$6,373.00 into the plan for the plan to fund in 60 months. Additionally, per the Franchise Tax Board proof of claim (Claim No. 11), Debtors have not filed their 2019 tax returns. *Id.*

Debtors responded on September 29, 2022. Doc. #95. First, Debtors contend that Claims 8 and 9 filed by Midland Credit Management, Inc. are unenforceable under Cal. Code Civ. Proc. § 337 because the last transactions on those accounts are more than four years old. *Id.* Those claims total \$5,393.52. Assuming an 8% trustee fee on those claims, Debtors believe that \$5,862.52 can be removed from the underfunded amount of \$6,373.00 that Trustee asserts. After Debtors successfully prosecute an objection to the claims, they will only need to pay an additional \$510.48 over the remaining life of the plan to fund the plan. Debtors agree to increase their payment by an amount sufficient to pay this additional \$510.48. *Id.*

Additionally, Debtors claim that their 2019 tax returns were self-prepared, and the e-filing of the state return seems to have failed. Doc. #96. Debtors will pay a preparer to re-file the 2019 Franchise Tax Board return and provide the return to Trustee before the hearing.

This matter will be called as scheduled to inquire about Trustee's reply. If Debtors has submitted the 2019 tax return to the Trustee, Debtors will have cured the outstanding tax return issue. But as of this writing, no objections to any proofs of claim have been filed and this case is facing re-conversion or dismissal in matter #1 above. If this case is re-converted to chapter 7 or dismissed in matter #1 above, this motion will be DENIED AS MOOT. If the case is not re-converted or dismissed, this motion may be CONTINUED to November 2, 2022 at 9:00 a.m. so that Debtors can file such an objection to proofs of claim.

3. [22-11231](#)-B-13 **IN RE: CARLOS MORENO**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-7-2022 [\[17\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

Since posting the original pre-hearing dispositions, the court has changed its intended ruling on this matter.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained in part; overruled as moot in part.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to the following exemptions claimed by Carlos Alberto Moreno ("Debtor"):

- (a) \$4,850.00 in a 2010 Honda Accord as a tool of the trade under Cal. Code Civ. Proc. ("CCP") § 704.060;
- (b) \$2,400.00 in a 2010 Honda Accord under CCP § 704.010; and
- (c) \$617.00 in a 2016 Acura RDX under CCP § 704.010.

Doc. #17. Debtor did not oppose. On September 14, 2022, Debtor filed *Amended Schedule C*, retaining the \$4,850.00 exemption in the 2010 Honda Accord under CCP § 704.060. Debtor omitted the two exemptions in the 2010 Honda Accord and the 2016 Acura RDX under CCP § 704.010, so Trustee's objection is moot in part as to those grounds.

This objection will be called and proceed as scheduled. The court is inclined to SUSTAIN IN PART and OVERRULE AS MOOT IN PART the objection.

This objection was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the 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 sustaining of the objection. *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). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the objecting party has done here.

Federal Rule of Bankruptcy Procedure 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 meeting of creditors is held or within 30 days after any amendment to *Schedule C* is filed, whichever is later. In this case, the § 341 meeting was held on September 6, 2020 and this objection was filed on September 7, 2020, which is within the 30-day timeframe.

Trustee says that Debtor is employed by Westpac as a phlebotomist and Debtor's non-filing spouse is employed as a pharmacy technician at Mercy Plaza Pharmacy. *Id.*, citing Doc. #11., *Sched. I*.

CCP § 704.060 provides:

(a) Tools, implements, instruments, materials, uniforms, furnishing, books, equipment, one commercial motor vehicle, one vessel, and other personal property are exempt to the extent that the aggregate equity therein does not exceed:

(1) [\$9,525.00], if reasonably necessary to and actually used by the judgment debtor in the exercise of the trade, business, or profession by which the judgment debtor earns a livelihood . . .

Trustee argues that CCP § 704.060 requires a vehicle claimed as exempt as a tool of the trade to be reasonably necessary to, and actually used, in the exercise of the trade, business, or profession by which the debtor earns a livelihood. Doc. #17, citing *In re Rawn*, 199 B.R. 733, 736 (Bankr. E.D. Cal. 1996); *Lopez v. Gill (In re Lopez)*, 2015 Bankr. LEXIS 2983 (B.A.P. 9th Cir. Sept. 3, 2015). Therefore, Debtor must provide evidence that the 2010 Honda is a necessary tool of Debtor's trade. *Id.*

Additionally, Trustee claims that the same 2010 Honda cannot be exempted under both CCP §§ 704.060 and 704.010, and Debtor must demonstrate why the 2016 Acura RDX is not reasonably adequate for use in Debtor's business because it is exempted under § 704.010.

The Eastern District of California Bankruptcy Court in *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015), held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [relevant California law] and the extent to which that exemption applies."

Here, Debtor did not file opposition and Debtor's default is entered. Debtor has not established that the 2010 Honda Accord is reasonably necessary to, and actually used by the Debtor in his employment as a phlebotomist. Trustee's objection will therefore be sustained in part with respect to the exemption under CCP § 704.060. Trustee's other two objections to Debtor's CCP § 704.010 exemptions are moot due to Debtor's *Amended Schedule C*.

This matter will be called and proceed as scheduled. The court is inclined to SUSTAINED IN PART the objection as to the exemption in the 2010 Honda Accord under CCP § 704.060 and OVERRULE AS MOOT IN PART the objection as to the exemptions in the 2010 Honda Accord and 2016 Acura RDX under CCP § 704.010.

4. [20-12688](#)-B-13 **IN RE: MARY HELEN BARRO**
[PK-3](#)

MOTION TO MODIFY PLAN
8-8-2022 [[90](#)]

MARY HELEN BARRO/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

Mary Helen Barro ("Debtor") moves for an order confirming the *Second Modified Chapter 13 Plan* dated August 8, 2022. Doc. #90. The plan proposes that Debtor has paid \$36,623.60 into the plan through July 31, 2022, and Debtor will pay \$2,153.00 per month until completion with a 0% distribution to allowed, non-priority unsecured claims. Doc. #91. Debtor's *Amended Schedules I and J* indicate that Debtor receives \$2,314.50 in monthly net income. Doc. #89.

In contrast, Debtor's *Chapter 13 Plan* dated August 13, 2020, confirmed October 9, 2020, provides that Debtor will pay 60 monthly payments of \$2,114.00 per month with a 0% dividend to unsecured claims. Docs. #8; #39.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely filed written opposition. Doc. #97. Trustee objects under 11 U.S.C. § 1322(a) because the plan fails to provide for submission of all or such portion of future earnings or other future income to the supervision and control of the Trustee as is necessary to execute the plan. *Id.*

Debtor responded. Doc. #99.

This motion will be called and proceed as scheduled. This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of the creditors, the U.S. Trustee, or any other party in interest except Trustee to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Trustee 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).

First, Trustee says that the Additional Provisions of the plan state "through July 31, 2022, the debtor has paid \$36,623.60 into the plan. She will pay \$2,153.00 [sic] per month until completion." Doc. #97. Trustee says that the plan fails to state which month the \$2,153.00 payment will commence.

Second, the Additional Provisions state that Class 1 Creditor Wilmington Savings Fund Society FSB ("Wilmington") has been paid \$26,334.88 in regular payments and \$4,381.38 in Class 1 arrears, but the plan fails to state the month through which the aggregates apply.

Lastly, the Additional Provisions state that administrative expenses have been paid \$2,983.00 to date, payments will be \$134.68 in month 24, \$60.68 per month in months 24-49, \$31.50 per month in months 50-56, \$105.81 per month in months 58-59, and \$375.22 in month 60. In month 24, the plan proposes to pay attorney's fees dividends in the amount of \$134.68 and \$60.68, but there is no monthly dividend listed for month 57.

In response, Debtor first says that she will pay \$2,153.00 per month until completion and that she has made the August 2022 payment. Doc. #99. Debtor suggests including language in the order confirming plan to state that payments will commence in month 24.

Second, Debtor says that the payment to Wilmington should have included the date from the total payments paragraph. *Id.* Debtor suggests that the order confirming plan reflect that the aggregate is payments through July 31, 2022. *Id.*

Lastly, Debtor says that no monthly payment is due in month 57. Debtor's counsel is aware that there is an underpayment of attorney fees.

This matter will be called and proceed as scheduled. It appears that Debtor has resolved the first two issues raised by Trustee, but the underpayment of attorney fees is still a problem. The court will inquire whether this plan may be confirmed, and the remaining issues addressed in the order confirming plan, or whether Debtor will be required to file, serve, and set for confirmation hearing a new modified plan.

10:00 AM

1. [21-11405](#)-B-7 **IN RE: NORTHWEST PETROLEUM, INC.**
[JMV-2](#)

MOTION TO PAY
9-6-2022 [[60](#)]

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
D. GARDNER/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 Jeffrey M. Vetter ("Trustee") seeks authority to pay administrative tax claims in the amount of \$823.00 and \$800.00 to the Franchise Tax Board ("FTB") for the May 1, 2021 through April 30, 2022 and May 1, 2022 through April 30, 2023 tax years, respectively. Doc. #60. Trustee also requests to be authorized to pay up to \$1,500.00 for any unexpected tax liabilities without further court approval.

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

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

11 U.S.C. § 503 allows an entity to file a request for payment of administrative expenses. After notice and a hearing, payment of

certain administrative expenses shall be allowed, other than those specified in § 502(f), including taxes. § 503(b)(1)(B). Under 28 U.S.C. § 960(b), trustees are required to pay taxes the bankruptcy estate owes on or before the date they become due even if the respective tax agency does not file a request for administrative expenses. *Dreyfuss v. Cory (In re Cloobek)*, 788 F.3d 1243, 1246 (9th Cir. 2015).

Northwest Petroleum, Inc. ("Debtor") filed chapter 7 bankruptcy on May 28, 2021. Doc. #1. Trustee was appointed as interim trustee on that same day and became permanent trustee at the first meeting of creditors on July 23, 2021. Doc. #3; docket generally. Trustee employed Ratzlaff, Tamberi, & Wong ("Accountant") as the estate's accountant effective December 31, 2021. Doc. #34. Accountant determined that the estate has a tax liability due to the FTB in the amounts of \$823.00 and \$800.00 for the May 1, 2021 through April 30, 2022 tax year, and the May 1, 2022 through April 30, 2023 tax year, respectively, for a total of \$1,623.00. Doc. #62. These amounts represent the amounts due for the 2021 and 2022 tax years. Trustee also requests approval of an additional \$1,500.00 as a small buffer for any interest, fees, or other additional taxes owed so the estate will not need to incur further expense seeking additional approval for a nominal amount of tax liability.

This motion was fully noticed and no party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Trustee will be authorized to pay, in Trustee's discretion, \$1,623.00 to FTB for the 2021 and 2022 tax years. Further, Trustee will be authorized to pay an additional amount not to exceed \$1,500.00 for any unexpected tax liabilities without further court approval.

2. [21-11405](#)-B-7 **IN RE: NORTHWEST PETROLEUM, INC.**
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG,
ACCOUNTANT(S)
9-1-2022 [\[53\]](#)

RATZLAFF TAMBERI & WONG/MV
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Ratzlaff Tamberi & Wong ("Applicant"), the certified public accountancy firm engaged by chapter 7 trustee Jeffrey M. Vetter ("Trustee"), seeks final compensation under 11 U.S.C. § 330 in the sum

of \$2,277.40. Doc. #53. This amount consists of \$2,209.00 in fees as reasonable compensation for services rendered and \$68.40 in reimbursement for actual, necessary expenses from February 7, 2022 through August 4, 2022. *Id.*

Trustee has received and reviewed the application and supporting documents, states they are reasonable and necessary for estate administration, and has no objection to the proposed payment. Doc. #57.

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 Fed. R. Bankr. P. 2002(a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Northwest Petroleum, Inc. ("Debtor") filed chapter 7 bankruptcy on May 28, 2021. Doc. #1. Trustee was appointed as interim trustee on that same day and became permanent trustee at the first meeting of creditors on July 23, 2021. Doc. #3; docket generally. Trustee moved to employ Applicant as the estate's accountant under 11 U.S.C. §§ 327, 330, and 331 on January 21, 2022. Doc. #31. The court approved employment on February 7, 2022, effective December 31, 2021. Doc. #34. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for accounting services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Acceptance of employment was deemed to be an irrevocable waiver by Applicant of all pre-petition claims, if any, against the bankruptcy estate. *Id.* Applicant's services here were within the time period prescribed by the employment order.

This is Applicant's first and final fee application. Doc. #53. Applicant performed 9.4 billable hours of accounting services at a rate of \$235.00 per hour, totaling **\$2,209.00** in fees. Doc. #55, *Ex. A*. Applicant also incurred **\$68.40** in expenses for postage to notice creditors. *Id.* These combined fees and expenses total **\$2,277.40**.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services included, without limitation: (1) reviewing the petition and trustee's accounting for information relating to tax matters; (2) preparing the federal and state corporation income tax returns and underlying workpapers for the period ending April 30, 2022 (3) corresponding with the prior accountant and trustee regarding tax filings; and (4) preparing and filing the final fee application. Docs. #56; #55, Ex. A. The court finds the services and expenses actual, reasonable, and necessary. As noted above, Trustee has reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #57.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$2,209.00 in fees and \$68.40 in expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized to pay applicant, in Trustee's discretion, \$2,277.40 for services rendered to and costs incurred for the benefit of the estate from February 7, 2022 through August 4, 2022.

3. [22-10939](#)-B-7 **IN RE: SERGIO PEREZ AND ROSALINDA NEBRE-PEREZ**
[JSP-1](#)

MOTION TO AVOID LIEN OF FINANCIAL CREDIT NETWORK, INC.
8-25-2022 [\[16\]](#)

ROSALINDA NEBRE-PEREZ/MV
JOSEPH PEARL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Sergio Perez and Rosalinda Nebre-Perez (collectively "Debtors") move to avoid a judicial lien in favor of Financial Credit Network, Inc. ("Creditor") in the amount of \$9,933.67 and encumbering residential real property located at 404 11th Street, McFarland, CA 93250 ("Property").¹ Doc. #16.

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

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

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

Here, a judgment lien was entered against Debtors in favor of Creditor in the amount of \$9,933.67 on October 29, 2021. Doc. #18, Ex. A. The abstract of judgment was issued on November 23, 2021 and recorded in Kern County on March 10, 2022. *Id.* That lien attached to Debtors' interest in Property. *Id.*; Doc. #19.

As of the petition date, Property had an approximate value of \$305,000.00. *Id.*; Doc. #1, Sched. A/B. Property appears to be encumbered by a single \$130,201.00 deed of trust in favor of Shellpoint Mortgage Servicing. Doc. #1, Sched. D. Debtor claimed a homestead exemption of 100% of the fair market value of Property, up to any applicable statutory limit under Cal. Code Civ. Proc. ("CCP") § 704.730. *Id.*, Sched. C. Section 704.730 provides:

(a) The amount of the homestead exemption is the greater of the following:

(1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).

(2) Three hundred thousand dollars (\$300,000).

(b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers for the prior fiscal year, published by the Department of Industrial Relations.

C.C.P. § 704.730. On January 1, 2022, this exemption was automatically updated to increase the minimum exemption to \$312,600.00 and the countywide median sale price for a single-family home maximum to \$625,200.00 based on the change in the annual California Consumer Price Index (4.2%). So, Debtor may claim up to the minimum exemption of \$312,600.00 under CCP 704.730.

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

Amount of judgment lien	\$9,933.67
Total amount of unavoidable liens	+ \$130,201.00
Debtor's claimed exemption in Property	+ \$312,600.00
<i>Sum</i>	= \$452,734.67
Debtor's claimed value of interest absent liens	- \$305,000.00
Extent lien impairs exemption	= \$147,734.67

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	\$305,000.00
Total amount of unavoidable liens	- \$130,201.00
Homestead exemption	- \$312,600.00
Remaining equity for judicial liens	= (\$137,801.00)
Creditor's judicial lien	- \$9,933.67
Extent Debtor's exemption impaired	= (\$147,734.67)

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

¹ Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Alicia Sundstrom, who is Creditor's CEO, CFO, Secretary, and registered agent for service of process, by certified mail on August 26, 2022. Doc. #20.

4. [16-14353](#)-B-7 **IN RE: JUANA ROMERO**
[JSP-2](#)

MOTION TO AVOID LIEN OF FORD MOTOR CREDIT COMPANY, LLC
AND/OR MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY
ASSOCIATES, LLC
9-7-2022 [\[20\]](#)

JUANA ROMERO/MV
JOSEPH PEARL/ATTY. FOR DBT.

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

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

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

Juana Romero ("Debtor") moves to avoid two judicial liens encumbering real property located at 1303 Sprague River Lane, Bakersfield, CA 93311 ("Property"): (i) a \$8,197.15 judgment lien in favor of Ford Motor Credit Company, LLC ("Ford"); and (ii) a \$4,156.13 judgment lien in favor of Portfolio Recovery Associates, LLC ("PRA").² Doc. #20.

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

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

As of the petition date, Property had an approximate value of \$305,000.00. Docs. #1, *Sched. A/B*. Debtor claimed a homestead exemption in Property in the amount of \$68,886.70 pursuant to Cal. Civ. Code ("CCP") § 704.730.³ *Id.*, *Sched. C*.

Property is encumbered by \$236,113.30 deed of trust in favor of American Servicing Company ("ASC"). *Id.*, *Sched. D*.

On March 27, 2012, a judgment was entered against Debtor in favor of Ford in the amount of \$8,197.15. Doc. #23, *Ex. A*. An abstract of judgment was issued on May 23, 2012 and recorded in Kern County on July 12, 2012. *Id.*

On February 5, 2013, a second judgment was entered against Debtor in favor of PRA in the amount of \$4,156.13. Doc. #24, *Ex. B*. The second abstract of judgment was issued on February 21, 2013 and recorded in Kern County on February 27, 2013. *Id.*

These judgment liens attached to Property and were effective during the pendency of Debtor's bankruptcy. Debtor now seeks to avoid both liens. 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.*

Property's security interests can be illustrated with the following orders of priority:

Creditor	Amount	Recorded	Status
1. ASC	\$236,113.30	?	Unavoidable
2. Ford	\$8,197.15	07/12/12	Expired
3. PRA	\$4,156.13	02/27/13	Avoidable

As noted above, the Ford lien has expired and is therefore unenforceable. CCP § 683.020 defines a 10-year period in which a judgment may be enforced:

[U]pon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property:

- (a) The judgment may not be enforced.
- (b) All enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease.
- (c) Any lien created by an enforcement procedure pursuant to the judgment is extinguished.

C.C.P. § 683.020. The judgment was entered on March 27, 2012. Absent tolling, the judgment would have expired on March 27, 2022 - 3,652 days later.⁴ The 10-year renewal period ran for 1,711 days (with 1,941 days remaining) from March 27, 2012 to December 2, 2016, when Debtor filed this bankruptcy.

On filing this bankruptcy, Debtor triggered the automatic stay. 11 U.S.C. § 362(a) precludes creditors from renewing judgments while the automatic stay is in effect, so Ford was unable to renew the judgment during this time. *Spiertos v. Moreno (In re Spiertos)*, 221 F.3d 1079, 1080 (9th Cir. 2000); see also, *Kertesz v. Ostrovsky*, 115 Cal. App. 4th 369, 377-78 (2004) ("The suspension of a statute of limitations for a certain period is, in effect 'time taken out,' for that period and adds the same period of time to the limitation time provided in the statute.") (internal quotation omitted), citing *Schumacher v. Worcester*, 55 Cal. App. 4th 376, 380 (1997).

Section 108(c) preserves the period of renewal while the automatic stay is in effect and the bankruptcy case is pending:

[I]f applicable nonbankruptcy law . . . fixes a period for commencing or continuing a civil action . . . and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—

- (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case, or
- (2) 30 days after the notice of termination or expiration of the stay under section 362 . . . with respect to such claim.

11 U.S.C. § 108(c).

The automatic stay remained in effect until 30 days after the case is closed or dismissed. See § 362(c)(1), (c)(2). This case was closed by final decree on April 7, 2017, so the stay continued to suspend tolling the renewal period until 30 days later, which is May 7, 2017 (156 days after the petition date). As a result, the period to renew the ASC judgment was extended from March 27, 2022 to August 30, 2022. Debtor's reopening of this case does not trigger the automatic stay, so the judgment lien is expired. No evidence is presented that the judgment was renewed, so Property is not currently encumbered by the

Ford abstract of judgment based on the current evidence. This motion will be DENIED AS MOOT IN PART as to the Ford judgment lien.

Notwithstanding expiration of the Ford lien, the PRA lien may be avoided. Strict application of the § 522(f) formula with respect to the PRA lien is as follows:

Amount of judgment lien	\$4,156.13
Total amount of unavoidable liens ⁵	+ \$236,113.30
Debtor's claimed exemption in Property	+ \$68,886.70
<i>Sum</i>	= \$309,156.13
Debtor's claimed value of interest absent liens	- \$305,000.00
Extent PRA lien impairs exemption	= \$4,156.13

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	\$305,000.00
Total amount of unavoidable liens	- \$236,113.30
Homestead exemption	- \$68,886.70
Remaining equity for judicial liens	= \$0.00
PRA's judicial lien	- \$4,156.13
Extent Debtor's exemption impaired	= (\$4,156.13)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the PRA 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 the PRA lien under § 522(f)(1). This motion will be GRANTED IN PART as to the PRA judgment lien and DENIED AS MOOT IN PART as to the Ford lien. The proposed order shall state that the PRA lien is avoided from the subject Property only - the relief requested as to the Ford judgment lien having been denied as moot - and include a copy of the PRA abstract of judgment attached as an exhibit.

² Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Ford's and PRA's CEOs and registered agents for service of process via certified mail on September 7, 2022. Doc. #25.

³ The court notes that Debtor's declaration says that Debtor claimed a \$236,113.30 homestead exemption, but this is the amount of the deed of trust encumbering Property. Doc. #22, *cf.* Doc. #1, *Scheds. C, D.*

⁴ 3,652 days, rather than 3,650, to account for leap years in 2016, and 2020.

⁵ This amount consists only of the ASC deed of trust. Though the Ford lien would be unavoidable until junior liens are avoided, it is expired and therefore excluded from the calculation.

11:00 AM

1. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**
[18-1006](#) [CAE-1](#)

CONTINUED POST-TRIAL STATUS CONFERENCE RE: COMPLAINT
2-5-2018 [\[1\]](#)

PACE DIVERSIFIED CORPORATION
ET AL V. MACPHERSON OIL
T. BELDEN/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to November 2, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

The court is in receipt of the parties' proposed findings of fact and conclusions of law. Docs. #254; #257. This post-trial status conference will be CONTINUED to November 2, 2022 so that the parties can file or update their statements of corporate ownership.

Fed. R. Bankr. P. ("Rule") 7007.1 requires any nongovernmental corporation that is a party to an adversary proceeding, other than the debtor, to file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation. Rule 7007.1(a). The statement shall be filed with the corporation's first appearance, pleading, motion, response, or other request addressed to the court and shall be supplemented whenever the information required changes. Rule 7007.1(b)(1) and (2).

A fillable *Statement Regarding Ownership of Corporate Debtor/Party* ("Corporate Ownership Statement") is available on the court's website as Form EDC 3-500 (Rev. 12/2012).⁶

11 U.S.C. § 101(9) defines the term "corporation"—

(A) includes—

- (i) association having a power or privilege that a private corporation, but not an individual or a partnership, possesses;
- (ii) partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association;
- (iii) joint-stock company;
- (iv) unincorporated company or association; or
- (v) business trust; but

(B) does not include limited partnership.

§ 101(9) (A) and (B).

Here, Plaintiffs Pace Diversified Corporation ("Pace") and Dark Rock, LLC ("Dark Rock", and Defendant Macpherson Oil Company ("Macpherson") are all required to file Corporate Ownership Statements.

Pace filed a Corporate Ownership Statement on March 23, 2017 in connection with its chapter 11 bankruptcy. See Case No. 17-11028, Doc. #1, at 12. Thus, Pace does not need to file a new Corporate Ownership Statement unless its corporate ownership information has changed since that document was filed.

Neither Dark Rock, a limited liability company, nor Macpherson, a merged-out corporation that appears to now be a limited liability company, have filed Corporate Ownership Statements as required by Rule 7007.1. Absent the filing of a corporate ownership statement, the court is unable to comply with its conflict-of-interest obligations pursuant to Canon 3C of the Code of Conduct for United States Judges and 28 U.S.C. § 455.

Accordingly, this post-trial status conference will be CONTINUED to November 2, 2022 at 11:00 a.m. so that Dark Rock and Macpherson can each file a Corporate Ownership Statement pursuant to Rule 7007.1. Pace is not required to file an updated Corporate Ownership Statement provided that the information contained in its March 23, 2017 statement has not changed. If those statements have not been filed before the continued hearing date, the court may issue an *Order to Show Cause* why Dark Rock's complaint or Macpherson's answer should not be stricken pursuant to Fed. R. Civ. P. 12(f), *incorporated by* Rule 7012(b), for failure to comply with Rule 7007.1.

⁶ See Corporate Ownership Statement, Form EDC 3-500 (Rev. 12/2012) <https://www.caeb.uscourts.gov/documents/Forms/EDC/EDC.003-500.pdf> (visited Oct. 3, 2022).

11:30 AM

1. [22-11528](#)-B-7 **IN RE: RICARDO MANCILLAS**

PRO SE REAFFIRMATION AGREEMENT WITH FORD MOTOR CREDIT
COMPANY LLC
9-13-2022 [\[12\]](#)

JOSEPH PEARL/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

A Reaffirmation between debtor Ricardo Mancillas and Ford Motor Credit Company LLC for a 2020 Ford Mustang was filed on September 13, 2022. Doc. #12.

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

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

The debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.