

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, October 9, 2019
Place: Department B – Courtroom #13
Fresno, California

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. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

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

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

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

9:30 AM

1. [19-13710](#)-B-7 **IN RE: JOANNA REYES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-12-2019 [\[11\]](#)

\$335.00 FILING FEE PAID IN FULL 9/23/19

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fee of \$335.00 was paid on September 23, 2019. Therefore, the Order to Show Cause will be vacated.

2. [19-13214](#)-B-7 **IN RE: BRYAN/SIRINA RESENDEZ**
[WFZ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-11-2019 [\[17\]](#)

KINECTA FEDERAL CREDIT UNION/MV
STEPHEN LABIAK
MARK BLACKMAN/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

LBR 9014-1(f)(1)(B) states that Motions filed on at least 28 days' notice require the movant to notify the respondent or respondents that any opposition to motions filed on at least 28 days' notice must be in writing and must be filed with the court at least fourteen (14) days preceding the date or continued date of the hearing.

This motion was filed and served on September 11, 2019 and set for hearing on October 9, 2019. Doc. #18, 23. October 9, 2019 is 28 days after September 11, 2019, and therefore this hearing was set on 28 days' notice under LBR 9014-1(f)(1). The notice stated that written opposition was not required, and opposition, if any, must be presented at the hearing. Doc. #18. That is incorrect. Because the hearing was set on 28 days' notice, the notice should have stated that written opposition, if any, must be filed and served at least 14 days prior to the hearing.

LBR 9014-1(f)(2)(C) states: "[w]hen fewer than twenty-eight (28) days' notice of a hearing is given, no party in interest shall be required to file written opposition to the motion." Only motions that have actually been noticed on fewer than 28 days may properly use the language under 9014-1(f)(2)(C).

Because this motion was filed, served, and noticed on 28 days' notice, the language of LBR 9014-1(f)(1)(B) needed to have been included in the notice.

Also, the court did not see that the "Information Sheet" (doc. #22) nor the exhibits (doc. #20) were served with the motion, notice, declaration, and memorandum of points and authorities. See doc. #23.

The court notes debtors' non-opposition. Doc. #26. The Trustee did not file a non-opposition though it appears the Trustee has filed a report of no distribution. So, the local rule issues and service deficiencies remain germane.

3. [19-12517](#)-B-7 **IN RE: ALEXA JOY**
[JEB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION TO CONFIRM
TERMINATION OR ABSENCE OF STAY, MOTION FOR RELIEF FROM CO-DEBTOR
STAY
9-20-2019 [\[35\]](#)

HUGO RODARTE/MV
JOHN BOUZANE/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

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

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

First, LBR 4001-1(a) requires the movant to "file and serve as a separate document completed Form EDC 3-468, *Relief from Stay Summary Sheet*." No form was submitted with the motion.

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

It appears that at least two other stay relief motions have been filed and denied without prejudice with the DCN "JEB-1." This motion also has a DCN of JEB-1 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

4. [19-13819](#)-B-7 **IN RE: DIONISIO/SILVINA PELAYO**
[GT-1](#)

MOTION TO COMPEL ABANDONMENT
9-4-2019 [\[7\]](#)

DIONISIO PELAYO/MV
GRISELDA TORRES

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

First, LBR 9014-1(f)(1)(B) states that Motions filed on at least 28 days' notice require the movant to notify the respondent or respondents that any opposition to motions filed on at least 28 days' notice must be in writing and must be filed with the court at least fourteen (14) days preceding the date or continued date of the hearing.

This motion was filed on September 4, 2019 and set for hearing on October 9, 2019. Doc. #8. October 9, 2019 is at least 28 days after September 4, 2019, and therefore this hearing was set on at least 28 days' notice under LBR 9014-1(f)(1). The notice stated that written opposition was not required. Doc. #8. That is incorrect. Because the hearing was set on at least 28 days' notice, the notice should have stated that written opposition was required and must be filed and served not later than 14 days before the hearing. Because this motion was filed, served, and noticed on at least 28 days' notice, the language of LBR 9014-1(f)(1)(B) needed to have been included in the notice.

Second, LBR 9014-1(e)(2) requires a proof of service, in the form of a certificate of service, to be filed with the Clerk of the court

concurrently with the pleadings or documents served, or not more than three days after the papers are filed.

In this case, no proof of service was filed.

Third, LBR 9004-2(d)(2) requires an index "at the start of the [exhibit] that lists and identifies by exhibit number/letter each exhibit individually and shall state the page number at which it is found within the exhibit document."

There was no exhibit index. See doc. #10. Nor were the exhibits numbered. See LBR 9004-2(d)(3).

The motion is DENIED WITHOUT PREJUDICE.

5. [19-13425](#)-B-7 **IN RE: JESSE CANALES**
[GK-4](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-24-2019 [\[43\]](#)

38SDJV HOLDINGS, LLC/MV
JOSEPH WEST
MILES GRANT/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 will submit a proposed order after hearing.

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.

The court must first note movant's failure to comply with LBR 9004-2(c)(1) and (d).

First, LBR 9004-2(c)(1) requires that declarations, exhibits, *inter alia*, to be filed as separate documents. Here, all three declarations included exhibits, and were combined into one document and not filed separately.

Second, LBR 9004-2(d)(2) requires an index "at the start of the [exhibit] that lists and identifies by exhibit number/letter each exhibit individually and shall state the page number at which it is found within the exhibit document."

There was no exhibit index for any of the exhibits, nor were the exhibits numbered. Failure to comply with these rules in the future will result in the motion being denied without prejudice.

The movant, 38 SDJV Holdings, LLC, seeks relief from the automatic stay under 11 U.S.C. § 362(d)(4) concerning real property located at 4237 E. Clinton Avenue in Fresno, CA 93703.

Under § 362(d)(4), if the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval OR multiple bankruptcy filings affecting such real property, then an order entered under paragraph (4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order.

After review of the included evidence, the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of all or part ownership of the subject real property without the consent of the secured creditor or court approval.

This is debtor's ninth bankruptcy since 2008. Doc. #46. Every one of debtor's previous bankruptcy cases were dismissed for debtor's failure to file schedules and other papers. Id. In debtor's previous four bankruptcy cases, he filed motions to extend time to file, stating he needed time to hire an attorney. The court granted the motions, but debtor neither hired an attorney nor filed the necessary papers. Id. Debtor was previously found to be "a serial bankruptcy filer who has abused the bankruptcy system" after a court entered judgment in favor of the U.S. Trustee, who brought an adversary proceeding against debtor. Debtor was barred from filing bankruptcy for two years. Id.

On July 15, 2019, debtor transferred the subject property to himself and William Jay Cook ("Cook") as joint tenants for no consideration. Id. That same day, Cook filed bankruptcy. Id.

In February 2005, InterBay Funding LLC ("InterBay") loaned debtor \$388,700.00. Doc. #47. The loan was evidenced by a promissory note and secured by a deed of trust on debtor's investment property located at 4237 E. Clinton Avenue in Fresno, CA 93703. Id. The loan was eventually assigned to Creditor in September 2018. Id. Debtor has defaulted on the loan by failing to pay the installments due to Creditor since October 2018. Id. As of September 24, 2019, debtor owes nearly \$400,00.00 in principal and nearly \$45,000.00 in interest and costs. Id.

The Court having rendered findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, as incorporated by Federal Rule of Bankruptcy Procedure 7052:

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is vacated concerning real property located at 4237 E. Clinton Ave in Fresno, CA 93703; and

IT IS FURTHER ORDERED, pursuant to 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval; or multiple bankruptcy filing affecting such real property. The order shall be binding in any other case under Title 11 of the United States Code purporting to affect the real property described in the motion not later than two years after the date of entry of the order.

The 14-day stay under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived.

6. [19-10529](#)-B-7 **IN RE: BRENT/CHRISTINA KUTZBACH**
[JES-1](#)

MOTION TO EMPLOY JEFFREY S. BAIRD AS AUCTIONEER, AUTHORIZING
SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT
OF AUCTIONEER FEES AND EXPENSES
9-10-2019 [\[48\]](#)

JAMES SALVEN/MV
PETER BUNTING
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 amount 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.

This motion is GRANTED. 11 U.S.C. § 328(a) permits employment of "professional persons" on "reasonable terms and conditions" including "contingent fee basis."

Trustee is authorized to employ Baird Auctions & Appraisals ("Auctioneer") as auctioneer to sell property of the estate consisting of six firearms ("Firearms"): a Winchester 30x30, Remington 870 12 gauge shotgun, Brazil 12 gauge shotgun, Remington 700, Erma 22, and a Smith & Wesson 9mm, at a public auction, which is set for October 15, 2019 at Baird Auctions & Appraisals located at 1328 N. Sierra Vista, Suite B in Fresno, California beginning at 5:30 p.m. Doc. #48.

The trustee proposes to compensate Auctioneer on a percentage collected basis. The percentage is 15% of the gross proceeds from the sale. *Id.* Trustee is also authorized to reimburse Auctioneer up to \$250.00 for expenses.

The court finds the proposed arrangement reasonable in this instance. If the arrangement proves improvident, the court may allow different compensation under 11 U.S.C. § 328(a).

Trustee is authorized to employ and pay Auctioneer for his services as outlined above, and the proposed sale at auction of the Firearms is approved.

7. [18-10133](#)-B-7 **IN RE: JESSE/SHERRI SHIELDS**
[FW-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, PC FOR
PETER A. SAUER, TRUSTEES ATTORNEY(S)
9-6-2019 [\[82\]](#)

SCOTT LYONS

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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 amount 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.

The motion will be GRANTED. Trustee's special counsel, Fear Waddell, P.C., requests fees of \$7,236.00 and costs of \$351.80 for a total of \$7,587.80 for services rendered from February 22, 2019 through September 5, 2019.

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." Movant's services included, without limitation: (1) Resolving ownership of the personal injury claim, (2) Reviewed the personal injury settlement agreement, (3) Prepared a motion to approve the proposed settlement and prevailed on the motion, and (4) Prepared fee and employment applications. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$7,236.00 in fees and \$351.80 in costs.

8. [19-13346](#)-B-7 **IN RE: ERIKA MADRIGAL**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
8-5-2019 [\[5\]](#)

ERIKA MADRIGAL/MV
RESPONSIVE PLEADING

NO RULING.

9. [19-12754](#)-B-7 **IN RE: SUPER TRUCK LINES INC.**
[JHK-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
7-22-2019 [\[14\]](#)

MERCEDES-BENZ FINANCIAL SERVICES USA, LLC/MV
THOMAS HOGAN
JOHN KIM/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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 except the Trustee are entered and the matter will be resolved without oral argument. Trustee does not oppose the motion. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The movant, Mercedes-Benz Financial Services USA LLC dba Daimler Truck Financial, seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) concerning a 2017 Freightliner CA125SLP ("Vehicle"). The chapter 7 trustee does not oppose. Doc. #166.

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 debtor has failed to make at least

14 post-petition payments. The movant has also produced evidence that debtor is delinquent at least \$47,054.01. Doc. #16, 17.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization. Doc. #16, 17. Debtor is in chapter 7 and is not reorganizing.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) 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.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 14 post-petition payments to movant and the Vehicle is a depreciating asset.

10. [19-12754](#)-B-7 **IN RE: SUPER TRUCK LINES INC.**
[JHK-2](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
7-22-2019 [\[21\]](#)

MERCEDES-BENZ FINANCIAL SERVICES USA, LLC/MV
THOMAS HOGAN
JOHN KIM/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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 except the Trustee are entered and the matter will be resolved without oral argument. Trustee does not oppose the motion. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The movant, Mercedes-Benz Financial Services USA LLC dba Daimler Truck Financial, seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) concerning a 2016 Freightliner CA125SLP ("Vehicle"). The chapter 7 trustee does not oppose. Doc. #168.

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 debtor has failed to make at least 14 post-petition payments. The movant has produced evidence that debtor is delinquent at least \$43,108.30. Doc. #23, 26.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization. Doc. #23, 26. Debtor is in chapter 7 and is not reorganizing.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) 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.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 14 post-petition payments to movant and the Vehicle is a depreciating asset.

11. [19-12754](#)-B-7 **IN RE: SUPER TRUCK LINES INC.**
[JHK-3](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
8-6-2019 [\[59\]](#)

MERCEDES-BENZ FINANCIAL SERVICES USA, LLC/MV
THOMAS HOGAN
JOHN KIM/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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 except the Trustee are entered and the matter will be resolved without oral argument. Trustee does not oppose the motion. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The movant, Mercedes-Benz Financial Services USA LLC dba Daimler Truck Financial, seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) concerning a 2016 Freightliner CA125SLP ("Vehicle"). The chapter 7 trustee does not oppose. Doc. #170.

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 debtor has failed to make at least two post-petition payments. The movant has produced evidence that debtor is delinquent at least \$10,892.15. Doc. #63, 64.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization. Doc. #63, 64. Debtor is in chapter 7 and is not reorganizing.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) 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.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least two post-petition payments to movant and the Vehicle is a depreciating asset.

12. [19-12754](#)-B-7 **IN RE: SUPER TRUCK LINES INC.**
[JHK-4](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
8-6-2019 [\[66\]](#)

MERCEDES-BENZ FINANCIAL SERVICES USA, LLC/MV
THOMAS HOGAN
JOHN KIM/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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 except the Trustee are entered and the matter will be resolved without oral argument. The Trustee does not oppose the motion. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The movant, Mercedes-Benz Financial Services USA LLC dba Daimler Truck Financial, seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) concerning a 2016 Freightliner CA125SLP ("Vehicle"). The chapter 7 trustee does not oppose. Doc. #172.

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 debtor has failed to make at least

two post-petition payments. The movant has produced evidence that debtor is delinquent at least \$10,402.64 Doc. #70, 71.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization. Doc. #70, 71. Debtor is in chapter 7 and is not reorganizing.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) 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.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least two post-petition payments to movant and the Vehicle is a depreciating asset.

13. [19-12754](#)-B-7 **IN RE: SUPER TRUCK LINES INC.**
[JRD-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-11-2019 [\[137\]](#)

BB&T COMMERCIAL EQUIPMENT CAPITAL CORP./MV
THOMAS HOGAN
JONATHAN DOOLITTLE/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 motion will be DENIED WITHOUT PREJUDICE. The court does not know whether the moving papers were properly served as required by LBR 9014-1(e). A proof of service was not filed with the Clerk concurrently with the pleadings or more than three (3) days after they were filed.

The court notes trustee's non-opposition. Doc. #194.

14. [18-13758](#)-B-7 **IN RE: DONNIE/KELLY BROOKS**
[JES-4](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
8-29-2019 [\[96\]](#)

JAMES SALVEN/MV
STEPHEN LABIAK
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 amount 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.

The motion will be GRANTED. Trustee's accountant, James E. Salven, requests fees of \$1,625.00 and costs of \$398.20 for a total of \$2,032.20 for services rendered from May 15, 2019 through May 28, 2019.

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." Movant's services included, without limitation: (1) Preparation of employment and fee applications, (2) determining tax basis of house and car, (3) Processing both tax returns, and (4) Finalizing returns and prompt determination letters. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$1,625.00 in fees and \$398.20 in costs.

15. [18-13784](#)-B-7 **IN RE: BERNADETTE GARCIA-DAR**
[PFT-1](#)

MOTION TO APPROVE STIPULATION REGARDING SALE OF REAL PROPERTY
AND HOMESTEAD EXEMPTION
9-11-2019 [\[81\]](#)

PETER FEAR/MV
PETER BUNTING
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 amount 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.

This motion is GRANTED. It appears from the moving papers that the trustee has considered the standards of In re Woodson, 839 F.2d 610, 620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. the probability of success in the litigation;
- b. the difficulties, if any, to be encountered in the matter of collection;
- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of the trustee's business judgment. The order should be limited to the claims compromised as described in the motion.

The trustee requests approval of a settlement agreement with the debtor concerning the homestead exemption.

Under the terms of the compromise, upon the debtor selling the real property located at 8232 North Chance Avenue in Fresno, CA 93720, debtor agrees to waive any claim of exemption in the first \$20,000.00 of the net sale proceeds with the understanding that these funds will be paid to the bankruptcy estate, free of debtor's homestead exemption. In exchange for that waiver, Trustee agrees to waive the requirement that debtor reinvest her claimed homestead within six months of the sale of the property.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 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, because there is no litigation and collection is not an issue, the only factor relevant to consider is the interests of the creditors. This factor weighs heavily in favor of the creditors because without the stipulation, creditors would receive nothing; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be 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. Accordingly, the motion will be granted.

16. [19-13687](#)-B-7 **IN RE: ANGELICA GOMEZ**
[RMP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-10-2019 [\[15\]](#)

AJAX MORTGAGE LOAN TRUST 2019-A, MORTGAGE-BACKED
RENEE PARKER/ATTY. FOR MV.
CASE DISMISSED 9/16/19

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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 amount 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.

The movant, Ajax Mortgage Loan Trust, 2019-A, Mortgage-Backed Securities, Series 2019-A, by U.S. Bank National Association, as indenture trustee ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(4) concerning real property located at 38 Parkgrove Drive in South San Francisco, CA 94080 ("Property"). Doc. #15.

Under § 362(d)(4), if the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval OR multiple bankruptcy filings affecting such real property, then an order entered under paragraph (4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order.

After review of the included evidence, the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of all or

part ownership of the subject real property without the consent of the secured creditor or court approval.

On or about October 4, 2006, Carols A. Avelar and Maria D. Avelar ("Borrowers") executed an promissory note in the original amount of \$950,000.00. Doc. #18. Movant is in constructive possession of the Note and is entitled to enforce the Note. Id. The note is secured by a deed of trust encumbering real property located at 38 Parkgrove Drive in South San Francisco, CA 94080, executed by borrowers on or about October 4, 2006 and recorded in San Mateo County on October 20, 2006. Id. Movant is the assignee and/or successor in interest under the deed of trust.

Borrowers filed bankruptcy twice, stalling Movant's foreclosure sales. Id. Debtor here claims an interest in the Property. The amount due and owing under the loan is \$1,313,977.10. Id. On or about August 26, 2019, Borrowers executed a grant deed, giving an interest in the Property to debtor as tenants in common. Doc. #19, exh. H. The court notes that this bankruptcy case was filed on August 28, 2019. The recent dismissal of the case does not preclude the relief requested. See, In re Aheong, 276 B.R. 233 (B.A.P. 9th Cir, 2002); In re Vasquez, 580 B.R. 526, 530 (Bankr. C.D. Cal. 2017).

The Court having rendered findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, as incorporated by Federal Rule of Bankruptcy Procedure 7052:

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) vacated concerning real property located at 38 Parkgrove Drive in South San Francisco Avenue, CA 94080; and

IT IS FURTHER ORDERED, pursuant to 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval; or multiple bankruptcy filing affecting such real property. The order shall be binding in any other case under Title 11 of the United States Code purporting to affect the real property described in the motion not later than two years after the date of entry of the order.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived.

17. [18-14689](#)-B-7 **IN RE: JAVIER GONZALEZ**
[FW-3](#)

CONTINUED MOTION FOR TURNOVER OF PROPERTY
4-15-2019 [\[22\]](#)

JAMES SALVEN/MV
THOMAS GILLIS
PETER FEAR/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 12, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

Based on the chapter 7 trustee's status report, the lack of discovery that has been performed, and at the trustee's request, this motion is continued to December 12, 2019 at 1:30 p.m. to allow discovery to continue.

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

MOTION TO COMPEL
9-11-2019 [\[53\]](#)

JAMES SALVEN/MV
THOMAS GILLIS
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 amount 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.

Federal Rule of Civil Procedure 37(a)(3)(B)(iii) is made applicable to this contested matter by operation of Federal Rule of Bankruptcy Procedure 9014 and 7037 and permits the Trustee to move for an order compelling answers to interrogatories propounded under Rule 33.

Fed. R. Civ. P. 37(a)(3)(B)(iv) is made applicable to this contested matter by operation of Fed. R. Bankr. P. 9014 and 7037, and permits the Plaintiff to move for an order compelling production if a party fails to produce documents or failing to permit inspection of documents as requested under Rule 34.

Fed. R. Civ. P. 37(a)(4) requires that any evasive or incomplete answer or response be treated as a failure to answer or respond.

The record shows that the debtor's answers to interrogatories 1, 2, 3, 5, and 8 are evasive and/or incomplete. Additionally, debtor's answer to interrogatory no. 5(e) was not specific and was not signed by debtor's counsel. See Fed. R. Civ. P. 33(b)(4) and (5).

Debtor did not oppose.

This motion is GRANTED. Debtor shall fully answer, in writing and under oath as required by Fed. R. Civ. P. 33(b)(3), the Trustee's interrogatories nos. 1, 2, 3, 5, and 8 within 10 days of the issuance of the court's order. The non-certified objection to interrogatory no. 5(e) is stricken. Debtor shall also respond to requests to produce nos. 8 through 27 and to produce documents responsive to the same within 10 days of the issuance of the court's order.

19. [18-14689](#)-B-7 **IN RE: JAVIER GONZALEZ**
[FW-5](#)

MOTION TO COMPEL
9-11-2019 [\[48\]](#)

JAMES SALVEN/MV
THOMAS GILLIS
PETER FEAR/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Default entered against Anna Gonzalez on the motion, only.

ORDER: Order preparation determined at the hearing.

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 amount 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.

The trustee has moved to compel the turnover of property, which was opposed both by the debtor and Anna Gonzalez. Trustee's interrogatories and requests for production directed to Ms. Gonzalez have not been answered. Doc. #48.

Anna Gonzalez appeared on the turnover motion and opposed the Trustee's request for relief. One ground of opposition was that an Adversary Proceeding would be the appropriate forum for this dispute. Anna Gonzalez is not a debtor. A request for turnover against a non-debtor must be by Adversary Proceeding. F.R.B.P. 7001 (1).

The court is aware there is a dispute as to ownership of the property. No Adversary Proceeding has been filed against Ms. Gonzalez. So, even though Ms. Gonzalez has not opposed this discovery motion, it is questionable whether she can be compelled to respond to discovery demands that are only authorized against parties. The docket does not reflect Ms. Gonzalez's agreement to be bound by a ruling on the turnover motion.

Federal Rule of Civil Procedure 37(a)(3)(B)(iii) is made applicable to this contested matter by operation of Federal Rule of Bankruptcy Procedure 9014 and 7037 and permits the Trustee to move for an order compelling answers to interrogatories propounded under Rule 33.

Fed. R. Civ. P. 37(a)(3)(B)(iv) is made applicable to this contested matter by operation of Fed. R. Bankr. P. 9014 and 7037, and permits the Plaintiff to move for an order compelling production if a party fails to produce documents or failing to permit inspection of documents as requested under Rule 34.

Ms. Gonzalez has not responded to any of the Trustee's communications regarding the production of documents and interrogatories. Doc. #51.

Default of Ms. Gonzalez will be entered.

20. [19-12397](#)-B-7 **IN RE: JEFFERY CASH**
[PLG-4](#)

MOTION TO AVOID LIEN OF THE BEST SERVICE CO., INC.
9-25-2019 [\[44\]](#)

JEFFERY CASH/MV
RABIN POURNAZARIAN

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 will submit a proposed order after hearing.

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.

This motion is GRANTED. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the 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 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of The Best Service Co., Inc. in the sum of \$8,382.00 on October 4, 2018. Doc. #47. The abstract of judgment was recorded with Fresno County on January 15, 2019. Id. That lien attached to the debtor's interest in a residential real property in Fresno, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$185,000.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$129,106.31 on that same date, consisting of a first deed of trust in favor of Wells Fargo Home Mortgage. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(2) in the amount of \$100,000.00. Id.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

11:00 AM

1. [19-13100](#)-B-7 **IN RE: ZACHERY/BRITTANY BELL**

REAFFIRMATION AGREEMENT WITH CARMAX AUTO FINANCE
8-30-2019 [[26](#)]

SUSAN HEMB

NO RULING.

2. [19-12643](#)-B-7 **IN RE: JAMES MACMINN**

REAFFIRMATION AGREEMENT WITH FORD MOTOR CREDIT COMPANY
8-30-2019 [[17](#)]

GEORGE ALONSO

NO RULING.

3. [19-13162](#)-B-7 **IN RE: HECTOR RODRIGUEZ PORRAS AND MARIA RODRIGUEZ**

REAFFIRMATION AGREEMENT WITH ALLY BANK
9-4-2019 [[24](#)]

SUSAN HEMB

NO RULING.

4. [19-12484](#)-B-7 **IN RE: ALLISON KENYON**

PRO SE REAFFIRMATION AGREEMENT WITH AMERICAN HONDA FINANCE CORP.
9-10-2019 [[16](#)]

NO RULING.

5. [19-13489](#)-B-7 **IN RE: ISMAEL QUINONEZ**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION - 2017
HYUNDAI SONATA
9-17-2019 [\[9\]](#)

TIMOTHY SPRINGER

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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.

6. [19-13489](#)-B-7 **IN RE: ISMAEL QUINONEZ**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION - 2015
FORD MUSTRANG
9-17-2019 [\[11\]](#)

TIMOTHY SPRINGER

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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.

1:30 PM

1. [17-14619](#)-B-7 **IN RE: AMANDA/CALVIN HAMM**
[19-1056](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-6-2019 [[1](#)]

U.S. TRUSTEE V. HAMM ET AL
ROBIN TUBESING/ATTY. FOR PL.

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

DISPOSITION: Continued to October 22, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

By prior order of the court, the status conference would be continued to the date of plaintiff's motion for entry of default judgment, if one were to be filed prior to this hearing. Plaintiff filed a motion for entry of default judgment, which is set for hearing on October 22, 2019 at 1:30 p.m. Therefore, this status conference is continued to that date and time.

2. [19-11293](#)-B-7 **IN RE: JEFFREY/JAIME HULL**
[19-1094](#)

STATUS CONFERENCE RE: COMPLAINT
8-7-2019 [[1](#)]

HULL V. U.S. DEPARTMENT OF EDUCATION ET AL
TIMOTHY SPRINGER/ATTY. FOR PL.

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

DISPOSITION: Continued to November 13, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

It appears that the complaint and summons were not served. Plaintiff shall obtain a reissued summons and properly serve the reissued summons and complaint on the necessary parties.