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

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

Prior to the hearing, parties appearing via Zoom or CourtCall are encouraged to review the court's Zoom Policies and Procedures or CourtCall Appearance Information.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided:

| | |
|---|---|
| **Video web address:** | https://www.zoomgov.com/j/1617718762?pwd=MXF2dFBYemFZQkJHcFZDS3hnWlJIQT09 |
| **Meeting ID:** | 161 771 8762 |
| **Password:** | 143356 |
| **ZoomGov Telephone:** | (669) 254-5252 (Toll Free) |

Please join at least 5 minutes before the start of your hearing and wait with your microphone muted until your matter is called.

**Unauthorized Recording is Prohibited:** Any recording of a court proceeding held by video or teleconference, including "screenshots" or other audio or visual copying of a hearing, is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings please refer to Local Rule 173(a) of the United States District Court for the Eastern District of 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, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

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

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

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

**9:30 AM**

1. 22-11540-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
CAE-1

STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
9-1-2022 [1]

RILEY WALTER/ATTY. FOR DBT.

NO RULING.

2. 22-11540-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
KL-1

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
9-13-2022 [34]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Modify automatic stay as set forth below.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order to be signed and approved as to form by Debtor's bankruptcy counsel.

This motion was originally heard on September 27, 2022. Doc. #80. This matter will be called and proceed as scheduled.

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

Debtor-in-possession Valley Transportation, Inc. ("Debtor") opposed the motion at the September 27, 2022 hearing. Doc. #80. As a result, the court continued the hearing on this motion to October 27, 2022. Doc. #62. Debtor was permitted to file and serve any opposition not

later than October 13, 2022, and Movant was permitted to file and serve any reply not later than October 20, 2022. *Id.*

On October 13, 2022, Debtor timely filed written opposition, exhibits, and supporting declarations. Doc. #93.

Movant timely replied on October 20, 2022. Doc. #99.

On October 24, 2022, Debtor filed an adversary complaint against Movant styled *Valley Transportation, Inc., a California Corporation v. Andrew Mendoza*. *See* Adv. Proc. No. 22-1025 ("Adv. Proc."), Doc. #1. The adversary complaint seeks a judgment enjoining Movant from seeking to continue efforts to pursue non-debtors Deborah Simpson and Rodney Heintz in a different Fresno County Superior Court action styled *Andrew Mendoza v. Rodney Heintz, an individual; Deborah Simpson, an individual; and Barrett Business Services, Inc., a corporation*, Case No. 22CECG02752 ("Non-Debtor Action"). Debtor has a pending motion for a temporary restraining order and preliminary injunction filed on shortened time, which is the subject of matter #6 below.

BACKGROUND

Movant is a former employee of Debtor who alleges that he was wrongfully terminated from his employment on or about September 4, 2020, after notifying Debtor's agents that he was diagnosed with Stage IV kidney cancer while also being diagnosed with COVID-19. Docs. #37, *Ex. A;* ##94-95.

As a result of the purported wrongful termination, Movant filed a lawsuit against Debtor and two of its employees, Rodney Heintz and Deborah Simpson, in Fresno County Superior Court. Doc. #94. Those claims were removed to the United States District Court, Eastern District. *Id.* After Debtor moved to dismiss, Movant filed a First Amended Complaint rendering the motion moot. Thereafter, Movant obtained permission to voluntarily dismiss and refile the original complaint without prejudice so Movant could preserve past non-economic damages should he pass away during litigation. Doc. #38.

On or about March 4, 2022, Debtor filed the State Court Action against Debtor and DOES 1-100 in Los Angeles Superior Court alleging wrongful termination and other related causes of action. Doc. #37, *Exs. B*, *C*. Simpson and Heintz were not named as defendants. Debtor sought to transfer venue on the basis that Los Angeles County was inappropriate. Doc. #94. While the motion to transfer venue was still pending, Movant filed a motion for trial preference in the Fresno County Superior Court. A copy of that motion is included as an exhibit. Doc. #92, *Ex. B*. Per the docket of the State Court Action, it appears that the motion to transfer venue to Fresno County was granted on or about May 25, 2022. Doc. #37, *Ex. C*, at 9.

Debtor's First Amended Complaint was filed in the State Court Action on or about August 22, 2022. *Id.*, *Ex. B*.

The Fresno County Superior Court granted Movant's motion for trial by preference under Cal. Code Civ. Proc. § 36 and set an initial trial date of November 28, 2022 before the Honorable Kimberly Gaab. *Id.*, *Ex. C*. The reason for granting the trial preference was due to Movant's stage IV kidney cancer. Doc. #38. Movant's expert witness, oncologist Phillip Beron, M.D., states that as of June 16, 2022, there was "substantial medical doubt that [Movant] would survive longer than six months . . ." Doc. #37, *Ex. D*.

Following the ruling on the trial preference, Movant served at least 63 deposition notices and deposition subpoenas to third parties, including Debtor's current and former employees, customers, and vendors. Docs. #94; #93, *Ex. D*. Debtor has apparently responded to written discovery, but no depositions have occurred, and expert discovery has not been completed. Doc. #38.

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

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

On September 2, 2022, Movant also filed lawsuits in Fresno County Superior Court against the principal agents of Debtor, Rodney Heintz and Deborah Simpson, and against Debtor's third-party administrator, Barrett Business Services, Inc. ("BBSI"). *Id.*

CONTENTIONS

Debtor does not dispute that Movant's lawsuit will be tried in the Superior Court, but it does dispute when stay relief should be granted. Doc. #92.

Debtor requires a "breathing spell" while it completes the Initial Debtor Interview ("IDI") process scheduled for October 5, 2022, completes the meeting of creditors on October 11, 2022, attends the chapter 11 status conference on October 27, 2022, and files its chapter 11 plan by the November 30, 2022 statutory deadline. After those tasks are completed, Debtor will stipulate to relief from the automatic stay with the following protections:

a. Relief from the automatic stay is effective as of 15 days after the Debtor's Plan of Reorganization is filed or December 15, 2022, whichever is earlier.
b. The parties may proceed to litigate the dispute to a final judgment.
c. The award, if any, will be returned to this court for determination as to the allowed amount with no enforcement action without further order of this court.
d. The separately pending state court action brought by Movant against D. Simpson, R. Heintz, and BBSI shall be stayed pursuant to 11 U.S.C. § 105(a) pending further order of this court.
e. Movant may take no more than ten total depositions of Debtor's employees, former employees, customers or former customers, and expert witnesses.

*Id.* Debtor insists that this motion is premature because it was filed only days after the petition date and the exclusivity period requires a higher burden on the creditor seeking relief from the automatic stay. *Id.*, citing *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375 (1988); *Matter of Molley's, Inc.*, 140 B.R. 643, 701 (Bankr. W.D. Mich. 1992). Further, Debtor argues that Movant has failed to meet his elevated burden of establishing that cause exists to lift the automatic stay.

In response, Movant contends that the IDI process, meeting of creditors, and status conference have already passed by the time of this hearing, and that stay relief will not hinder Debtor's ability to propose a subchapter V plan. Doc. #99. Movant claims that Debtor has hired two state court counsels to represent it in the two pending state court lawsuits, who have been paid approximately $400,000 in retainers to defend the Debtor. Since Debtor has state court counsel to represent it in the State Court Action that have been paid a retainer, Movant claims that there is no reason the lawsuit cannot go forward while Debtor simultaneously prepares to propose a plan.

Additionally, Movant attempts to distinguish the *Timbers* case in that Movant is not seeking stay relief based on the fact that the plan is not confirmable and is instead seeking to proceed with his state court lawsuit, for which cause exists to lift the stay.

## DISCUSSION

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

### *Curtis* Factors

When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court must

consider the "*Curtis* factors" in making its decision. *Kronemyer v. Am. Contractors Indem. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). The relevant factors in this case include:

> 1. Whether the relief will result in a partial or complete resolution of the issues;
> 2. The lack of any connection with or interference with the bankruptcy case;
> 3. Whether the foreign proceeding involves the debtor as a fiduciary;
> 4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
> 5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
> 6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
> 7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee, and other interested parties;
> 8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
> 9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
> 10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
> 11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
> 12. The impact of the stay on the parties and the "balance of hurt."

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

The parties addressed the *Curtis* factors as follows:

1. Partial or complete resolution of the issues: Movant originally claimed that allowing him to proceed with the State Court Action would result in a complete resolution of the matter. Doc. #39. The "heart" of Movant's lawsuit is a wrongful termination claim that has been pending in state court. Movant has conducted discovery and seeks to complete discovery and proceed to trial. A trial date was previously set and vacated due to this bankruptcy. Additionally, Movant wishes to join the State Court Action with a related Non-Debtor Action against the Deborah Simpson and Rodney Heintz.

Debtor contests that the relief from the stay to proceed with lawsuit would result in a partial or complete resolution of the issues.

Doc. #92. By footnote, it indicates that Movant would not consider Debtor's settlement proposal without first reviewing Debtor's financial information, so allowing Debtor to file its plan could actually assist with resolution of Movant's claim. *Id.*, citing Hatmaker Decl., Doc. #94; #93, *Ex. C*.

Additionally, Debtor is responsible for defending and indemnifying Deborah Simpson and Rodney Heintz, who are sued in the Non-Debtor Action identical facts.

In response, Movant describes Debtor's argument as "non-sensical." Doc. #99. By granting relief from stay, Movant says he will be able to join its two pending state court cases — the State Court Action and the Non-Debtor Action — and resolve both by way of trial. Debtor's responsibility to defend its employees/principals does not change the fact that the pending lawsuits could be fully resolved in state court. Since the Non-Debtor Action is not against the Debtor in bankruptcy, having the two cases tried together in state court will result in a complete resolution of all issues. This factor appears to favor modification of the automatic stay.

2. Lack of connection with or interference with the bankruptcy case: The State Court Action does not appear to be a core proceeding under 28 U.S.C. § 157(b)(2). Doc. #39. Movant claims he will not interfere with the bankruptcy case but instead will do the opposite. The state court will likely allow the State Court Action to proceed with a preference trial at an early date as it did prior to the trial date vacatur.

Debtor disagrees, insisting that stay relief would significantly interfere with Debtor's reorganization. Doc. #92, citing *Curtis*, 40 B.R. at 806 ("Even a slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit."). By losing the "breathing room" of the automatic stay, Debtor fears that Movant will resume his "abusive discovery tactics." Debtor expects that the cost of complying Movant's discovery tactics could exceed $300,000 to take the case through trial, which will substantially diminish the amount available to pay creditors and significantly impact Debtor's reorganization. Doc. #94. Further, Movant's discovery will disrupt Debtor's current and former employees, customers, and vendors while operating in an uncertain economy with a looming recession and high inflation.

In response, Movant argues that his attorneys' decision to "zealously litigate" the case on behalf of their client is not abusive. Doc. #99. Given Movant's terminal condition, he does not have the luxury of delay. Further, no court has made any findings that Movant has engaged in abuse of the discovery process, so Debtor's accusations are unfounded. As to Debtor's desire for breathing room, Movant says that Debtor has already received breathing room by delaying the preference trial. *Id.*

Additionally, Movant argues that Debtor incurring costs in defending itself is not sufficient cause for delaying relief from the stay. *Id.*, citing *In re Santa Clara Cty. Fair Ass'n, Inc.*, 180 B.R. 564, 566 (B.A.P. 9th Cir. 1995) ("Ordinarily, litigation costs to a bankruptcy estate do not compel a court to stay relief."). Movant also contends that the claimed potential disruptions to customer and vendor relations and the impact on reorganization are inherent whenever a corporate entity files a bankruptcy.

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

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

5. Insurance carrier's assumption of responsibility in defending: Debtor does not have insurance coverage for Movant's claims, nor has any insurance carrier assumed financial responsibility for defending the State Court Action. Simpson Decl., Doc. #95. Debtor says that if it is forced to litigate the State Court Action, it will be forced to pay for the cost of defense on its own. Doc. #92. Given Movant's discovery tactics, the estimated $300,000 in costs to defend the State Court Action, and Debtor's lack of insurance coverage, Debtor believes stay relief will cause a significant burden on reorganization.

In response, Movant says that this factor does not favor denying relief from the stay. Doc. #99. Debtor's lack of insurance does not absolve it from litigating the claims against it. Further, Debtor's assets appear to be sufficient to defend the lawsuit because it has hundreds of thousands of dollars in cash on reserve and it is not facing liquidation. Since the parties agree the State Court Action should be tried in state court, Movant contends this factor supports stay relief so that the parties can try the merits and determine the amount of Movant's claim in the bankruptcy case.

6. Whether the action involves third parties and debtor functions only as a bailee for goods or proceeds: Heintz, Simpson, and BBSI are defendants in the related Non-Debtor Action lawsuit, which Movant seeks to consolidate with the State Court Action. However, Debtor does not appear to be functioning as a bailee for goods or proceeds.

But because the Non-Debtor Action against Heintz, Simpson, and BBSI has not been consolidated with the State Court Action, there are no third parties involved in this action, which Debtor argues weighs against stay relief. Doc. #92.

Movant intends to consolidate the two lawsuits if this motion is granted. Doc. #99.

This factor appears to be inapplicable, but if the lawsuits are consolidated, then it weighs in favor of stay relief.

7. Prejudice to other creditors and interested parties: Movant claims other creditors and parties would not be prejudiced because this case would no longer be burdened with trying Movant's claim, allowing the court to deal with the other claims against Debtor more easily. Doc. #39.

On the contrary, Debtor claims that defending against Movant's claim will require significant discovery expenses in attorneys' fees and costs, which could otherwise go to pay Debtor's creditors. Doc. #92. Also, due to Movant's aggressive discovery, Debtor believes that proceeding with the lawsuit would result in interruption and damage to Debtor's business operations, which would prejudice Debtor's reorganization efforts. This bankruptcy case is still in its early stages, as evidenced by a $2 million dollar claim from the Internal Revenue Service, including nearly $1 million dollars in priority claims that have been filed while this motion has been pending.

In response, Movant asks how these burdens, if true, would be eliminated by trying this case in bankruptcy court as opposed to state court. Doc. #99. Since Debtor has already retained state court counsel, allowing the lawsuits to resume in state court would allow Debtor to focus on its reorganization. If Debtor is able to succeed in defending its claim, more money will be available to pay unsecured creditors.

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

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

10. Interests of judicial economy and expeditious and economical determination of litigation for the parties: Movant argues that judicial economy weighs in favor of allowing the State Court Action to proceed in Fresno County Superior Court because a trial date had been set before this bankruptcy was filed and Movant has previously succeeded in obtaining a preference trial date. Doc. #39.

Debtor concedes that allowing the State Court Action to proceed in state court would remove the dispute from the bankruptcy court's docket, but still claims that it would not necessarily result in the "expeditious and economical" resolution of the case. Doc. #92. Since the pleadings have not yet been settled in the State Court Action, and Movant's discovery and trial tactics have resulted in "outrageously costly" litigation, stay relief would not be economical.

Movant insists this factor undeniably favors granting relief from the stay because the State Court Action was already set for a preference

trial and would have proceeded to trial within a few weeks but for this bankruptcy. Doc. #99. Given Movant's health, he is determined to proceed in the fastest way possible and will seek to have a trial set in state court on preference. This factor appears to support modification of the stay.

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

Debtor says that the pleadings in the State Court Action are not yet settled. Debtor has not filed an answer to Movant's complaint, Movant has not responded to pending written discovery, and no depositions have been taken, including no expert witness depositions. Doc. #92. Thus, the case has not progressed to the point where the parties are prepared for trial. Debtor accuses Movant of spending more time forum shopping and filing the Non-Debtor Action against Heintz, Simpson, and BBSI, rather than litigating.

But a trial date was in fact set for November 28, 2022, Movant did set depositions, and written discovery has been exchanged. Doc. #99. But for this bankruptcy, the trial would have proceeded in approximately one month. This factor supports modification of the stay.

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

Debtor reiterates that lifting the stay would suffer severe prejudice through the cost of litigation, the expense of time and energy that would impact business operations, and the delay while waiting for Movant's claim to be liquidated in another forum. Doc. #92. Debtor has proposed a modification of the automatic stay that would allow Movant to proceed with liquidation of his claims.

Additionally, Debtor inquires about an update on Movant's condition. Debtor notes that Movant's expert medical opinion indicated Movant had only six months to live, but more than eight months have passed since then. As a result, Debtor claims that Movant has failed to meet his burden.

Further, Debtor says that Movant has been responsible for delays in bringing his claims to state court, including the filing in an improper forum, voluntarily dismissing the case in another forum, and twice amending his pleadings to avoid a motion to dismiss and demurrer. *Id.*

In response, Movant is aware that defending the lawsuit would be burdensome, as is every lawsuit. Doc. #99. Movant does not have much

longer to live and is also burdened by the lawsuit, as well as this bankruptcy filing, and the termination from his employment that led to the lawsuits. Movant reiterates that Debtor's financial condition does not absolve it from responsibility for pre-petition wrongdoings.

As to his medical condition, Movant notes that the expert medical opinion was not that Debtor would die on a specific day, only that there is substantial medical doubt that the Plaintiff will live more than six months. The balance of prejudice is clear, says Movant, in that he could lose his "day in court" if this motion is rejected.

This factor appears to support modification of the stay.

In sum, though highly contested, the *Curtis* factors appear to support modification of the automatic stay.

*Tucson Estates* Factors

"Where a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues, cause may exist for lifting the stay as to the state court trial." *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990).

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

> (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of the bankruptcy court's docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

*Id.*, at 1167 quoting *In re Republic Reader's Serv., Inc.*, 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987).

Here, Movant argues that the *Tucson Estates* factors support abstention. Doc. #39. Debtor, meanwhile, argues that these factors are

inapplicable because there is no ongoing proceeding in bankruptcy court. Doc. #92. In response, Movant says that its claim in this bankruptcy case is an ongoing proceeding in which the court may abstain in favor of resolution by the state court. Doc. #99.

As noted above, Debtor has since filed an adversary proceeding against Movant. Adv. Proc. No. 22-1025. Therefore, there is an ongoing proceeding in bankruptcy court and abstention is undoubtedly applicable.

The *Tucson Estates* factors appear to support modification of the stay as follows:

1. Effect on administration of the estate if the court abstains: Movant contends that abstention would promote the efficient administration of the estate by relieving this court of the burden of its lawsuit that Movant had already filed and can be resolved expeditiously because it is expected to be set on preference. Doc. #39. This factor weighs in favor of abstention.

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

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

4. Presence of a related proceeding commenced in state court: Movant intends to join the State Court Action with a related proceeding against Heintz, Simpson, and BBSI, which is already commenced in state court. This factor supports abstention.

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

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

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

8. Feasibility of severing state law claims from core bankruptcy matters: There do not appear to be any core bankruptcy issues in the State Court Action that could be severed from state law claims. This factor weighs in favor of abstention.

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

10. Likelihood of forum shopping: Movant contends that the tenth factor does not apply. However, if the hearsay regarding Debtor's filing of bankruptcy to hinder or delay Movant were to be admitted, it would suggest that some forum shopping could exist.

In contrast, Debtor has accused Movant of forum shopping by originally filing the complaint in Los Angeles County.

This factor appears to be neutral or slightly weighs in favor of abstention.

11. Existence of a right to a jury trial: All parties have a right to a jury trial, so this factor supports abstention.

12. Presence of non-debtor parties in related proceedings: The State Court Action is related to the Non-Debtor Action lawsuit against Heintz, Simpson, and BBSI and Movant intends to consolidate the two actions if this motion is granted, so there are non-debtor parties in related proceedings. This factor supports abstention.

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

Waiver of the 14-day Stay

To the extent this court is inclined to grant this motion, Debtor requests that waiver of the 14-day stay of Rule 4001(a)(3) be denied. Doc. #92. The 14-day stay enables Debtor, or any other party, to seek a stay pending appeal of an adverse ruling. *Id.*, citing *In re R.K. Best, Inc.*, 2013 Bankr. LEXIS 3247, at *26 (Bankr. E.D. Cal. 2013). Since the granting of relief from the stay will have a severe and immediate impact on Debtor by forcing it to immediately contend with abusive discovery tactics, Debtor insists that the 14-day stay should not be waived.

But in response, Movant says that waiver of the 14-day stay should be granted because this case is distinguishable from a situation such as

an imminent foreclosure sale, or imminent trial, in which the Debtor would be prejudiced by waiver of the 14-day stay. Doc. #99. The last trial that was set by the state court on preference has been vacated due to this bankruptcy, so no trial is currently scheduled. Movant's health condition results in a race against time to prosecute the State Court Action before the end of his life.

CONCLUSION

This matter will be called and proceed as scheduled. After weighing all of the factors above, the court is inclined to modify the automatic stay to permit Fresno County Superior Court Case No. 22CECG01786, styled *Andrew Mendoza v. Valley Transportation, Inc. and DOES 1 to 100, inclusive*, to proceed only as follows:

1. Either party may take the testimony deposition of Movant, Andrew Mendoza.
2. Either party may propound and respond to written discovery.
3. Movant and Debtor may notice and take the depositions of 10 witnesses each as permitted by California law.
4. Movant and Debtor may present any law and motion or discovery disputes to the Fresno County Superior Court without further order of this court. The Fresno County Superior Court may rule on those motions, including but not limited to the issuance of sanctions. No sanctions may be enforced against the Debtor or the estate without further order of this court.
5. Debtor may file pleadings responding to the complaint.
6. Either party may amend their pleadings as permitted by applicable laws.

Further stay relief may be granted by separate motion as permitted under the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and the Local Rules of Practice of this court.

The 14-day stay under Rule 4001(a)(3) will be ordered WAIVED due to Movant's terminal health condition, and because Debtor's concerns that the State Court Action will severely impact its reorganization are abated by the limitations described above.

3. 22-10947-B-11 **IN RE: FLAVIO MARTINS**
MB-12

FINAL HEARING RE: AMENDED MOTION TO USE CASH COLLATERAL, AMENDED MOTION FOR ADEQUATE PROTECTION
10-6-2022 [204]

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

NO RULING.

The court issued an interim order authorizing further use of cash collateral on September 30, 2022. Doc. #202. The order authorized Debtor to use cash collateral beginning October 1, 2022 through October 29, 2022 in accordance with the attached Budget and with a 10% weekly variance, with one modification: other than the direct $315,000 payment to Bank of the Sierra ("BOTS") from the purchaser of the 300 dry jersey cows budgeted in Week 19 of the Budget, no additional payments to BOTS were authorized pending the final hearing on this motion. *Id.*

On October 6, 2022, Debtor amended the underlying motion upon discovering a third entity with a security interest in the cash collateral: the Internal Revenue Service ("IRS"). Doc. #204.

At this final hearing, Debtor intends to provide BOTS, Western Milling ("WM"), and the IRS with adequate protection by caring for and maintaining the cash collateral, granting replacement liens on accounts receivable and other property generated by Debtor of the same type and nature as existed when Debtor filed the case, and by making $279,117 per month adequate protection payments to BOTS as provided in the Budget, as well as the December installment of the 2022-23 real property taxes. *Id.*

In sum, Debtor seeks (1) authorization to use cash collateral from October 1, 2022 through December 31, 2022 in the total weekly amounts as set forth in the Budget, with a 10% weekly variance; (2) authorization to use cash collateral on an interim basis on a revolving weekly basis starting October 1, 2022, and continuing through the week of October 9, 2022 or a further hearing on the motion, whichever occurs later, in the total weekly amount set forth in the Budget with a 10% variance; (3) an order granting adequate protection to BOTS, WM, and the IRS; and (4) either continuing the interim hearing on this motion to a date certain to allow for further interim cash collateral use and the filing of a revised Budget as may be necessary to reflect sales of estate assets that may occur in the next few months, or setting a final hearing on the motion.

The hearing on this motion will be called and proceed as scheduled.

4. 22-10061-B-11 **IN RE: CALIFORNIA ROOFS AND SOLAR, INC.**
MJB-5

MOTION FOR COMPENSATION FOR MICHAEL JAY BERGER, DEBTORS ATTORNEY(S)
9-13-2022 [125]

MICHAEL BERGER/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Michael J. Berger ("Applicant"), general counsel for debtor-in-possession California Roofs and Solar, Inc. f/k/a CMSED Enterprises, California Roofs and Solar ("Debtor"), requests final compensation in the sum of $39,846.12 under 11 U.S.C. §§ 330, 331, and Fed. R. Bankr. P. 2016. Doc. #125. This amount consists of $38,293.00 in fees as reasonable compensation for services rendered, and $1,553.12 in reimbursement for actual, necessary services from January 18, 2022 through August 31, 2022. *Id.*

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

For motions filed on 28 days' notice, LBR 9014-1(f)(1)(B) requires the movant to notify respondents that any opposition to the motion must be in writing and filed with the court at least 14 days preceding the date of the hearing.

Here, the motion was filed and served on September 13, 2022 and originally set for hearing on October 26, 2022. Docs. ##125-31. The next day, September 14, 2022, Applicant filed an amended notice to correct the date of the hearing to October 27, 2022. Doc. #132. September 14, 2022 is 43 days before October 27, 2022. Therefore, this motion was set for hearing on 28 days' notice under LBR 9014-1(f)(1). However, both the original and the amended notice included the following identical language:

> NOTICE IS FURTHER GIVEN that no written opposition to the Application is required; opposition, if any, to the Application may be made orally at the hearing. See L.B.R. 9014-1(f)(1).

Docs. #126; #132, Lines 2:11-14. This is incorrect. Because the hearing was set on 28 days' notice, LBR 9014-1(f)(1) is applicable and the notice should have stated that written opposition was required, must be filed 14 days before the hearing, and failure to file written opposition may be deemed a waiver of any opposition to the granting of the motion. Instead, the respondents were told not to file and serve written opposition even though it was necessary. Therefore, the notice

was materially deficient. If the movant gives 28 days or more of notice of the hearing, there is no option to simply pretend that the motion was set for hearing on less than 28 days of notice to dispense with the court's requirement that any opposition must be in writing and filed with the court. Additionally, under LBR 9014-1(d)(3)(B)(i), the motion must include the names and addresses of the persons who must be served with such opposition.

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

5. 22-10885-B-11 **IN RE: SYNCHRONY OF VISALIA, INC.**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
5-25-2022 [1]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

The court is in receipt of the *Debtor-in-Possession's Second Chapter 11 Status Conference Statement* dated October 19, 2022. Doc. #135.

This status conference will be called and proceed as scheduled.

6. 22-11540-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
22-1025 WJH-1

MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR MOTION FOR ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION
10-25-2022 [12]

VALLEY TRANSPORTATION, INC. V.
MENDOZA
RILEY WALTER/ATTY. FOR MV.
OST 10/25/22

NO RULING.

**11:00 AM**

1. 22-11558-B-7 **IN RE: DAVID PHO**

REAFFIRMATION AGREEMENT WITH WELLS FARGO BANK N.A.
10-5-2022 [14]

ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION: Dropped; taken off calendar.

NO ORDER REQUIRED.

Debtor's counsel shall notify the debtor that no appearance is necessary. This Reaffirmation Agreement was filed on October 5, 2022 (Doc. #14) and it was signed by the Debtor's attorney with the appropriate attestations. The form of the Reaffirmation Agreement complies with 11 U.S.C. §§ 524(c) and (k). Pursuant to 11 U.S.C. § 524(d), the court need not approve the agreement. Accordingly, the hearing will be DROPPED from and taken off calendar.

**1:30 PM**

1. 22-10005-B-7 **IN RE: PATRICIA TESSENDORE**
ICE-1

AMENDED MOTION TO COMPEL
10-10-2022 [83]

IRMA EDMONDS/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Chapter 7 trustee Irma C. Edmonds ("Trustee") moves for an order compelling the debtor to appear and testify at the continued meeting of creditors scheduled for November 14, 2022 at 12:00 p.m. Doc. #83. However, this motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

On July 29, 2022, Trustee filed an *ex parte* application to approve stipulation to extend the time to file a complaint to determine dischargeability or to deny discharge under 11 U.S.C. §§ 523 and 727. Doc. #71. The court approved that stipulation on August 1, 2022. Doc. #74. The DCN for that motion was ICE-1.

On September 20, 2022, Trustee filed a motion to compel Debtor to appear at the continued meeting of creditors on October 3, 2022. Doc. #79. Debtor amended the motion to compel by filing this amended motion on October 10, 2022. Doc. #83. The DCN for both the original and amended motion is also ICE-1, and therefore neither comply with the local rules. Each new motion requires a different, unused DCN.

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

2. 19-10016-B-7 **IN RE: QUALITY FRESH FARMS, INC.**
LNH-6

MOTION TO COMPROMISE CONTROVERSY SAL PARRA, SAL PARRA JR, BURFORD FAMILY FARMING CO. L.P., GROWERS FARM MANAGEMENT INC, GEORGE GARCIA , MOTION FOR COMPENSATION BY THE LAW OFFICE OF MILLER & AYALA LLP FOR NATHAN S. MILLER, SPECIAL COUNSEL
9-28-2022 [119]

JAMES SALVEN/MV
RILEY WALTER/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order with a copy of the stipulation attached as an exhibit and shall separately file and docket the same as a stipulation.

Chapter 7 trustee James E. Salven ("Trustee") moves for an order (1) approving a settlement agreement between the estate and Sal Parra, Sal Parra, Jr., Burford Family Farming Company, L.P., Growers Farm Management, Inc., George Garcia, and Does 1 through 50 (collectively "Defendants") under Federal Rule of Bankruptcy Procedure ("Rule") 9019, and (2) approving and authorizing Trustee to pay Miller & Ayala, LLP's ("Special Counsel") attorney fees of $475,000.00 and expenses of $7,647.09 on a final basis. Doc. #119. Trustee also requests waiver of the 14-day stay of Rule 7062. *Id.*

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(3) and (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.

This motion affects the proposed disposition and Special Counsel. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion and allow the relief requested by the movant here as to Special Counsel and use the court's discretion to add a party under Civ. Rule 21.

Compensation is separate from approval of the compromise, so the court will allow their joinder in this motion under Civ. Rule 18 (Rule 7018) because it is economical to handle this motion in this manner absent objection. This rule is not incorporated in contested matters absent court order under Rule 9014(c) and affected parties are entitled to notice. Trustee, having requested this relief, is deemed to have notice. Since no party timely filed written opposition, defaulted parties are deemed to have consented to application of this rule.

Background

Before filing bankruptcy, Quality Fresh Farms, Inc. ("Debtor") engaged Special Counsel as its attorney to prosecute a state court action, Case No. 18CECG01340 against Defendants alleging breach of contract, negligent misrepresentation, negligence, and fraud arising from events occurring in 2017. Doc. #122. Trustee says that in early 2017, Debtor leased farmland from defendant Burford to grow a watermelon crop. Debtor asserts that Burford, the Parras, and Grower's Farm Management (through its owner, Garcia), agreed to provide various farm management and pest control services to Debtor. *Id.* Specifically, Burford, the Parras, and Grower's Farm all agreed that they would manage all aspects of the farming operations, including inspecting crops daily and providing all recommendations for pest control, fertilizer, soil nutrition, and plant pathology. *Id.*

Debtor filed chapter 7 bankruptcy on January 4, 2019. Doc. #1. Trustee was appointed as interim trustee on January 8, 2019 and became permanent trustee at the first § 341 meeting on February 13, 2019. Doc. #5; docket generally.

After filing bankruptcy, Trustee engaged Special Counsel to prosecute the action on behalf of the estate, which was approved by this court on June 10, 2019. Doc. #100.

After extensive discovery, several mediation sessions, and a trial date looming, the parties agreed to settle the action for $950,000.00. Of this amount, Trustee wishes to pay $475,000.00 in attorney's fees and $7,647.09 in expenses on a final basis.

Compensation

11 U.S.C. § 327 allows the trustee, with the court's approval, to employ one or more attorneys, accountants, auctioneers, or other professional persons to represent or assist the trustee in carrying out the trustee's duties. The professional is required to be a disinterested person and neither hold nor represent interests adverse to the estate. § 327(a).

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

Under the terms of Special Counsel's employment order, Special Counsel shall be paid a 50% contingency fee on any recovery, and reimbursement of expenses incurred, unless at the time of the fee application, the court determines that such terms and conditions are improvident in light of developments not capable of being anticipated at the time of employment. *Id.*

Since the gross recovery on this settlement agreement is $950,000.00, Special Counsel's 50% contingency fees results in **$475,000.00** in fees. Special Counsel also incurred the following expenses, totaling **$7,647.09:**

| | |
|---|---|
| Postage | + $96.49 |
| Copies | + $239.00 |
| Filing Fees | + $544.61 |
| Service Fees | + $512.84 |
| Appearance Fees | + $307.25 |
| Mediation Fees | + $1,350.00 |
| Deposition Costs | + $4,596.90 |
| **Total Costs** | = **$7,647.09** |

Doc. #123, *Ex. A*. The combined contingency fees and expenses total **$482,647.09.**

The court will authorize Special Counsel's compensation to be paid as prayed. Trustee will be authorized to pay Special Counsel $482,647.09 in compensation for services rendered to the estate from the $950,000.00 gross settlement, which consists of $475,000.00 in contingency fees (50% of $950,000) and $7,647.09 in expenses.

Approval of Settlement

After vigorously disputing the nature and extent of Debtor's damages, and their respective liability for any damages, the Defendants ultimately agreed to settle the litigation with Trustee for $950,000.00 in exchange for Trustee releasing his claims against Defendants and dismissing the litigation. Doc. #122.

Trustee says that the settlement was negotiated in good faith at arm's length between the parties after significant discovery and with the help of a mediator. Trustee and the Defendants were both represented by their respective counsel.

Under the terms of the settlement, Trustee will release all claims and dismiss with prejudice the state court action against the Defendants in exchange for payment of $500,000.00 from George Garcia and Growers Farm Management, Inc., and payment of $450,000.00 from Sal Parra, Sal Parra, Jr., and Burford Family Farming Company, LP, both through their respective insurance carriers and within 21 days after Defendants receive notice that the court has approved the settlement agreement and the time to appeal the order has run without an appeal being filed. Doc. #123, *Ex. B*. The stipulation also contains other terms and conditions, but it is filed as an exhibit, not as a stipulation.

Trustee now seeks approval of the parties' settlement agreement. Doc. #119.

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

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

1. Probability of success in litigation: Defendants vigorously dispute the nature and extent of Debtor's damages, and Defendants' liability for the harms. Trustee says that a trial would hinge on the believability of fact witnesses with conflicting recollections, and whether accounting experts could effectively prove Debtor's economic losses. Trustee estimates a 50% chance of success at trial, which would require significant administrative expenses that could reduce any potential recovery. This factor heavily favors approval of the settlement.

2. Difficulties in collection: Trustee believes that he would not experience difficulties in collecting the judgment if Trustee prevailed at trial because the Defendants appear to have the resources to pay a judgment, and also appear to have insurance coverage for at least a portion of any judgment. This factor weighs against approval of the settlement.

3. Complexity of litigation: Taking the case to trial, Trustee says, would require the testimony of expert forensic accounting witnesses to substantiate Debtor's damages upon the total loss of the watermelon crop. Litigation has already incurred over $7,000.00 in expenses and prosecuting the case would likely cost over $40,000.00 in expert fees. Based on the case's progress in state court, Trustee estimates that the matter would have been ready for trial within a month of the hearing on this motion. However, after verdict, either party may seek an appeal, which is likely to take another 18-24 months if the parties do not seek time extensions, which are routine. By settling this litigation with the Defendants, Trustee has avoided two years or more of litigation and appeals. This factor weighs heavily in favor of approving the settlement.

4. Interests of creditors: Trustee says that approval of the settlement will resolve Debtor's claim for the best possible settlement available under the facts, which will pay costs of administration of this case and provide approximately $400,000 to pay claims. In the absence of the settlement, creditors may not be paid until the claim is fully litigated through trial and appeal provided that Trustee does not lose. This factor supports approving the settlement.

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

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED, and the stipulation approved. The court concludes that the compromise is in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.*

The proposed order shall include an attached copy of the stipulation as an exhibit. A copy of the stipulation shall also be filed separately and docketed as a stipulation.

Waiver of 14-day stay

Trustee's request for waiver of the 14-day stay of Rule 7062 will be DENIED because Trustee presents no legal or factual bases in support of such waiver. *See Paladino v. S. Coast Oil Corp. (In re S. Coast Oil Corp.)*, 566 F. App'x 594, 595 (9th Cir. 2014) (affirming waiver of 14-day stay because time was of the essence due to regulatory deadlines);

*In re Ormet Corp.*, 2014 LEXIS 3071 (Bankr. D. Del. July 17, 2014) (finding cause to lift 14-day stay because the buyer required closing before the stay would expire). There do not appear to be any circumstances warranting waiver of the stay under Rule 7062(h).

3. 19-10016-B-7 **IN RE: QUALITY FRESH FARMS, INC.**
LNH-7

MOTION TO PAY
9-28-2022 [124]

JAMES SALVEN/MV
RILEY WALTER/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") seeks authority to pay (a) administrative tax claims in the amount of $3,067.28 to the Franchise Tax Board ("FTB") for taxes, penalties, and interest on account of its Proof of Claim 71-3, (b) any additional interest or penalties as may be assessed by the State of California, (c) an additional amount for unexpected tax liability incurred by the estate (but not for a tax of a kind specified in § 507(a)(8)), and (d) another $800.00 for tax year 2023, with the total payments not exceeding $4,500.00. Doc. #124.

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 Cloobeck)*, 788 F.3d 1243, 1246 (9th Cir. 2015).

Quality Fresh Farms, Inc. ("Debtor") filed chapter 7 bankruptcy on January 4, 2019. Doc. #1. Trustee was appointed as interim trustee on January 8, 2019 and became permanent trustee at the first § 341 meeting on February 13, 2019. Doc. #5; docket generally. Trustee employed Ratzlaff, Tamberi, & Wong ("Accountant") as the estate's accountant effective January 28, 2019. Doc. #25. Trustee has determined that Debtor owes $3,067.28 and $800.00 in taxes owed to FTB on account of its claim and for tax year 2023. Doc. #126; *cf.* Claim 71-3. Trustee also requests approval of an additional amount as a small buffer, not to exceed the total combined sum of $4,500.00 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, $3,067.28 to FTB on account of Claim 71-3, and $800.00 for the 2023 tax year. Further, Trustee will be authorized to pay an additional amount not to exceed a combined total of $4,500.00 for any unexpected tax liabilities without further court approval.

4. 22-11224-B-7 **IN RE: PAULETTA SEEBOHM**
FW-3

MOTION TO SELL AND/OR MOTION TO PAY
9-22-2022 [30]

JAMES SALVEN/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
GABRIEL WADDELL/ATTY. FOR MV.

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

DISPOSITION: Granted

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

Chapter 7 trustee James E. Salven ("Trustee") requests an order authorizing the sale of the estate's interest in residential real property located at 4504 N. Valentine Avenue, Apartment 182, Fresno, CA 93722-4065 ("Property") to Eric Wolf and Jeanette Wolf ("Proposed Buyers") for $142,000.00 under 11 U.S.C. § 363, subject to higher and better bids at the hearing, and (ii) to pay broker commission of 6% under 11 U.S.C. §§ 327(a), 328, and 330, to be split equally between Berkshire HomeServices California Realty ("Broker") and the buyer's real estate broker. Doc. #30. Trustee also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 6004(h). *Id.*

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(2) and (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. 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.

This motion affects the proposed disposition and the Broker. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion

and allow the relief requested by movant here as to the proposed broker and use the court's discretion to add a party under Civ. Rule 21.

Compensation is separate from the sale. Since payment of Broker's compensation and the sale are separate claims, the court will allow their joinder in this motion under Civ. Rule 18 (Rule 7018) because it is economical to handle this motion in this manner absent an objection. This rule is not incorporated in contested matters absent court order under Rule 9014(c) and affected parties are entitled to notice. Trustee, having requested this relief, is deemed to have notice. Since no party timely filed written opposition, defaulted parties are deemed to have consented to application of this rule.

Pauletta Seebohm ("Debtor") filed chapter 7 bankruptcy on July 18, 2022. Doc. #1. Trustee was appointed as interim trustee on that same day and became permanent trustee at the first § 341 meeting of creditors on August 18, 2022. Doc. #5; docket generally. In the course of administering the estate, Trustee investigated the estate's assets, which included Property. Trustee now seeks to sell Property pursuant to 11 U.S.C. § 363(b).

Compensation of Broker

On August 16, 2022, Trustee moved to employ Broker to assist the trustee in carrying out the trustee's duties by selling property of the estate. Doc. #16. The court authorized Broker's employment on August 24, 2022 under 11 U.S.C. §§ 327 and 328. Doc. #21.

Pursuant to the employment order, Trustee requests to compensate Broker and the buyer's broker a commission of 6%, which will be split equally between Broker and the buyer's real estate broker. Doc. #30. Trustee believes that this is a reasonable compensation for the services performed by Broker, including listing Property for sale, soliciting offers, showing the Property, marketing the Property, and negotiating the terms of the sale with the buyer. *Id.*

If sold at the proposed sale price, Broker and the buyer's broker will split $8,520.00 in compensation: $4,260.00 each. The court will authorize Trustee to pay the brokers' compensation as prayed.

Proposed Sale

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir.

1996); *In re Wilde Horse Enters., Inc.,* 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC,* 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). Trustee wishes to sell Property to Proposed Buyer. There is nothing in the record suggesting that Proposed Buyer is an insider with respect to Debtor. Proposed Buyers are neither listed in the schedules nor the master address list. Docs. #1; #4.

Trustee declares that he entered into a contract with Proposed Buyer to sell Property for $142,000.00. Docs. #32; #33, *Ex. A.* The sale is subject to a number of relevant terms and conditions. Namely, Proposed Buyer has agreed that the sale of Property is as-is, where-is, that the seller will do no repairs, and the sale is subject to bankruptcy court approval and potential overbids. Doc. #32. Further, in negotiating the sale, the Proposed Buyers requested $2,000.00 in credit for repairs. After negotiating, Proposed Buyers and Trustee agreed to a credit of $1,000.00 to the Proposed Buyers for those repairs to be paid out of escrow. *See* Doc. #33, *Ex. C.*

Trustee includes a copy of the preliminary title report. Doc. #33, *Ex. B.* Property is subject to a deed of trust securing an approximate $76,923.00 debt owed to Mortgage Electronic Registration Systems, solely as nominee for Sierra Pacific Mortgage Company, Inc., which was subsequently assigned to The Bank of New York Mellon Fka the Bank of New York, as Trustee for Tue Certificateholders CWALT, Inc., Alternative Loan Trust 2006-35CB, Mortgage Pass-Through Certificates, Series 2006-35CB. *Id.* Additionally, taxes are currently owed or in default. Both the deed of trust and the taxes will be paid through escrow. Doc. #32.

Additionally, the preliminary title report lists potential liens and charges payable to Camelot West Association, which are homeowners association dues. Trustee is not aware of any such due and payable amounts, but Trustee requests authority to pay off such homeowners association dues to the extent necessary to close the sale of the Property. *Id.*

Debtor claimed an exemption in Property in the amount of $73,174.00 pursuant to Cal. Code Civ. Proc. § 704.730. Doc. #1. However, Debtor has agreed to equally divide the proceeds of the sale of the Property

with the bankruptcy estate, capped at the amount of her exemption. Doc. #32.

If sold at the proposed sale price, the sale would be illustrated as follows:

| | |
|---|---|
| Sale price | $142,000.00 |
| Bank of NY Mellon deed of trust | - $76,926.00 |
| Estimated taxes | - $1,420.00 |
| Estimated HOA dues | - $0.00 |
| Estimated costs of sale | - $2,840.00 |
| Estimated broker fee (6%, split) | - $8,520.00 |
| Repair credit to buyer | - $1,000.00 |
| Estimated net proceeds | = $51,294.00 |
| **Estimated net proceeds to estate after division with Debtor** | = **$25,647.00** |

*Id.* The sale under these circumstances should maximize potential recovery for the estate. The sale of the Property appears to be in the best interests of the estate because it will pay off the deed of trust and provide liquidity that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be authorized to sell the Property to the prevailing bidder at the hearing and pay Broker and the buyer's broker for its services. Trustee is further authorized to pay all costs, commissions, and real property taxes directly from escrow.

Waiver of 14-day Stay

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

Overbid Procedure

Any party wishing to overbid shall deposit with Trustee's counsel certified monies in the amount of $4,560.00 prior to the time of the sale motion hearing, provide proof in the form of a letter of credit, or some other written pre-qualification for any financing that may be required to complete the purchase of the Property sufficient to cover any necessary overbid amount, and provide proof that any successful overbidder can and will close the sale within 15 days of delivery of a certified copy of the court's order approving the sale and execute a Purchase Agreement for the Property. The successful overbid shall have the $4,560.00 deposit applied to the successful overbid price and unsuccessful bidders' deposits shall be returned at the conclusion of the hearing.

In the event a successful overbidder fails to close the sale within 15 days of delivery of a certified copy of the court's order approving the sale and execute a Purchase Agreement for the Property, the $4,560.00 deposit shall become non-refundable, and the next highest bidder shall become the buyer. Any party wishing to overbid may do so by making an appearance at the hearing or having an authorized representative with written proof of authority to bid on behalf of the prospective overbidder. All overbids shall be in the minimum amount of $1,000.00 such that the first of any overbid shall be in the minimum amount of $143,000.00.

The sale of Property is in "as-is" condition with no warranty or representations, express, implied, or otherwise by the bankruptcy estate, the Debtor, or their representatives.

5. 22-11224-B-7 **IN RE: PAULETTA SEEBOHM**
FW-4

MOTION TO SELL
9-22-2022 [25]

JAMES SALVEN/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
GABRIEL WADDELL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") requests an order authorizing the sale of the estate's interest in a 2010 Toyota Corolla ("Estate Asset") to Pauletta Seebohm ("Debtor") for $6,200.00 under 11

U.S.C. § 363, subject to higher and better bids at the hearing. Doc. #13. Trustee also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 6004(h).

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

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

Pauletta Seebohm ("Debtor") filed chapter 7 bankruptcy on July 18, 2022. Doc. #1. Trustee was appointed as interim trustee on that same day and became permanent trustee at the first § 341 meeting of creditors on August 18, 2022. Doc. #5; docket generally. In the course of administering the estate, Trustee investigated the estate's assets, which included Property. Trustee now seeks to sell Property pursuant to 11 U.S.C. § 363(b).

Proposed Sale

11 U.S.C. § 363(b)(1) allows the trustee to "sell or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners v. Colony GFP Partners, Ltd. P'Ship (In re 240 N. Brand Partners)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference." *Id.*, citing *In re Psychometric Sys.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

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

The Estate Asset is listed in the schedules as a 2010 Toyota Carola LE with 79,000 miles, has body damage, and is valued at $6,200.00 with no encumbrances. Doc. #1, *Scheds. A/B, D*. Debtor claimed a $3,625.00 exemption in the vehicle pursuant to Cal. Code Civ. Proc. § 704.010. *Id.*, *Sched. C*. Debtor will receive a $3,625.00 exemption credit towards the purchase price, resulting in $2,575.00 in net proceeds to the estate if the sale is completed as proposed.

Trustee received an offer from Debtor to purchase the Estate Asset at the sale price indicated, which he accepted subject to court approval and higher and better bids. Doc. #27. The source of funds for payment is a portion of the exempt funds Debtor will receive from the sale of her residence in matter #4 above. FW-3. There will be no tax consequences to the estate as a result of this sale. Doc. #27. Trustee believes the sale price is fair when considering the cost of obtaining court approval to hire an auctioneer for the estate, plus commissions and costs.

The sale appears to be in the best interests of creditors and the estate, for a fair and reasonable price, supported by a valid exercise of Trustee's business judgment, and was proposed in good faith. The sale subject to higher and better bids will maximize estate recovery and yield the best possible sale price.

No party has filed opposition to the sale. Accordingly, this motion will be GRANTED, and the sale will proceed for higher and better bids only. Trustee will be authorized to sell the Estate Asset to the highest bidder as determined at the hearing.

Waiver of 14-day Stay

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

Overbid Procedure

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

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

6. 10-12725-B-7 **IN RE: LEONARD/DEANNA RAGLE**
FW-6

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT AND/OR MOTION FOR COMPENSATION BY THE LAW OFFICE OF KLINE & SPECTER, P.C. FOR TOBI MILLROOD, SPECIAL COUNSEL(S), MOTION FOR COMPENSATION BY THE LAW OFFICE OF SOKOLOVE LAW FOR RICKY A. LEBLANC, SPECIAL COUNSEL(S)
9-28-2022 [74]

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

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order with a copy of the stipulation attached as an exhibit and shall separately file and docket the same as a stipulation.

Chapter 7 trustee James E. Salven ("Trustee") moves for an order (1) approving a settlement agreement between the estate and a defendant manufacturer in a multi-district litigation ("MDL") under Federal Rule of Bankruptcy Procedure ("Rule") 9019; (2) authorizing Trustee to enter into, execute, and deliver any releases and other documents as may be required to effectuate the settlement; (3) approving and authorizing Trustee to pay Kline & Specter and Sokolove Law (collectively "Special Counsel") attorney fees totaling $30,607.42, which will be split by Special Counsel 80/20, plus reimbursement of Special Counsel's costs; and (4) authorizing Trustee to further pay (i) $6.04 for a Medicare lien reimburse and (ii) sums of $700 and $875 for a bankruptcy fee and a lien resolution fee, respectively, to Archer Systems. Doc. #74.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(3) and (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.

This motion affects the proposed disposition and Special Counsel. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion and allow the relief requested by the movant here as to Special Counsel and use the court's discretion to add a party under Civ. Rule 21.

Compensation is separate from approval of the compromise, so the court will allow their joinder in this motion under Civ. Rule 18 (Rule 7018) because it is economical to handle this motion in this manner absent objection. This rule is not incorporated in contested matters absent court order under Rule 9014(c) and affected parties are entitled to notice. Trustee, having requested this relief, is deemed to have notice. Since no party timely filed written opposition, defaulted parties are deemed to have consented to application of this rule.

Background

On or about October 7, 2008, pre-petition, joint debtor Deanna K. Ragle ("Debtor") was implanted with an allegedly defective product. Doc. #77.

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

On August 25, 2019, Debtors retained Special Counsel to pursue a product liability claim against the manufacturer of the allegedly defective product ("Liability Claim"). Doc. #77. Special Counsel guided the Liability Claim into the MDL with many other similar claims. *Id.*

The case was reopened July 27, 2021 after the U.S. Trustee learned that the Debtors failed to schedule an interest in the lawsuit, which was property of the estate. Docs. ##18-19.

After filing bankruptcy, Trustee engaged Special Counsel to prosecute the action on behalf of the estate, which was approved by this court on August 12, 2022. Doc. #62.

In an effort to resolve the MDL, the manufacturer, while disclaiming liability, established a fund from which qualified claimants would be paid. Doc. #77. Special Counsel satisfied the requirements to establish that the Liability Claim is eligible for compensation from this fund from which a gross payment of $100,000.00 will be paid. Of this amount, Trustee wishes to pay contingency fees and expenses totaling $30,607.42 on a final basis.

Compensation

11 U.S.C. § 327 allows the trustee, with the court's approval, to employ one or more attorneys, accountants, auctioneers, or other professional persons to represent or assist the trustee in carrying out the trustee's duties. The professional is required to be a disinterested person and neither hold nor represent interests adverse to the estate. § 327(a).

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

Under the terms of Special Counsel's employment, Special Counsel's 33/3% contingency fees will be split 80/20 such that Kline & Specter will receive 80% and Sokolove Law will receive 20%, plus reimbursement of Special Counsel's costs. Doc. #77.

Prior to calculating fees, the $100,000.00 gross settlement is subject to several reductions. *Id.* Specifically, the court in which the MDL is pending has ordered a 5% "common benefit assessment" to be deducted from each claimants share, which equates to $5,000.00 here. *Id.* Additionally, each claimant's attorney fee is subject to a slight reduction, which reduces the remaining $31,635.00 (33.3% of $95,000) fee down to $30,607.42. *Id.* The 80/20 split results in fees of $24,485.94 for Kline & Specter and $6,121.48 in fees for Sokolove Law. *Id.* Additionally, Kline & Specter has incurred $3,177.75 in costs for

which it seeks reimbursement. This results in total compensation for Kline & Specter in the amount of **$27,663.69** and Sokolove Law in the amount of **$6,121.48**, for a combined total of $33,785.17.

The court will authorize Special Counsel's compensation to be paid as prayed. Trustee will be authorized to pay Special Counsel's combined $33,785.17 in compensation for services rendered to the estate from the $100,000.00 gross settlement, which consists of $24,485.94 in fees and $3,177.75 in expenses for Kline & Specter, and $6,121.48 in fees for Sokolove Law.

Approval of Settlement

In exchange for releasing Debtor's Liability Claim against the defendant manufacturer in the MDL, the defendant has agreed to settle the litigation with Trustee for $100,000.00. Doc. #76.

In addition to the attorneys' fees and costs and the common benefit assessment described above, Trustee says that there is a nominal reimbursement of $6.04 to Medicare for a lien and a combined $1,575.00 for Archer Systems for bankruptcy and lien resolution fees. *Id.*

The proposed distribution of settlement proceeds is as follows:

| | | |
|---|---|---|
| Gross settlement amount | | $100,000.00 |
| Common Benefit Assessment | - | $5,000.00 |
| Attorney fees for Kline & Specter | - | $24,485.94 |
| Attorney fees for Sokolove Law | - | $6,121.48 |
| Attorney costs reimbursement | - | $3,177.75 |
| Medicare lien | - | $6.04 |
| Archer Systems: bankruptcy fee | - | $700.00 |
| Archer Systems: lien resolution fee | - | $875.00 |
| **Net to estate** | = | **$59,633.79** |

*Id.* Trustee now seeks approval of the settlement. Doc. #74.

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

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

1. Probability of success in litigation: Were Trustee to continue litigating the Liability Claim, it is uncertain whether he would ultimately prevail at trial. Trustee believes the facts constitute a legitimate claim for damages, and thus that the Liability Claim would be meritorious, there are inherent uncertainties presented in trying a case of any kind, including those involving injury claims. It is too speculative to know whether the Liability Claim would prevail at trial. This factor favors approval of the settlement.

2. Difficulties in collection: Trustee says that the settlement proceeds are being handled by a third-party settlement administrator. Upon receiving the court order approving resolution, the administrator will issue funds to Trustee pursuant to an established "batch payment" schedule. Trustee foresees no issue with collection, but the fact that it is an already-established, reputable, and readily accessible source tips in favor this factor supporting approval of the settlement.

3. Complexity of litigation: This case is very complicated as a result of the allegedly defect device being implanted over 20 years, and the commencement of the Liability Claim nearly ten years ago. The case is part of many, many similar cases joined together in the MDL. If the case were to proceed to trial, Special Counsel would be required to disclaim this procedure, which may result in Trustee losing Special Counsel's services entirely. This would require Trustee to find another attorney competent to handle the claim, as well as expend conservable additional resources to determine issues of causation and damages. It is possible that the injuries sustained were worth more than the settlement offer but defining those injuries apart from the settlement procedures from the claim pool would be costly, and ultimately may result in a determination by the jury that there is no liability to the manufacturer. Such result would require extensive and costly expert evaluation, reports, and testimony, and would ultimately be subject to appeal, which would further delay receipt of any proceeds for the estate.

4. Interests of creditors: Trustee says that approval of the settlement will result in a net of $59,633.79 to the estate, subject to a capped exemption of the Debtor. Remaining funds will be property of the estate to be distributed to creditors. In the absence of the settlement, creditors may not be paid until the claim is fully litigated through trial and appeal provided that Trustee does not lose. Given that this case was originally a "no asset" case, this factor supports approving the settlement.

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

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED, and the stipulation approved. The court concludes that the compromise is in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d

849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.*

The proposed order shall include an attached copy of the stipulation as an exhibit. A copy of the stipulation shall also be filed separately and docketed as a stipulation.

7. 21-11635-B-7 **IN RE: JUAN CORDERO**
ICE-3

MOTION FOR COMPENSATION FOR IRMA CORRAL EDMONDS, TRUSTEES ATTORNEY(S)
9-19-2022 [63]

MONICA ROBLES/ATTY. FOR DBT.
IRMA EDMONDS/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.

Irma C. Edmonds ("Applicant"), general counsel for chapter 7 trustee James E. Salven ("Trustee"), requests final compensation in the sum of $7,597.20. Doc. #63. This amount consists of $7,336.50 in fees as reasonable compensation and $260.70 in reimbursement for actual, necessary expenses from January 10, 2022 through September 16, 2022. *Id.*

Trustee has reviewed the application, has no objections to the proposed payment, and indicates that the bankruptcy estate currently has funds on hand in the approximate amount of $24,500.00. Doc. #67.

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. ("Rule") 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.

Juan Cordero ("Debtor") filed chapter 7 bankruptcy on June 28, 2021. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341 meeting of creditors on August 5, 2021. Doc. #3; docket generally. Trustee moved to employ Applicant on January 11, 2022. Doc. #28. The court approved Applicant's employment January 20, 2022, effective January 10, 2022. Doc. #31. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for legal services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Monthly applications for interim compensation under § 331 would be entertained, but no such interim applications have been filed. Applicant's services here were within the time period prescribed by the employment order.

This is Applicant's first and final fee application. Applicant's firm provided 22.10 billable hours at the following rates, totaling **$7,336.50** in fees as follows:

| **Professional** | **Rate** | **Hours** | **Total** |
|---|---|---|---|
| Attorney | $400 | 17.25 | $6,900.00 |
| Paralegal | $90 | 4.85 | $436.50 |
| **Total Hours & Fees** | | **22.10** | **$7,336.50** |

Docs. #65; #66, *Ex. A*. Applicant also incurred **$260.70** in expenses:

| | |
|---|---|
| Copies | $209.00 |
| Postage | + $51.70 |
| **Total Costs** | = **$260.70** |

*Id.* These combined fees and expenses total **$7,597.20.**

11 U.S.C. § 330(a)(1)(A) and (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" 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) providing counsel to the Trustee as to the administration of the case; (2) providing services in connection with the Trustee's sale of real property for $25,000.00, including working with Trustee's broker on

the sale, preparing and filing the motion for approval (ICE-2), and handling various matters with the escrow and title company; (3) preparing and filing Applicant's employment application (ICE-1); and (4) preparing and filing this fee application (ICE-3). Docs. #63; #65; #66, *Ex. A*. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Trustee has reviewed the application, consents to payment of the requested fees and expenses, and indicates that the estate has approximately $24,500.00 in funds on hand. Doc. #67.

No party in interest timely filed written opposition to this motion. Accordingly, this motion will be GRANTED. Applicant will be awarded $7,336.50 in reasonable fees and $260.70 in actual, necessary expenses on a final basis pursuant to § 330. Trustee will be authorized, in his discretion, to pay Applicant $7,597.20 on the terms outlined above for services rendered and costs incurred from Au January 10, 2022 through September 16, 2022.

8. 21-11445-B-7 **IN RE: GOBINDER/HARINDER AUJLA**
JCW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-23-2022 [46]

HONDA LEASE TRUST/MV
PETER BUNTING/ATTY. FOR DBT.
VINCENT FROUNJIAN/ATTY. FOR MV.
DISCHARGED 9/7/21, RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The movant, Honda Lease Trust ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2019 Honda Accord ("Vehicle"). Doc. #46.

Gobinder Singh Aujla and Harinder Aujla filed non-opposition to this motion and will contact Movant to arrange for the surrender of the collateral, or to negotiate a renewal of lease. Doc. #52.

This motion will be DENIED AS MOOT.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46

F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

This motion relates to an executory contract or lease of personal property. The case was filed on June 1, 2021 and the lease was not assumed by the chapter 7 trustee within the time prescribed in 11 U.S.C. § 365(d)(1). Pursuant to § 365(p)(1), the leased property is no longer property of the estate and the automatic stay under § 362(a) has already terminated by operation of law. This motion is moot to the estate's interest.

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The Debtors' discharge was entered on September 7, 2021. Doc. #43. Therefore, the automatic stay terminated with respect to the Debtors on September 7, 2021. This motion is moot as to the Debtors' interest.

For the above reasons, this motion will be DENIED AS MOOT.

9. 22-10060-B-7 **IN RE: CURTIS/CHARTOTTE ALLEN**
TCS-2

MOTION BY TIMOTHY C. SPRINGER TO WITHDRAW AS ATTORNEY
10-5-2022 [85]

TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Timothy C. Springer ("Counsel"), attorney for Curtis James Allen and Charlotte Yvette Allen (collectively "Debtors"), seeks to withdraw as counsel of record for the Debtors. Doc. #85.

This motion was filed and served pursuant to LBR 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the defaults of non-responding parties will be entered. 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.

Debtors retained Counsel on January 12, 2022. Doc. #87, *Ex. D*. Counsel took on the representation in good faith, believing that Debtors would understand the court proceedings based on their prior filing and proceed in a manner that would allow them to pay the arrearages on their house. Doc. #85. After filing the case, Counsel discovered that the house had already been sold and the escrow company was holding the surplus.

Debtors have separately asserted that they are not subject to the jurisdiction of the bankruptcy court because they are living flesh and blood beings, their names were in all-capital letters, and other reasons. Doc. #45, citing the "Cestui Qui Vie Act of 1666."

The case was converted to chapter 7 on July 27, 2022. Doc. #71. The motion says that Counsel drafted the schedules and amendments required for chapter 7 and asked the Debtors repeatedly to sign those documents, but Counsel has received no response. Doc. #85.

Debtors did not appear at the first chapter 7 § 341 meeting scheduled on August 29, 2022. *See* docket generally. Debtors also did not appear at the continued § 341 meeting scheduled for September 29, 2022, and it has since been further continued to October 31, 2022. *Id.*

Prior to the first meeting on August 29, 2022, Debtors sent an email to Counsel and the chapter 13 trustee claiming that they do not consent to contract with Counsel, the chapter 13 trustee, the Bankruptcy Court, or anyone else involved, and Debtors refused to appear. Doc. #87, *Ex. C*. Additionally, Counsel included a copy of the Debtors' contract for chapter 13 bankruptcy services. *Id.*, *Ex. D*.

Based on the actions of the Debtors, their comments made in court, and the email stating that they are not represented by Counsel, the motion requests to withdraw as counsel for the Debtors.

LBR 2017-1(e) provides that an attorney who has appeared may not withdraw leaving the client *in propria persona* without leave of the court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal of an attorney is governed by the Rules of Professional Conduct of the State Bar of California and Counsel shall conform to the requirements of those rules.

The motion here omits an affidavit stating the current or last known address or addresses of the Debtors as required by LBR 2017-1(e). Although there is a description of Counsel's efforts to notify the client, no declarations are included with this motion.

Cal. R. Prof'l Conduct ("RPC"), Rule 1.16(b)(5) (formerly 3-700(C)(1)(f)), permits a lawyer to withdraw from representing a client

if the client breaches a material term of an agreement with the lawyer relating to representation, and the lawyer has given the client a reasonable warning after the breach that the lawyer will withdraw unless the client fulfills the agreement.

RPC 1.16(b)(4) (formerly 3-700(C)(1)(d)) permits withdrawal if the client by other conduct renders it unreasonably difficult for the lawyer to carry out the representation effectively.

Here, under the terms of their contract with Counsel, Debtors' obligations are:

a. To respond immediately to any requests of the Debtor by the Attorney or the Attorney's staff;
b. To provide accurately and honestly all the information necessary to prepare and file the Chapter 7 bankruptcy;
c. To keep the attorney advised at all time of the Debtor's address and telephone numbers;
d. To attend the 341 Creditors Meeting and any other hearings set in the case;
e. To cooperate with and provide any information requested of the Debtor by the chapter 7 trustee, the U.S. Trustee, or any other party in the case, unless the Court rules that the Debtor is not required to provide the information;
f. To pay the fees as set out above.

Doc. #87, *Ex. D*.

Withdrawal under RPC 1.16(b)(5) appears to be appropriate because Debtors are refusing to (i) immediately respond to Counsel's requests, (ii) to attend the § 341 meeting, and (iii) to cooperate with the chapter 7 trustee.

Withdrawal under RPC 1.16(b)(4) also appears to be available because the motion indicates that Debtors are being unreasonably difficult because they do not consent to contract with anyone involved in this bankruptcy, are disclaiming Counsel's representation of them, and are refusing to appear at the § 341 meeting of creditors.

This matter will be called and proceed as scheduled. If granted, Debtors will be left *pro se* post-withdrawal and Counsel's authority and duty as attorney for Debtors shall continue until the court enters an order. Any order shall include Debtors' names and last known addresses.

10. 21-10368-B-7 **IN RE: SIMONA PASILLAS**
JES-5

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, CHAPTER 7 TRUSTEE(S)
9-28-2022 [116]

JAMES SALVEN/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") requests statutory compensation of $14,631.92 under 11 U.S.C. §§ 326, 330. Doc. #116. This amount consists of $13,525.00 as statutory fees for services rendered to the estate and $1,106.92 in actual, necessary expenses from February 12, 2021 through case closing. *Id.*

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

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

Simona Pasillas ("Debtor") filed chapter 7 bankruptcy on February 12, 2021. Doc. #1. Applicant was appointed as interim trustee on that same date and became permanent trustee at the first § 341 meeting of creditors on March 11, 2021. Doc. #5; docket generally. Trustee administered the estate, submitted the final report to the U.S. Trustee on or about August 7, 2022, and now seeks final compensation. Doc. #118. The final report was approved by the U.S. Trustee and filed on September 21, 2022. Doc. #111.

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

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

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

(a) $1,250.00 (25%) of the first $5,000.00;
(b) $4,500.00 (10%) of the next $45,000.00; and
(c) $7,775.00 (5%) of the next $155,500.00.

Docs. #118; #122, *Ex. A*. These percentages comply with the restrictions imposed by § 326(a) and total **$13,525.00**. The total disbursements were $205,500. *Id.* Trustee also incurred **$1,106.92** in expenses as follows:

| | | |
|---|---|---|
| Certified copy of order (1 @ $11.50) | | $11.50 |
| Copies (638 @ $0.20) | + | $127.60 |
| CourtCall (1 @ $22.50) | + | $22.50 |
| Filing/Serving Motion | + | $750.66 |
| Re-keying locks | + | $150.00 |
| Overnight title for auction | + | $35.86 |
| Postage for tax returns | + | $8.80 |
| **Total Costs** | = | $1,106.92 |

Docs. #119, *Ex. A*; #122, *Ex. A*. These combined statutory fees and expenses total **$14,631.92**.

11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses. 11 U.S.C. § 330(a)(1)(A) & (B). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Trustee's services included but were not limited to: (1) conducting the meeting of creditors; (2) employing general counsel, auctioneers, and an accountant, and selling real property (JES-1; JES-2; JES-3); (3) preparing the Final Report; and (4) preparing and filing this fee application (JES-5). The court finds Trustee's services and expenses actual, reasonable, and necessary to the estate.

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be awarded $14,631.92 as final compensation pursuant to §§ 326, 330.

11. 22-10569-B-7 **IN RE: SUMAIRA RAHMAN**
AP-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-22-2022 [134]

FIRST-CITIZENS BANK & TRUST COMPANY/MV
WENDY LOCKE/ATTY. FOR MV.
DISMISSED 10/7/22

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

First-Citizens Bank & Trust Company, successor by merger to CIT Bank, N.A. seeks relief from the automatic stay with respect to real property located at 12104 Timberpointe Drive, Bakersfield, CA 93312 under 11 U.S.C. § 362(d)(1) and (d)(2). Doc. #134. However, this case was dismissed on October 7, 2022. Doc. #151. Under § 362(c)(1) and (c)(2)(B), the stay against property of the estate continues until such property is no longer property of the estate, and the stay of any other act continues until the time the case is dismissed. Accordingly, this motion will be DENIED AS MOOT.

12. 22-10569-B-7 **IN RE: SUMAIRA RAHMAN**
JCW-3

MOTION TO RECONSIDER
9-19-2022 [123]

SUMAIRA RAHMAN/MV
SUMAIRA RAHMAN/ATTY. FOR MV.
DISMISSED 10/7/22

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The court will issue an order.

Sumaira Rahman ("Debtor"), *pro se*, requests that the court reconsider its order granting relief from the automatic stay for MTGLQ Investors, L.P.s ("Creditor") on September 9, 2022. Doc. #123. After granting Creditor's motion for relief from the automatic stay, Debtor simultaneously filed a notice of appeal and this motion for reconsideration on September 19, 2022. Docs. #122; #123. Debtor did not set the motion for reconsideration for hearing.

Although the filing of a notice of appeal generally divests a bankruptcy court of jurisdiction, a motion timely filed under Fed. R. Bankr. P. ("Rule") 9023 or 9024 effectively suspends the notice until disposition of the motion. Rule 8002(b)(1), (b)(2); *Moldo v. Ash (In re Thomas)*, 428 F.3d 1266, 1269 (9th Cir. 2005); *In re Adelphia Communs. Corp.*, 327 B.R. 175 (Bankr. S.D.N.Y. 2005). As a result, on September 27, 2022, the court issued an order setting this motion for hearing. Doc. #146. The order provided that Creditor may file and serve a written response, if any, to Debtor's motion not later than October 13, 2022, and Debtor may file and serve a written reply, if any, not later than October 20, 2022. *Id.*

Neither Creditor nor Debtor filed any responses or replies. In the interim, Debtor's bankruptcy case was dismissed on October 7, 2022 for failure to appear at the § 341 meeting of creditors. Doc. #151. Since the case has been dismissed, the request for reconsideration is moot.

Even if this request for reconsideration was not moot, Debtor has provided no evidence of clear error, newly discovered evidence, or intervening change of controlling law.

A motion for reconsideration is treated as a motion to alter or amend judgment under Civ. Rule 59(e) if it is filed within 28 days of the entry of judgment (14 days in bankruptcy cases under Rule 9023), otherwise it is treated as a motion for relief from judgment under Civ. Rule 60(b). *Am. Ironworks & Erectors, Inc. v. N. Am. Contr. Corp.*, 248 F.3d 892, 898-99 (9th Cir. 2001).

Rule 9023 and Civ. Rule 59 allow a party to file a motion to alter or amend judgment within 14 or 28 days, respectively, after entry of the judgment. This motion was filed 10 days after the court's order, so it was timely.

Under Civ. Rule 59(e), motions "may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Marlyn Nutraceuticals, Inc. v. Mucos Pharms GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009). The rule "does not provide a vehicle for a party to undo its own procedural failures [or] allow a party to introduce new evidence or advance new arguments that could and should have been presented at the [bankruptcy] court prior to the judgment." *DiMarco-Zappa v. Cabanillas*, 238 F.3d 25, 34 (1st Cir. 2001). The rule authorizes reconsideration or amendment of a previous order, but it is "an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). "Indeed, a motion for reconsideration should not be granted absent highly unusual circumstances, unless the [bankruptcy] court is presented with newly discovered evidence, committed clear error, or if there is an intervening change of controlling law." *Id.*

Reconsideration is the exception to the rule: it is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (internal quotation omitted); *School Dist. No. 1J v. ACandS, Inc.*, 5.3d 1255 1263 (9th Cir. 1993). "Whether or not to grant reconsideration is committed to the sound discretion of the court." *Navajo Nation v. Confederated Tribes and Bands of the Yakama Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003).

Here, no clear error, newly discovered evidence, or intervening change of controlling law is presented. Debtor claims an inability to appear at the hearing due to failure to schedule an appearance via CourtCall more than 24 hours in advance of the hearing date. However, Debtor also could have appeared by via ZoomGov, the instructions for which are located on the first page of the court's pre-hearing dispositions.

Other than that, Debtor re-iterates arguments already rejected by this court in its ruling and raises new arguments for the first time. *See* Doc. #117.

For the above reasons, Debtor's motion for reconsideration is DENIED.

13. 22-10569-B-7 **IN RE: SUMAIRA RAHMAN**
JCW-4

MOTION TO RECONSIDER
9-19-2022 [128]

SUMAIRA RAHMAN/MV
SUMAIRA RAHMAN/ATTY. FOR MV.
DISMISSED 10/7/22

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The court will issue an order.

Sumaira Rahman ("Debtor"), *pro se*, requests that the court reconsider its order granting relief from the automatic stay for MTGLQ Investors, L.P.s ("Creditor") on September 9, 2022. Doc. #128. After granting Creditor's motion for relief from the automatic stay, Debtor simultaneously filed a notice of appeal and this motion for reconsideration on September 19, 2022. Docs. #127; #128. Debtor did not set the motion for reconsideration for hearing.

Although the filing of a notice of appeal generally divests a bankruptcy court of jurisdiction, a motion timely filed under Fed. R. Bankr. P. ("Rule") 9023 or 9024 effectively suspends the notice until disposition of the motion. Rule 8002(b)(1), (b)(2); *Moldo v. Ash (In re Thomas)*, 428 F.3d 1266, 1269 (9th Cir. 2005); *In re Adelphia Communs. Corp.*, 327 B.R. 175 (Bankr. S.D.N.Y. 2005). As a result, on September 27, 2022, the court issued an order setting this motion for hearing. Doc. #147. The order provided that Creditor may file and serve a written response, if any, to Debtor's motion not later than October 13, 2022, and Debtor may file and serve a written reply, if any, not later than October 20, 2022. *Id.*

Neither Creditor nor Debtor filed any responses or replies. In the interim, Debtor's bankruptcy case was dismissed on October 7, 2022 for failure to appear at the § 341 meeting of creditors. Doc. #151. Since the case has been dismissed, the request for reconsideration is moot.

Even if this request for reconsideration was not moot, Debtor has provided no evidence of clear error, newly discovered evidence, or intervening change of controlling law.

A motion for reconsideration is treated as a motion to alter or amend judgment under Civ. Rule 59(e) if it is filed within 28 days of the entry of judgment (14 days in bankruptcy cases under Rule 9023), otherwise it is treated as a motion for relief from judgment under Civ. Rule 60(b). *Am. Ironworks & Erectors, Inc. v. N. Am. Contr. Corp.*, 248 F.3d 892, 898-99 (9th Cir. 2001).

Rule 9023 and Civ. Rule 59 allow a party to file a motion to alter or amend judgment within 14 or 28 days, respectively, after entry of the judgment. This motion was filed 10 days after the court's order, so it was timely.

Under Civ. Rule 59(e), motions "may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Marlyn Nutraceuticals, Inc. v. Mucos Pharms GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009). The rule "does not provide a vehicle for a party to undo its own procedural failures [or] allow a party to introduce new evidence or advance new arguments that could and should have been presented at the [bankruptcy] court prior to the judgment." *DiMarco-Zappa v. Cabanillas*, 238 F.3d 25, 34 (1st Cir. 2001). The rule authorizes reconsideration or amendment of a previous order, but it is "an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). "Indeed, a motion for reconsideration should not be granted absent highly unusual circumstances, unless the [bankruptcy] court is presented with newly discovered evidence, committed clear error, or if there is an intervening change of controlling law." *Id.*

Reconsideration is the exception to the rule: it is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (internal quotation omitted); *School Dist. No. 1J v. ACandS, Inc.*, 5.3d 1255 1263 (9th Cir. 1993). "Whether or not to grant reconsideration is committed to the sound discretion of the court." *Navajo Nation v. Confederated Tribes and Bands of the Yakama Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003).

Here, no clear error, newly discovered evidence, or intervening change of controlling law is presented. Debtor claims an inability to appear at the hearing due to failure to schedule an appearance via CourtCall more than 24 hours in advance of the hearing date. However, Debtor also could have appeared by via ZoomGov, the instructions for which are located on the first page of the court's pre-hearing dispositions.

Other than that, Debtor re-iterates arguments already rejected by this court in its ruling on Creditor's motion, as well as the ruling on Creditor's related stay relief motion, and raises new arguments for the first time. *See* Docs. #117; #118.

For the above reasons, Debtor's motion for reconsideration is DENIED.

14. 22-11171-B-7 **IN RE: MIGUEL HERNANDEZ-BARRIGA AND BRANDI**
GAL-2 **HERNANDEZ**

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-28-2022 [33]

MIC GENERAL INSURANCE
CORPORATION/MV
STEPHEN LABIAK/ATTY. FOR DBT.
GARRY MASTERSON/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.

The movant, MIC General Insurance Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2017 Chevrolet Equinox ("Vehicle"). Doc. #33. Movant also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3). *Id.*

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

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

11 U.S.C. § 362(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 Debtors owe more than $12,932.00 to Movant, Vehicle is not adequately protected, and Debtors intend to surrender the vehicle. Doc. #36.

The court also finds that the Debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because Debtors are in chapter 7. *Id.* The Vehicle is valued at $15,675.00 and Debtor owes $12,932.00. Doc. #33, #35, #36.

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 Debtors have failed to make any post-petition payments to Movant and the Vehicle is a depreciating asset.

15. 22-10974-B-7 **IN RE: FRANCISCO SAMANIEGO**
DJP-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-11-2022 [45]

GRETCHEN FREEDMAN/MV
T. O'TOOLE/ATTY. FOR DBT.
DON POOL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

The movant, Gretchen B. Freedman ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to real property located at 1930 W. Kearney Boulevard, Fresno, California ("Property"). Doc. #45. Movant also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3). *Id.*

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

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

11 U.S.C. § 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 not made any post-petition payments. Movant has produced evidence that Debtor owes approximately $613,162.10 against the Property, Debtor failed to provide evidence that Property is insured, and Movant is not adequately protected. Doc. #45.

The court also finds that the debtor does not have any equity in the Property and the Property is not necessary to an effective reorganization because debtors are in chapter 7. *Id.* The Property is valued at $406,700.00 with liens in the amount of $613,162.10 and debtor owes $359,544.98. *Id.* 48, #49.

Accordingly, the motion will be GRANTED as to the trustee's interest and as to the debtor's interest.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtor has not provided evidence of insurance and Movant is not adequately protected.

16. 22-11393-B-7 **IN RE: TAMARA HACKER**
SKI-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-16-2022 [11]

FORD MOTOR CREDIT COMPANY LLC/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
SHERYL ITH/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.

The movant, Ford Motor Credit Company LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2015 Ford Fusion("Vehicle"). Doc. #11. Movant also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3). *Id.*

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

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

11 U.S.C. § 362(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 any complete post-petition payments. The movant has produced evidence that debtors are delinquent at least $9,820.00. Doc. #11.

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 because debtor is in chapter 7. *Id.* The Vehicle is valued at $8,125.00 and debtor owes $9,820.75. Doc. #11.

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. According to the debtors' statement of Intention, the Vehicle will be surrendered.

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

17. 20-10299-B-7 **IN RE: MANUEL DICOCHEA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-30-2022 [85]

T. O'TOOLE/ATTY. FOR DBT.
$32.00 FILING FEE PAID 9/30/22

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 now due has been paid. Accordingly, this order to show cause will be VACATED.

18. 20-10299-B-7 **IN RE: MANUEL DICOCHEA**
MOT-2

MOTION TO AVOID LIEN OF GLORIA VEGA/CREDITORS BUREAU USA
9-20-2022 [78]

MANUEL DICOCHEA/MV
T. O'TOOLE/ATTY. FOR DBT.
T. O'TOOLE/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.

Manuel Adrian Dicochea ("Debtor") seeks to avoid a judicial lien originally in favor of Gloria Vega as assigned to Creditors Bureau USA ("Creditor") in the sum of $20,534.00 and encumbering residential real property located at 4728 E. Vassar Ave., Fresno, CA 93703 ("Property").[1]

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

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

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

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

Here, a judgment was entered against Debtor in favor of Gloria Vega in the amount of $20,534.00 on November 1, 2010. Doc. #81, *Ex. A*. The judgment was assigned to Creditor on July 12, 2019. *Id.* Thereafter, Creditor obtained an abstract of judgment issued on November 19, 2019 and recorded it in Fresno County on November 27, 2019. *Id.*

Though that judgment was entered more than 10 years ago, it has not yet expired. Absent tolling, the judgment would have expired on November 1, 2020 – 3,653 days later.[2] The 10-year renewal period ran for 3,376 days (with 277 days remaining) from November 1, 2010 to January 29, 2020, when Debtor filed a chapter 7 bankruptcy.

On filing that 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 Creditor was unable to renew the judgment during this time. *Spirtos v. Moreno (In re Spirtos)*, 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 will remain in effect until 30 days after the case is closed or dismissed. *See* § 362(c)(1), (c)(2). Since the case is still pending, the stay will continue to toll the renewal period until 30 days after the case is closed or dismissed. Thus, Creditor's lien is still avoidable.

As of the petition date, Property had an approximate fair market value of $178,512.00. Doc. #80; *see also* Doc. #75, *Am. Sched. A/B*. Property is solely encumbered by a $196,607.30 deed of trust in favor of PennyMac. Doc. #75, *Am. Sched. D*. There do not appear to be any other encumbrances on Property other than the mortgage and this judicial lien. *Id.* Debtor claimed a homestead exemption in Property pursuant to

Cal. Code Civ. Proc. ("CCP") § 704.730 in the amount of $75,000.00. Doc. #75, *Am. Sched. C*.

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

| | |
|---|---|
| Amount of judgment lien | $20,534.00 |
| Total amount of unavoidable liens | + $196,607.60 |
| Debtor's claimed exemption in Property | + $75,000.00 |
| *Sum* | = $292,141.60 |
| Debtor's claimed value of interest absent liens | - $178,512.00 |
| Extent lien impairs exemption | = $113,629.60 |

*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 | $178,512.00 |
| Total amount of unavoidable liens | - $196,607.60 |
| Homestead exemption | - $75,000.00 |
| Remaining equity for judicial liens | = ($93,095.60) |
| Creditor's judicial lien | - $20,534.00 |
| Extent Debtor's exemption impaired | = ($113,629.60) |

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.

---

[1] Debtor appears to have complied with Fed. R. Bankr. P. 7004(b)(3) by serving via regular U.S. mail John D. Suhr, Creditor's authorized agent, at the address listed in the proof of claim, and Creditor's PO Box from the *Acknowledgment of Assignment of Judgment*, on September 20, 2022. Doc. #83; *cf.* Doc. #81, *Ex. A*; Claim 4.

[2] 3,653 days, rather than 3,650, to account for leap years in 2012, 2016, and 2020.