

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, November 9, 2021
Place: Department B – Courtroom #13
Fresno, California

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

2. 18-13677-B-9 IN RE: COALINGA REGIONAL MEDICAL CENTER, A
WJH-18 CALIFORNIA LOCAL HEALTH CARE DISTRICT

CONTINUED OBJECTION TO CLAIM OF DEPARTMENT OF HEALTH CARE
SERVICES, CLAIM NUMBER 61
10-19-2020 [[657](#)]

COALINGA REGIONAL MEDICAL
CENTER, A CALIFORNIA LOCAL
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING
CONT'D TO 12/14/21 PER ECF ORDER #729

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

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

NO ORDER REQUIRED.

The parties have been engaged in ongoing settlement negotiations and claim to have reached an agreement on the material terms of a settlement. Doc. #725. As result, the parties stipulated to continue this matter to allow for additional time to finalize a written settlement agreement. *Id.* On October 27, 2021, the court approved the stipulation and continued the matter to December 14, 2021 at 9:30 a.m. Doc. #729. The deadlines to file and serve responsive pleadings shall be the same as if the continued hearing date was the initial original hearing date.

3. [21-12183](#)-B-11 IN RE: UNIVERSAL REAL ESTATE DEVELOPMENT, LLC

STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY
PETITION
9-13-2021 [1]

NOEL KNIGHT/ATTY. FOR DBT.

NO RULING.

1:30 PM

1. [21-11803](#)-B-7 **IN RE: NOEL HERNANDEZ**
[MMJ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-5-2021 [\[14\]](#)

CAPITAL ONE AUTO FINANCE/MV
BENNY BARCO/ATTY. FOR DBT.
MARJORIE JOHNSON/ATTY. FOR MV.

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

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

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

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

Capital One Auto Finance ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2019 Toyota 86 GT Coupe 2D ("Vehicle"). Doc. #14.

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

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

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The debtor's discharge was

entered on November 9, 2021. Doc. #23. Therefore, the automatic stay terminated with respect to the debtor on November 9, 2021.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least 10 payments. The movant has produced evidence that debtor is delinquent at least \$6,577.80. Doc. #16.

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 \$28,605.00 and debtor owes \$36,428.42. Docs. #16 and #17.

Accordingly, the motion will be GRANTED IN PART as to the trustee's interest 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. The motion will be DENIED AS MOOT IN PART as to debtor's interest under § 362(c)(2)(C).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 10 payments to Movant and the Vehicle is a depreciating asset. No other relief is awarded.

2. [21-11106](#)-B-7 **IN RE: ANA AGUILERA**
[SL-2](#)

MOTION TO AVOID LIEN OF CREDILOGICAL SYSTEMS, LLC
9-22-2021 [\[36\]](#)

ANA AGUILERA/MV
SCOTT LYONS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice or continued.

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

Ana Maria Aguilera ("Debtor") seeks to avoid a judicial lien in favor of Credilogical Systems, LLC ("Creditor") in the amount of \$5,535.29 and encumbering residential real property located at 1210 E. Kenneth Ave., Earlimart, CA 93219 ("Property").¹ Doc. #36.

No party in interest timely filed written opposition, but there are issues regarding the order of priority in which Property's liens will be removed. The court intends to DENY WITHOUT PREJUDICE or CONTINUE this motion.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. 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 motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

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

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

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$2,798.26 on March 7, 2005. Doc. #39, Ex. D. An abstract of judgment was issued on May 25, 2005 and recorded in Tulare County on August 15, 2005. *Id.* The judgment was renewed in the amount of 5,535.29 on December 5, 2014. *Id.*, Ex. E. The renewed abstract of judgment was issued on March 26, 2015 and recorded in Tulare County on April 14, 2015. *Id.* That lien attached to Debtor's interest in Property. Doc. #38.

As of the petition date, Property had an approximate value of \$198,640.00. *Id.*; Doc. #1, *Sched. A/B*. Debtor owns a 50% interest in Property with co-owner Jose Reyes Aguilera.² Doc. #38; *cf.* Doc. #20, *Am. Sched. H*, ¶ 3.2. The only unavoidable lien encumbering Property is a deed of trust in favor of Wells Fargo Home Mortgage ("WFHM") in the amount of \$30,790.30, for which both Debtor and Mr. Aguilera are liable. Doc. #19; *Am. Sched. D*, ¶ 2.7.

The WFHM deed of trust (\$30,790.30) is subtracted from Property's total value (\$198,640.00) because WFHM has a consensual encumbrance against the entire co-owned Property. The result, \$167,849.70, is the equity split between Mr. Aguilera and Debtor, so Debtor's one-half ownership interest in Property for the purposes of § 522(f) is \$83,924.85. Debtor claimed a homestead exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$300,000.00. Doc. #1, *Sched. C*.

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

Property is encumbered by judicial liens in favor of the following entities:

- (a) \$17,622.94 - Kings Credit Services (recorded Sept. 3, 2014);
- (b) \$15,319.74 - Anchor General Insurance (unknown);
- (c) \$5,535.29 - Creditor (Credilogical Sys.; recorded Aug. 15, 2005; renewed judgment recorded Apr. 14, 2015);
- (d) \$3,528.85 - Kings Credit Services (recorded Dec. 29, 2005);
- (e) \$791.48 - Kings Credit Services (unknown); and
- (f) \$2,358.05 - Kings Credit Services (recorded May 6, 2009).

Docs. #19, *Sched. D*; #28, #47, #52, Ex. D; #39, Exs. D, E.

The court previously avoided the \$17,622.94 lien in favor of Kings Credit Services on September 24, 2021. Doc. #41. Debtor has two pending motions to avoid two additional liens in favor of Kings Credit Services in the amounts of \$2,358.05 (SL-3) and \$3,528.85 (SL-4) scheduled for November 16, 2021 and December 2, 2021. Both of these appear to have expired and it is unclear whether they were ever renewed.³ The remaining \$15,319.74 lien in favor of Anchor General Insurance and \$791.48 in favor of Kings Credit Services are unknown, as no information about those liens is provided. It appears that Debtor intends to avoid all judgment liens eventually, but the remaining two motions have not yet been filed.

As result of filing each lien avoidance motion separately, it is unclear whether they are being removed in reverse order of priority as required by *Hanger*. Based on the value of Debtor's net fractional

interest and her \$300,000 exemption, the disjointed order of removal may be *de minimis* assuming that all liens are avoidable and will be avoided eventually. But the same does not hold true in all situations. Put differently, if Debtor's exemption did not exceed the value of Debtor's interest in the property, then not every lien would be avoidable, and the order in which each is removed would be important for ensuring that non-impairing senior liens are not categorically avoided.

More importantly, the lien at issue here was originally recorded August 15, 2005 and it appears to be senior to the liens Debtor seeks to avoid on November 16 and December 2, 2021. And because no information is provided about the Anchor General Insurance and remaining Kings Credit Services liens, the positioning of Creditor's lien in relation to those is unknown.

For this reason, Debtor has failed to make a *prima facie* showing that she is entitled to the relief sought. *Tracht Gut, LLC v. County of L.A. (In re Tracht Gut, LLC)*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014).

This matter will be called as scheduled. Liens must be removed in reverse order of priority, but here Debtor has not shown that this lien is the most junior. Accordingly, the court is inclined to either DENY WITHOUT PREJUDICE or CONTINUE this motion to be heard with Debtor's other motions to avoid lien scheduled on November 16 and December 2, 2021.

¹ Debtor complied with Rule 7004(b)(3) by serving John Welsome, Creditor's CEO and registered agent for service of process, at Creditor's mailing address on September 22, 2021. Doc. #40.

² The court takes judicial notice of the chapter 7 bankruptcy of Jose Reyes Aguilera, Case No. 18-14684, filed November 20, 2018, discharged March 25, 2019, and closed March 29, 2019. Fed. R. Evid. 201.

³ Mr. Aguilera's bankruptcy paused tolling of the 10-year expiration on these judgments from November 20, 2018 until April 28, 2019, which is 30 days after the case closed on March 29, 2019. Despite the 159-day pause, the judgments appear to have expired unless renewed.

3. [21-12031](#)-B-7 **IN RE: JUAN FAJARDO**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
10-19-2021 [\[14\]](#)

HONDA LEASE TRUST/MV
SCOTT LYONS/ATTY. FOR DBT.
VINCENT FROUNJIAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied as moot.

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

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 2020 Honda
Civic ("Vehicle"). Doc. #14.

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

This motion relates to an executory contract or lease of personal
property. The case was filed on August 20, 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.

Accordingly, the motion will be DENIED AS MOOT. Movant may submit an
order denying the motion and confirming that the automatic stay has
already terminated on the grounds set forth above. No other relief is
granted.

4. [21-11134](#)-B-7 **IN RE: LARRY/SUSAN HAMPTON**
[FW-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH LARRY HAMPTON AND SUSAN HAMPTON
10-4-2021 [\[22\]](#)

PETER FEAR/MV
GRISELDA TORRES/ATTY. FOR DBT.
GABRIEL WADDELL/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 with the stipulation attached as an exhibit. A copy of the original stipulation shall be filed separately and docketed as a stipulation.

Chapter 7 trustee Peter L. Fear ("Trustee") requests an order approving a settlement agreement between the estate and Larry Hampton and Susan Ferren Hampton ("Debtors") pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019). Doc. #22.

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

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

Debtors filed chapter 7 bankruptcy on April 30, 2021. Doc. #1. Debtors' discharge was entered on August 16, 2021. Doc. #20. In their original schedules, Debtors claimed no ownership interest in any real property. Doc. #1, *Sched. A/B*. At the § 341 meeting of creditors, Trustee learned that Debtors had transferred residential real property

located at 2524 N. Vagedes, Fresno, CA 93705 ("Property") within the four years preceding the petition date to their children. Doc. #24.

Post-disclosure, Debtors amended Schedules A/B, C, I, and J on June 24, 2021, listing an equitable ownership interest in Property valued at \$319,600.00. Doc. #11, *Am. Sched. A/B*. The amended schedules state that Property's "[t]itle [is] held in daughters' names but debtors live in [the] home and claim ownership." *Ibid*. Property does not appear to be encumbered by any consensual liens or security interests. Doc. #1, *Sched. D*. Debtors claimed an exemption in Property pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$319,600.00. Doc. #11, *Am. Sched. C*.

Trustee contests Debtors' assertion and believes that the transfer to their daughters could be avoided for the benefit of the estate. Doc. #24. However, Trustee acknowledges that contesting the transfer raises significant factual issues and would require extensive litigation to prevail, which could result in the estate's defeat with considerable litigation expenses. As result, Trustee and Debtors executed a settlement agreement to expeditiously resolve the issues raised by the transfer.

Under the terms of the settlement agreement,

- a. Debtors shall pay \$10,000.00 to the bankruptcy estate in certified funds on or before August 31, 2021. If payment is not timely, Trustee may cancel the agreement in his sole discretion.
- b. Trustee shall release any and all claims against Debtors and their children relating to the transfer of the Property.
- c. The agreement is subject to court approval and shall have no force or effect if it is not approved.

Doc. #25, Ex. A. The settlement was signed by Debtors on July 9, 2021 and Trustee on August 6, 2021. *Id*. Trustee now seeks approval of the settlement agreement. Doc. #22.

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. Trustee believes that the estate would likely prevail in recovering Property if he were to file an adversary proceeding to avoid the transfer. Doc. #24. However, the probability of success is far from assured as Debtors allege that they continue to be the beneficial owners of Property. If true, Debtors may potentially defeat the estate's attempt to avoid the transfer. Trustee states that there are significant risks for the estate given the factual nature of the dispute. Additionally, proceeding with litigation will greatly increase administrative expenses to the estate that could be circumvented with this compromise.
2. If Trustee succeeds in avoiding the transfer, collecting the asset would not be problematic because the transfer was of real property. Nevertheless, Trustee acknowledges that liquidation itself weighs in favor of settlement. *Id.* The estate would incur expenses to sell Property and Property is at risk of being devalued due to market forces or damage. The settlement agreement eliminates the possibility of increased administrative expenses and provides for a recovery to the estate.
3. The litigation to recover Property is not particularly complex, but Debtors have raised certain factual contentions that could defeat the estate's efforts to avoid the transfer. *Id.* These factual issues would require significant discovery. Meanwhile, the settlement removes the uncertainty, streamlines recovery, and reduces administrative expenses.
4. Trustee declares that the settlement will greatly benefit the estate and creditors because it avoids the risk of no recovery if litigation is unsuccessful. The settlement agreement provides for an already-liquidated recovery that would otherwise not exist.

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

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

The proposed order shall attach the stipulation as an exhibit. Since the stipulation is docketed as an exhibit, a copy of the original stipulation shall be filed separately and docketed as a stipulation.

5. [21-12344](#)-B-7 **IN RE: DAVID/BLANCA ALVARADO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-20-2021 [\[24\]](#)

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 in the amount of \$338.00 was paid on November 2, 2021. Therefore, the Order to Show Cause will be vacated.

6. [21-11946](#)-B-7 **IN RE: ENSELMO MONTOYA**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-29-2021 [\[18\]](#)

FORD MOTOR CREDIT COMPANY
LLC/MV
GEORGE BURKE/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

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

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

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

Ford Motor Credit Company LLC ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2019 Ford Mustang ("Vehicle"). Doc. #18.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor, creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned

parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The debtor's discharge was entered on November 2, 2021. Doc. #26. Therefore, the automatic stay terminated with respect to the debtor on November 2, 2021.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least 2 payments. The movant has produced evidence that debtor is delinquent at least \$977.53. Doc. #21.

Accordingly, the motion will be GRANTED IN PART as to the trustee's interest pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. The motion will be DENIED AS MOOT IN PART as to debtor's interest under § 362(c)(2)(C).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 2 payments to Movant and Debtor contacted Movant on September 21, 2021 to advise his intentions to surrender the Vehicle. No other relief is awarded.

7. [19-11067](#)-B-7 **IN RE: STEPHANIE STOUT**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
9-29-2021 [\[31\]](#)

JAMES SALVEN/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

James E. Salven ("Applicant"), the certified public account of chapter 7 trustee Peter L. Fear ("Trustee"), requests final compensation under 11 U.S.C. § 330 in the sum of \$1,608.44. Doc. #31. This amount consists of \$1,375.00 in fees for reasonable compensation for services rendered and \$233.44 in reimbursement for actual, necessary expenses incurred for the benefit of the estate from September 2, 2021 through September 21, 2021. *Id.*

Trustee filed a statement consenting to the application. Doc. #35. Trustee indicates that he has reviewed the application and believes that the requested professional fees and costs are reasonable and necessary to the administration of the estate. Trustee has no objection to the application. *Id.*

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

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

Applicant's employment was authorized on September 20, 2021 pursuant to 11 U.S.C. §§ 327, 330-31, effective as to services rendered on or after September 1, 2021.⁴ JES-1; Doc. #30. As a condition precedent to employment, Applicant was required to irrevocably waive any pre-petition claims against Debtor's bankruptcy estate. *Id.* The order further provided that no compensation would be permitted except upon court order under § 330(a) and compensation would be set at the "lodestar rate" for accounting services applicable at the time services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). *Id.* Interim compensation under § 331 was permitted. *Id.*

This is Applicant's first and final fee application. Applicant provided 5.5 billable hours of accounting services at a rate of \$250.00 per hour, totaling **\$1,375.00** in fees. Doc. #33, Ex. A. Applicant also requests reimbursement of **\$233.44** for the following expenses:

Envelopes (5 @ \$0.20)	\$1.00
Lacerte Tax Proc. (1 @ \$186)	+ \$186.00
Postage (36 @ \$1.29)	+ \$46.44
Total Costs	= \$233.44

Id., Ex. B. These combined fees and expenses total **\$1,608.44**.

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

Applicant's services included, without limitation: (1) conflict review and preparation of the employment application (JES-1); (2) reviewing Forms I and II regarding the tax implications of an inheritance; (3) correspondence with the probate estate counsel regarding inheritance; (4) preparing, processing, and reviewing tax returns; (5) preparing prompt determination and transmittal letters; (6) preparing and filing this fee application. *Id.*, Ex. A. The court finds the services and expenses reasonable, actual, and necessary.

No party in interest timely filed written opposition. This motion will be GRANTED. Applicant shall be awarded \$1,375.00 in fees and \$233.44 in expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized, in his discretion, to pay Applicant \$1,608.44 as reasonable compensation for services rendered and actual, necessary expenses incurred on behalf of the estate from September 2, 2021 through September 21, 2021.

⁴ Since the application was filed on September 10, 2021 (Doc. #27), the presumptive effective employment date could have been August 11, 2021 under LBR 2014-1(b)(1). However, Applicant's services did not begin accruing until September 2, 2021. Doc. #33, Ex. A.

8. [21-11181](#)-B-7 **IN RE: ELISSA GARCIA**
[MAZ-3](#)

MOTION TO AVOID LIEN OF NDS, LLC
9-24-2021 [\[40\]](#)

ELISSA GARCIA/MV
MARK ZIMMERMAN/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.

Elissa A. Garcia ("Debtor") seeks to avoid a judicial lien in favor of NDS, LLC ("Creditor") in the amount of \$11,606.05 and encumbering residential real property located at 1219 E. Ferguson Ave., Visalia, CA 93292 ("Property").⁵ Doc. #40.

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 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.

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

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$5,890.10 on April 7, 2006. Doc. #43, Ex. D. The judgment was recorded in Tulare County on August 31, 2015. *Id.* Creditor applied to renew the judgment in the amount of \$11,606.06 on November 9, 2015. The renewal was recorded in Tulare County on December 3, 2015. That lien attached to Debtor's interest in Property. Doc. #42.

As of the petition date, Property had an approximate value of \$120,000.00. *Id.*; Doc. #1, *Sched. A/B*. The only unavoidable lien encumbering Property is a deed of trust in favor of Fifth Third Bank in the amount of \$59,058.41. *Id.*, *Sched. D*. Debtor claimed a homestead exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$300,000.00. *Id.*, *Sched. C*. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property		\$120,000.00
Fifth Third Bank deed of trust	-	\$59,058.41
Remaining unencumbered equity	=	\$60,941.59
Debtor's "homestead" exemption	-	\$300,000.00
Extent over-exempted	=	(\$239,058.41)
Creditor's judicial lien	-	\$17,622.94
Extent exemption impaired	=	(\$256,681.35)

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

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

⁵ Creditor is a limited liability company. Debtor complied with Federal Rule of Bankruptcy Procedure 7004(b)(3) by serving Michael David Schulman, Creditor's CEO and registered agent for service of process, at Creditor's mailing address on September 24, 2021. Doc. #44.