



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

**Hearing Date: Thursday, November 14, 2024**

Unless otherwise ordered, all matters before the Honorable René Lastreto II, shall be simultaneously: (1) **In Person** at, 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 or stated below.

All parties or their attorneys who wish to appear at a hearing remotely must sign up by **4:00 p.m. one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/CourtAppearances>. Each party/attorney who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties and their attorneys who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest and/or their attorneys may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press who wish to attend by ZoomGov may only listen in to the hearing using the Zoom telephone number. Video participation or observing are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may attend in person unless otherwise ordered.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#). If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

**Unauthorized Recording is Prohibited:** Any recording of a court proceeding held by video or teleconference, including "screen shots" 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. [20-10809](#)-B-11    **IN RE: STEPHEN SLOAN**  
[WJH-7](#)

MOTION TO COMPEL  
10-17-2024    [\[768\]](#)

SANDTON CREDIT SOLUTIONS  
MASTER FUND IV, LP/MV  
PETER FEAR/ATTY. FOR DBT.  
KURT VOTE/ATTY. FOR MV.

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

DISPOSITION:    Continued to December 10, 2024.

No order is required.

On November 4, 2024, the court entered an order continuing this matter to December 10, 2024. Therefore, this matter is CONTINUED.

2. [20-10809](#)-B-11    **IN RE: STEPHEN SLOAN**  
[WJH-8](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH WILLIAM BRETT SLOAN  
10-17-2024    [\[763\]](#)

SANDTON CREDIT SOLUTIONS  
MASTER FUND IV, LP/MV  
PETER FEAR/ATTY. FOR DBT.  
KURT VOTE/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:    Granted.

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

Sandton Credit Solutions Master Fund IV, LP ("Sandton" or "Creditor") requests an order approving a settlement agreement reached between Sandton and Defendant William Brett Sloan, as Trustee of the Brett Sloan Irrevocable Trust dated 2020 and the Grace Sloan Irrevocable Trust dated February 4, 2020 ("Brett" or "Defendant") in the adversary

proceeding before this court styled Sandton Credit Solutions Master Fund IV, LP v. Stephen William Sloan et al, Case No. 21-01039 ("the Adversary"). Doc. #763.

Sandton filed the Adversary to avoid certain real property transfers made by Stephen W. Sloan ("Debtor" or "Steve"), debtor in the underlying Chapter 11 bankruptcy proceeding. *Id.*; *Adversary Doc. #1*. The stipulation, if approved, would bind Brett to the result of the upcoming trial in this matter while also removing Brett except as a nominal defendant.

No party in interest timely filed written opposition, and Defendant has filed a Non-Opposition. Doc. #780. 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.

Debtor filed chapter 11 bankruptcy on March 2, 2020. Doc. #1. On February 2, 2022, the court confirmed Debtor's *Fourth Amended Plan of Reorganization dated December 21, 2021*, with the plan by its terms appointing Terrence J. Long as Plan Administrator ("Plan Administrator") Doc. #483.

During the pendency of the Chapter 11 case, Sandton filed certain motions for relief from stay as to various properties which Debtor had conveyed prepetition, and in an effort to expeditiously resolve those motions, Debtor stipulated that Sandton would have standing to pursue avoidance claims in an adversary proceeding. Doc. #302(¶11).

On September 3, 2021, Sandton filed the Adversary against Steve as an individual and against Brett in his capacity as trustee of the two irrevocable trusts to which Steve conveyed the property at issue. *Adversary Doc. #1*. The gravamen of the complaint is that Debtor defaulted on debts owed to Sandton prepetition, that Sandton initiated non-judicial foreclosure proceedings, and that Debtor filed Chapter 11 to prevent the foreclosures, but that, prior to filing Debtor caused

real property which should rightfully be property of the estate to be transferred to Brett in his capacity as trustee of the two trusts. *Id.*

On or about November 10, Sandton and Brett reached a settlement, the one at issue in this motion. Doc. #765 (Decl. of Steven Vote). The settlement was filed with the court in the form of a Stipulation on or about November 29, 2023, incorporated by reference as part of the parties' Joint Pretrial Order. *Id.*; Adversary Doc. #112. That Joint Pretrial Order specifically referenced the Stipulation, stating that

pursuant to this Stipulation, upon approval of this Joint Pretrial Order, Brett shall be relegated to the status of a nominal defendant and no judgment shall be entered against him, except as may be necessary to effectuate transfer of the properties which are the subject of the adversary proceeding. Brett agrees, pursuant to the Stipulation, to abide by the terms of any such judgment and shall neither appeal from nor collaterally attack same. Brett shall not be ordered to appear as a party at trial in this matter. Plaintiff will file a motion pursuant to Federal Rule of Bankruptcy Procedure 9019 shortly. Due to the settlement between Brett and Plaintiff, Brett neither stipulates to nor contests the stipulated facts set forth above.

Adversary Doc. #112. Sandton did not, in fact, file a Rule 9019 motion "shortly," and the Stipulation languished while the Adversary was continued for months while the parties unsuccessfully sought a global settlement. Doc. #765; *See Adversary Doc. #121 (Order vacating trial date)*. At the July 10, 2024, status conference in the Adversary, Brett's counsel expressed a belief that the settlement between Brett and Sandton was not final yet because no Rule 9019 motion to approve the stipulation had been filed yet. Doc. #765. This motion followed in due course, and Brett filed a Non-Opposition.

The court notes it does not appear that a copy of the settlement agreement has been filed in this case as a separate Stipulation. The settlement agreement and Stipulation were incorporated by reference into the prior Joint Pretrial Order, but in light of the lengthy continuance since entry of that order, it may no longer be operative. Accordingly, the motion will only be granted if Sandton separately files the settlement agreement and docket it as a stipulation.

As representative of the bankruptcy estate, Trustee has the authority to settle claims of Debtor subject to court approval. 11 U.S.C. § 323(a). A chapter 11 debtor in possession likewise has all rights and powers of a trustee other than the right to compensation under § 330 and is required to perform all of the functions and duties of a trustee, except those specified in § 1106(a)(2), (3), and (4). 11 U.S.C. § 1107. The parties have stipulated on several occasions that Sandton has standing to bring avoidance actions on behalf of the estate. *See generally* Docs. #302, #766. Sandton has exercised this standing to bring the Adversary, and the agrees with Sandton that, "by

way of the Stipulation, Debtor conveyed his standing as debtor-in-possession to Sandton to pursue the Adversary Proceeding, which includes the power to compromise the action." See Doc. #763.

On a motion by the trustee [or, in this case, the Creditor] 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).

It appears from the moving papers that Sandton has considered the *A & C Props.* and *Woodson* factors, which weigh in favor of approving the settlement agreement as follows:

1. Probability of success in litigation: Sandton argues that settlement with Brett greatly simplifies the issues underlying the Adversary and ensures that Sandton will only have to deal with a single defendant at trial, which is obviously preferable to dealing with multiple defendants and counsel.
2. Collection: Sandton argues that the settlement increases the likelihood of collection because the agreement provides that Brett will not appeal from or collaterally attack any judgment entered in the Adversary, thus increasing the likelihood of the properties at issue which are currently held by the trust being returned to the estate in short order.
3. Complexity of litigation: Sandton concedes that its claims are straightforward and again notes that settlement with one of the defendants will streamline the proceedings and reduce expense.
4. Paramount interests of creditors: Eliminating Brett's defenses and allowing the trial to move forward against Steve expeditiously will benefit all creditors and increase the likelihood of a dividend.

The *A & C Props.* and *Woodson* factors appear to weigh in favor of approving the settlement. Therefore, the settlement appears to be a fair, equitable, and reasonable exercise of Trustee's business judgment. 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.*

Sandton also offers an anticipatory response to Brett's expected argument that Sandton's failure to file this motion within fifteen (15) business day deadline set by the terms of the agreement. See Doc.

#763. However, as Brett has filed a Non-Opposition, those arguments are moot. Accordingly, this motion will be GRANTED. The settlement between the Sandton and Brett will be approved.

This ruling is not authorizing the payment of any fees or costs associated with the settlement. Additionally, Trustee shall attach a copy of the settlement agreement as an exhibit to the proposed order and shall separately file the settlement agreement and docket it as a stipulation.

3. [24-11015](#)-B-11 **IN RE: PINNACLE FOODS OF CALIFORNIA LLC**  
[MJB-10](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR  
CLARIFYING ORDER OF BANKRUPTCY COURT  
10-2-2024 [[265](#)]

PINNACLE FOODS OF CALIFORNIA  
LLC/MV  
MICHAEL BERGER/ATTY. FOR DBT.

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

DISPOSITION: Dropped from the calendar.

No order is required.

On October 30, 2024, this court entered an order resolving this motion. Doc. #307. Accordingly, this motion will be DROPPED from the calendar.

4. [24-11015](#)-B-11 **IN RE: PINNACLE FOODS OF CALIFORNIA LLC**  
[MJB-11](#)

MOTION TO EXTEND DEADLINE TO ASSUME LEASE AGREEMENT  
10-17-2024 [[282](#)]

PINNACLE FOODS OF CALIFORNIA LLC/MV  
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.

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 October 1, 2024, Pinnacle Foods of California, LLC ("Pinnacle") filed a *Motion to Use Cash Collateral*. Doc. #254. The DCN for that motion was MJB-11. On October 17, 2024, Pinnacle filed the instant *Motion to Extend Deadline to Assume Lease Agreements*. Doc. #282. The DCN for this motion is also MJB-11, and therefore, it does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

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

5. [24-11016](#)-B-11     **IN RE: TYCO GROUP LLC**  
[MJB-10](#)

MOTION TO EXTEND DEADLINE TO ASSUME LEASE AGREEMENT  
10-17-2024    [[216](#)]

TYCO GROUP LLC/MV  
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.

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

For motions filed on less than 28 days' notice, LBR 9014-1(f)(2)(C) requires the movant to notify respondents written opposition is not required and any opposition to the motion must be presented at the hearing.

Tyco Group LLC ("Tyco") filed this *Motion to Extend Deadline to Assume Lease Agreement* on October 17, 2024, with a hearing set for November 14, 2024. Doc. #216 *et seq.* However, Tyco did not file its *Notice of Hearing* until October 18, 2024, and only after a Clerk's Notice directing Tyco to do so and stating that the matter would only be calendared upon receipt of a *Notice of Hearing*. See Docs. #219, #222.

While October 17, 2024, is 28 days before the November 14, 2024, hearing date, October 18, 2024, is only 27 days before the hearing date. Therefore, this motion was set for hearing on less than 28 days' notice under LBR 9014-1(f)(2). Nevertheless, the Notice stated:

Pursuant to Local Rule 9014-1(f)(1)(B), opposition, if any, to the granting of the Motion must be in writing and must be served and filed with the Court by the responding party at least 14-days preceding the date of the hearing.

Doc. #222.

This is incorrect. Motions noticed less than 28 days before the hearing are deemed brought pursuant to LBR 9014-1(f)(2). The notice should have informed respondents that written opposition was not required, and opposition, if any, shall be presented at the hearing. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs. Therefore, the notice was materially deficient because the respondents were told to file and serve written opposition even though it was not necessary. Thus, interested parties may be deterred from opposing the motion or from appearing at the hearing. For the above reason(s), this motion will be DENIED WITHOUT PREJUDICE.

6. [24-10546](#)-B-12     **IN RE: MAXIMINIO/MARIE SILVEIRA**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION  
3-5-2024     [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

7. [24-10546](#)-B-12     **IN RE: MAXIMINIO/MARIE SILVEIRA**  
[FW-11](#)

MOTION TO CONFIRM CHAPTER 12 PLAN  
10-10-2024     [[150](#)]

MARIE SILVEIRA/MV  
PETER FEAR/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

8. [24-10546](#)-B-12     **IN RE: MAXIMINIO/MARIE SILVEIRA**  
[FW-5](#)

CONTINUED MOTION TO CONFIRM CHAPTER 12 PLAN  
6-6-2024    [[82](#)]

MARIE SILVEIRA/MV  
PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION:     Denied as moot.

ORDER:             The court will prepare the order.

On October 10, 2024, the Debtors filed an Amended Chapter 12 Plan and Motion for Confirmation of same. Docs. #150, #154. Accordingly, this motion to confirm the earlier plan dated May 31, 2024, is DENIED AS MOOT.

9. [24-12751](#)-B-11     **IN RE: BIKRAM SINGH AND HARSIMRAN SANDHU**  
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION  
9-22-2024    [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

10. [24-12751](#)-B-11     **IN RE: BIKRAM SINGH AND HARSIMRAN SANDHU**  
[FW-1](#)

MOTION TO EMPLOY PETER L. FEAR AS ATTORNEY(S)  
10-17-2024    [[43](#)]

HARSIMRAN SANDHU/MV  
PETER FEAR/ATTY. FOR DBT.

NO RULING.

11. [24-12775](#)-B-11     **IN RE: ROBERTO SANCHEZ**  
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTAR PETITION  
9-25-2024    [1]

DISMISSED 10/8/24

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

DISPOSITION:     Concluded and dropped from calendar.

No order is required.

On October 8, 2024, this case was dismissed for failure to timely file documents. Doc. 12. Accordingly, this Status Conference is CONCLUDED and will be DROPPED from the calendar.

12. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-18](#)

CONTINUED OBJECTION TO CLAIM OF TULARE HOSPITALIST GROUP,  
CLAIM NUMBER 231  
1-8-2020    [1784]

TULARE LOCAL HEALTHCARE DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION     Continued to January 14, 2025, at 9:30.

ORDER:            The court will prepare the order.

On November 5, 2024, Tulare Local Health District ("District") submitted a status report which, inter alia, requested a continuance in this matter until mid-January due to settlement negotiation and complications arising from criminal proceedings in state court involving Dr. Parmod Kumar, who controls the claim at issue here.

Accordingly, this matter will be CONTINUED TO January 14, 2025, at 9:30.

A joint or unilateral status report(s) shall be filed and served on or before January 7, 2025. The status report(s) are to set forth a proposed schedule for the joint litigation of all three claim objections. Said schedule shall include proposed fact discovery cutoff (no more than 3 months after the status conference), deadline for designating all expert witnesses (two weeks after fact discovery cutoff), rebuttal expert witnesses (one week after initial expert witness designation), deadline for hearing dispositive motions (no

more than 45 days after rebuttal expert designation) and how many trial days will be needed using Alternate Direct Testimony.

Both claimants' and District counsel to appear at the status conference, either in person or by video conference following the court's procedures.

13. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-19](#)

CONTINUED OBJECTION TO CLAIM OF GUPTA-KUMAR MEDICAL  
PRACTICE, CLAIM NUMBER 232  
1-8-2020    [[1789](#)]

TULARE LOCAL HEALTHCARE  
DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION           Continued to January 14, 2025, at 9:30.

ORDER:                 The court will prepare the order.

On November 5, 2024, Tulare Local Health District ("District") submitted a status report which, inter alia, requested a continuance in this matter until mid-January due to settlement negotiation and complications arising from criminal proceedings in state court involving Dr. Parmod Kumar, who controls the claim at issue here.

Accordingly, this matter will be CONTINUED TO January 14, 2025, at 9:30.

A joint or unilateral status report(s) shall be filed and served on or before January 7, 2025. The status report(s) are to set forth a proposed schedule for the joint litigation of all three claim objections. Said schedule shall include proposed fact discovery cutoff (no more than 3 months after the status conference), deadline for designating all expert witnesses (two weeks after fact discovery cutoff), rebuttal expert witnesses (one week after initial expert witness designation), deadline for hearing dispositive motions (no more than 45 days after rebuttal expert designation) and how many trial days will be needed using Alternate Direct Testimony.

Both claimants' and District counsel to appear at the status conference, either in person or by video conference following the court's procedures.

14. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-25](#)

CONTINUED OBJECTION TO CLAIM OF INPATIENT HOSPITAL GROUP, INC.,  
CLAIM NUMBER 230  
1-10-2020   [\[1834\]](#)

TULARE LOCAL HEALTHCARE DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION         Continued to January 14, 2025, at 9:30.

ORDER:               The court will prepare the order.

On November 5, 2024, Tulare Local Health District ("District") submitted a status report which, inter alia, requested a continuance in this matter until mid-January due to settlement negotiation and complications arising from criminal proceedings in state court involving Dr. Parmod Kumar, who controls the claim at issue here.

Accordingly, this matter will be CONTINUED TO January 14, 2025, at 9:30.

A joint or unilateral status report(s) shall be filed and served on or before January 7, 2025. The status report(s) are to set forth a proposed schedule for the joint litigation of all three claim objections. Said schedule shall include proposed fact discovery cutoff (no more than 3 months after the status conference), deadline for designating all expert witnesses (two weeks after fact discovery cutoff), rebuttal expert witnesses (one week after initial expert witness designation), deadline for hearing dispositive motions (no more than 45 days after rebuttal expert designation) and how many trial days will be needed using Alternate Direct Testimony.

Both claimants' and District counsel to appear at the status conference, either in person or by video conference following the court's procedures.

11:00 AM

1. [24-11772](#)-B-7    **IN RE: RANDY LONGNECKER**

REAFFIRMATION AGREEMENT WITH MERCED SCHOOL EMPLOYEES FCU  
10-7-2024    [[15](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION:    Denied.

ORDER:    The court will issue an order.

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

A Reaffirmation Agreement between Randy Allen Longnecker ("Debtor") and Merced School Employees Federal Credit Union ("Creditor") for a 2017 GMC Acadia ("Vehicle") was filed on October 7, 2024. Doc. #15.

11 U.S.C. § 524(c)(6)(A)(ii) states "An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable non-bankruptcy law, whether or not discharge of such debt is waived, only if the court approves such agreement as in the best interest of the debtor."

Here, the Vehicle is valued at \$19,692.00. The amount being reaffirmed by Debtor is \$28,693.80 with a 6.64% interest rate. Debtor has negative equity of \$9,001.80 with approximately 60 months (five years) remaining on the loan and a negative net monthly income of \$63.00 remaining in the budget every month according to the Debtor's schedules. Though there is no presumption of undue hardship because the lender is a Credit Union, reaffirming this debt is not in the Debtor's best interest.

Nothing prevents the Debtor from continuing to make payments to the Creditor nor the creditor from accepting those payments. Approval of the reaffirmation agreement is DENIED.

1:30 PM

1. [22-11907](#)-B-7     **IN RE: FREON LOGISTICS**  
[DMG-21](#)

MOTION TO EMPLOY WATSON REALTY AS REALTOR(S) AND/OR MOTION  
FOR COMPENSATION FOR WATSON REALTY, REALTOR(S)  
10-17-2024     [[1280](#)]

JEFFREY VETTER/MV  
LEONARD WELSH/ATTY. FOR DBT.  
D. GARDNER/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

Chapter 7 trustee Jeffrey Vetter ("Trustee") seeks authorization to  
(a) employ Watson Realty ("Broker") under 11 U.S.C. § 328 and (b)  
compensate Broker under §§ 327(a) and 328. Doc. #1280.

On October 15, 2024, the court approved the sale of the real property  
known as 310 Chico St., Bakersfield, California 93305 ("the  
Property"). Doc. #1278. The facts which gave rise to the instant  
motion are fully outlined in that order. *Id.* Briefly stated, Trustee  
moved to approve both the sale of the Property and to award commission  
to Broker. *Id.* The court denied the latter request on the grounds  
that, apparently through Trustee's oversight, no motion to employ  
Broker had ever been filed and approved, though the Trustee had  
previously filed a motion to employ Broker in the sale of other  
properties which the court had approved. *Id.* The instant motion is  
apparently presented to correct that oversight.

This motion was set for hearing on 28 days' notice as required by  
Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR  
9014-1(f)(1)(B), the failure of any party in interest (including but  
not limited to creditors, the debtor, the U.S. Trustee, or any other  
properly-served party in interest) to file written opposition at least  
14 days prior to the hearing may be deemed a waiver of any such  
opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46  
F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion,  
the defaults of all parties in interest who failed to timely respond  
will be entered, and, in the absence of any opposition, the movant's  
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). Because the court will not materially alter the  
relief requested by the moving party, an actual hearing is unnecessary

when an unopposed movant has made a prima facie case for the requested relief. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

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

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).

LBR 2014-1(b) (2) governs retroactive authorization for employment exceeding 30 days:

All requests for retroactive authorization for employment exceeding 30 days duration must be set for hearing, must show exceptional circumstances, must satisfactorily explain the applicant's failure to receive prior judicial approval, and must demonstrate that the applicant's services benefited the bankruptcy estate in a significant manner.

LBR 2014-1(b) (2). Under these sections, Trustee requests to retroactively employ and compensate Broker by paying a 6% commission on the gross proceeds from the sale (which came to \$780,000.00, according to the instant motion and the court's October 15, 2024 order). See *Doc. 1278*. A 6% commission on \$780,000.00 is \$46,800.00.

In arguing that there are "exceptional circumstances" to justify the retroactive authorization, the Trustee states:

As to those circumstances, when the Trustee sought the employment of Watson Realty, the subject property was not contemplated to be sold and was not included with the Enos Lane or Mt. Vernon Ave. properties in the employment application. The potential sale of the subject property did not become possible, or really even known by the Trustee until after Court approval was obtained for the broker.

After the discovery of the pre and post-petition transfers and the subsequent litigation that resulted in the bankruptcy estate obtaining a stake in the subject property, it was not recalled that Watson Realty's employment was "property specific" in that the Court order specified Enos Lane and Mt. Vernon only.

Doc. #1280 at ¶13. Trustee further represents that Broker's actions and services have and will result in a benefit to the estate in a significant manner in terms of net proceeds realized from the sale of the Property. *Id.* at ¶15.

While the court is reticent to view what amounts to an oversight by the Trustee as an "exceptional circumstance," Trustee has explained his failure to receive prior judicial approval and demonstrated that Broker's services benefited the estate in a significant manner. The court concludes that the failure to seek approval to employ a Broker to sell Property at a time when the Property was not the estate's to sell is "exceptional enough" to satisfy LBR 2014-1(b) (2).

No party in interest has filed an opposition. This motion will be GRANTED. The court approves Watson Realty's employment as real estate broker to the Chapter 7 Trustee under the terms and conditions described in the motion and on a retroactive basis. The court also approves the payment of a 6% commission, or \$46,800.00 to Broker, to be paid from the sale proceeds.

2. [23-11508](#)-B-7     **IN RE: ANGELA WARREN**  
[FW-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,  
P.C. FOR GABRIEL J. WADDELL, TRUSTEES ATTORNEY(S)  
10-11-2024     [\[55\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.  
GABRIEL WADDELL/ATTY. FOR MV.

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

DISPOSITION:     Granted.

ORDER:     The Moving Party shall submit a proposed order that conforms with the opinion below.

Fear Waddell, P.C. ("Applicant") seeks approval of a final allowance of compensation under 11 U.S.C. § 330 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as attorney for Peter L. Fear, Chapter 7 Trustee in the above-styled case, for services rendered between September 19, 2023, and October 9, 20214. Doc. #55. Applicant seeks **\$8,230.00** in fees and **\$173.56** in expenses, for a total compensation of **\$8,403.56**. *Id.*

Applicant was employed to perform services under § 327 of the Code pursuant to an order of this court dated October 3, 2023. Doc. #29. This is this Applicant's first and final request for compensation.

Applicant seeks **\$8,230.00** in fees based on **23.80** billable hours over the service period, as follows:

<b>Name</b>	<b>Hourly Rate</b>	<b>Hours Worked</b>	<b>Fees</b>
Gabriel Waddell (2023)	\$360.00	0.40	\$144.00
Gabriel Waddell (2024)	\$380.00	17.30	\$6,574.00
Peter A. Sauer (2024)	\$300.00	0.20	\$60.00
Katie Waddell (2023)	\$260.00	1.00	\$260.00
Katie Waddell (2024)	\$280.00	3.70	\$1,036.00
Laurel Guenther (2023)	\$115.00	0.30	\$34.50
Laurel Guenther (2024)	\$135.00	0.90	\$121.50.
<b>Total</b>		23.8	\$8,230.00

Doc. #55. Applicant also seeks **\$173.56** for expenses, consisting of copy expenses (\$95.67), official fees (\$15.00), and postage (\$62.89). *Id.*

11 U.S.C. § 330(a)(1)(A) and (B) permit 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). Previous interim compensation awards under 11 U.S.C. § 331, if any, are subject to final review under § 330.

Applicant's services here included, without limitation: asset disposition and fee/employment applications. The court finds the services and expenses reasonable, actual, and necessary. The Trustee has reviewed the Application and finds the requested fees and expenses to be reasonable. Doc. #57.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest has responded, and the defaults of all such parties are entered.

This Application is GRANTED. The court will approve on a final basis under 11 U.S.C. § 330 compensation in the amount of **\$8,230.00** in fees and **\$173.56** in expenses. The court grants the Application for a total award **\$8,403.56** as an administrative expense of the estate and an order authorizing and directing the Trustee to pay such to Applicant from the first available estate funds.

3. [24-12520](#)-B-7     **IN RE: FRIDA ORTEGA**  
[PPR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR  
ADEQUATE PROTECTION  
10-11-2024    [\[14\]](#)

NASA FEDERAL CREDIT UNION/MV  
D. GARDNER/ATTY. FOR DBT.  
LEE RAPHAEL/ATTY. FOR MV.

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

DISPOSITION:     Denied without prejudice.

ORDER:            The court will issue an order.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). NASA Federal Credit Union ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2018 Toyota Camry, (VIN 4T1B11HK3JU543589) ("Vehicle"). Doc. #14.

This matter will be DENIED WITHOUT PREJUDICE for failure to comply with the federal and local rules.

First, the notice did not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice of hearing to include the names and addresses of persons who must be served with any opposition. Movant failed to list themselves as persons to serve. Doc. #15.

Second, the record does not establish that the motion was served on the named respondents in compliance with Fed. R. Bankr. P. 7004. Fed. R. Bankr. P. 4001(a) requires motions for relief from the automatic stay to be "made in accordance with Fed. R. Bankr. P. 9014." Rule

9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Fed. R. Bankr. P. 7004.

Here, according to the matrix 6B2 attached to the Certificate of Service (Doc. #19), the correct Debtors, Debtors' attorney, chapter 7 trustee and the U.S. Trustee's office were not served.

Therefore, the motion will be DENIED WITHOUT PREJUDICE.

4. [24-10726](#)-B-7     **IN RE: RODNEY/AMIE WOLFORD**  
[MJ-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-25-2024    [[32](#)]

ACAR LEASING LTD/MV  
D. GARDNER/ATTY. FOR DBT.  
MEHRDAUD JAFARNIA/ATTY. FOR MV.  
DISCHARGED 7/8/24

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

DISPOSITION:         Denied without prejudice.

ORDER:                The court will enter the order.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2). ACAR Leasing LTD ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2024 GMC Sierra 1500 Denali ("Vehicle"). Doc. #32.

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

LBR 4001-1 states that motions for relief from the automatic stay of 11 U.S.C. § 362(a) shall be set for hearing in accordance with LBR 9014. LBR 9014, in turn, states that, under LBR 9014-1(d)(3)(B)(i), the Notice of the motion must include the names and addresses of the persons who must be served with such opposition.

Here, the Notice only directed that written opposition should be served upon Movant's counsel. *See Doc. #33.* However, as the motion to lift stay implicates assets of the estate, the Chapter 7 Trustee and the U.S. Trustee are included among "the persons who must be served with such opposition."

Accordingly, the Notice is deficient, and this motion must be DENIED WITHOUT PREJUDICE.

5. [24-12840](#)-B-7    **IN RE: BONIFACIO VILLALOBOS**  
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-15-2024    [\[15\]](#)

LEGACY MORTGAGE ASSET TRUST 2018-RPL2/MV  
JENNIFER WONG/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.

Legacy Mortgage Asset Trust 2018-RPL2, its assignees and/or successors, by and through its servicing agent Rushmore Servicing ("Creditor" or "Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1), (d)(2), and (d)(4) with respect to real property located at 7225 East Olive Avenue, Fresno, CA 93727 ("the Property"). Doc. #15. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.* Bonifacio Villalobos, Jr. ("Debtor") did not oppose.

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.

**Section 362(d)(1)**

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 Debtors have failed to make at least 50 complete pre-petition payments. The Movant has produced evidence that Debtors are delinquent at least \$389,419.99 and that the loan matured on April 1, 2023, and is due and payable in the full amount of \$941,764.60. Docs. #17, #18, #20. Movant has also produced evidence that the Property has been the subject of multiple unauthorized grant deeds. *Id.*

### **Section 362(d) (2)**

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 also finds that the Debtor does not have any equity in the property and the property is not necessary to an effective reorganization. This is a chapter 7 case, and so the Property cannot be necessary for an effective reorganization. Debtor filed a bare-bones petition which provided no basis for valuing the Property. Doc. #1. Movant provides evidence in the form of a Broker Prince Opinion that the Property has a current market value of \$947,200.00. Doc. #17 (*Exhib. 4*). Movant also provides evidence in the form of a Trustee Sale Guarantee which purports to list the encumbrances on the Property and which states that, between senior and junior liens, tax liens, and other involuntary liens totaling in excess of \$2.5 million plus an estimated Cost of Sale in the amount of \$75,776.00, the Property has a negative equity of **(\$1,649,481.40)**. Doc. #15, #20 (*Exhib. 5*).

### **Section 362(d) (4)**

An order entered under § 362(d) (4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order.

To obtain relief under § 362(d) (4), Movant must show and the court must affirmatively find the following three elements: (1) the debtor's' bankruptcy filing must have been part of a scheme; (2) the object of the scheme must have been to delay, hinder, or defraud creditors, and (3) the scheme must have involved either the transfer of some interest in the real property without the secured creditor's consent or court approval, or multiple bankruptcy filings affecting the property. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (B.A.P. 9th Cir. 2012).

A scheme is an intentional construct - it does not happen by misadventure or negligence. *In re Duncan & Forbes Dev., Inc.*, 368 B.R.

27, 32 (Bankr. C.D. Cal. 2007). A § 362(d)(4)(A) scheme is an "intentional artful plot or plan to delay, hinder or defraud creditors." *Id.* It is not common to have direct evidence of an artful plot or plan to deceive others - the court must infer the existence and contents of a scheme from circumstantial evidence. *Id.* Movant must present evidence sufficient for the trier of fact to infer the existence and content of the scheme. *Id.*

Here, Movant has presented evidence that the case sub judice is the thirteenth bankruptcy which has been filed for the purpose of delaying Movant from foreclosing on the Property, either by Debtor, Debtor's spouse, or by one of the individuals who made a joint tenant in the Property via grant deed without Movant's consent. Doc. #20 (*Exhib. 8*). All twelve of the prior bankruptcies were filed pro se as bare bones petitions and all twelve were swiftly dismissed for failure to file information without any stay relief granted to Movant. *Id.* The relevant cases were:

1. In re Bonifacio Villalobos, 1:22-bk-11378. Filed August 12, 2022. Dismissed September 12, 2022.
2. In re Bonifacio Villalobos, 1:22-bk-11921. Filed November 10, 2022. Dismissed December 1, 2022.
3. In re Lydia Ann Torres, 1:22-bk-12097. Filed December 12, 2022. Dismissed January 11, 2023.
4. In re Lydia Ann Torres, 1:23-bk-10264. Filed February 15, 2023. Dismissed March 10, 2023.
5. In re Bonifacio Villalobos, 1:23-bk-11077. Filed May 19, 2023. Dismissed June 6, 2023.
6. In re Bonifacio Villalobos, 1:23-bk-11319. Filed June 21, 2023. Dismissed July 10, 2023.
7. In re Rigoberto Ignacio Vera, 1:23-bk-11769. Filed August 14, 2023. Dismissed September 1, 2023.
8. In re Rigoberto Ignacio Vera, 1:23-bk-12325. Filed October 18, 2023. Dismissed November 6, 2023.
9. In re Jose Sanchez Lopez, 1:23-bk-12622. Filed November 28, 2023. Dismissed December 18, 2023.
10. In re Jose Sanchez Lopez, 1:24-bk-10278. Filed February 6, 2024. Dismissed February 26, 2024.
11. In re Bonifacio Villalobos, Jr., 1:24-bk-11605. Filed June 22, 2024. Dismissed July 10, 2024.
12. In re Lydia Ann Torres, 1:24-bk-12489. Filed August 27, 2024. Dismissed September 16, 2024.
13. In re Bonifacio Villalobos, Jr., 1:24-bk-12749 (the instant case). Filed September 30, 2024, with a bare bones petition.

The instant case is set for dismissal for failure to file required documents by the October 15, 2024. Doc. #14. The case is also subject to a *Trustee's Motion to Dismiss* for failure to appear at the 341 meeting of creditors. Docs. ##22-23.

After review of the included evidence, the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder,

or defraud creditors in the form of (a) multiple bankruptcies purporting to affect Property and (b) the purported transfer of an interest in Property without Movant's consent. Accordingly, relief under § 362(d)(4) is appropriate.

**Conclusion.**

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

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is vacated concerning real property located at 7225 East Olive Avenue, Fresno, CA 93727; and

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

The 14-day stay of Rule 4001(a)(3) will be ordered waived because Debtor has failed to make pre- and post-petition payments to Movant.

6. [24-11547](#)-B-7     **IN RE: EMILY BRADY**  
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-1-2024     [[19](#)]

ALLY BANK/MV  
R. BELL/ATTY. FOR DBT.  
WENDY LOCKE/ATTY. FOR MV.  
DISCHARGED 9/30/24

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

**DISPOSITION:**     Denied without prejudice.

**ORDER:**     The court will enter the order.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2). Ally Financial ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to

a 2024 Toyota Camry, (VIN No. 4T1S31AK7RU061188) ("Vehicle"). Doc. #19.

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

LBR 4001-1 states that motions for relief from the automatic stay of 11 U.S.C. § 362(a) shall be set for hearing in accordance with LBR 9014. LBR 9014, in turn, states that, under LBR 9014-1(d)(3)(B)(i), the Notice of the motion must include the names and addresses of the persons who must be served with such opposition. Here, the Notice only directed that written opposition should be served upon Movant's counsel. See Doc. #20. However, as the motion to lift stay implicates assets of the estate, the Chapter 7 Trustee and the U.S. Trustee are included among "the persons who must be served with such opposition." Though the Trustee has filed a "Notice of No Distribution," the Property has not been abandoned from the estate. Accordingly, the Notice is deficient, and this motion must be DENIED WITHOUT PREJUDICE.

7. [23-11953](#)-B-7     **IN RE: LINDSEY CUDE**  
[MJ-2](#)

MOTION TO APPLY INSURANCE PROCEEDS  
9-25-2024    [[38](#)]

LINDSEY CUDE/MV  
STEVEN ALPERT/ATTY. FOR DBT.

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

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

Movant ACAR Leasing LTD d/b/a GM Financial Leasing ("Movant") seeks authorization to apply the insurance proceeds to Debtor's loan after the subject vehicle was deemed a total loss. Doc. #38.

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

LBR 9004-2(d) requires (1) exhibits to be filed as a separate exhibit document, (2) an exhibit index stating the page number at which each exhibit is found within the exhibit document, and (3) use of consecutively numbered exhibit pages throughout the exhibit document, including any separator, cover, or divider sheets.

Here, while the motion references an "Exhibit A" which is supposed to be the sales contract governing this motion, no exhibits of any kind

were filed concurrently with the motion, nor have any exhibits been filed since. See *Docket generally*.

In the absence of the contract or any other documentary support, the court cannot determine whether Movant has met its evidentiary burden in showing it is entitled to the insurance funds. Accordingly, this motion will be DENIED WITHOUT PREJUDICE.

8. [24-12763](#)-B-7     **IN RE: SARA/MANUEL NEGRETE**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE  
9-24-2024     [\[6\]](#)

MANUEL NEGRETE/MV

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

DISPOSITION:     Dropped and taken off calendar.

NO ORDER REQUIRED.

An Order Approving Payment of Filing Fee in Installments was entered on October 15, 2024, Doc. #20. Accordingly, this Motion for Waiver of the Chapter 7 Filing Fee will be taken off calendar as moot. No appearance is necessary.

9. [24-12183](#)-B-7     **IN RE: ANDY/SUSAN RAMIREZ**  
[DWE-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-20-2024     [\[30\]](#)

FREEDOM MORTGAGE CORPORATION/MV  
ERIC ESCAMILLA/ATTY. FOR DBT.  
DANE EXNOWSKI/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.

Freedom Mortgage Corporation ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to 1248 Rich Ellen Drive, Palmyra, Tennessee 37142 ("Property"). Doc. #30. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). Id. Andy Paul Ramirez and Susan Marie Ramirez ("Debtors") did not oppose.

No other 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 amount 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(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 have failed to make at least 14 complete pre-position payments and one post-petition payment. The Movant has produced evidence that Debtors are delinquent at least \$30,636.58 exclusive of fees, costs, and/or charges and the entire balance of \$408,801.33 is due. Docs. ##32-33.

The court declines finding that Debtor does not have any equity in the Property. Although this is a chapter 7 case and the Property is not necessary for an effective reorganization, the moving papers indicate that Debtors have approximately \$16,198.67 in equity. Doc. #32. Relief under § 362(d)(2) is moot because there is "cause" to grant the motion under § 362(d)(1).

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtors have failed to make at least 15 payments, both pre- and post-petition to Movant.

10. [24-12683](#)-B-7     **IN RE: JOHN SCHATZ**  
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-3-2024    [[11](#)]

FREEDOM MORTGAGE CORPORATION/MV  
ASHTON DUNN/ATTY. FOR DBT.  
DANE EXNOWSKI/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.

Freedom Mortgage Corporation ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to 1643 E. Valley Drive, Mohave Valley, Arizona 86440 ("Property"). Doc. #11. John Schatz ("Debtor") did not oppose.

No other 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 amount 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(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 9 pre-petition payments. The Movant has produced evidence that Debtor is delinquent at least \$18,158.61 and the entire balance of \$429,031.80 is due. Docs. #13, #16.

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. The property is valued at \$404,003.00 and Debtor owes \$429,031.80. Doc. #16.

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.

11. [24-12594](#)-B-7 **IN RE: SEUYTHAVINH/LINDA LOKEOMANIVONG**  
[PBB-1](#)

MOTION TO AVOID LIEN OF DNF ASSOCIATES, LLC  
10-14-2024 [28]

LINDA LOKEOMANIVONG/MV  
PETER BUNTING/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.

Seuythavinh and Linda Lokeomanivong ("Debtors") move for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of **DNF Associates ("DNF")** in the sum of **\$7,493.87** and encumbering residential real property located at 135 South Filbert Avenue, Fresno, California 93727 ("Property"). Doc. #28.

Debtors complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor's registered agent for service of process via first class mail on October 15, 2023. Doc. #33.

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 Debtors in favor of DNF in the amount of **\$6,744.48** on January 23, 2023. Doc. #31 (*Exhib. D*). The abstract of judgment was issued on July 7, 2023, and was recorded in Fresno County on September 1, 2023. *Id.* That lien attached to Debtors' interest in Property. *Id.*; Doc. #30. Debtors estimate that the current amount owed on account of this lien is **\$7,493.87**. *Id.*

As of the petition date, Property had an approximate value of \$430,200.00. Doc. #1 (Sched. A/B). Debtors claimed a combined \$348,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. Doc. #1 (Sched. C).

Property is encumbered by three deeds of trust, one with Midland Mortgage ("Midland") and two with the U.S. Department of Housing and Urban Development ("HUD"). Doc. #1 (Sched. D). It is also encumbered by three judicial liens which are the subject of this and two other lien avoidance motions. In descending order of priority, the judicial lien holders are Capital One Bank (USA), NA ("Capital One"); Debt Management Partners ("DMP"); and DFN Associates ("DFN"). These encumbrances can be represented as follows:

Creditor	Amount	Recorded	Status
1. Midland Mortgage	\$232,181.39	5/2018	Unavoidable
2. HUD (1)	\$14,000.00	3/2021	Unavoidable
3. HUD (2)	\$0.00	4/2022	Unavoidable
4. Capital One	\$5,279.56	8/23/2022	Avoidable; Item #13
5. DMP	\$4,960.20	4/28/2023	Avoidable; Item #12
6. DNF (This lien)	\$7,493.87	9/1/2023	Avoidable; Item #11

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, 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.*; § 522(f)(2)(B).

"Under the full avoidance approach, as used in *Brantz*, the only way a lien would be avoided 'in full' was if the debtor's gross equity were equal to or less than the amount of the exemption." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 596 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999), citing *In re Brantz*, 106 B.R. 62, 68 (Bankr. E.D. Pa. 1989) ("Avoidance of all judicial liens results unless (3) [the result of deducting the debtor's allowable exemptions and the sum of all liens not avoided from the value of the property] is a positive figure."), citing *In re Magosin*, 75 B.R. 545, 547 (Bankr. E.D. Pa. 1987) (judicial lien was avoidable in its entirety where equity is less than exemption).

This lien is the most junior lien subject to avoidance (after the DNF lien is removed and the senior liens not yet avoided are treated as unavoidable) and there is not any equity to support the lien. Strict application of the § 522(f)(2) formula with respect to Creditor's junior lien is illustrated as follows:

Amount of judgment lien	\$7,493.87
Total amount of unavoidable liens (including liens not yet avoided)	+ \$256,421.15
Debtor's claimed exemption in Property	+ 348,000.00
<i>Sum</i>	= \$611,915.02
Debtor's claimed value of interest absent liens	- \$430,200.00
Extent lien impairs exemption	= \$181,715.02

*All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007); *accord. Hanger* 217 B.R. at 596, *Higgins v. Household Fin. Corp. (In re Higgins)*, 201 B.R. 965, 967 (B.A.P. 9th Cir. 1996); *cf. Brantz*, 106 B.R. at 68, *Magosin*, 75 B.R. at 549-50, *In re Piersol*, 244 B.R. 309, 311 (Bankr. E.D. Pa. 2000). Since there is no equity for liens to attach and this case does not involve fractional interests or co-owned property with non-debtor third

parties, the § 522(f)(2) formula can be re-illustrated using the Brantz formula with the same result:

Fair market value of Property		\$430,200.00
Total amount of unavoidable liens (incl. liens not yet avoided)	-	\$256,421.15
Homestead exemption	-	348,000.00
Remaining equity for judicial liens	=	(\$174,221.15)
Creditor's judicial lien	-	\$7,493.87
Extent Debtor's exemption impaired	=	(\$181,715.02)

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

Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). Accordingly, this motion will be GRANTED. The proposed order shall state that DNF's lien is avoided from the subject Property only and include a copy of the abstract of judgment as an exhibit.

12. [24-12594](#)-B-7 **IN RE: SEUYTHAVINH/LINDA LOKEOMANIVONG**  
[PBB-2](#)

MOTION TO AVOID LIEN OF DEBT MANAGEMENT PARTNERS, LLC  
 10-15-2024 [\[17\]](#)

LINDA LOKEOMANIVONG/MV  
 PETER BUNTING/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.

Seuythavinh and Linda Lokeomanivong ("Debtors") move for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of **Debt Management Partners ("DMP" or "Creditor")** in the sum of **\$4,960.20** and encumbering residential real property located at 135 South Filbert Avenue, Fresno, California 93727 ("Property"). Doc. #28.

Debtors complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor's registered agent for service of process via first class mail on October 15, 2023. Doc. #33.

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 Debtors in favor of Creditor in the amount of **\$3,910.02** on November 7, 2022. Doc. #20 (*Exhib. D*). The abstract of judgment was issued on March 16, 2023, and was recorded in Fresno County on April 28, 2023. *Id.* That lien attached to Debtors' interest in Property. *Id.*; Doc. #19. Debtors estimate that the current amount owed on account of this lien is **\$4,960.20**. *Id.*

As of the petition date, Property had an approximate value of \$430,200.00. Doc. #1 (Sched. A/B). Debtors claimed a combined \$348,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. Doc. #1 (Sched. C).

Property is encumbered by three deeds of trust, one with Midland Mortgage ("Midland") and two with the U.S. Department of Housing and Urban Development ("HUD"). Doc. #1 (Sched. D). It is also encumbered by three judicial liens which are the subject of this and two other lien avoidance motions. In descending order of priority, the judicial lien holders are Capital One Bank (USA), NA ("Capital One"); Debt Management Partners ("DMP"); and DFN Associates ("DFN"). The DFN lien has already been avoided. *See Item #11, above*. These encumbrances can be represented as follows:

Creditor	Amount	Recorded	Status
1. Midland Mortgage	\$232,181.39	5/2018	Unavoidable
2. HUD (1)	\$14,000.00	3/2021	Unavoidable
3. HUD (2)	\$0.00	4/2022	Unavoidable
4. Capital One	\$5,279.56	8/23/2022	Avoidable; Item #13
5. DMP (This lien)	\$4,960.20	4/28/2023	Avoidable; Item #12
6. DNF	\$7,493.87	9/1/2023	Avoided; Item #11

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, 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.*; § 522(f)(2)(B).

"Under the full avoidance approach, as used in *Brantz*, the only way a lien would be avoided 'in full' was if the debtor's gross equity were equal to or less than the amount of the exemption." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 596 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999), citing *In re Brantz*, 106 B.R. 62, 68 (Bankr. E.D. Pa. 1989) ("Avoidance of all judicial liens results unless (3) [the result of deducting the debtor's allowable exemptions and the sum of all liens not avoided from the value of the property] is a positive figure."), citing *In re Magosin*, 75 B.R. 545, 547 (Bankr. E.D. Pa. 1987) (judicial lien was avoidable in its entirety where equity is less than exemption).

This lien is the most junior lien subject to avoidance (after the DNF lien is removed and the senior liens not yet avoided are treated as unavoidable) and there is not any equity to support the lien. Strict application of the § 522(f)(2) formula with respect to Creditor's junior lien is illustrated as follows:

Amount of judgment lien	\$4,960.20
Total of unavoidable liens (incl. liens not yet avoided)	+ \$251,460.95
Debtor's claimed exemption in Property	+ 348,000.00
<i>Sum</i>	= \$604,421.15
Debtor's claimed value of interest absent liens	- \$430,200.00
Extent lien impairs exemption	= \$174,221.15

*All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007); *accord. Hanger* 217 B.R. at 596, *Higgins v. Household Fin. Corp. (In re Higgins)*, 201 B.R. 965, 967 (B.A.P. 9th Cir. 1996); *cf. Brantz*, 106 B.R. at 68, *Magosin*, 75 B.R. at 549-50, *In re Piersol*, 244 B.R. 309, 311 (Bankr. E.D. Pa. 2000). Since there is no equity for liens to attach and this case does not involve fractional interests or co-owned property with non-debtor third

parties, the § 522(f)(2) formula can be re-illustrated using the Brantz formula with the same result:

Fair market value of Property		\$430,200.00
Total of unavoidable liens (incl. liens not yet avoided)	-	\$251,460.95
Homestead exemption	-	348,000.00
Remaining equity for judicial liens	=	(\$169,260.95)
Creditor's judicial lien	-	\$4,960.20
Extent Debtor's exemption impaired	=	(\$174,221.15)

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

Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). Accordingly, this motion will be GRANTED. The proposed order shall state that DMP's lien is avoided from the subject Property only and include a copy of the abstract of judgment as an exhibit.

13. [24-12594](#)-B-7 **IN RE: SEUYTHAVINH/LINDA LOKEOMANIVONG**  
[PBB-3](#)

MOTION TO AVOID LIEN OF CAPITAL ONE, N.A.  
10-15-2024 [\[23\]](#)

LINDA LOKEOMANIVONG/MV  
PETER BUNTING/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.

Seuythavinh and Linda Lokeomanivong ("Debtors") move for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of **Capital One Bank (USA), N.A. ("Capital One" or "Creditor")** in the sum of **\$5,279.56** and encumbering residential real property located at 135 South Filbert Avenue, Fresno, California 93727 ("Property"). Doc. #23.

Debtors complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor's registered agent for service of process via first class mail on October 15, 2023. Doc. #27. Debtors also complied with Rule 7004(h), which requires service to be made by certified mail and addressed to an officer, unless one of three exceptions specified in subsections (h)(1) to (3) are applicable. *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 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 Debtors in favor of Creditor in the amount of **\$4,140.80** on March 7, 2022. Doc. #26 (*Exhib. D*). The abstract of judgment was issued on Jun 22, 2022, and was recorded in Fresno County on August 23, 2022. *Id.* That lien attached to Debtors' interest in Property. *Id.*; Doc. #25. Debtors estimates that the current amount owed on account of this lien is **\$4,960.20**. *Id.*

As of the petition date, Property had an approximate value of \$430,200.00. Doc. #1 (Sched. A/B). Debtors claimed a combined \$348,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. Doc. #1 (Sched. C).

Property is encumbered by three deeds of trust, one with Midland Mortgage ("Midland") and two with the U.S. Department of Housing and Urban Development ("HUD"). Doc. #1 (Sched. D). It is also encumbered by three judicial liens which are the subject of this and two other lien avoidance motions. In descending order of priority, the judicial lien holders are Capital One Bank (USA), NA ("Capital One"); Debt Management Partners ("DMP"); and DFN Associates ("DFN"). The DFN lien

and the DMP lien have already been avoided. See Items #11 and #12, above. These encumbrances can be represented as follows:

Creditor	Amount	Recorded	Status
1. Midland Mortgage	\$232,181.39	5/2018	Unavoidable
2. HUD (1)	\$14,000.00	3/2021	Unavoidable
3. HUD (2)	\$0.00	4/2022	Unavoidable
4. Capital One (This lien)	\$5,279.56	8/23/2022	Avoidable; Item #13
5. DMP	\$4,960.20	4/28/2023	Avoided; Item #12
6. DNF	\$7,493.87	9/1/2023	Avoided; Item #11

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, 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.*; § 522(f)(2)(B).

"Under the full avoidance approach, as used in *Brantz*, the only way a lien would be avoided 'in full' was if the debtor's gross equity were equal to or less than the amount of the exemption." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 596 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999), citing *In re Brantz*, 106 B.R. 62, 68 (Bankr. E.D. Pa. 1989) ("Avoidance of all judicial liens results unless (3) [the result of deducting the debtor's allowable exemptions and the sum of all liens not avoided from the value of the property] is a positive figure."), citing *In re Magosin*, 75 B.R. 545, 547 (Bankr. E.D. Pa. 1987) (judicial lien was avoidable in its entirety where equity is less than exemption).

This lien is the most junior lien subject to avoidance (after the DNF lien is removed and the senior liens not yet avoided are treated as unavoidable) and there is not any equity to support the lien. Strict application of the § 522(f)(2) formula with respect to Creditor's junior lien is illustrated as follows:

Amount of judgment lien	\$5,279.56
Total of unavoidable liens (incl. liens not yet avoided)	+ \$246,181.39
Debtor's claimed exemption in Property	+ 348,000.00
<i>Sum</i>	= \$599,460.95
Debtor's claimed value of interest absent liens	- \$430,200.00
Extent lien impairs exemption	= \$169,260.95

*All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007); *accord. Hanger* 217 B.R. at 596, *Higgins v. Household Fin. Corp. (In re Higgins)*, 201 B.R. 965, 967 (B.A.P. 9th Cir. 1996); *cf. Brantz*, 106 B.R. at 68, *Magosin*, 75 B.R. at 549-50, *In*

re *Piersol*, 244 B.R. 309, 311 (Bankr. E.D. Pa. 2000). Since there is no equity for liens to attach and this case does not involve fractional interests or co-owned property with non-debtor third parties, the § 522(f)(2) formula can be re-illustrated using the *Brantz* formula with the same result:

Fair market value of Property		\$430,200.00
Total of unavoidable liens (incl. liens not yet avoided)	-	\$246,181.39
Homestead exemption	-	348,000.00
Remaining equity for judicial liens	=	(\$163,981.39)
Creditor's judicial lien	-	\$5,279.56
Extent Debtor's exemption impaired	=	(\$169,260.95)

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

Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). Accordingly, this motion will be GRANTED. The proposed order shall state that Capital One's lien is avoided from the subject Property only and include a copy of the abstract of judgment as an exhibit.