UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Tuesday, November 15, 2022
Department B – Courtroom #13
Fresno, California

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

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

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

Video web address:	https://www.zoomgov.com/j/1619476436?pwd=Mk54UFdiamJWRHZaWHNjK1FHSmVwdz09
Meeting ID:	161 947 6436
Password:	580182
ZoomGov Telephone:	(669) 254-5252 (Toll Free)

Please join at least 10 minutes before the start of your hearing and wait with your microphone muted until your matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screenshots" or other audio or visual copying of a hearing, is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

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

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

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

2. 22-10885-B-11 **IN RE: SYNCHRONY OF VISALIA, INC.**
LKW-7

MOTION TO CONFIRM CHAPTER 11 PLAN
9-27-2022 [109]

SYNCHRONY OF VISALIA, INC./MV
LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

Subchapter V, chapter 11 debtor-in-possession Synchrony of Visalia, Inc. ("Debtor") moves for an order confirming *Debtor's Plan of Reorganization Dated September 27, 2022*, as modified on October 21, 2022 (the "Plan"). Docs. ##108-09;#137.

Debtor transmitted the original plan, motion to confirm, declaration, exhibits, ballots, and notice of the confirmation hearing (originally set for November 9, 2022) to all parties in interest on September 27, 2022 without lodging a proposed *Order Setting Confirmation Hearing and Related Deadlines (for Use Only in Cases Under Subchapter V of Chapter 11*) ("Deadline Order") using the current EDC Official Order Form 006-202 (Rev. 10/21) as ordered in paragraph 4 of the *Order Setting Subchapter V Chapter 11 Status Conference Date; Claims Bar Date; and Other Deadlines* filed July 14, 2022.[1] Docs. #45; #114. Debtor transmitted notice of the corrected date for confirmation hearing and corrected ballots later that same day. Docs. #117-118. Debtor filed and served a modified plan on October 21, 2022, and on November 2, 2022, Debtor filed a memorandum of points and authorities, supplemental declarations and exhibits, and ballot tabulations. Docs. #138; #161.

Notwithstanding the failure of Debtor to lodge a proposed Deadline Order, the court finds it would cause unnecessary and undue delay in confirmation of the Plan to require Debtor to lodge a proposed Deadline Order and re-solicit ballots in favor of confirming the Plan.

Accordingly, the court finds notice and service of the Plan and related documents were proper and the confirmation hearing should proceed. No objections to confirmation of the Plan have been filed.

Additionally, the Plan was not filed using Official Form 425A, *Plan of Reorganization for Small Business Under Chapter 11*, which is obligatory under Fed. R. Bankr. P. ("Rule") 9009 and has been prescribed by the Judicial Conference of the United States for use in subchapter V cases. However, the Plan as filed by Debtor contains content that conforms substantially to the appropriate Official Form 425A as permitted under Rule 3016(d) and Interim Local Rule 3016(d).

Debtor set confirmation of the Plan with at least 28 days' notice of the deadline for filing objections to confirmation of the plan notice pursuant to Rule 2002(b) and Local Rule of Practice ("LBR") 9014-1(f)(1). Under LBR 9014-1(f)(1), written opposition, if any, is due at least 14 days prior to the hearing and failure to timely file written opposition 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).

The Plan appears to comply with 11 U.S.C. § 1190. Specifically, the Plan contains a brief history of Debtor's business operations, a liquidation analysis, and projections evidencing Debtor's ability to make payments as required by 11 U.S.C. § 1190(1). Docs. #108; #137. The Plan also provides for the submission of all or such portion of Debtor's future earnings or other future income to the supervision and control of the Subchapter V Trustee as is necessary for the execution of the Plan as required by § 1190(2). The court finds that § 1190(3) is inapplicable here.

Plan Confirmation

11 U.S.C. § 1191 governs plan confirmation in Subchapter V. In the *Memorandum of Points and Authorities in Support of Confirmation of Debtor's Plan of Reorganization Dated September 27, 2022 as Modified*, Debtor seeks confirmation as a consensual plan under § 1191(a) and does not seek confirmation on a non-consensual basis under § 1129(b) or 1191(b). Doc. #157.

§ 1129(a)(1)

Except for § 1123(a)(6), the Plan appears to satisfy the requirements of § 1129(a)(1) by complying with the applicable provisions of Chapter 11 and meets most of the applicable mandatory provisions of § 1122 and 1123. The Plan:

§§ 1122(a), 1123(a)

(1) Designates classes of claims other than claims of a kind specified in §§ 507(a)(1) (administrative claims), 507(a)(7) (tax claims, and interest holder claims) as required by § 1123(a)(1). Debtor does not have any § 507(a)(2) or (a)(3) claims except for fees owed to Debtor's attorney and the Subchapter V Trustee, which are provided to be paid in full under the Plan. Claims are classified as Class 1 (impaired priority unsecured claims), Class

2 (impaired general unsecured claims), Class 3 (unimpaired executory contracts and unexpired leases), and Class 4 (Debtor's interest). Plan, Doc. #108, Arts. V, VII, & IX. Debtor does not have any secured creditors, so the Plan does not include or provide for payment of any secured claims. *Id.*, Art. VI.

(2) Specifies any class of claims or interests that are not impaired under the Plan as required by § 1123(a)(2).

(3) Specifies the treatment of any class of claims or interests that are impaired under the Plan as required by § 1123(a)(3).

(4) Provides the same treatment for each claim or interest of a particular class, unless the holder of the particular claim or interest agrees to less favorable treatment of such particular claim or interest as required by § 1123(a)(4). Debtor's Plan provides for the same treatment for each claim or interest within a particular class.

(5) Provides adequate means for implementation and execution of the Plan as required by § 1123(a)(5). Debtor will fund the Plan by continuing its business to generate revenue for the operation of its business and to fund the Plan and retain all property of the estate. § 1123(a)(5)(A). Debtor believes its business will generate gross revenue of $665,724.00 per year during the term of the Plan.

(6) 11 U.S.C. § 1123(a)(6) appears to be applicable because Debtor is a corporation. However, the Plan does not appear to provide for the inclusion in Debtor's charter to prohibit the issuance of non-voting shares or include provisions relating to election of directors in the event of default in the payment of dividends under the Plan. The Plan does provide a list of officers during the term of the plan and states the expected persons to be serving on Debtor's Board of Directors, but provisions addressing § 1123(a)(6) appear to be omitted from the Plan. Doc. #108, Art. X, § 10.02. The court will inquire about such provision at the hearing.

(7) Contains no provisions that violate public policy with respect to the selection of any officer, director, or trustee under the Plan as required by § 1123(a)(7).

(8) The provisions of § 1123(a)(8) do not apply in a Subchapter V case. § 1181.

§ 1123(b)

The Plan includes the six permissive provisions of § 1123(b):

(1) The Plan may impair or leave unimpaired any class of claims, secured or unsecured, or of interests under § 1123(b)(1). The Plan includes impaired Classes 1 and 2.

(2) The Plan includes Class 3, which consists of executory contracts and unexpired leases. Class 3 is unimpaired under the plan. Plan, Doc. #108, Art. VIII. Executory contracts not rejected prior to the Effective Date will be assumed under the Plan. General unsecured claims arising out of the rejection of executory contracts will be treated as a Class 3 claim and allowed administrative claims arising out of the rejection of executory contracts will be treated as a Class 1 claim.

(3) The plan provides for settlement or adjustment of any claim or interest belonging to the Debtor or the estate. Debtor retains the right to prosecute all claims arising from any dispute involving Debtor and may pursue any claim for monetary damages that Debtor deems appropriate, as well any avoidance actions, including preference claims, fraudulent conveyance claims, and all claims held by a trustee or debtor in possession arising on or before the Effective Date, after confirmation, and after the Effective Date. The Plan designates Maria Ortiz Nance as its Executive Officer and authorizes Debtor to employ professionals to carry out any activity authorized under the plan.

(4) The Plan does not propose any sale of all or part of property of the estate as permitted by § 1123(b)(4).

(5) Debtor does not have any secured claims, so the Plan does not modify the rights of holders of secured claims as permitted by § 1123(b)(5).

(6) The Plan contains other provisions not expressly referred to in § 1123, but it does not appear that any of these provisions are inconsistent with the Bankruptcy Code.

§ 1123(c)
Since Debtor proposed the Plan, § 1123(c) is inapplicable.

§ 1129(a)(2)
The Plan appears to comply with the applicable provisions of Chapter 11 as required by § 1129(a)(2). Since Debtor is the proponent of the Plan, Debtor is not required to comply with § 1125 before soliciting acceptances unless the court otherwise orders. § 1181(b). The court did not here. Also, even though Debtor modified the plan before confirmation, § 1127 does not apply in subchapter V. § 1181(a). Debtor therefore complied with § 1129(a)(2).

§ 1129(a)(3)
The Plan has been proposed in good faith and not by any means forbidden by law as required by § 1129(a)(3). The sole purpose of the Plan is to restructure and repay the debts owed to creditors and retain ownership and possession of the business.

§ 1129(a)(4)

Pursuant to § 1129(a)(4), the Plan provides that payment to holders of allowed administrative claims, including payment of compensation and reimbursement of expenses to professionals, shall be made only after entry of an order by the Bankruptcy Court following notice and a hearing.

§ 1129(a)(5)

Pursuant to § 1129(a)(5)(A), the Plan discloses the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as an officer, director, or voting trustee of the Debtor. Specifically, the Plan identifies Maria Ortiz Nance as Debtor's Executive Director, Jay Peterson as Debtor's secretary, and Kathleen Moroney-Albidrez as Debtor's Chief Financial Officer during term of the Plan. Debtor expects that Jay Peterson, Kathleen Moroney-Albidrez, Rob Kennedy, and Cynthia Ramos will be Debtor's Board of Directors during the term of the plan. Section 1129(a)(5)(B) appears to be inapplicable.

§ 1129(a)(6)

Section 1129(a)(6) appears to be inapplicable because no changes in regulatory rates are provided for in the Plan.

§ 1129(a)(7)

As required by § 1129(a)(7), each holder of a claim or interest in an impaired class has either accepted the Plan or will receive an amount equal to or greater than the amount such holder of a claim or interest would receive in a chapter 7 case. Doc. #157, citing *Kane v. Johns-Manville Corps.*, 843 F.2d 636, 649 (2d Cir. 1988). The Plan satisfies the "best interest of creditors" test because it provides for payment of an amount equal to or greater than creditors would receive in a Chapter 7 case. Further, the Plan provides:

a. Class 1 consists of Debtor's priority creditors, which Debtor estimates will be $15,288.15 on the Effective Date. The Class 1 creditors will be paid in full during the Plan over five years at 6.5% interest from the Effective Date. Payments shall be $3,590.00 per year due on December 31 of each year during the term of the plan, beginning on December 31, 2023. Plan, Doc. #108, Art. V.

b. Class 2 consists of general unsecured claims, which includes (a) general unsecured claims existing on the petition date and (b) the unsecured portion of any secured claim as provided for in § 506. Debtor estimates that Class 2 will consist of approximately $81,361.86 on the Effective Date. Class 2 shall receive a pro rata share of $38,100 over five years and shall accrue no interest. Class 2 claims not paid through the Plan will be discharged when the court enters a discharge as provided for in §§ 1141 and 1192. Payments to Class 2 claims shall be $7,620.00 per year during the term of the plan beginning on

December 31, 2023 and shall continue until the dividend is paid in full.

c. Class 3 consists of executory contracts and unexpired leases, which will be unimpaired under the Plan.

§ 1129(a)(8)

Section 1129(a)(8) requires that each class of claims or interests either accept the plan or not be impaired. Here, all of the impaired Classes have accepted the Plan:

a. The following Class 1 claimants voted to accept the Plan: (i) clinician Jessica F. Langley with a $1,405.30 claim, (ii) Alex Vargas with a $2,542.12 claim, (iii) Business Administrator Maria Ortiz-Nance with a $642.05 claim, and (iv) clinical psychologist Ian J. Ortiz-Nance with a $2,147.87 claim. Doc. #156. No ballots rejecting the Plan were received by Debtor's counsel. Doc. #159.

b. Class 2 claimant Farley Law Firm with a $14,206.66 claim voted to accept the Plan. Doc. #156. No ballots rejecting the Plan were received by Debtor's counsel. Doc. #159.

Since all impaired classes voted to accept the Plan, it satisfies § 1191(a) and an analysis of § 1191(b) is unnecessary.

§ 1129(a)(9)

Section 1129(a)(9) requires that the Plan treat all priority claims consistent with the requirements of § 507(a), which means that administrative claimants who have not agreed to accept other treatment and holders of non-priority tax claims that have rejected the Plan must be paid in full on the Effective Date, and § 507(a)(8) tax claims must be paid over a period not exceeding 5 years after the date of the order for relief and on terms that are not less favorable than the most favored nonpriority unsecured claim. Here, Debtor has employed one professional in this case – its bankruptcy counsel. The bankruptcy counsel will be paid after its fees are approved by the court. The other administrative claimant is the Subchapter V Trustee, Lisa Holder. Debtor estimates that its bankruptcy counsel and the Subchapter V Trustee will be paid less than $30,000.00 on the Effective Date of the Plan as authorized by § 1191(e) and described in the Budgets. Plan, Doc. #108, Art. IV, § 4.02; Doc. #112, *Exs. B*, *C*.

Section 1129(a)(9)(B) requires that wage claimants (§ 507(a)(3)), employee benefit priority claimants (§ 507(a)(4)), certain farmer and fisherman priority claimants (§ 507(a)(5)), and consumer deposit priority claimants (§ 507(a)(6)) receive full payment of the allowed amount of their respective priority claims in cash on the effective date of the plan if the class has not voted to accept the plan, or deferred cash payments of a value as of the effective date of the plan equal to such allowed claims if the class has accepted the plan. Here, the only priority claimants are wage claims, which will be paid in full on or before December 31, 2017, so § 1129(a)(9)(A) has been

satisfied, and § (a)(9)(B), (C), and (D) are not implicated. The Plan therefore complies with § 1129(a)(9).

§ 1129(a)(10)
Section 1129(a)(10) requires that if a class of claims is impaired under the plan, at least one class of claims that is impaired has accepted the plan, which is determined without including the acceptance by any insider. Here, the Plan has been accepted by impaired, non-insider Class 1 and Class 2 claimants. Since these impaired classes have voted to accept the Plan, it complies with § 1129(a)(10).

§ 1129(a)(11)
As required by § 1129(a)(11), the court finds that the Plan is feasible and confirmation of the Plan is not likely to be followed by the liquidation, or need for further financial reorganization, of Debtor or any successor to Debtor under the Plan. The Plan projects that all of the projected disposable income of Debtor to be received in the five-year period beginning on the date that the first payment is due under the Plan will be applied to make the payments under the Plan. Debtor's income and expense projections, which are attached as Exhibit B, show that Debtor has sufficient income from the revenue generated from its business operations to fund the Plan. Debtor's Executive Officer, Maria Ortiz-Nance, believes that Debtor will be profitable during the term of the plan, so there the Plan has a "reasonable probability of success" and is not a "visionary scheme."

§ 1129(a)(12)
Section 1129(a)(12) has been satisfied because all fees due under 28 U.S.C. § 1930 have been paid. However, since Debtor is a Subchapter V Chapter 11 debtor, quarterly fees due to the Office of the United States Trustee are not required, so this section is inapplicable.

§ 1129(a)(13)
Section 1129(a)(13) is not applicable because Debtor does not have any obligations for retiree benefits as defined in § 1114.

§ 1129(a)(14)
Section 1129(a)(14) is not applicable because Debtor does not have any domestic support obligations.

§ 1129(a)(15)
Section 1129(a)(15) is not applicable. § 1181(a).

§ 1129(a)(16)
Section 1129(a)(16) is not applicable because Debtor is a business, or commercial corporation.

§ 1191(c)
Pursuant to § 1191(c)(1), the requirements of § 1129(b)(2)(A) with respect to secured claims are inapplicable because Debtor does not have any secured claims.

With respect to § 1191(c)(2), all projected disposable income received in the five years of the Plan will be applied to make payments under the Plan. The plan projects all disposable income received by Debtor during the term of the Plan will be applied to make payments under the Plan. Doc. #112, *Exs. B, C.*

With respect to § 1191(c)(3)(A), the court finds there is a reasonable likelihood Debtor will be able to make all payments under the Plan.

Minor Modifications

Debtor requests to make minor modifications to the Plan that were filed on October 21, 2022. Notably, the modification (a) deletes references to 11 U.S.C. § 1127 in § 14.02 and (b) inserts a reference to 11 U.S.C. § 1193 concerning modification of the Plan into § 14.02, and (c) modifies definitions in §§ 12.01 and 16.01 of the Plan.

Pursuant to Rule 3019(a), the court will find that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification and deem it accepted by all creditors and equity security holders who have previously accepted the Plan.

Conclusion

Other than § 1123(a)(6), the Plan appears to satisfy the requirements of § 1191(a). The court will inquire about § 1191(a) compliance at the hearing. The court may GRANT the motion and confirm the Plan with an added provision prohibiting the issuance of non-voting equity shares or securities, and adequate provisions for the election of directors in the event of default in the payment of dividends.

---

[1] *See* EDC 6-202 (Rev. 10/21), *Order Setting Confirmation Hearing and Related Deadlines (For Use Only in Cases Under Subchapter V of Chapter 11)*, https://www.caeb.uscourts.gov/documents/Forms/EDC/EDC.006-202.pdf (Nov. 13, 2022).

3. 22-10885-B-11 **IN RE: SYNCHRONY OF VISALIA, INC.**
LKW-8

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
10-21-2022 [139]

LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

The Law Offices of Leonard K. Welsh ("Applicant"), the law firm representing subchapter V, chapter 11 debtor Synchrony of Visalia, Inc. ("Debtor"), seeks interim compensation under 11 U.S.C. §§ 330 and 331 in the sum of $19,003.47. Doc. #139. This amount consists of $17,742.50 in attorneys' fees as reasonable compensation and $1,260.97 in reimbursement for actual, necessary expenses from June 1, 2022 through September 30, 2022. *Id.*

Debtor's Executive Officer, Maria Ortiz-Nance filed a declaration indicating that Debtor has reviewed the application and Debtor has no objection to payment of the fees and costs requested. Ortiz-Nance Decl., Doc. #142. The requested fees and costs will be paid from the $10,500.00 retainer paid before filing the case, and the remaining will be paid from income generated by the Debtor during operation of its business as permitted under the proposed Plan, upon the Effective Date of the Plan. *Id.*

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion.

This motion was filed and served on 21 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Fed. R. Bankr. P. 2002(a)(6) 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.

Debtor filed chapter 7 bankruptcy on May 25, 2022. Doc. #1. On July 11, 2022, the court granted Debtor's motion to convert the case to subchapter V of chapter 11 of the Bankruptcy Code. Doc. #40. Lisa Holder was appointed as subchapter V trustee on July 14, 2022. Doc. #46.

Applicant's employment as Debtor's general bankruptcy counsel was approved on July 27, 2022, effective May 25, 2022 pursuant to 11 U.S.C. § 327(a) 329-331. Doc. #60. The order provided that no compensation is permitted except upon court order following application under § 330(a). No hourly rate was specified, and compensation was set at the "lodestar rate" applicable at the time services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Monthly applications for interim compensation under 11 U.S.C. § 331 would be entertained. *Id.* Applicant's services here were within the time authorized under the employment order.

Prior to filing bankruptcy, Applicant received a $10,500.00 retainer. This amount was originally intended to be a flat fee of $10,000.00 and a cost advance of $500.00 as a flat fee for Debtor's chapter 7 bankruptcy. Upon converting the case to subchapter V, it was changed to an advanced payment of fees and costs. Doc. #139.

This is Applicant's first interim fee application. Applicant's firm performed 75.30 billable hours of legal services at the following rates, totaling **$17,742.50** in fees:

Professional	**Rate**	**Hours**	**Fees**
Leonard K. Welsh	$350	36.30	$12,705.00
Leonard K. Welsh (no charge)	$0	0.20	$0.00
Kathilee Welsh	$250	1.50	$375.00
Trinette M. Lidgett (paralegal)	$125	37.30	$4,662.50
Total Hours & Fees		**75.30**	**$17,742.50**

Id.; Welsh Decl., Doc. #143; Time Entries, Doc. #143, *Ex. B*. Applicant also incurred **$1,260.97** in expenses:

CourtCall (5 @ $22.50)	$112.50
Filing Fees	$954.00
Overnight Delivery	$17.42
Postage	$76.55
WebPACER Charges	$100.50
Total Costs	**$1,260.97**

Id. These combined fees and expenses total **$19,003.47.**

As noted briefly above, Debtor was paid $10,500.00 pre-petition. If approved, this amount will be applied to fees, leaving a balance of $8,503.47 to be paid through the proposed Plan from the income generated from the operation of Debtor's business.

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).

Applicant's services included, without limitation: (1) advising Debtor of the options available under chapter 7 and chapter 11 of the Bankruptcy Code; (2) preparing and prosecuting a motion to convert the case from chapter 7 to a proceeding under subchapter V of chapter 11 (LKW-3); (3) preparing and amending schedules; (4) advising Debtor about the administration of chapter 11 and its duties as debtor-in-possession; (5) providing copies of the petition and other documents to Debtor and parties in interest; (6) preparing and filing an amended creditor's matrix; (7) preparing for and participating in status conferences, the Meeting of Creditors and Initial Debtor Interview, and providing requested documents to the U.S. Trustee; (8) assisting Debtor in opening debtor-in-possession accounts and filing monthly operating reports; (9) opposing the appointment of a patient care ombudsman (UST-1); (10) advising Debtor about correspondences and collection services available, and reviewing proofs of claim; (11) seeking and obtaining employment authorization (LKW-4); and (12) preparing and filing the subchapter V chapter 11 plan (LKW-7). Docs. #139; #141 The court finds the services and expenses reasonable, actual, and necessary. As noted above, Debtor reviewed the fee application and consents to payment of the requested compensation. Doc. #142.

Written opposition was not required and may be presented at the hearing. In the absence of opposition at the hearing, the court is inclined to GRANT this motion. Applicant will be awarded $17,742.50 in fees and $1,260.97 in expenses on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. Debtor will be awarded a total of $19,003.47 and after application of the $10,500.00 retainer, Debtor will be authorized to pay Applicant $8,503.47 under the terms of the plan provided that the plan is confirmed for services rendered and/or costs incurred between June 1, 2022 through September 30, 2022.

4. 22-10885-B-11 **IN RE: SYNCHRONY OF VISALIA, INC.**
LKW-9

MOTION TO AUTHORIZE DEBTOR TO MAINTAIN PREPETITION BANK ACCOUNTS AND DEBTOR-IN-POSSESSION BANK ACCOUNTS
10-28-2022 [150]

SYNCHRONY OF VISALIA, INC./MV
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Synchrony of Visalia, Inc. ("Debtor") moves for an order authorizing it to maintain its prepetition bank accounts and debtor-in-possession bank accounts. Doc. #150.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion.

This motion was filed and served on 21 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Fed. R. Bankr. P. 2002(a)(6) 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.

LBR 2015-2 and the *United States Trustee's Chapter 11 Operating Report Guidelines for Debtors-in-Possession (Revised September 2022)* require, upon filing a chapter 11 petition, the debtor-in-possession to immediately close all bank, deposit, and investment accounts.

Debtor operates its business by receiving direct deposits into its bank accounts at Union Bank ("Prepetition Accounts") from insurance companies for services rendered to its patients. Ortiz-Nance Decl., Doc. #152. Ortiz-Nance believes that forcing Debtor to close its pre-petition accounts and change its billing practices will be difficult for Debtor and may require it to close its business. *Id.* Since Debtor's income is collected from insurance reimbursements, insurance companies may take 90 days or more to direct funds to a new account. Additionally, Debtor has been informed that the process to receive payment from insurance companies will be stopped until the new bank account is recognized and authorized to submit and receive payments. Lastly, several insurance companies only pay through electronic

deposit, and it will take some time for Debtor to receive electronic payments in new accounts such that Debtor's business and proposed reorganization would be imperiled if Debtor were forced to close its prepetition accounts. Debtor has experienced difficulty in the past when a change in payment protocol has been requested, including (a) insurance companies not honoring Debtor's request for a change in payment protocol and continuing to make payments to what may have been a closed account, and (b) payments to Debtor being delayed while the insurance companies attempted to understand the requested change in payment protocol.

Debtor therefore requests that it be permitted to maintain the Prepetition Accounts and its Debtor-in-Possession accounts at Bank of the West ("DIP Accounts") during the administration of this case. Doc. #150.

Debtor suggests using the following solution with respect to its accounts:

(a) Debtor be permitted to maintain the Prepetition Accounts for the purpose of collecting money owed to Debtor from whatever source;
(b) Debtor instructs Bank of the West to "sweep" its prepetition accounts at Union Bank one time per week and transfer the money on deposit in its prepetition accounts at Union Bank to the DIP Accounts at Bank of the West; and
(c) Debtor be ordered to pay all of its ongoing business and operating expenses from its DIP Accounts.

Id.; Doc. #152.

11 U.S.C. § 1108 permits a debtor-in-possession in a chapter 11 case to operate its business without appointment of a trustee and § 363 permits the debtor-in-possession to use property of the estate in the ordinary course of business without excessive court control or supervision. Under § 105(a) the court may issue an order, process, or judgment that is necessary or appropriate to carry out the Bankruptcy Code.

Debtor argues that waiver of the U.S. Trustee's Guidelines is appropriate where good cause for the waiver exists, because the Guidelines may be impractical and detrimental to the Debtor's business operations and restructuring efforts. Doc. #150, citing *In re Columbia Gas Systems, Inc.*, 997 F.2d 1039, 1061 (3d Cir. 1993); *In re SRC Liquidation*, Case No. 15-10541 (BLS) (Bankr. D. DE Mar. 13, 2015); *In re Overseas Shipping Group, Inc.*, Case No. 12-20000 (PJW) (Bankr. D. DE Jan. 24, 2013).

This matter will be called as scheduled to inquire whether any party in interest opposes. In the absence of opposition, the court is inclined to GRANT this motion.

5. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
WJH-18

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

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

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

DISPOSITION: Continued to February 14, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

Due to ongoing discussions between the District and Tulare Hospitalist Group, the court continued this hearing to February 14, 2023 at 9:30 a.m. pursuant to the parties' stipulation. Doc. #2546. The District shall file and serve a status report not later than seven days prior to the continued hearing date.

6. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
WJH-19

CONTINUED SCHEDULING CONFERENCE RE: 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.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 14, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

Due to ongoing discussions between the District and Gupta-Kumar Medical Practice, the court continued this hearing to February 14, 2023 at 9:30 a.m. pursuant to the parties' stipulation. Doc. #2547. The District shall file and serve a status report not later than seven days prior to the continued hearing date.

7. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
WJH-25

CONTINUED SCHEDULING CONFERENCE RE: 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.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 14, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

Due to ongoing discussions between the District and Inpatient Hospital Group, Inc., the court continued this hearing to February 14, 2023 at 9:30 a.m. pursuant to the parties' stipulation. Doc. #2545, *as modified November 10, 2022* by Doc. #2548. The District shall file and serve a status report not later than seven days prior to the continued hearing date.

11:00 AM

1. 22-11508-B-7 **IN RE: JESUS/GABRIELA LOPEZ**

REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
10-20-2022 [21]

JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel shall notify the debtor that no appearance is necessary.

The form of the Reaffirmation Agreement complies with 11 U.S.C. § 524(c) and 524(k), and it was signed by the debtor's attorney with the appropriate attestations. Pursuant to 11 U.S.C. § 524(d), the court need not approve the agreement.

2. 22-11508-B-7 **IN RE: JESUS/GABRIELA LOPEZ**

REAFFIRMATION AGREEMENT WITH CAPITAL ONE AUTO FINANCE
10-25-2022 [23]

JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel shall notify the debtor that no appearance is necessary.

The form of the Reaffirmation Agreement complies with 11 U.S.C. § 524(c) and 524(k), and it was signed by the debtor's attorney with the appropriate attestations. Pursuant to 11 U.S.C. § 524(d), the court need not approve the agreement.

3. 22-11508-B-7 **IN RE: JESUS/GABRIELA LOPEZ**

REAFFIRMATION AGREEMENT WITH ALLY BANK
10-26-2022 [24]

JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel shall notify the debtor that no appearance is necessary.

The form of the Reaffirmation Agreement complies with 11 U.S.C. § 524(c) and 524(k), and it was signed by the debtor's attorney with the appropriate attestations. Pursuant to 11 U.S.C. § 524(d), the court need not approve the agreement.

1:30 PM

1. 22-11142-B-7 **IN RE: GEORGE AGUILAR**
LLB-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-31-2022 [38]

CL WEST MANAGEMENT, LLC/MV
MARIA GARCIA/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

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

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

CL West Management, LLC, a Delaware limited liability company ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to proceed with its unlawful detainer action entitled *CL West Management, LLC v. Aguilar, et al.*, Case No. 22CECL03644 ("Unlawful Detainer Action") with respect to a hotel room rented on a daily basis at Home Towne Studioes Fresno-West, 3460 West Shaw Avenue, Room 332, Fresno, CA 93711 ("Property"). Doc. #38. Movant also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3).

Though not required, Debtor filed handwritten opposition. Doc. #51.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT IN PART and DENY AS MOOT IN PART this motion.

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.

As a preliminary matter, Debtor's opposition does not comply with the local rules. First, Debtor's opposition does not comply with the general formatting requirements of pleadings. LBR 9004-2(a)(2) requires each page to have consecutively numbered lines, double spaced, in the left margin. Such numbered pleading lines were not included here.

Second, LBR 9004-2(a)(3) requires all pleadings and other papers submitted for filing to be typewritten, printed, computer generated, or prepared by some other *clearly legible process*. LBR 9004-2(a)(4) requires the font for documents filed with the court to be between 12- to 14-point type font in Arial, Courier, Times, Times New Roman, and Helvetica, or their equivalent. Here, Debtor's opposition is handwritten and is neither "clearly legible" nor an equivalent to Arial, Courier, Times, Times New Roman, or Helvetica.

Third, LBR 9004-2(c)(1) requires all motions, objections, responses, and other specified pleadings to be filed as separate documents. LBR 9004-2(e)(1) and (2), and LBR 9014-1(e)(3) require the proof of service for any documents to be itself filed as a separate document, and copies of the pleadings and documents served SHALL NOT be attached to the proof of service filed with the court. Here, Debtor's opposition includes an opposition, declaration, and proof of service. Instead, Debtor should have separately filed each as three distinct documents.

Fourth, LBR 9004-2(c)(3) requires the pages of each document to be numbered consecutively at the bottom center of the page. Here, Debtor does number pages 2 and 3 in the top-right corner. Instead, the page numbers should have been on every page in the bottom center of the page.

Fifth, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The Movant here properly identified this motion and its supporting documents as DCN LLB-1. But Debtor's opposition omits the use of a DCN entirely. This is incorrect. Since Debtor was opposing a motion filed under LLB-1, Debtor should have also used LLB-1 as the DCN for the opposition.

Sixth, Debtor served his opposition on Movant by facsimile. The form, content, and method of service do not comply with Fed. R. Bankr. P. 7004, 9036, or LBR 7005-1.

The above grounds are enough to overrule Debtor's opposition. When a bankruptcy court operates within its local rules, there is no abuse of discretion in application of those local rules. *In re Thao Tran Nguyen*, 447 B.R. 268, 281 (B.A.P. 9th Cir. 2011) (*en banc*).

The court acknowledges that Debtor filed this opposition *pro se* and is therefore held to less stringent standards. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197 (2007) ("A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.") (internal quotations and citations omitted). However, "*pro se* litigants in the ordinary civil case should not be treated more favorably than parties with attorneys of record."

Jacobsen v. Filler, 790 F.2d 1362, 1364 (9th Cir. 1986). "Thus, before dismissing a *pro se* complaint, the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity to amend effectively." *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992), citing *Draper v. Coombs*, 795 F.2d 915, 924 (9th Cir. 1986).

Even considering Debtor's opposition, the result of this motion is unchanged because the automatic stay has already terminated with respect to the Debtor.

BACKGROUND

On or about October 3, 2019, George W. Aguilar ("Debtor") and non-debtor Olivia Oneal ("Oneal") orally agreed to rent the Property on a day-to-day basis with a daily rental payment of $49.99. Doc. #40. Debtor executed a rental agreement with Movant on or about April 1, 2022. Doc. #43, *Ex. 1* to *Ex. A*. Debtor defaulted under the rental agreement on or about April 1, 2022, which prompted Movant to serve a *Three-Day Notice to Pay Rent or Quit* on June 3, 2022. *Id.*, *Ex. 2* to *Ex. A*.

On June 9, 2022, Movant filed the Unlawful Detainer Action in Fresno County Superior Court. *Id.*, *Ex. A*. Debtor filed an Answer on or about June 21, 2022, contending that the Movant has breached the warranty of habitability and, as a result, has overstated the amount of rent owed due to its failure to provide a habitable premises. *Id.*, *Ex. B*.

Debtor filed chapter 7 bankruptcy on July 6, 2022. Doc. #1.

On July 11, 2022, Movant's attorney received a notice from the state court that a hearing on the Unlawful Detainer Action would be held on July 18, 2022 regarding Debtor's declaration of COVID-19 related financial distress. *Id.*, *Ex. C*; Doc. #42. Without notice of the bankruptcy, Debtor's attorney attended the hearing on behalf of Movant and argued for denial of Debtor's declaration. *Id.* Debtor's attorney alleges that Debtor was present at the hearing and did not disclose his pending bankruptcy. *Id.* Thereafter, Movant received a copy of the state court's minute order on the declaration on or about July 25, 2022. *Id.*; Doc. #43, *Ex. D*.

Movant received a *Notice of Stay of Proceedings* on August 1, 2022. *Id.*, *Ex. E*. Movant's attorney filed a copy of the notice in the Unlawful Detainer Action on the next day. *Id.*, *Ex. F*. On August 8, 2022, Movant's attorney received notice of a hearing on dismissal of the Unlawful Detainer Action set for November 1, 2022. *Id.*, *Ex. G*.

Debtor's discharge was entered on November 8, 2022. Doc. #50.

Movant now requests relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) effective as of the petition date, July 6, 2022, so that any acts taken by or at the request of the Movant to

enforce its remedies, including its appearance and arguments at the July 18, 2022 hearing in Unlawful Detainer Action will not constitute a violation of the automatic stay. Doc. #38.

In opposition, Debtor accuses Movant of filing a frivolous motion without merit and likens it to "yet another vindictive attack" on the Debtor for invoking COVID-19 protections during the pandemic. Doc. #51. Debtor claims that Movant removed the television from the Property on April 13, 2020 at a time when public information was vital. *Id.* Additionally, Debtor has been unable to located new housing.

Debtor also indicates that this is at least Movant's second attempt at filing the Unlawful Detainer Action. Apparently, another action was initiated on May 17, 2022 that was dismissed on June 8, 2022. After proffering *ad hominem* personal attacks against Movant's counsel, Debtor requests that the court uphold the automatic stay because Debtor's bankruptcy case is without any assets. *Id.*

DISCUSSION

This motion relates to an executory contract or lease of residential real property. Under 11 U.S.C. § 365(d)(1), if the chapter 7 trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property within 60 days after the order for relief, then the contract or lease is deemed rejected.

The lease for Property was not assumed by the chapter 7 trustee within the 60-day time period prescribed in § 365(d)(1). However, since the Property at issue is residential property, § 365(p)(1) is inapplicable, and the rejected lease remains property of the estate and the automatic stay still applies with respect to the chapter 7 estate and chapter 7 trustee.

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until the case is closed, dismissed, or discharge is granted or denied, whichever is earliest. Here, Debtor's discharge was entered on November 8, 2022. Doc. #50. Therefore, the automatic stay terminated with respect to the Debtor on November 8, 2022. This motion will be DENIED AS MOOT IN PART as to the Debtor's interest.

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, as of the date Movant filed this motion, Debtor has missed 96 pre-petition and 113 post-petition payments of $49.99 per day. Docs. ##40-42. Debtor is delinquent in the amount of $10,297.94 and has been delinquent since April 1, 2022. *Id.*

Additionally, the court finds that Debtor does not have any equity in the Property because this is a lease, and the Property is not necessary to an effective reorganization because this is a chapter 7 case.

Though "cause" exists to lift the stay, Movant here seeks to retroactively annul the automatic stay effective as of the petition date.

The Ninth Circuit Court of Appeals has warned that retroactive relief should only be "applied in extreme circumstances." *In re Aheong*, 276 B.R. 233, 250 (B.A.P. 9th Cir. 2002) (citations omitted). When deciding a motion to annul the automatic stay, the court may consider the "*Fjeldsted*" factors:

> 1. Number of filings;
> 2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;
> 3. A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;
> 4. The Debtor's overall good faith (totality of circumstances test;
> 5. Whether creditors knew of the stay but nonetheless took action, thus compounding the problem;
> 6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;
> 7. The relative ease of restoring parties to the *status quo ante*;
> 8. The costs of annulment to debtors and creditors;
> 9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative contract;
> 10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;
> 11. Whether annulment of the stay will cause irreparable injury to the debtor;
> 12. Whether stay relief will promote judicial economy or other efficiencies.

In re Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 24-25 (B.A.P. 9th Cir. 2003). One factor alone may be dispositive. *Id.*

Notwithstanding Movant's failure to address the *Fjeldsted* factors, an analysis of such factors support annulment of the stay as follows:

1. Number of filings: This appears to be Debtor's first bankruptcy filing in this district. Thus, this factor appears to be neutral and inapplicable.

2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors: Since this is Debtor's first bankruptcy filing, this factor is also neutral and inapplicable.

3. Extent of prejudice to creditors or third parties if the stay relief is not made retroactive: Movant may potentially be prejudiced if stay relief is not made retroactive because Movant appeared and argued in the Unlawful Detainer Action on July 18, 2022. By taking action to enforce its rights and remedies under applicable law, Movant is concerned that its appearance and argument will constitute a continuation of a judicial action or proceeding against the debtor that was commenced before commencement of this case. § 362(a)(1). This factor supports annulment.

4. Debtor's overall good faith (totality of the circumstances): Movant has not alleged that Debtor has not acted in good faith. But Movant indicates that Debtor failed to mention the filing of this bankruptcy when he appeared at the Unlawful Detainer Action on July 18, 2022. Further, it appears that Movant and the state court were not notified of the bankruptcy at the time of filing. Rather, Movant was required to file the notice of the stay because Debtor did not do so.

However, Debtor began renting the Property on a daily basis in October of 2019 and appears to have remained current on his obligations until April of 2022. Although the timing of the bankruptcy coincided with the Unlawful Detainer Action, the filing itself does not appear to have been in bad faith. Debtor completed the bankruptcy and received an order of discharge on November 8, 2022. Doc. #50.

This factor slightly favors annulment due to Debtor's failure to notify Movant or the state court about the bankruptcy.

5. Whether creditors knew of the stay but nonetheless took action, thus compounding the problem: Movant maintains that it did not learn about the automatic stay until August 1, 2022. Docs. #40; #42. Upon learning of it, Movant promptly filed the notice of stay in the Unlawful Detainer Action to halt the proceedings there. Since then, Movant does not appear to have taken any action against Debtor until filing the instant motion to annul the automatic stay. Since Movant has not taken any subsequent actions to compound any stay violations, this factor supports annulment.

6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules: Notwithstanding the procedural deficiencies described above, Debtor appears to have complied with the Bankruptcy Code and Federal Rules of Bankruptcy Procedure. However, Debtor did not properly serve Movant in accordance with Fed. R. Bankr. P. 7004 or 9036. This factor weighs slightly against annulment.

7. The relative ease of restoring parties to the *status quo ante*: The parties appear to presently be at the *status quo ante*. Although the state court denied Debtor's declaration regarding COVID-19 financial difficulties because Debtor has received the maximum limit of 18 months of Emergency Rental Assistance, so he is ineligible for further assistance. Doc. #43, *Ex. D*. This ruling does not change Debtor's position because he was not guaranteed to receive such assistance even with the automatic stay. This factor supports annulment.

8. The costs of annulment to the debtor and creditors: The costs of annulment are *de minimis* for both parties. Even if Movant's appearance and argument at the July 18, 2022 hearing constitute as stay violations, Debtor does not appear to have been damaged by such appearance and argument in any way. This factor appears to be neutral as to both sides.

9. How quickly creditors moved for annulment, or how quickly the debtor moved to set aside the sale or contract: Movant filed the motion to annul the stay three months after this case was filed. Debtor, meanwhile, has not moved to set aside anything, but there is also nothing to set aside. Movant's delay in filing the motion can be explained by Debtor's failure to timely notify Movant of the bankruptcy. This factor supports annulment.

10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved to expeditious gain relief: After learning of the bankruptcy, Movant does not appear to have taken any steps in continued violation of the stay and expeditiously filed this motion for annulment. This factor supports annulment.

11. Whether annulment of the stay will cause irreparable injury to the debtor: Annulment of the stay will not cause irreparable injury to the Debtor. In fact, the stay is already terminated as to Debtor because his discharge has been entered. Instead, the stay only applies to the chapter 7 trustee. No irreparable injury will occur here. Further, since the trustee did not assume Debtor's day-to-day hotel room rental agreement, the agreement was deemed to be rejected on the 60th day after the petition date. This factor supports annulment.

12. Whether stay relief will promote judicial economy or other efficiencies: The interests of judicial economy and efficiency are served by annulling the automatic stay. The stay is already terminated

with respect to the Debtor and the trustee has rejected the rental agreement. This factor supports annulling the stay.

In sum, the *Fjeldsted* factors support annulling the automatic stay because Movant did not timely receive notice of the bankruptcy. Upon receiving notice, Movant promptly filed this motion. Meanwhile, Debtor did not promptly notify all parties in interest of this bankruptcy.

CONCLUSION

For the reasons stated above, as to present relief from the automatic stay, this motion will be DENIED AS MOOT IN PART as to the Debtor because his discharge has been entered and GRANTED IN PART as to the chapter 7 trustee and estate. The court finds that "cause" exists to grant relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) because Debtor has missed 209 payments and is delinquent at least $10,297.00.

Further, the motion will be retroactively GRANTED as to both Debtor and the chapter 7 trustee and estate because the *Fjeldsted* factors support annulment. The automatic stay will be annulled as to Movant with respect to both Debtor and the chapter 7 trustee and estate effective July 6, 2022.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 96 pre-petition and 113 post-petition and Debtor is delinquent at least $10,297.94.

2. 22-10060-B-7 **IN RE: CURTIS/CHARTOTTE ALLEN**
FW-3

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR
10-18-2022 [90]

PETER FEAR/MV
GABRIEL WADDELL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Chapter 7 trustee Peter L. Fear ("Trustee") moves to extend the deadlines for filing a complaint objecting to the debtors' discharge under § 727, up to and including January 27, 2023 as to the Trustee, as to all creditors and interested parties. Doc. #90. Curtis James Allen and Charlotte Yvette Allen (collectively "Debtors") did not oppose.

No party in interest timely filed written opposition. Since Debtors are *pro se*, this matter will be called and proceed as scheduled. The court intends to GRANT this motion.

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). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Federal Rule of Bankruptcy Procedure ("Rule") 4004(a) requires a complaint objecting to the debtors' discharge under § 727 to be filed no later than 60 days after the first date set for the § 341(a) meeting of creditors unless an extension of time is requested. Rule 4004(b)(1) allows the court to extend the time to object to discharge, for cause, on motion of any party in interest and after a noticed hearing. The motion shall be filed before the time has expired unless the conditions specified in Rule 4004(b)(2) are met.

Rule 4004(b)(2) permits an extension of time to object to discharge after the for objection has expired and before discharge is granted if (A) the objection is based on facts that, if learned after the discharge, would provide a basis for revocation under § 727(d), and (B) the movant did not have knowledge of those facts in time to permit an objection.

The court is permitted to enlarge the time for acting under Rule 4004(a) only to the extent and under the conditions stated in that rule. Rule 9006(b)(3).

Courts have analyzed "cause" for the purposes of requesting an extension of time to object to a debtor's discharge. These factors include:

(1) Whether the moving party had sufficient notice of the deadline and information to file an objection;
(2) The complexity of the case;
(3) Whether the moving party has exercised diligence; and
(4) Whether the debtor has been uncooperative or acted in bad faith.

In re Bomarito, 448 B.R. 242, 249 (Bankr. E.D. Cal. 2011), citing *In re Nowinski*, 291 B.R. 302 (Bankr. S.D. N.Y. 2004).

Here, Debtors filed chapter 13 bankruptcy on January 17, 2022. Doc. #1. The first date set for the meeting of creditors was February 2022, so the original 60-day deadline to file a complaint objecting to discharge under § 727 was April 2, 2022. Doc. #9.

The first § 341 meeting was held on February 1, 2022, continued to March 22, 2022, and continued again to April 27, 2022, at which time it concluded. *See* docket generally.

Trustee moved to dismiss or convert the case for unreasonable delay that is prejudicial to creditors, failure to file complete and accurate schedules, and failure to disclose surplus proceeds from a pre-petition foreclosure sale totaling approximately $130,000. Doc. #61. At the hearing, the court converted the case to chapter 7 on July 20, 2022. Doc. #63.

On the same day, Trustee was appointed as interim trustee and the 341 meeting of creditors for the chapter 7 case was first set for August 29, 2022. *Id.*; Doc. #64. The new deadline to object to Debtors' discharge was October 28, 2022.

The 341 meeting was held on August 29, 2022, continued to September 29, 2022, continued again to October 31, 2022, and most recently was continued to December 12, 2022. Docket generally. Debtors have repeatedly failed to appear at each meeting. Doc. #92.

Trustee has reviewed the Debtors' schedules in which they have disclosed an ownership interest in a piece of real property, which was purportedly sold at a foreclosure sale pre-petition. *Id.* Debtors have been uncooperative with Trustee and refuse to consent to contract with anyone involved in this bankruptcy. Docs. ##45-49. Further, Debtors have separately asserted that they are not subject to the jurisdiction of this court because they are "living flesh and blood beings", their names were in all-capital letters, and other reasons. Doc. #45, citing the "Cestui Qui Vie Act of 1666." Doc. #45. Trustee has exercised diligence, but since Debtors refuse to appear at the 341 meeting, he is unable to obtain information necessary to administer the bankruptcy estate.

This case is complicated and required substantial due diligence. Trustee intends to file a motion to compel the Debtors to provide the necessary information. Doc. #90. An extension of time will provide Trustee with sufficient time to complete its evaluation of whether an adversary proceeding for non-dischargeability is necessary.

Accordingly, this motion will be called as scheduled and the court intends to GRANT the motion. For the reasons stated above, the court finds that cause exists to extend the deadline to object to Debtors' discharge under § 727. The deadlines for the Trustee and any other party in interest to file a complaint objecting to Debtors' discharge under § 727 is extended up to and including January 27, 2023. Further extensions may be permitted upon noticed motion by any party.

3. 22-11170-B-7 **IN RE: DOUA YANG**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-26-2022 [51]

TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings and conclusions.

ORDER: The court will issue an order.

Creditor Toyota Motor Credit Corporation ("Creditor") filed a *Motion for Relief from Automatic* Stay on October 7, 2022. Doc. #41. A fee of $188.00 is required at the time of filing that motion. A *Notice of Payment Due* was served on Creditor on October 21, 2022. Doc. #48.

On October 26, 2022, the Clerk of the court issued an *Order to Show Cause re Dismissal of Contested Matter or Imposition of Sanctions* directing Creditor to appear at the hearing and show cause why the motion should not be stricken, sanctions imposed on the party filer and/or their counsel, or other relief ordered for failure to comply with the provisions of 28 U.S.C. § 1930(b). Doc. #51.

Since then, Creditor's motion was denied without prejudice for failure to file a certificate of service. Doc. #56.

This matter will proceed as scheduled. If the filing fee of $188.00 is not paid prior to the hearing, the motion may be stricken, and sanctions imposed on the filer and/or its counsel on the grounds stated in the OSC.

4. 22-11491-B-7 **IN RE: LAURA MCCULLOUGH**
SLL-1

MOTION TO AVOID LIEN OF NORTHRIDGE TERRACE HOMEOWNERS ASSOCIATION
10-10-2022 [14]

LAURA MCCULLOUGH/MV
STEPHEN LABIAK/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.

Laura B. McCullough ("Debtor") seeks to avoid a judicial lien in favor of Northridge Terrace Homeowners Association, aka Northridge Terrace Association, ("Creditor") in the sum of $14,625.12 and encumbering residential real property located at 41864 Crass Drive, Oakhurst, CA 93644 ("Property").[2] Doc. #14.

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 originally entered against Debtor in favor of Creditor in the sum of $14,625.12 on April 30, 2013. Doc. #17, *Ex. D.* This judgment was renewed by Creditor on November 15, 2021. *Id.* The renewed abstract of judgment was issued on January 6, 2022 and recorded in Madera County on January 12, 2022. *Id.* That lien attached to Debtor's interest in Property. Debtor Decl., Doc. #16.

As of the petition date, Property had an approximate value of $375,000.00. *Id.*; Doc. #1, *Sched. A/B*. Property is solely encumbered by a $277,000.00 deed of trust in favor of Sierra Pacific Mortgage. *Id.*, *Sched. D*. There do not appear to be any other interests encumbering Property besides the mortgage and this judgment lien. *Id.* Debtor claimed a homestead exemption in Property pursuant to Cal. Code

Civ. Proc. ("CCP") § 704.730 in the amount of $98,000.00. *Id.*, *Sched. C*.

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

Amount of judgment lien	$14,625.12
Total amount of unavoidable liens	+ $277,000.00
Debtor's claimed exemption in Property	+ $98,000.00
Sum	= $389,625.12
Debtor's claimed value of interest absent liens	- $375,000.00
Extent lien impairs exemption	= $14,625.12

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property	$375,000.00
Total amount of unavoidable liens	- $277,000.00
Homestead exemption	- $98,000.00
Remaining equity for judicial liens	= $0.00
Creditor's judicial lien	- $14,625.12
Extent Debtor's exemption impaired	= ($14,625.12)

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

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). This motion will be GRANTED. The proposed order shall state that the lien is avoided from the subject Property only and include a copy of the abstract of judgment attached as an exhibit.

[2] Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving on October 10, 2022 via first class mail Creditor's registered agent for service of process, as well as its Association Board Member and Association Property Manager. Doc. #18.