

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, December 2, 2021
Place: Department B – Courtroom #13
Fresno, California

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [21-11001](#)-B-11 **IN RE: NAVDIP BADHESHA**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
4-21-2021 [\[1\]](#)

MATTHEW RESNIK/ATTY. FOR DBT.

NO RULING.

2. [21-11001](#)-B-11 **IN RE: NAVDIP BADHESHA**
[RMB-12](#)

MOTION TO USE CASH COLLATERAL
10-29-2021 [\[183\]](#)

NAVDIP BADHESHA/MV
MATTHEW RESNIK/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted on an interim basis.

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

Debtor-in-possession Navdip S. Badhesha ("DIP") seeks interim approval pursuant to 11 U.S.C. § 363 for the continued use of cash collateral to pay the cost of goods sold and operating expenses due from November 30, 2021 to May 30, 2022.¹ Doc. #183.

All parties in interest were properly served in accordance with Fed. R. Bankr. P. 7004(b). Docs. #187; #192; #194. No party timely filed written opposition to this motion. This motion will be GRANTED on an interim basis for the use of cash collateral from November 30, 2021 through May 30, 2022.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. The failure of the creditors, the 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.

PROCEDURAL ISSUES

As a preliminary matter, the *Notice of Hearing* (Doc. #184) does not comply with the local rules. LBR 9014-1(d)(3)(B)(i) requires the notice to include the names and addresses of persons who must be served with any opposition. Counsel is advised to review the local rules to ensure procedural compliance in subsequent motions. Future violations of the local rules may result in the matter being denied without prejudice.

BACKGROUND

DIP is a married individual, employed full-time as a service team supervisor at Aweta Americas, and operates a grape farm that produces raisins. Doc. #185. DIP owns real property at 13570 W. McKinley Avenue, Kerman, CA 93630 ("Property"), valued at \$1.6 million per a recent appraisal. *Id.* Property is DIP's personal residence and is encumbered by the following deeds of trust in order of priority:

| | |
|------------------------------|--------------|
| 1. AgriFinancial Servs. Inc. | \$194,241.25 |
| 2. AgriFinancial Servs. Inc. | \$424,491.63 |
| 3. Premier Valley Bank | \$189,488.43 |
| 4. USDA Farm Service Agency | \$45,277.00 |
| 5. Fresno First Bank | \$553,430.70 |
| Total: \$1,406,929.01 | |

Docs. #21, *Sched. A/B*; #113, *Am. Sched. D*; *cf.* Proofs of Claim Nos. 9-11, 13-14. Property contains a grape vineyard wherein DIP produces raisins and, according to DIP's previous declarations, it also includes a small, separate residential property that generates \$400 in monthly rent. Docs. #54; #185.

DIP filed chapter 11 bankruptcy on April 21, 2021. Doc. #1. The rents, profits, and other proceeds generated from Property and DIP's raisin production are cash collateral of the above lienholders. Thus, DIP must either obtain consent or seek court authorization after notice

and a hearing prior to using those rents, proceeds, and other profits.
11 U.S.C. § 363(c) (2).

Property's vineyard consists of 60-year-old vines that require continual maintenance to keep living and growing grapes. Doc. #185. The vines require monthly irrigation from March to August and must be pruned in January. *Id.* DIP must continually monitor the vines for mold, mildew, and insects at the risk of ruining the production of future years' harvests. *Id.* The value of Property and DIP's ability to reorganize is drastically impacted if he is not able to use cash collateral to pay ordinary and customary operating expenses. *Id.*

Shortly after filing, DIP sought and obtained interim authorization to use cash collateral to pay expenses as set forth in his revised budget filed July 6, 2021 ("*First Budget*," Doc. #97, *Ex. A*). Doc. #110. Authorization was granted on a preliminary basis from July 14, 2021 through August 10, 2021, and on a final basis from August 10, 2021 through November 30, 2021. *Id.* DIP was authorized to deviate from the total expenses contained in the *First Budget* by no more than 15% and to deviate by category without further need for court order, provided the DIP does not pay any expenses outside of the approved categories. *Id.* Additionally, the court ordered DIP to provide the following adequate protection to the above lienholders:

- a. DIP shall give a replacement lien on the revenue generated post-petition from his real property to the extent that the secured creditors' cash collateral is actually being used;
- b. DIP shall segregate in his cash collateral DIP bank account all revenue exceeding the funds needed to pay the operating expenses as set forth in the *First Budget*;
- c. If DIP fails to cure any default with 14-days written notice from secured creditors, secured creditors shall be entitled to a hearing requesting relief from the automatic stay pursuant to 11 U.S.C. § 362 on an expedited basis; and
- d. DIP shall provide secured creditors with reasonable reporting requirements to be determined by the parties.

Id.; Doc. #145. Prior to expiration of the interim order, DIP was to file, serve, and set for hearing a new motion for further use of cash collateral. *Id.* DIP properly served, filed, and set this motion for hearing prior to expiration of the first interim order.

After the first interim order became effective, DIP used the final \$10,067 payment from the 2020 raisin production to pay all expenses associated with harvesting the grapes and producing the raisins in September 2021. Doc. #183. In September 2021, DIP received the first installment payment of \$32,000 for the 2021 harvest. *Id.* The second installment of \$75,439.79 was received on October 11, 2021, for a total of \$107,439.79 (collectively, "2021 Revenue") for the 2021 raisin production. *Id.* DIP included a postpetition household and business profit and loss statement through September 30, 2021 with

this motion. Doc. #186, *Ex. B*. The statement was amended and updated through October 31, 2021 shortly thereafter. Doc. #191, *Ex. B*.

DIP now seeks continued authorization to use cash collateral to pay the cost of goods sold and expenses associated with operating the vineyard. Doc. #183.

DISCUSSION

11 U.S.C. § 1107 gives the chapter 11 debtor-in-possession all the rights and powers of a trustee and shall perform all the functions and duties, with certain exceptions inapplicable here.

11 U.S.C. § 363(c)(2) prevents a trustee or debtor-in-possession from using, selling, or leasing cash collateral unless each secured creditor consents or the court authorizes such use, sale, or lease after notice and a hearing.

DIP proposes the court continue authorizing use of cash collateral to pay only the cost of goods sold and vineyard operating expenses pursuant to an amended budget filed November 17, 2021 ("*Second Budget*"). Doc. #191, *Ex. A*. This order would be effective for the next six months from November 30, 2021 through May 30, 2022. Doc. #185. DIP believes that the expenses in the *Second Budget* represent what he must pay to maintain his business operations for the next six months. *Id.*

DIP intends to make his mortgage payments to Agri Financial Services, Inc. for the first and second deeds of trust with the 2021 Revenue in January 2022. Docs. #183; #191, *Ex. A*. DIP believes that the remaining 2021 Revenue will cover all expenses associated with the 2022 raisin production. *Id.* The *Second Budget* is based on DIP's best estimate of necessary expenses, but he notes that expenses fluctuate heavily depending on the issues affecting the vines (such as mold, mildew, and insects) and issues involving the raisin production (labor costs). Doc. #185. As with the first interim order, DIP requests authority to deviate from the total expenses by no more than 15% and to deviate by expense category without further order, provided the DIP does not pay any expenses outside of the approved categories. *Id.* Debtor will continue to be bound by the terms and conditions of the prepetition agreements, unless otherwise modified. *Id.*

As with the first interim motion, DIP argues that adequate protection payments are only required under § 362(d)(1) if Property is likely to diminish in value. Doc. #183. DIP does not believe that Property is decreasing in value, so he insists that secured creditors are adequately protected by uninterrupted maintenance of the vineyard and raisin production. Doc. #185.

Absent authorization to pay ordinary expenses and necessary operating costs, DIP will be unable to maintain the vineyard. Property's value and creditors' security interests will be negatively impacted and DIP's prospects for a successful reorganization will end. *Id.*

DIP proposes to continue the adequate protection ordered in the first interim order. Doc. #185. That is, (1) secured creditors retain their replacement liens on the revenue generated postpetition from Property to the extent that the cash collateral is actually used; (2) DIP will segregate in his cash collateral DIP bank account all revenue exceeding the funds needed to pay ongoing expenses; (3) if DIP fails to cure any default within 14-days written notice from secured creditors, secured creditors shall be entitled to a hearing requesting relief from the automatic stay under § 362 on an expedited basis; and (4) DIP will provide the secured creditors with reasonable reporting requirements to be determined by the parties. Doc. #183.

CONCLUSION

The hearing on this motion will proceed as scheduled.

All parties in interest were properly served the motion and supporting papers, amended exhibits, and notice of errata in accordance with Fed. R. Bankr. P. 7004(b). No party in interest timely filed any written opposition or objections to this motion. All defaults are entered.

This motion will be GRANTED. DIP will be authorized to continued use of cash collateral on an interim basis from November 30, 2021 through May 30, 2021. The order should contain the adequate protection specified above. DIP shall file, serve, and set for hearing a new motion for further use of cash collateral prior to expiration of the interim order.

¹ The court acknowledges DIP's *Notice of Errata* that corrects all "November 30, 2021 to May 30, 2021" references. Doc. #193.

11:00 AM

1. [21-12080](#)-B-7 **IN RE: SHELLEY BRUSKI**

PRO SE REAFFIRMATION AGREEMENT WITH BOEING EMPLOYEES' CREDIT
UNION
11-15-2021 [[16](#)]

NO RULING.

1:30 PM

1. [21-11403](#)-B-7 **IN RE: CARSON WONG**
[JES-1](#)

MOTION TO SELL
10-29-2021 [\[21\]](#)

JAMES SALVEN/MV
RABIN POURNAZARIAN/ATTY. FOR DBT.

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

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.

Chapter 7 trustee James E. Salven ("Trustee") seeks authorization to sell the estate's interest in a certain personal property ("Estate Assets") to Carson Mar Wong ("Debtor") for a total of \$19,937.00, subject to higher and better bids. Doc. #21.

The Estate Assets consist of the estate's interest in a 2001 Nissan Altima, 2013 Lexus ES, 20 million Iraqi Dinars ("IQD"), and five firearms. Doc. #23.

No party in interest timely filed written opposition. The court will inquire at the hearing as to Trustee's method for determining the market value of the Estate Assets. If the court is convinced that the sale is for a fair and reasonable price, the motion will be GRANTED and proceed for higher and better bids only.

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

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

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

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887, citing *Mission Prod. Holdings, Inc. v. Old Cold, LLC (In re Old Cold, LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to the Debtor. The Estate Assets are listed in the schedules with a combined value of \$24,200.00 as follows:

| Estate Asset | A/B Value | Sale Price | Exempt | Lien | Net to Estate |
|---------------------|-----------------|-----------------|----------------|--------------|-----------------|
| 2001 Nissan Altima | \$1,000 | \$1,100 | \$0 | \$0 | \$1,100 |
| 2013 Lexus ES 350 | \$13,000 | \$11,937 | \$3,325 | \$612 | \$8,000 |
| 20 million IQD | \$8,000 | \$4,700 | \$0 | \$0 | \$4,700 |
| HK VP9 | \$600 | \$600 | \$0 | \$0 | \$600 |
| HK P2000SK | \$500 | \$500 | \$0 | \$0 | \$500 |
| Sig Sauer P226 | \$700 | \$700 | \$0 | \$0 | \$700 |
| Beretta PX4 Storm | \$350 | \$350 | \$0 | \$0 | \$350 |
| Anderson Arms AM-15 | \$50 | \$50 | \$0 | \$0 | \$50 |
| Total | \$24,200 | \$19,937 | \$3,325 | \$612 | \$16,000 |

Docs. #1, *Sched. A/B, D*; #16, *Am. Sched. C*; cf. Doc. #21. Information as to how the prices of the Estate Assets were determined is sparse. The proposed sale price is significantly lower than the total scheduled value of the Estate Assets: \$24,200 vs. \$19,937, which is a difference of \$4,263. It is unclear whether the sale is in the best interests of the estate resulting from a fair and reasonable price without more information.

Debtor filed bankruptcy on May 28, 2021. Doc. #1. The Estate Assets were listed in the schedules with the values stated above. Debtor

indicates that the vehicle valuations were based on reports from Carmax. *Id.*, *Sched. A/B*, ¶¶ 3.1, 3.2. The schedules do not elaborate on the firearm valuations. *Id.*, ¶ 10. Debtor additionally owns a Keltec KSG valued at \$800, which was omitted from this sale due to the claimed exemption for its full amount. Doc. #16, *Am. Sched. C*.

Debtor's 20 million IQD is scheduled with the following description:

Debtor bought 20 Million Iraqi Dinars approximately 10-12 years ago. Current value is approximately \$8000-\$9000 as it is very difficult to sell this currency due to the instability in Iraq.

Doc. #1, *Sched. A/B*, ¶ 53. Trustee reaffirms in the motion that the IQD is approximately 10-12 years old and claims that its fair market value is \$4,700. Doc. #21. No information is provided for that valuation, and it is presumably based on Debtor's representation that IQD is very difficult to exchange due to the instability in Iraq.

Trustee declares his belief that the proposed sale is for the full and fair market value of the property and in the best interests of creditors and the estate. Doc. #23. Trustee has not agreed to pay a commission to any party in connection with this sale, which is subject to liens and encumbrances, known or unknown. *Id.* Moreover, Trustee says that the funds have been received and are awaiting court approval. Doc. #21.

The U.S. Secretary of the Treasury ("Treasury") publishes the *Treasury Reporting Rates of Exchange* dataset to provide "the U.S. government's authoritative exchange rates to ensure consistency for foreign currency units and U.S. dollar ["USD"] equivalents across all reporting done by agencies of the government." The report is updated quarterly and covers all foreign currencies in which the U.S. government has an interest. A historical record report can be generated on the Treasury's Fiscal Data dataset search. The petition date USDIQD Treasury exchange rate was 1,458 IQD = \$1.00 USD:

| Record Date | IQD per \$1.00 USD | 20 million IQD in USD |
|-------------------|--------------------|------------------------|
| 09/30/2021 | 1,459 IQD | \$13,708.02 USD |
| 06/30/2021 | 1,458 IQD | \$13,717.42 USD |
| 03/31/2021 | 1,458 IQD | \$13,717.42 USD |
| 12/31/2020 | 1,458 IQD | \$13,717.42 USD |
| 09/30/2020 | 1,138 IQD | \$17,574.69 USD |
| . . . | 1,138 IQD | \$17,574.69 USD |
| 06/30/2018 | 1,138 IQD | \$17,574.69 USD |
| 03/31/2018 | 1,166 IQD | \$17,152.66 USD |

*Treasury Reporting Rates of Exchange.*² Using this exchange rate, 20,000,000 IQD was worth approximately \$13,717.42 on the petition date, or \$13,708.02 as of September 30, 2021.

The court acknowledges that exchanging IQD to USD appears to be very tedious. The Corporate Finance Institute states:

[S]everal schemes try to get people to buy dinars in expectation of future price growth. Multiple institutions and publications alert investors not to invest in IQD scams. . . .

[B]rokers selling Iraqi dinar in cash charge a 25% to 30% premium over the official rate. Entities who buy the currency risk major losses immediately after buying it. Selling IQD is also challenging since there is practically no demand outside Iraq. . . .

Legitimate forex exchange in the USD/IQD currency pair is practically non-existent. Major banks do not offer trade-in Iraqi dinars. IQD is only available for purchase or sale by selected brokers or money exchangers, who may or may not be legally authorized. . . .

Purchasing and selling IQD could lead to a loss of 50% without any movement in the exchange rate.

Corporate Finance Institute.³

Liquidating the IQD into USD for the benefit of creditors is therefore challenging. "Legitimate" exchanges and banks do not offer IQD for trade, so any exchange will come with a sizeable premium from a less-than-reputable broker. While it does appear that IQD can be successfully exchanged, doing so comes with considerable risk.

Here, the \$4,700 proposed sale price for the 20 million IQD is 34.26% of its petition date value, or a 34.29% of its current value. Debtor is receiving an approximate discount of 65%. Is this fair and reasonable given the difficulty to redeem IQD for USD? The court is uncertain because Trustee did not provide evidence of the reasonable efforts and diligence undertaken to exchange the IQD.

Debtor's estimated scheduled valuation of \$8,000 to \$9,000 appears to be 58.38-65.61% of its exchange rate value, which seems to account for a 35-42% broker premium over the official rate. If this sale is authorized, will Debtor simply resell the 20 million IQD to the broker it was purchased from for \$8,000 to \$9,000? Did Trustee inquire which broker Debtor purchased the IQD from, whether that broker buys IQD, and if so, its procedure and fee for doing so? Did Trustee investigate whether there were other legal brokerages offering to exchange IQD at more favorable rates? The court will inquire at the hearing about the discrepancy between the proposed sale price and Debtor's scheduled value.

Otherwise, the sale of Property appears to be in the best interests of the estate because it will provide liquidity to the estate that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. The sale being subject to higher and better bids should yield the best possible sale price. Trustee's business judgment appears to be reasonable and will be given deference.

The court will inquire at the hearing about the difference in Debtor's scheduled valuation with the sale price. The court may GRANT this motion and commence the sale subject to higher and better bids.

Any party wishing to overbid must appear at the hearing and acknowledge that the sale of the Estate Assets is "as-is" and subject to any liens and encumbrances, known or unknown.

² Treasury Reporting Rates of Exchange, Mar. 31, 2001 - Sept. 30, 2021, <http://fiscaldata.treasury.gov/datasets/treasury-reporting-rates-exchange/treasury-reporting-rates-of-exchange> (updated Nov. 15, 2021).

³ Corp. Fin. Institute, Iraqi Dinar, Scams of Investing in the Iraqi Dinar, <http://corporatefinanceinstitute.com/resources/knowledge/finance/iraqi-dinar-igd/> (as of Nov. 23, 2021).

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

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

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: 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.

Ana Maria Aguilera ("Debtor") seeks to avoid a judicial lien in favor of Credilogical Systems, LLC ("Creditor") in the sum of \$5,535.29 and encumbering residential real property located at 1210 E. Kenneth Ave., Earlimart, CA 93219 ("Property").⁴ Doc. #36.

This motion was originally set for hearing on November 9, 2021 on 28 days' notice under Local Rule of Practice ("LBR") 9014-1(f)(1). Doc. #54. The court entered the defaults of all non-responding parties

and continued the hearing to December 2, 2021 to be heard with Debtor's related lien avoidance motions in matters ##3-6 below. *Id.*; see also SL-3, SL-4, SL-5, SL-6.

On November 16, 2021, Debtor filed an amended notice of hearing under LBR 9014-1(f)(2), which stated that written opposition was not required and may be presented at the hearing. Though the defaults of all parties in interest are already entered, this matter will proceed as scheduled. This motion will be GRANTED.

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

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

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

As of the petition date, Property had an approximate value of \$198,640.00. *Id.*; Doc. #1, *Sched. A/B*. Debtor owns a 50% interest in Property. The remaining 50% interest is co-owned with non-filing co-debtor Jose Reyes Aguilera. Doc. #20, *Am. Sched. H*, ¶ 3.2. The court notes that Mr. Aguilera filed bankruptcy on November 20, 2018, received an order of discharge on March 25, 2019, and the case was closed on March 29, 2019.⁵ Doc. #38. The only unavoidable lien encumbering Property is a deed of trust in favor of Wells Fargo Home Mortgage ("WFHM") in the amount of \$30,790.30, for which both Debtor and Mr. Aguilera are liable. Doc. #19; *Am. Sched. D*, ¶ 2.7.

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

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

Here, Property is encumbered by multiple judicial liens in favor of Creditor, Kings Credit Services ("Kings Credit"), and Anchor General Insurance Company ("Anchor") with the following priorities:

| Creditor | Amount | Entered | Recorded | Status (DCN) |
|--------------------------------|--|-----------------------------|-----------------------------|-------------------------------|
| 1. Kings Credit | \$791.48 | 01/03/03 | 01/14/03 | Expired (SL-6) |
| 2. Creditor Renewed | \$2,798.26 \$5,535.29 | 03/07/05 12/05/14 | 08/15/05 04/14/15 | This motion (SL-2) |
| 3. Kings Credit | \$3,528.85 | 12/14/05 | 12/29/05 | Expired (SL-4) |
| 4. Kings Credit | \$2,358.05 | 05/06/09 | 05/14/09 | Expired (SL-3) |
| 5. Kings Credit | \$17,622.94 | 06/27/14 | 09/03/14 | Avoided (SL-1) |
| 6. Anchor | \$15,319.74 | 05/02/17 | 07/18/17 | Avoided (SL-5) |

In reverse order of priority, the sixth priority judgment lien in favor of Anchor in the amount of \$15,319.74 is the most junior judgment lien. That lien will be avoided in matter #5 (SL-5) below.

The court previously avoided the fifth priority \$17,622.94 lien in favor of Kings Credit on September 24, 2021. Doc. #41. Since that lien was not the most junior lien at the time, it should have been avoided after the Anchor lien. This error is *de minimis* because both liens ultimately are avoided, but only because Debtor's exemption did not exceed the value of Debtor's interest. In other situations, there is a risk that non-impairing senior liens could be avoided in lieu of their junior predecessors in violation of § 522.

The third and fourth priority liens are in favor of Kings Credit. They are both expired and the subjects of matters #3 (SL-3) and #4 (SL-4) below.

The liens junior to Creditor's judgment lien have either expired or have been avoided. Property's only remaining senior lien in favor of Kings Credit is also expired and the subject of matter #6 (SL-6) below.

Strict application of the § 522(f)(2) formula is as follows:

| | |
|---|----------------|
| Amount of Creditor's judicial lien | \$5,535.29 |
| Total amount of unavoidable judgment liens | + \$0.00 |
| Amount of Debtor's claimed exemption in Property | + \$300,000.00 |
| <i>Sum</i> | = \$305,535.29 |
| Value of Debtor's interest absent liens | - \$83,924.85 |
| Amount Creditor's lien impairs Debtor's exemption | = \$221,610.44 |

Meyer, 373 B.R. at 91. 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 | \$198,640.00 |
| WFHM deed of trust | - \$30,790.30 |
| Remaining unencumbered equity | = \$167,849.70 |
| Debtor's 50% interest | = \$83,924.85 |
| Debtor's "homestead" exemption | - \$300,000.00 |
| Remaining equity for judicial liens | = (\$216,075.15) |
| Creditor's judicial lien | - \$5,535.29 |
| Extent Debtor's exemption impaired | = (\$221,610.44) |

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). Therefore, this motion will be GRANTED.

⁴ Debtor complied with Rule 7004(b)(3) by serving John Welsome, Creditor's CEO and registered agent for service of process, at Creditor's mailing address on September 22, 2021. Doc. #40. Creditor was sent an amended notice at the same address on November 16, 2021. Doc. #61.

⁵ The court takes judicial notice of the chapter 7 bankruptcy of Jose Reyes Aguilera, Case No. 18-14684. Fed. R. Evid. 201.

3. [21-11106](#)-B-7 **IN RE: ANA AGUILERA**
[SL-3](#)

CONTINUED MOTION TO AVOID LIEN OF KINGS CREDIT SERVICES
10-6-2021 [\[44\]](#)

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

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Ana Maria Aguilera ("Debtor") seeks to avoid a judicial lien in favor of Kings Credit Services ("Creditor") in the sum of \$2,358.05 and encumbering residential real property located at 1210 E. Kenneth Ave., Earlimart, CA 93219 ("Property").⁶ Doc. #44.

This motion will be DENIED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

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

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$2,358.05 on May 6, 2009. Doc. #47, *Ex. D*. The abstract of judgment was issued on that same day and recorded in Tulare County on May 14, 2009. *Id.* At the time, the judgment attached to Debtor's 50% interest in Property. Doc. #46. The remaining 50% interest is co-owned with non-filing co-debtor Jose Reyes Aguilera. Doc. #20, *Am. Sched. H*, ¶ 3.2. The court notes that Mr. Aguilera filed bankruptcy on November 20, 2018, received an order of discharge on March 25, 2019, and the case was closed on March 29, 2019.⁷

California Code of Civil Procedure ("C.C.P.") § 697.310(b) provides, "[u]nless the money judgment is satisfied or the judgment lien is

released, subject to Section 683.180 (renewal of judgment), a judgment lien created under this section continues until 10 years from the date of entry of the judgment."

C.C.P. § 683.020 clarifies that "upon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property: (a) The judgment may not be enforced. (b) All enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease. (c) Any lien created by an enforcement procedure pursuant to the judgment is extinguished."

When applicable nonbankruptcy law "fixes a period for commencing or continuing a civil action" in nonbankruptcy court, "such period does not expire until" 30 days after notice of termination or expiration of the automatic stay under § 362. 11 U.S.C. § 108(c). The automatic stay under § 362(a) "continues until such property is no longer property of the estate;" until the case is closed or dismissed. § 362(c)(1), (c)(2).

11 U.S.C. § 362(a) precludes creditors from renewing judgments while the automatic stay is in effect. *Spiertos v. Morena (In re Spiertos)*, 221 F.3d 1079, 1080 (9th Cir. 2000).

The judgment was entered on May 6, 2009, so the 10-year statute of limitations was originally going to expire on May 6, 2019 – 3,652 days later.⁸ It tolled from May 6, 2009 until November 20, 2018, or 3,485 days (167 days short of expiration).

The automatic stay in Mr. Aguilera's bankruptcy ran from November 20, 2018 until the case was closed on March 29, 2019. The period to renew the judgment did not resume tolling under § 108(c) until April 28, 2019 (159 days). From that date, the 10-year judgment renewal period expired on October 12, 2019.

The judgment expired before Debtor filed bankruptcy on April 30, 2021. No evidence is presented that the judgment was renewed, so the lien cannot be avoided. The Property at issue is not currently encumbered by this judgment based on movant's evidence. This motion will be DENIED WITHOUT PREJUDICE to the submission of additional evidence in a separate motion that the judgment has been renewed.

⁶ Debtor complied with Rule 7004(b)(3) by serving Vicki Callahan, Creditor's registered agent for service of process, at Creditor's registered agent address the original notice on October 6, 2021, and the amended notice on November 16, 2021. Docs. #48, #63.

⁷ The court takes judicial notice of the chapter 7 bankruptcy of Jose Reyes Aguilera, Case No. 18-14684. Fed. R. Evid. 201.

⁸ 3,652 days, rather than 3,650, to account for leap years in 2012 and 2016.

4. [21-11106](#)-B-7 **IN RE: ANA AGUILERA**
[SL-4](#)

MOTION TO AVOID LIEN OF KINGS CREDIT SERVICES, A CORP.
10-20-2021 [\[49\]](#)

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

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Ana Maria Aguilera ("Debtor") seeks to avoid a judicial lien in favor of Kings Credit Services ("Creditor") in the sum of \$3,528.85 and encumbering residential real property located at 1210 E. Kenneth Ave., Earlimart, CA 93219 ("Property").⁹ Doc. #49.

This motion will be DENIED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

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

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$3,528.85 on December 14, 2005. Doc. #52, *Ex. D*. The abstract of judgment was issued that same day and recorded in Tulare County on December 29, 2005. *Id.* At the time, the judgment attached to Debtor's 50% interest in Property. Doc. #51. The remaining 50% interest is co-owned with non-filing co-debtor Jose Reyes Aguilera. Doc. #20, *Am. Sched. H*, ¶ 3.2. The court notes that Mr. Aguilera filed bankruptcy on November 20, 2018, received an order of discharge on March 25, 2019, and the case was closed on March 29, 2019.¹⁰

California Code of Civil Procedure ("C.C.P.") § 697.310(b) provides, "[u]nless the money judgment is satisfied or the judgment lien is

released, subject to Section 683.180 (renewal of judgment), a judgment lien created under this section continues until 10 years from the date of entry of the judgment."

C.C.P. § 683.020 clarifies that "upon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property: (a) The judgment may not be enforced. (b) All enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease. (c) Any lien created by an enforcement procedure pursuant to the judgment is extinguished."

The judgment was entered on December 14, 2005, so the 10-year deadline passed on December 14, 2015. The judgment expired before Mr. Aguilera filed bankruptcy on November 20, 2018. No evidence is presented that the judgment was renewed, so the lien cannot be avoided. The Property at issue is not currently encumbered by this judgment based on movant's evidence. This motion will be DENIED WITHOUT PREJUDICE to the submission of additional evidence in a separate motion that the judgment has been renewed.

⁹ Debtor complied with Rule 7004(b)(3) by serving Vicki Callahan, Creditor's registered agent for service of process, at Creditor's registered agent address on October 20, 2021. Doc. #53.

¹⁰ The court takes judicial notice of the chapter 7 bankruptcy of Jose Reyes Aguilera, Case No. 18-14684. Fed. R. Evid. 201.

5. [21-11106](#)-B-7 **IN RE: ANA AGUILERA**
[SL-5](#)

MOTION TO AVOID LIEN OF ANCHOR GENERAL INSURANCE CO.
11-17-2021 [\[65\]](#)

ANA AGUILERA/MV
SCOTT LYONS/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.

Ana Maria Aguilera ("Debtor") seeks to avoid a judicial lien in favor of Anchor General Insurance Co. ("Creditor") in the sum of \$15,319.74 and encumbering residential real property located at 1210 E. Kenneth Ave., Earlimart, CA 93219 ("Property").¹¹ Doc. #65.

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 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.

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

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

Here, a judgment was entered against Erik Aguilera, Jose Reyes Aguilera, and Debtor in favor of Creditor in the sum of \$15,319.74 on May 2, 2017, but only \$5,000.00 is enforceable against Debtor individually. Doc. #67, *Ex. D*. An abstract of judgment was issued on July 5, 2017 and recorded in Tulare County on July 18, 2017. *Id.* That lien attached to Debtor's interest in Property and is the subject of this motion. Doc. #68.

As of the petition date, Property had an approximate value of \$198,640.00. *Id.*; Doc. #1, *Sched. A/B*. Debtor owns a 50% interest in Property. The remaining 50% interest is co-owned with non-filing co-debtor Jose Reyes Aguilera. Doc. #20, *Am. Sched. H*, ¶ 3.2. The court notes that Mr. Aguilera filed bankruptcy on November 20, 2018, received an order of discharge on March 25, 2019, and the case was closed on March 29, 2019.¹² Doc. #38. The only unavoidable lien encumbering Property is a deed of trust in favor of Wells Fargo Home Mortgage ("WFHM") in the amount of \$30,790.30, for which both Debtor and Mr. Aguilera are liable. Doc. #19; *Am. Sched. D*, ¶ 2.7.

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

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

Here, Property is encumbered by multiple judicial liens in favor of Creditor, Kings Credit Services ("Kings Credit"), and Credilogical Systems, Inc. ("Credilogical") with the following priorities:

| Creditor | Amount | Entered | Recorded | Status (DCN) |
|--------------------|------------------------|-----------------|-----------------|---------------------------|
| 1. Kings Credit | \$791.48 | 01/03/03 | 01/14/03 | Expired (SL-6) |
| 2. Credilogical | \$2,798.26 | 03/07/05 | 08/15/05 | Avoided next in |
| Renewed | \$5,535.29 | 12/05/14 | 04/14/15 | matter #2 (SL-2) |
| 3. Kings Credit | \$3,528.85 | 12/14/05 | 12/29/05 | Expired (SL-4) |
| 4. Kings Credit | \$2,358.05 | 05/06/09 | 05/14/09 | Expired (SL-3) |
| 5. Kings Credit | \$17,622.94 | 06/27/14 | 09/03/14 | Avoided (SL-1) |
| 6. Creditor | \$15,319.74 | 05/02/17 | 07/18/17 | This motion (SL-5) |

In reverse order of priority, Creditor's sixth priority judgment lien is the most junior judgment lien.

The court previously avoided the fifth priority \$17,622.94 lien in favor of Kings Credit on September 24, 2021. Doc. #41. Since that lien was not the most junior lien at the time, it should have been avoided after Creditor's lien. This error is *de minimis* because both liens ultimately are avoided, but only because Debtor's exemption did not exceed the value of Debtor's interest. In other situations, there is a risk that non-impairing senior liens could be avoided in lieu of their junior predecessors in violation of § 522.

The first, third, and fourth priority liens in favor of Kings Credit are expired and the subjects of matters #3 (SL-3), #4 (SL-4), and #6 (SL-6) above and below.

The court intends to avoid Credilogical's second priority judgment lien matter #2 (SL-2) above, but only after this junior priority lien is avoided first. Credilogical's lien is the only senior avoidable lien currently remaining.

Strict application of the § 522(f)(2) formula is as follows:

| | |
|---|----------------|
| Amount of Creditor's judicial lien | \$15,319.74 |
| Total amount of unavoidable judgment liens | + \$5,535.29 |
| Amount of Debtor's claimed exemption in Property | + \$300,000.00 |
| <i>Sum</i> | = \$320,855.03 |
| Value of Debtor's interest absent liens | - \$83,924.85 |
| Amount Creditor's lien impairs Debtor's exemption | = \$236,930.18 |

Meyer, 373 B.R. at 91. 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 | \$198,640.00 |
| WFHM deed of trust | - \$30,790.30 |
| Remaining unencumbered equity | = \$167,849.70 |
| Debtor's 50% interest | = \$83,924.85 |
| Debtor's "homestead" exemption | - \$300,000.00 |
| Remaining equity for judicial liens | = (\$216,075.15) |
| Creditor's judicial lien | - \$15,319.74 |
| Amount Creditor's lien impairs exemption | = (\$231,394.89) |
| Kings Credit judicial lien | - \$5,535.29 |
| Extent impaired by both liens | = (\$236,930.18) |

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). Therefore, this motion will be GRANTED.

¹¹ Debtor complied with Rule 7004(b)(3) by serving Abdulla Badani, Creditor's CEO and registered agent for service of process, at Creditor's mailing address on November 17, 2021. Doc. #69.

¹² The court takes judicial notice of the chapter 7 bankruptcy of Jose Reyes Aguilera, Case No. 18-14684. Fed. R. Evid. 201.

6. [21-11106](#)-B-7 **IN RE: ANA AGUILERA**
[SL-6](#)

MOTION TO AVOID LIEN OF KINGS CREDIT SERVICES, A CORP.
11-17-2021 [\[70\]](#)

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

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Ana Maria Aguilera ("Debtor") seeks to avoid a judicial lien in favor of Kings Credit Services ("Creditor") in the sum of \$791.48 and encumbering residential real property located at 1210 E. Kenneth Ave., Earlimart, CA 93219 ("Property").¹³ Doc. #70.

This motion will be DENIED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

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

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$791.48 on January 3, 2003. Doc. #72, *Ex. D*. The abstract of judgment was issued that same day and recorded in Tulare County on January 14, 2003. *Id.* At the time, the judgment attached to Debtor's 50% interest in Property. Doc. #73. The remaining 50% interest is co-owned with non-filing co-debtor Jose Reyes Aguilera. Doc. #20, *Am. Sched. H*, ¶ 3.2. The court notes that Mr. Aguilera filed bankruptcy on November 20, 2018, received an order of discharge on March 25, 2019, and the case was closed on March 29, 2019.¹⁴

California Code of Civil Procedure ("C.C.P.") § 697.310(b) provides, "[u]nless the money judgment is satisfied or the judgment lien is

released, subject to Section 683.180 (renewal of judgment), a judgment lien created under this section continues until 10 years from the date of entry of the judgment."

C.C.P. § 683.020 clarifies that "upon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property: (a) The judgment may not be enforced. (b) All enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease. (c) Any lien created by an enforcement procedure pursuant to the judgment is extinguished."

The judgment was entered on January 3, 2003, so the 10-year deadline passed on January 3, 2013. The judgment expired before Mr. Aguilera filed bankruptcy on November 20, 2018. No evidence is presented that the judgment was renewed, so the lien cannot be avoided. The Property at issue is not currently encumbered by this judgment based on movant's evidence. This motion will be DENIED WITHOUT PREJUDICE to the submission of additional evidence in a separate motion that the judgment has been renewed.

¹³ Debtor complied with Rule 7004(b)(3) by serving Vicki Callahan, Creditor's registered agent for service of process, at Creditor's registered agent address on November 17, 2021. Doc. #74.

¹⁴ The court takes judicial notice of the chapter 7 bankruptcy of Jose Reyes Aguilera, Case No. 18-14684. Fed. R. Evid. 201.

7. [21-10709](#)-B-7 **IN RE: AMB RANCH MANAGEMENT, INC.**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-27-2021 [\[51\]](#)

FORD MOTOR CREDIT COMPANY
LLC/MV
JAMES MILLER/ATTY. FOR DBT.
JENNIFER WANG/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.

Ford Motor Credit Company LLC ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2019 Ford F250 ("Vehicle"). Doc. #51.

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

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least two (2) payments. The movant has produced evidence that debtor is delinquent at least \$1,898.78. Doc. #53.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. *Id.* The Vehicle is valued at \$31,850.00 and debtor owes \$40,313.28. Doc. #53, #54.

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.

8. [21-10709](#)-B-7 **IN RE: AMB RANCH MANAGEMENT, INC.**
[JHW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-28-2021 [\[58\]](#)

FORD MOTOR CREDIT COMPANY
LLC/MV
JAMES MILLER/ATTY. FOR DBT.
JENNIFER WANG/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.

Ford Motor Credit Company LLC ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2018 Ford F450 ("Vehicle"). Doc. #58.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least two

(2) payments. The movant has produced evidence that debtor is delinquent at least \$2,139.70. Docs. #60, #61.

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.

9. [21-11818](#)-B-7 **IN RE: DARRIN/REBECCA STACEY**
[UST-1](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND TIME TO FILE
A MOTION TO DISMISS CASE UNDER SEC. 707(B)
10-26-2021 [\[17\]](#)

TRACY DAVIS/MV
D. GARDNER/ATTY. FOR DBT.
JASON BLUMBERG/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.

Tracy Hope Davis, United States Trustee for Region 17 ("UST"), moves to extend the deadlines for objecting to the debtors' discharge under § 727 or filing a motion to dismiss under § 707(b)(1) to December 31, 2021. Doc. #17.

No party in interest timely filed written opposition. The 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, 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.

Rule 4004(a) requires a complaint objecting to the debtor's discharge to be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a) unless an extension of time is requested.

Rule 4004(b)(1) allows the court for cause to extend the time to object to discharge 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 1017(e)(1) governs dismissal of a case for abuse under § 707(b) or (c) and may only be filed within 60 days after the first date set for the meeting of creditors under § 341(a) unless the court extends the time for cause.

Here, the first meeting of creditors was scheduled on August 27, 2021, so the 60-day deadline to file a complaint objecting to discharge or a motion to dismiss under § 707 was October 26, 2021. See docket generally. UST timely filed this motion.

Robbin Little, UST's Paralegal Specialist, declares that joint debtor Darrin Todd Stacey's pay statements indicate that Mr. Stacey's gross income is approximately \$10,630, rather than the \$9,160.32 disclosed in the amended schedules and \$6,880.28 in the original schedules. Doc. #19; cf. Docs. #1, *Sched. I*; #13, *Am. Sched. I*. Compares to expenses, UST believes that Debtors have monthly disposable income of at least \$1,000. Doc. #19.

UST indicates that Mr. Stacey has a medical appointment scheduled on November 10, 2021, and may require surgery, which is expected to reduce his hours and income. Doc. #17. Meanwhile, the deadline is fast approaching for UST to file a motion to dismiss for abuse under §§ 707(b)(1) and (3) or an adversary complaint objecting to discharge under § 727.

Though it appears Debtors have significant monthly disposable income, they may suffer a decrease in future income due to medical reasons. The parties should have greater certainty on this issue after the November 10, 2021. There is cause for extending the time for filing a complaint objecting to discharge or a motion to dismiss for presumed abuse so that the parties can determine whether Debtors will continue to have monthly disposable income in light of a possible future surgery. Accordingly, this motion will be GRANTED.

10. [20-12023](#)-B-7 **IN RE: GABRIELA COVARRUBIAS**
[RH-4](#)

MOTION FOR COMPENSATION FOR ROBERT HAWKINS, TRUSTEES
ATTORNEY(S)
11-1-2021 [\[64\]](#)

T. O'TOOLE/ATTY. FOR DBT.
ROBERT HAWKINS/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.

Robert Hawkins ("Applicant"), general counsel for chapter 7 trustee James E. Salven ("Trustee"), requests final compensation of \$6,406.98 under 11 U.S.C. § 330. Doc. #64. This amount consists of \$6,280.00 in fees as reasonable compensation and \$126.98 for reimbursement of advanced expenses for actual, necessary services rendered for the benefit of the estate from August 14, 2020 through October 26, 2021. *Id.*

Trustee filed a declaration in support of the fee application. Doc. #66. Trustee declares that he has reviewed the fee application and has no objection to fees and expenses requested therein. *Id.*

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

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

As a preliminary matter, the court notes that the exhibits filed with this motion do not procedurally comply with the local rules. LBR 9004-

2(d) requires exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets. Here, an exhibit is attached to the motion, it does not contain an exhibit index, and there is no exhibit number or letter on the first page of the exhibit. Doc. #64. The exhibit should have been filed separately, included an index, and identified the exhibit by an exhibit number or letter. Counsel is advised to review the local rules and ensure procedure compliance in subsequent matters. Failure to comply with the local rules in future matters may result in the motion being denied without prejudice.

Gabriela Covarrubias ("Debtor") filed chapter 7 bankruptcy on June 15, 2020. Doc. #1. Trustee was appointed as interim trustee on that same date and became the permanent trustee at the first § 341 meeting of creditors on July 9, 2020. Doc. #3. Trustee sought to employ Applicant on August 17, 2020. Doc. #18. On August 26, 2020, the court approved Applicant's employment effective August 1, 2020 pursuant to 11 U.S.C. §§ 327, 329-31. Doc. #22.

Applicant indicates that his firm performed 15.70 billable hours of legal services at a rate of \$400 per hour, totaling **\$6,280.00**. Doc. #64; #67. Applicant also incurred **\$128.98** in expenses as follows:

| | |
|-------------------------|-------------------|
| Copies (402 @ \$0.15) | \$60.30 |
| Envelopes (57 @ \$0.10) | + \$5.70 |
| Postage (36 @ \$0.50) | + \$18.00 |
| Postage (9 @ \$2.76) | + \$24.84 |
| Postage (12 @ \$1.51) | + \$18.12 |
| Total Costs | = \$126.96 |

Id. These combined fees and expenses total **\$6,406.96**.

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

Applicant's services included, without limitation: (1) preparing the application to employ attorney (RH-1); (2) reviewing the case, documentation, and prior bankruptcy filings, and communicating with Trustee; (3) preparing application to conduct a Rule 2004 examination (RH-2); (4) deposing Mr. Ferrer; (5) negotiating and compromising with Mr. Ferrer; (6) preparing and filing motion to approve settlement agreement (RH-3); (7) reviewing Trustee's motion for turnover of property (JES-1); and (8) preparing and filing the final fee application (RH-4). Docs. #64; #67. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Trustee

reviewed the application and consents to payment of the requested compensation. Doc. #66.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$6,280.00 in fees and \$128.98 in expenses on a final basis under § 330. Trustee will be authorized, in his discretion, to pay Applicant \$6,406.96 for services rendered to and costs incurred for the benefit of the estate between August 14, 2020 through October 26, 2021.

11. [21-12031](#)-B-7 **IN RE: JUAN FAJARDO**
[JES-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-25-2021 [\[20\]](#)

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

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

Chapter 7 trustee James E. Salven ("Trustee") objects to the claimed exemption of Juan Fajardo ("Debtor") for a 2007 Ford F-150 ("Vehicle") in the amount of \$8,725.00 under California Code of Civil Procedure ("C.C.P.") § 703.060. Doc. #20.

Debtor did not oppose and filed *Amended Schedules A/B and C* on November 8, 2021. Doc. #25. No other parties in interest timely filed written opposition. This objection will be OVERRULED AS MOOT.

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

Federal Rule of Bankruptcy Procedure ("Rule") 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 meeting of creditors is held or within 30 days after any amendment to *Schedule C* is filed, whichever is later. In this case, the § 341(a) meeting of creditors was first held and concluded on September 27, 2021. See docket generally. Trustee timely filed this objection on October 24, 2021, which is within the 30-day deadline prescribed by Rule 4003(b).

The Eastern District of California Bankruptcy Court in *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property]

claimed as exempt in Schedule C is exempt under [California law] and the extent to which that exemption applies."

Trustee objects because Debtor exempted Vehicle for \$8,725.00 under C.C.P. § 703.060. C.C.P. § 703.060, however, contains a limitation of \$4,850.00 for a commercial vehicle used in a trade or business. Docs. #20; #22.

However, Debtor amended *Schedule C* on November 8, 2021, reducing the claimed exemption for Vehicle to \$1,750.00. Doc. #25, *Am. Sched. C*. This is within the statutory limit imposed by C.C.P. § 703.060. Debtor has therefore resolved Trustee's objection.

Accordingly, this objection will be OVERRULED AS MOOT.

12. [18-12362](#)-B-7 **IN RE: FREDDY/ESTHER AMAYA**
[BBR-2](#)

MOTION TO AVOID LIEN OF TARGET NATIONAL BANK AND/OR MOTION
TO AVOID LIEN OF UNIFUND CCR PARTNERS , MOTION TO AVOID LIEN
OF VALLEY PACIFIC PETROLEUM SERVICES, INC.
11-4-2021 [\[46\]](#)

ESTHER AMAYA/MV
T. BELDEN/ATTY. FOR DBT.

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

DISPOSITION: Granted in part; denied without prejudice in part.

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

Freddy R. Amaya and Esther Araceli Amaya ("Debtors") seek to avoid the following judicial liens in favor of the following creditors, and encumbering residential real property located at 4612 Idlerock Avenue, Bakersfield, CA 93313 ("Property"):

1. Target National Bank ("Target"): \$4,104.72;¹⁵
2. Unifund CCR Partners ("Unifund"): \$12,061.72; and
3. Valley Pacific Petroleum Services, Inc. ("VPPS"): \$204,790.19.¹⁶

Doc. #46.

No party in interest timely filed written opposition, but service upon Target and Unifund is insufficient under Fed. R. Bankr. P. ("Rule") 7004(b)(3) and (h). This motion will be GRANTED IN PART and DENIED WITHOUT PREJUDICE IN PART.

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

creditors, the chapter 13 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. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest **except Target and Unifund** 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).

Debtors request the court take judicial notice of certain documents from the bankruptcy. Doc. #50. The court may take judicial notice of all documents and other pleadings filed in this bankruptcy case, filings in other court proceedings, and public records. Fed. R. Evid. 201; *Bank of Am., N.A. v. CD-04, Inc. (In re Owner Gmt. Serv., LLC)*, 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of the requested documents, but not the truth or falsity of such documents as related to findings of fact. *In re Harmony Holdings, LLC*, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008).

PROCEDURAL ISSUES

As a preliminary matter, the court notes three procedural deficiencies.

First, LBR 9004-2(d) requires exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets.

Here, the *Declaration of Isabel Medellin* (Doc. #51) and *Supplemental Declaration of Isabel Medellin* (Doc. #55) include attached exhibits that are not filed separately. These exhibits did not contain exhibit indices. The court notes that the separately filed *Exhibits in Support of Motion* (Doc. #52) otherwise complied with the local rules. The exhibits attached to Ms. Medellin's declarations should have either been included in the other exhibit document or filed separately.

Second, and more importantly, Target and Unifund were not properly served in accordance with Rule 7004. Rule 4003(d) requires that proceedings to avoid a lien under 11 U.S.C. § 522(f) "shall be commenced by motion in the manner provided in Rule 9014." Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004.

Target was a national bank, but it closed on March 13, 2013 and was subsequently acquired by TD Bank USA, N.A. ("TD Bank").¹⁷ TD Bank is a national bank insured by the Federal Deposit Insurance Corporation ("FDIC"), so it is an insured depository institution under 11 U.S.C. § 101(35) (A) and 12 U.S.C. § 1813(c) (2) (an "insured depository institution" is any bank insured by the FDIC).¹⁸

Service on insured depository institutions is governed by Rule 7004(h), which requires service to be made by certified mail and addressed to a named officer, unless one of three exceptions specified in subsections (h)(1) to (3) have been met. There is no indication that any of these exceptions apply.

Unifund CCR Partners,¹⁹ meanwhile, is the trade name for Unifund Corporation,²⁰ and Unifund CCR, LLC/Unifund Group.²¹ Unifund's public filings are available on the business search page for the Ohio Secretary of State. Trudy Weiss Craig is Unifund's Vice President and Corporation Service Company is its registered agent for service of process. This is also reflected in its March 22, 2018 *Statement of Information* filed with the California Secretary of State on behalf of Unifund CCR, LLC.²²

Rule 7004(b)(3) governs service for domestic or foreign corporations, partnerships, or unincorporated associations. It allows for service in the United States by first class mail "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process[.]" Rule 7004(b)(3).

The Ninth Circuit interprets Rule 7004 to require service upon a named officer, rather than to just the title of the office. *In re Schoon*, 153 B.R. 48, 49 (Bankr. N.D. Cal. 1993) ("By addressing the envelope 'Attn: President' the debtors did not serve an officer, they served an office.") (emphasis in original); see also *Beneficial Cal. Inc. v. Villar (In re Villar)*, 317 B.R. 88, 94 (B.A.P. 9th Cir. 2004) (strictly construing the named officer requirement with respect to Rule 7004(b)(3)).

Debtors attempted to serve Target, Unifund, and TD Bank by certified mail at the following addresses:

- Target
 1. Target National Bank
c/o CIR Law Offices
2650 Camino Del Rio N., Suite No. 308
San Diego, CA 92108
 2. Target Corporation
CT Corporation System
1010 Dale Street N.
St. Paul, MN 55117-5603
- TD Bank
 3. TD Bank US Holding Company
c/o CSC-Agent for Service of Process
251 Little Falls Drive
Wilmington, DE 19808

- Unifund
4. Unifund CCR Partners
c/o Lang, Richert & Patch
Fig Garden Financial Center
5200 North Palm Avenue, Fourth Floor
Fresno, CA 93704
 5. Unifund CCR Partners
10625 Techwoods Circle
Cincinnati, OH 45242

Docs. #51; #53; ##55-56. Addresses ##1-2 are for Target National Bank and Target Corporation, to their state court attorney and registered agent for service of process, respectively. But as noted above, Target was acquired by TD Bank in 2013, so neither of these entities are appropriate with respect to the judgment lien here. If Target National Bank were acquired or merged into Target Corporation, then the second address to Target's registered agent would have been sufficient, but that did not happen.

Address #3 is the only address for TD Bank. While TD Bank US Holding Company was properly served at its registered agent address, TD Bank USA, N.A. is a bank that must be served in accordance with Rule 7004(h). This requires service upon a named officer of TD Bank.

Greg Braca appears to be the current President and CEO of TD Bank.²³ Service upon Mr. Braca at TD Bank's FDIC mailing address, 2035 Limestone Road, Wilmington DE 19808, should be sufficient to ensure it has been "received by a person who is charged with responding to the service." *Villar*, 317 B.R. at 94-95, citing *Schwab v. Assocs. Commercial Corp. (In re C.V.H. Transp.)*, 254 B.R. 331, 334 (Bankr. M.D. Pa. 2000).

Service attempts ##4-5 for Unifund are close, but neither satisfy the named officer or registered agent for service of process requirements specified in Rule 7004(b)(3).

Lang, Richert & Patch, the Unifund's state court attorneys, cannot be presumed to be authorized to accept Rule 7004 service on behalf of Unifund without evidence of an express or implied agency. "An implied agency to receive service is not established by representing a client in an earlier action." *Villar*, 317 B.R. at 93; *Rubin v. Pringle (In re Focus Media, Inc.)*, 387 F.3d 1077, 1083 (9th Cir. 2004) (finding that a former attorney must have explicit or implicit authority from client to accept service under Rule 7004(b)). The same applies to CIR Law Offices on behalf of Target, even though Target's interests were acquired by TD Bank.

Lastly, the fifth address omitted a named officer and a registered agent for service of process. Had Debtors served either Trudy Weiss Craig, Unifund's Vice President at Unifund's primary mailing address at 10625 Techwoods Circle, Cincinnati, OH 45242, or Corporation

Service Company at either its Ohio or California offices, then service on Unifund would have been sufficient under Rule 7004(b)(3).

For these reasons, the motion will be DENIED WITHOUT PREJUDICE IN PART with respect to Target, TD Bank, and Unifund. However, service upon VPPS was sufficient because Debtors properly served Greg Crum in accordance with Rule 7004(b)(3).

DISCUSSION

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 issued against Rhino Ready Mix Trucking Inc., Debtors' business, and joint debtor Freddy R. Amaya, in favor of VPPS in the sum of \$204,790.19 on April 12, 2018. Doc. #52, *Ex. H*. The abstract of judgment was issued on May 3, 2018 and recorded in Kern County on June 27, 2018. *Id.* That lien attached to Debtors' interest in Property. Doc. #49.

As of the petition date, Property had an approximate value of \$329,000.00. Doc. #1, *Sched. A/B*. The only unavoidable lien is a deed of trust in favor of Chase Bank in the amount of \$259,205.38. *Id.*, *Sched. D*. Debtors claimed a "homestead" exemption pursuant to Cal. Code Civ. Proc. ("C.C.P.") § 704.730 up to 100% of the fair market value, up to any applicable statutory limit. *Id.*, *Sched. C*.

At the time Debtors filed bankruptcy on June 12, 2018, the homestead exemption under C.C.P. § 704.730 was \$75,000, or \$100,000 if the judgment debtor or spouse of the judgment debtor reside in the homestead as members of a family unit, and at least one member of the family unit owns either a community property interest or no interest in the homestead. C.C.P. § 704.730 (eff. Jan. 1, 2013). Here, Debtors are claiming a \$100,000 homestead exemption. Doc. #48.

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

Here, Property is encumbered by multiple judicial liens in favor Target (TD Bank), Unifund, and VPPS with the following priorities:

| Creditor | Amount | Entered | Recorded |
|---------------------|---------------------|-----------------|-----------------|
| 1. Target (TD Bank) | \$4,104.72 | 06/14/11 | 12/20/11 |
| 2. Unifund | \$12,061.72 | 03/29/13 | 06/27/13 |
| 3. VPPS | \$204,790.19 | 04/12/18 | 06/18/18 |

Doc. #52, Exs. F-H.

In reverse order of priority, the VPPS lien is the most junior judgment lien.

Strict application of the § 522(f)(2) formula is as follows:

| | |
|---|----------------|
| Amount of VPPS's judicial lien | \$204,790.19 |
| Total amount of unavoidable liens ²⁴ | + \$275,371.82 |
| Amount of Debtor's claimed exemption in Property | + \$100,000.00 |
| <i>Sum</i> | = \$580,162.01 |
| Value of Debtor's interest absent liens | - \$329,000.00 |
| Amount Creditor's lien impairs Debtor's exemption | = \$251,162.01 |

Meyer, 373 B.R. at 91. 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 | \$329,000.00 |
| Chase Bank deed of trust | - \$259,205.38 |
| Remaining unencumbered equity | = \$69,794.62 |
| Debtors' "homestead" exemption | - \$100,000.00 |
| Remaining equity for judicial liens | = (\$30,205.38) |
| Target/TD Bank judgment lien | - \$4,104.72 |
| Extent exemption impaired by Target/TD Bank lien | = (\$34,310.10) |
| Unifund judgment lien | - \$12,061.72 |
| Extent exemption impaired by both liens | = (\$46,371.82) |
| VPPS judgment lien | - \$204,790.19 |
| Extent exemption impaired by all three liens | = (\$251,162.01) |

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

Debtors have established the four elements necessary to avoid the VPPS lien under § 522(f)(1). Therefore, this motion will be GRANTED IN PART as to the VPPS lien only. The motion will be DENIED WITHOUT PREJUDICE

IN PART as to the Target/TD Bank and Unifund liens. The order prepared by movant's counsel shall reflect this disposition.

¹⁵ Target National Bank closed on March 13, 2013 and is no longer insured by the FDIC. <https://banks.data.fdic.gov/bankfind-suite/bankfind/details/33868> (Nov. 29, 2021).

¹⁶ Debtors complied with Rule 7004(b)(3) with respect to VPPS by serving Grant Crum, Creditor's Secretary and registered agent for service of process, by certified mail at Creditor's mailing and registered agent address on November 4, 2021. Docs. #53; #55. The court notes that the domestic return receipt for Mr. Crum is omitted from those filed on November 23, 2021. Doc. #55.

¹⁷ TD Bank USA, N.A. 2013 Consolidated Financial Statements (Dec. 4, 2013), [https://www.td.com/document/PDF/investor/2013/2013 Annual Financial Statements 6K.pdf](https://www.td.com/document/PDF/investor/2013/2013%20Annual%20Financial%20Statements%206K.pdf) (Nov. 29, 2021).

¹⁸ See FDIC Cert. #33947. BankFind Suite, Established Oct. 13, 1994, <https://banks.data.fdic.gov/bankfind-suite/bankfind> (Nov. 29, 2021).

¹⁹ Unifund CCR Partners, *Renewal of Trade Name*, No. 1420055 (Jul. 3, 2018), <https://bizimage.ohiosos.gov/api/image/pdf/201818402002> (Nov. 29, 2021).

²⁰ Unifund Corporation, *Statutory Agent Update*, No. 698031 (Apr. 2, 2019), <https://bizimage.ohiosos.gov/api/image/pdf/201909303444> (Nov. 29, 2021).

²¹ Unifund Group/Unifund CCR, LLC, *Renewal of Trade Name*, No. 397223 (Aug. 25, 2021), <https://bizimage.ohiosos.gov/api/image/pdf/202123701378> (Nov. 29, 2021).

²² Unifund CCR, LLC, *Statement of Information*, No. 18-B05548 (Mar. 22, 2018), <https://businesssearch.sos.ca.gov/Document/RetrievePDF?Id=201129910225-23909796> (Nov. 29, 2021).

²³ Greg Braca, President and CEO of TD Bank <https://www.td.com/about-tdbfg/corporate-information/executive-profiles/braca.jsp> (Nov. 29, 2021).

²⁴ This amount includes the Target/TD Bank and Unifund judgment liens because they cannot be avoided before VPPS's junior lien, as well as the Chase Bank deed of trust because Debtors do not own a fractional interest in Property.

13. [19-13569](#)-B-7 **IN RE: JOHN ESPINOZA**
[JRL-6](#)

OBJECTION TO CLAIM OF JON P. MAROOT, CLAIM NUMBER 6
10-13-2021 [\[154\]](#)

JOHN ESPINOZA/MV
JERRY LOWE/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

John Espinoza ("Debtor") objects to Proof of Claim No. 6 filed by Jon P. Maroot ("Claimant") in the amount of \$42,042.08 on June 15, 2021. Doc. #154; Claim #6-1.

Claimant timely replied, objecting to the admissibility of Debtor's evidence, and arguing that the claim should be allowed as an unsecured claim in the amount of \$26,000. Doc. #162.

This matter will be called and proceed as a scheduling conference.

This objection was filed on 44 days' notice pursuant to Local Rule of Practice ("LBR") 3007-1(b)(1) and will be called as scheduled. The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest except Claimant to file written opposition may be deemed a waiver of any opposition to the objection. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Claimant are entered.

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under section 501, is deemed allowed, unless a party in interest objects.

Federal Rule of Bankruptcy Procedure ("Rule") 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute *prima facie* evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000).

BACKGROUND

El Camino Painting and Repair, or "Restoration"

Debtor is the sole proprietor and owner of an auto body repair shop known as Johnny's Custom Paint. Doc. #156. Debtor does not perform restorations, but he did agree to strip and paint Claimant's 1966 El Camino ("El Camino"). *Id.*

Upon completing the work, Debtor says that Claimant picked up the vehicle without expressing any objection as to the quality of the work performed. *Id.* Debtor advised Claimant against having additional work performed on the El Camino because it would cause damage to its body. Nevertheless, Claimant subsequently replaced the El Camino's 15" inch wheels and tires with 20" inch wheels and tires and had the El Camino lowered. *Id.*

After noticing some cracking in the paint, Claimant brought the El Camino back to Debtor and accused him of providing defective work product. *Id.* Debtor informed Claimant that the cracking paint was due to lowering the vehicle in a manner that caused the fender to be pushed beyond its appropriate limits. *Id.* Still, Debtor agreed to repaint the fenders for an additional sum, which he did. Debtor maintains that he was not paid for this work. *Id.* Thereafter, Claimant took the El Camino to Haskin Performance Coatings and had it restored for \$26,000. *Id.*

Jason Haskin, previously a global technical advisor for House of Kolor, inspected the car. Doc. #164. Mr. Haskin's initial observations found that there were marks from sanding that had not been properly rubbed out before painting over flames, as well painting over dirt and

rust. *Id.* Haskin attempted to repair certain areas but noticed delamination down to the original dark blue paint job. Haskin was able to peel green paint off with his fingers, which tore off in large pieces several inches across, and he could scratch the paint with his fingernail. *Id.*; Doc. #165, *Exs.* 6-7. Haskin also states that he could smell the solvent, which is a common indicator that either too many coats of base paint were "stacked," or the paint was applied when the surface of the vehicle was under 60 degrees Fahrenheit. Doc. #164. Haskin suggested that the vehicle should be stripped and repainted. Claimant agreed and hired Haskin to perform the work. Haskin ultimately determined that the El Camino paint job was deficient because of: (1) poor preparation when the original substrate and metal were sanded, (2) improper application of the primer in preparation for painting, and (3) a general lack of knowledge of how to prepare and paint a vehicle.

Bankruptcy

Debtor filed bankruptcy on August 21, 2019. Doc. #1. Claimant filed Proof of Claim No. 6 on June 15, 2021 in the amount of \$42,042.08, not including interest, for defective repair, preparation, and painting of Claimant's El Camino. Claim #6-1. According to the proof of claim supplement, Claimant contacted Debtor in April 2018 to restore his El Camino, which took approximately two years to complete. Upon picking up the vehicle on May 8, 2020, there were visible imperfections in the paint job due to painting over dirt and other debris, delaminated clear coat over the flames, too many base coats, and inadequate repairs. *Id.*, Attach. #1.

Claimant paid Haskin \$26,000 to strip the car, do the body repairs correctly, and properly prime, prepare, and paint the car. Claimant paid Debtor a total of \$16,042.08 to paint the vehicle. Doc. #162. This consists of payment for supplies in the amounts of \$2,640.36 pre-petition and \$2,076.72 post-petition, totaling \$4,717.08, and payment for services in the amounts of \$3,775 pre-petition and \$7,500 post-petition, totaling \$11,325. These amounts, combined with the \$26,000 paid to Haskin to strip and repaint the vehicle, result in the \$42,042.08 total amount of his claim.

CONTENTIONS

Though Debtor did agree to strip and paint Claimant's El Camino, he contends that the claim is wholly without merit because he never agreed to restore the El Camino. Docs. #154. Debtor maintains:

1. Debtor provided quality work, but Claimant caused damage (cracking paint) to the El Camino by lowering it in a manner that caused the fender to be pushed out beyond its appropriate limit.
2. Claimant is demanding a refund for work performed on more vehicles than the El Camino but does not complain of defective work product on those vehicles, and Debtor is also demanding payment for damages caused by Claimant to Debtor's shop door.

3. Claimant is demanding a refund for parts and supplies supplied by Claimant and used to repair multiple vehicles, but Claimant does not claim that those parts or supplies were defective.
4. Debtor agreed to provide auto body and paint work only, and never agreed to "restore" the El Camino. Claimant subsequently obtained restoration services elsewhere when the auto body and paint work was not a satisfactory restoration.

Id. Debtor claims that Claimant's custom was to purchase parts and supplies and provide them to Debtor to save money. Doc. #156. Debtor supports his contentions with copies of invoices that purportedly show the amounts paid to him covered multiple vehicles, including performing body work and painting parts for a Harley Davidson motorcycle, a 1958 Ford Fairlane, and a golf cart. Doc. #157. Debtor's attached invoices provide that the following amounts were paid by Claimant to Debtor on the following dates:

- A. \$1,500 via check #1065 on April 8, 2018 for services performed by Debtor's subtenant, a mechanic named Michael Allen, who came to Debtor's shop to do "front end" work on the El Camino. *Id.*, *Ex. A.* This invoice later states, "Michael called police - April 20, 2019[.]" *Ibid.*
- B. \$2,000 via check #1381, of which \$1,250 was for work performed by Debtor on Claimant's Harley Davidson, and \$750 for work performed on Claimant's Ford Fairlane. *Id.*, *Ex. B.* The invoice purports that the Harley Davidson was received by Debtor on June 11, 2015. Per Claimant's declaration, this may have been an illegible attempt at writing June 11, 2019. *Cf.*, Doc. #163.
- C. Three checks totaling \$3,150 as partial payments for work performed by Debtor on Claimant's Ford Fairlane. Doc. #157, *Ex. C.* This includes checks #1444 and #1513, but the third check and date are omitted from this invoice.
- D. \$400 via check #1506 for the damage caused by Claimant to the shop door. *Id.*, *Ex. D.* This invoice states, "JP Ran into her SUV backing out of my shop[.]" *Ibid.* The invoice is not dated.
- E. \$2,000 via check #1547, of which \$650 was for work performed by Debtor on the golf cart, with the balance to be applied to work performed by Debtor on Claimant's Ford Fairlane. *Id.*, *Ex. E.* This invoice appears to be dated sometime in February 2020, but the precise date is not legible.
- F. \$275 via check #1182 for primer paint, abrasive sheets, and valve display stands. *Id.*, *Ex. F.* This invoice is not dated.
- G. \$2,000 via check #1453 for work performed by Debtor on the El Camino. The invoice is dated April 8, 2018.

In sum, Debtor characterizes Claimant's demands as seeking compensation for work produced beyond the scope of his claim (work on multiple cars), for work performed by someone else to do a job that Debtor never agreed to do (El Camino restoration), for parts and supplies Claimant purchased for multiple vehicles not the subject of the claim, and for damages he caused to Debtor's shop door. On this

basis, Debtor seeks to disallow Claimant's claim as "illegitimate." Doc. #154.

In reply, Claimant insists that Debtor is only objecting to this claim because Trustee liquidated Debtor's rental property resulting in excess funds in the estate provided that this claim is disallowed or reduced. Doc. #162. Claimant argues that Debtor negligently prepared the El Camino for painting pre-petition, which caused damages in the amount of \$26,000. Doc. #162. Debtor had possession of the El Camino from April 2018 until May 2020 and filed bankruptcy on August 21, 2019 - 16 months after receiving the El Camino. During this time, Claimant contends that Debtor negligently started the painting process by fixing body defects, stripping the old paint, and preparing the surfaces to be painted. Since Debtor's work was defective, Claimant was required to take the El Camino to Jason Haskin.

Claimant argues that Debtor has not presented any credible evidence that the funds paid by Claimant were almost exclusively for work by Debtor on vehicles other than the El Camino. Doc. #162. Claimant objects to the admissibility of Debtor's invoices because they are "just notes Debtor currently made from memory trying to reconstruct his business dealings with [Claimant]." *Id.* Since the business name is hand printed, and the exhibits are not numbered or consistently dated, Claimant contends that they are not contemporaneous records that can be admitted into evidence.

As an automotive repair business, Claimant says that Debtor was required under Cal. Bus. & Prof'l Code §§ 9884, *et seq.*, to prepare and maintain estimates signed by the customer for each repair and provide final invoices to be kept for a minimum of three years. Since Debtor did not maintain those records as required, he instead allegedly fabricated inaccurate invoices from memory. *Id.* Claimant states that he has timestamped pictures from his phone proving that the "invoices" for work done on the Ford Fairlane were at a time when the Ford was not in Debtor's possession. Doc. #163.

Ford Fairlane and El Camino

Claimant paid Debtor \$11,325 over a 22-month period from April 18, 2018 to February 2, 2020, which is during the time that the El Camino was in the shop. Debtor admits that \$2,000 of this sum was applied to the El Camino and claims that \$5,250 was applied to the painting of the Ford Fairlane. The Fairlane was in the shop from early 2019 until April 4, 2019, for unrelated work performed by Debtor's subtenants.

Claimant says that Debtor painted the firewall and underside of the truck the wrong color without authority while the vehicle was in the shop for unrelated work. After disputing the unauthorized paint, Claimant removed the Ford Fairlane from his possession on April 4, 2019 and took it to his shop. Debtor did not touch or paint the El Camino until after April 4, 2019.

Claimant's declaration places the Ford in Claimant's possession from April 4, 2019 through September 2, 2020, at which point it was sent to Haskin. Claimant's timestamped pictures show the Ford in Claimant's possession on the following dates:

April 4, 2019
July 20, 2019
September 8, 2019
November 22, 2019
April 3, 2020

Doc. #165, *Ex. 1*. Meanwhile, Debtor's invoices for work on the Ford after it was removed are:

June 11, 2019 - \$750 (Doc. #157, *Ex. B*)
September 6, 2019 - \$650 (*Id.*, *Ex. C*)
December 17, 2019 - \$1,000
January 8, 2020 - \$1,500
February 10, 2020 - \$1,350 (*Id.*, *Ex. E*).

Doc. #163. It is unclear which invoices are allegedly dated December 17, 2019 and January 8, 2020 because some of the invoices omit dates entirely.

Nevertheless, Claimant reaffirms that the invoices are fabricated from Debtor's unreliable memory and lack of records, so they should be disregarded as inaccurate. Doc. #162.

Valve Display Stand

Claimant concedes that Debtor did paint a valve display stand. *Id.* It was designed on November 13, 2019 based on a dated copy of the drawing. Doc. #165, *Ex. 2*. The stand was delivered to Debtor on December 3, 2019. *Id.*, *Ex. 3*. The stand was painted by December 5, 2019 and used at the World Ag Expo on February 11, 2020. *Ibid.* Claimant also included a picture of his exhibitor's pass dated February 12, 2020. *Id.*

Debtor's invoices, however, indicate that the valve stand paint job was covered in check #1182. Doc. #157, *Ex. F*. Claimant says that this check was dated September 10, 2018, but Debtor's invoice omits a date entirely. Claimant argues that the check purportedly for the valve display stand was executed over one year before it was designed and built. This is another reason that Claimant insists Debtor's records are inaccurate. Doc. #162.

Shop Door

Debtor alleges that Claimant backed into his shop door, requiring him to repair it for \$400. But Claimant says that Debtor's memory is wrong, and his records are unreliable because Claimant backed into a customer's car, not a shop door. The customer agreed that Debtor could

repair the car door, which he did. Claimant included a picture of Debtor dated October 8, 2019, ready to paint the door of the car. Doc. #165, Ex. 4. Claimant paid either \$300 or \$400 in cash at the time of the picture and the customer was apparently satisfied. Debtor's invoices allocate \$400 for the shop door in the invoice for check #1506 (Doc. #157, Ex. D), which Debtor says occurred on or around December 2019. Doc. #156. Claimant says this is over two months after the repair took place. Doc. #162. As noted above, Debtor's invoice says that Claimant ran into "her" SUV by backing out of his shop. This seems to support Claimant's contention that he did not run into Debtor's shop door.

Harley

Debtor allocates \$1,250 to painting Claimant's Harley, but Claimant says that he does not own a Harley (Doc. #157, Ex. B). Doc. #163. Claimant did take two tanks and two fenders from a Harley to Debtor's shop, which belonged to a third party named Mike Lopez who was not satisfied with the paint job performed by another shop. *Id.* Since Claimant owed Lopez \$600 for design work, Claimant agreed to take the parts to Debtor's shop and paid Debtor \$600 to repaint them. Claimant did not pick up the parts and is not aware whether Lopez and Debtor had any other transactions exceeding the \$600 paid by Claimant.

Golf Cart/ATV

Claimant's "golf cart" is a Kawasaki Mule 4-wheel-drive ATV. Debtor applied an undercoating to the canopy of the ATV using leftover material supplied by Claimant for an application to the bed of the El Camino. Doc. #165, Ex. 5. Debtor has no records of the "golf cart" and Claimant insists that there was no charge for the undercoating of the ATV because Debtor agreed to do it as part of the dispute over the repair of fenders for the El Camino.

Payment to Michael Allen

Lastly, Debtor alleges that check #1065 executed in April 2018 in the amount of \$1,500 was not a deposit for El Camino paint services, but instead for Michael Allen, Debtor's subtenant who performed work on the front end of the El Camino. But since Debtor has no records of the deposit, Claimant contends that check #1065 was a deposit for the El Camino.

In sum, Claimant argues that he paid \$16,042.08 to Debtor for the paint job, and \$26,000 to Haskin to paint the El Camino correctly. Claimant acknowledges that he is not entitled to the full \$26,000 paid to Haskin. The difference between the contracted price (\$16,042.08) and the cover price (\$26,000) is \$9,957.92, so Claimant argues he should be entitled to \$26,000 (\$16,042.08 paid to Debtor plus the \$9,957.92 difference in the cost to cover, totaling \$26,000). Since Debtor has failed to rebut the evidentiary presumption of Rule

3001(f), Claimant argues that the objection should be overruled, and he should be entitled to an allowed \$26,000 unsecured claim.

CONCLUSION

The court agrees that the omission of dates, check numbers, payment amounts, and customer signatures in Debtor's supplied invoices is concerning. Fed. R. Evid. 803(6) establishes a hearsay exception for business records that (1) are made in the course of regularly conducted activity of a business; (2) the business has a regular practice to make such records of that activity; (3) were made at or near the time of the recorded event or contain information transmitted by a person with knowledge of the information within the document; and (4) the source of information, or method or circumstances of preparation, have not been shown to indicate a lack of trustworthiness by an opponent. Without satisfying all of required the elements of Fed. R. Evid. 803(6), the invoices submitted by Debtor will be inadmissible hearsay not covered by this exemption. Claimant has provided cause that the information contained in or the method or circumstances of preparation of the invoices indicate a lack of trustworthiness. Debtor is given the opportunity to reply while the record is developed.

There are factual disputes and claims of both parties that will largely depend on witness credibility. The court is unable to assess that without the testimony of the percipient witnesses.

The hearing on this motion will be called as scheduled and will proceed as a scheduling conference. This matter is now deemed to be a contested matter. Pursuant to Rule 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

Based on the record, the factual issues appear to include:

1. The total amount paid by Claimant to Debtor for repair and painting of the El Camino, notwithstanding any amounts paid for Claimant's other automobile body or paint work.
2. Whether any amounts paid to Debtor are attributable to Debtor's services painting Claimant's valve display stand, Harley, and golf cart/ATV, the timing of those payments, and when those services were performed.
3. Whether Claimant collided with Debtor's shop door or a customer's car door, and whether that claim has been satisfied.

The legal issues appear to include:

1. Whether Debtor's invoices are admissible as records of a regularly conducted activity.
2. Whether Debtor negligently painted the El Camino and breached his duty of care with respect to Claimant.
3. Whether Debtor breached his contract with Claimant.
4. Whether to allow Claimant's proof of claim as an unsecured claim, and if so, the amount of said allowed claim.

14. [21-10495](#)-B-7 **IN RE: ROSARIO ALDACO**
[FW-3](#)

MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR BERKSHIRE
HATHAWAY HOMESERVICES CALIFORNIA REALTY, BROKER(S)
11-4-2021 [\[35\]](#)

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

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

DISPOSITION: Granted; there will be no stay waiver.

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

Chapter 7 trustee James E. Salven ("Trustee") seeks authorization to
sell the estate's interest in residential real property located at 547
North Sierra Vista Street, Porterville, CA 93257 ("Property") for
\$195,000.00 to Varo-Real Investments, Inc. ("Proposed Buyer"), subject
to higher and better bids. Doc. #35.

Trustee asks to pay all costs, six percent (6%) broker commission to
be split equally between the buyer's and seller's brokers, real
property taxes, all security interests, and Rosario Rodriguez Aldaco's
("Debtor") claimed exemption directly from escrow.

Trustee also requests waiver of the 14-day stay under Fed. R. Bankr.
P. ("Rule") 6004(h).

This motion affects the real estate broker as well. Under Civ. Rule 21
(Rule 7021 incorporated in contested matters under Rule 9014(c)), the
court will exercise its discretion and allow the relief requested by
movant here as to the real estate broker. Though compensation is
separate from the sale, it is economical to handle this motion in this
manner since there is no objection.

No party in interest timely filed written opposition. The court will
inquire at the hearing about the debtor's scheduled valuation for
Property in the amount of \$428,152 in relation to the proposed
\$195,000 sale price. If the court is convinced that the sale is for a
fair and reasonable price, the motion will be GRANTED and proceed for
higher and better bids only.

This motion was set for hearing on 28 days' notice as required by
Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P.
2002(a)(2) and (a)(6). The failure of the creditors, the debtor, the
U.S. Trustee, or any other party in interest to file written

opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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.

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

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

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887, citing *Mission Prod. Holdings, Inc. v. Old Cold, LLC (In re Old Cold, LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to Proposed Buyer. There is no indication that Proposed Buyer is an insider with respect to Debtor or the estate. Proposed Buyer is owned by Diego Daniel Espinoza-Martinez.²⁵ Proposed Buyer and Espinoza-Martinez are not listed in the schedules or the master address list and do not appear to be creditors, co-debtors, or other parties in interest in this case, other than their involvement in this sale. Docs. #1; #5.

Debtor filed bankruptcy on February 26, 2021. Doc. #1. Property is listed in the schedules with a value of \$428,152.00. *Id.*, Sched. A/B, ¶ 1.1. Debtor claimed an exemption of \$30,595.91 in Property pursuant to Cal. Civ. Proc. Code § 703.140(b)(5). *Id.*, Sched. C. Property is subject to a deed of trust in favor of U.S. Bank in the amount of \$95,265.00.²⁶ *Id.*, Sched. D. Trustee indicates that Property is also encumbered by a deed of trust securing a \$18,125.00 debt to the City of Porterville, which was paid off in 2006 when Debtor refinanced Property. Doc. #38. The deed of trust has not yet been reconveyed, but

Trustee anticipates the City of Porterville will submit a \$0.00 demand to escrow. *Id.*

Additionally, real property taxes in the amount of \$594.15 for the second installment of Fiscal Year 2020-2021 are due. *Id.*; Doc. #37, *Ex. B*, at 4.

Trustee wants to sell Property to Proposed Buyer for \$195,000.00. Doc. #35. The proposed sale can be illustrated as follows:

| | |
|-----------------------------------|----------------------|
| Sale price | \$195,000.00 |
| Estimated commission (6%) | - \$11,700.00 |
| Estimated costs of sale | - \$3,900.00 |
| Estimated taxes | - \$594.15 |
| City of Porterville deed of trust | - \$0.00 |
| US Bank deed of trust | - \$95,265.00 |
| Debtor's exemption | - \$30,595.91 |
| Estimated net proceeds to estate | = \$52,944.94 |

Trustee declares that the sale is subject to a number of relevant terms and conditions. Doc. #38. Proposed Buyer has agreed that the sale is "as-is" and the buyer is responsible for any government or retrofit requirements. The tenant in the Property shall remain in possession at close of escrow and the solar system on Property is not part of the sale. *Id.* The buyer is responsible to negotiate a new contract with the solar company or have the solar system removed. The buyer must also acknowledge that Trustee has not had access to the Property, the tenant may not allow the buyer access for inspections, and the buyer is satisfied with that lack of inspection and holds Trustee and Trustee's agents harmless from future liability related to the sale.

Despite the terms and conditions of the sale, including the possibility of an uncooperative tenant, the court notes that Property's proposed sale price is significantly lower than its scheduled value: \$428,152 vs. \$195,000, which is a difference of \$233,152. Was Debtor's \$428,152 scheduled valuation merely an over-estimate of Property's fair market value? The court notes that Debtor's 2006 deed of trust was in the amount of \$128,000. Doc. #37, *Ex. B*, at 6. Further, for tax purposes, Property's was assessed with a combined land and improvement value of \$108,068.00. *Id.*, at 4. Though it appears that the sale price is a more accurate representation of Property's value, the court will inquire at the hearing about the discrepancy with Debtor's scheduled value.

Otherwise, the sale of Property appears to be in the best interests of the estate because it will pay off the secured creditors and provide liquidity to the estate to be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment

and proposed in good faith. Trustee's business judgment appears to be reasonable and will be given deference.

In connection with this sale, Trustee asks to pay broker commission of six percent (6%) to be split equally between the buyer's and seller's brokers. On September 14, 2021, this court authorized employment of Berkshire Hathaway HomeServices California Realty ("Broker") as Trustee's real estate broker pursuant to 11 U.S.C. § 327(a). Doc. #34. The order specified that Broker's compensation was subject to court approval under § 328 and other policies of this court regarding fees of professionals, which includes § 330. *Id.* According to the motion, the listing agreement between Trustee and Broker provides that the broker commission will be set at six percent to be split between the buyer's and seller's respective brokers. Doc. #35. Trustee indicates that this is reasonable compensation for the services performed by Broker, including listing the Property for sale, soliciting offers, showing the Property, marketing the Property, and negotiating terms with Proposed Buyer. Per the *Confirmation of and Disclosure Regarding Real Estate Agency Relationships* signed by Proposed Buyer and Trustee, Proposed Buyer's real estate broker is Keller Williams Realty-Kings County. Doc. #37, at 5, 21-22, *Ex. A*.

The court will allow the commissions to be paid as prayed. The court finds the compensation reasonable.

Lastly, Trustee asks for waiver of the 14-day stay of Rule 6004(h) because he does not anticipate that anyone will appeal this motion, so there is no reason for the 14-day stay. Doc. #38. The request for waiver will be DENIED because Trustee presents no factual basis to waive the stay provided by law. *See Palladino v. S. Coast Oil Corp.* (*In re S. Coast Oil Corp.*), 566 F. App'x 594, 595 (9th Cir. 2014) (affirming waiver of 14-day stay because "time was of the essence" due to regulatory deadlines); *In re Ormet Corp.*, 2014 LEXIS 3071 (Bankr. D. Del. July 17, 2014) (finding cause existed to lift the stay because there had been one previous failed sale attempt and the new buyer required closing before the 14-day stay would expire).

It appears that the sale of Property is in the best interests of the estate, supported by a valid business judgment, proposed in good faith, and for a fair and reasonable price. The court will inquire at the hearing about the difference in Debtor's scheduled valuation with the sale price, but the sale price appears to be a more accurate valuation of Property. There are no objections or opposition to the motion. The sale being subject to higher and better bids will yield the best possible sale price. The court is inclined to GRANT this motion.

Trustee will be authorized to pay broker commission of six percent (6%) of the gross sale proceeds, as well as all costs, taxes, security interests, and claimed exemptions. This matter will proceed for higher and better bids only.

The motion does not request, nor will the court authorize, the sale free and clear of any liens and interests. Valid encumbrances including those mentioned here will be paid through escrow. The sale is subject to all interests.

Any party wishing to overbid must deposit with Trustee's counsel certified monies in the amount of \$6,000.00 prior to the time of the sale motion hearing. Unsuccessful bidders' deposits will be returned at the conclusion of the hearing. The successful bidder's deposit shall be applied to the successful overbid price. Prospective overbidders must provide proof in the form of a letter of credit, or some other written prequalification, for any financing that may be required and that the overbidder can and will close the sale within fifteen (15) days of delivery of a certified copy of the court's order approving the sale and be able to execute a purchase agreement for Property.

Overbidders must be present at the hearing, make overbids in the amount of \$2,000.00, be aware that their deposit will be forfeited if they do not timely close the sale, and acknowledge that the sale is "as-is." The buyer is responsible for any government or retrofit requirements. The tenant in the Property shall remain in possession at close of escrow and the solar system on Property is not part of the sale. The buyer is responsible to negotiate a new contract with the solar company or the solar system removed. The buyer must also acknowledge that Trustee has not had access to the Property, the tenant may not allow the buyer access for inspections, and the buyer is satisfied with that lack of inspection and holds Trustee and Trustee's agents harmless from future liability related to the sale.

²⁵ See, Varo-Real Investments, Inc. on the California Secretary of State Business Search, <https://businesssearch.sos.ca.gov/>, *Articles of Incorporation* (June 14, 2011) and *Statements of Information* (Dec. 7, 2020, Apr. 13, 2021).

²⁶ The deed of trust is in favor of Mortgage Electronic Registration Systems (MERS), solely as nominee for First NLC Financial Services, LLC, dba the Learning Center, which assigned its interest to U.S. Bank National Association. Doc. #37, *Ex. B*.

15. [21-10999](#)-B-7 **IN RE: ERIC/ROMANA JOHNSON**
[JES-2](#)

MOTION TO EMPLOY BAIRD AUCTION AND APPRAISALS AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
11-1-2021 [\[26\]](#)

JAMES SALVEN/MV
JOEL WINTER/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.

Chapter 7 trustee James E. Salven ("Trustee") seeks authorization to employ Baird Auctions & Appraisals ("Auctioneer") and to sell the estate's interest in a Ruger SP 101 .357 magnum revolver and 2.5 boxes of .38 special ammunition ("Property") at public auction. Doc. #26. The auction will be held on or after December 7, 2021 at 5:30 p.m. at Baird Auctions & Appraisals, 1328 N. Sierra Vista, Suite B, Fresno, California.

Trustee requests to pay 15% of gross proceeds from the sale as compensation under 11 U.S.C. §§ 327(a) and 328, along with expenses of up to \$100.00 for anticipated sale preparation and storage expenses. Doc. #28. In addition to those fees and expenses, Auctioneer charges buyers a 10% premium on the purchase price. *Id.* Trustee and Jeffrey Baird, Auctioneer's owner, filed declarations attesting that Auctioneer is a disinterested person as defined in § 101(14) and does not hold interests adverse to the estate in accordance with § 327(a). *Id.*; Doc. #29.

No party in interest timely filed written opposition, but the motion proposes sell Property at auction on December 7, 2021. Trustee did not request waiver of the 14-day stay under Fed. R. Bankr. P. ("Rule") 6004(h) but does ask for such other and further relief as the court deems just and proper. The motion will be GRANTED.

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

This motion affects the proposed disposition and the auctioneer. Under Civ. Rule 21 (Rule 7021 incorporated in contested matters under Rule 9014 (c)), the court will exercise its discretion and allow the relief requested by movant here as to both requests. Though compensation is separate from the sale, it is economical to handle this motion in this manner and there is no objection.

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 trustee's duties. Section 327 requires that the professional does not hold or represent interests adverse to the estate and is a disinterested person. § 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).

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

Trustee wishes to sell Property under § 363(b). Doc. #26. Eric Neal Johnson and Romana Hanna Johnson ("Debtors") listed Property in the

amended schedules with a petition date value of \$500.00. Doc. #19, *Am. Sched. A/B*, at 3, ¶ 10. Debtor did not claim an exemption in Property, and it is not encumbered by any security interests. *Id.*, *Am. Schedules C, D*. If sold for its scheduled value, the sale would be illustrated as follows:

| | |
|-------------------------------------|-----------------|
| Property (Schedule A/B value) | \$500.00 |
| Auctioneer compensation (15%) | - \$75.00 |
| Auctioneer expenses (\leq \$100) | - \$100.00 |
| Debtors' exemption | - \$0.00 |
| Net to the estate | \geq \$325.00 |

Trustee believes that using the auction process to sell Property will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #28. Based on Trustee's experience, this will yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.* Trustee intends to sell Property on or after December 7, 2021. *Id.*

Sale by auction under these circumstances should maximize potential recovery for the estate. Therefore, this sale is an appropriate exercise of Trustee's business judgment.

No party in interest timely filed written opposition, but the motion contemplates selling the Property on December 7, 2021 without any request for waiver of the 14-day stay under Rule 6004(h). This motion will be called as scheduled.

The court is inclined to GRANT the motion. Trustee will be authorized to employ Auctioneer to sell Property at public auction and pay Auctioneer for its services as outlined above. Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale, and reimbursement of reasonable expenses of up to \$100.00.

Since Trustee did not request waiver, the court is inclined to grant the motion without waiver under Rule 6004(h), which will require that the sale be delayed until after December 16, 2021.