

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, December 8, 2022
Place: Department A – 510 19th Street
Bakersfield, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 631, courthouses for the Eastern District of California were reopened to the public effective June 14, 2021.

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

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.

1. [21-12820](#)-A-13 **IN RE: CLYDE/HEATHER DUNN**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
10-12-2022 [\[83\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
MICHAEL MEYER/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

2. [21-12820](#)-A-13 **IN RE: CLYDE/HEATHER DUNN**
[RSW-2](#)

MOTION TO AVOID LIEN OF TBF FINANCIAL I, LLC
11-3-2022 [\[98\]](#)

HEATHER DUNN/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

As a procedural matter, counsel for the movants incorrectly completed the mandatory certificate of service form (EDC Form 7-005, Rev. 10/22). Federal Rule of Bankruptcy Procedure ("Rule") 9014(b) requires a motion to avoid a lien under 11 U.S.C. § 522(f) be served "in the manner provided for service of a summons and complaint by Rule 7004[.]" Fed. R. Bankr. P. 9014(b). However, the certificate of service indicates that service of the motion and related pleadings was made pursuant to Federal Rule of Civil Procedure 5 and Rule 7005. Doc. #102. Nevertheless, service of the motion to TBF Financial I, LLC ("Creditor") does satisfy Rule 7004(b)(3), which provides that service upon a

limited liability company be mailed "to the attention of an officer, managing or general agent, or to any other agent authorized by appointment or law to receive service of process[.]" Fed. R. Bankr. P. 7004(b)(3). The certificate of service filed in connection with this motion shows that Creditor, which is a limited liability corporation, was served by U.S. mail to the attention of an agent for service of process. See Doc. #102. Further, the address to which Creditor was served is the correct address according to the California Secretary of State website. Essentially, the movants effectuated Rule 7004 service despite checking the box indicating service pursuant to Rule 7005. Accordingly, service is proper notwithstanding the improperly completed certificate of service.

Clyde Dunn, III and Heather Dunn ("Debtors"), the debtors in this chapter 13 case, move pursuant to 11 U.S.C. § 522(f) and Rule 4003(d) to avoid the judicial lien of Creditor on the residential real property commonly referred to as 15722 Carparzo Drive, Bakersfield, California (the "Property"). Doc. #98.

In order 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). 11 U.S.C. § 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)).

Debtors filed a chapter 7 bankruptcy petition on December 20, 2021, that was converted to chapter 13 on June 28, 2022. Doc. #1, 45. A judgment was entered against Clyde Newton Dunn, III in the amount of \$74,178.69 in favor of Creditor on July 17, 2020. Exs. 6-8, Doc. #100. The abstract judgment was recorded pre-petition in Kern County on April 20, 2021, as document number 221073000. Ex. 6, Doc. #100. The lien attached to Debtors' interest in the Property located in Kern County. Doc. #98. The Property also is encumbered by a lien in favor of NewRez LLC dba Shellpoint Mortgage Servicing in the amount of at least \$342,353.00. Schedule D, Doc. #1; Claim No. 18-1. Debtors claimed an exemption of \$170,350.00 in the Property under California Code of Civil Procedure § 704.730. Am. Schedule C, Doc. #79. Debtor asserts a market value for the Property as of the petition date at \$420,000.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$74,178.69
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$342,353.00
Amount of Debtors' claim of exemption in the Property	+	\$170,350.00
		\$586,881.69
Value of Debtors' interest in the Property absent liens	-	\$420,000.00
Amount Creditor's lien impairs Debtor's exemption		\$166,881.69

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

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

3. [21-12820](#)-A-13 **IN RE: CLYDE/HEATHER DUNN**
[RSW-4](#)

MOTION TO CONFIRM PLAN
10-31-2022 [\[90\]](#)

HEATHER DUNN/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

4. [22-11820](#)-A-13 **IN RE: GWENDOLYN PICKENS**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
11-8-2022 [\[10\]](#)

MICHAEL MEYER/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

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 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 non-responding parties in interest are entered. Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

As an informative matter, the trustee used an older version of the court's Official Certificate of Service form (EDC Form 7-005, New 09/2022) instead of using the most updated version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/22). The correct form can be accessed on the court's website at <http://www.caeb.uscourts.gov/Forms/FormsAndPublications>.

Michael H. Meyer ("Trustee"), the Chapter 13 trustee in the bankruptcy case of Gwendolyn Marie Pickens ("Debtor"), objects to Debtor's claim of a homestead exemption under California Code of Civil Procedure ("C.C.P.") § 704.730 in the amount of \$325,000.00 in Debtor's real property located at 10804 Seriana Drive, Bakersfield, California 93311, in Kern County (the "Property"). Tr.'s Obj., Doc. #10; see Schedule C, Doc. #1.

Debtor filed her Chapter 13 case on October 25, 2022. At the time of filing, C.C.P. § 704.730 provided that the amount of the homestead exemption is the greater of "[t]he countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims

the exemption, not to exceed" \$626,400, with a minimum of \$313,200. C.C.P. § 704.730.

"[T]he debtor, as the exemption claimant, bears the burden of proof which requires [him] to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under California Code of Civil Procedure § [704.730] and the extent to which the exemption applies." In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); see Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016) (concluding "that where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation.").

Trustee does not contest that the Property is Debtor's homestead. Rather, Trustee objects to Debtor's exemption in the Property to the extent that the California Association of Realtors is not the correct source to find the countywide median sale price. Doc. #10. If the California Association of Realtors is the correct source to find the countywide median sale price, then Trustee concedes that Debtor's claimed exemption is appropriate.

The court determines that the countywide median sale price as reported by the California Association of Realtors is a proper data source for monthly countywide median sale price information. To calculate the countywide median sale price for a single-family home for purposes of determining the exemption amount permitted by C.C.P. § 704.730, the proper method is to (1) obtain the monthly median sale price for appropriate county for each month in the applicable year from the website of the California Association of Realtors, (2) sort the twelve monthly median sales prices from lowest to highest, (3) drop the five lowest prices and the five highest prices, and (4) average the remaining two prices. Through this calculation, based on the information provided in Trustee's objection, the median sale price in 2021 for a single-family home in Kern County is \$325,500.00. Doc. #10.

Accordingly, this objection to Debtor's claim of exemption is OVERRULED.

5. [22-11631](#)-A-13 **IN RE: THOMAS RODRIGUEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
11-4-2022 [\[14\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on November 29, 2022. Doc. #21.

6. [22-11635](#)-A-13 **IN RE: EMELITA BROWN**
[MHM-1](#)

MOTION TO DISMISS CASE
11-4-2022 [\[13\]](#)

MICHAEL MEYER/MV
JOSHUA STERNBERG/ATTY. FOR DBT.
WITHDRAWN 12/1/22

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on December 1, 2022. Doc. #22.

7. [18-14853](#)-A-13 **IN RE: JERRICK/SANDRA BLOCK**
[RSW-6](#)

MOTION TO MODIFY PLAN
10-18-2022 [\[106\]](#)

SANDRA BLOCK/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to January 5, 2023 at 9:00 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The Chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to modify the Chapter 13 plan. Tr.'s Opp'n, Doc. #114. Unless this case is voluntarily converted to Chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response no later than December 22, 2022. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. Trustee shall file and serve a reply, if any, by December 29, 2022.

If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than December 29, 2022. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

8. [22-11281](#)-A-13 **IN RE: DWAYNE HAUGHTON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-31-2022 [\[55\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.
\$156.00 INSTALLMENT FILING FEE PAID 11/2/22

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid.

The order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

9. [21-12296](#)-A-13 **IN RE: ISTVAN/MARGIT MAJOROS**
[MHM-3](#)

MOTION TO DISMISS CASE
10-19-2022 [\[90\]](#)

MICHAEL MEYER/MV
PHILLIP GILLET/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

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

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(6) for unreasonable delay by the debtors that is prejudicial to creditors and a material default by the debtors with respect to a term of a confirmed plan. Doc #90. Specifically, payments to the trustee are

not current under the debtors' confirmed plan. 11 U.S.C. §1307(c)(4) and/or (c)(6). The debtors have failed to make all payments due under the plan. As of October 19, 2022, the debtors are delinquent in the amount of \$8,064.63. In addition, the debtors must pay each and every plan payment that comes due between October 19, 2022, and this hearing date. Doc. #90. The debtors did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) and (c)(6) for unreasonable delay by debtors that is prejudicial to creditors and cause exists to dismiss this case as the debtors have failed to make all payments due under the plan.

Because there is minimal equity in the debtors' assets after taking into account secured claims and the debtors' claimed exemptions, the court finds that dismissal rather than conversion is appropriate. Doc. #44.

Accordingly, the motion will be GRANTED, and the case dismissed.

10. [19-11598](#)-A-13 **IN RE: BRIAN/MARIA PATRICK**
[DMG-2](#)

MOTION TO BORROW
11-21-2022 [\[51\]](#)

MARIA PATRICK/MV
D. GARDNER/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 the hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date 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.

Brian Keith Patrick and Maria Del Rosario Patrick (together, "Debtors"), the chapter 13 debtors in this case, move the court for an order authorizing Debtors to incur new debt. Doc. #51. Debtors seek a court order authorizing them to finance the purchase of real property located in Benton County, Washington. Decl. of Maria Patrick, Doc. #52. Debtors are looking to purchase real property to be utilized as Debtors' personal residence for a loan amount not to exceed \$600,000.00 and monthly payments not to exceed \$3,250.00. Decl., Doc. #52. Debtors currently pay \$2,700.00 per month for rent and their rent is going to increase again in a few months. Id. Debtors moved to Washington and

have changed employment which has caused a large increase in wages and their monthly disposable income to exceed their plan payment by over \$1,000.00. Id.; Am. Schedule I and J, Doc. #19; Plan, Doc. #12.

LBR 3015-1(h)(1)(E) provides that "if the debtor wishes to incur new debt . . . on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1." The court finds that notice pursuant to Federal Rule of Bankruptcy Procedure 2002 is not required in this instance because Debtors are not seeking to use, sell or lease property of the estate since Debtor have not yet purchased the real property.

The court is inclined to GRANT this motion. This motion was properly served and noticed, and opposition may be presented at the hearing. There is no indication that Debtors are not current on their chapter 13 plan payments or that the chapter 13 plan is in default. Debtors filed amended Schedules I and J that demonstrate an ability to pay future plan payments, projected living and business expenses, and the new debt. The new debt is a single loan incurred to purchase a personal residence that is reasonably necessary for the maintenance or support of Debtors. The only security for the new debt will be the real property to be purchased by Debtors.

Accordingly, subject to opposition raised at the hearing, this motion is GRANTED. Debtors are authorized, but not required, to incur up to \$600,000.00 in debt in a manner consistent with the motion.

11. [19-12898](#)-A-13 **IN RE: JEFFREY VANDERNOOR**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
8-4-2022 [\[125\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

12. [19-12898](#)-A-13 **IN RE: JEFFREY VANDERNOOR**
[RSW-6](#)

MOTION TO MODIFY PLAN
11-2-2022 [\[152\]](#)

JEFFREY VANDERNOOR/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

1. [22-11120](#)-A-7 **IN RE: SALVADOR/LETICIA AREVALO**
[JMV-2](#)

MOTION TO SELL
11-17-2022 [\[25\]](#)

JEFFREY VETTER/MV
VINCENT GORSKI/ATTY. FOR DBT.
JEFFREY VETTER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

As a procedural matter, the movant checked the box indicating that service was made pursuant to Rule 7004. If service was being made pursuant to Rule 7004, then the appropriate boxes in section 6A would have needed to be checked and attached to the certificate of service form the appropriate attachment labeled Attachment 6A1. Here, the movant served notice of the hearing on all creditors and served the notice and motion papers on a smaller list but failed to label the smaller list as Attachment 6A1. Also, when the movant served all creditors with notice of the hearing only, that service was made pursuant to Rule 7005, and the boxes in section 6B2 should have been checked and the attached Clerk's Matrix of Creditors should have been labeled as Attachment 6B2.

Jeffrey Vetter ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Salvador Arevalo and Leticia Arevalo (together, "Debtors"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the bankruptcy estate's interest in a 2018 Toyota Camry (the "Vehicle") to Debtors for the purchase price of \$4,092.00, subject to higher and better bids at the hearing. Doc. #26. The minimal overbid is \$20,125.00 to account for the loan on the Vehicle and Debtors' claimed exemption in the Vehicle. Id.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 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 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy

court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 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. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Decl. of Jeffrey Vetter, Doc. #27; Doc. #25. Trustee's proposed sale to Debtors is made in consideration of the full and fair market value of the Vehicle. Vetter Decl., Doc. #27. Trustee values the Vehicle at \$22,500.00 and is selling the Vehicle to Debtors subject to a loan in the amount of \$11,408.00, less costs of sale in the amount of \$3,375.00 and less Debtors' claimed exemption in the amount of \$3,625.00. Id. Debtors offered to buy the Vehicle for the net purchase price of \$4,092.00, subject to overbid at the hearing. Id. Trustee received full payment of \$4,092.00 from the Debtors towards the purchase of the Vehicle. Id. The court recognizes that no commission will need to be paid because the sale is to Debtors.

It appears that the sale of the estate's interest in the Vehicle is in the best interests of the estate, the Vehicle will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith.

Accordingly, subject to overbid offers made at the hearing, the court is inclined to GRANT Trustee's motion and authorize the sale of the estate's interest in the Vehicle to Debtors on the terms set forth in the motion.

2. [17-13528](#)-A-7 **IN RE: DAVID/DEBRA MATTOCKS**
[JSP-3](#)

MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC
11-8-2022 [\[27\]](#)

DEBRA MATTOCKS/MV
JOSEPH PEARL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 amount of damages).

Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants has done here.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. In addition, the notice should not have included a list of potential respondents to be notified.

As a further procedural matter, the certificate of service filed in connection with this motion does not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form (EDC Form 7-005, Rev. 10/22) as of November 1, 2022. In addition, the certificate of service does not comply with LBR 9014-1(e)(2), which requires a certificate of service to be filed "concurrently with the pleadings of documents served, or not more than three (3) days after they are filed." Here, counsel served the motion and supporting papers on November 9, 2022 and the proof of service was filed on November 28, 2022. Doc. #31.

As a further procedural matter, the supporting papers do not comply with LBR 9014-1(c) and 9004-2(b)(6) because the Notice of Hearing, Certificate of Service, Exhibit, and Declaration filed in connection with this motion included an old docket control number (JSP-1) immediately below the case number and not the docket control number used on the Motion (JSP-3). Doc. #27.

The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

David W. Mattocks and Debra A. Mattocks (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Midland Funding, LLC ("Creditor") on the residential real property commonly referred to as 2309 Kent Drive Bakersfield, California (the "Property"). Doc. #27; Schedule C, Doc. #1.

In order 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). 11 U.S.C. § 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)).

Debtors filed the bankruptcy petition on September 14, 2017. Doc. #1. A judgment was entered against David Mattocks in the amount of \$4,641.66 in favor of Creditor on April 28, 2017. Ex. A, Doc. #30. The abstract judgment was recorded pre-petition in Kern County on June 27, 2017, as document number 217082251. Ex. A, Doc. #30. The lien attached to Debtors' interest in the Property located in Kern County. Doc. #27. The Property also is encumbered by a lien in favor of Wells Fargo Home Mortgage in the amount \$143,420.00. Schedule D, Doc. #1. Debtors claimed an exemption of \$24,580.00 in the Property under California Code of Civil Procedure § 703.140(b)(1). Schedule C, Doc. #1. Debtors asserts a market value for the Property as of the petition date at \$168,000.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$4,641.66
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$143,420.00
Amount of Debtors' claim of exemption in the Property	+	\$24,580.00
		\$172,641.66
Value of Debtors' interest in the Property absent liens	-	\$168,000.00
Amount Creditor's lien impairs Debtor's exemption		\$4,641.66

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

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

3. [21-10530](#)-A-7 **IN RE: CHRISTOPHER METAS**
[JMV-1](#)

MOTION FOR COMPENSATION FOR JEFFREY M. VETTER, CHAPTER 7 TRUSTEE(S)
10-31-2022 [\[99\]](#)

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

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

DISPOSITION: Granted.

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

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

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The notice indicates that the opposition must be "served on the parties identified attached [.]" Doc. #100. However, there is no attachment to the notice. Instead of attaching a list of the names and addresses of the parties to be served, the trustee could include those names and addresses in the body of the notice.

Jeffrey M. Vetter ("Trustee"), the chapter 7 trustee, requests allowance of final compensation and reimbursement for expenses for services rendered as the chapter 7 trustee in this case. Doc. #99. Trustee provided trustee services valued at \$10,355.53, and requests compensation for that amount. Doc. #99. Trustee requests reimbursement for expenses in the amount of \$114.18. Doc. #99. Since being appointed as the chapter 7 trustee in this case on March 3, 2021, Trustee has administered the estate, employed counsel, disposed of estate property, reviewed and reconciled financial records, and prepared final filings. Ex. C, Doc. #102.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a chapter 7 trustee. 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded a chapter 7 trustee, the court shall treat such compensation as a commission, based on § 326 of the Bankruptcy Code. 11 U.S.C. § 330(a)(7). Here, Trustee demonstrates reasonable compensation in accordance with the statutory framework of § 326. Exs. A & B, Doc. #102. Further, the court finds Trustee's services and requested expenses were actual and necessary to the administration of this estate.

This motion is GRANTED. The court allows statutory compensation in the amount of \$10,355.53 and reimbursement for expenses in the amount of \$114.18.

4. [18-11949](#)-A-7 **IN RE: MOGUL ENERGY PARTNERS I, LLC**
[JMV-3](#)

MOTION FOR COMPENSATION FOR JEFFREY M. VETTER, CHAPTER 7 TRUSTEE(S)
10-31-2022 [\[220\]](#)

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

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

DISPOSITION: Granted.

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

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

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice

include the names and addresses of persons who must be served with any opposition. The notice indicates that the opposition must be "served on the parties identified attached hereto[.]" Doc. #221. However, there is no attachment to the notice. Instead of attaching a list of the names and addresses of the parties to be served, the trustee could include those names and addresses in the body of the notice.

Jeffrey M. Vetter ("Trustee"), the chapter 7 trustee, requests allowance of final compensation and reimbursement for expenses for services rendered as the chapter 7 trustee in this case. Doc. #220. Trustee provided trustee services valued at \$49,750.00, and requests compensation for that amount. Doc. #220. Trustee requests reimbursement for expenses in the amount of \$270.56. Doc. #220. Since being appointed as the chapter 7 trustee in this case on November 13, 2018, Trustee has administered the estate, employed counsel and accountant, disposed of estate property, reviewed and reconciled financial records, and prepared fee application. Ex. C, Doc. #222.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a chapter 7 trustee. 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded a chapter 7 trustee, the court shall treat such compensation as a commission, based on § 326 of the Bankruptcy Code. 11 U.S.C. § 330(a)(7). Here, Trustee demonstrates reasonable compensation in accordance with the statutory framework of § 326. Exs. A & B, Doc. #222. Further, the court finds Trustee's services and requested expenses were actual and necessary to the administration of this estate.

This motion is GRANTED. The court allows statutory compensation in the amount of \$49,750.00 and reimbursement for expenses in the amount of \$270.56.

5. [21-10561](#)-A-7 **IN RE: SHELTON MCKENZIE**
[PLG-2](#)

CONTINUED MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION
7-28-2022 [[23](#)]

SHELTON MCKENZIE/MV
L. TEGAN RODKEY/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on November 2, 2022. Doc. #39.

6. [20-11528](#)-A-7 **IN RE: CANDACE WILKERSON**
[RSW-2](#)

MOTION TO AVOID LIEN OF MOUNTAIN LION ACQUISITIONS, INC.
11-23-2022 [\[29\]](#)

CANDACE WILKERSON/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice of the hearing on this motion was sent by mail on November 23, 2022, with a hearing date set for December 8, 2022. The motion was set for hearing on less than 28 days' notice and is governed by Local Rule of Practice ("LBR") 9014-1(f)(2). Pursuant to LBR 9014-1(f)(2), written opposition was not required, and any opposition may be raised at the hearing. While the notice of hearing states that opposition may be raised at the hearing, it also states that without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. The notice of hearing further states that failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions pursuant to LBR 9014-1(f)(1). Because the notice of hearing was unclear as to whether opposition could be presented at the hearing or needed to be in writing, the court finds the notice of hearing does not comply with LBR 9014-1(f)(2).

Accordingly, this motion is DENIED WITHOUT PREJUDICE for improper notice.

1. [21-12348](#)-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**
[IJL-6](#)

CONTINUED AMENDED MOTION FOR COMPENSATION FOR IGNACIO J. LAZO, DEBTORS
ATTORNEY(S)
10-7-2022 [[144](#)]

IGNACIO LAZO/ATTY. FOR DBT.
RESPONSIVE PLEADING

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 the hearing.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2). While not required, Grimmway Enterprises, Inc. ("Grimmway") filed a written opposition to the motion on November 3, 2022. Doc. #148. At the prior hearing on the motion, the matter was continued to permit the moving party to respond to the written opposition. After consideration of the motion, opposition, and response, the court will grant the motion.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

Cadden & Fuller LLP ("Movant"), counsel for the debtor and debtor in possession Juarez Brothers Investments, LLC ("DIP"), requests allowance of interim compensation in the amount of \$113,210.00 and reimbursement for expenses in the amount of \$852.06 for services rendered from February 1, 2022 through August 31, 2022. Ex. A, Doc. #142, Doc. #144. Movant's first two fee applications were rejected by the court, so time and costs were incurred to generate a new notice and re-serve the moving papers. Decl. of Ignacio J. Lazo, Doc. #141. Movant believes it is inappropriate for DIP to bear the cost of addition fees because of these addition filings and requests the court reduce the amount approved for payment by \$12,650.00, so that the amount approved for payment is \$101,412.06. Lazo Decl, Doc. #141, Doc. #144. This is Movant's second fee application in this case. The court has previously approved a total of \$70,845.60 in interim fees and expenses, of which \$70,845.60 has been paid to Movant. Doc. #144.

Grimmway opposes the motion asserting that the requested fees are patently unreasonable. Doc. #148. Specifically, Movant has filed two fee applications in the aggregate amount of \$171,330.00, of which \$62,975.00 relates to fee and employment applications and \$46,140.00 relates to litigation. Grimmway asserts that the fees for preparing fee and employment applications were caused by Movant's repeated failures and make up a disproportionate amount of the total fees incurred. With respect to the fees for litigation, Grimmway asserts that those fees are unreasonable because DIP has dragged its feet in the ten months that this bankruptcy case has been pending and DIP's counsel has failed to provide Grimmway with initial disclosures, respond to written discovery, or make DIP available for depositions.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a professional person. 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to counsel, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing general case administration; (2) preparing, filing, and serving an adversary proceeding against Grimmway to quiet title to the DIP's primary asset; (3) conducting legal research in preparation for drafting opposition to motion to dismiss in the adversary proceeding; (4) preparing, revising, and finalizing memorandum of points of authorities in opposition to Grimmway's motion to dismiss in the adversary proceeding; (4) reviewing and sorting documents received from DIP in connection with preparing to comply with Rule 26(a) Initial Disclosure requirements; (5) reviewing documents received from DIP and generated by counsel for Grimmway in two prior state court actions in connection with generating the Rule 26 Report; (6) drafting section of the Rule 26 Report regarding documents; (7) reviewing, revising, and supplementing proposed joint Rule 26(f) Report from Grimmway's counsel; (8) drafting, reviewing, revising, and supplementing DIP's monthly operating reports; (9) preparing bankruptcy case status report; (10) reviewing and evaluating the merits of proofs of claim accumulated since November 2021; and (11) preparing and prosecuting fee and employment applications. Lazo Decl., Doc. #141; Ex. A, Doc. #142.

Movant filed a late response¹ asserting that the large amount of fees related to employing Movant are in large part a result of obtaining bankruptcy court permission for Salvador Rodriguez, a brother-in-law of DIP's members, to pay Movant's fees for Movant's representation of DIP. Supp. Decl. of Ignacio J. Lazo, Doc. #157. This is an unusual case in which the court has authorized Mr. Rodriguez to pay the attorneys' fees and expenses for Movant's representation of DIP instead of DIP's bankruptcy estate. Order, Doc. #129. Based on the need for DIP to obtain approval for Mr. Rodriguez to pay Movant's attorneys' fees and expenses for its representation of DIP, the court is inclined not to reduce the request for fees beyond the voluntary reduction already made by Movant.

Movant also explained the numerous issues that have resulted in what appears to be higher than usual fees with respect to the litigation with Grimmway. Supp. Lazo Decl., Doc. #157. The court finds that the compensation and reimbursement sought by Movant, for purposes of approving this interim fee application, to be reasonable, actual, and necessary. The court's determination in granting this

¹ Pursuant to the court's order after the prior hearing, DIP's response was to be filed and served not later than November 23, 2022. Doc. #152. DIP's response was filed on November 28, 2022. Doc. #157. There is no certificate of service showing that DIP's response was served as required by the court's order.

motion is without prejudice to Grimmway raising the same or similar objections to the final fee application of Movant.

This motion is GRANTED. The court allows interim compensation in the amount of \$100,560.00 and reimbursement of expenses in the amount of \$852.06. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

11:00 AM

1. [22-11042](#)-A-7 **IN RE: TIFFINI HUGHES**
[22-1019](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
9-19-2022 [[1](#)]

LABOR COMMISSIONER OF THE STATE OF CALIFORNIA V. HUGHES
EDELMIRA DIAZ-WEAVER/ATTY. FOR PL.
CONT'D TO 2/9/23 PER ECF ORDER #20

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

DISPOSITION: Continued to February 9, 2023 at 11:00 a.m.

NO ORDER REQUIRED.

On November 17, 2022, the court issued an order continuing the status conference to February 9, 2023 at 11:00 a.m. Doc. #18.

2. [19-13783](#)-A-7 **IN RE: MARK/SUSAN CHAGOYA**
[19-1129](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
7-6-2020 [[40](#)]

BROWN V. CHAGOYA ET AL
JEFF BEAN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

3. [19-13783](#)-A-7 **IN RE: MARK/SUSAN CHAGOYA**
[19-1129](#) [PK-5](#)

CONTINUED MOTION BY PATRICK KAVANAGH TO WITHDRAW AS ATTORNEY
7-7-2022 [[109](#)]

BROWN V. CHAGOYA ET AL

NO RULING.

4. [19-13783](#)-A-7 **IN RE: MARK/SUSAN CHAGOYA**
[PK-5](#)

CONTINUED MOTION BY PATRICK KAVANAGH TO WITHDRAW AS ATTORNEY
7-7-2022 [[40](#)]

PATRICK KAVANAGH/ATTY. FOR DBT.

NO RULING.