



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

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

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[WJH-13](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WANGER JONES
HELSEY FOR RILEY C. WALTER, DEBTORS ATTORNEY(S)
11-22-2022 [\[138\]](#)

RILEY WALTER/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.

Wanger Jones Helsley PC ("Applicant"), the law firm representing
debtor-in-possession Valley Transportation, Inc. ("Debtor"), seeks
interim compensation under 11 U.S.C. §§ 330 and 331 in the sum of
\$102,128.98. Doc. #138. This amount consists of \$101,035.00 in
attorneys' fees as reasonable compensation and \$1,093.98 in
reimbursement for actual, necessary expenses from September 1, 2022
through November 15, 2022. *Id.*

Deborah Simpson, Debtor's representative, has received and reviewed
the fee application and has no objections to the same. Doc. #142.

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

This motion was filed and served on 21 days' notice pursuant to Local
Rule of Practice ("LBR") 9014-1(f)(2) and Fed. R. Bankr. P. 2002(a)(6)
and will proceed as scheduled. Unless opposition is presented at the
hearing, the court intends to enter the respondents' defaults and
grant the motion. If opposition is presented at the hearing, the court
will consider the opposition and whether further hearing is proper
pursuant to LBR 9014-1(f)(2). The court will issue an order if a
further hearing is necessary.

Applicant's employment as general bankruptcy counsel was authorized
pursuant to 11 U.S.C. §§ 327(a) and 329-331 on September 22, 2022,
effective on the petition date. Doc. #53. No compensation was
permitted except upon court order following application under § 330(a)
and will be paid at the "lodestar rate" for attorney services
applicable at the time that services are rendered in accordance with
In re Manoa Fin. Co., Inc., 853 F.2d 687 (9th Cir. 1988). All funds

received by Applicant from Debtor are deemed to be an advanced payment of fees and shall be maintained in a trust account until prevailing on an application for compensation and the issuance of an order authorizing disbursement of a specific amount. *Id.* Monthly applications for interim compensation exceeding \$5,000.00 would be entertained under § 331. Applicant's services here were within the authorized time period.

This is Applicant's first interim fee application. Applicant's firm provided 299.80 billable hours of legal services at the following rates, totaling **\$102,128.98** in fees:

Professional	Rate	Hours	Fees
Riley C. Walter	\$550	104.60	\$57,530.00
Kurt F. Vote	\$450	0.20	\$90.00
Steven K. Vote	\$315	69.00	\$21,735.00
Nathan J. Martin	\$235	4.00	\$940.00
Nicole Medina	\$170	122.00	\$20,740.00
Total Hours & Fees		299.80	\$101,035.00

Docs. ##140-41. Applicant also incurred **\$1,093.98** in expenses:

Postage	\$330.03
Reproduction	\$701.25
Electronic Research	\$40.20
Telephone Charges	\$22.50
Total Costs	\$1,093.98

Id. These combined fees and expenses total **\$102,128.98**. The *Disclosure of Compensation* form indicates that Applicant was paid \$125,000.00 in pre-petition payments, but \$6,730.00 was applied to pre-petition fees and costs, leaving a retainer of \$118,270.00, which appears to be sufficient to fund this entire fee application.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services included, without limitation: (1) preparing the schedules, 521/IDI documents, and attending the initial debtor interview, meeting of creditors, and meeting with the subchapter V trustee; (2) opposing a motion for relief from the automatic stay; (3) preparing an adversary complaint; (3) preparing subchapter V plan; and

(4) preparing and filing employment applications. Docs. ##140-41. Debtor reviewed the fee application and consents to the proposed payment. Doc. #142.

No party in interest timely filed written opposition. If no one opposes this application at the hearing, this motion will be GRANTED. Applicant will be awarded \$101,035.00 in fees and \$1,093.98 in expenses on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. Applicant will be permitted to draw down \$102,128.98 from the pre-petition retainer when permitted under the proposed subchapter V plan, for services rendered and/or costs incurred between September 1, 2022 through November 16, 2022.

2. [22-10947](#)-B-11 **IN RE: FLAVIO MARTINS**
[DMS-1](#)

MOTION FOR COMPENSATION FOR DAVID M. SOUSA, ACCOUNTANT(S)
11-15-2022 [\[249\]](#)

SOUSA AND COMPANY/MV
HAGOP BEDOYAN/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.

David M. Sousa and Sousa and Company ("Applicant"), the accountants engaged by debtor-in-possession Flavio Almeida Martins dba Top Line Dairy ("Debtor"), seeks interim compensation under 11 U.S.C. §§ 330 and 331 in the sum of \$48,252.95. Doc. #249. This amount consists of \$48,248.30 in fees as reasonable compensation and \$4.65 in reimbursement for actual, necessary expenses from June 1, 2022 through October 31, 2022. *Id.*

Debtor has reviewed the application and statement for fees and costs and has no objection to paying the same from his ongoing business operations. Doc. #253. Debtor intends to submit a new cash collateral budget no later than December 13, 2022 as ordered by this court. *Id.*; Doc. #239.

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) and Fed. R. Bankr. P. 2002(a)(6). 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.

Applicant's employment as the estate's accountant was authorized pursuant to 11 U.S.C. §§ 327(a) and 329-331 on June 23, 2022, effective June 1, 2022. Doc. #62. No compensation was permitted except upon court order following application under § 330(a) and will be paid at the "lodestar rate" for accountant services applicable at the time that services are rendered in accordance with *In re Manoa Fin. Co., Inc.*, 853 F.2d 687 (9th Cir. 1988). All funds received by Applicant from Debtor are deemed to be an advanced payment of fees and shall be maintained in a trust account until prevailing on an application for compensation and the issuance of an order authorizing disbursement of a specific amount. *Id.* Monthly applications for interim compensation exceeding \$5,000.00 would be entertained under § 331. Applicant's services here were within the authorized time period.

This is Applicant's first interim fee application. Applicant's firm provided 180.87 billable hours of accountancy services at the following rates, totaling **\$48,248.30** in fees:

Professional	Rate	Hours	Amount
David M. Sousa	\$395	30.90	\$12,205.50
Tina Kampen	\$255	127.97	\$32,632.35
Carolina Lara	\$115	13.13	\$1,509.95
Preslee Sousa	\$260	4.31	\$1,120.60
Amanda Franks	\$265	0.95	\$251.75
Crystal Elliott	\$165	1.36	\$224.40
Jenny Valdovinos	\$135	2.25	\$303.75
Total Hours & Fees		180.87	\$48,248.30

Docs. ##251-52. Applicant also incurred **\$4.65** in expenses for postage. *Id.* These combined fees and expenses total **\$48,252.95**.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person . . ." and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature,

extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E).
§ 330(a)(3).

Applicant's services included, without limitation: (1) preparing the cash collateral budgets, including revisions, and communicating with Debtor regarding the same; (2) preparing monthly operating reports for June through September, 2022; (3) preparing payroll tax returns for the second and third quarters of 2022; (4) providing ongoing assistance to Debtor's bookkeeper regarding properly classifying and recording income and expenses in the accounting system; (5) preparing profit and loss reports; (6) preparing 2021 federal and state tax returns; and (7) preparing an income analysis of selling various farm properties owned by Debtor. Docs. #249; ##251-52. Debtor reviewed the fee application and consents to payment of the requested compensation. Doc. #253.

No party in interest timely filed written opposition. This motion will be GRANTED. Applicant will be awarded \$48,248.30 in fees and \$4.65 in expenses on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. Debtor may pay Applicant \$48,252.95 when permitted under the current operative cash collateral order, as may be modified in subsequent orders, for services rendered and/or costs incurred between June 1, 2022 through October 31, 2022.

3. [22-10947](#)-B-11 **IN RE: FLAVIO MARTINS**
[MB-17](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF MCCORMICK,
BARSTOW, SHEPPARD, WAYTE & CARRUTH LLP FOR HAGOP T. BEDOYAN,
DEBTORS ATTORNEY(S)
11-15-2022 [[243](#)]

HAGOP BEDOYAN/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.

McCormick, Barstow, Sheppard, Wayte & Carruth, LLP ("Applicant"), the law firm representing debtor-in-possession Flavio Almeida Martins dba Top Line Dairy ("Debtor"), seeks interim compensation under 11 U.S.C. §§ 330 and 331 in the sum of \$19,125.07. Doc. #243. This amount consists of \$18,519.50 in attorneys' fees as reasonable compensation and \$605.57 in reimbursement for actual, necessary expenses from October 1, 2022 through October 31, 2022. *Id.*

Debtor has reviewed the application and statement for fees and costs and has no objection to paying the same from the proceeds of his ongoing business operations. Doc. #245. Debtor intends to submit a new cash collateral budget no later than December 13, 2022 as ordered by this court on November 10, 2022 (Doc. #239). *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) and Fed. R. Bankr. P. 2002(a)(6). 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.

Applicant's employment as general bankruptcy counsel was authorized pursuant to 11 U.S.C. §§ 327(a) and 329-331 on June 22, 2022, effective June 1, 2022.¹ Doc. #60. No compensation was permitted except upon court order following application under § 330(a) and will be paid at the "lodestar rate" for attorney services applicable at the time that services are rendered in accordance with *In re Manoa Fin. Co., Inc.*, 853 F.2d 687 (9th Cir. 1988). All funds received by Applicant from Debtor are deemed to be an advanced payment of fees and shall be maintained in a trust account until prevailing on an application for compensation and the issuance of an order authorizing disbursement of a specific amount. *Id.* Monthly applications for interim compensation exceeding \$5,000.00 will be entertained under § 331.

Prior to filing bankruptcy, Applicant received a \$50,000.00 retainer. Applicant applied \$45,261.75 from the retainer to fees provided prior to commencement of the case, so \$4,738.25 remained in trust at the time of Applicant's first interim fee application. Docs. #88; #131.

First Interim Award

On August 9, 2022, the court awarded \$37,132.50 in fees and \$4,960.00 in expenses, totaling \$42,092.50 in compensation from June 1, 2022 through June 30, 2022. Docs. ##131-32. Applicant was allowed to draw down the \$4,738.25 retainer and Debtor was authorized to pay Applicant \$30,000.00 pursuant to the then-current cash collateral order. *Id.* The remaining \$7,354.25, which remained outstanding, was not authorized

until further funds became available under the current cash collateral order.

Second Interim Award

On September 8, 2022, the court awarded \$15,752.50 in fees and \$1,259.75 in expenses, totaling \$17,012.25 in compensation from July 1, 2022 through July 31, 2022. Doc. #169. Debtor was authorized to pay Applicant \$17,012.25 for fees and/or costs from July 1, 2022 through July 31, 2022 pursuant to the then-current cash collateral order. *Id.* Debtor was further authorized to pay the outstanding balance of \$7,354.25 from the first interim award.

Third Interim Award

On October 14, 2022, the court awarded \$32,965.00 in fees and \$550.10 in expenses, totaling \$33,515.10 in compensation from August 1, 2022 through August 31, 2022. Doc. #223. Debtor was authorized to pay the full amount when authorized under the current cash collateral order.

Fourth Interim Award

On November 9, 2022, the court awarded \$25,167.50 in fees and \$502.65 in expenses, totaling \$25,670.15 in compensation from September 1, 2022 through September 30, 2022. Doc. #238. Debtor was authorized to pay the full amount when authorized under the current cash collateral order.

Current Application

So far, Applicant has been awarded a total of \$118,290.00 in compensation in this case. Of that amount, \$4,738.25 was paid from the pre-petition retainer, leaving \$113,551.75 to be paid by Debtor from cash collateral.

This is Applicant's fifth interim fee application. Applicant's firm performed 47.70 billable hours of legal services at the following rates, totaling **\$18,519.50** in fees:

Professional	Rate	Hours	Fees
Hagop T. Bedoyan	\$475	31.50	\$14,962.50
Hagop T. Bedoyan (no charge)	\$0	0.30	\$0.00
Garrett R. Leatham	\$250	14.10	\$3,525.00
Garrett R. Leatham (no charge)	\$0	1.60	\$0.00
Amy G. Sherrick	\$160	0.20	\$32.00
Total Hours & Fees		47.70	\$18,519.50

Docs. ##246-47. Applicant also incurred **\$605.57** in expenses:

First American Datatree Fees	\$127.32
Photocopies	\$478.25
Total Costs	\$605.57

Id. These combined fees and expenses total **\$19,125.07**.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services included, without limitation: (1) visiting dairies with other counsel to observe state of the dairies and to meet with Debtor; (2) drafting amended cash collateral motion and attending hearing on the same (MB-12); (3) successfully obtaining 2004 exam order to determine details of a perched water supply agreement affecting title to property, and reviewing and analyzing the same (MB-15); (4) preparing and filing fourth interim fee application (MB-16); (5) continuing efforts to sell Vaca Linda dairy; and (6) continuing follow up on the sale of dry cows to ensure matter concluded successfully and without issue. Docs. ##246-47. Debtor reviewed the fee application and consents to payment of the requested compensation. Doc. #245.

No party in interest timely filed written opposition. This motion will be GRANTED. Applicant will be awarded \$18,519.50 in fees and \$605.57 in expenses on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. Debtor may pay Applicant \$19,125.07 when permitted under the current operative cash collateral order, as may be modified in subsequent orders, for services rendered and/or costs incurred between October 1, 2022 and October 31, 2022.

¹ The court notes that the order authorizing employment says that employment is effective as of June 1, 1022. Doc. #60. This is a typographical error and will be construed as June 1, 2022, which is the petition date.

4. [22-11907](#)-B-11 **IN RE: FREON LOGISTICS**

AMENDED MOTION TO DISMISS CASE, AMENDED MOTION TO CONVERT
CASE FROM CHAPTER 11 TO CHAPTER 7 RE: MOTION TO CONVERT CASE
FROM CHAPTER 11 TO CHAPTER 7 CASE.
12-1-2022 [[149](#)]

TRACY DAVIS/MV
LEONARD WELSH/ATTY. FOR DBT.
JORGE GAITAN/ATTY. FOR MV.
OST 12/1/22

NO RULING.

5. [22-11907](#)-B-11 **IN RE: FREON LOGISTICS**
[DW-1](#)

AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY
12-8-2022 [[214](#)]

TBK BANK, SSB/MV
LEONARD WELSH/ATTY. FOR DBT.
MATTHEW OLSON/ATTY. FOR MV.
OST 12/8/22

NO RULING.

11:00 AM

1. [22-11545](#)-B-7 **IN RE: ALFREDO CORPUS**

PRO SE REAFFIRMATION AGREEMENT WITH FIRST TECH FEDERAL
CREDIT UNION
11-23-2022 [[16](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Counsel shall inform his clients that no appearance is necessary at this hearing.

A Reaffirmation between debtor Alfredo Corpus and First Tech Federal Credit Union for a 2020 Dodge Ram was filed on November 23, 2022. Doc. #16.

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. In re Minardi, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

The debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

1:30 PM

1. [22-11403](#)-B-7 **IN RE: STANFORD CHOPPING, INC.**
[SDN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-15-2022 [\[61\]](#)

THE HUNTINGTON NATIONAL BANK/MV
DAVID JOHNSTON/ATTY. FOR DBT.
SHERYL NOEL/ATTY. FOR MV.
RESPONSIVE PLEADING
WITHDRAWN 12/06/2022

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

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

The Huntington National Bank withdrew this motion on December 6, 2022. Doc. #86. Accordingly, this motion for relief from the automatic stay will be dropped and taken off calendar pursuant to the withdrawal.

2. [15-12406](#)-B-7 **IN RE: ANDREW/KRISTA MIRELEZ**
[FW-2](#)

MOTION TO EMPLOY STUART C. TALLEY AS SPECIAL COUNSEL
11-15-2022 [\[60\]](#)

PETER FEAR/MV
PETER SAUER/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.

Chapter 7 trustee Peter L. Fear ("Trustee") moves for an order approving the estate's retention of Wallace Miller and Kershaw, Cook, & Talley, P.C. (collectively "Joint Special Counsel") pursuant to 11 U.S.C. §§ 327, 328(a), and Fed. R. Bankr. P. ("Rule") 2014(a).

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

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

Andrew Robert Mirelez and Krista Michele Mirelez (collectively "Debtors") filed chapter 7 bankruptcy on June 17, 2015. Doc. #1. Trustee was appointed as the chapter 7 trustee in this case. Doc. #2. Debtors' discharge was entered on October 19, 2015 and the case was closed by final decree on March 10, 2017. Docs. #23; #39.

Prior to filing bankruptcy, joint debtor Krista Michele Mirelez was the recipient of a surgical implant on or about May 30, 2014. Doc. #63. Post-discharge, Debtor underwent a surgical rescission. *Id.* Thereafter, Debtor retained Joint Special Counsel to pursue a claim against the manufacturer of the surgical implant ("Liability Claim"). *Id.* The agreement with Joint Special Counsel provided that they would be paid a 40% contingency fee of the gross recovery, to be split between the two firms, plus expenses incurred as a result of prosecuting the Liability Claim. *Id.*

Joint Special Counsel joined the Liability Claim with numerous other claims against the manufacturer of the device in a multi-district litigation ("MDL"). The manufacturer, in an effort to resolve the claim in the MDL, submitted an offer to Joint Special Counsel in the amount of \$111,866.82. *Id.*

Following the disclosure of the settlement offer, the United States Trustee moved to reopen this case on August 11, 2022, which was granted on that same day. Docs. ##41-42. Trustee was reappointed as the chapter 7 trustee and sought to employ general counsel, which was granted on August 29, 2022. Docs. #52; #54; #59. Since the device was implanted pre-petition, Trustee contends that the Liability Claim is a pre-petition asset of the estate and seeks to bring into the estate any proceeds related to the offer. Doc. #64. However, Trustee wishes to retain Joint Special Counsel because they have years of first-hand experience with this type of case, have been eager to assist the Trustee in finalizing estate administration, and have assisted Trustee

in preparing a motion for approval of the underlying settlement under Rule 9019.

11 U.S.C. § 327 allows the trustee, with the court's approval, to employ one or more attorneys, accountants, auctioneers, or other professional persons to represent or assist the trustee in carrying out the trustee's duties. Under § 327(e), an attorney that has represented the debtor can be employed by the estate for a specified special purpose other than to conduct the case, with the court's approval, if it is in the best interest of the estate, the proposed attorney does not hold or represent an interest adverse to the estate with respect to the matter on which such attorney is to be employed.

LBR 2014-1(a) provides that an application for an order approving employment pursuant to Rule 2014(a) shall be presumed to relate back to the later of 30 days before the filing of the application or the order for relief. The order approving employment shall state the effective date on or after which the employment is authorized and effective for services rendered.

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).

In support of this application, Trustee includes the declarations of Edward A. Wallace of Wallace Miller and of Stuart C. Talley of Kershaw, Cook, & Talley, P.C. Docs. ##62-63. Both Messrs. Wallace and Talley declare that neither of their firms have any other connection with the Debtors, creditors, or any party in interest, their attorneys, accountants, the U.S. Trustee, or any employee of the U.S. Trustee. *Id.* Both Messrs. Wallace and Talley acknowledge that they are not entitled to the contingency until further approval from the bankruptcy court is obtained. *Id.*

No party in interest timely filed written opposition to Trustee's motion. Therefore, the court finds that Joint Special Counsel does not hold or represent an interest adverse to the estate and are disinterested. The conditions of § 327(e) have been met. Applicant's fee will be fixed under § 328(a) to a 40% contingency fee of the gross recovery, to be split between the two firms, plus expenses. Accordingly, this motion will be GRANTED, and the application will be APPROVED effective October 16, 2022.

3. [22-11614](#)-B-7 **IN RE: NANCY JERKOVICH**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-7-2022 [\[13\]](#)

U.S. BANK NATIONAL
ASSOCIATION/MV
LAYNE HAYDEN/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

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

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

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

U.S. Bank National Association as Trustee for Bear Stearns Asset Backed Securities I Trust 2005-AC9, Asset-Backed Certificates, Series 2005-AC9 and serviced by Specialized Loan Servicing, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to real property located at 5090 N. Forkner Avenue, CA ("Property"). Doc. #13. Nancy Jerkovich ("Debtor") did not oppose.

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

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

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 78 complete pre- and post-petition payments. Movant has produced evidence that Debtor is delinquent at least \$243,705.87 and the entire balance of \$513,551.30 is due. Docs. #15, #16.

However, it is not clear whether Debtor has any equity in the Property for relief under § 362(d)(2). Although the Property is not necessary to an effective reorganization because Debtor is in chapter 7, Debtor claims that it is valued at \$555,000.00. *Am. Sched. A/B*, Doc. #12. Movant estimates the value of Property to be \$543,600.00 and Debtor owes \$513,551.30, so it does appear that Debtor owns some equity in Property under either valuation. Regardless, relief under § 362(d)(2) is moot because the court is granting relief under § 362(d)(1).

Accordingly, the motion will be GRANTED IN PART pursuant to 11 U.S.C. § 362(d)(1) and DENIED AS MOOT IN PART with respect to (d)(2). Movant will be permitted to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtor has failed to make at least 78 combined pre- and post-petition payments to Movant and Debtor has not opposed this motion. The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

4. [22-11624](#)-B-7 **IN RE: JANETTE ETHERIDGE**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
10-31-2022 [\[19\]](#)

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue an order.

Chapter 7 trustee Peter L. Fear ("Trustee") seeks dismissal of this case for the debtor's failure to appear and testify at the § 341(a) meeting of creditors held on October 31, 2022. Doc. #19.

Janette Etheridge ("Debtor") timely filed written opposition. Doc. #20. Debtor did not attend the hearing because Debtor could not

"figure out where to get on the Zoom to log in." *Id.* Debtor did not include the reasons this case should not be dismissed.

Notwithstanding Debtor's failure to include those reasons, this motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for January 3, 2023 at 3:00 p.m. See, Doc. #18. If Debtor fails to appear at testify at the rescheduled meeting, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The times prescribed in Fed. R. Bankr. P. 1017(e)(1) and 4004(a) for the Chapter 7 Trustee and U.S. trustee to object to Debtor's discharge or file motions for abuse, other than presumed abuse under § 707, are extended to 60 days after the conclusion of the meeting of creditors.

5. [22-11538](#)-B-7 **IN RE: BRIAN FINNIGAN**
[TCS-1](#)

MOTION TO AVOID LIEN OF BANK OF AMERICA, N.A.
11-8-2022 [\[15\]](#)

BRIAN FINNIGAN/MV
TIMOTHY SPRINGER/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.

Brian Daniel Finnigan ("Debtor") seeks to avoid a judicial lien in favor of Bank of America, N.A. ("Creditor") in the sum of \$15,102.27 and encumbering residential real property located at 336 E. Simpson Avenue, Fresno, CA 93704 ("Property").² Doc. #15.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned

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

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$15,102.27 on October 30, 2018. Doc. #18, *Ex. B*. The abstract of judgment was issued on December 3, 2018 and was recorded in Fresno County on December 18, 2018. *Id.* That lien attached to Debtor's interest in Property. Doc. #17.

As of the petition date, Property had an approximate value of \$357,300.00. *Am. Sched. A/B*, Doc. #11. Debtor claimed a homestead exemption in Property in the amount of \$300,000.00 pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Am. Sched. C, Id.*

Property is encumbered by a first deed of trust in favor of Educational Employees Credit Union ("EECU") in the amount of \$145,445.00. *Sched. D*, Doc. #1. Property is also encumbered by a junior judicial lien in favor of Cavalry SPV I, LLC ("Cavalry") in the amount of \$8,012.74, which is avoided in matter #6 below. See TCS-2.

Property appears to be subject to the following encumbrances in order of priority:

Lienholder	Amount	Recorded	Status
1. EECU	\$145,445.00	11/18/16	Unavoidable deed of trust
2. Creditor	\$15,102.27	12/18/18	Avoidable here
3. Cavalry	\$8,012.74	07/09/21	Avoided (matter #6; TCS-2)

Docs. #18, *Ex. B*; #23, *Ex. B*. In this motion, Debtor seeks to avoid Creditor's lien.

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)).

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*.

Cavalry's lien has to be avoided first because it is junior to Creditor's lien here. In matter #6 below, the court intends to GRANT Debtor's motion to avoid Cavalry's junior judicial lien because it impairs Debtor's exemption. After the Cavalry lien is avoided, Creditor's lien becomes the most junior lien subject to avoidance. Strict application of the § 522(f)(2) formula with respect to Creditor's lien is as follows:

Amount of judgment lien	\$15,102.27
Total amount of unavoidable liens	+ \$145,445.00
Debtor's claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$460,547.27
Debtor's claimed value of interest absent liens	- \$357,300.00
Extent lien impairs exemption	= \$103,247.27

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

Fair market value of Property	\$357,300.00
Total amount of unavoidable liens	- \$145,445.00
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$88,145.00)
Creditor's judicial lien	- \$15,102.27
Extent Debtor's exemption impaired	= (\$103,247.27)

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

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

² Debtor has complied with Fed. R. Bankr. P. 7004(h) by serving via certified mail Brian Moynihan, Creditor's CEO, on November 8, 2022. Doc. #19.

6. [22-11538](#)-B-7 **IN RE: BRIAN FINNIGAN**
[TCS-2](#)

MOTION TO AVOID LIEN OF CAVALRY SPV I, LLC.
11-8-2022 [\[20\]](#)

BRIAN FINNIGAN/MV
TIMOTHY SPRINGER/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.

Brian Daniel Finnigan ("Debtor") seeks to avoid a judicial lien in favor of Cavalry SPV I, LLC ("Creditor") in the sum of \$8,012.74 and encumbering residential real property located at 336 E. Simpson Avenue, Fresno, CA 93704 ("Property").³ Doc. #20.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$8,012.74 on July 5, 2019. Doc. #23, *Ex. B*. The abstract of judgment was issued on January 24, 2020 and was recorded in Fresno County on July 9, 2021. *Id.* That lien attached to Debtor's interest in Property. Doc. #22.

As of the petition date, Property had an approximate value of \$357,300.00. *Am. Sched. A/B*, Doc. #11. Debtor claimed a homestead exemption in Property in the amount of \$300,000.00 pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Am. Sched. C, Id.*

Property is encumbered by a first deed of trust in favor of Educational Employees Credit Union ("EECU") in the amount of \$145,445.00. *Sched. D*, Doc. #1. Property is also encumbered by a senior judicial lien in favor of Bank of America, N.A. ("BoA") in the amount of \$15,102.27, which is the subject of matter #5 above. See TCS-2.

Property appears to be subject to the following encumbrances in order of priority:

Lienholder	Amount	Recorded	Status
1. EECU	\$145,445.00	11/18/16	Unavoidable deed of trust
2. BoA	\$15,102.27	12/18/18	Avoidable (matter #5, TCS-1)
3. Creditor	\$8,012.72	07/09/21	Avoidable here

Docs. #18, *Ex. B*; #23, *Ex. B*. In this motion, Debtor seeks to avoid Creditor's lien.

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)).

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*.

Creditor's lien has to be avoided first because it is junior to BoA's lien subject to matter #5 above. There do not appear to be any other avoidable judgment liens more junior than this lien. Strict application of the § 522(f)(2) formula with respect to Creditor's lien is as follows:

Amount of judgment lien	\$8,012.72
Total amount of unavoidable liens ⁴	+ \$160,547.27
Debtor's claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$468,559.99
Debtor's claimed value of interest absent liens	- \$357,300.00
Extent lien impairs exemption	= \$111,259.99

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

Fair market value of Property	\$357,300.00
Total amount of unavoidable liens	- \$160,547.27
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$103,247.27)
Creditor's judicial lien	- \$8,012.72
Extent Debtor's exemption impaired	= (\$111,259.99)

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

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

³ Debtor has complied with Fed. R. Bankr. P. 7004(b)(3) by serving via regular mail Andrew Zaro, Creditor's CEO, on November 8, 2022. Doc. #24.

⁴ This amount consists of the sum of the \$145,445.00 deed of trust in favor of EECU and the \$15,102.27 judgment lien in favor of BoA, which remains unavoidable until all junior liens have been avoided.

7. [21-11754](#)-B-7 **IN RE: MICHAEL ANARADIAN**
[FW-4](#)

OBJECTION TO CLAIM OF GARY LEO BECK, CLAIM NUMBER 1
10-24-2022 [\[60\]](#)

PETER FEAR/MV
LEONARD WELSH/ATTY. FOR DBT.
GABRIEL WADDELL/ATTY. FOR MV.

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

DISPOSITION: Sustained.

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

Chapter 7 trustee Peter L. Fear ("Trustee") objects to Proof of Claim No. 1 filed by Gary Leo Beck ("Claimant") in the amount of \$180,000.00 on September 2, 2021.⁵ Doc. #60. Trustee asserts that the supporting documents filed with this claim indicate that Claimant entered into a contract with Northwest Petroleum Company, Inc. ("Northwest Petroleum"), which were executed by Michael Peter Anaradian ("Debtor") as Northwest Petroleum's president. *Id.* Since there is no evidence that Claimant has a claim against Debtor individually, Trustee asks to disallow Claim 1 in its entirety pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 3007 and 11 U.S.C. § 502. *Id.*

No party in interest timely filed written opposition. This objection will be SUSTAINED.

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(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 sustaining of the objection. *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 objecting party has done here.

Trustee asks the court to take judicial notice of Claim 1 and its supporting documents. Doc. #64. The court may take judicial notice of all documents and other pleadings filed in this 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 Mgmt. Serv., LLC)*, 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of Claim 1 and its supporting documents, but not the truth or falsity of such documents as related to findings of fact and conclusions of law. *In re Harmony Holdings, LLC*, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008).

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. Trustee is a party in interest within the meaning of § 502(a). Section 704(5) requires the trustee to examine proofs of claim and object to the allowance of any claim that is improper. *In re Thompson*, 965 F.2d 1136 (1st Cir. 1992).

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).

Here, Trustee objects because the Attachments to Claim 1 indicate that Debtor executed the underlying agreement with Claimant in Debtor's capacity as the president of Northwest Petroleum. See Attachs. 1-2, Claim 1; Doc. #63, Ex. A. Additionally, the two checks issued by Claimant on October 2, 2018 (Check #2903) and April 2, 2019 (Check #2983) are payable to Northwest Petroleum, not Debtor. *Id.* Trustee sent a letter to Claimant requesting additional supporting documentation for his claim against Debtor and, in response, received correspondence from Claimant stating his belief that he has a claim against Debtor because he and his wife met personally with Debtor, who assured them that he was the company and that they were partnering with Debtor to drill oil wells. Docs. #62; #63, Exs. B, C.

Trustee has presented evidence that Claimant's claim is against Northwest Petroleum, not Debtor individually. No evidence has been presented that the debt involves personal guarantees or other individual liability of the Debtor. Claimant was appropriately served on at least 44 days' notice and did not file opposition.

Accordingly, this objection will be SUSTAINED. Proof of Claim No. 1 filed by Claimant Gary Leo Beck on September 2, 2021 will be disallowed in its entirety.

⁵ Trustee complied with Rule 3007(a)(2)(A) by serving Claimant at the name and address most recently designated on the proof of claim as the person to receive notices, at the address so indicated, on October 24, 2022. Doc. #65.

8. [21-11754](#)-B-7 **IN RE: MICHAEL ANARADIAN**
[FW-5](#)

OBJECTION TO CLAIM OF REBECCA LYNN STAMBAUGH, CLAIM NUMBER 4
10-24-2022 [\[66\]](#)

PETER FEAR/MV
LEONARD WELSH/ATTY. FOR DBT.
GABRIEL WADDELL/ATTY. FOR MV.

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

DISPOSITION: Sustained.

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

Chapter 7 trustee Peter L. Fear ("Trustee") objects to Proof of Claim No. 4 filed by Rebecca Lynn Stambaugh ("Claimant") in the amount of

\$22,500.00 on October 10, 2021.⁶ Doc. #66. Trustee asserts that the supporting documents filed with this claim indicate that Claimant entered into a contract with Northwest Petroleum Company, Inc. ("Northwest Petroleum"), which were executed by Michael Peter Anaradian ("Debtor") as Northwest Petroleum's president. *Id.* Since there is no evidence that Claimant has a claim against Debtor individually, Trustee asks to disallow Claim 4 in its entirety pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 3007 and 11 U.S.C. § 502. *Id.*

No party in interest timely filed written opposition. This objection will be SUSTAINED.

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(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 sustaining of the objection. *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 objecting party has done here.

Trustee asks the court to take judicial notice of Claim 4 and its supporting documents. Doc. #70. The court may take judicial notice of all documents and other pleadings filed in this 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 Mgmt. Serv., LLC)*, 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of Claim 4 and its supporting documents, but not the truth or falsity of such documents as related to findings of fact and conclusions of law. *In re Harmony Holdings, LLC*, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008).

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. Trustee is a party in interest within the meaning of § 502(a). Section 704(5) requires the trustee to examine proofs of claim and object to the allowance of any claim that is improper. *In re Thompson*, 965 F.2d 1136 (1st Cir. 1992).

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).

Here, Trustee objects because the Attachment to Claim 4 indicates that Debtor executed the underlying agreement with Claimant in Debtor's capacity as the president of Northwest Petroleum. See Attach. 1, Claim 4; Doc. #69, *Ex. A*. Additionally, the check issued by Claimant on September 28, 2014 (Check #1001) is payable to Northwest Petroleum, not Debtor. *Id.* Trustee sent a letter to Claimant requesting additional supporting documentation for her claim against Debtor but did not receive any responsive correspondence. Docs. #68; #69, *Ex. B*.

Trustee has presented evidence that Claimant's claim is against Northwest Petroleum, not Debtor individually. No evidence has been presented that the debt involves personal guarantees or other individual liability of the Debtor. Claimant was appropriately served on at least 44 days' notice and did not file opposition.

Accordingly, this objection will be SUSTAINED. Proof of Claim No. 4 filed by Claimant Rebecca Lynn Stambaugh on October 10, 2021 will be disallowed in its entirety.

⁶ Trustee complied with Rule 3007(a)(2)(A) by serving Claimant at the name and address most recently designated on the proof of claim as the person to receive notices, at the address so indicated, on October 24, 2022. Doc. #71.

9. [21-11754](#)-B-7 **IN RE: MICHAEL ANARADIAN**
[FW-6](#)

OBJECTION TO CLAIM OF A. ROGER WELLS, CLAIM NUMBER 5
10-24-2022 [\[72\]](#)

PETER FEAR/MV
LEONARD WELSH/ATTY. FOR DBT.
GABRIEL WADDELL/ATTY. FOR MV.

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

DISPOSITION: Sustained.

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

Chapter 7 trustee Peter L. Fear ("Trustee") objects to Proof of Claim No. 5 filed by A. Roger Wells ("Claimant") in the amount of \$90,000.00 on October 28, 2021.⁷ Doc. #72. Trustee asserts that the supporting documents filed with this claim indicate that Claimant entered into a contract with Northwest Petroleum Company, Inc. ("Northwest Petroleum"), which were executed by Michael Peter Anaradian ("Debtor") as Northwest Petroleum's president. *Id.* Since there is no evidence

that Claimant has a claim against Debtor individually, Trustee asks to disallow Claim 5 in its entirety pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 3007 and 11 U.S.C. § 502. *Id.*

No party in interest timely filed written opposition. This objection will be SUSTAINED.

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(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 sustaining of the objection. *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 objecting party has done here.

Trustee asks the court to take judicial notice of Claim 5. Doc. #76. The court may take judicial notice of all documents and other pleadings filed in this 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 Mgmt. Serv., LLC)*, 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of Claim 5, but not the truth or falsity of such claim as related to findings of fact and conclusions of law. *In re Harmony Holdings, LLC*, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008).

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. Trustee is a party in interest within the meaning of § 502(a). Section 704(5) requires the trustee to examine proofs of claim and object to the allowance of any claim that is improper. *In re Thompson*, 965 F.2d 1136 (1st Cir. 1992).

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).

Here, Trustee objects because the agreement appended to Claim 5 indicates that Debtor executed the agreement with Claimant in Debtor's capacity as the president of Northwest Petroleum. See Claim 5; Doc.

#75, *Ex. A*. Additionally, the checks issued by Claimant on March 3, 2015 (Check #3122) and December 8, 2016 (Check #3349) are payable to Northwest Petroleum, not Debtor. *Id.* Trustee sent a letter to Claimant requesting additional supporting documentation for the claim against Debtor but did not receive any responsive correspondence. Docs. #74; #75, *Ex. B*.

Trustee has presented evidence that Claimant's claim is against Northwest Petroleum, not Debtor individually. No evidence has been presented that the debt involves personal guarantees or other individual liability of the Debtor. Claimant was appropriately served on at least 44 days' notice and did not file opposition.

Accordingly, this objection will be SUSTAINED. Proof of Claim No. 5 filed by Claimant A. Roger Wells on October 28, 2021 will be disallowed in its entirety.

⁷ Trustee complied with Rule 3007(a)(2)(A) by serving Claimant at the name and address most recently designated on the proof of claim as the person to receive notices, at the address so indicated, on October 24, 2022. Doc. #77.

10. [22-11359](#)-B-7 **IN RE: LARRY SPANKE**

MOTION TO OBJECTION TO CHAPTER 7 PLAN
10-17-2022 [[25](#)]

MICHELLE KEVORKIAN/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice, but motion will be construed as a deficient complaint under Rule 7008(a) and Civ. Rule 8(a). Creditor may file amended complaint relating back to the date of the motion within 14 days.

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

Creditor Michelle Kevorkian ("Creditor") moves to object to the chapter 7 plan of Larry J. Spanke ("Debtor"). Doc. #25. Creditor alleges that Debtor falsified documents, lied under oath, and filed for bankruptcy while illegally working as a contractor. *Id.* On this basis, Creditor requests that the debt owed to her by Debtor be deemed non-dischargeable. *Id.* Debtor did not oppose.

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). 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 matter will be called and proceed as scheduled. The court intends to DENY WITHOUT PREJUDICE this motion and order that the motion is construed as a deficient complaint intended to commence an adversary proceeding to determine the dischargeability of her claim against Debtor and/or a complaint objecting to Debtor's discharge.

As a preliminary matter, the motion does not comply with the Federal Rules of Bankruptcy Procedure ("Rule") and the Local Rules of Practice ("LBR") and suffers from several procedural infirmities.

Creditor is without counsel and filed this motion *pro se*. Though *pro se* litigants are held to less stringent standards than attorneys, they are still required to comply with applicable procedural rules. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197 (2007) ("A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.") (internal quotations and citations omitted); *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986) ("[P]ro se litigants in the ordinary civil case should not be treated more favorably than parties with attorneys of record."). "Thus, before dismissing a *pro se* complaint, the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity to amend effectively." *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992), citing *Draper v. Coombs*, 795 F.2d 915, 924 (9th Cir. 1986).

First, constitutional due process requires an objecting party to make a *prima facie* showing that they are entitled to the relief sought. The motion does 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) & *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Chapter 7 bankruptcy does not involve the filing of a plan for repayment as in chapter 13, so there is no "plan" to which Creditor may object. Thus, Creditor has failed to state a valid claim for relief.

Second, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in

every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Here, the motion and/or objection and supporting documents omit the use of a DCN. Docs. ##25-35; ##37-39. This is incorrect. Each new matter filed with the court requires all pleadings in that matter to be linked together with a unique DCN. For example, Creditor could have used DCN MK-1, Creditor's initials, or any other unused iteration of any DCN. Creditor apparently attempted to use DCN MSK-1 for four proofs of service filed on October 20, 2022, but this late attempt to use a DCN was insufficient. Docs. ##40-43. If Creditor tries to file another motion or objection, the MSK-1 DCN has already been used, so Creditor would have to use a different DCN (such as MSK-2, provided that it has not been used by then).

Third, LBR 9014-1(d)(3)(B)(iii) requires the moving or objecting party to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling viewable by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Here, the notice of hearing and amended notices of hearing did not contain any language directing respondents to the pre-hearing dispositions on the court's website. Docs. #26; ##38-39. The court notes that the amended notices of hearing did include the correct language apprising respondents whether and when opposition must be filed as required by LBR 9014-1(d)(3)(B)(i) and (f)(1)(B). *Id.*

Fourth, LBR 9004-2(c)(1) requires exhibits and other specified pleadings to be filed as separate documents, and LBR 9004-2(d) requires exhibits to be filed as a separate document, include an 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, some, but not all, of the exhibits are attached to *Adversary Proceeding Cover Sheets*. Docs. ##27-28. However, none of the exhibits have an exhibit index or consecutively numbered pages as required by LBR 9004-2(d). *Id.*; Docs. ##30-32.

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE. However, Creditor appears to be attempting object to Debtor's chapter 7 filing and/or seeking to have her debt deemed non-dischargeable for a variety of reasons including falsifying documents, lying under oath at the meeting of creditors, filing false information in the schedules and bankruptcy forms, and "illegally" filing this bankruptcy.

Doc. #25. These allegations appear to be invoking causes of action under 11 U.S.C. §§ 523 or 727 for non-dischargeability of debts and/or denial or revocation of Debtor's discharge, respectively. However, this type of action requires Creditor to initiate an adversary proceeding by filing an adversary complaint. See Rule 7001(4) & (6).

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

Meanwhile, Rule 4007(c) requires a complaint to determine the dischargeability of a debt under § 523(c) to be filed no later than 60 days after the first date set for the § 341 meeting of creditors. The court may extend the time fixed on request of any party in interest, after notice and a hearing, and filed before the time has expired.

Here, the first 341 meeting was scheduled for September 12, 2022. Doc. #3. Therefore, the deadline to file complaints objecting to Debtor's discharge or seeking to determine dischargeability of a debt were required to be filed not later than November 11, 2022. That date has passed, but Debtor filed this motion on October 17, 2022.

Fed. R. Civ. P. ("Civ. Rule") 8 applies to adversary proceedings under Rule 7008. Civ. Rule 8(a) establishes the general pleading requirement of a "short and plain statement of the claim showing that the pleader is entitled to relief."

"In the bankruptcy context, we construe a deficient pleading liberally, if the pleading substantially complies with the requirements of a complaint by giving the debtor 'fair notice of what the plaintiff's claim is and the grounds upon which it rests.'" *Dominguez v. Miller (In re Dominguez)*, 51 F.3d 1502, 1508 (9th Cir. 1995), quoting *Classic Auto Refinishing v. Marino (In re Marino)*, 37 F.3d 1354, 1356-57 (9th Cir. 1994) (declining to construe document as a defective complaint because it did not provide adequate notice to the debtor of the nature of the claims and relief requested).

Here, Creditor alleges that Debtor lied under oath on his schedules and in the 341 meeting. Doc. #25. Citing to multiple exhibits, Creditor contends that this chapter 7 bankruptcy was not filed in good faith and that his multiple violations of bankruptcy law should prevent him from "wiping out debt." Though Creditor specifically asks that the debt owed to her be deemed non-dischargeable, it contains ambiguities that, if resolved, could be construed as an attempt to deny Debtor's discharge.

Additionally, Creditor filed four *Adversary Proceeding Cover Sheets* on Form B1040 in which Creditor indicated the nature of her suit pertained to dischargeability under § 523(a)(2) (false pretenses, false representation, actual fraud) and (a)(4) (fraud as fiduciary, embezzlement, and larceny). Docs. ##27-29; #33. LBR 7003-1 requires a plaintiff to separately file a completed cover sheet at the time of filing an adversary complaint. Although no such adversary complaint has been filed here, it is clear that Creditor was attempting to file one.

Under Civ. Rule 15(c)(1)(B), as incorporated by Rule 7015, “[a]n amendment relates back to the date of the original pleading when the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to set out—in the original pleading.” Creditor attempted to assert claims related to dischargeability of debts under § 523 or, albeit ambiguously, denial of discharge under § 727. Although there are a multitude of procedural errors that must be resolved, Creditor’s motion, though deficient, appears to satisfy the requirements of Rules 4004(a) and/or 4007(c) for a timely filed complaint if deemed to relate back to the filing date under Civ. Rule 15(c). “The rules set deadlines, but they also provide that deficient pleadings may suffice if appropriately amended.” *Dominguez*, 51 F.3d at 1510.

This matter will be called and proceed as scheduled. This motion will be DENIED WITHOUT PREJUDICE for the procedural reasons outlined above. The court intends to order that Creditor’s motion is construed as an incomplete complaint intended to commence an adversary proceeding to determine the dischargeability of Creditor’s claim and/or deny Debtor’s discharge. Creditor may file an amended adversary complaint within 14 days of entry of this order and, if Creditor does so, it will be deemed timely.

11. [22-10060](#)-B-7 **IN RE: CURTIS/CHARTOTTE ALLEN**
[FW-4](#)

MOTION TO COMPEL
11-29-2022 [\[104\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Chapter 7 trustee Peter L. Fear (“Trustee”) moves for an order compelling Curtis James Allen and Charlotte Yvette Allen⁸ (collectively

"Debtors") to attend the continued § 341(a) meeting of creditors. Doc. #104. Debtors did not oppose.

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

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

Debtors filed chapter 13 bankruptcy on January 17, 2022. Doc. #1. The first § 341 meeting was held on February 1, 2022, continued to March 22, 2022, and continued again to April 27, 2022, at which time it concluded. See docket generally. The chapter 13 trustee moved to dismiss or convert the case for unreasonable delay that is prejudicial to creditors, failure to file complete and accurate schedules, and failure to disclose surplus proceeds from a pre-petition foreclosure sale totaling approximately \$130,000. Doc. #61. At the hearing, the court converted the case to chapter 7 on July 20, 2022. Doc. #63.

On the same day, Trustee was appointed as interim trustee and the 341 meeting of creditors for the chapter 7 case was first set for August 29, 2022. *Id.*; Doc. #64. The new deadline to object to Debtors' discharge was October 28, 2022. The 341 meeting was held on August 29, 2022, continued to September 29, 2022, continued again to October 31, 2022, and most recently was continued to December 12, 2022. Docket generally. As of this writing, the December 12, 2022 meeting has not yet occurred.

11 U.S.C. § 341(a) requires the holding of a meeting of creditors. At this hearing, the Trustee is required to orally examine the debtors as to certain items of information necessary for administration of the bankruptcy estate.

This matter will be called and proceed as scheduled. The court is inclined to GRANT this motion and order Debtors to appear at the rescheduled 341 meeting to a date to be determined if Debtors fail to appear at the December 12, 2022.

⁸ At the September 22, 2021 hearing on Debtors' motion to extend automatic stay in their previous bankruptcy, Case No. 21-12079, Debtors' attorney indicated that the petition misspelled joint debtor Charlotte Allen's name as "Chartotte".

12. [22-10060](#)-B-7 **IN RE: CURTIS/CHARTOTTE ALLEN**
[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)
10-27-2022 [\[95\]](#)

TRACY DAVIS/MV
JASON BLUMBERG/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

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

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

Tracy Hope Davis, United States Trustee for Region 17 ("UST"), moves to extend the deadlines for filing (i) a complaint objecting to the debtors' discharge under § 727, and (ii) a motion to dismiss under § 707(b)(1) and (b)(3), up to and including January 27, 2023. Doc. #95. Curtis James Allen and Charlotte Yvette Allen (collectively "Debtors") did not file a response.

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

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

First, this motion will be DENIED AS MOOT IN PART. On November 17, 2022, the court granted the chapter 7 trustee's motion to extend the deadline for filing a complaint objecting to the Debtors' discharge up to and including January 27, 2023 as to the chapter 7 trustee, all creditors, and parties in interest. Doc. #102. As a party in interest, UST already has an extension of time to file a complaint objecting to Debtors' discharge under § 727 pursuant to the court's order.

Second, Fed. R. Bankr. P. ("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 § 341(a) meeting of creditors unless the court extends the time for cause. The court is permitted to enlarge the time for acting under Rule 1017(e) only to the extent and under the conditions stated in those rules. Rule 9006(b)(3).

Courts have analyzed "cause" for the purposes of requesting an extension of time to object to a debtor's discharge or to dismiss a case for abuse under § 707(b). These factors include:

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

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

Here, Debtors filed chapter 13 bankruptcy on January 17, 2022. Doc. #1. The first date set for the meeting of creditors was February 2022, so the original 60-day deadline to file a motion to dismiss this case for abuse under § 707(b) was April 2, 2022. Doc. #9. The first § 341 meeting was held on February 1, 2022, continued to March 22, 2022, and continued again to April 27, 2022, at which time it concluded. See docket generally.

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

On the same day, Trustee was appointed as interim trustee and the 341 meeting of creditors for the chapter 7 case was first set for August 29, 2022. *Id.*; Doc. #64. The new 60-day deadline to file a motion to dismiss the case for abuse under § 707(b) was October 28, 2022. UST timely filed this motion on October 27, 2022. Doc. #95.

Post-conversion, the meeting scheduled on August 29, 2022 was continued to September 29, 2022, continued again to October 31, 2022, and most recently was continued to December 12, 2022. Docket

generally. Debtors have repeatedly failed to appear at each meeting.
Doc. #92.

UST is investigating whether it is appropriate to file (i) a motion to dismiss this case for abuse pursuant to 11 U.S.C. §§ 707(b)(1) or (b)(3) (bad faith and totality of the circumstances abuse), or (ii) a complaint objecting to discharge pursuant to 11 U.S.C. § 727.
Doc. #95.

Though moot as to dischargeability, an extension of time will provide UST with sufficient time to complete its evaluation of whether a motion to dismiss under § 707(b) is necessary. Cause exists because Debtors have been uncooperative with the chapter 7 trustee and refuse to consent to contract with anyone involved in this bankruptcy. Docs. ##45-49. Further, Debtors have separately asserted that they are not subject to the jurisdiction of this court because they are "living flesh and blood beings", their names were in all-capital letters, and other reasons. Doc. #45, citing the "Cestui Qui Vie Act of 1666." Despite the UST's diligence, Debtors refuse to appear at the 341 meeting, so UST has been unable to complete its evaluation.

Accordingly, this motion will be GRANTED IN PART. The deadline for UST to file a motion to dismiss for abuse under § 707(b)(1) or (b)(3) is extended up to and including January 27, 2023. As stated above, the motion will be DENIED AS MOOT IN PART as to the request for an extension of time to file a complaint objecting to Debtors' discharge because UST, as a party in interest, already has until January 27, 2023 to file such complaint.

13. [22-11170](#)-B-7 **IN RE: DOUA YANG**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-10-2022 [\[58\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

Movant Toyota Motor Credit Corporation withdrew this motion for relief from the automatic stay on November 17, 2022. Doc. #66. Accordingly, this matter will be dropped and taken off calendar pursuant to the withdrawal.

14. [21-12475](#)-B-7 **IN RE: ROBIN MIDDLEBROOK
[NES-2](#)**

MOTION TO AVOID LIEN OF UNIFIED CCR LLC AND/OR MOTION TO
AVOID LIEN OF BANK OF AMERICA, N.A.
11-3-2022 [\[27\]](#)

ROBIN MIDDLEBROOK/MV
NEIL SCHWARTZ/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.

Robin Elizabeth Middlebrook ("Debtor") seeks to avoid two judicial
liens in favor of the creditors below and encumbering residential real
property located at 200 Somerford Court, Bakersfield, CA 93312
("Property"):

1. Unifund CCR, LLC ("Unifund"): \$16,682.31, and
2. Bank of America, N.A. ("BoA"): \$14,945.06..⁹

Doc. #27. No party in interest timely filed written opposition. This
motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by
Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the
creditors, the chapter 7 trustee, the U.S. Trustee, or any other party
in interest to file written opposition at least 14 days prior to the
hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of
any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46
F.3d 52, 53 (9th Cir. 1995). Further, because the court will not
materially alter the relief requested by the moving party, an actual
hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592
(9th Cir. 2006). Therefore, the defaults of the above-mentioned
parties in interest are entered and the matter will be resolved
without oral argument. Upon default, factual allegations will be taken
as true (except those relating to amounts of damages). *Televideo Sys.,
Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional
due process requires that a plaintiff make a *prima facie* showing that
they are entitled to the relief sought, which the movant has done
here.

As a preliminary matter, the notice of hearing is not procedurally
compliant with the local rules. LBR 9014-1(d)(3)(B)(i), which requires
the notice to include the names and addresses of persons who must be
served with any opposition. Here, the notice directs delivery of
opposition to "Debtor and their attorney of record, the Chapter 7
Trustee, the United States Trustee and parties requesting notice." The

addresses of these parties are omitted. Doc. #28. Additionally, although the certificate of service properly includes official matrices from the Clerk of the Bankruptcy Court, the form declaration fails to identify who was served. ¶ 5, Doc. #32. These issues appear to be *de minimis* here but should be correct in future matters.

As of the petition date, Property had an approximate value of \$789,300.00. *Am. Sched. A/B*, Doc. #24. Property was encumbered by a first and second deed of trust in favor of BoA in the amounts of \$748,043.69 and \$48,390.21, respectively. *Am. Sched. D, Id.* Debtor claimed a \$5,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 703.140(b)(5). *Am. Sched. C, Id.*

Property is encumbered by two liens. The first is a \$14,945.06 judgment that was entered against Debtor in favor of BoA on March 27, 2019. *Ex. 4*, Doc. #31. The abstract of judgment was issued on June 10, 2019 and was recorded in Kern County on September 12, 2019. *Id.* The second, a \$16,682.31 judgment entered against Debtor aka Robin Heck in favor of Unifund on January 24, 2020. *Ex. 3, Id.* The abstract of judgment was issued on May 14, 2020 and appears to have been recorded on June 16, 2020.¹⁰ Property's encumbrances can be illustrated with the following priorities:

Lienholder	Amount	Recorded	Status
1. BoA	\$748,043.69	05/19/05	Unavoidable deed of trust
2. BoA	\$48,390.21	03/23/07	Unavoidable deed of trust
3. BoA	\$14,945.06	09/12/19	Avoidable judicial lien
4. Unifund	\$16,682.31	06/16/20	Avoidable judicial lien

Exs. 3-4, Id. Debtor seeks to avoid BoA's and Unifund's judicial liens here. Doc. #27.

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)).

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.*

The Unifund lien must be avoided first because it is junior to BoA's lien. There do not appear to be any other avoidable judicial liens more junior than this lien. Strict application of the § 522(f)(2) formula with respect to the Unifund lien, and then the BoA lien, are as follows:

Unifund judicial lien	\$16,682.31
Total amount of unavoidable liens ¹¹	+ \$811,378.96
Debtor's claimed exemption in Property	+ \$5,000.00
<i>Sum</i>	= \$833,061.27
Debtor's claimed value of interest absent liens	- \$789,300.00
Extent lien impairs exemption	= \$43,761.27

After the Unifund lien is avoided, the BoA lien becomes avoidable:

BoA judicial lien	\$14,945.06
Total amount of unavoidable liens	+ \$796,433.90
Debtor's claimed exemption in Property ¹²	+ \$5,000.00
<i>Sum</i>	= \$816,378.96
Debtor's claimed value of interest absent liens	- \$789,300.00
Extent lien impairs exemption	= \$27,078.96

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

Fair market value of Property	\$789,300.00
First BoA deed of trust	- \$748,043.69
Second BoA deed of trust	- \$48,390.21
Debtor's exemption	- \$5,000.00
Remaining equity for judicial liens	= (\$12,133.90)
BoA judicial lien	- \$14,945.06
Extent Debtor's exemption impaired by BoA lien	= (\$27,078.96)
Unifund judicial lien	- \$16,682.31
Extent Debtor's exemption impaired by both liens	= (\$43,761.27)

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

Debtor has established the four elements necessary to avoid the Unifund and BoA judicial liens under § 522(f)(1). This motion will be GRANTED. The proposed order shall state that the subject liens are avoided from the subject Property only and include copies of the abstracts of judgment attached as exhibits.

⁹ Debtor has complied with Fed. R. Bankr. P. 7004(b)(3), (h), and (i) by serving named officers of Unifund and BoA via certified mail on November 3, 2022. Doc. #32.

¹⁰ Due to font legibility, it is not clear whether the Unifund judgment lien was recorded on "6/16/2020" or "8/18/2020". Ex. 3 at 31, Doc. #31. The motion says it was recorded on May 14, 2020 (5/14/2020), but the abstract was issued later (June 10, 2019). Doc. #27. The court believes the correct date is "6/16/2020" based on a comparison with the same font below - the "6" in the document number, and the "8" in timestamp. Regardless, the Unifund lien was recorded in 2020 and is clearly the more junior lien here.

¹¹ This amount consists of the two deeds of trust (\$748,043.69 & \$48,390.21) plus the BoA judicial lien (\$14,945.06) because the BoA lien remains unavoidable until all junior liens have been avoided.

¹² This amount consists of the two deeds of trust only.

15. [22-11182](#)-B-7 **IN RE: LEONARDO GUTIERREZ**
[JES-1](#)

CONTINUED MOTION TO COMPEL
9-30-2022 [\[18\]](#)

JAMES SALVEN/MV
T. O'TOOLE/ATTY. FOR DBT.
JAMES SALVEN/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

At the last hearing, the court ordered turnover of the 2003 Hummer J3 to Baird Auctions & Appraisals within seven calendar days of the date of the order (turnover by December 7, 2022). Doc. #45. Debtor Leonardo Gabriel Gutierrez was required to provide chapter 7 trustee James Salven with the last known telephone number and other contact information for Ivan Joel Nunez. *Id.*

This matter will be called as scheduled to inquire about the status of the turnover.