

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Tuesday, December 14, 2021  
Place: Department B - Courtroom #13  
Fresno, California

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

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

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

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

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

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

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

**9:30 AM**

1. [20-10809](#)-B-11      **IN RE: STEPHEN SLOAN**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY  
PETITION  
3-2-2020    [\[1\]](#)

PETER FEAR/ATTY. FOR DBT.

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

**DISPOSITION:**      Continued to January 25, 2022 at 9:30 a.m.

**ORDER:**              The court will issue an order.

Debtor-in-possession Stephen William Sloan's ("DIP") disclosure statement was approved as containing adequate information on October 26, 2021. Doc. #447. DIP's chapter 11 plan confirmation hearing is scheduled January 25, 2022 at 9:30 a.m. *Id.* Accordingly, this status conference will be continued to the same date and time as the plan confirmation hearing.

2. [21-12134](#)-B-11     **IN RE: WALTER C. SMITH COMPANY, INC.**  
[DMS-1](#)

MOTION FOR COMPENSATION FOR DAVID M. SOUSA, CHAPTER 11  
TRUSTEE(S)  
11-18-2021    [\[164\]](#)

DAVID SOUSA/MV  
RILEY WALTER/ATTY. FOR DBT.  
DAVID SOUSA/ATTY. FOR MV.  
DISMISSED 11/17/21. RESPONSIVE PLEADING.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                  Granted.

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

Chapter 11 Subchapter V Trustee David M. Sousa ("Trustee") requests compensation in the total amount of \$4,914.50. Doc. #164. This amount consists of fees in the amount of \$4,847.00 as an administrative claim and \$67.50 in reimbursement of expenses for actual, necessary services rendered to the estate from September 2, 2021 through November 15, 2021. *Id.* Debtor Walter C. Smith Company, Inc. ("Debtor") filed non-opposition to the fees and expenses sought by Trustee. Doc. #170.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

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

As a preliminary matter, the motion does not procedurally comply with the local rules. LBR 9004-2(d) requires exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets. Here, a copy of the exhibits is attached to the motion. Doc. #164. That exhibit does not have an exhibit index and is not consecutively numbered. Trustee filed this same exhibit document separately, with an index, and with consecutive page numbers. Doc. #166. The separate exhibit does comply with the local rules, but the copy attached to the

motion does not. Applicant is advised to review the local rules to ensure procedural compliance in subsequent matters.

Debtor filed bankruptcy on September 2, 2021. Doc. #1. On September 3, 2021, Trustee was appointed as Subchapter V trustee. Doc. #8. Debtor filed a motion to dismiss on October 25, 2021. Doc. #132. The dismissal was granted on November 17, 2021 and the court reserved jurisdiction to rule on Trustee's fee application. Doc. #161.

Trustee indicates that he provided 12.6 billable hours of trustee services, totaling **\$4,847.00** in fees at the following rates:

Professional	Rate	Billed	Total
David M. Sousa	\$395	12.10	\$4,779.50
Crystal Elliott	\$135	0.50	\$67.50
<b>Total Hours &amp; Fees</b>		<b>12.60</b>	<b>\$4,847.00</b>

Docs. #167; #166, *Ex. A*. Applicant also requests reimbursement of **\$67.50** for three telephonic appearances through CourtCall at a \$22.50 each. Doc. #164. These combined fees and expenses total **\$4,914.50**. The fees and expenses will be paid by the Debtor from income generated by the operation of Debtor's business. Doc. #167.

11 U.S.C. § 503(b)(2) permits, after notice and a hearing, the payment of allowed administrative expenses for compensation and reimbursement under § 330(a). 11 U.S.C. § 330(a)(1)(A) and (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses."

11 U.S.C. § 326(b) is inapplicable here because Trustee was appointed under 11 U.S.C. § 1183(a), rather than 28 U.S.C. § 586(b). Doc. #8.

Trustee's services included, without limitation: (1) performing a conflict check, reviewing case filings, communicating with the United States Trustee regarding status of the case, and attending status conferences; (2) scheduling and attending the Initial Debtor Interview and § 341 meeting, preparing questions, and reviewing documents received; and (3) reviewing motions and attending hearings for the sale of assets, employment of counsel, relief from stay, and case dismissal. Doc. #165; #166, *Ex. A*. The court finds Trustee's services and expenses reasonable, actual, and necessary. As noted above, Debtor filed non-opposition.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED. Trustee shall be awarded \$4,914.50 in final compensation. Debtor will be authorized to pay Trustee \$4,847.00 in fees and \$67.50 in costs for services rendered and expenses incurred for the benefit of the estate from September 2, 2021 through November 15, 2021.

3. [18-13677](#)-B-9      **IN RE: COALINGA REGIONAL MEDICAL CENTER, A  
GL-1                      CALIFORNIA LOCAL HEALTH CARE DISTRICT**

CONTINUED MOTION TO FILE AMENDED PROOF OF CLAIM  
12-29-2020    [\[669\]](#)

DEPARTMENT OF HEALTH CARE  
SERVICES/MV  
RILEY WALTER/ATTY. FOR DBT.  
GRANT LIEN/ATTY. FOR MV.  
WITHDRAWN

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

DISPOSITION:      Dropped from calendar.

NO ORDER REQUIRED.

Creditor California Department of Health Care Services ("DHCS") states that the matters at issue in this motion were resolved via settlement agreement with Coalinga Regional Medical Center. Doc. #737. The settlement agreement provides that DHCS shall have a Class 3 allowed unsecured claim in the amount of \$270,000 payable under and subject to all provisions of the plan and confirmation order as a compromise of this motion and the related objection to claim in matter #4 below. Pursuant to the settlement agreement, DHCS withdrew this motion with prejudice on November 16, 2021. *Id.* Accordingly, this motion will be DROPPED FROM CALENDAR.

4. [18-13677](#)-B-9      **IN RE: COALINGA REGIONAL MEDICAL CENTER, A  
WJH-18                      CALIFORNIA LOCAL HEALTH CARE DISTRICT**

CONTINUED OBJECTION TO CLAIM OF DEPARTMENT OF HEALTH CARE  
SERVICES, CLAIM NUMBER 61  
10-19-2020    [\[657\]](#)

COALINGA REGIONAL MEDICAL  
CENTER, A CALIFORNIA LOCAL  
RILEY WALTER/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:      Dropped from calendar.

NO ORDER REQUIRED.

Debtor Coalinga Regional Medical Center ("District") states that the matters at issue in this objection were resolved via settlement agreement with the California Department of Health Care Services ("DHCS"). Doc. #735. The settlement agreement provides that DHCS will

shall have a Class 3 allowed unsecured claim in the amount of \$270,000 payable under and subject to all provisions of the plan and confirmation order as a compromise of this objection and the related motion for leave to amend proof of claim in matter #3 above. Pursuant to the settlement agreement, District withdrew this objection with prejudice on November 16, 2021. *Id.* Accordingly, this motion will be DROPPED FROM CALENDAR.

1:30 PM

1. [21-10709](#)-B-7     **IN RE: AMB RANCH MANAGEMENT, INC.**  
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG,  
ACCOUNTANT(S)  
11-12-2021     [\[66\]](#)

RATZLAFF, TAMBERI & WONG/MV  
JAMES MILLER/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.

Ratzlaff Tamberi & Wong ("Applicant"), the certified public accountancy firm employed by chapter 7 trustee James E. Salven ("Trustee"), seeks final compensation under 11 U.S.C. § 330 in the amount of \$1,712.94. Doc. #66. This amount consists of \$1,687.50 in fees as reasonable compensation and \$25.44 in reimbursement of expenses for actual, necessary services rendered for the benefit of the estate from September 4, 2021 through November 1, 2021. *Id.*

Trustee has reviewed the application and supporting documentation and consents to the proposed payment of compensation. Doc. #69.

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.

AMB Ranch Management, Inc. ("Debtor") filed chapter 7 bankruptcy on March 25, 2021. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors on April 22, 2021. Doc. #3. Trustee moved to employ Applicant on September 16, 2021 under 11 U.S.C. §§ 327 and 330-31, which was approved effective August 16, 2021. Docs. #39; #48. No compensation was permitted except upon court order following application pursuant to § 330(a) and compensation was set at the "lodestar rate" for accounting services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Acceptance of employment was deemed to be an irrevocable waiver by Applicant of all pre-petition claims, if any, against the bankruptcy estate. *Id.*

Trustee's final report was filed on December 8, 2021. Docs. ##81-82.

Applicant provided 7.5 billable hours of accounting services at a rate of \$225 per hour, totaling **\$1,687.50** in fees. Docs. #68; #70, *Ex. A*. Applicant also incurred **\$25.44** in expenses for postage. *Ibid.* These combined fees and expenses total **\$1,712.94**.

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

Applicant's services included, without limitation: (1) preparing the employment application (RTW-1); (2) reviewing documents filed in the bankruptcy case and prior years' corporate income tax returns; (3) corresponding with Trustee regarding case status and tax returns; (4) preparing federal and state corporation income tax returns for the period ending October 31, 2021; (5) preparing and filing the final fee application (RTW-2). *Id.*, *Ex. A*. The court finds the services and expenses actual, reasonable, and necessary. As noted above, Trustee reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #69.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$1,687.50 in fees and \$25.44 in expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized, in his discretion, to pay Applicant \$1,712.94 for services rendered to and costs incurred for the benefit of the estate from September 4, 2021 through November 1, 2021.



2. [15-12715](#)-B-7     **IN RE: JOAQUIN/PAMELA DENIZ**  
[MAZ-2](#)

MOTION TO APPOINT TRUSTEE  
11-24-2021    [\[33\]](#)

PAMELA DENIZ/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION:        Denied as moot.

ORDER:                The court will issue an order.

Joaquin B. Deniz and Pamela L. Deniz ("Debtors") request that the court appoint a chapter 7 trustee. Doc. #33. Debtors filed chapter 7 bankruptcy on July 8, 2015 and received an order of discharge on November 6, 2015. Docs. #1; #23. Debtors reopened the case on November 15, 2021 after recently settling a class action lawsuit. Doc. #31.

Shortly after this motion was filed, the United States Trustee filed an *ex parte* request for an order authorizing appointment of a chapter 7 trustee. Doc. #36. This motion was granted November 29, 2021 and Irma C. Edmonds was appointed as a successor trustee. Docs. ##37-38.

Accordingly, this motion will be DENIED AS MOOT because a successor trustee has already been appointed.

3. [21-12028](#)-B-7     **IN RE: JACQUELYN FARGANO-JANKOWSKI**  
[GB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-10-2021    [\[21\]](#)

CONSUMER PORTFOLIO SERVICES,  
INC./MV  
PETER BUNTING/ATTY. FOR DBT.  
ERICA LOFTIS/ATTY. FOR MV.  
RESPONSIVE PLEADING

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.

Consumer Portfolio Services, Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2017 Ford Escape Utility 4D Titanium EcoBoost ("Vehicle"). Doc. #21.

Debtor filed non-opposition on November 16, 2021. Doc. #28. No other party 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 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(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. Jacquelyn Ann Fargano-Jankowski's ("Debtor") discharge was entered on December 9, 2021. Doc. #32. Therefore, the automatic stay terminated with respect to Debtor on December 9, 2021.

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 3 post-petition payments. The movant has produced evidence that debtor is delinquent at least \$2,084.23. Doc. #21. The court notes that the declaration of Katelyn Davis states that the last payment received by the Debtor was on September 9, 2021 (Doc. #23, ¶ 10), yet the motion (Doc. #21, ¶ 2) and the relief from stay information sheet (Doc. #25) both state November 1, 2021 as the last payment received. Also, the information sheet states the past due amount as \$1,581.57 whereas the motion and declaration state the past due amount as \$2,084.23.

The court declines finding that Debtor does not have any equity in the Property. Although this is a chapter 7 case and the Property is not necessary for an effective reorganization, the moving papers indicate

that Debtor has approximately \$323.34 in equity. Docs. #23, #25. Although costs of sale may entirely shrink that remaining equity, Movant has not established a basis for asserting "Other Fees." In the absence of those fees and after subtracting costs of sale, Debtor may have some equity in the Property. Regardless, relief under § 362(d)(2) is moot because there is "cause" to grant the motion under § 362(d)(1).

Accordingly, the motion will be GRANTED IN PART as to the trustee's interest pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. The motion will be DENIED AS MOOT as to Debtor's interest under § 362(c)(2)(C).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtor has failed to make at least 3 payments to Movant and the Vehicle is a depreciating asset. No other relief is awarded.

4. [17-13430](#)-B-7      **IN RE: RODNEY/TERESA WITTEN**  
[DMG-3](#)

CONTINUED MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA)  
N.A.  
10-14-2021    [\[27\]](#)

TERESA WITTEN/MV  
D. GARDNER/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

Rodney Jewell Witten and Teresa Lynn Witten ("Debtors") seek to avoid a judicial lien in favor of Capital One Bank (USA), N.A. ("Creditor") in the sum of \$3,009.09 and encumbering residential real property located at 5205 Warwick Place, Bakersfield, CA 93309 ("Property").<sup>1</sup> Doc. #27.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was originally set for hearing on 28 days' notice under Local Rule of Practice ("LBR") 9014-1(f)(1). Doc. #28. The defaults of all non-responding parties except Creditor were entered. Doc. #35. Service upon Creditor was insufficient, but public information about Creditor's officers was seemingly non-existent. *Id.* The court was persuaded that Richard D. Fairbank is authorized to accept service of

process under Fed. R. Bankr. P. ("Rule") 7004(h) because Fairbank had represented himself as Creditor's Chairman in regulatory filings and is the President, CEO, and Chairman of Capital One Financial Corporation, Creditor's parent company. *Id.* The court continued the matter to December 14, 2021 and ordered Debtors to serve Fairbank at his mailing address. Doc. #37. Debtors complied with that order. Docs. ##39-41.

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

Here, a judgment was entered against joint debtor Rodney Witten in favor of Creditor in the sum of \$3009.09 on January 28, 2013. Doc. #30, *Ex. A*. The abstract of judgment was issued on February 8, 2013 and recorded in Kern County on February 26, 2013. *Id.* That lien attached to Debtors' interest in Property. *Id.* Mr. Witten estimates that the amount of Creditor's lien was approximately \$8,200.00 on the petition date. Doc. #29.

As of the petition date, Property had an approximate value of \$280,000.00. Doc. #1, *Sched. A/B*. The unavoidable liens totaled \$272,265.71 on that same date, consisting of two deeds of trust: (a) \$56,089.95 in favor of Nationwide Credit and (b) \$216,175.76 in favor of Sun Trust Mortgage. *Id.*, *Sched. D*. Property is also encumbered by a junior judgment lien in favor of Merchants Financial Guardian, Inc. in the amount of \$9,674.47, which was avoided on November 16, 2021 (DMG-2). Doc. #42. Debtors claimed a "wildcard" exemption of \$7,734.29 in Property under Cal. Civ. Proc. Code § 703.140(b)(1). Doc. #1, *Sched. C*.

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

The § 522(f)(2) formula is strictly applied as follows:

Amount of Creditor's judicial lien	\$8,200.00
Total amount of all other unavoidable liens	+ \$272,265.71
Debtors' "wildcard" exemption in Property	+ \$7,734.29
<i>Sum</i>	= \$288,200.00
Value of Debtors' interest absent liens	- \$280,000.00
Amount Creditor's lien impairs Debtors' exemption	= \$8,200.00

*All Points Cap. Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007). 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. Accordingly, Property's encumbrances can be re-illustrated as follows:

Fair Market Value of Property	\$280,000.00
Total amount of unavoidable liens	- \$272,265.71
Remaining unencumbered equity	= \$7,734.29
Debtors' "wildcard" exemption	- \$7,734.29
Remaining equity for judicial liens	= (\$0.00)
Creditor's judicial lien (approx.)	- \$8,200.00
Extent exemption impaired by both liens	= (\$8,200.00)

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 Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). Therefore, this motion will be GRANTED.

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<sup>1</sup> Debtors complied with Fed. R. Bankr. P. 7004(h) by serving Richard D. Fairbank, Creditor's chairman, by certified mail at his mailing address on November 22, 2021. Docs. ##40-41.

5. [21-12031](#)-B-7 **IN RE: JUAN FAJARDO**  
[SL-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13  
11-9-2021 [[27](#)]

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Juan Fajardo ("Debtor") seeks to convert this case from chapter 7 to chapter 13 under 11 U.S.C. § 706(a). Doc. #27.

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

The *Notice of Hearing* did not contain the language required under LBR 9014-1(d). Doc. #28. LBR 9014-1(d)(3)(B)(iii) requires the movant 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 that can be viewed 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 that (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

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

6. [20-12036](#)-B-7     **IN RE: SANDRA SANCHEZ**  
[ADJ-3](#)

MOTION FOR COMPENSATION FOR ANTHONY D. JOHNSTON, TRUSTEES  
ATTORNEY(S)  
10-27-2021     [\[69\]](#)

MARK HANNON/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.

Anthony D. Johnston of Fores Macko Johnston, Inc. ("Applicant"), the attorney employed by chapter 7 trustee James. E. Salven ("Trustee"), seeks final compensation under 11 U.S.C. § 330 in the amount of \$3,094.09. Doc. #69. This amount consists of \$3,000.00 in fees as reasonable compensation and \$94.09 in reimbursement of expenses for actual, necessary services rendered for the benefit of the estate from January 14, 2021 through October 25, 2021. *Id*

Trustee has reviewed the application and supporting documentation and consents to the proposed payment. Doc. #71.

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.

Sandra Sanchez ("Debtor") filed chapter 7 bankruptcy on June 15, 2021. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors on July 21, 2020. Doc. #5. Trustee moved to employ Applicant on January 27, 2021 under 11 U.S.C. §§ 327, 330, and 331. Doc. #42. The court approved employment on February 4, 2021, effective January 11, 2021. Doc. #47. No compensation was permitted except upon court order following application pursuant to § 330(a) and compensation was set at the "lodestar rate" for accounting services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Applicant's services here were within the presumptive 30-day time frame prescribed in LBR 2014-1(b)(1) and Fed. R. Bankr. P. 2014(a) for employment orders.

Trustee's final report was filed December 8, 2021. Docs. ##83-84.

Applicant performed 11.90 billable hours of legal services at a rate of \$325 per hour, totaling \$3,867.50 in fees. However, Applicant has agreed to reduce fees to **\$3,000.00**. Docs. #72; #73, *Exs. A, B*. Applicant also incurred **\$94.09<sup>2</sup>** for the following expenses:

Copies	\$52.00
Postage	+ \$42.09
<b>Total Costs</b>	<b>= \$94.09</b>

*Id.*, *Ex. C*. These combined fees and expenses total **\$3,094.09**.

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

Applicant's services included, without limitation: (1) conflict review, preparing, and filing the employment application (ADJ-1); (2) reviewing bankruptcy filings and schedules, and analyzing recovery of debtor's 1/3 interest in real property; (3) preparing and filing adversary complaint (Adv. Proc. No. 21-01016); (4) corresponding with Debtor's counsel and Trustee and researching issues in the adversary proceeding; (5) negotiating, settling, and drafting settlement agreement; (6) preparing and filing a motion to compromise controversy (ADJ-2); and (7) preparing and filing this fee application (ADJ-3), providing counsel to Trustee as to the administration of the chapter 7 case; Docs. #72; #73, *Exs. A, B*. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Trustee reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #71.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$3,000.00 in fees and \$94.09 in expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized, in his discretion, to pay Applicant \$3,094.09 for services rendered to and costs incurred for the benefit of the estate from January 14, 2021 through October 25, 2021.

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<sup>2</sup> The court notes that Applicant waived costs for postage and service of this fee application. Doc. #73, *Ex. C*.

7. [20-12036](#)-B-7     **IN RE: SANDRA SANCHEZ**  
[JES-5](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)  
11-10-2021    [\[76\]](#)

JAMES SALVEN/MV  
MARK HANNON/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.

James E. Salven ("Applicant"), in his capacity as a certified public accountant employed by the estate in his capacity as chapter 7 trustee, seeks final compensation under 11 U.S.C. § 330 in the amount of \$1,140.64. Doc. #76. This amount consists of \$850.00 in fees as reasonable compensation and \$290.64 in reimbursement of expenses for actual, necessary services rendered for the benefit of the estate from September 13, 2021 through November 8, 2021. *Id.*



Applicant, in his capacity as chapter 7 trustee, has reviewed the application and supporting documentation and consents to the proposed payment. Doc. #80.

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.

Sandra Sanchez ("Debtor") filed chapter 7 bankruptcy on June 15, 2021. Doc. #1. Applicant was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors on July 21, 2020. Doc. #5. Applicant, in his capacity as chapter 7 trustee, moved to employ himself as accountant on September 20, 2021 under 11 U.S.C. §§ 327, 330, and 331. Doc. #63. The court approved employment on September 28, 2021, effective September 12, 2021. Doc. #68. No compensation was permitted except upon court order following application pursuant to § 330(a) and compensation was set at the "lodestar rate" for accounting services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Acceptance of employment was deemed to be an irrevocable waiver by Applicant of all pre-petition claims, if any, against the bankruptcy estate. Applicant's services here were within the presumptive 30-day time frame prescribed in LBR 2014-1(b)(1) and Fed. R. Bankr. P. 2014(a) for employment orders.

Trustee's final report was filed December 8, 2021. Docs. ##83-84.

Applicant performed 3.40 billable hours of accounting services at a rate of \$250 per hour, totaling **\$850.00** in fees.<sup>3</sup> Docs. #78; #79, *Ex. A*. Applicant also incurred **\$290.64**<sup>4</sup> for the following expenses:

Copies (124 @ \$0.20)	\$24.80
Envelopes (4 @ \$0.25)	+ \$1.00
Lacerte Tax Proc. (1 @ \$186.00)	+ \$186.00
Service: fee app (36 @ \$2.19)	+ \$78.84
<b>Total Costs</b>	<b>= \$290.64</b>

*Id.*, *Ex. B*. These combined fees and expenses total **\$1,140.64**.

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

Applicant's services included, without limitation: (1) conflict review and preparing the employment application (JES-4); (2) analyzing, inputting, and processing tax returns and clearance letters; and (3) preparing, filing, and serving the fee application (JES-5). The court finds the services and expenses actual, reasonable, and necessary. As noted above, Applicant, in his capacity as chapter 7 trustee, has reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #80.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$850.00 in fees and \$290.64 in expenses on a final basis pursuant to 11 U.S.C. § 330. Applicant, in his capacity as chapter 7 trustee and in his discretion, will be authorized to pay Applicant, in his capacity as accountant, \$1,140.64 for services rendered to and costs incurred for the benefit of the estate from September 13, 2021 through November 8, 2021.

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<sup>3</sup> Applicant waived fees for conflict review, preparing, and filing the employment application. Doc. #79, *Ex. A*.

<sup>4</sup> The court notes a discrepancy in the moving papers. The motion states that Applicant's costs are \$290.61, but then subsequently says that they are \$290.64. Doc. #76, ¶¶ 7, 9. Applicant's declaration in his capacity as trustee and the exhibits also say \$290.64, but the notice of hearing says \$290.61. Docs. #79, *Ex. B*; #80. *Cf.* Doc. #77. Based on the itemized exhibits, \$290.64 is the correct amount of costs.

8. [21-10762](#)-B-7     **IN RE: STEVEN/SANDRA SLUMBERGER**  
[DMG-3](#)

OMNIBUS OBJECTION TO CLAIMS  
11-1-2021    [\[52\]](#)

JAMES SALVEN/MV  
PETER FEAR/ATTY. FOR DBT.  
D. GARDNER/ATTY. FOR MV.

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

DISPOSITION:     Overruled without prejudice.

ORDER:             The court will issue an order.

Chapter 7 trustee James E. Salven ("Trustee") filed this omnibus objection to the following proofs of claim under Fed. R. Bankr. P. ("Rule") 3007(d)(2):<sup>5</sup>

- (a) Claim No. 5-1 in the amount of \$62,745.83 filed by Bank of America, N.A. on June 1, 2021;
- (b) Claim No. 9-1 in the amount of \$3,750.00 filed by Arthur Chavez on July 14, 2021;
- (c) Claim No. 4-1 in the amount of \$2,367.00 filed by Discount Tire on May 25, 2021;
- (d) Claim Nos. 1-1 and 2-1, both in the amount of \$456,035.38, filed by Larry Duba on May 3, 2021 and May 12, 2021, respectively; and
- (e) Claim No. 3-1 in the amount of \$177,568.22 filed by Nancy Kell on May 16, 2021.

Doc. #52. Trustee asserts that these claims are against Cable Links Construction Group, Inc., which is a corporation that was owned or controlled by the Debtors. Cable Links Construction Group filed a separate chapter 7 bankruptcy on February 9, 2021. Case No. 21-10316.

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

LBR 3007-1(b)(1) provides that an objecting party shall file and serve an objection to proofs of claim on at least forty-four (44) days' notice unless the objecting party elects to give the notice permitted by LBR 3007-1(b)(2). LBR 3007-1(b)(2) imposes procedure for objections set on thirty (30) days' notice. When fewer than 44 days' notice of a hearing is given, no party in interest shall be required to file written opposition to the objection, which, if any, shall be presented at the hearing.

Here, the objection was filed and served on the claimants on November 1, 2021 and set for hearing on December 14, 2021. Doc. #56. November 1, 2021 is **forty-three (43)** days before December 14, 2021. The *Notice of Hearing* states that written opposition was required, must be filed

at least 14 days before the hearing, and failure to timely file written opposition may be deemed a waiver of any opposition to the objection. Doc. #53. This is incorrect. Because the hearing was set on less than 44 days' notice, the notice should have followed the procedure under LBR 3007-1(b)(2) by stating that opposition was not required and may be presented at the hearing.

For the above reason, this objection will be OVERRULED WITHOUT PREJUDICE.

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<sup>5</sup> The court notes that Trustee has complied with the omnibus objection requirements specified in Rule 3007(d) and (e).

9. [21-12473](#)-B-7     **IN RE: BLAIN FARMING CO., INC.**  
[FW-3](#)

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION FOR  
COMPENSATION FOR CENTURY 21 JORDAN LINK & CO., BROKER(S)  
11-23-2021     [\[36\]](#)

JAMES SALVEN/MV  
RILEY WALTER/ATTY. FOR DBT.  
PETER FEAR/ATTY. FOR MV.

TENTATIVE RULING:             This matter will proceed as scheduled.

DISPOSITION:                     Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") seeks authorization (i) to sell property of the estate located at 1240 E. Caldwell Avenue, Visalia, CA 93292 ("Property") to Fast N Esy 16 Corporation ("Proposed Buyer") for \$2,000,000.00 (ii) free and clear of certain liens pursuant to 11 U.S.C. § 363(f)(4); and (iii) to pay broker commission of 5.5% under § 328, to be split equally between the buyer's and seller's brokers. Doc. #36.

Trustee asks to pay all costs, commissions, real property taxes, and some of the security interests directly from escrow. Trustee also requests waiver of the 14-day stay under Fed. R. Bankr. P. ("Rule") 6004(h). Trustee also filed a supplemental declaration updating the payoff amounts on December 8, 2021. Doc. #57.

This motion affects the real estate brokers as well. Under Federal Rule of Civil Procedure ("Civil Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion and allow the relief requested here as to the real estate

brokers. Though compensation is separate from the sale, it is economical to handle this motion in this manner provided that there are no objections at the hearing.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

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

#### BACKGROUND

Blain Farming Co., Inc. ("Debtor") filed chapter 7 bankruptcy on October 22, 2021. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors on November 18, 2021. Doc. #4.

Trustee moved to employ Century 21 Jordan Link & Co. ("Broker") on November 9, 2021 as the estate's real estate broker to market and sell Property at the highest and best possible price. Doc. #22. On November 18, 2021, the court authorized Broker's employment pursuant to 11 U.S.C. §§ 327, 328. Doc. #31. Broker's employment authorization is presumptively effective October 10, 2021 under the 30-day time frame prescribed in LBR 2014-1(b)(1) and Rule 2014(a) for employment orders.

Subject to court approval, Trustee has entered into a contract to sell Property to Proposed Buyer for \$2,000,000. Doc. #41, *Ex. A*.

Property is subject to multiple encumbrances, including multiple liens for taxes owed or in default. *See id., Exs. B, C*. The tax liens will be paid through escrow. Trustee argues that the remaining liens, other than the first deed of trust, are subject to the Trustee's powers of sale free and clear. Some of these interests have consented to this sale. The others are in bona fide dispute, claims Trustee. Alternatively, the remaining tax liens could be compelled in a legal or equitable proceeding to accept a money satisfaction, so Trustee argues that liens junior to the tax lien can be avoided.

Property is encumbered by the following security interests in favor of the following creditors:

1. The Socotra Fund, LLC - A deed of trust was recorded June 6, 2018 in favor of The Socotra Fund, LLC ("Socotra") securing an original indebtedness of \$1,200,000. This creditor consents to the sale and agreed to a carveout of \$60,000 to be paid to the bankruptcy estate

from the amounts they would be entitled to from the sale. The remaining amount owed would be paid through escrow. Doc. #38, ¶ 8(a).

2. Bobbie June Blain - A deed of trust recorded February 13, 2019 in favor of Bobbie June Blain as trustee of the Bobbie June Blain Revocable Trust and as trustee of the Marital Trust created under the estate of Albert F. Blain ("Blain Trusts") securing an initial indebtedness of \$637,426.00. This creditor consents to the sale and agreed to a carveout of \$60,000 to be paid from the sale. *Id.*, ¶ 8(b). After entering into the agreement, Trustee was informed that there may be a basis to dispute the lien. Since this may result in a bona fide dispute as to this lien, Trustee is investigating these issues and requests that the \$60,000 in proceeds be impounded until the court enters an order determining who is entitled to them.

Caren L. Curtiss, the attorney representing the City of Visalia in the pre-bankruptcy litigation against Debtor, declares that there is no record of the Blain Trusts loaning Debtor \$637,426.00 as stated in this deed of trust. Doc. #39, ¶ 3. If offered to prove the truth of the matter asserted, this evidence is hearsay under Fed. R. Evid. 802. However, it does indicate that there is a bona fide dispute here. Further, the Blain Trusts previously consented to the sale.

3. Williams, Brodersen, Pritchett & Burke, LLP - There is a deed of a trust in favor of Williams, Brodersen, Pritchett & Burke, LLP ("Attorneys") recorded February 13, 2019. This creditor has consented to the sale, but Trustee disputes the amount of this lien. *Id.*, ¶ 8(c). Trustee requested documentation showing that the creditor has complied with the requirements to perfect the lien as an attorney and has not been provided with any documentation. As result, Trustee believes that this creditor does not have a valid lien in any amount and appears to have a bona fide dispute.

4. State of California - There is a tax lien in favor of the State of California ("California") recorded October 20, 2019 and securing the amount of \$306,661.66. *Id.*, ¶ 8(d). Trustee has investigated this lien and it appears to be based on a missing tax return. From Trustee's analysis, once the return is filed, no taxes will be owing, and the State of California will not be entitled to the lien. Thus, there is a bona fide dispute here.

Trustee further argues that this lien may be avoided under 11 U.S.C. § 724. Trustee's argument regarding § 724 is discussed below, but the court declines finding that § 724 may be used to avoid this lien under § 363(f) (5).

5. City of Visalia - The City of Visalia ("Visalia") has a writ of attachment recorded December 17, 2020 in the amount of \$1,339,989.11. *Id.*, ¶ 8(e). Trustee seeks to sell Property free and clear of this lien for four reasons.

First, Visalia consents to the sale provided that the distribution of funds only includes costs of sale, senior taxes, and the first deed of trust less the \$60,000 carveout, with the remaining funds impounded pending a determination by the court of the rights of each party. *Ibid.*

Second, Trustee disputes this lien for multiple reasons. First, this is a writ of attachment, which is a pre-judgment lien based on pre-petition litigation. The City of Visalia is simultaneously seeking stay relief in matter #10 below to proceed with that litigation, which Trustee opposes. MB-2. This litigation constitutes a bona fide dispute.

Next, an attachment lien is unperfected until judgment is obtained, so Trustee believes that it does not secure the otherwise unsecured claims when a bankruptcy is filed. Lastly, Trustee argues that writs of attachment are not enforceable against bona fide purchasers for value under Cal. Code Civ. Proc. ("C.C.P.") § 697.740(a), and since Trustee stands in the shoes of a bona fide purchaser as representative of the estate, he asserts his ability to avoid this lien under 11 U.S.C. § 544(a)(3) and disputes on that basis. *Ibid.* However, the legislative comments to C.C.P. § 697.740 indicate that it covers tangible personal property not covered by C.C.P. § 697.730 and intangible personal property, such as accounts receivable and general intangibles. See, 16 Cal.L.Rev.Comm. Reports 1305 (1982). So, C.C.P. § 697.740(a) appears to be inapplicable here.

Finally, because the senior tax lien in favor of the State of California can be avoided under § 724, Trustee argues this lien may be avoided under § 724(b). Section 724 is discussed below, but the court declines finding that it may be used here to avoid Visalia's judgment lien. See *Barstow v. U.S.I.R.S. (In re Bankr. Est. of Markair, Inc.)*, 308 F.3d 1038 (9th Cir. 2002) ("tax lien" subordinated by § 724(b) means a statutory tax lien, not a judicial lien granted to a tax agency).

6. Mechanics Bank - A notice of pendency of action was recorded by Mechanics bank on July 27, 2021. *Id.*, ¶ 8(f). Mechanics Bank then recorded an abstract of judgment on August 25, 2021. Trustee disputes these liens for two reasons.

First, the notice of pendency of action relates to pre-petition litigation initiated by Mechanics Bank against Debtor. It is a provisional remedy, except to the extent that it is merged into an eventual abstract of judgment. That litigation is stayed by the bankruptcy, which demonstrates evidence of a bona fide dispute.

Second, the notice of pendency of action was recorded 87 days before the petition date, so it may be avoided under 11 U.S.C. § 547 because (i) Mechanics Bank was a creditor at the time the notice of pendency was filed; (ii) the notice of pendency was filed on account of antecedent debt owed by Debtor; (iii) Debtor was insolvent at the time

it was recorded; (iv) it was filed within 90 days of the bankruptcy; (v) it provided a lien to which Mechanics Bank would not have been entitled to under chapter 7; and (vi) the abstract of judgment was recorded 58 days prior to the petition date. Even if it related back to the notice of pendency, that notice was still recorded within 90 days. As result, both can be avoided under § 547.

In the alternative, Trustee argues that because the senior tax lien can be avoided under § 724, these liens may be avoided under § 724(b). This is discussed below.

7. Atlas World Food & Ag., Inc. - Additionally, Atlas World Food & Ag., Inc. ("Atlas") filed bankruptcy case no. 21-11448-A-7. *Id.*, ¶ 8(g). The Atlas bankruptcy estate, administered by trustee Irma Edmonds, asserts that Property may have been fraudulently transferred to Debtor. Ms. Edmonds consents to the sale on behalf of Atlas provided that the distribution only encompasses the costs of sale, senior taxes, and the first deed of trust less the \$60,000 carveout, with the remaining proceeds impounded pending a determination of the rights of the parties.

Trustee also disputes the Atlas estate's assertion that there was a fraudulent transfer. *Ibid.* The deed by which Debtor obtained ownership of Property was signed by an individual who was an officer of both Atlas and the Debtor. A representative of Debtor supposedly testified at the meeting of creditors that Debtor was owed money by Atlas and Property was transferred as the result of those debts. Thus, Trustee believes that Atlas will not be successful in prosecuting the avoidance of fraudulent transfer claim as to Property. Even if Atlas was successful in avoiding the transfer, it would not be entitled to the return of the Property and instead would only be entitled to a claim in this bankruptcy estate. Since Trustee has the rights and powers of a bona fide purchaser under § 544(a)(3), Trustee contends he is entitled to retain the interest transferred in the face of an assertion of a fraudulent transfer. Doc. #40, citing § 548(c).

#### 11 U.S.C. § 724

Although all of the above liens either consent to the sale or are subject to a bona fide dispute, Trustee argues that the tax lien in favor of California can be avoided under 11 U.S.C. § 724. Doc. #40. As result, Trustee argues all subsequent junior liens can also be avoided as an alternate basis for relief under § 724(b).

Trustee insists that the tax lien distribution scheme of § 724(b) is precisely the kind of "legal or equitable proceeding" that fits the narrow definition of *Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC)*, 391 B.R. 25, 42-43 (B.A.P. 9th Cir. 2008). Section 724(b) mandates a distribution scheme in chapter 7 for estate property subject to an unavoidable tax lien, or the proceeds of such property, which are to be distributed first to claims that have a higher priority under § 507(a), then to the tax lien claimant, then to any



junior lien claimant, and then to the estate. Under § 724(b), a tax lien claimant can be compelled to accept less than the full amount of the claim, even if that amount is zero.

Trustee cites to other courts that have applied § 724(b) under § 363(f)(5). *Id.*, citing *In re Healthco Int'l Inc.*, 174 B.R. 174, 177 (Bankr. D. Mass. 1994); *In re Grand Slam U.S.A., Inc.*, 178 B.R. 460, 463-64 (E.D. Mich. 1995); *In re A.G. Van Metre, Jr., Inc.*, 155 B.R. 118, 123 (Bankr. E.D. Va. 1993); *aff'd*, 16 F.3d 414 (4th Cir. 1994); *In re Gulf States Steel, Inc. of Alabama*, 285 B.R. 497, 509 (Bankr. N.D. Ala. 2002). In particular, Trustee notes that *Gulf States Steel* found that § 724(b) satisfied the requirements of § 363(f)(5) and compelled taxing authorities to accept money satisfaction for their interest. *Ibid.* *Gulf States Steel* was cited by the Ninth Circuit in *Clear Channel* as an example of § 724(b) being used in conjunction with § 363(f)(5) to find that a mechanism existed to extinguish a lien or interest without full payment. *Clear Channel*, 391 B.R. at 42-43. Trustee states that *Clear Channel* departed from the *Gulf States Steel* reasoning with respect to the cramdown provisions of § 1129(b)(2) as not qualifying as a "legal or equitable proceeding," so § 363(f)(5) should not allow the "effect of cramdown without requiring any of the § 1129(b) substantive and procedural protections[,] " which Trustee argues are substantially different from those in § 363(f)(5). *Id.*, at 46. In contrast, § 724(b) does not have significant different procedural or substantive protections than those in § 363(f)(5) and applies to "[p]roperty . . . subject to a lien . . . or proceeds of such property." Doc. #40, quoting § 724(b). Thus, under § 724(b), Trustee argues that the distribution scheme allows junior tax liens to be paid from property or proceeds of property after the tax lien is paid. *Id.* So, Trustee insists the sale can be made free and clear of tax liens referenced in § 724(b) and any lien junior to such tax lien, which includes both the writ of attachment and notice of pendency of action.

The court declines finding that the liens can be avoided under §§ 363(f)(5) and 724(b). To subordinate the tax liens to administrative and other priority expenses under § 724(b), Trustee must exhaust the unencumbered assets of the estate and recover appropriate preservation costs from secured creditors. There is nothing in the record indicating that Trustee has done this. This is a requirement before using § 724(b) to satisfy the requisite free and clear sale under § 363(f)(5).

Next, even if § 724(b) was applicable, the lienholders with unavoidable liens subordinate to the tax liens are not affected and "set aside" by the subordination of tax liens to administrative and priority expenses. Trustee asserts that *Clear Channel* supports the proposition that § 724(b) is the type of "legal or equitable proceeding" described in § 363(f)(5), but *Clear Channel* disagrees with the authorities Trustee cited: *In re Grand Slam, U.S.A* and *In re Healthco Int'l*, in particular. The reference in *Clear Channel* to *Gulf States Steel* is also not helpful, because *Gulf States Steel* relied on

the chapter 11 cram down, which as Trustee notes is rejected by *Clear Channel*. *Clear Channel*, 391 B.R. at 46. Further, the *Clear Channel* court did not include the § 724(b) subordination as an example of a qualifying "legal and equitable proceeding." *Id.*, at 43. There does not appear to be any reason that it would not have made this reference if intended, so the omission appears to be intentional.

Finally, § 363(f)(5) only applies if the affected entity could be compelled in a legal or equitable proceeding "to accept a money satisfaction" of the interest. Trustee wants to sell Property free and clear of all liens subordinate to the California tax claim, but Trustee does not propose to satisfy these lien holders with money.

The court finds that Trustee is not entitled to relief under § 363(f)(5), but relief under (f)(2) and (f)(4) appears to be available because all lienholders either consent or there is a bona fide dispute.

#### 11 U.S.C. §§ 363(f)(2) and (f)(4)

11 U.S.C. § 363(b) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Section 363(f) allows the trustee to sell property under § 363(b) "free and clear of any interest in such property of an entity other than the estate" only if such entity consents or such interest is in bona fide dispute. § 363(f)(2), (4).

Trustee may sell property of the estate free and clear of a non-debtor's interest that is in bona fide dispute under § 363(f)(4). "Under this standard, a court need not determine the probable outcome of the dispute, but merely whether one exists." *In re Octagon Roofing*, 123 B.R. 583 (Bankr. N.D. Ill. 1991), citing *In re Busick*, 831 F.2d 745, 750 (7th Cir. 1987). "The parties must provide some factual grounds to show some objective basis for the dispute." *In re Kellogg-Taxe*, No. 2:12-BK-51208-RN, 2014 WL 1016045, at \*6 (Bankr. C.D. Cal. Mar. 17, 2014), citing *In re Gaylord Grain, L.C.C.*, 306 B.R. 614, 617 (B.A.P. 8th Cir. 2004).

Here, Socotra has consented to the sale as to their deed of trust. The remaining liens or interests in favor of the Blain Trusts, Attorneys, California, Visalia, Mechanics Bank, and the estate of Atlas are in bona fide dispute. The sale may proceed on these grounds.

#### Proposed sale

Trustee's proposed sale will have the following distribution:

Sale price	\$2,000,000.00
Estimated taxes	- \$41,030.70
Estimated costs of sale	- \$40,000.00
Estimated broker fee (5.5%)	- \$110,000.00
<b>Net after closing costs</b>	<b>= \$1,808,969.30</b>
Estimated first lien	- \$1,427,010.92
<b>Net after payment of non-contested liens</b>	<b>= \$381,958.38</b>
<b>Agreed-upon carveouts paid to estate</b>	<b>+ \$120,000.00</b>
Estimated contested liens to be paid to the extent available after court order	- \$2,584,076.66

Doc. #57. After paying closing costs and the first lien in favor of Socotra, Trustee anticipates that there will remain proceeds of \$381,958.38, plus \$120,000 received from the carveouts paid to the estate. These amounts will be impounded in an escrow account to be held until the court determines the respective interests of the parties.

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

Concetto Sciacca, an employee of Broker, declares that Debtor hired Broker to sell Property prior to filing bankruptcy. Doc. #42. Property was listed on the MLS in February 2021 with a list price of \$2,400,000. Sciacca advised Debtor pre-petition that it should be listed at \$2,100,000, but Debtor wanted to use the higher figure. On February 21, 2021, Sciacca received an offer from an investor client to purchase Property for \$2,100,00. That buyer ultimately decided not to buy the property. *Id.*

Sciacca received other offers in June and July 2021. Those offers were withdrawn or had difficulty finding financing. Proposed Buyer offered to buy Property in August 2021. Debtor accepted this offer, but it did not close prior to filing bankruptcy. Proposed Buyer needs this deal

to close before the end of 2021 to secure tax advantages. *Id.* Sciacca declares that Property has been difficult to sell and believes that proposed \$2,000,000 sale price is the fair market value of the Property. *Id.*

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Prod. Holdings, Inc. v. Old Cold, LLC (In re Old Cold, LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). There is nothing in the record suggesting that Proposed Buyer is an insider. Proposed Buyer is neither listed in the original or amended master addresses, nor listed in the original or amended schedules. Docs. #1; #3; ##54-55.

The sale of Property appears to be in the best interests of the estate and creditors because it will pay off one secured creditor and provide liquidity to the estate. The sale subject to higher and better bids will maximize estate recovery and yield the best possible price. The sale appears to be supported by a valid business judgment, proposed in good faith, and for a fair and reasonable price. Trustee's business judgment appears to be reasonable and will be given deference.

#### Broker Commissions

In connection with this sale, Trustee also seeks authorization under § 330 to pay a 5.5% commission on the final sale price as reasonable compensation for actual, necessary services of Broker. This commission will be split equally between the buyer's and seller's brokers. If Property is sold at the proposed sale price, the 5.5% commission would be \$110,000.00, which is \$55,000 to each broker. The court will allow the commission to be paid as prayed if the sale is confirmed.

#### CONCLUSION

This matter will be called as scheduled to inquire whether any parties in interest oppose the sale. If there is no opposition, the motion will be GRANTED, but there will be no distributions other than costs of sale and the first deed of trust. The remaining proceeds shall be held in an impound account pending determination of the parties' interests. But if opposition is presented at the hearing, this motion will be CONTINUED.

#### Rule 6004(h) Waiver

Trustee requests waiver of the 14-day stay of Rule 6004(h) because time is of the essence to allow the sale to successfully close. Docs. #36; #38. Proposed Buyer needs to close the sale prior to the end of 2021 to secure tax advantages. *Id.*; Doc. #42. As result, the sale agreement requires the sale to close on or before December 31, 2021, and Trustee believes that it may fall through if delayed. If there is no opposition to the proposed sale at the hearing and the motion is granted, and if Proposed Buyer is the successful bidder, the court will waive the 14-day stay under Rule 6004(h). *Paladino v. S.*

*Coast Oil Corp. (In re S. Coast Oil Corp.)*, 566 F. App'x 594, 595 (9th Cir. 2014) (affirming waiver of 14-day stay because time was of the essence due to regulatory deadlines); *In re Ormet Corp.*, 2014 LEXIS 3071 (Bankr. D. Del. July 17, 2014) (finding cause to lift the stay because the buyer required closing before the 14-day stay would expire).

#### Overbid Procedure

Any party wishing to overbid must deposit with Trustee's counsel certified monies in the amount of \$25,000.00 prior to the time of the sale motion hearing. Prospective overbidders must provide proof in the form of a letter of credit, or some other written pre-qualification for any financing required to complete Property sufficient to cover the necessary overbid amount, close the sale within 15 days of delivery of a certified copy of the order approving the sale, and execute a purchase agreement. Unsuccessful bidders' deposits shall be returned at the conclusion of the hearing and any successful overbid shall have the \$25,000 deposit applied to the overbid purchase price. In the event a successful overbidder fails to close the sale within 15 days of delivery of a certified copy of the order approving the sale and execute a purchase agreement, the \$25,000 deposit shall become non-refundable, and the next highest bidder shall become the buyer.

Prospective overbidders may do so by making an appearance at the hearing or having an authorized representative with written proof of authority to bid on behalf of the prospective overbidder. All overbids shall be in the minimum amount of \$10,000, such that the first overbid shall be in the minimum amount of \$2,010,000. The sale of the Property is in "as-is" condition with no warranty or representations, express, implied, or otherwise by the estate, Debtor, or their representatives.

10. [21-12473](#)-B-7     **IN RE: BLAIN FARMING CO., INC.**  
[MB-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-3-2021    [\[10\]](#)

CITY OF VISALIA/MV  
RILEY WALTER/ATTY. FOR DBT.  
HAGOP BEDOYAN/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

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

The City of Visalia ("Creditor") seeks to modify the automatic stay under 11 U.S.C. § 362(d)(1) to proceed to final judgment in a state court lawsuit filed against Blain Farming Co., Inc. ("Debtor") and others on February 7, 2019 in Tulare County Superior Court ("State Court Action"). Doc. #10.

Chapter 7 trustee James E. Salven ("Trustee") timely opposes stay relief for three reasons: (1) the matters disputed between Debtor and Creditor are core proceedings that directly impact administration of the estate; (2) Creditor is seeking to perfect a lien that relates back to an unperfected pre-judgment lien, which if successful, would have a significant negative impact on the recovery by unsecured creditors; and (3) since the State Court Action concerns core matters, neither mandatory nor discretionary abstention should be exercised.

Creditor replied, arguing that (1) the dispute between Trustee and Creditor is not core; (2) Trustee cannot use "strong-arm" powers to invalidate Creditor's writ of attachment; and (3) cause exists for abstention. Doc. #51.

The court is inclined to GRANT this motion. The automatic stay will be modified to permit Creditor to continue the State Court Action to liquidate, but not enforce, its claim against Debtor. Creditor is not permitted to create a judgment lien that relates back to the writ of attachment or pursue any enforcement without further court order.

This motion was filed on 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. The failure of the creditors, the Debtor, the U.S. Trustee, or any other party in interest except Trustee to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Trustee are entered.

#### BACKGROUND

Creditor filed suit against Debtor, Atlas World Food & Ag., Inc. ("Atlas"), Brody Blain, Brian Blain, and Barrett Blain (collectively "Blain family members") on February 7, 2019. Doc. #13, *Ex. A*. The State Court Action entitled *City of Visalia v. Blain Farming Company, Inc., et al.*, case no. 277320, and alleges four causes of action: (1) money had and received; (2) breach of contract; (3) conversion by fraud; and (4) declaratory relief. Doc. #12, ¶ 5.

On March 8, 2019, the state court issued an order granting a motion filed by Creditor to (1) attach property of the Debtor in the amount of \$1,330,989.11, and (2) grant a temporary protective order against the Debtor. *Id.*, ¶ 6.

Debtor filed a cross-complaint against Creditor on March 1, 2019, which alleged 56 causes of action for breach of contract and common

counts arising under state law. *Id.*, ¶ 7. Debtor amended the cross-complaint on May 16, 2019. *Id.*, ¶ 8. Creditor answered on June 20, 2019. *Id.*, ¶ 9. A jury trial was scheduled on February 24, 2020, but it was continued to April 6, 2020 due to a scheduling conflict. *Id.*, ¶¶ 10-11. The parties waived their right to a jury trial at a mandatory scheduling conference and the matter was set for a bench trial on June 22, 2020. *Id.*, ¶ 12.

Due to the COVID-19 pandemic and the inability to complete expert discovery, the bench trial was continued to September 14, 2020. *Id.*, ¶ 13. However, that trial date was vacated due to a major illness requiring surgery and a case management conference was scheduled for November 20, 2020, which was continued to January 25, 2021. *Id.*, ¶ 14. At that case management conference, the trial was rescheduled for June 14, 2021. *Id.*, ¶ 15. This trial date was later vacated due to co-defendant Atlas' bankruptcy, case no. 21-11448-A-7, filed on June 2, 2021. *Id.*, ¶¶ 16-17.

Creditor filed a motion for relief from stay in the Atlas bankruptcy case. It was granted by the Honorable Jennifer E. Niemann on July 28, 2021. Doc. #14, *RJN* 2. A further case management conference was held on August 10, 2021, but it was rescheduled for December 14, 2021 at 8:30 a.m. due to the suspension of Debtor's corporate powers by the California Franchise Tax Board. Doc. #12, ¶ 20. Discovery has been completed and the case is ready for trial. *Id.*, ¶ 22.

Debtor filed bankruptcy on October 22, 2021. Doc. #1. Other than Atlas and Debtor, none of the Blain Family Members have filed bankruptcy. Doc. #12, ¶ 21.

#### DISCUSSION

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).

Creditor seeks relief for cause based on both mandatory and permissive abstention.

#### Mandatory Abstention

Mandatory abstention requires six elements to be satisfied: (a) the motion to abstain is timely brought; (b) the underlying action or proceeding pending in federal court is based upon a state law claim or cause of action; (c) the matter is non-core, such that it is related to a bankruptcy proceeding but neither arises under title 11 nor is a case under title 11; (d) Section 1334 is the sole basis for federal jurisdiction; (e) an action is commenced in state court; and (f) the action can be timely adjudicated in state court. *N.J. Dep't of Envtl.*

*Prot. V. Occidental Chem. Corp. (In re Maxus Energy Corp.)*, 560 B.R. 111, 120 (Bankr. D. Del.).

Creditor contends: (a) the motion is timely and Creditor has not filed a claim or otherwise submitted to the bankruptcy court's jurisdiction other than by filing this motion; (b) the State Court Action is based on state court claims only; (c) the matter is non-core and does not arise under title 11; (d) Section 1334 is the sole basis of jurisdiction because the State Court Action involves only parties that reside in California and only state court claims; (e) the State Court Action commenced February 7, 2019 in Tulare County Superior Court; and (f) the State Court Action can and will be timely adjudicated in state court if stay relief is granted. Doc. #10.

Trustee contests Creditor's "non-core" classification. Doc. #47. Since Creditor is seeking to establish and liquidate its claim against the Debtor in the State Court Action, Trustee argues that Creditor's claims constitute matters concerning administration of the estate and the allowance or disallowance of claims against the estate. *Id.*, citing 28 U.S.C. § 157(b)(2)(A) [matters concerning estate administration], (B) [allowance or disallowance of claims], (C) [counterclaims by the estate against persons filing claims], (K) [determination of the validity, extent, or priority of liens], and (O) [other proceedings affecting liquidation of assets of the estate]. Further, Trustee says the claims are even more important for estate administration because Creditor is seeking to perfect its presently unperfected lien and convert their claim from an unsecured to secured claim.

Additionally, Debtor filed a counterclaim against Creditor prior to filing bankruptcy. Trustee is in the process of analyzing those claims and does not currently know whether they have value to the estate. To the extent that they do have value, they are property of the estate and constitute counterclaims by the estate against Creditor. Since this is a "core" proceeding, Trustee argues that mandatory abstention is inapplicable here.

In reply, Creditor insists that this is not a core proceeding. Doc. #51. Since Creditor has not filed a proof of claim, 28 U.S.C. §§ 157(b)(2)(B) [allowance or disallowance of claim against the estate] and (C) [counterclaims by the estate against persons filing claims against the estate] are inapplicable here. *Id.* And Trustee's alternate basis for "core" jurisdiction, 28 U.S.C. § 157(b)(2)(K) [determinations of the validity, extent, or priority of liens] would require an adversary proceeding under Rule 7001(2), which has not been filed. Creditor argues that the State Court Action already provides a mechanism to resolve the dispute over the validity of the writ.

Creditor notes that it obtained stay relief in the Atlas bankruptcy case on nearly identical facts.



## Discretionary Abstention

Discretionary or permissive abstention requires analysis of the following factors when deciding whether to abstain from exercising jurisdiction:

(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of the bankruptcy court's docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

*Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1167 (9th Cir. 1990), quoting *In re Republic Reader's Serv., Inc.*, 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987).

Creditor argues that the *Tucson Estates* factors permit abstention as follows:

1. Effect on administration of the estate if the court abstains: The State Court Action was on the verge of having a bench trial conducted prior to Atlas' and Debtor's bankruptcy filings. If this court does not abstain, the parties' trial efforts will have to be duplicated here. This factor weighs in favor of abstention.
2. Extent to which state law issues predominate: The State Court Action concerns only state court claims. This factor weighs in favor of abstention.
3. Difficulty or unsettled nature of the applicable law: The State Court Action claims are described by Creditor as "routine." There is nothing to suggest that the claims are difficult or unsettled. This factor weighs against abstention.
4. Presence of a related proceeding commenced in state court: The State Court Action was commenced and litigated. It was ready to proceed to trial until Atlas' and Debtor's bankruptcies were filed. This factor weighs in favor of abstention.

5. Jurisdictional basis other than 28 U.S.C. § 1334: Creditor argues that there is no supplemental jurisdiction because the State Court Action involves no claims which would fall under original jurisdiction. Trustee disagrees, asserting that the claims are "core matters." This is discussed further below, but this factor appears to slightly weigh in favor of abstention.
6. Degree of relatedness or remoteness to the bankruptcy case: The State Court Action is only related to the bankruptcy case by establishing a liability that the Debtor owes to Creditor. This factor appears to weigh in favor of abstention.
7. Substance rather than form of the asserted "core" proceeding: Creditor claims the State Court Action contains no core bankruptcy matters. This assertion is disputed by Trustee.
8. Feasibility of severing state law claims from core bankruptcy matters: Creditor claims that there are no core bankruptcy matters to sever from the state court claims raised. Trustee is still investigating the claims, but if true, this factor would weigh in favor of abstention.
9. Burden on the bankruptcy court's docket: Liquidating the State Court Action in bankruptcy court would use bankruptcy court resources instead of Tulare County Superior Court resources. Modification of the stay would ease the burden on the bankruptcy court's docket. This factor weighs in favor of abstention.
10. Likelihood of forum shopping: A bench trial was scheduled. Atlas filed chapter 7 bankruptcy. In Creditor's motion for stay relief in the Atlas' bankruptcy, the Honorable Jennifer E. Niemann noted that there may be the appearance of forum shopping based on the timing of the Atlas' chapter 7 petition filing. After Creditor obtained stay relief, but before the State Court Action could be tried, Debtor filed bankruptcy. It does appear that Debtor may feel that the bankruptcy court would be more favorable than the Tulare County Superior Court. This factor weighs in favor of abstention.
11. Existence of a right to a jury trial: The parties waived their respective rights to a jury trial. This factor weighs against abstention.
12. Presence of non-debtor parties in related proceedings: There are several non-debtor parties that are named as defendants that have not filed for bankruptcy. This factor weighs in favor of abstention.

Doc. #10. In response, Trustee asserts that the balance of equities weighs toward declining to abstain from exercising jurisdiction because Creditor's claims are core matters. Doc. #47. Specifically, this court's efficient administration of the estate would be hampered

if the state court determined the nature and effect of liens that impact distributions to unsecured creditors, as well as Trustee's standing as a bona fide purchaser under § 544. Given the size of Creditor's claim and their asserted lien, the State Court Action has a high degree of relatedness to the main bankruptcy proceeding and the effect on administration of the estate. Liquidating the claims in state court would leave many significant bankruptcy issues to be resolved, which would increase the judicial workload. Lastly, since the parties waived their jury trial rights, litigating the State Court Action in bankruptcy court weighs against abstention.

In reply, Creditor maintains that the State Court Action concerns non-core matters and claims that Trustee cannot use strong-arm powers to invalidate its writ of attachment. Doc. #51. Since Creditor's writ was obtained outside of the 90-day preference window, state law determines the validity and effect of liens in the bankruptcy context. *Id.*, citing *In re Acquarius Disk Services, Inc.*, 254 B.R. 253 (Bankr. N.D. Cal. 2000); *In re Cool Fuel*, 210 F.3d 999, 1007 (9th Cir. 2000). Trustee's § 544(a)(3) avoidance powers are subject to § 544(b), which permits perfection of an interest to be effective against an entity that acquires rights in property before the date of perfection, or provides for the maintenance or continuation of perfection of an interest in property effective against an entity that acquires rights before the date on which action is taken to effect maintenance or continuation, if certain elements are met.

Creditor argues such elements are met. Doc. #51. The writ was obtained using Cal. Code Civ. Proc. §§ 484.090, 485.220, and 486.020. Though an attachment creditor has no right to proceed against the property until after the creditor obtains a judgment, once a judgment is obtained, the priority of the judgment lien relates back to the attachment lien. *Id.*, citing *In re Southern California Plastics, Inc.*, 165 F.3d 1243, 1246 (9th Cir. 1999); *In re Wind Power Systems, Inc.*, 841 F.2d 288 (9th Cir. 1988); *In re Jenson*, 980 F.2d 1254, 1258; *In re Robbins*, 330 B.R. 626, 630 (B.A.P. 9th Cir. 2004).

Creditor insists that Trustee is not impeded by the automatic stay and could pursue Creditor on the cross-claims, but Creditor would be stayed from pursuing its own claims against Debtor or the bankruptcy estate absent stay relief.

As noted above, the Honorable Jennifer E. Niemann granted Creditor's motion and modified the stay for "cause" on near-identical facts. The State Court Action has been pending for almost three years and is ready for trial. Creditor states that the other non-debtor defendant parties involved in the State Court Action would not subject to this court's jurisdiction if the automatic stay is not modified.

#### Curtis Factors

When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court must

consider the "Curtis factors" in making its decision. *Kronemyer v. Am. Contractors Indem. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). The relevant factors in this case include:

(1) Whether the relief will result in a partial or complete resolution of the issues; (2) The lack of any connection with or interference with the bankruptcy case; (3) Whether the foreign proceeding involves the debtor as a fiduciary; (4) Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases; (5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation; (6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question; (7) Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee, and other interested parties; (8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c); (9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f); (10) The interests of judicial economy and the expeditious and economical determination of litigation for the parties; (11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and (12) The impact of the stay on the parties and the "balance of hurt."

*Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004) citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984); see also *Kronemyer*, 405 B.R. at 921.

Here, (1) stay modification will result in partial resolution of the issues, with the remaining issues to be decided here. (2) The State Court Action should not interfere with the bankruptcy case provided that Creditor is only permitted to liquidate its claim, rather than enforcing it. (3) Debtor does not appear to be involved as a fiduciary. (4) The action involves state law claims and was filed in state court, which is experienced in handling the state law claims. (5) Insurance carrier liability does not appear to be applicable here. (6) The action involves multiple third parties, but Debtor does not appear to be functioning as a bailee or conduit for goods or proceeds. (7) Litigation in another forum should not prejudice the interests of other creditors or interested parties. Though Trustee asserts that the lawsuit will greatly impact administration of the estate, permitting Creditor to merely liquidate its claim, rather than enforce it, should prevent such impact on administration. Further, Trustee is permitted to litigate the estate's cross-claim in state court. (8) Creditor's success in state court will not create a judicial lien because this court will not authorize Creditor to obtain a judgment lien relating back to Creditor's writ of attachment. (9) And because Creditor is not

authorized to obtain a judgment lien, lien avoidance under § 522(f) will be inapplicable. (10) The interests of judicial economy and the expeditious and economical determination of litigation weighs in favor of stay modification because the State Court Action is ready to proceed to trial. (11) Trial dates have been set and vacated multiple times due to multiple bankruptcies. Creditor previously obtained stay relief in the Atlas bankruptcy and now only need stay relief here before the trial may begin. (12) The impact of the stay on the parties and the "balance of hurt" appears to weigh in favor of stay modification. The State Court Action involves multiple third parties and cannot proceed until the stay is modified, which is preventing the liquidation of Creditor's claim. Though Trustee insists on litigating this case here, Trustee is not precluded from litigating it in state court either. So, the balance of hurt analysis weighs in favor of stay modification.

#### CONCLUSION

Here, both the *Curtis* and *Tucson Estates* factors weigh in favor of modifying the automatic stay. Modifying the automatic stay to permit the state court to liquidate Creditor's claims against Debtor is judicially economical and expeditious because the State Court Action is ready for trial, the claims involved are routine, and there are several non-debtor defendants in the State Court Action.

The court finds that cause exists to modify the automatic stay. This motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Creditor to prosecute and liquidate, but not enforce, its claim against Debtor in the State Court Action.

Creditor also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3). Though the State Court Action is ready for trial, Trustee opposes relief and is still investigating the state court claims. There is a case management conference scheduled for December 14, 2021 at 8:30 a.m., but no trial date has been set. The court will DENY the request for waiver of the stay because Creditor provides no legal basis for a waiver.

11. [19-13374](#)-B-7      **IN RE: KENNETH HUDSON**  
[21-1032](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
8-5-2021    [\[1\]](#)

VETTER V. PETROLEUM CAPITAL  
INCOME PROPERTIES, LLC, A  
LISA HOLDER/ATTY. FOR PL.

NO RULING.

12. [19-13374](#)-B-7     **IN RE: KENNETH HUDSON**  
[21-1032](#)     [LNH-5](#)

CONTINUED MOTION FOR ENTRY OF DEFAULT JUDGMENT  
10-14-2021     [\[37\]](#)

VETTER V. PETROLEUM CAPITAL  
INCOME PROPERTIES, LLC, A  
LISA HOLDER/ATTY. FOR MV.

NO RULING.

13. [21-11992](#)-B-7     **IN RE: MARION MORALES**  
[MMJ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-8-2021     [\[18\]](#)

CAPITAL ONE AUTO FINANCE/MV  
CHIRNESE LIVERPOOL/ATTY. FOR DBT.  
MARJORIE JOHNSON/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.

Capital One Auto Finance, a division of Capital One, N.A. ("Movant"),  
seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and  
(d)(2) with respect to a 2013 Nissan Sentra S Sedan 4D ("Vehicle").  
Doc. #18.

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  
debtor, creditors, the U.S. Trustee, or any other party in interest to  
file written opposition at least 14 days prior to the hearing as  
required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any  
opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46  
F.3d 52, 53 (9th Cir. 1995). Further, because the court will not  
materially alter the relief requested by the moving party, an actual  
hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592  
(9th Cir. 2006). Therefore, the defaults of the above-mentioned  
parties in interest are entered and the matter will be resolved  
without oral argument. Upon default, factual allegations will be taken  
as true (except those relating to amounts of damages). *Televideo Sys.*,

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

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least 3.498 payments. The movant has produced evidence that debtor is delinquent at least \$1,151.16. Docs. #19, #21.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. *Id.* The Vehicle is valued at \$4,127.00 and debtor owes \$10,023.57. Doc. #21.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 3.498 payments to Movant and the Vehicle is a depreciating asset. No other relief is awarded.