

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Tuesday, December 21, 2021  
Place: Department A - Courtroom #11  
Fresno, California

*Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.*

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

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

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

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

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

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

1. [21-10445](#)-A-11 **IN RE: HARDEEP KAUR**  
[DMS-2](#)

MOTION FOR COMPENSATION FOR DAVID M. SOUSA, CHAPTER 11 TRUSTEE(S)  
11-24-2021 [[176](#)]

DAVID SOUSA/MV  
LEONARD WELSH/ATTY. FOR DBT.  
DAVID SOUSA/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

David M. Sousa ("Movant"), chapter 11 subchapter V trustee in this bankruptcy case, requests allowance of interim compensation in the amount of \$7,327.45 and reimbursement for expenses in the amount of \$232.47 for services rendered from February 23, 2021 through September 30, 2021. Doc. #176.

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

Movant's services included, without limitation: (1) providing general case administration as subchapter V trustee; (2) reviewing communications and information provided by creditors and the debtor; (3) reviewing operating reports; and (4) attending creditor meetings and hearings. Decl. of David M. Sousa, Doc. #178; Ex. A, Doc. #176. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$7,327.45 and reimbursement of expenses in the amount of \$232.47. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. The debtor is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

11:00 AM

1. [20-10301](#)-A-7     **IN RE: HELIBERTO ELIZONDO**

PRO SE REAFFIRMATION AGREEMENT WITH TD AUTO FINANCE LLC  
12-1-2021    [\[134\]](#)

TRANG NGUYEN/ATTY. FOR DBT.

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

DISPOSITION:     Dropped.

ORDER:            The court will issue an order.

The debtor's counsel will inform the debtor that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. The debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. In re Minardi, 399 B.R. 841, 846 (Bankr. N.D. Okla. 2009). The reaffirmation agreement, in the absence of a declaration by debtor(s)' counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. The debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

1. [14-14739](#)-A-7 **IN RE: ADAN GARCIA**  
[DMG-3](#)

MOTION FOR COMPENSATION FOR D. MAX GARDNER, TRUSTEES ATTORNEY(S)  
12-1-2021 [\[42\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) 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.

D. Max Gardner, Attorney at Law ("Movant"), attorney for chapter 7 trustee Jeffrey M. Vetter ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered July 11, 2021 through November 30, 2021. Doc. #42. Movant provided legal services valued at \$3,627, and requests compensation for that amount. Doc. #42. Movant requests reimbursement for expenses in the amount of \$151. Doc. #42. This is Movant's first and final fee application.

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

Movant's services included, without limitation: (1) providing counsel to Trustee as to the administration of the chapter 7 case; (2) providing legal assistance in negotiating a settlement with the debtor; and (3) preparing and filing employment and fee applications. Decl. of D. Max Gardner, Doc. #44; Ex. A, Doc. #45. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$3,627 and reimbursement for expenses in the amount of \$151. Trustee is authorized to make a combined payment of \$3,778, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

MOTION TO AMEND JUDICIAL LIEN  
11-11-2021    [\[53\]](#)

ELISAVET MERCADO/MV  
SCOTT MITCHELL/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

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

Daniel Lorenzo Mercado and Elisavet Carranza Mercado (together, "Debtors"), the chapter 7 debtors, request the court enter an order amending the Order Granting Motion to Avoid Judicial Lien found on the docket as item number 35 (the "Order"). Doc. #53.

Federal Rule of Civil Procedure ("Civil Rule") 60(a) is made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 9024. Civil Rule 60(a) allows the court to "correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record." Civil Rule 60(a) "finds application where the record makes apparent that the court intended one thing but by merely clerical mistake or oversight did another." United States v. Kellogg (In re West Tex. Mktg. Corp.), 12 F.3d 497, 503 (5th Cir. 1994) (citations omitted). "The rule allows courts to modify their judgment in order to insure that the record reflects the actual intentions of the court and the parties." Id. at 504.

Amending the court's Order in this case is appropriate under Civil Rule 60(a). The Order Debtors seek to amend states that the abstract of judgment was recorded on September 16, 2011. Order, Doc. #35. However, the civil minutes state the court's finding that the abstract of judgment was recorded pre-petition in Merced County on January 12, 2012. Doc. #34. The abstract of judgment referenced was identified as Ex. 4 on Doc. #28, and the abstract of judgment bears the Merced County recorder docket number 2012-001359. Ex. 4, Doc. #28. Debtors have submitted a proposed order correcting the mistake.

Accordingly, this motion is GRANTED.

3. [21-10848](#)-A-7     **IN RE: DONALD RUSSELL**  
[DRJ-1](#)

MOTION TO AVOID LIEN OF STAN BOYETT AND SON, INC.  
11-15-2021    [[63](#)]

DONALD RUSSELL/MV  
DAVID JENKINS/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

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

Donald Kent Russell ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) to avoid the judicial lien of Stan Boyett & Son Inc., a California corporation d/b/a Boyett Petroleum, ("Creditor") on the residential real property commonly referred to as 21758 Fairway Oaks, Friant, CA 93626 (the "Property"). Doc. #63; Schedule C, Doc. #1.

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

Debtor filed the bankruptcy petition on April 5, 2021. Doc. #1. A judgment was entered against Donald K. Russell in the amount of \$31,864.58 in favor of Creditor on September 25, 2015. Ex. A, Doc. #66. The abstract of judgment was recorded pre-petition in Fresno County on October 22, 2015. Ex. A, Doc. #66. The lien attached to Debtor's interest in the Property located in Fresno County. Doc. #66. The Property is encumbered by a lien in favor of Bank of America in the amount \$463,543.00. Schedule D, Doc. #1. The Property is further encumbered by a senior state tax lien in favor of the State of California Employment Development Department in the amount of \$57,285.78 and a senior federal tax lien in favor of the Internal Revenue Service in the amount of \$775,147.96. Exs. B & C, Doc. #66. Debtor claimed an exemption of \$300,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C,

Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$831,700. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$31,864.58
Total amount of all other liens on the Property (excluding junior judicial liens)	+	1,295,976.74
Amount of Debtor's claim of exemption in the Property	+	300,000.00
		<u>\$1,627,841.32</u>
Value of Debtor's interest in the Property absent liens	-	831,700.00
Amount Creditor's lien impairs Debtors' exemption		<u>\$796,141.32</u>

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

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