UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, January 27, 2022
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.

9:30 AM

1. 18-10105-A-13 **IN RE: SCOTT MARSH**
JRL-5

MOTION TO MODIFY PLAN
11-15-2021 [119]

SCOTT MARSH/MV
JERRY LOWE/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). 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.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

2. 20-13407-A-13 **IN RE: ANGIE BEASWORRICK**
LAR-2

MOTION TO MODIFY PLAN
12-20-2021 [49]

ANGIE BEASWORRICK/MV
LAUREN RODE/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to March 10, 2022, at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to modify the chapter 13 plan. Tr.'s

Opp'n, Doc. #55. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response no later than February 10, 2022. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. Trustee shall file and serve a reply, if any, by February 17, 2022.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 17, 2022. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

3. 17-10408-A-13 **IN RE: PHIL/TAMMY SMITH**
FW-5

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
12-27-2021 [107]

GABRIEL WADDELL/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 debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). 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.

Fear Waddell P.C. ("Movant"), counsel for Phil Charles Smith and Tammy Marie Smith (together, "Debtors"), the debtors in this chapter 13 case, requests allowance of final compensation in the amount of $9,856.50 and reimbursement for expenses in the amount of $302.26 for services rendered from October 31, 2017 through December 9, 2021. Doc. #107. Debtors' confirmed plan provides for $20,000.00 in attorney's fees. Plan, Doc. #43. One prior fee application has been granted, allowing interim compensation and reimbursement for expenses to Movant pursuant to 11 U.S.C. § 331 totaling $11,598.79. Order, Doc. #75.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1),

(4)(B). In determining the amount of reasonable compensation, 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).

Here, Movant demonstrates services rendered relating to: (1) amending petitions and schedules during bankruptcy case; (2) preparing and prosecuting plan modification; (3) responding to and filing motions in the bankruptcy case; (4) projected discharge and case closing fees; and (5) preparing the final fee application. Exs. A & B, Doc. #110. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court finds all fees and expenses of Movant previously allowed on an interim basis are reasonable and necessary. The court allows on a final basis all fees and expenses previously allowed to Movant on an interim bases, in addition to compensation requested by this motion in the amount of $9,856.50 and reimbursement for expenses in the amount of $302.26 to be paid in a manner consistent with the terms of the Order dated December 23, 2019. Doc. #95.

4. 22-10031-A-13 **IN RE: ASHLEY AMEZQUITA TRUJILLO**
PBB-1

MOTION TO EXTEND AUTOMATIC STAY
1-13-2022 [8]

ASHLEY AMEZQUITA TRUJILLO/MV
PETER BUNTING/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 court will issue an order.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Debtor Ashley Joann Amezquita Trujillo ("Debtor") moves the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B). Doc. #8.

Debtor had a chapter 13 case pending within the preceding one-year period that was dismissed, Case No. 20-13426 (Bankr. E.D. Cal.) (the "Prior Case"). The Prior Case was filed on October 29, 2020 and dismissed on December 21, 2021. Decl. of Debtor, Doc. #10. Under 11 U.S.C. § 362(c)(3)(A), if a debtor had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the current case. Debtor filed this case on January 10, 2022. Petition,

Doc. #1. The automatic stay will terminate in the present case on February 9, 2022.

Section 362(c)(3)(B) allows the court to extend the stay "to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed[.]" 11 U.S.C. § 362(c)(3)(B).

Section 362(c)(3)(C)(i) creates a presumption that the case was not filed in good faith if: (1) the debtor filed more than one prior case in the preceding year; (2) the debtor failed to file or amend the petition or other documents without substantial excuse, provide adequate protection as ordered by the court, or perform the terms of a confirmed plan; or (3) the debtor has not had a substantial change in his or her financial or personal affairs since the dismissal, or there is no other reason to believe that the current case will result in a discharge or fully performed plan. 11 U.S.C. § 362(c)(3)(C)(i).

The presumption of bad faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C). Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.' Factual contentions are highly probable if the evidence offered in support of them instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition." Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288 n.11 (B.A.P. 9th Cir. 2016) (citations omitted), vacated and remanded on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019).

In this case, the presumption of bad faith arises. Debtor failed to perform the terms of a confirmed plan in the Prior Case. A review of the court's docket in the Prior Case disclosed a chapter 13 plan was confirmed on December 17, 2020, the chapter 13 trustee ("Trustee") filed a Notice of Default and Intent to Dismiss Case (the "Notice") on November 5, 2021, and the court dismissed the Prior Case upon Trustee's declaration that Debtor failed to address the Notice in the time and manner prescribed by LBR 3015-1(g). See Case No. 20-13426, Doc. ##30, 32, 34. Debtor acknowledges that the Prior Case was dismissed for failure to timely make plan payments. Decl. of Debtor, Doc. #10.

To rebut the presumption of bad faith, Debtor explains that she fell behind on plan payments after unemployment benefits ended in September 2021. Decl., Doc. #10. Debtor applied for and received food stamps and some cash aid but it was not enough to cover Debtor's living expenses and plan payments in the Prior Case. Id. In December 2021, Debtor began working for United Health Centers but could not catch up on plan payments within the deadline given by the Trustee in the Notice. Id. Debtor refiled under chapter 13 to prevent repossession of her vehicle, which Debtor relies on for transportation. Id. Debtor has filed a proposed chapter 13 plan to pay the balance of the vehicle loan, attorney's fees, and zero percent to unsecured creditors. Id. Debtor's Schedules I and J filed in this case list monthly net income of $353.44, of which Debtor proposes to apply $350 to monthly plan payments. Schedules I & J, Doc. #1; Plan, Doc. #3.

The court is inclined to find that the termination of Debtor's unemployment benefits, subsequent acquisition of gainful employment, and timely adherence to the requirements of a chapter 13 debtor in this case rebut the presumption of bad faith that arose from the failure to perform the terms of a confirmed plan in the Prior Case and that Debtor's petition commencing this case was filed in good faith. Moreover, the court recognizes that Debtor's employment represents

a substantial change in financial affairs since the dismissal of the Prior Case.

Accordingly, the court is inclined to GRANT the motion and extend the automatic stay for all purposes as to those parties that received notice of Debtor's motion (see Doc. #12), unless terminated by further order of the court.

5. 21-11640-A-13 **IN RE: TRICIA ACEVES**
SLL-2

CONTINUED OBJECTION TO CLAIM OF ROBERT ACEVES, CLAIM NUMBER 9-3
11-29-2021 [31]

TRICIA ACEVES/MV
STEPHEN LABIAK/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The objection was resolved by stipulation and order entered on January 26, 2022. Doc. #60.

6. 21-10142-A-13 **IN RE: DEXTER ANTHONY/JENNIFER JANE MARIE CABEBE**
DRJ-2

MOTION FOR COMPENSATION FOR DAVID R. JENKINS, DEBTORS ATTORNEY(S)
12-28-2021 [25]

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 debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). 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.

David R. Jenkins ("Movant"), counsel for Dexter Anthony F. Cabebe and Jennifer Jane Marie R. Cabebe (together, "Debtors"), the debtors in this chapter 13 case, requests final allowance of compensation and reimbursement for expenses in the amount of $6,000.00 for services rendered from November 13, 2020 through December 26, 2021. Doc. #25. Debtors' confirmed plan provides for $6,000.00 in attorney's fees to be paid through the plan. Plan, Doc. ##4, 22. No prior fee applications have been submitted.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, 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).

Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtor's chapter 13 plan; (2) preparing schedules and forms; (3) communicating with Debtor's creditors and the chapter 13 trustee; (4) preparing the fee application; and (5) general case administration. Exs., Doc. #27. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on a final basis compensation and reimbursement for expenses in the amount of $6,000.00 to be paid in a manner consistent with the terms of the confirmed plan.

7. 19-11945-A-13 **IN RE: NICHOLAS/VICTOR DE LA TORRE**
DRJ-2

MOTION FOR COMPENSATION FOR DAVID R. JENKINS, DEBTORS ATTORNEY(S)
12-22-2021 [25]

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.

David R. Jenkins ("Movant"), counsel for Nicholas De La Torre and Victor M De La Torre (together, "Debtors"), the debtors in this chapter 13 case, requests final allowance of compensation and reimbursement for expenses in the amount of $6,000.00 for services rendered from January 24, 2019 through December 6, 2021. Doc. #25. Debtors' confirmed plan provides for $6,000.00 in attorney's fees to be paid through the plan. Plan, Doc. ##8, 21. No prior fee applications have been submitted. Debtors reviewed the application and have no objection. Ex. D, Doc. #27.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, 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).

Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtor's chapter 13 plan; (2) preparing schedules and forms; (3) communicating with Debtor's creditors and the chapter 13 trustee; (4) preparing the fee application; and (5) general case administration. Exs., Doc. #27. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on a final basis compensation and reimbursement for expenses in the amount of $6,000.00 to be paid in a manner consistent with the terms of the confirmed plan.

8. 17-12047-A-13 **IN RE: TAMMY ABELS**
FW-5

MOTION TO AVOID LIEN OF SUNLAN-020105, LLC
12-23-2021 [138]

TAMMY ABELS/MV
PETER FEAR/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.

Tammy Lynn Abels ("Debtor"), the debtor in this chapter 13 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of SUNLAN-020105 LLC ("Creditor") on Debtor's residential real property commonly referred to as 611 Cherry Ave., Sanger, CA 93657 (the "Property"). Doc. #138; 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 May 24, 2017. A judgment was entered against Tammy Abels aka Tammy L. Roberts aka Tammy L. Ledda in the amount of $3,348.71 in favor of Creditor on September 13, 2016. Ex. A, Doc. #141. The abstract of judgment was recorded pre-petition in Fresno County on November 8, 2016, at docket number 2016-0154968. Ex. A, Doc. #141. The lien attached to Debtor's interest in the Property located in Fresno County, and the amount owing as of the petition date was $3,580.83. Doc. #140. The Property also is encumbered by a senior lien in favor of Bank of American N.A. in the amount $174,415.92 and a senior lien in favor of 2005 Residential Trust 3-1 in the amount of $29,565.79. Schedule D, Doc. #1; Doc. #140. Debtor claimed an exemption of $1.00 in the Property under California Code of Civil Procedure § 703.140(b)(5). Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at $170,000. Schedule A/B, Doc. #1; Doc. #140.

Applying the statutory formula:

Amount of Creditor's judicial lien		$3,580.83
Total amount of all other liens on the Property (excluding junior judicial liens)	+	203,981.71
Amount of Debtor's claim of exemption in the Property	+	1.00
		$207,563.54
Value of Debtors' interest in the Property absent liens	-	170,000.00
Amount Creditor's lien impairs Debtors' exemption		$37,563.54

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

9. 21-12657-A-13 **IN RE: MARGARET TORRES**
AP-1

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON
12-20-2021 [16]

THE BANK OF NEW YORK MELLON/MV
GEORGE BURKE/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on January 20, 2022. Doc. #31. The objection will be OVERRULED AS MOOT.

10. 21-12657-A-13 **IN RE: MARGARET TORRES**
JCW-1

OBJECTION TO CONFIRMATION OF PLAN BY FEDERAL HOME LOAN MORTGAGE CORPORATION
1-12-2022 [25]

FEDERAL HOME LOAN MORTGAGE CORPORATION/MV
GEORGE BURKE/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on January 20, 2022. Doc. #31. The objection will be OVERRULED AS MOOT.

11. 21-12657-A-13 **IN RE: MARGARET TORRES**
MHM-1

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
1-7-2022 [21]

GEORGE BURKE/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on January 20, 2022. Doc. #31. The objection will be OVERRULED AS MOOT.

12. 19-10558-A-13 **IN RE: GWENDOLYN BROWN**
DRJ-4

MOTION FOR COMPENSATION FOR DAVID R. JENKINS, DEBTORS ATTORNEY(S)
12-20-2021 [81]

GABRIEL WADDELL/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.

David R. Jenkins ("Movant"), former counsel for Gwendolyn J. Brown ("Debtor"), the debtor in this chapter 13 case, requests final allowance of compensation and reimbursement for expenses in the amount of $6,000.00 for services rendered from November 1, 2018 through December 4, 2021. Doc. #81. Debtor's confirmed plan provides for $6,000.00 in attorney's fees to be paid through the plan. Plan, Doc. ##53, 77. No prior fee applications have been submitted. Debtor has reviewed the application and has no objection. Ex. D, Doc #83. On December 21, 2021, a substitution of attorney order was entered terminating Movant's representation of Debtor in this case. Doc. #85.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, 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).

Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtor's original and modified chapter 13 plans; (2) preparing schedules and forms; (3) communicating with Debtor's creditors and the chapter 13 trustee; (4) preparing the fee application; and (5) general case administration. Exs., Doc. #83. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on a final basis compensation and reimbursement for expenses in the amount of $6,000.00 to be paid in a manner consistent with the terms of the confirmed plan.

13. 19-12961-A-13 **IN RE: LEONARDO GONZALEZ**
SL-4

MOTION TO MODIFY PLAN
12-17-2021 [104]

LEONARDO GONZALEZ/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to March 10, 2022 at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to modify the chapter 13 plan. Tr.'s Opp'n, Doc. #111. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response no later than February 10, 2022. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. Trustee shall file and serve a reply, if any, by February 17, 2022.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 17, 2022. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

14. 19-12462-A-13 **IN RE: ROBERT HAMPTON AND DEATRIA DAVIS**
AP-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-22-2021 [111]

THE BANK OF NEW YORK MELLON/MV
PETER BUNTING/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The chapter 13 trustee ("Trustee") timely filed written opposition on December 27, 2021. Doc. #118. The debtors timely filed written opposition on January 13, 2022. Doc. #120. 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). Therefore, the defaults of the non-responding parties in interest are entered.

The movant, The Bank of New York Mellon f/k/a The Bank of New York as Trustee for Nationstar Home Equity Loan Trust 2007-C ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property located at 231 Gee Gee Avenue, Los Banos, California 93635 (the "Property"). Doc. #111. Movant contends that cause exists to lift the stay because the debtors have not addressed mortgage payments owed to Movant previously subject to a forbearance. Doc. #114.

Section 362(d)(1) of the Bankruptcy Code allows the court to grant relief from the stay for cause. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court finds that no "cause" exists to lift the stay. Movant holds a deed of trust encumbering the Property that secures a debt owed by the debtors. The loan was in forbearance for the period of April 1, 2020 through September 1, 2020, and the Trustee stopped making mortgage payments to Movant beginning May 2020 through September 2020. Doc. #118. Trustee resumed making ongoing mortgage payments to Movant on October 30, 2020. Doc. #118. Trustee never stopped making monthly payments to Movant for pre-petition arrears. Doc. #118. Movant's post-petition ledger indicates that when the forbearance period ended and mortgage payments resumed in October 2020, Movant applied the resumed payments to the payment owed for April 2020, the month the forbearance period began. Ex. 4, Doc. #116. As a result, Movant claims that a six-month delinquency exists, which, based on Movant's papers, appears to be caused by the lack of payments to Movant during the six-month forbearance period. Movant did not submit the forbearance agreement or any information informing the court of the terms of the forbearance agreement. Additionally, Movant's records show, and Trustee's

opposition indicates, that the debtors have maintained monthly payments to Movant except for the agreed-upon six-month forbearance period.

To the extent that some confusion exists as to when the debtors should be required to make payments applicable to the forbearance period, the debtors filed a modified plan on January 19, 2022, and a hearing to confirm the modified plan is scheduled for February 24, 2022, at 9:30 a.m. Doc. ##124-130. The debtors state that the proposed plan will provide for the cure of any post-petition delinquent amount owed to Movant. Doc. #120.

The court finds no cause exists to lift the automatic stay. Accordingly, the motion will be DENIED.

15. 21-12562-A-13 **IN RE: MARGARET GRAVELLE**
MHM-1

MOTION TO DISMISS CASE
12-20-2021 [14]

MICHAEL MEYER/MV
THOMAS MOORE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtor failed to appear at the scheduled 341 meeting of creditors and failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Debtor did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for "cause". "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re

Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is cause for dismissal because the debtor failed to respond to an objection to plan confirmation and the objection was sustained and the debtor failed to appear at the § 341 meetings held on December 14, 2021 and January 11, 2022.

Dismissal, rather than conversion, is in the best interest of creditors and the estate because the debtor does not appear to have any non-exempt assets. Schedules, Doc. #1.

Accordingly, this motion will be GRANTED. The case will be dismissed.

16. 21-11182-A-13 **IN RE: KIAH SANDERS**
WLG-2

MOTION TO MODIFY PLAN
12-14-2021 [29]

KIAH SANDERS/MV
NICHOLAS WAJDA/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to March 10, 2022 at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to modify the chapter 13 plan. Tr.'s Opp'n, Doc. #38. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response no later than February 10, 2022. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. Trustee shall file and serve a reply, if any, by February 17, 2022.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 17, 2022. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

17. 19-12697-A-13 **IN RE: CHRISTOPHER/HEATHER KENT**
DRJ-3

MOTION FOR COMPENSATION FOR DAVID R. JENKINS, DEBTORS ATTORNEY(S)
12-27-2021 [50]

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.

David R. Jenkins ("Movant"), counsel for Christopher J. Kent and Heather A. Kent (together, "Debtors"), the debtors in this chapter 13 case, requests final allowance of compensation and reimbursement for expenses in the amount of $6,000.00 for services rendered from April 4, 2019 through December 23, 2021. Doc. #50. Debtors' confirmed plan provides for $6,000.00 in attorney's fees to be paid through the plan. Plan, Doc. ##34, 49. No prior fee applications have been submitted. Debtors reviewed the application and have no objection. Ex. D, Doc #52.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, 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).

Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtor's original and modified chapter 13 plans; (2) preparing schedules and forms; (3) communicating with Debtor's creditors and the chapter 13 trustee; (4) preparing the fee application; and (5) general case administration. Exs., Doc. #52. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on a final basis compensation and reimbursement for expenses in the amount of $6,000.00 to be paid in a manner consistent with the terms of the confirmed plan.

11:00 AM

1. 18-14920-A-7 **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA**
   20-1034 BBR-2 **GENERAL PARTNERSHIP**

   CONTINUED MOTION FOR SUMMARY JUDGMENT
   12-2-2021 [62]

   SOUSA V. FRED AND AUDREY SCHAKEL AS TRUSTEES OF THE
   KALEB JUDY/ATTY. FOR MV.
   RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on at least 42 days' notice pursuant to Local Rule of Practice ("LBR") 7056-1(a) and the Scheduling Order (Doc. #60). The court continued the hearing on this motion to January 27, 2022 at 11:00 a.m. Doc. #109. The responding party timely filed written opposition, and the moving party filed a timely reply. This matter will proceed as scheduled.

As a procedural matter, the declarations filed in connection with the motion do not comply with LBR 9004-2(c)(1), which require declarations in support of a motion to be filed as separate documents. The declarations of the individual defendants filed in support of the motion were filed as exhibits to the motion and not as separate documents. The court encourages counsel for the defendants to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

Fred and Audrey Schakel as Trustees of The Schakel Family Trust dated November 5, 1996, Manuel Rodrigues, Patricia Rodrigues, Ryan Schakel, Kristin Schakel, Fred Schakel, Audrey Schakel, South Lakes Dairy LP, SLD GP LLC, and Schakel Family Partnership L.P. (collectively, "Defendants") move for summary judgment of the claims against them pursuant to Federal Rule of Civil Procedure 56, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7056. Doc. #62. David M. Sousa ("Plaintiff"), chapter 7 trustee of debtor-defendant South Lakes Dairy Farm ("South Lakes"), lodged a complaint against Defendants asserting state law and federal claims under Title 11 in connection with the circumstances leading to the filing of South Lakes' chapter 7 bankruptcy petition on December 11, 2018. Am. Complaint, Doc. #46.

Summary Judgment Standard

"Summary judgment should be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Kim v. Yoon (In re Yoon), 627 B.R. 905, 911 (Bankr. C.D. Cal. 2021) (citing Fed. R. Civ. P. 56(c)). "A party seeking summary judgment bears the initial burden of informing the court of the basis for its motion and of identifying those portions of the pleadings and discovery responses which demonstrate the absence of a genuine issue of

material fact." Cambridge Elecs. Corp. v. MGA Elecs., Inc., 227 F.R.D. 313, 320 (C.D. Cal. 2004) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). "[T]he burden on the moving party may be discharged by 'showing'—that is, pointing out to the [trial] court—that there is an absence of evidence to support the nonmoving party's case." Celotex, 477 U.S. at 325.

The factual material presented by the moving party must be viewed in the light most favorable to the nonmoving party and the motion should only be granted where it is "quite clear what the truth is." Quadra v. Super. Ct. of S.F., 378 F. Supp. 605, 623-24 (N.D. Cal. 1974) (citations omitted).

"An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Fed. R. Civ. P. 56(c)(4). "In judging evidence at the summary judgment stage, the court does not make credibility determinations or weigh conflicting evidence." Cambridge Elecs., 227 F.R.D. at 320.

"The first question to be addressed when considering affidavits in a summary judgment motion is whether the information which they contain would be admissible at trial." Zupancic v. Winer (In re Zupancic), 38 B.R. 754, 757 (B.A.P. 9th Cir. 1984).

Moving Party's Initial Burden Not Met

In conformance with the local rules, Defendants filed their separate statement of undisputed material facts in support of the motion for summary judgment. Doc. #68. Defendants assert fifty-four undisputed material facts, of which thirty-five are supported solely by declarations of the individual defendants filed with the motion. The remaining undisputed facts rely largely on the declarations of the individual defendants but are also supported by some other evidence for which the declarations are necessary for admissibility purposes, such as authentication. Therefore, to determine whether Defendants, as the moving parties, have met their initial burden on summary judgment the court must first consider whether the evidence would be admissible at trial.

Plaintiff objects to the declarations of Manuel Rodrigues, Patricia Rodrigues, Ryan Schakel, Kristin Schakel, Fred Schakel, and Audrey Schakel. Doc. ##73-77, 107. To each of the declarations, Plaintiff objects on the grounds that the declarant has not established personal knowledge of the facts asserted. Although each of the declarations contain statements that the declaration is made on personal knowledge, Plaintiff contends that such a statement is insufficient. Rather, Plaintiff argues that the declarant must establish facts showing the declarant's connection with the matters stated and establish the source of the declarant's information. See Beyene v. Coleman Sec. Servs., Inc., 854 F.2d 1179, 1182 (9th Cir. 1988) (stating that a proper foundation must be laid for all evidence supporting a motion for summary judgment). The court agrees with Plaintiff and concludes that the inadmissibility of the declarations of the individual defendants filed in support of motion results in Defendants' failure to satisfy Defendants' initial burden at summary judgment.

For example, in his declaration, Manuel Rodrigues states that he is a defendant, is married to co-defendant Patricia Rodrigues and is part of the Schakel family. Manuel Rodrigues Decl. ¶ 2 Ex. 6, Doc. #54. Manuel Rodrigues states that he and the other named individual defendants "used to be partners in South Lakes Dairy Farm." Id. ¶ 3. Manuel Rodrigues's declaration goes on to discuss South Lakes' chapter 11 case, loan agreements and changes to South Lakes' organizational structure, South Lakes' solvency, the decision to sell the dairy, salary and expense reimbursements for himself and the other

defendants, and South Lakes' rent payments to Schakel Family Partnership. However, nowhere in his declaration does Manuel Rodrigues explain his involvement with South Lakes during any specific period of time or how he came to know the information to which he testifies in his declaration.

Manuel Rodrigues does state that he helped prepare the borrowing base certificates submitted by South Lakes to Tiverton, a lender, between March 2017 and July 2018, but he goes on to testify that the information in the borrowing base certificates "was taken from South Lakes' business records." Id. ¶ 18. Manuel Rodrigues never establishes personal knowledge of the South Lakes business records or financial statements themselves, and his assistance with creating the borrowing base certificates does not establish his familiarity with South Lakes' underlying finances. Manuel Rodrigues states that he was a manager of South Lakes but does not state what his duties were or when he served as a manager. In other words, Manuel Rodrigues, like the other declarants, declares only that he knows certain facts without demonstrating how he came to possess the knowledge. Simply stating that a declarant knows something to be true without demonstrating how the declarant possesses that knowledge does not satisfy Federal Rule of Civil Procedure 56(c)(4) and does not lay the proper foundation of personal knowledge required of a witness at trial.

Similarly, the declaration of Fred Schakel sets forth facts unsupported by the declarant's personal knowledge. Fred Schakel repeatedly asserts the common feelings and thoughts shared between all South Lakes partners, but never establishes how he obtained that information. See, e.g., Fred Schakel Decl. ¶¶ 8, 13, Ex. 1, Doc. #64. Despite Defendants' argument in their reply, statements of what the partners of South Lakes thought about a business decision as presented in a declaration are not present sense impressions because there is no evidence to suggest that the statements of the various partners describe or explaine an event or condition made while or immediately after the declarant (here, the other partners) perceived it. See Fed. R. Evid. 803(1). Further, other than stating that he was the designated tax matters partner for South Lakes in "2017 and previously", Fred Schakel does not explain how he is familiar with South Lakes' operations, payments to landlords, loan agreements, or other operations of the business. Fred Schakel Decl. ¶ 14, Ex. 1, Doc. #64. Fred Schakel only states that, as the designated tax matters partner for South Lakes, he signed the tax returns; he does not state that he had any other specific duties or responsibilities in connection with creating or maintaining financial statements and negotiating or approving loan agreements. Id.

In the declaration of Patricia Rodrigues, Patricia Rodrigues states that she "was one of the people responsible for making sure South Lakes' internal accounting records (in QuickBooks) were accurate." Patricia Rodrigues Decl. ¶ 14, Ex. 5, Doc. #64. Patricia Rodrigues does not state when she had these duties, although she does indicate that she did not receive a salary from South Lakes from December 2016 through December 2018. Id. ¶ 13. Assuming December 2016 through December 2018 is the period in which Patricia Rodrigues was responsible for some accounting duties (though such an assumption is not required), there is still no indication that Patricia Rodrigues has personal knowledge of the facts she asserts and documents she seeks to authenticate, for example South Lakes partner salaries beginning in the year 2013, expense reimbursements since the year 2013, or rent payments since 2013.

The same deficiencies regarding personal knowledge and lack of foundation are present in every other declaration filed by Defendants in support of their motion for summary judgment. The undisputed material facts supporting Defendants' motion for summary judgment rely on the declarations discussed

above. Because the evidence submitted to support Defendants' motion for summary judgment fails to establish personal knowledge and would not be admissible in evidence at trial, the court finds that Defendants have not met their burden of informing the court of the basis of their motion and identifying the absence of a genuine issue of material fact.

Even if the declarations filed with the motion established the declarants' personal knowledge and presented evidence in an admissible form, the court would still deny Defendants' motion for summary judgment.

Summary judgment is disfavored when the knowledge of the facts surrounding the allegations lies exclusively within the province of the defendant moving for summary judgment. Transway Fin. Co. v. Gershon, 92 F.R.D. 777, 778 (E.D.N.Y. 1982). "Summary judgment is particularly inappropriate when the disputed facts may be colored by the motivations of interested witnesses." Id. at 778-779. Moreover, conclusory declarations lacking detailed facts and corroborating evidence are insufficient to demonstrate the absence of a genuine issue of material fact. The moving party must point to, not simply state, an absence of evidence. See Celotex, 477 U.S. at 325.

At this point, to consider each of the declarations as true despite a dearth of corroborating evidence would be akin to making a credibility determination that is improper at the summary judgment stage. Cambridge Elecs., 227 F.R.D. at 320 ("In judging evidence at the summary judgment stage, the court does not make credibility determinations or weigh conflicting evidence."). For example, on the issue of consent, Defendants declare that they consented to the various actions taken by South Lakes but offer no other supporting evidence demonstrating consent, such as a writing indicating consent. A lack of supporting evidence could very well be evidence demonstrating that there was not consent. This factual determination turns on the credibility of the witnesses that can properly be decided only after direct and cross examination at trial.

Accordingly, the motion is DENIED.

2. 19-14729-A-13 **IN RE: JASON/JODI ANDERSON**
19-1131 FW-4

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
FOR GABRIEL J. WADDELL, PLAINTIFFS ATTORNEY(S)
12-28-2021 [156]

ANDERSON ET AL V. NATIONAL ENTERPRISE SYSTEMS, INC.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in the amount of $111,048.50 in attorneys' fees and $5,528.90 in costs, plus additional attorneys' fees and costs incurred by the plaintiffs in responding to the opposition to the motion.

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

This motion was filed and served with at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) requiring written opposition to be filed no later than 14 days prior to the scheduled hearing date. The responding party timely filed written opposition and the moving party filed a timely reply. This matter will proceed as scheduled.

As a procedural matter, the declaration filed in connection with the opposition to this motion does not comply with LBR 9004-2(c)(1), (d)(1) and (e)(1), which require declarations, exhibits and proofs of service to be filed as separate documents. The declaration was filed as a single document that included the movant's exhibits as well as the proof of service of the declaration. Doc. #166. Additionally, the responding party, Defendant National Enterprise Systems, Inc. ("Defendant"), failed to provide an exhibit index as required by LBR 9004-2(d)(2). The court encourages counsel for Defendant to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

By this motion, Plaintiffs Jason John Anderson and Jodi Noel Anderson (collectively, "Plaintiffs") move for an order determining that their attorneys' fees in the amount of $146,555.00 and costs in the amount of $5,528.90 incurred in representing Plaintiffs over the course of this adversary proceeding are reasonable and shall be paid pursuant to the terms of the Stipulation of Settlement approved by this court on November 30, 2021 ("Stipulation"). Doc. #156. The attorneys' fees were incurred for services rendered from December 5, 2019 through December 27, 2021. Ex. A, Doc. #161. In addition to the fees and costs requested in the motion, Plaintiffs request that, if Defendant opposes the motion, Plaintiffs be awarded such additional fees and costs as Plaintiffs incur in responding to such opposition based on supplemental information to be provided by Plaintiffs at the hearing. Doc. #156.

Legal Standard

Per the Stipulation, "Defendant agrees to pay reasonable 'costs and attorney's fees,' as that term is used in 11 U.S.C. § 362(k), as determined by the court pursuant to a motion brought by plaintiff for determination of the reasonable amount of such costs and fees." Stipulation at 2:9-11, Doc. #153. In

determining what constitute reasonable costs and attorneys' fees under 11 U.S.C. § 362(k), a court is to apply the standard set forth in § 330(a)(1) of the Bankruptcy Code for compensating professionals in bankruptcy cases. Eskanos & Adler, P.C. v. Roman (In re Roman), 283 B.R. 1, 11 (B.A.P. 9th Cir. 2002) (analyzing 11 U.S.C. § 362(h), the predecessor to 11 U.S.C. § 362(k)). In determining the amount of reasonable compensation to be awarded to a professional person under 11 U.S.C. § 330(a)(1), 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). In addition, the reasonableness inquiry in the context of 11 U.S.C. § 362(k) requires the bankruptcy court to "examine whether the debtor could have mitigated the damages. Generally, in determining the appropriate amount of attorneys' fees to award as a sanction, the court looks to two factors: '(1) what expenses or costs resulted from the violation and (2) what portion of those costs was reasonable, as opposed to costs that could have been mitigated.'" Roman, 283 B.R. at 12 (citations omitted). "One way to determine whether the debtors complied with their duty to mitigate is to consider who caused the attorney's fees to be incurred – the debtors or their creditor." Orian v. Asaf (In re Orian), No. CC-18-1092-SFL, 2018 Bankr. LEXIS 3734, at *21-22 (B.A.P. 9th Cir. Nov. 27, 2018).

Obligation to Mitigate Fees

The court turns first to whether Plaintiffs could have mitigated the amount of attorneys' fees incurred. Most of Plaintiffs' attorneys' fees result from Defendant's position that Defendant's actions did not constitute a willful violation of the automatic stay, and so Defendant could not be liable for any damages, including Plaintiffs' attorneys' fees in prosecuting this adversary proceeding. Defendant continually denied receiving any document informing Defendant of Plaintiffs' bankruptcy filing until Defendant received the complaint in this adversary proceeding. Opp. at 2:4-21, Doc. #165. Based on this lack of actual receipt, Defendant claimed it could not be liable for willfully violating the automatic stay notwithstanding the mailbox rule presumption in favor of Plaintiffs that created a genuine issue of material fact which, if resolved in favor of Plaintiffs, would have resulted in Defendant being liable for damages for willful violation of the automatic stay, including Plaintiffs' attorneys' fees. See generally Civ. Min. re Motion for Summary Judgment, Doc. #67.

Based on Defendant's failure to cease garnishing Mrs. Anderson's wages after being sent notice of Plaintiffs' bankruptcy filing through two letters by Plaintiffs' counsel and a notice by the bankruptcy court, the filing of this adversary proceeding was appropriate. Moreover, the initial offer by Defendant to settle the adversary proceeding in February 2020 for $3,000.00 was barely enough to cover Plaintiffs' attorneys' fees that had been incurred as of that time to address the stay violation and provided nothing to Plaintiffs for any other damages caused by Defendant's delay in honoring the automatic stay and ceasing to garnish Mrs. Anderson's wages. The court finds that the attorneys' fees and costs incurred by Plaintiffs to conduct discovery, defend against Defendant's motion for partial summary judgment, defend against Defendant's three motions in limine and prepare for trial to be appropriate, especially in light of the initial settlement offer by Defendant and lack of further settlement offers until March 2021.

As part of the litigation, Plaintiffs and Defendant engaged in discovery of an expert related to Plaintiffs' potential tax liability for an attorney fee award as part of Plaintiffs' damages claim under 11 U.S.C. § 362(k). Defendant filed a motion in limine to preclude that evidence at trial, and the court issued a tentative ruling granting that motion. Doc. #166, Ex. 4. At the hearing on the motion in limine, instead of accepting the tentative ruling and proceeding to

trial, Plaintiffs requested a continuance of the hearing on the motion in limine so Plaintiffs could file a motion to determine as a matter of law that such tax liability should be considered as actual damages under 11 U.S.C. § 362(k), which the court permitted. The court ultimately denied Plaintiffs' motion. Doc. #105. Plaintiffs then sought an immediate appeal and direct certification of the denial of their motion. Doc. ##109, 110.

Plaintiffs, in their reply, allocate the requested attorneys' fees that relate to Plaintiffs' position that Defendant should be required to reimburse Plaintiffs for the tax liabilities that would result from a judgment or settlement in this adversary proceeding. Doc. #167. Plaintiffs calculate $5,296.50 in fees related to expert discovery prior to Defendant's motion in limine to exclude such evidence, $4,579.00 in fees related to responding to that motion in limine, $16,663.00 in fees related to researching and preparing Plaintiffs' motion for determination that such tax liability should be considered as actual damages as a matter of law, and $16,004.00 in fees related to the appeal of the court's denial of that motion. Id. at pp. 3-4.

The court finds that Plaintiffs did not mitigate their attorneys' fees when Plaintiffs filed their motion to determine as a matter of law that such tax liability should be considered as actual damages under 11 U.S.C. § 362(k) and subsequently appealed of the denial of that motion. The court had ruled against Plaintiffs in granting the related motion in limine, and it was Plaintiffs that insisted on further briefing on the issue and pursuing an immediate appeal. Accordingly, the court will reduce the requested fees by $32,667.00 for Plaintiffs' failure to mitigate incurring those fees.

Analysis under Section 330

The court now turns to an analysis of the remaining fees based on the standard set forth in section 330(a)(1) of the Bankruptcy Code. In Exhibit 14 filed with the opposition, Defendant lists objections to specific time entries for Plaintiffs' attorneys. After careful review and analysis of each specific objection, the court agrees with Defendant regarding reducing some fees for clerical tasks, nonbillable tasks, some paralegal tasks, and travel time. The court disagrees with the remaining objections, including for vague or blocked entries, scheduling, and excessive amount of time spent on various matters.

With respect to the time entries objected to as "Clerical" on Exhibit 14, pages 1, 10, 11 (for 09-09-2020 time entry only) and 16, the court finds that the fees charged for these tasks are clerical in nature and will not be included in determining the attorney fee award. Based on such objections, the requested fees will be reduced by an additional $409.00.

With respect to the time entries objected to as "Non-billable" relating to review of invoices for depositions on Exhibit 14, pages 12, 13 and 18 (for 12-03-2020 time entry only), the court finds that the fees charged for these tasks are non-billable in nature and will not be included in determining the attorney fee award. Accordingly, the requested fees will be reduced by an additional $192.00.

With respect to the time entries objected to as "Paralegal" on Exhibit 14, pages 1, 6, 14 and 17, the court will reduce the hourly rate to $100.00 for those services. Accordingly, the requested fees will be reduced by an additional $1,882.50.

The court agrees that travel should not be billed at the full hourly rate and will allow at half the hourly rate. Accordingly, the requested fees for travel on Exhibit 14, pages 3 and 29 will be reduced by an additional $260.00.

With respect to the time entry objected to as duplicative of each other on Exhibit 14, page 4, the court will allow the entry with the larger amount of time and disallow the entry for .3 hours. Accordingly, the requested fees will be reduced by an additional $96.00.

The court disagrees with the remaining objections to time entries asserted by Defendants for clerical, paralegal and non-billable time.

The court disagrees with Defendant that the time entries objected to as "Vague" are vague and should not be allowed. The court has reviewed each time entry objected to as "Vague." While such time entries could always include more detail, the time entries sufficiently describe the tasks performed in a manner similar to other fee applications that the court reviews under 11 U.S.C. § 330(a). Accordingly, the court will not further reduce the requested fees for vague time entries.

Defendant also asks the court to reduce the requested fees for block billing. Block billing refers to the practice of combining tasks as a single billed entry rather than itemizing each task individually. See Welch v. Metro Life Ins. Co., 480 F.3d 942, 948 (9th Cir. 2007). The United States Trustee Program's Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses filed under 11 U.S.C. § 330 ("1996 Guidelines"), 28 C.F.R. Part 54, App'x A, allow for services to be "lumped" together if related to tasks performed in a project which total a de minimis amount of time and do not exceed 0.5 hours on a daily aggregate. 1996 Guidelines. The court has reviewed the time entries and will not reduce the requested fees for blocked billing. The blocked billing time entries are appropriate under the 1996 Guidelines and, to the extent some of the time entries objected to exceed 0.5 hours, those time entries do not describe services that are "lumped" together. Accordingly, the court will not further reduce the requested fees for blocked billing time entries.

The court disagrees with Defendant that the time entries objected to as "Scheduling" should not be allowed. The court has reviewed each time entry objected to as "Scheduling" and does not agree that counsel for Plaintiffs cannot receive compensation for performing these tasks under 11 U.S.C. § 330(a). Accordingly, the court will not further reduce the requested fees for scheduling time entries.

With respect to the assertion that Plaintiffs' attorneys spent excessive time on various tasks, the court has already disallowed all time spent with respect to the motion to determine tax liability to be actual damages under 11 U.S.C. § 362(k) and related appeal. The court disagrees with Defendant that additional time should be reduced as being excessive.

With respect to tasks related to discovery matters, such as initial disclosures, initial written discovery and discovery responses, the pleadings related to these tasks were not filed with the court and copies were not provided by Defendant in its opposition papers for the court to review as to whether the alleged time spent with respect to discovery matters was excessive. Based on the record before the court, the court finds that the alleged fees related to discovery matters should not be reduced as being excessive.

With respect to the nearly 60 hours spent by counsel for Plaintiffs' defending Defendant's motion for summary judgment, the court has already reduced the hours by 12.1 with respect to the paralegal reduction. The court does not find the remaining nearly 48 hours spent by Plaintiffs' counsel to defend the summary judgment motion to be excessive. Similarly, the court does not find the

nearly 25 hours spent by counsel for Plaintiffs' defending Defendant's three motions in limine to be excessive. Exclusion of such evidence impacted Plaintiffs' case greatly, and the time spent defending the three motions is not excessive.

The court also does not find attorney Waddell spending 6.1 hours on Plaintiffs' pre-trial statement to be excessive. The court expects a party to conduct significant analysis in preparing a pre-trial statement to provide the court and opposing counsel with valuable information prior to the court setting a trial. The 6.1 hours preparing such a statement is not excessive in this case. Finally, with respect to the 7.6 hours spent by attorney Waddell preparing the alternate direct testimony of Mrs. Anderson, at the time the task was performed, the trial was still set for April 2021, and counsel for Plaintiffs was under a deadline to submit that testimony to counsel for Defendant. Under the court's local rules, alternate direct testimony is a substitute for direct testimony that each witness would give. Considering that Mrs. Anderson was Plaintiffs' primary witness, the time spent by attorney Waddell preparing her alternate direct testimony was not excessive.

For the above reasons, the court will reduce the requested attorneys' fees by the aggregate amount of $35,506.50. The court determines that $111,048.50 in attorneys' fees and $5,528.90 in costs, plus additional fees and costs incurred addressing the opposition to this motion, are reasonable and shall be paid pursuant to the terms of the Stipulation.

3. 19-11430-A-7 **IN RE: VINCENT/CAROL HERNANDEZ**
20-1055

PRE-TRIAL CONFERENCE RE: COMPLAINT
8-27-2020 [1]

SALVEN V. HERNANDEZ ET AL
RUSSELL REYNOLDS/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar

NO ORDER REQUIRED.

A stipulation for dismissal of the complaint was filed on December 2, 2021. Doc. #52. A review of the docket indicates all parties have been dismissed. Accordingly, this pre-trial conference is dropped from calendar. This adversary may be administratively closed when appropriate.

4. 20-10945-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
20-1041

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
6-26-2020 [1]

SIHOTA ET AL V. SINGH ET AL
PETER SAUER/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 16, 2022, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status report filed on January 20, 2022, Doc. #87, and the order staying this adversary proceeding until the entry of a final order in the state court, Doc. #80, the pre-trial conference will be continued to June 16, 2022, at 11:00 a.m.

The parties shall file a joint status report not later than June 9, 2022.

5. 21-11450-A-7 **IN RE: ANTHONY FLORES**
21-1036

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-24-2021 [1]

SAWUSCH ET AL V. FLORES
JESSICA WELLINGTON/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

6. 20-10569-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
20-1042

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
6-26-2020 [1]

SIHOTA ET AL V. SINGH ET AL
LENDEN WEBB/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 16, 2022, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status report filed on January 20, 2022, Doc. #90, and the order staying this adversary proceeding until the entry of a final order in the state court, Doc. #83, the pre-trial conference will be continued to June 16, 2022, at 11:00 a.m.

The parties shall file a joint status report not later than June 9, 2022.