

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Tuesday, February 9, 2021  
Place: Department B - Courtroom #13  
Fresno, California

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

*Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.*

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

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

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. 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. [20-11612](#)-B-11 IN RE: BENTON ENTERPRISES, LLC

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY  
PETITION  
5-5-2020 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

2. [20-11612](#)-B-11 IN RE: BENTON ENTERPRISES, LLC  
[FW-5](#)

CONTINUED CHAPTER 11 DISCLOSURE STATEMENT FILED BY DEBTOR  
BENTON ENTERPRISES, LLC  
11-20-2020 [[102](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

This motion was originally filed on 28 days' notice under Local Rule of Practice ("LBR") 9014-1(f)(1) and scheduled for January 12, 2021. At the previous hearing, the defaults of all parties in interest were entered **except** Fresno-Madera Production Credit Association ("PCA"), Fresno Madera-Federal Land Bank Association, FLCA ("FLCA"), and ESHEG, Inc. ("ESHEG"). Doc. #120. The court continued the matter to February 9, 2021 at 9:30 a.m. so debtor-in-possession Benton Enterprises, LLC ("DIP"), could file and serve an Amended Disclosure Statement by February 2, 2021. Doc. #132. The order also specified that PCA, FLCA, and ESHEG may object to the Disclosure Statement at or before the hearing on February 9, 2021 and any reply to such objection by DIP may be stated at the hearing. *Id.*

DIP filed an Amended Plan (Doc. #141), Amended Disclosure Statement (Doc. #142), and a red-lined copy of the Amended Plan and Disclosure Statement (Doc. #143) on February 2, 2021.

This matter will be called as scheduled to inquire whether there are any objections by PCA, FLCA, or ESHEG. If no opposition is presented at the hearing, the court is inclined to approve the Disclosure Statement. But if there are any objections to the Disclosure Statement, the hearing will be continued to accommodate the appropriate filing of and response to the objections.

3. [20-11612](#)-B-11     **IN RE: BENTON ENTERPRISES, LLC**  
[FW-6](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,  
P.C. FOR PETER L. FEAR, DEBTORS ATTORNEY(S)  
1-12-2021    [[122](#)]

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. FLCA and PCA's counsel shall approve the order.

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 **except** Fresno-Madera Land Bank Association, FLCA ("FLCA") and Production Credit Association ("PCA") 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 Systems, 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.

Peter L. Fear of Fear Waddell, P.C. ("Movant"), counsel for debtor-in-possession Benton Enterprises, LLC ("DIP"), requests interim fees of \$34,748.00 and costs of \$879.69 for a total of \$31,036.50 for services rendered from May 6, 2020 through November 30, 2020. Doc. #122. Mr. William Pittman, DIP's President, filed a declaration stating that he reviewed the fee application and has no objection to its approval. Doc. #126.

On January 26, 2021, the parties executed a stipulation stating that creditors FLCA and PCA object to any use of its cash collateral, including rents and proceeds, to pay any portion of Movant's fee application until PCA and FLCA agree in writing to such use. Doc. #135. However, the parties agree that no party disputes that Movant's pre-petition retainer of \$31,036.50 may be used to fund this fee application. *Id.* No other parties in interest timely filed written opposition.

This motion will be GRANTED.

This is Movant's first fee application.

This case was filed on May 5, 2020. Doc. #1. On May 29, 2020, DIP filed a motion to employ Movant as general bankruptcy counsel. Doc. #23. This motion was granted on June 8, 2020 effective for services rendered on or after May 5, 2020. Doc. #37. The order stated that employment was subject to the applicable provisions of 11 U.S.C. §§ 327, 329-331 and no compensation would be permitted except upon court order following application under § 330(a). Compensation was set at the "lodestar rate" applicable at the time services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Funds received pre-petition were deemed to be an advance payment of fees and Movant was instructed to maintain such fees in a trust account at an authorized depository. Monthly applications for interim compensation under § 331 would be entertained provided the fees and costs exceed \$5,000.00.

Movant's *Disclosure of Compensation*, Form B2030, indicates that Movant was paid \$62,216.00 prior to filing the case. Doc. #13, at 69. Of this amount, \$29,034.00 was drawn down prior to filing to cover pre-petition fees and costs, including the \$1,717.00 filing fee, and \$30,966.00 remained to be used as a retainer. *Ibid.* However, in the application Movant states that \$31,036.50 of the retainer remains. Doc. #122.

Movant indicates that his firm spent a total of 119.8 billable hours totaling \$34,748.00 in fees as follows:

<b>Professional</b>	<b>Rate</b>	<b>Hours</b>	<b>Fees</b>
Peter L. Fear	\$400.00	74.7	\$29,880.00
Gabriel J. Waddell	\$320.00	0.1	\$32.00
Katie Waddell	\$220.00	2.8	\$616.00
Kayla Schlaak	\$100.00	42.2	\$4,220.00
<b>Totals:</b>		<b>119.8</b>	<b>\$34,748.00</b>

Doc. #122, ¶ 5. Movant also incurred the following expenses:

Copying	\$398.45
Court Fees	\$183.00
Postage	\$298.24
<b>Total Costs:</b>	<b>\$879.69</b>

*Id.*, ¶ 7. These fees and expenses total \$35,627.69. As noted above, DIP's President, Mr. Pittman, filed a declaration stating that he reviewed the fee application and has no objection. Doc. #126. The parties filed a stipulation acknowledging that PCA and FLCA object to the use of cash collateral to pay any professional fees without first obtaining PCA and FLCA's written consent. Doc. #135. The parties agreed that Movant's pre-petition retainer of \$31,036.50 may be used to at least partly fund this fee application. *Id.*

11 U.S.C. §§ 330(a)(1)(A) & (B) permit approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) preparing DIP's schedules and statements to be filed with the petition; (2) responding to the United States Trustee's ("UST") request for documents; (3) attending the Initial Debtor Interview with DIP and UST; (4) corresponding with creditors who continued to bill DIP after the petition was filed; (5) preparing and filing status conference statements; (6) communicating with DIP's lessees regarding continuing their lease, obtaining new SNDA agreements, and preparing a motion to obtain the new lease (FW-4); (7) appearing at the § 341 meeting with DIP; (8) preparing motions to employ Movant (FW-1) and a real estate agent (FW-3); and (9) preparing and filing the chapter 11 plan and disclosure statement. Doc. #125, Ex. A. The court finds the services reasonable and necessary and the expenses requested actual and necessary. Other than the stipulation with PCA and FLCA, no party in interest timely filed written opposition.

This motion will be GRANTED. Movant shall be awarded \$34,748.00 in fees and \$879.69 in costs. Per the stipulation, DIP is not authorized to use PCA and FLCA's cash collateral for any professional fees without first obtaining written consent. Movant will be authorized apply its retainer of \$31,036.50 to the balance of fees for services rendered and expenses incurred between May 6, 2020 and November 30, 2020.

The order submitted by Movant shall be approved by FLCA and PCA's counsel.

4. [20-12642](#)-B-11     **IN RE: 3MB, LLC**

FURTHER STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION  
8-11-2020    [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION:        Continued to April 7, 2021 at 10:30 a.m.

ORDER:                The court will issue an order.

Debtor-in-possession 3MB, LLC, filed its Amended Disclosure Statement and Chapter 11 Plan on February 4, 2021, which are currently set for hearing on April 7, 2021 at 10:30 a.m. Doc. #172; #173. Accordingly, this status conference will be continued to April 7, 2021 at 10:30 a.m. to be heard in connection with the Amended Disclosure Statement.



11:00 AM

1. [20-13588](#)-B-7 IN RE: RIGOBERTO/GUADALUPE BERNAL

PRO SE REAFFIRMATION AGREEMENT WITH BANK OF THE WEST  
1-11-2021 [[19](#)]

NO RULING.

1:30 PM

1. [20-13607](#)-B-7     **IN RE: JESSE/ESMERALDA GONZALEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
1-22-2021   [\[27\]](#)

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

DISPOSITION:        The OSC will be vacated.

ORDER:               The court will issue an order.

The record indicates that the fee was paid in its entirety on February 2, 2021. Accordingly, the order to show cause will be vacated.

2. [20-13716](#)-B-7     **IN RE: DESIREE KINGSTON**  
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-4-2021   [\[14\]](#)

JPMORGAN CHASE BANK, N.A./MV  
NEIL SCHWARTZ/ATTY. FOR DBT.  
WENDY LOCKE/ATTY. FOR MV.

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

DISPOSITION:        Denied without prejudice.

ORDER:               The court will issue an order.

This motion was filed on 28 days' notice pursuant to Local Rule of Practice 9014-1(f)(1).<sup>1</sup> JPMorgan Chase Bank, N.A. ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2018 Cadillac Escalade ("Vehicle"). Doc. #14.

This matter will be DENIED WITHOUT PREJUDICE for failure to comply with the federal and local rules.

First, Rule 4001(a) requires motions for relief from the automatic stay to be "made in accordance with Rule 9014." Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. This motion could be a contested matter if any party in interest opposes.

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<sup>1</sup> Unless otherwise indicated, references to "LBR" are to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California; "Rules" are to the Federal Rules of Bankruptcy Procedure; and "Civil Rules" are to the Federal Rules of Civil Procedure.

Rule 7004 allows service in the United States by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business" and "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 7004(b)(1), (b)(3). Though not applicable here, if the United States trustee is acting solely as trustee, then "by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending." Rule 7004(b)(10).

Rule 9036 does allow for electronic service but provides: "This rule does not apply to any pleading or other paper required to be served in accordance with Rule 7004." Rule 7004's service requirement is not subject to waiver under Civil Rule 4(d). See Rule 7004(a)(1).

Here, the certificate of service indicates that Debtor's counsel, Neil E. Schwartz, the Chapter 7 Trustee Jeffrey M. Vetter ("Trustee") and the U.S. Trustee, respectively, were served electronically. Doc. #20. No email addresses were listed. *Id.*

Debtor and her counsel must be served by mail in accordance with Rule 7004. Because this motion will affect property of the estate, the Ch. 7 Trustee must also be served in accordance with Rule 7004. Rule 7004, which is applicable for relief from stay motions under Rules 4001 and 9014, is specifically precluded from electronic service by Rule 9036. Thus, the Movant must serve the Debtor, her counsel, and the Ch. 7 Trustee in conformance with Rule 7004.

The Trustee has not formally abandoned the Vehicle, so it remains an asset of the estate.

Additionally, the Movant must serve or notify the UST, who may raise, appear, and be heard on any issue in any case under § 307. Because relief is not being sought against the UST, electronic notification under Rule 7005 and LBR 7005-1 will be sufficient, as discussed below.

Second, LBR 7005-1(a) allows service by electronic means pursuant to Civil Rule 5(b)(2)(E), as made applicable to Rule 7005, which typically only applies to pleadings filed after the original complaint and other papers specified in Civil Rule 5(a)(1). LBR 7005-1(d) states, in relevant part:

1) Upon Those Parties Consenting to Service by Electronic Means. Service by electronic means pursuant to Fed. R. Civ. P. 5(b)(2)(E) shall be accomplished by transmitting an email which includes as a PDF attachment the document(s) served. The subject line of the email shall include the words "Service Pursuant to Fed. R. Civ. P. 5," and the first line of the email shall include the case or proceeding name and number and the title(s) of the document(s) served.

. . . .  
3) *Certificate of Service*. The certificate of service shall include all parties served, whether by electronic or conventional means. Where service was accomplished by electronic means, the certificate of service shall include the email addresses to which the document(s) were transmitted, and the party, if any, whom the recipient represents.

LBR 7005-1(d)(1), (d)(3). Here, the certificate of service indicates that the enumerated parties were served by email pursuant to Local Bankruptcy Rule 7005-1(d)(1). Doc. #20. The certificate of service does not comply with LBR 7005-1(d)(3) because it does not include the email addresses of the parties served. As noted above, the Debtor, her counsel, and the Ch. 7 Trustee must be served as required by Rule 7004. Electronic service may be made on the UST, but that electronic service must comply with LBR 7005-1(d)(3) and include the UST's email address.

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

3. [18-11222](#)-B-7     **IN RE: SAMUEL/CRYSTAL M. FLORES**  
[FW-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,  
P.C. FOR PETER A. SAUER, TRUSTEES ATTORNEY(S)  
1-8-2021    [[67](#)]

MARK ZIMMERMAN/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 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 amount of damages). *Televideo Systems, 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.

Peter A. Sauer of Fear Waddell, P.C. ("Movant"), counsel for chapter 7 trustee James E. Salven ("Trustee"), requests fees of \$14,259.00 and costs of \$213.00 for a total of \$14,472.00 for services rendered from October 26, 2018 through January 7, 2021. Doc. #67. Trustee filed a declaration stating that he reviewed the fee application, believes the requested fees and expenses are reasonable and necessary for the administration of the estate, and has no objection to the approval of this fee application. Doc. #70. No party in interest timely filed written opposition.

This motion will be GRANTED.

This is Movant's first and final fee application.

This case was filed on March 30, 2018 and Trudi Manfredo was appointed as the interim trustee on that same date. Doc. #1. Ms. Manfredo became permanent trustee on May 7, 2018. On December 4, 2018, this court issued an order authorizing employment of Movant effective for services rendered on and after October 26, 2018. Doc. #32. The order stated that employment was subject to the applicable provisions of 11 U.S.C. §§ 327, 329-331 and no compensation would be permitted except upon court order following application under § 330(a). Compensation was set at the "lodestar rate" applicable at the time services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988).

On December 21, 2018, Ms. Manfredo resigned as trustee. Doc. #40. Trustee James E. Salven was appointed as successor trustee on December 26, 2018. Doc. #41. Trustee filed a motion to employ Movant on February 8, 2019, which was granted on February 20, 2019, effective for services rendered since Ms. Manfredo's resignation on December 21, 2018. Doc. #52. The order stated that employment was subject to the applicable provisions of 11 U.S.C. §§ 327, 329-331 and no compensation would be permitted except upon court order following application under § 330(a). Compensation was set at the "lodestar rate" applicable at the time services are rendered in accordance with *In re Manoa. Fin. Co.*

Movant indicates that his firm spent a total of 63.6 billable hours totaling \$14,259.00 in fees as follows:

<b>Professional</b>	<b>Rate</b>	<b>Hours</b>	<b>Fees</b>
Peter A. Sauer (2018)	\$210.00	15.7	\$3,297.00
Peter A. Sauer (2019)	\$225.00	22.0	\$4,950.00
Peter A. Sauer (2020)	\$235.00	21.4	\$5,029.00
Peter A. Sauer (2021)	\$245.00	0.2	\$49.00
Katie Waddell (2019)	\$210.00	0.6	\$126.00
Katie Waddell (2020)	\$220.00	1.3	\$286.00
Katie Waddell (2021)	\$230.00	2.2	\$506.00
Kayla Schlaak (2019)	\$80.00	0.2	\$16.00
<b>Totals:</b>		<b>63.6</b>	<b>\$14,259.00</b>

Doc. #67, ¶ 5. Movant also incurred the following expenses:

Copying	\$120.90
PACER	\$1.00
Postage	\$213.00
<b>Total Costs:</b>	<b>\$334.90</b>

*Id.*, ¶ 5. These fees and expenses total \$14,472.00. As noted above, Trustee filed a declaration stating that he reviewed the fee application, believes the fees and expenses are reasonable and necessary to the estate, and has no objection to this application. Doc. #70.

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." Movant's services included, without limitation: (1) advising Trustee on administration of the estate and legal issues arising in connection with administration of the estate; (2) evaluating a personal injury claim, its value, and the effect on the estate for purported changes to the value of the claim; (3) preparing for mediation, reviewing the defendant's mediation brief, and considering potential factual deficiencies and their effect on the value of the claim; (4) negotiating a settlement with the debtor and preparing a motion to approve stipulation (FW-4); (5) preparation and filing of employment and fee applications (FW-1; FW-2; FW-3; FW-5). Doc. #71, Ex. A. The court finds the services reasonable and necessary and the expenses requested actual and necessary. No party in interest timely filed written opposition.

This motion will be GRANTED. Movant shall be awarded \$14,259.00 in fees and \$213.00 in costs. Trustee will be authorized to pay Movant \$14,472.00 for services rendered and expenses incurred between October 26, 2018 and January 7, 2021.

4. [17-13947](#)-B-7     **IN RE: EDWIN CATUIRA**  
[RTW-3](#)

MOTION FOR COMPENSATION FOR CHRISTOPHER A. RATZLAFF,  
ACCOUNTANT(S)  
1-8-2021    [[68](#)]

RATZLAFF TAMBERI & WONG/MV  
LAYNE HAYDEN/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 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 amount of damages). *Televideo Systems, 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.

Ratzlaff Tamberi & Wong ("Movant"), the certified public accountancy firm engaged by chapter 7 trustee James E. Salven ("Trustee"), requests fees of \$1,386.00 and costs of \$14.00 for a total of \$1,400.00 for services rendered from February 27, 2020 through November 16, 2020. Doc. #68. Trustee filed a declaration stating that he reviewed the fee application, believes the requested fees and expenses are reasonable and necessary for the administration of the estate, and has no objection to the approval of this fee application. Doc. #71. No party in interest timely filed written opposition.

This motion will be GRANTED.

This is Movant's second and final fee application. Movant's first fee application was denied without prejudice for procedural reasons. Doc. #66; #67.

This case was filed on October 13, 2017 and Trustee was appointed as the interim trustee on that same date. Doc. #1. Trustee became permanent trustee on December 4, 2017 and filed a motion to employ Movant on February 19, 2020. Doc. #49. On February 27, 2020, this court issued an order authorizing employment of Movant effective for services rendered on and after January 20, 2020. Doc. #52. The order stated that employment was subject to the applicable provisions of 11 U.S.C. §§ 327, 330, and 331 and no compensation would be permitted except upon court order following application under § 330(a). Compensation was set at the "lodestar rate" applicable at the time services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988).

Movant indicates that his firm spent a total of 6.3 billable hours totaling \$1,386.00 in fees for certified public accountancy services. Doc. #72, Ex. A. Movant also incurred \$14.00 in expenses for postage to notice creditors. *Ibid.* These fees and expenses total \$1,400.00. As noted above, Trustee filed a declaration stating that he reviewed the fee application, believes the fees and expenses are reasonable and necessary to the estate, and has no objection to this application. Doc. #71.

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." Movant's services included, without limitation: (1) reviewing the petition and Trustee's accounting data for information relating to tax matters of the estate; (2) reviewing final accounting information and corresponding with Trustee regarding settlement income; (3) preparing the final federal and state fiduciary income tax returns for the tax period ending November 30, 2020; (4) preparing and filing the final fee application. Doc. #72, Ex. A. The court finds the services reasonable and necessary and the expenses requested actual and necessary. No party in interest timely filed written opposition.

This motion will be GRANTED. Movant shall be awarded \$1,386.00 in fees and \$14.00 in costs. Trustee will be authorized to pay Movant \$1,400.00 for services rendered and expenses incurred between February 27, 2020 and November 16, 2020.

5. [15-11070](#)-B-7     **IN RE: SHAWN KNIGHT**  
[FW-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,  
P.C. FOR PETER A. SAUER, TRUSTEES ATTORNEY(S)  
1-8-2021    [[89](#)]

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 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 amount of damages). *Televideo Systems, 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.

Peter A. Sauer of Fear Waddell, P.C. ("Movant"), general counsel for chapter 7 trustee Peter L. Fear ("Trustee"), requests fees of \$6,587.50 and costs of \$137.10 for a total of \$6,724.60 for services

rendered from March 12, 2020 through January 7, 2021. Doc. #89. Trustee filed a declaration stating that he reviewed the fee application, believes the requested fees and expenses are reasonable and necessary for the administration of the estate, and has no objection to the approval of this fee application. Doc. #92. No party in interest timely filed written opposition.

This motion will be GRANTED.

This is Movant's first and final fee application.

This case was filed on March 20, 2015 and Trustee was appointed as the interim trustee on that same date. Doc. #1. Trustee became permanent trustee on April 24, 2015, the debtor received a discharge on June 29, 2015, and the case was closed on July 10, 2015 with no distribution to creditors. Doc. #20; #22. On February 27, 2020, the United States trustee moved to reopen the case. Doc. #24. On that same date, the court issued an order reopening the case and Trustee was appointed as successor trustee. Doc. #25; #26. On April 10, 2020, Trustee sought to employ Movant as general counsel. Doc. #36. This motion was granted on April 21, 2020 and effective March 10, 2020. Doc. #40. The order authorizing employment stated that employment was subject to the applicable provisions of 11 U.S.C. §§ 327, 329-331 and no compensation would be permitted except upon court order following application under § 330(a). *Id.* Compensation was set at the "lodestar rate" applicable at the time services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988).

Movant indicates that his firm spent a total of 28.1 billable hours totaling \$6,587.50 in fees as follows:

Professional	Rate	Hours	Fees
Peter A. Sauer (2020)	\$235.00	25.0	\$5,875.00
Peter A. Sauer (2021)	\$245.00	0.5	\$122.50
Katie Waddell (2020)	\$220.00	0.8	\$176.00
Katie Waddell (2021)	\$230.00	1.8	\$414.00
<b>Totals:</b>		<b>28.1</b>	<b>\$6,587.50</b>

Doc. #89, ¶ 5. Movant also incurred the following expenses:

Copying	\$75.00
Postage	\$62.10
<b>Total Costs:</b>	<b>\$137.10</b>

*Id.*, ¶ 6. These fees and expenses total \$6,724.60. As noted above, Trustee filed a declaration stating that he reviewed the fee application, believes the fees and expenses are reasonable and necessary to the estate, and has no objection to this application. Doc. #92.

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." Movant's services included, without limitation: (1) disputing the debtor's claimed exemptions; (2) negotiating a settlement wherein the debtor would "carve-out" a portion of the homestead exemption in return for the estate's ownership of the balance of the proceeds, and seeking approval of such settlement (FW-3); (3) preparing and filing a motion to obtain court approval of a settlement in multi-district litigation (FW-4); and (4) preparing and filing fee (FW-5) and employment applications (FW-1; FW-2). Doc. #93, Ex. A. The court finds the services reasonable and necessary and the expenses requested actual and necessary. No party in interest timely filed written opposition.

This motion will be GRANTED. Movant shall be awarded \$6,587.50 in fees and \$137.10 in costs. Trustee will be authorized to pay Movant \$6,724.60 for services rendered and expenses incurred between March 12, 2020 and January 7, 2021.

6. [20-12272](#)-B-7     **IN RE: RICHARD MULLEN AND DORIS CAFFEE-MULLEN**  
[RPZ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-7-2021    [[20](#)]

CITIMORTGAGE, INC./MV  
DAVID JENKINS/ATTY. FOR DBT.  
ROBERT ZAHRADKA/ATTY. FOR MV.  
DISCHARGED 11/16/20

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

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

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

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 amount of damages). *Televideo Systems, 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. The debtors' discharge was entered on November 16, 2020. Doc. #18. Therefore, the automatic stay terminated with respect to the debtors on November 16, 2020. This motion will be DENIED AS MOOT IN PART as to the debtors' interest and will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, CitiMortgage, Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a piece of real property located at 1530 Michael Street, Visalia, California 93292 ("Property"). Doc. #20.

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 debtors have been in default since September 1, 2020. Doc. #23.

The court also finds that the debtors do not have any equity in the property and the property is not necessary to an effective reorganization because debtors are in chapter 7. Debtors have valued the Property at \$90,000.00. Doc. #1. The amount owed to Movant is \$107,387.20. Doc. #22.

Accordingly, the motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtors' interest under § 362(c)(2)(C).

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

7. [20-13178](#)-B-7     **IN RE: JOHN/WINONA VINCENT**  
[APN-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-4-2020    [[18](#)]

NISSAN MOTOR ACCEPTANCE  
CORPORATION/MV  
SCOTT LYONS/ATTY. FOR DBT.  
AUSTIN NAGEL/ATTY. FOR MV.  
DISCHARGED 1/19/21

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

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

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

This matter was originally set for hearing on 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and scheduled for January 26, 2021 at 1:30 p.m. Doc. #19. John D. Vincent and Winona R. Vincent ("Debtors"), their attorney Scott Lyons, and chapter 7 trustee Peter L. Fear ("Trustee") were properly served; the United States Trustee ("UST") was not properly served. Doc. #23. On January 7, 2021, in an effort to correct the service defect, the movant filed an amended notice of hearing continuing the matter to February 9, 2021 at 1:30 p.m. Doc. #24. According to the separately filed certificate of service, the amended notice of hearing was served solely on UST. Doc. #25.

There is also a certificate of service attached to the amended notice indicating that Debtors, their attorney, and Trustee were served the amended notice. Doc. #24. The court notes that LBR 9004-2(c), (e)(1), and (e)(2) provide that notices, proofs of service, and other specified pleadings are to be filed as separate documents and copies of the pleadings and documents served "SHALL NOT be attached to the proof of service." This procedural defect, however, is *de minimis* in this case because all parties were served as required by Fed. R. Bankr. P. 4001, 7004, and 9014, Debtors already received a discharge and intend to surrender the vehicle, and Trustee filed a Report of No Distribution. Similar violations of the local rules in other matters may result in the motion being denied without prejudice.

No parties appeared at the January 26, 2021 hearing and defaults of all parties except UST were entered on the record. Doc. #29. The court issued an order continuing the matter to February 9, 2021 at 1:30 p.m. Doc. #30.

This continued hearing was set on 28 days' notice under LBR 9014-1(f)(1). The failure of the UST to file written opposition at least 14 days prior to the hearing under 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, UST's default will be 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 Systems, 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.

Nissan Motor Acceptance Corporation ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2018 Nissan Sentra ("Vehicle)". Doc. #18.

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. Debtors' discharge was entered on January 19, 2021. Doc. #26. Therefore, the automatic stay terminated with respect to Debtors on January 19, 2021. This motion will be DENIED AS MOOT IN PART as to Debtors' interest and will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

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 Debtors have missed at least four pre-petition payments and two post-petition payments totaling at least \$3,172.43, plus \$173.75 in late fees. Doc. #22. Additional payments \$528.74 will continue to become due each month. Doc. #20. Movant additionally contends that Debtors have not provided proof of insurance coverage and suspect that Vehicle is being operated without insurance coverage. *Id.* Moreover, Debtors' *Statement of Intention* indicates that Debtors intend to surrender Vehicle. Doc. #1, at 73.

The court also finds that Debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because Debtors are in chapter 7. The Vehicle is valued at \$11,425.00 and Debtors owe Movant \$25,269.66. *Id.*

No opposition was timely filed in response to this motion. Accordingly, the motion will be GRANTED IN PART as to Trustee's interest and DENIED AS MOOT IN PART as to Debtors' interest under § 362(c)(2)(C).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the Vehicle is a depreciating asset, Debtors intend to surrender Vehicle, Debtors have not provided proof of insurance, and Movant's interest is not adequately protected.

8. [21-10080](#)-B-7     **IN RE: LEONARDO VASQUEZ**  
[EMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-21-2021    [[14](#)]

CAM VENTURE I REO, LLC/MV  
ERIN MCCARTNEY/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.

This motion was filed and served 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.

CAM Venture I REO, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) to proceed with a state court unlawful detainer action in connection with real property located at 185 Oceanview Drive, Vista, CA 92084 ("Vista Property"). Doc. #14.

This motion will be GRANTED.

Leonardo Vasquez ("Debtor") filed this case on January 14, 2021. Doc. #1. The petition appears to be mistaken or ambiguous because Debtor purports to live at 341 Burning Tree Dr., San Jose, CA 95119 ("San Jose Property"), receives mail at Vista Property, but has also lived in this district longer than in any other district over the last 180 days. *Id.*, at 2, ¶¶ 5, 6. Debtor only filed Schedule A/B and has until February 11, 2021 to file his remaining schedules. Doc. #27. Schedule A/B says that Debtor does not own any real property. Doc. #23.

Debtor previously filed another case in this district on December 11, 2020, which was heard before the Honorable Chief Judge Ronald H. Sargis and dismissed on December 29, 2020 for failure to timely file schedules. See case no. 20-25508, Doc. #23. Movant filed a motion similar to this motion in that case, but it was denied as moot since the case had already been dismissed. *Id.*, Doc. #29. The previous case was filed with joint debtor Miriam Malone, who was purportedly Debtor's spouse pending ongoing divorce proceedings. *Id.*, Doc. #1, at 2, ¶ 6. Debtor did not claim to live in this district longer than in any other district over the last 180 days before filing, but venue was proper because Ms. Malone supposedly lived in Sacramento,

California. *Ibid*. Considering that Debtor did not individually meet that prerequisite just two months ago, it is questionable whether Debtor did in fact reside in this district longer than in any other over the last 180 days. Thus, at first glance, venue appears to be improper.

The case's ailments do not improve. Debtor used a different social security number in each filing. The two social security numbers are dissimilar, so this does not appear to be a clerical error. It seems unlikely that Debtor could have acquired a new social security number between the time his last case was dismissed and this case was filed.

It also seems that Debtor does not live at San Jose Property, his supposed home address. On January 25, 2021, a third party named Mike Tisdell filed a letter with the court that stated he has been receiving legal paperwork from Dynamic Legal Services addressed to Leonardo Vasquez at San Jose Property. Doc. #22. Mr. Tisdell claims to have lived at San Jose Property for over 20 years and has "no knowledge of anyone named Leonardo Vasquez." *Id*. "This is fraudulent information and must be corrected," claims Tisdell. Due to the above discrepancies, Debtor's filings lack credibility.

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 no apparent ownership interest in Vista Property. Debtor's only connection to Vista Property is listing it as his mailing address, which is disputed by Mr. Tisdell.

The court also finds that Debtor does not have any equity in Vista Property and it is not necessary to an effective reorganization because this is a chapter 7 case.

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 (B.A.P. 9th Cir. 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;
5. 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; see also *Kronemyer*, 405 B.R. at 921.

Relief from the stay may result in complete resolution of the issues and the matter in the state courts is unrelated to this bankruptcy. Unlawful detainer actions are a state court matter and not something the bankruptcy court would hear. The state court proceeding involves third parties and does not involve Debtor. Other creditors will not be prejudiced by allowing the state court action to proceed because Debtor has no ownership interest in Vista Property, and thus it cannot be liquidated to benefit the estate. The state court action is not subject to equitable subordination under § 510(c) or an avoidable judicial lien under § 522(f). The interests of judicial economy and the expeditious and economical determination of litigation for the parties weigh in favor of stay relief, as Movant obtained ownership of Vista Property on May 7, 2020. The "balance of hurt" weighs in favor of Movant because it has been attempting to acquire possession of Vista Property since acquisition but has been

hindered and delayed in enforcing its rights and remedies due to repeated bankruptcy filings.

Accordingly, this motion will be GRANTED pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) so that Movant may proceed with its unlawful detainer action in state court.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtor has no ownership interest in Vista Property and appears to have filed this case solely to delay Movant.

9. [20-13782](#)-B-7     **IN RE: RAQUEL JIMENEZ**  
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-7-2021    [[16](#)]

VW CREDIT LEASING, LTD./MV  
SUSAN SALEHI/ATTY. FOR DBT.  
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION:        Denied as moot.

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

This motion relates to an executory contract or lease of personal property. The case was filed on December 1, 2020 and the lease was not assumed by the chapter 7 trustee within the time prescribed in 11 U.S.C. § 365(d)(1). Pursuant to § 365 (p)(1), the leased property is no longer property of the estate and the automatic stay under § 362(a) has already terminated by operation of law.

Since there is no opposition from the debtor, the court is unaware if debtor exercised her option to assume the lease under § 365(p)(2).

Accordingly, Movant may submit an order denying the motion and confirming that the automatic stay has already terminated on the grounds set forth above. No other relief is granted.

10. [20-13786](#)-B-7    **IN RE: ALYSSA TORRES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
1-13-2021    [[28](#)]

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

DISPOSITION:        The OSC will be vacated.

ORDER:                The court will issue an order.

The record indicates that \$1.00 fee was paid on February 8, 2021.  
Accordingly, the order to show cause will be vacated.