UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, April 27, 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, **and all parties will need to appear at the hearing unless otherwise ordered.** The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

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

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

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

9:30 AM

1. 20-10800-B-11 **IN RE: 4-S RANCH PARTNERS, LLC**

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

ALEXANDER LEE/ATTY. FOR DBT.

NO RULING.

2. 20-10800-B-11 **IN RE: 4-S RANCH PARTNERS, LLC**
MF-14

AMENDED CHAPTER 11 DISCLOSURE STATEMENT FILED BY DEBTOR 4-S RANCH PARTNERS, LLC
3-15-2021 [394]

ALEXANDER LEE/ATTY. FOR DBT.
RENO FERNANDEZ/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

Debtor-in-possession 4-S Ranch Partners, LLC ("4-S") seeks approval of its chapter 11 Disclosure Statement. Doc. #394.

United States Trustee Tracy Hope Davis ("UST") and Sandton Credit Solutions Master Fund IV, LP ("Sandton"), timely objected as to the adequacy of information provided in the Disclosure Statement. Docs. #405; #408.

Sandton obtained stay relief for 4-S's real property on April 1, 2021 and a foreclosure sale is scheduled for April 29, 2021. Doc. #404. Because the real property is essential for 4-S's proposed Plan of Reorganization, UST contends that 4-S should amend the Disclosure Statement to address how the stay relief and foreclosure affect the implementation and feasibility of the plan. Doc. #405. Sandton joins UST's objection. Doc. #407.

Meanwhile, Sandton proceeded with enforcement of its rights and remedies in state court after the effective date of stay relief. A Receiver was appointed by the Merced Superior Court and a nonjudicial foreclosure sale of 4-S's property has been scheduled for April 29, 2021.

4-S's owner, William Sloan, is involved in a related chapter 11 bankruptcy. Mr. Sloan believes he will be able to sell or refinance the loan secured by 4-S's real property prior to the sale date, but acknowledges that it may be sold by trustee's sale and Sandton may or may not have a deficiency claim remaining against 4-S and himself individually. *See In re Stephen Sloan*, case no. 20-10809, Doc. #358.

This matter will be called as scheduled to inquire about 4-S's position. In light of recent developments in this case that are not contemplated in the Disclosure Statement, the court is inclined to DENY approval of the Disclosure Statement.

3. 20-10809-B-11 **IN RE: STEPHEN SLOAN**

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

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Continued to June 15, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

The court intends to continue the hearing on debtor-in-possession Stephen William Sloan's ("DIP") Third Amended Plan of Reorganization ("Plan") to June 15, 2021 in matter #5 below. FW-9. Accordingly, this status conference will be continued to June 15, 2021 at 9:30 a.m. to be heard in connection with DIP's Plan.

4. 20-10809-B-11 **IN RE: STEPHEN SLOAN**
FW-9

CONFIRMATION HEARING RE: AMENDED CHAPTER 11 PLAN
2-26-2021 [340]

PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to June 15, 2021 at 9:30 a.m.

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

On March 3, 2021, the court approved debtor-in-possession Stephen William Sloan's ("DIP") Disclosure Statement and set the Third

Amended Plan of Reorganization ("Plan") for confirmation hearing for April 27, 2021. Doc. #343.

Oak Valley Community Bank, Inc. ("Oak Valley") timely objects to confirmation because the Plan: (1) is not feasible; (2) unfairly discriminates against Oak Valley's claim and is neither fair nor equitable with respect to that claim. Doc. #351.

DIP replied, contending that the Plan is fair and equitable and does not unfairly discriminate against Oak Valley's claim. Doc. #363. DIP argues that the Plan is feasible, but requests that the court continue this hearing to June 15, 2021 to determine the impact of foreclosure sales scheduled for April 27 and 29, 2021. *Id.* DIP also requested to continue the hearing by motion in matter #5 below. Doc. #353.

The court intends to continue the hearing on DIP's Plan to June 15, 2021 in matter #5 below. Accordingly, this confirmation hearing will be continued to June 15, 2021 at 9:30 a.m. Further opposition shall be filed and served not later than June 1, 2021 and DIP's reply, if any, is due not later than June 8, 2021. If no further opposition is filed, DIP shall instead file a status report not later than June 8, 2021.

5. 20-10809-B-11 **IN RE: STEPHEN SLOAN**
FW-9

MOTION TO CONTINUE CONFIRMATION HEARING RE: AMENDED/MODIFIED PLAN
4-13-2021 [353]

STEPHEN SLOAN/MV
PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to June 15, 2021 at 9:30 a.m.

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

This derivative motion was filed on less than 28 days' notice under 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-in-possession Stephen William Sloan ("DIP") seeks to continue the hearing on the confirmation of DIP's Third Amended Plan of Reorganization ("Plan") in matter #4 above from April 27, 2021 to June 15, 2021 under Fed. R. Bankr. P. 9006(b). Doc. #353.

In the absence of opposition, the court is inclined to GRANT this motion.

Fed. R. Bankr. P. 9006(b)(1) provides:

> *In general.* Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

Fed. R. Bankr. P. 9006(b)(2) and (3) provide instances where enlargement is prohibited or is governed by other rules that are inapplicable here.

On March 3, 2021, the court approved DIP's Disclosure Statement and set the Plan confirmation hearing for April 27, 2021. Doc. #343. The Plan proposes to pay all creditors in full by selling or refinancing approximately 5,300 acres of real property owned by DIP's limited liability company, 4-S Ranch Partners, LLC, ("4-S Property") or approximately 668 acres of farm property ("Hamburg Property") owned by DIP. Doc. #307. If this sale or refinance is insufficient to pay creditors in full, the Plan provides for DIP to liquidate his remaining assets to pay all claims in full. DIP declares that he has been actively working to sell or refinance 4-S Property and believes that such a sale or refinance will happen shortly. Doc. #358, ¶ 12.

Class 1.1 secured creditor Sandton Credit Solutions Master Fund, IV, LP ("Sandton") obtained stay relief effective April 1, 2021. Doc. #302. Trustee's sales are scheduled for April 27, 2021 for Hamburg Property and April 29, 2021 for 4-S Property. Doc. #358, ¶ 13. Based on communications with Sandton, DIP believes that Sandton will be amenable to postponing the trustee's sales if DIP has a bona fide sale or refinance in place before the sales dates even though the first of those sales is scheduled for the same date as this hearing. *Ibid.* If, however, Sandton conducts the trustee's sales as currently scheduled, there may be issues regarding feasibility of the Plan if DIP is forced to liquidate other assets to satisfy claims in this case. *Ibid.*

DIP believes that there are four possible scenarios that will occur pending the outcome of the scheduled trustee's sales:

(1) Sandton conducts the trustee's sales, their claim is paid in full, and there is no deficiency;

(2) Sandton postpones the sales to allow for a sale or refinance to occur;

(3) Sandton conducts the trustee's sales and there is a small deficiency; or

(4) Sandton conducts the trustee's sales and there is a large deficiency.

Id., ¶ 14. DIP believes that the Plan will remain feasible in the first three scenarios but estimates that the fourth will pose an issue to Plan feasibility if the deficiency is more than approximately $10 million. *Ibid.*

As result, DIP requests a continuance of the Plan confirmation hearing to June 15, 2021 so that there is sufficient time to determine (1) the amount of Sandton's deficiency after completion of the trustee's sales, if any; or (2) whether DIP was able to complete a sale or refinance to pay Sandton in full. Doc. #353.

Upon review of the motion and the included evidence, and in the absence of any opposition, the court finds that DIP, Sandton, and creditors will not be prejudiced by a short continuance to determine the outcome of Sandton's trustee's sales or DIP's sale or refinance. The feasibility of DIP's proposed Plan is dependent upon the outcome of Sandton's trustee's sales or DIP's sale or refinance. This delay will not have any impact on the judicial proceedings because either the scheduled trustee's sales will take place on April 27 and 29, 2021 at Sandton's discretion; or DIP is able to secure a sale or refinance acceptable to Sandton by the scheduled sales dates. DIP filed this motion in a reasonable time in light of Sandton obtaining stay relief April 1, 2021 and scheduling trustee's sales for the respective properties. The court finds that DIP acted in good faith.

Plan confirmation will be CONTINUED to June 15, 2021 at 9:30 a.m. The court will set a hearing schedule if confirmation remains contested at the re-scheduled hearing. As noted in matter #4 above, further opposition to Plan confirmation shall be filed and served not later than June 1, 2021 and DIP's reply, if any, is due not later than June 8, 2021. If no further opposition is filed, DIP shall instead file a status report not later than June 8, 2021.

6. 20-12642-B-11 **IN RE: 3MB, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
8-11-2020 [1]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

7. 20-12642-B-11 **IN RE: 3MB, LLC**
AG-4

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
3-10-2021 [193]

U.S. BANK NATIONAL
ASSOCIATION/MV
LEONARD WELSH/ATTY. FOR DBT.
AMIR GAMLIEL/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to track confirmation proceedings or alternatively, denied.

ORDER: The court will issue an order.

This motion was filed on 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1).

U.S. Bank N. A. ("USB") moves the court for an order terminating the automatic stay of 11 U.S.C. §§ 362 (d)(1), (2), and (3), to allow it to enforce its rights and remedies under the Loan Documents including foreclosing on real property commonly referred to as the Village at Towne Center, 1201 24th Street, Bakersfield, CA 93301 ("Shopping Center"). Doc. #193.

USB seeks relief from the automatic stay because: (a) 3MB has failed to propose a plan of reorganization that is confirmable within a reasonable time period; (b) 3MB has failed to make payments equal to the non-default interest rate; (c) USB has not been adequately protected from the decline in the value of the Shopping Center; (d) 3MB filed this chapter 11 case in bad faith; and (e) 3MB has no equity in the Shopping Center and cannot successfully reorganize. *Id.*

Debtor-in-possession 3MB, LLC ("3MB"), timely opposed the motion. Doc. #218.

USB replied and submitted evidentiary objections to the declaration of Robert Bell in support of 3MB's opposition. Docs. ##227-28.

On April 6, 2021, the parties stipulated to continue this motion to April 27, 2021 at 9:30 a.m. due to ongoing negotiations regarding a consensual resolution to the chapter 11 case. Doc. #230. The court approved the stipulation that same day and amended the order on April 8, 2021. Docs. #232; #237.

No further briefing was permitted. *Id.* As of this writing, no further stipulations for a consensual resolution to this matter have been filed.

This matter will proceed as scheduled.

BACKGROUND

The Loan

3MB obtained a $6.4 million loan from Prudential Mortgage Capital Company on October 14, 2006. Doc. #195. Subsequently, Prudential made a $3.05 million loan to 3MB on Aril 13, 2007 and consolidated it with the first loan in the combined amount of $9.45 million. *Id.* These loans are evidenced by separate notes and a consolidated promissory note and secured by an original deed of trust, assignment of rents, and post-consolidation deed of trust ("Loan Documents"). Under the terms of the loan, monthly payments of $53,308.25 are due on the fifth of each month beginning June 5, 2007. All unpaid balances of principal and accrued unpaid interest were due on May 5, 2017. *Id.*

Prudential assigned the Loan Documents to LaSalle Bank National Association effective June 27, 2007. Bank of America became the successor by merger LaSalle effective January 1, 2011 and assigned the Loan Documents to USB on October 6, 2017. *Id.*

Default

On May 5, 2017, the loan matured. 3MB defaulted. *Id.*

On August 11, 2017, USB provided notice to 3MB of the default, revoked 3MB's license in the assignment of rents and deed of trust and demanded all amounts due under the loan.

On June 15, 2018, USB commenced a non-judicial foreclosure on the Shopping Center by recording a notice of default and notice of trustee's sale scheduled for November 21, 2018.

On November 6, 2018, USB filed a receivership lawsuit seeking: (1) appointment of a receiver, accounting, and specific performance of the rents-and-profits clause; and (2) injunctive relief.

On November 14, 2018, the state court granted USB's *ex parte* application for the appointment of a receiver and issued a receivership order. 3MB was ordered to appear on November 29, 2018 to explain why a receiver should not be confirmed and why 3MB should not be prohibited from controlling or receiving any income from the Shopping Center.

First Bankruptcy

On November 19, 2018, 3MB filed chapter 11 bankruptcy. Case No. 18-14663. In the first bankruptcy, 3MB claimed the Shopping Center was valued at $12 million. *Id.*, Doc. #1. USB filed Proof of Claim No. 1 on August 14, 2019 in the amount of $8,950,963.89 as of July 17, 2019. *Id.*, Claim #1-2. USB hired CBRE, Inc., to conduct an appraisal, which valued the Shopping Center "as is" at $9,200,000 as of March 7, 2019, and as complete at $9,300,000 as of June 7, 2019.

3MB and USB agreed to the use of cash collateral provided that, among other things, 3MB would continue to pay USB monthly interest payments at the contractual non-default rate. *Id.*, Doc. #38.

On May 20, 2019, 3MB's exclusive period to propose a plan expired and USB filed its own Disclosure Statement and Plan of Liquidation for 3MB. *Id.*, Doc. #144. USB's Plan proposed to employ a manager to take over day-to-day operations of the Shopping Center until it could be sold. USB expected to be paid from the Shopping Center and proposed to pay non-insider unsecured creditors in full.

Subsequently, 3MB proposed a Disclosure statement and Plan of Reorganization. *Id.*, Docs. ##188-89. 3MB sought to keep the current management in place and repay USB over an extended period. USB sought inclusion of the default interest rate, which 3MB opposed claiming that allowance of default interest would make the plan infeasible. The court published an opinion on December 5, 2019 overruling 3MB's objection, finding that USB's default interest provision was not a liquidated damages clause, and even if it was, it was valid and enforceable under applicable law. *In re 3MB, LLC*, 609 B.R. 841, 845 (Bankr. E.D. Cal. 2019).

On September 6, 2019, the court approved a joint disclosure statement relating to both 3MB and USB's plans. Case No. 18-14663, Doc. #272. No plan solicitations occurred because the parties entered into a settlement agreement on December 18, 2019. The Settlement Agreement provided:

(a) 3MB would file a motion to dismiss the first bankruptcy;
(b) USB would accept a reduced payoff amount of $8,500,000 on or before January 31, 2020 at 3:00 p.m.
(c) 3MB could extend the deadline to March 31, 2020 by making a $100,000 extension payment;
(d) 3MB would continue to make monthly non-default interest payments to USB of $47,800 pending payment of the payoff amount; and
(e) In the event the payoff amount is not paid by March 31, 2020, 3MB agreed to (i) not delay, oppose, enjoin, or otherwise disrupt the holding of any foreclosure sale under the deed of trust; (ii) stipulate to the immediate appointment of USB's recommended receiver for the Shopping Center; and (iii) stipulate to entry of judgment against guarantors for all amounts due and owing under the Loan Documents.

Id. 3MB subsequently moved to dismiss its first bankruptcy, which was granted on January 10, 2020. Case No. 18-14663, Doc. #329.

Second Bankruptcy

Following dismissal, 3MB extended the deadline to pay the reduced payoff amount to March 31, 2020 by making the $100,000 extension payment. 3MB made non-default interest payments to USB of $47,800 in both January and February 2020. 3MB did not make any further payments and did not pay the payoff amount by March 31, 2020. Doc. #35, ¶ 18.

After several months of negotiations regarding further forbearance, USB intended to proceed with foreclosure on August 12, 2020. On August 11, 2020, 3MB filed this second chapter 11 bankruptcy. Doc. #1.

USB filed Proof of Claim No. 5 in the amount of $9,620,744.05 on October 5, 2020. Claim #5-1. In addition to USB's claim, the Kern County Treasurer-Tax Collector ("KCTTC") filed two proofs of claim asserting a total secured claim of $283,933.56, which is an increase from the $109,317.15 claim filed in the first bankruptcy. Claims #1-1; #2-1.

USB agreed to 3MB's use of cash collateral through December 31, 2020 pursuant the parties' stipulation. Doc. #108. Under the budget proposed under the stipulation, 3MB agreed to pay USB $34,875 per month to USB, which is lower than the previous amount of $53,308.25 owed under the Loan Documents. USB contends that these payments do not constitute adequate protection. *Id.*, ¶ 6.

3MB's Plan of Reorganization

3MB proposed a Plan of Reorganization (Doc. #93) and Disclosure Statement (Doc. #94) on November 10, 2020 ("First Plan").

The First Plan included a non-consensual sale of a portion of USB's collateral — the Starbucks Pad and the Western Dental Pad — for $4.5 million. The proceeds from the sale will pay down USB's secured claim, leaving a projected $5.47 residual claim, which will accrue interest at a rate of 4.75% per year. 3MB will make monthly payments of $28,434.11. 3MB's equity holders will retain their ownership interests and continue to manage the Shopping Center through an affiliate for a monthly fee.

At the hearing on the first Disclosure Statement, the court raised several concerns regarding the adequacy of 3MB's disclosures and the feasibility of 3MB's First Plan. Doc. #149. The first Disclosure Statement was not approved. Doc. #154.

3MB proposed an Amended Plan of Reorganization and Amended Disclosure Statement on February 4, 2021. The continued hearing to approve the Amended Disclosure Statement is set for April 27, 2021 in matter #8 below. *See* LKW-11.

DISCUSSION

Evidentiary Objections

As noted above, USB filed evidentiary objections to five paragraphs of Robert Bell's declaration (Doc. #219) in support of 3MB's opposition to this motion. Doc. #228. Before discussing relief from the automatic stay, the court will address USB's evidentiary objections.

Paragraph 3 – Best evidence

First, USB objects to ¶ 3 of the declaration, which states: "Debtor is willing to sell all of the Shopping Center to satisfy all allowed claims if an acceptable offer is received though the Amended Plan provides only for the sale of what are identified as the 'Starbucks Pad' and the 'Western Dental Pad'." Doc. #219, ¶ 3. USB contends that this violates Fed. R. Evid. 1002 because the best evidence of what 3MB is willing to do is its statements in the Amended Plan. Doc. #228. This objection will be OVERRULED because this statement of willingness to sell is not contrary to the Amended Plan.

Paragraph 4 – Hearsay

USB objects to ¶ 4 of the declaration. Paragraph 4 provides:

> I have met with potential buyers who have expressed interest in purchasing part or all of the Shopping Center since 3MB filed its Chapter 11 case. Additionally, I have met with potential investors who can provide financing to [3MB] sufficient to repay [USB]'s and other creditors' claims. Finally, I have met with real estate sales companies about the sale of part of all of the Shopping Center since [3MB] filed its Chapter 11 case – all of which show [3MB]'s commitment to reorganizing its business and repaying the debt owed to its creditors.

Doc. #219, ¶ 4. USB objects under Fed. R. Evid. 802 on the basis that this is hearsay. Doc. #228. If the testimony is offered to prove what potential buyers or investors may do, then this objection will be SUSTAINED. If the testimony is offered for another purpose, such as evidence of efforts to refinance or liquidate, then the objection will be OVERRULED.

Paragraph 5 – Hearsay

Paragraph 5 of Mr. Bell's declaration states:

> Jeffrey Leggio from ASU has informed me that he is in "active negotiations" with a potential purchasar [sic] of the Starbucks Pad and that he hopes to have an offer from the potential purchasar [sic] soon. Mr. Leggio said that the purchase price for the Starbucks Pad will be consistent with the Listing Price found in the Commercial and Residential Listing Agreement between [3MB] and ASU- to wit: $4.75 million for the Starbucks and the Western Dental Pad.

Doc. #219, ¶ 5. USB objects under Fed. R. Evid. 802 and contends that Mr. Bell is making statements regarding Mr. Leggio's actions and beliefs. Doc. #228. If the testimony is offered to prove the truth of what potential buyers or investors may do, then this objection will be SUSTAINED. If the testimony is offered for another purpose, such as demonstrating efforts to sell the Starbucks and Western Dental Pads, then the objection will be OVERRULED.

Paragraph 6 – Lack of foundation, improper opinion, and speculation

In ¶ 6, Mr. Bell states:

> However, I believe that [3MB] has survived the worst of the Coronavirus pandemic and that its ability to fill tenant vacancies in the Shopping Center, increase its income, and sell the "Starbucks Pad" and the "Western Dental Pad" as required by the Amended Plan is realistic and attainable and will occur soon.

Doc. #219, ¶ 6. USB has three objections to this paragraph: lacks foundation, improper opinion, and speculative.

USB objects on the basis that the statement lacks foundation under Fed. R. Evid. 400-403. Doc. #228. USB argues that Mr. Bell has not established that he has personal knowledge or familiarity with the ongoing COVID-19 pandemic or related government regulations which might impact either general economic trends or specific operations of the Shopping Center. *Id.* This objection will be OVERRULED. Mr. Bell is a member and authorized representative of 3MB and has demonstrated familiarity with operation of the center.

USB also objects as improper opinion testimony under Fed. R. Evid. 701. USB argues that a person may testify as a lay witness only if the opinions or inferences do not require any specialized knowledge and could be reached by an ordinary person. Doc. #228 (citing *Doddy v. Oxy USA, Inc.*, 101 F.3d 448 (5th Cir. 1996); *Brady Chemical Const., Corp.*, 740 F.2d 195, 200 (2d Cir. 1984)). This objection will be OVERRULED because it is rationally based on Mr. Bell's perceptions of the effects of the pandemic on the center and such testimony is helpful for the fact finder and not based on specialized knowledge. The weight of the testimony is considered in light of the evidence.

USB further objects to this testimony as speculative under Fed. R. Evid. 602. USB insists that Mr. Bell is speculating as to COVID-19 pandemic and that its impact will decrease in the near future. Moreover, USB argues that Mr. Bell is speculating that tenant vacancies will be filled and that 3MB's business will generate sufficient income to fund required payments under the plan. This objection will be SUSTAINED as to the extent of the future of the pandemic but OVERRULED as to the balance of testimony. The testimony will be weighed in light of other evidence.

Paragraph 7 – Lack of foundation, speculation

Lastly, USB objects to ¶ 9 of the declaration, which states: "I believe that the Income and Expense Projections included as Exhibit 'B' and Exhibit 'C' to [3MB]'s First Amended Disclosure Statement Dated February 8, 2021 are realistic and attainable." Doc. #219, ¶ 7.

USB objects to this testimony as lacking foundation under Fed. R. Evid. 400-403 because Mr. Bell does not establish sufficient facts for this opinion. Doc. #228. This objection will be OVERRULED

because Mr. Bell's status as member of 3MB is established and therefore Mr. Bell would be able to testify about projections.

USB also argues that the testimony is speculative under Fed. R. Evid. 602 because Mr. Bell does not establish sufficient facts for this opinion and that he is speculating as to whether 3MB's business will generate sufficient income to fund required payments under the Amended Plan. Doc. #228. This objection will be OVERRULED. All projections are speculative. The objection goes to weight, not authority.

Automatic Stay

11 U.S.C. § 362(d) provides multiple avenues for creditors to seek relief from the automatic stay. The burden of proof on all issues except the issue of equity in the debtor's property lies with the party objecting to relief from stay. 11 U.S.C. § 362(g); *see also In re Dev., Inc.*, 36 B.R. 998, 1004 n.2 (Bankr. D. Haw. 1984); *Frankford Trust Co. v. Dublin Props. (In re Dublin Props.)*, 12 B.R. 77, 79 (Bankr. E.D. Pa. 1981). USB contends that stay relief is warranted under §§ 362(d)(1), (2), and (3).

Section 362(d)(3)

11 U.S.C. § 362(d)(3) allows the court to grant relief from the stay in single asset real estate cases where, after 90 days from entry of the order for relief, the debtor either (a) failed to file a plan "that has a reasonable possibility of being confirmed within a reasonable time;" or (b) failed to make monthly payments equal to the non-default interest rate.

USB contends that 3MB's First Plan was an "unrealistic bare-bones plan" and the Amended Plan is only "a slightly-revised version" of the same plan that was filed more than 90 days after the case was filed. Doc. #195. USB argues that none of these versions have a realistic prospect of reorganization within a reasonable period.

USB claims it is entitled to non-default interest of $47,800 under the Loan Documents, but 3MB is only making payments of $34,875 as a condition for use of its cash collateral. *Cf.* Doc. #108. USB cites 3MB's income projections in Exhibit B to the Amended Disclosure Statement, which shows, after payment of expenses and adequate protection to USB, 3MB's projected net income ranges from $3,438.19 to $5,063.19 from February 2021 through January 2022. Doc. #195 (citing Doc. #175, Ex. B, Income and Expense Projections Before Sale of Starbucks Pad and Western Dental Pad).

On this basis USB claims that even if 3MB were to pay all remaining net income to USB, 3MB would still not be paying the full amount of the non-default interest rate. Further, USB insists that 3MB has not convincingly demonstrated that it will achieve income at the projected levels, as its November 2020 monthly operating report indicates only $38,210 in rent was collected. Doc. #127. USB states that 3MB has clearly failed to satisfy § 362(d)(3)(B).

As to § 362(d)(3)(A), USB argues that 3MB's plan does not have a reasonable chance of being confirmed within a reasonable time. The plan is patently unconfirmable, USB claims, because of its (i) unfair and discriminatory treatment of USB's claim under § 1129(b)(2)(A) and (ii) its lack of feasibility as required by § 1129(a)(11).

USB then launches into a discussion under § 1129 about the Amended Plan. USB argues that it does not provide (i) fair and equitable treatment to USB, (ii) the interest rate is too low, (iii) a 30-year repayment term is unfair, (iv) the plan is not feasible, (v) 3MB has insufficient cash receipts, (vi) the Shopping Center is not worth $12 million, (vii) 3MB's testimony demonstrates the plan has no reasonable chance of success, and (viii) the plan violates the absolute priority rule.

In response, 3MB contends that the Amended Plan satisfies the requirements of §§ 1129(a) and (b) and provides for payment in full of USB's allowed claim over time as permitted by § 1129(b)(2)(A). Doc. #218. 3MB believes the Income and Expense Projects in the First Amended Disclosure Statement are reasonable and attainable notwithstanding difficulties caused by COVID-19. Thus, 3MB argues the court may find the Amended Plan is feasible, satisfies the other chapter 11 requirements, and can be confirmed. This demonstrates that there is a "reasonable possibility" that the Amended Plan can be confirmed within a reasonable time as required. Further, 3MB insists that the proper forum for determining whether the Plan can be confirmed is at its confirmation hearing, not at a motion for relief from the automatic stay.

The court agrees with 3MB. USB acknowledges that relief from the automatic stay is not proper if 3MB has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time. Doc. #195, at 12, ¶¶ 21-25. Of course, USB also argues that 3MB's Plan is patently unconfirmable on its face, and therefore has not filed a plan that has a reasonable possibility of being confirmed, but those arguments can be presented at the Plan's upcoming confirmation hearing.

USB has therefore failed to make a *prima facie* showing that it is entitled to relief under 11 U.S.C. § 362(d)(3) at this time. But that does not mean that 3MB's Plan is confirmable. To be sure, USB has many good reasons the plan may not be confirmed. But the arguments are not such as to make the plan "patently unconfirmable." The arguments may be found persuasive in the correct forum. But in an administrative matter with limited issues which stay relief litigation is, there is not sufficient reason to find the plan has no realistic possibility of being confirmed.

No legal impediment to confirmation has been argued by USB. Any impediment ("feasibility," "fair and equitable," "administrative solvency," "absolute priority rule," etc.) are factually driven.

The court is inclined to continue this matter for tracking purposes pending the resolution of the Amended Plan.

Section 362(d)(1)

Next, USB seeks relief from the automatic stay for "cause."

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).

Adequate Protection

11 U.S.C. 361 provides three non-exclusive examples of what may constitute adequate protection: (1) periodic cash payments equivalent to a decrease in value; (2) an additional or replacement lien on other property; or (3) other relief that provides the indubitable equivalent. *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). Adequate protection is provided to safeguard the creditor against depreciation in the value of its collateral during the reorganization process. *In re Deico Elecs., Inc.*, 139 B.R. 945, 947 (B.A.P. 9th Cir. 1992).

USB contends that the value of the Shopping Center has been rapidly depreciating. CBRE previously appraised the value of the Shopping Center to be $8.2 million in May 2020. In its most recent appraisal, CBRE now estimates that the Shopping Center has a value of $6.87 million, which is a $1.33 million decline in less than one year. *See* Doc. #197. Meanwhile, USB states that it has received payments under the cash collateral agreement in the amount of $174,375 since the second bankruptcy case was filed, resulting in a significant and uncompensated loss in value on its collateral. Doc. #195. Further, the monthly payments under the cash collateral agreement are $34,875, which is significantly below the $53,308 monthly principal and interest on the loan.

USB also accuses 3MB of failing to timely pay its real estate taxes, resulting in a secured claim by KCTTC in the amount of $283,933.56, which accrues at an interest rate of 18% per year according to the Amended Plan. This is an increase of nearly $175,000 compared to the first bankruptcy.

USB argues that it has no adequate protection against continued diminution of its collateral, which will occur from both continued accrual of interest to KCTTC and continued decrease in the value of the Shopping Center.

In response, 3MB argues that USB ignores the fact that (1) interest is accruing on the KCTTC claim at the rate of $4,259 per month, while 3MB is paying $9,768 per month per cash collateral agreement; and (2) under-secured creditors are not required to be paid interest on its claim if a "reorganization is in prospect." Doc. #218 (citing *In re Timbers of Inwood Forrest Association*, 484 U.S. 365, 375 (1988)).

3MB does not concede that USB's allegations regarding diminution of Shopping Center's value, but insists that if they are correct, it is

caused by COVID-19 and its effect on the occupancy rate. Doc. #218. 3MB states that occupancy is at 57.10% according to the appraisal report submitted by CBRE. Doc. #197. 3MB notes the appraisal report states that the "Stabilized Occupancy" for the Shopping Center is 92.00%, which means that the Shopping Center will increase in value after COVID-19 and "the World returns to normal."

No one disputes the effect of the pandemic. The question is when will its effect on 3MB's Shopping Center vanish. Ruling on that issue at a stay relief hearing is inappropriate on this record. There is an occupancy rate that is "stable." If the time to reach that rate is too speculative to quantify, that may be an issue mitigating against confirmation of the plan. But that is not the case now.

Bad Faith

Additionally, USB argues that 3MB commenced this case in bad faith solely to prevent USB from exercising its foreclosure rights.

"Bad faith" may be established where there is no likelihood of rehabilitation by the debtor. *Fid. Assurance Ass'n v. Sims*, 318 U.S. 608, 618 (1943). Dismissal of a chapter 11 case has been found appropriate where "a feasible plan is not possible." *In re 3 Ram Inc.*, 343 B.R. 113, 117 (Bankr. E.D. Pa. 2006). Evidence of bad faith may also be found under circumstances where a debtor uses the bankruptcy process to frustrate the rights of creditors, particularly with respect to single asset cases, or where chapter 11 is used to coerce unfair treatment. *Shapiro v. Wilgus*, 287 U.S. 348, 356-57 (1932). "[C]ourts may consider any factors which evidence an intent to abuse the judicial process and the purposes of the reorganization provisions, to make the bad faith determination." *In re Prometheus Health Imaging, Inc.*, 705 F. App'x 626, 627 (9th Cir. 2017).

USB argues that this case is effectively a two-party dispute and 3MB solely filed the case to abuse the bankruptcy process and frustrate the rights of USB. Doc. #195.

In response, 3MB notes that USB proposes the same arguments in its previous motion to dismiss that was denied on October 7, 2020. Doc. #75. The court found no bad faith because 3MB appeared willing to quickly proceed through the reorganization process. Doc. #72. The "test is whether a debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy, efficient reorganization on a feasible basis." *Marsch v. Marsch (In re Marsch)*, 36 F.3d 825, 828 (9th Cir. 1994) citing *In re Arnold*, 806 F. 2d 937, 939 (9th Cir. 1986).

First, the denial of the dismissal motion does not mean further evidence may support a finding of bad faith. The test is unreasonable delay. No one anticipated what has happened in the last year.

Second, at some moment, 3MB's reality and blaming performance on conditions all parties are dealing with no longer carries weight.

That moment is when the confirmation of the plan is being scrutinized. Not when a speculative result is before the court.

Section 362(d)(2)

Lastly, USB seeks relief from the stay under § 362(d)(2) because 3MB lacks equity and cannot successfully reorganize.

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.

USB must demonstrate that there is no equity in the Shopping Center while 3MB must prove that the Shopping Center is necessary to an effective plan of reorganization. 11 U.S.C. § 362(g); *In re Dublin Props.*, 12 B.R. at 77; *In re Dev., Inc.*, 36 B.R. 998.

USB contends there is no equity in the Shopping Center based on the recent appraisal conducted by CBRE that values the property at $6.87 million, which is more than USB's claim of $9,620,744.05 as of the petition date. Doc. #197; *cf.* Claim #5-1. USB repeats its previous arguments that the Shopping Center is not necessary for an effective reorganization because 3MB's proposed plan is patently unconfirmable.

For now, USB has met its burden to demonstrate lack of equity.

In response, 3MB repeats that a reorganization is in prospect. 3MB contests that USB is under-secured, but that even if it is, 3MB's Amended Plan can be confirmed. Doc. #218. USB may object to the Amended Plan at the plan confirmation stage, wherein the parties may require an evidentiary hearing regarding the feasibility of the Amended Plan and whether it provides the payment of the present value of USB's claim.

The court agrees for the reasons discussed above. The proper forum for USB's objections to confirmation of 3MB's plan are at confirmation.

Section 362(e)

11 U.S.C. 362(e)(1) provides:

> Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of

> this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the courts finds is required by compelling circumstances.

USB requests relief under § 362(d). Under § 362(e), the stay is terminated with respect to USB unless the court orders such stay continued in effect pending the conclusion of a final hearing and determination under § 362(e).

The court will order the stay continued in effect pending the conclusion of the final hearing on this matter at the continued hearing date because there is a reasonable likelihood 3MB will prevail if it successfully confirms its Amended Plan of Reorganization.

The court will inquire at the hearing as to whether USB consents to extending the automatic stay under § 362(e) pending the conclusion of the final hearing. If not, the court will find there is a reasonable likelihood 3MB will prevail if the plan is confirmed and deny this motion. The reasons are set forth above and in the ruling on the disclosure statement.

The court is aware § 362(e) requires a "crystal ball." But there is no real impediment to this plan being tested under the magnifying glass of confirmation. 3MB is continuing to pay USB, albeit at a lower rate than non-default. But there is no evidence of waste being committed on the property. Tax accrual is concerning but 3MB is paying down the tax debt, albeit slowly.

CONCLUSION

The court will either ORDER that the stay be continued in effect pending the conclusion of the final hearing on this motion or deny the motion.

8. 20-12642-B-11 **IN RE: 3MB, LLC**
LKW-11

CONTINUED AMENDED CHAPTER 11 DISCLOSURE STATEMENT FILED BY DEBTOR 3MB, LLC
2-4-2021 [173]

LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: Debtor-in-possession to prepare order.

On April 6, 2021, the parties stipulated to continue this motion to April 27, 2021 at 9:30 a.m. due to ongoing negotiations regarding a consensual resolution to the chapter 11 case. Doc. #230. The court approved the stipulation that same day and amended the order on April 8, 2021. Docs. #232; #238.

No further briefing was permitted. *Id.* As of this writing, no further stipulations for a consensual resolution to this matter have been filed.

Debtor-in-possession 3MB, LLC ("3MB") asks the court to approve its Amended Disclosure Statement for the proposed Plan of Reorganization dated February 4, 2021 ("DS"). U.S. Bank National Association, as Trustee, as successor in interest to Bank of America, N.A., as Trustee, as successor by merger to LaSalle Bank National Association, as Trustee, for the registered holders of Bear Stearns Commercial Mortgage Securities Inc. Commercial Mortgage Pass-Through Certificates, Series 2007-PWR16 ("USB") objects to the DS.

On January 6, 2021, the court disapproved 3MB's initial disclosure statement. The court cited eight separate deficiencies in the initial disclosure statement. DS is 3MB's second attempt at adequate disclosure. 3MB addressed the eight deficiencies in DS.

USB has two general objections. First, DS does not include adequate disclosure. Specifically, USB urges that valuation disclosures, identification of potential buyers for estate property, discussion of renting vacant space and account receivables is inadequate.

Second, USB argues the proposed amended plan is unconfirmable. So, DS should not be approved. Specifically, USB claims 3MB's actual cash flow post-petition establishes the plan is not feasible. Also, USB claims the estate may soon be administratively insolvent.

3MB responds that the disclosure statement stage is not the time to evaluate plan feasibility and that the debtor believes it can raise the necessary cash to maintain the plan. 3MB also claims the proposed sale of the "Starbucks and Western Dental Pads" ("pads") will significantly reduce the balance owed USB allowing 3MB to support the amended plan's cash flow requirements.

The disclosures contain adequate information under §1125(a).

Section 1125(b) conditions solicitation of votes on a proposed plan on the court approving the disclosure statement as containing "adequate information." "Adequate information" is defined as a kind, and in sufficient detail "in light of the nature and history of the debtor and the condition of the debtor's books and records. . . that would enable a hypothetical investor typical of the holders of claims or interests in the relevant class that would enable [that] investor to make an informed judgment about the plan. . . ." § 1125(a)(1).

USB's concerns about valuation disclosures relate to 3MB's basis for value versus USB's recent appraisal. USB finds 3MB's reliance on a four-year-old appraisal, the lack of a broker's opinion of value, and 3MB's principal, Robert Bell's valuation inadequate. USB's current appraisal values the shopping center at $6.87 million and the pads at $3.2 million. This is far less than 3MB's estimated values-$12 million for the center and over $4 million for the pads. But this does not mean 3MB's disclosures are inadequate. The basis for 3MB's valuations is disclosed.

3MB should disclose what USB's recent appraisal states. 3MB can disagree, but the creditors can decide to vote for the plan or not.

Similarly, USB's concerns about potential buyer information and lease collections are adequately disclosed. The buyers are generally described. 3MB also invites direct contact with its counsel for more detailed information. The reason for the generic descriptions is explained.

3MB explains the reasons for the reduction in rental collection as attributable largely to the business disruption of the COVID-19 pandemic. 3MB also states that additional rent is expected from related entity CITA before the plan's effective date.

Though disclosures may be adequate, that is a far cry from the court finding this plan workable, feasible or in compliance with § 1129(b).

Separately, USB argues the amended plan is patently unconfirmable and so DS should not be approved.

USB cites the actual post-petition income revealed by 3MB in the monthly operating reports as establishing the plan cannot be confirmed.

To be sure, the cash needs of over $62,000 per month before the pads are sold has not been attained since filing. That is a cause for concern. 3MB responds that based on pre-petition experience in 2017 and 2018, the shopping center generated substantial income. Also, 3MB claims income will increase before the effective date as discussed above.

Who is correct? We do not know and will not before the court hears the evidence. But for disclosure purposes, who is right does not matter now. These are plan feasibility issues. The question is whether the disclosure is adequate. It is.

A creditor can decide whether to vote for the plan after reviewing the DS. There is nothing misleading in the DS. The basis for and "projections" of feasibility are set forth. USB has strong arguments why those are "not based in (USB's) reality." Which "reality" exists remains to be seen.

That said, the possibility of administrative insolvency is a major concern for 3MB. But that is an issue under § 1129(a) not § 1125. In fact, 3MB should be concerned not only about its professionals but possible claims of other creditors to administrative status.

The determination of what is adequate information is largely subjective and made on a case-by-case basis. *Comput. Task Grp., Inc. v. Brotby (In re Brotby),* 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003). The determination is largely within this court's discretion. *Id.* The only party objecting to the adequacy of the DS here is a sophisticated and well represented lender. USB has taken discovery through the Rule 2004 process in both bankruptcies. The court's concerns expressed concerning the first disclosure statement have been largely addressed by 3MB.

That said, USB raises very salient points that may very well impact the ultimate success of 3MB's reorganization. Yet, those points do not mean the DS is inadequate or misleading. USB disagrees with virtually every premise upon which 3MB's reorganization is based. The burden of proof at plan confirmation is on 3MB. *United States ex rel. Farmers Home Admin. v. Arnold & Baker Farms (In re Arnold & Baker Farms)*, 177 B.R. 648, 654 (B.A.P. 9th Cir. 1994*) aff'd* 85 F.3d 1415 (9th Cir. 1996). That burden may well determine the conclusion of this case.

The DS is approved and 3MB's motion is GRANTED.

9. 20-12642-B-11 **IN RE: 3MB, LLC**
LKW-13

CONTINUED MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
3-10-2021 [200]

LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The fees requested are approved on an interim basis. No payment is authorized from USB's cash collateral.

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)(1). This motion is a request for compensation or reimbursement of expenses exceeding $1,000.00, and therefore it was properly set for hearing on at least 21 days' notice as required by Fed. R. Bankr. P. 2002(a)(6). On April 6, 2021, the parties stipulated to continue this motion to April 27, 2021 at 9:30 a.m. due to ongoing negotiations regarding a consensual resolution to the chapter 11 case. Doc. #230. The court approved the stipulation that same day and amended the order on April 8, 2021. Docs. #232; #239.

No further briefing was permitted. *Id.* As of this writing, no further stipulations for a consensual resolution to this matter have been filed.

Leonard K. Welsh of the Law Office of Leonard K. Welsh ("Movant"), as counsel for the debtor-in-possession 3MB, LLC ("3MB"), requests approval of fees of $19,700.00 and costs of $429.90 for a total of $20,129.90 for services rendered from December 1, 2020 through February 28, 2021. Docs. ##200-01. 3MB's authorized representative, Mr. Robert Bell, filed a declaration stating that 3MB has no objection to this court authorizing it to pay $20,129.90 to Movant. Doc. #202.

U.S. Bank National Association ("USB") timely objected to Movant's application. Doc. #222. USB states that it has not authorized use of its cash collateral to pay 3MB's professionals and reserved the right to challenge any final fee application seeking to pay 3MB's professionals from its collateral. Given (1) the continuing decline in USB's collateral value, (2) 3MB's approaching administrative insolvency, (3) 3MB's failure to propose an adequate disclosure statement or confirmable plan, and (4) 3MB's refusal to collect rent from insider CITA while paying CITA a $2,275 management fee, USB objects to funding a case that does not serve a valid bankruptcy purpose.

USB contends that it does not consent to any use of its cash collateral outside of the express terms of the parties' cash collateral stipulation and order. If 3MB seeks to use cash collateral to pay professional fees, USB demands adequate protection. Based on 3MB's monthly operating reports, 3MB does not have the financial ability to provide sufficient adequate protection for USB. Given the uncertainty surrounding 3MB's case, USB argues that any compensation to Movant should come directly from an infusion of new cash by 3MB's members, a return of post-petition management fees received by CITA, the collection of post-petition rent from CITA, or be deferred until USB's collateral is adequately protected. *Id.*

3MB filed a reply contending that USB's interests are adequately protected and therefore the motion should be granted. Doc. #223. 3MB argues that it has made adequate protection payments of $34,875 per month to USB and $9,768 per month to the Kern County Treasurer-Tax Collector ("KCTTC") since this case was filed. The Shopping Center is only 57.10% occupied according to USB's appraisal and 3MB's income will increase in the future when COVID-19 subsides, 3MB procures new tenants, and 3MB's existing tenants pay rent owed on a prompter and more regular basis. *Id.* 3MB states that it maintains the Shopping Center at no cost to USB and a large amount of fees and costs owed to Movant are fees and costs incurred providing information and documents requested by USB.

Moreover, 3MB is working to sell part of the Shopping Center for $4.5 million without cost to USB so that its interests are "adequately protected" and the debt is repaid. *Id.*

3MB argues that it is disingenuous for USB to make demands for information and documents needed by USB to protect its interest and then object to the payment of fees and costs incurred to provide that protection. *Id.*

This motion will be granted as follows. The fees will be approved. No payment is authorized from USB's cash collateral without further order of court.

This is Movant's third fee application.

Movant's employment was authorized on September 3, 2020. Doc. #29. The order specified that 3MB was authorized to employ Movant pursuant to 11 U.S.C. § 328(a), subject to applicable terms and conditions of §§ 327, 329-331. *Id.* Compensation was set at the "lodestar rate" applicable at the time services are rendered per the Ninth Circuit decision in *In re Manoa Finance Co.*, 853 F.2d 687 (9th Cir. 1988). *Id.* at ¶ 3. The order further stated that monthly applications for interim compensation pursuant to § 331 would be entertained. *Id.* at ¶ 5.

Form B2030, *Disclosure of Compensation of Attorney for Debtor(s)*, indicates that Movant was paid $6,717.00 by 3MB prior to the filing of the petition. Of that pre-petition payment, Movant applied $1,717.00 to costs incurred before the filing of the chapter 11

case. Doc. #1, Form B2030. All fees and costs after August 4, 2020 will be paid by application as approved by this court. *Id.*

On December 3, 2020, this court authorized 3MB to pay Movant $13,682.55 plus withdrawal of a $5,000.00 retainer for payment of fees and expenses of $18,682.55 incurred from August 1, 2020 through October 31, 2020. Doc. #123.

On January 21, 2021, the court authorized 3MB to pay Movant $9,030.00 for fees and $99.70 for expenses incurred from November 1, 2020 through November 30, 2020. Doc. #167.

Movant indicates that the requested fees will be paid directly by 3MB from income generated from the operation of its business. Doc. #203. at ¶ 7. Movant additionally contends that his office as provided 57.70 hours of legal services. *Id.*, ¶ 5; #204, Ex. B. Based on Movant and 3MB's legal agreement dated June 15, 2020, 3MB has agreed to pay Movant an hourly rate of $350.00 per hour and his legal assistant $125.00 per hour. Doc. #204, Ex. C, at 2. Movant's billable hours are as follows:

Timekeeper	Hours	Rate	Total
Leonard K. Welsh	55.5	$350.00	$19,425.00
Trinette M. Lidgett	2.2	$125.00	$275.00
Total	**57.7**		**$19,700.00**

Doc. #200, ¶ 11(a). Ms. Lidgett appears to be Movant's paralegal. Movant also seeks reimbursement of $429.90 in expenses:

Court Call	$45.00
Postage	$144.80
WebPACER Charges	$42.10
Filing Fee	$188.00
Total Costs	**$419.90**

Id., ¶ 14.

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 3MB about its duties and administration of the chapter 11 case; (2) preparing for status conferences; (3) preparing and filing the Amended Disclosure Statement and Amended Plan of Reorganization (LKW-11); (4) preparing for and participating in the Rule 2004 Examinations of Mr. Bell and Mark Thomas conducted by USB on January 28, 2021; (5) delivering documents to USB as required by the order authorizing the Rule 2004 Examination; (6) communicating with the U.S. Trustee regarding quarterly fees; (7) preparing and filing monthly operating reports; (8) advising 3MB about the sale of the Shopping Center and the sale of the Starbucks and Western Dental Pads; (9) opposing USB's motion for relief from the automatic stay; (10) preparing and filing the second fee application (LKW-8); (11)

preparing and filing a motion to employ ASU Commercial as real estate broker (LKW-12); (11) providing information about 3MB's business operations, adequate protection, and use of cash collateral to USB; (12) advising 3MB about lawsuits filed by USB, the City of Bakersfield, and Hair. Docs. #200; #202. The court finds the services reasonable and necessary, and the expenses requested actual and necessary.

USB does not object to the amount of fees requested. Those are approved.

USB's objection is to payment of fees from its cash collateral without additional adequate protection. The court will not authorize payment of fees from USB's cash collateral without further order of court. First, the status of the proposed plan and disclosure statement are addressed by the court in other matters on this calendar.

Second, none of USB's cash collateral can be used to "fund the case" unless it is within the uses authorized by previous orders. USB and KCTTC are each receiving monthly payments. The order approving counsel's fees does not authorize payment from cash collateral without USB's consent.

Notably, USB's suggestion that 3MB pay the fees from alleged uncollected rents from CITA makes no sense. The rents would be USB's cash collateral. Is USB consenting to its use? Likewise, it is unclear CITA's management fee is not coming from USB's cash collateral. So 3MB's statement that the center is managed at no cost to USB seems incorrect.

Third, potential administrative insolvency is concerning. This is especially true if § 507(b) is applicable at confirmation. On this record, though, the court cannot now find that any diminution of collateral value is due to the automatic stay or 3MB's "use" of the center. There could be many other causes including the pandemic's economic downturn.

3MB suggests it holds cash that is not USB's collateral including a settlement from the City of Bakersfield. The court is not ruling whether the settlement is or is not cash collateral. There is no evidence one way or the other. Should a ruling be necessary it will need to be scheduled in due course. Movant will be awarded $19,700.00 in fees and $429.90 in costs. 3MB will be authorized to pay $20,129.90 to Movant provided payment is consistent with 3MB's and USB's agreement for use of cash collateral.

10. 18-13677-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A**
GL-1 **CALIFORNIA LOCAL HEALTH CARE DISTRICT**

CONTINUED MOTION TO FILE AMENDED PROOF OF CLAIM
12-29-2020 [669]

DEPARTMENT OF HEALTH CARE
SERVICES/MV
RILEY WALTER/ATTY. FOR DBT.
GRANT LIEN/ATTY. FOR MV.
CONT'D TO 6/8/21 PER ECF ORDER #686

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

DISPOSITION: Continued to June 8, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

The parties stipulated to extend the discovery response deadlines and related deadlines for further briefing in this matter. Doc. #683. The court approved the stipulation on March 3, 2021 and the matter was continued to June 8, 2021 at 9:30 a.m. Doc. #686. The deadlines to file and serve responsive pleadings shall be the same as if the continued hearing date was the original hearing date.

11. 18-13677-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A**
WJH-18 **CALIFORNIA LOCAL HEALTH CARE DISTRICT**

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

COALINGA REGIONAL MEDICAL
CENTER, A CALIFORNIA LOCAL
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 6/8/21 PER ECF ORDER #685. RESPONSIVE PLEADING.

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

DISPOSITION: Continued to June 8, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

The parties stipulated to extend the discovery response deadlines and related deadlines for further briefing in this matter. Doc. #681. The court approved the stipulation on March 3, 2021 and the matter was continued to June 8, 2021 at 9:30 a.m. Doc. #685. The District shall file and serve its responsive pleadings to the opposition filed by the Department of Health Care Services not later than five days before the continued hearing date.

12. 20-11992-B-11 **IN RE: CHAR PHAR INVESTMENTS, LLC**
WLC-9

MOTION FOR COMPENSATION FOR SHERYL A. STRAIN, ACCOUNTANT(S)
3-12-2021 [174]

SHERYL STRAIN/MV
WILLIAM COWIN/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 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.

Sheryl A. Strain ("Movant"), the certified public accountant of debtor-in-possession Char Phar Investments, LLC ("DIP"), requests interim fees of $8,652.00 and costs of $0.00 for services rendered from December 1, 2020 through March 5, 2021. Doc. #174. No party in interest timely filed written opposition.

The motion will be GRANTED.

Movant's employment as an accountant was authorized pursuant to 11 U.S.C. §§ 327, 330, and 331 on August 17, 2020, effective as to services rendered on or after May 13, 2020. Doc. #103; *see also* WLC-3. The order further stated that no compensation was permitted except upon court order under § 330(a) and compensation would be at the "lodestar rate" for accounting services applicable at the time services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). *Id.* Interim compensation under § 331 was permitted if the combined fees and expenses exceeded $5,000.00. *Id.* This Movant's third interim fee application having previously been approved to receive: (a) $11,872.00 on October 20, 2020; (b) $6,356.00 on January 25, 2021. *See* WLC-7; WLC-8.

Movant indicates that she spent 30.90 billable hours at a rate of $280.00 per hour, resulting in $8,652.00 in fees for accountant services. Doc. #177, Ex. A. Movant did not request reimbursement for any expenses.

Ravinderpaul S. Tut, DIP's representative, filed a declaration stating that he reviewed the fee application and has no objections. Doc. #178.

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) providing accounting services to the DIP; (2) preparing the November, December, and January Monthly Operating Reports; (3) reviewing paycheck reports to locate payroll tax deposits; (4) preparing budgets and analyzing the budget compared to actual expenditures. Docs. #176; #177, Ex. A. The court finds the services reasonable and necessary.

This motion will be GRANTED. Movant shall be awarded $8,652.00 in fees on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to 11 U.S.C. § 330.

13. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
WJH-4

CONTINUED STATUS CONFERENCE RE: OBJECTION TO CLAIM OF DEPARTMENT OF HEALTH CARE SERVICES, CLAIM NUMBER 197
7-1-2019 [1512]

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 25, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

The Department of Health Care Services' related motion to file an amended proof of claim was submitted on March 30, 2021. *See* Doc. #2415; GL-1. Given that the outcome of this matter largely depends on the court's ruling on that motion, this matter will be continued to May 25, 2021 at 9:30 a.m.

1:30 PM

1. 21-10201-B-7 **IN RE: SCOTT MUNSTER**
AP-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-26-2021 [19]

JPMORGAN CHASE BANK, N.A./MV
JUSTIN HARRIS/ATTY. FOR DBT.
WENDY LOCKE/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 January 28, 2021 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. Movant indicates that the Vehicle has been surrendered and the lease agreement terminated.

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.

2. 21-10416-B-7 **IN RE: DERLENE COLBERT**
LKW-1

MOTION TO AVOID LIEN OF ARROW FINANCIAL SERVICES, LLC
3-29-2021 [11]

DERLENE COLBERT/MV
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue the order.

This motion will be DENIED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014) (*citing Ashcroft v.*

Iqbal, 556 U.S. 662, 678 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

First, Cal. Code Civ. P. § 697.310(b) states that "[u]nless the money judgment is satisfied or the judgment lien is released, subject to Section 683.180 (renewal of judgment), a judgment lien created under this section continues until 10 years from the date of entry of the judgment." The date of entry of Arrow Financial Services' judgment was August 12, 2010. Doc. #15, Ex. E. The 10-year deadline has passed, and the judgment has expired. Therefore, the lien cannot be avoided. No evidence is presented that the judgment was renewed. So, the property at issue is not currently encumbered with this abstract of judgment based on movant's evidence.

Second, Fed. R. Bankr. P. 4003(b)(1) allows a party in interest to object to claim of exemptions within 30 days after the conclusion of the § 341 meeting of creditors or 30 days after an amended Schedule C has been filed, whichever is later. Here, the meeting of creditors concluded on April 9, 2021. *See* docket generally. The 30-day time period will expire on May 9, 2021. This motion was filed on March 29, 2021 and is therefore not yet ripe for hearing. Doc. #11.

For the above reasons, this motion will be DENIED.

3. 21-10416-B-7 **IN RE: DERLENE COLBERT**
LKW-2

MOTION TO AVOID LIEN OF AMERICAN GENERAL FINANCIAL SERVICES, INC.
3-29-2021 [18]

DERLENE COLBERT/MV
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue the order.

This motion will be DENIED WITHOUT PREJUDICE. Fed. R. Bankr. P. 4003(b)(1) allows a party in interest to object to claim of exemptions within 30 days after the conclusion of the § 341 meeting of creditors or 30 days after an amended Schedule C has been filed, whichever is later. Here, the meeting of creditors concluded on April 9, 2021. *See* docket generally. The 30-day time period will expire on May 9, 2021. This motion was filed on March 29, 2021 and is therefore not yet ripe for hearing. Doc. #18.

4. 21-10416-B-7 **IN RE: DERLENE COLBERT**
LKW-3

MOTION TO AVOID LIEN OF CALIFORNIA BUSINESS BUREAU, INC.
3-29-2021 [25]

DERLENE COLBERT/MV
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue the order.

This motion will be DENIED WITHOUT PREJUDICE. Fed. R. Bankr. P. 4003(b)(1) allows a party in interest to object to claim of exemptions within 30 days after the conclusion of the § 341 meeting of creditors or 30 days after an amended Schedule C has been filed, whichever is later. Here, the meeting of creditors concluded on April 9, 2021. *See* docket generally. The 30-day time period will expire on May 9, 2021. This motion was filed on March 29, 2021 and is therefore not ripe for hearing. Doc. #25.

5. 17-13947-B-7 **IN RE: EDWIN CATUIRA**
JES-1

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, CHAPTER 7 TRUSTEE(S)
3-26-2021 [86]

JAMES SALVEN/MV
LAYNE HAYDEN/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Televideo 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.

This motion will be GRANTED. Chapter 7 Trustee James E. Salven ("Trustee") requests fees of $11,260.43 and costs of $125.16 for a total of $11,385.59 as statutory compensation and actual and necessary expenses. Doc. #317.

11 U.S.C. § 326 permits the court to allow reasonable compensation to the chapter 7 trustee under § 330 for the trustee's services. Section 326(a) states:

> In a case under chapter 7 or 11, other than a case under subchapter V of chapter 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first $5,000 or less, 10 percent on any amount in excess of $5,000 but not in excess of $50,000, 5 percent on any amount in excess of $50,000 but not in excess of $1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of $1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including all holders of secured claims.

11 U.S.C. § 326(a).

11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses. 11 U.S.C. § 330(a)(1)(A) & (B).

Here, Trustee has made total disbursements of $160,208.62 throughout this case. Doc. #88, Ex. A. Trustee has requested:

(1) $1,250.00 (25%) of the first $5,000.00;
(2) $4,500.00 (10%) of the next $45,000.00; and,
(3) $5,510.43 (5%) of the next $110,208.62.

Ibid. These percentages comply with the percentage restrictions imposed by § 326(a) and total $11,260.43. These fees were incurred by Trustee during the course of this case in which Trustee conducted the meeting of creditors, settled an exemption dispute with the debtor, reviewed and reconciled financial records, made disbursements to creditors totaling $160,208.62, and prepared the final report.

Trustee also incurred the following expenses:

Copies (149 @ $0.20)	$29.80
Distribution (7 @ $1.00)	$7.00
Postage (4 @ $2.25)	$9.00
Other	$79.36
Total Costs	$125.16

The court finds Trustee's services were actual and necessary to the estate, and the fees are reasonable and consistent with § 326(a). This motion will be GRANTED, and Trustee will be awarded the requested fees and costs.

6. 20-13951-B-7 **IN RE: JOSE RAMIREZ**
GB-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-24-2021 [18]

U.S. BANK TRUST NATIONAL ASSOCIATION/MV
R. BELL/ATTY. FOR DBT.
ERICA LOFTIS/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, U.S. Bank Trust National Association ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to real property located at 11107 Pocono Way, Bakersfield, CA 93306 ("Property"). Doc. #18.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least 26 complete pre- and post-petition payments. The movant has produced evidence that debtor is delinquent at least $38,057.39 and the entire balance of $305,003.65 is due. Doc. #20, #21.

The court also finds that the debtor does not have any equity in the Property and the Property is not necessary to an effective reorganization because debtor is in chapter 7. The debtor values the property at $282,440.00 and debtor owes $305,003.65. Doc. #20, #22.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 26 payments, both pre- and post-petition, to Movant.

7. 20-12969-B-7 **IN RE: CARLOS CORTES AND BERTHA SPINDOLA**
ADJ-2

MOTION FOR TURNOVER OF PROPERTY
3-15-2021 [22]

IRMA EDMONDS/MV
T. O'TOOLE/ATTY. FOR DBT.
ANTHONY JOHNSTON/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 29, 2021 at 1:30 p.m.

NO ORDER REQUIRED.

Chapter 7 trustee Irma Edmonds ("Trustee") seeks an order compelling the debtors to turn over property of the estate. Doc. #22.

Carlos Bravo Cortes and Bertha Esthela Spindola ("Debtors") timely responded requesting a continuance because the parties arrived at a

tentative settlement to this matter and a related adversary proceeding filed by Trustee against Debtors. Doc. #29.

On April 15, 2021, Trustee moved to continue the matter to June 29, 2021 because Trustee's counsel needs to prepare a settlement agreement and compromise motion. Doc. #31. The court granted the motion to continue on April 19, 2021. Doc. #35.

Accordingly, this matter will be continued to June 29, 2021 at 1:30 p.m. Any further opposition to the motion must be filed and served not later than June 15, 2021.

8. 14-13574-B-7 **IN RE: DAVID/CAROL BROWN**
RSW-3

MOTION TO AVOID LIEN OF GE MONEY BANK
4-7-2021 [47]

CAROL BROWN/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party 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.

David Michael Brown and Carol Lynn Brown ("Debtors") filed this motion seeking to avoid a judicial lien in favor of GE Money Bank ("Creditor"), and encumbering residential real property located at 12601 Savonburg Drive, Bakersfield, CA Nicole Ave., Hanford, CA 93312 ("Property"). Doc. #47.

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

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 debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir.

2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd* 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtors in favor of Creditor in the sum of $3,644.82 on March 15, 2012. Doc. #50, Ex. 4. The abstract of judgment was issued on April 20, 2012 and recorded in Kern County on May 8, 2012. *Ibid.* That lien attached to Debtors' interest in Property. Doc. #49. As of the petition date, Property had an approximate value of $351,000.00. *Id.*, ¶ 2; Doc. #1, Schedule A. The unavoidable liens totaled $408,543.66 on that same date, consisting of a deed of trust in favor of Bac Home Loans Servicing ("BHLS"). Doc. #25, Schedule D. Debtors claimed an exemption pursuant to Cal. Civ. Proc. Code ("C.C.P.") § 703.140(b)(5) in the amount of $1.00. Doc. #1, Schedule C.

Property's encumbrances can be illustrated as follows:

Fair Market Value of Property on petition date		$351,000.00
BHLS first priority deed of trust	-	$408,543.66
Debtors' claimed exemption	-	$1.00
Creditor's judicial lien	-	$3,644.82
Extent Debtors' exemption impaired	=	($61,189.48)

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

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Therefore, in the absence of further opposition, the court is inclined to GRANT this motion.

9. 21-10379-B-7 **IN RE: ERNESTO GUTIERREZ**
RPZ-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-12-2021 [13]

PENNYMAC LOAN SERVICES, LLC/MV
STEPHEN LABIAK/ATTY. FOR DBT.
ROBERT ZAHRADKA/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the

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

The movant, PennyMac Loan Services, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property located at 5977 West Turtle Bay Drive, Fresno, California 93722 ("Property"). Doc. #13, #15.

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).

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least 25 complete pre-petition payments. The movant has produced evidence that debtor is delinquent at least $42,904.83 and the entire balance of $239,773.77 is due. Doc. #15, #18.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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

10. 21-10185-B-7 **IN RE: HUMBERTO/ANGELINA RODRIGUEZ**

OPPOSITION/OBJECTION TO CHAPTER 7 TRUSTEE'S REPORT OF NO DISTRIBUTION
3-30-2021 [16]

MARK ZIMMERMAN/ATTY. FOR DBT.

NO RULING.

Pro se creditors Rafaela Santillan and Felipe Santillan ("Creditors") filed a letter opposing chapter 7 trustee Peter L. Fear's ("Trustee") Report of No Distribution. Doc. #16. Creditors allege that they paid joint debtor Humberto M. Rodriguez $33,500.00 for contracting services to build on Creditors' property in Exeter,

California. Creditors included a handwritten contract signed on December 7, 2020 wherein Rodriguez acknowledges receipt of $31,800 and promises to pay Creditors any remainder after conducting an evaluation of services performed. *Id.*

There are a number of procedural defects in Creditors' opposition.

The Local Rules of Practice ("LBR") "are intended to supplement and shall be construed consistently with and subordinate to the Federal Rules of Bankruptcy Procedure and those portions of the Federal Rules of Civil Procedure that are incorporated by the Federal Rules of Bankruptcy Procedure." LBR 1001-1(b). The most up-to-date rules can be found at the court's website, www.caeb.uscourts.gov, towards the middle of the page under "Court Information," by selecting "Local Rules & General Orders." The newest rules became effective April 12, 2021.

First, LBR 9004-2(a)(6), (b)(5), (e), and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion or objection requires a new DCN. Here, the objection and supporting documents did not contain a DCN. Docs. #16-18.

Second, LBR 9014-1(f)(1)(B) states that motions filed on at least 28 days' notice require the movant to notify the respondents that any opposition must be made in writing and filed with the court at least 14 days preceding the date of the hearing. Failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition. LBR 9014-1(d)(3)(B)(ii).

LBR 9014-1(f)(2)(C) states that motions filed on less than 28 days' notice, but at least 14 days' notice, require the movant to notify the respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing and if opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs.

Creditors filed the opposition on March 30, 2021, which is 28 days before the April 27, 2021 hearing date and therefore filed on 28 days' notice under LBR 9014-1(f)(1). Doc. #16. However, the notice and exhibit documents were filed on April 1, 2021, which is 27 days before the hearing. Docs. #17-18. This poses some difficulty. Based on the motion filing date, the notice should have included the language from LBR 9014-1(f)(1)(B) wherein written opposition was due at least 14 days before the hearing. But because the notice and supporting documents were filed on less than 27 days' notice, opposition would not be required and allowed to be presented at the hearing.

Regardless, the notice of hearing (Doc. #17) contained no information advising respondents how and when a response may be presented. LBR 9014-1(d)(3)(B) requires the movant to advise respondents how and when respondents may file responsive pleadings.

Third, the notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii), which requires the movant to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

Fourth, LBR 9014-1(e) requires the movant to serve all pleadings and documents filed in support of a motion on or before the day they are filed, with a proof of such service in the form of a certificate of service to be filed with the Clerk concurrently with the pleadings or documents served, or not more than three days after they are filed. LBR 9014-1(e)(1), (2). LBR 9014-1(e)(3) requires each proof of service to be filed separately, bear the DCN of the matter to which it relates, and identify the title of the pleadings and documents served.

Here, no certificate of service was ever filed. It appears that the documents were not served on the debtors, Trustee, U.S. Trustee, or any other parties in interest.

Fifth, LBR 9004-2(c)(1) requires motions, exhibits, and other specified pleadings to be filed as separate documents. Here, opposition and exhibits were combined into one document and not filed separately. Doc. #16. The court notes that another set of exhibits was filed separately, but some of those exhibits are illegible. Doc. #18.

LBR 9004-2(d)(2) requires each exhibit document to have an index at the start of the exhibit that lists and identifies by exhibit number or letter each exhibit individually with the page number that it is found within the exhibit document. LBR 9004-2(d)(3) requires exhibit document pages, including the index page and any separator, cover, or divider sheets to be consecutively numbered and state the exhibit number or letter on the first page of each exhibit. Here, the exhibits (Doc. #18) were not consecutively numbered and did not contain an exhibit index.

Sixth, even if these procedural errors were addressed, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014 (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Under Fed. R. Bankr. P. 7001(6), a proceeding to determine the dischargeability of a debt is an adversary proceeding. Here, the court is unable to grant the relief request unless Creditors properly file an adversary proceeding. *See* Fed. R. Bankr. P. 7003; Fed. R. Civ. P. 3. The court cannot even consider the claim without jurisdiction over all parties in interest.

Creditors may have a valid claim for relief, but that claim must be properly asserted in an adversary proceeding. Creditors are advised to retain counsel to successfully navigate the Bankruptcy Code and

the local rules of this court. The court notes that Creditors filed their opposition before the April 30, 2021 deadline to initiate proceedings asserting the debtors are not entitled to a discharge under 11 U.S.C. §§ 727(a)(2)-(7) or except certain debts from discharge under 11 U.S.C. §§ 523(a)(2), (4), or (6).

This matter will be called as scheduled to inquire about the parties' intentions.

11. 21-10297-B-7 **IN RE: HUGO ALONZO**
ICE-1

MOTION TO EMPLOY BAIRD AUCTION AND APPRAISAL AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
3-30-2021 [12]

IRMA EDMONDS/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
IRMA EDMONDS/ATTY. FOR MV.

FINAL RULING: This matter will proceed as scheduled.

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 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.

Chapter 7 trustee Irma Edmonds ("Trustee") asks the court to employ Baird Auction & Appraisal ("Auctioneer") to sell property of the estate consisting of a 2007 Chevrolet Tahoe ("Property") at public auction. Doc. #12. The auction will be held on or after April 27, 2021 at 1328 N. Sierra Vista Ave., Suite B, Fresno, CA 93703. Trustee requests approval of the sale of Property in matter #12 below. *See* ICE-2. No party in interest timely filed written opposition.

This motion will be GRANTED

11 U.S.C. § 327 provides:

> (a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

11 U.S.C. § 327(a). 11 U.S.C. § 328(a) permits employment of "a professional person under section 327" on "any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." Section 328(a) further "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.'" *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002).

Trustee requests to pay 20% commission of gross proceeds from the sale as compensation under 11 U.S.C. §§ 327(a) and 328, reasonable expenses estimated to be $1,000.00 incurred in preparing the Property for sale, including inspection, transport, storage, repair, labor, and vehicle document preparation. Doc. #14. Jeffrey Baird, Auctioneer's owner, declares that Auctioneer (1) has no connection with the debtor, creditors, or any parties in interest; (2) does not represent any interest adverse to the representation of the Trustee and the estate; and (3) is a disinterested party in this case. *Id.* Auctioneer is a disinterested person as defined in § 101(14) and does not hold interests adverse to the estate as required by § 327(a).

Auctioneer's services will also include: (1) market advertising of the Property and (2) performing and assisting Trustee in matters customarily performed by auctioneers. *Id.*

Trustee will be authorized to employ Auctioneer to sell Property at public auction. Trustee will also be authorized to compensate Auctioneer on a percentage collected basis: 20% of the gross proceeds from the sale and reasonable expenses of up to $1,000.00.

The court finds the proposed arrangement reasonable in this instance. If the arrangement proves improvident, the court may allow different compensation under § 328(a).

This motion will be GRANTED. Trustee will be authorized to employ and pay Auctioneer for his services as outlined above.

12. 21-10297-B-7 **IN RE: HUGO ALONZO**
ICE-2

MOTION TO SELL
3-30-2021 [16]

IRMA EDMONDS/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
IRMA EDMONDS/ATTY. FOR MV.

FINAL RULING: This matter will proceed as scheduled.

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 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.

Chapter 7 trustee Irma Edmonds ("Trustee") asks the court to authorize Baird Auction & Appraisal ("Auctioneer") to sell property of the estate consisting of a 2007 Chevrolet Tahoe ("Property") at public auction. Doc. #16. The auction will be held on or after April 27, 2021 at 1328 N. Sierra Vista Ave., Suite B, Fresno, CA 93703. Trustee requests approval to employ Auctioneer in matter #11 above. *See* ICE-1. No party in interest timely filed written opposition.

This motion will be GRANTED.

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D.

Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" *Id.* citing *In re Psychometric Systems, Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Trustee wishes to sell Property under 11 U.S.C. § 363(b). Doc. #16. Property is listed in the petition with a value of $9,536.00. Doc. #1, Schedule A/B, ¶ 3.1. The debtor exempted Property in the amount of $3,325.00 under Cal. Code Civ. P. § 704.010. *Id.*, Schedule C. Property appears to have no encumbrances. *Id.*, Schedule D.

Trustee believes that using an auction process to sell Property will result in it being sold for the best possible price because it will be exposed to a large number of prospective purchasers. Doc. #16, ¶ 5. Trustee intends to accept the highest reasonable bid, but if no reasonable bids are received the Property made be held for subsequent auction or private sale without additional notice. *Id.*, ¶ 7. Trustee declares her belief that sale of Property at public auction is in the best interests of the estate and will result in the quickest liquidation of Property at the full fair market value. Doc. #18.

Sale by auction under these circumstances should maximize potential recovery for the estate. Therefore, it is an appropriate exercise of Trustee's business judgment.

This motion will be GRANTED. The proposed sale of Property at auction will be approved.