

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, August 26, 2020
Place: Department A - Courtroom #11
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. A telephone appearance through CourtCall must be arranged 24 hours in advance of the hearing time.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [20-11628](#)-A-7 **IN RE: ANNIE PUMPHREY**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-24-2020 [[17](#)]

THE BANK OF NEW YORK MELLON/MV
GRISELDA TORRES/ATTY. FOR DBT.
WENDY LOCKE/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 amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Select Portfolio Servicing Inc. ("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 1401 Jepsen Avenue, Corcoran, California ("Property"). Doc. #17.

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 11 complete pre-petition payments. The movant has produced evidence that debtor is delinquent by at least \$15,671.81 and the entire balance of \$163,972.65 is due. Doc. #19.

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 property is valued at \$155,200.00 and debtor owes \$163,972.65. Doc. #17.

The debtor filed a notice of non-opposition of the motion dated August 13, 2020. Doc. #24.

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.

2. [18-12535](#)-A-7 **IN RE: JOSE CARILLO AND JUANA RIVERA**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
7-27-2020 [[43](#)]

JAMES SALVEN/MV
THOMAS GILLIS/ATTY. FOR DBT.

TENTATIVE 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 debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought.

James E. Salven, CPA ("Movant"), the accountant for the bankruptcy estate of Jose Carillo & Juana Rivera (collectively, the "Debtors"), requests allowance of final compensation in the amount of \$1,525.00 and reimbursement of expenses of \$414.60 for accounting and tax services. Doc. #44.

As a preliminary matter, the court notes a discrepancy in Movant's application. The applicant states Movant is a certified public accountant engaged by James E. Salven, Trustee. However, the Chapter 7 trustee in this case is Peter L. Fear, and Movant included a statement of non-objection by Mr. Fear, as trustee, regarding Movant's fees and costs. See Doc. ##2, 44, 46. Movant should be prepared to clarify the record before the court.

Section 330(a)(1)(A) & (B) of the Bankruptcy Code permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Movant's services included, without limitation, analyzing a settlement and compromise for tax aspects and allocation between spouses, and processing tax returns. Doc. #45, Ex. A. The court finds that Movant's services were reasonable and necessary.

Accordingly, the court is inclined to grant this motion after Movant clarifies the record. The court will allow final compensation in the amount of \$1,525.00 and reimbursement of expenses of \$414.60.

3. 19-15155-A-7 **IN RE: ADRIAN/PATRICIA GARCIA**
EPE-1

MOTION TO AVOID LIEN OF BENEFICIAL STATE BANK
7-24-2020 [47]

ADRIAN GARCIA/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). However, constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

Adrian Garcia and Patricia Ramirez Garcia (collectively, the "Debtors"), the debtors in this Chapter 7 case, move pursuant to 11 U.S.C. § 522(f) to avoid the judicial lien of Beneficial State Bank ("Creditor") on their residential real property commonly known as 804 "F" Street, Reedley, California 93654 (the "Property"). Doc. #47. For the reasons that follow, this motion is DENIED WITHOUT PREJUDICE.

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 section 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 section 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003)(quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994)).

A judgment was entered against the Debtors in the amount of \$14,579.15 in favor of Creditor on April 25, 2019. Doc. #50, Ex. 2. The abstract of judgment was recorded with Fresno County on May 23, 2019. Id. That lien attached to the Debtors' interest in the Property. See id. at Exs. 1-2. The Debtors value their interest in the Property at \$376,000.00, subject to the unavoidable lien of Caliber Home Loans in the amount of \$278,706.00, and the Debtors' claim of exemption under California Code of Civil Procedure § 704.730 of \$67,214.00. Id. at Exs. 3-4.

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Amount of Beneficial State Bank's Judicial Lien	+	\$14,579.15
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$278,706.00
Amount of the Debtors' claim of exemption in the Property	+	\$67,214.00
Value of the Debtors' interest in the Property	-	\$376,000.00
Extent of impairment of the Debtors' exemption in the Property	=	(\$15,500.85)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there appears to be \$15,500.85 of equity to support Creditor's judicial lien and there is no impairment of the Debtors' exemption in the Property.

The court notes that the Debtors include the cost of a hypothetical sale to reduce the apparent value of their interest in the Property on their schedules. See Doc. #50, Exs. 3-4. In this case, the Debtors believe the market value of the Property is \$376,000.00, but deduct an estimated 8% costs of a hypothetical sale leaving the value of their interest in the Property at \$345,920.00 on their schedules and for the purposes of this motion. See id.

However, this approach is contrary to In re Aslanyan, in which Judge McManus held "[l]iquidation costs or closing costs are not deducted from market value in the context of a motion to avoid a judicial lien." Case No. 17-24195-A-7, 2017 Bankr. LEXIS 4363, at *4 (Bankr. E.D. Cal Dec. 20, 2017) (citing In re Wolmer, 494 B.R. 783, 784 (Bankr. D. Conn. 2013); In re Barrett, 370 B.R. 1, 3 (Bankr. D. Me. 2007) ("[A] bevy of courts have opted against including hypothetical sales costs and other transaction costs in the valuation of collateral for the purpose of determining the fate of a judicial lien."); In re Sheth, 225 B.R. 913 918-19 (Bankr. N.D. Ill. 1998); In re Sumerell, 194 B.R. 818, 827 (Bankr. E.D. Tenn 1996); In re Abrahamzadeh, 162 B.R. 676, 678 (Bankr. N.J. 1994), In re Yackel, 114 B.R. 349, 351 (Bankr. N.D.N.Y 1990)). "When the bankruptcy court determines a debtor's exemption rights in property, 11 U.S.C. § 522(a)(2) directs it to value property at 'market value as of the date of the filing of the petition. . . .' There is no provision in section 522(a)(2) or in the statutory formula in section 522(f)(2)(A) mandating that a debtor's likely costs of sale be taken into account when ascertaining market value." Aslanyan, 2017 Bankr. LEXIS 4363, at *4.

The court recognizes that under California Code of Civil Procedure § 704.730, the Debtors may be able to claim an exemption in an amount greater than \$67,214.00, but that is not the facts currently before the court. Based on the numbers presented in this motion, Creditor's judicial lien does not impair the Debtors' current claim of exemption. Therefore, the Debtors have not satisfied the requirements of section 522(f)(1) to avoid Creditor's judicial lien.

Accordingly, this motion is DENIED WITHOUT PREJUDICE.

MOTION TO COMPEL ABANDONMENT
8-11-2020 [[28](#)]

THOMAS GRAHAM/MV
SCOTT LYONS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order in conformance with the ruling below.

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

Thomas G. Graham (the "Debtor"), the debtor in this Chapter 7 case, moves the court pursuant to 11 U.S.C. § 554(b) for an order compelling Irma Edmonds (the "Trustee"), the trustee of the bankruptcy estate, to abandon the Debtor's residence commonly known as 3940 E Cherry Avenue, Visalia, California 93292 (the "Property"). Doc. #28. The Debtor wants to list the Property for sale in light of uncertainty over the economy, the Debtor's employment, and how long it might take to close this case. Doc. #30, Graham Decl. at ¶ 2.

Bankruptcy Code section 554(b) provides that, on the request of a party in interest and after notice and a hearing, "the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." Thus, in order to approve a motion to abandon property, the court must find either that (1) the property is burdensome to the estate or (2) of inconsequential value and benefit to the estate.

The Debtor contends the Property is worth \$275,868.00 according to Schedule A/B. Doc. #1. The Property is encumbered by a deed of trust in favor of Freedom Mortgage for \$216,679.00. Doc. #1, Schedule D, Line 2.1. The Property also was encumbered by a judicial lien in favor of Kings Federal Credit Union for \$21,228.46, which has been avoided pursuant to 11 U.S.C. § 522(f)(1)(A). Doc. #26, Order Granting Motion to Avoid Judgment Lien of Kings Federal Credit Union. The Debtor has claimed an exemption in the Property in the amount of \$75,000.00 under California Code of Civil Procedure § 704.730. Doc. #1, Schedule C, Line 2.

Based on the scheduled value of the Property, minus the amount of the secured claim of Freedom Mortgage and the Debtor's homestead exemption, the court finds there is no equity available to the estate. Therefore, unless opposition is presented at the hearing, the court is inclined to find the Property is of inconsequential value and benefit to the estate and will grant the motion to compel the Trustee to abandon the Property.

5. [17-12389](#)-A-7 **IN RE: DON ROSE OIL CO., INC.**
[WF-25](#)

CONTINUED MOTION TO SELL
7-22-2020 [\[1084\]](#)

RANDELL PARKER/MV
RILEY WALTER/ATTY. FOR DBT.
DANIEL EGAN/ATTY. FOR MV.

NO RULING.

6. [20-11893](#)-A-7 **IN RE: LUIS VELASQUEZ**
[MMJ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-20-2020 [\[15\]](#)

EXETER FINANCE, LLC/MV
JERRY LOWE/ATTY. FOR DBT.
MARJORIE JOHNSON/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Exeter Finance, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2015 BMW 3 Series 320i Sedan 4D ("Vehicle"). Doc. #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).

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 five complete pre- and post-petition payments. The movant has produced evidence that debtor is delinquent by at least \$2,726.74. Doc. #17, 18.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. Id. The Vehicle is valued at \$12,271.00 and debtor owes \$19,702.00. Doc. #18.

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. According to the debtor's Statement of Intention, the Vehicle will be surrendered.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least five pre- and post-petition payments to Movant and the Vehicle is a depreciating asset.

7. [19-13799](#)-A-7 **IN RE: ERICA/LITCATZIN YOAKUM**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-17-2020 [[16](#)]

TOYOTA MOTOR CREDIT
CORPORATION/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
DISCHARGED 01/06/2020

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

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

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

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

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtors' interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtors' discharge was entered on January 6, 2020. Doc. #14. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Toyota Motor Credit Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2016 Scion tC ("Vehicle"). Doc. #16.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors have failed to make at least six complete post-petition payments. The movant has produced evidence that debtors are delinquent by at least \$3,115.18. Doc. #18.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtors are in chapter 7. The Vehicle is valued at \$11,283.00 and debtor owes \$23,580.01. Doc. #16.

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.

10:00 AM

1. [20-11147](#)-A-7 **IN RE: MARTIN LEON-MORALES AND MA ELENA MALDONADO-RAMIREZ**
[20-1040](#)

STATUS CONFERENCE RE: COMPLAINT
6-26-2020 [[1](#)]

DE CASTAING ET AL V.
MALDONADO-RAMIREZ ET AL
ROBERT RODRIGUEZ/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

At the adversary proceeding status conference, the parties should be prepared to explain to the court why they have not complied with the filing deadlines set forth in the Order to Confer on Initial Disclosures and Setting Deadlines filed in this adversary proceeding on June 26, 2020. Doc. #5.

2. [17-12781](#)-A-7 **IN RE: DALIP NIJJAR**
[17-1066](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
1-31-2018 [[151](#)]

SALVEN V. NIJJAR ET AL
PETER SAUER/ATTY. FOR PL.

NO RULING.

10:30 AM

1. [20-11989](#)-A-7 IN RE: LYNN RIOS

PRO SE REAFFIRMATION AGREEMENT WITH BRIDGECREST CREDIT CO.
LLC
8-6-2020 [[32](#)]

NO RULING.

1. [20-12258](#)-A-11 **IN RE: JARED/SARAH WATTS**
[JWC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY, AND/ OR
MOTION/APPLICATION FOR ADEQUATE PROTECTION
8-11-2020 [[80](#)]

BMO HARRIS BANK N.A./MV
LEONARD WELSH/ATTY. FOR DBT.
JENNIFER CRASTZ/ATTY. FOR MV.

NO RULING.

2. [20-12258](#)-A-11 **IN RE: JARED/SARAH WATTS**
[RPM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY, AND/OR
MOTION/APPLICATION FOR ADEQUATE PROTECTION
7-29-2020 [[52](#)]

MERCEDES-BENZ FINANCIAL
SERVICES USA LLC/MV
LEONARD WELSH/ATTY. FOR DBT.
RANDALL MROCZYNSKI/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted as set forth below.

ORDER: The minutes of the hearing will be the court's findings and conclusions. 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) and will proceed as scheduled. The Debtors filed a timely opposition. Doc. #70.

Secured creditor Mercedes-Benz Financial Services USA LLC dba Daimler Truck Financial ("Secured Creditor") moves the court for relief from the automatic stay, or alternatively for adequate protection of its secured interests in three Freightliner vehicles: (1) a 2016 Freightliner 132 Coronado, VIN 3AKJGMD13GDHN5795 (the "Contract 32001 Freightliner"); (2) a 2016 Freightliner 122SD, VIN 3AKBGYD68GDHE6187 (the "Contract 45001 Freightliner"); and (3) a 2016 Freightliner 122SD, VIN 3AKBGYDV4GDGS5944 (the "Contract 31001 Freightliner").

Jared Allen Watts and Sarah Danielle Watts (collectively, the "Debtors"), the debtors and debtors in possession in this Chapter 11 case, own and operate a hay brokerage and commercial transportation business under the name of "Watts Hay Company" in Bakersfield, California, and operate throughout the State of California. Doc. #71, Watts Decl. at ¶ 3. Among the property of the estate are the three Freightliner vehicles that are Secured Creditor's collateral. Id. at

¶ 4. The Debtors declare the Contract 32001 Freightliner and Contract 45001 Freightliner are important to their business and intend to retain these two vehicles, while surrendering the Contract 31001 Freightliner as part of their reorganization plan. Id. at ¶¶ 5, 7.

Secured Creditor alleges the Debtors are four pre-petition payments past due in the amount of \$28,442.92, not including pre-petition late charges of \$1,628.58, and delinquent for at least one post-petition payment in the amount of \$2,724.36. Doc. #55, Taylor Decl. at ¶¶ 6-7; see also Doc. #57. The Debtors admit Secured Creditor's motion reflects the amount of debt the Debtors owe on account of the three Freightliner vehicles. Doc. #71, Watts Decl. at ¶ 4. However, the Debtors argue that they "are not required to maintain their 'ongoing contractual payments' while their reorganization 'is in prospect.'" Doc. #70.

Secured Creditor states the aggregate debt that the Debtors owe with respect to the three Freightliner vehicles is \$267,841.16. Doc. #55, Taylor Decl. at ¶ 8; see also Claim No. 12-1. Secured Creditor contends the aggregate retail value of the three Freightliner vehicles is \$220,925.00 according to the NADA Market Reports dated July 21, 2020. Doc. #55, Taylor Decl. at ¶ 8. The three separate contracts for each of the Freightliner vehicles provided for cross-collateralization and cross-default. Doc. #55, Taylor Decl. at ¶ 3. The retail value of the Contract 32001 Freightliner that the Debtors plan to retain is \$59,100.00, but the Debtors owe a total of \$68,026.88 for this vehicle according to Secured Creditor's proof of claim filed on July 29, 2020. Compare Doc. #54, Ex. D with Claim No. 12-1. The retail value of the Contract 45001 Freightliner that the Debtors plan to retain is \$84,850.00, but the Debtors owe a total of \$89,437.56 according to Secured Creditor's proof of claim. Id. The retail value of the Contract 31001 Freightliner that the Debtors plan to surrender is \$84,850.00, but the Debtors owe a total of \$110,376.72 according to Secured Creditor's proof of claim. Id.

Under 11 U.S.C. § 362(d)(2), relief from the automatic stay is available to a secured creditor if the debtor lacks equity in the collateral and that collateral is not necessary to an effective reorganization. Secured Creditor argues, and the Debtors do not dispute that there is no equity in the Freightliner vehicles. Doc. ##52, 70. However, the Debtors argue that the Contract 32001 Freightliner and Contract 45001 Freightliner are important to their business and necessary to their reorganization. Doc. #71, Watts Decl. at ¶ 5.

While 11 U.S.C. § 363(c)(1) allows a debtor in possession to use property of the estate in which a creditor holds a lien in the ordinary course of the debtor's business, section 363(e) conditions that right and provides, "on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the [debtor in possession], the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest." Bankruptcy Code section 361(1) states adequate protection may be provided by "requiring the [debtor in possession] to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property."

Bankruptcy Code section 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection of an interest in property of such party in interest. "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). In this case, Secured Creditor has asked for relief from the automatic stay, or alternatively provision of adequate protection. Doc. #52.

The court has broad discretion under the Bankruptcy Code in granting relief from the automatic stay for cause under 11 U.S.C. § 362(d). See, e.g., Edwards v. Wells Fargo Bank, N.A. (In re Edwards), 454 B.R. 100, 107 (B.A.P. 9th Cir. 2011); Groshong v. Sapp (In re Mila, Inc.), 423 B.R. 537, 542 (9th Cir. 2010); In re Delaney-Morin, 304 B.R. 365, 369-70 (B.A.P. 9th Cir. 2003); In re Leisure Corp., 234 B.R. 916, 920 (B.A.P. 9th Cir. 1999); Mataya v. Kissinger (In re Kissinger), 72 F.3d 107, 108-09 (9th Cir. 1995). The party seeking relief must first establish that cause exists for relief under section 362(d)(1). United States of America v. Gould (In re Gould), 401 B.R. 415, 426 (B.A.P. 9th Cir. 2009) (citing Duvar Apt., Inc. v. FDIC (In re Duvar Apt., Inc.), 206 B.R. 196, 200 (B.A.P. 9th Cir. 1996)). Once a *prima facie* case has been established, the burden shifts to the debtor to show that relief from the stay is not warranted. Id.

Alternatively, a secured creditor may seek adequate protection of its interest in property under Bankruptcy Code section 363(e). On request of an entity that has an interest in property to be used by the debtor, the debtor has the burden of proof that the secured creditor is adequately protected. 11 U.S.C. § 363(p)(1). Bankruptcy courts have broad discretion in designing appropriate adequate protection awards for secured creditors. People's Capital & Leasing Corp. v. Big3D, Inc. (In re Big3D, Inc.), 438 B.R. 214, 225 (B.A.P. 9th Cir. 2010).

The Debtors operate a commercial transportation business throughout California and state that at least two Freightliner vehicles in which Secured Creditor has an interest are important to that business. Doc. #71, Watts Decl. at ¶¶ 3-5. Secured Creditor has requested adequate protection of its interest in the Freightliner vehicles, and the court may condition the Debtors' continued use of the vehicles in the ordinary course of the Debtors' business on the provision of adequate protection to Secured Creditor; or in the absence of adequate protection, grant Secured Creditor relief from the stay. Secured Creditor appears to make requests for two different forms of adequate protection: (1) maintenance of ongoing contractual payments and insurance coverage; or (2) cash payments to compensate Secured Creditor for the loss in value of its collateral as a result of the stay. See Doc. ##52 and 93. As discussed below, the latter measure is the appropriate standard.

According to Secured Creditor, the monthly payment amount for the Contract 32001 Freightliner is \$2,977.48; and the monthly payment amount for the Contract 45001 Freightliner is \$2,724.36. Doc. #55, Taylor Decl. at ¶ 5. The Debtors argue that the Supreme Court's holding in United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 369-71 (1988), does not require a debtor to maintain ongoing contractual payments while their reorganization is in prospect, and an undersecured creditor is not entitled to relief from the stay under section 362(d)(1) simply because it is delayed in foreclosing against its collateral and not receiving payments from the debtor prior to confirmation. Doc. #70. The Debtors have offered only to maintain insurance on the Freightliner vehicles to provide adequate protection to Secured Creditor. Id. However, the Debtors did not submit any proof of insurance along with their opposition to Secured Creditor's motion.

Timbers did state a secured creditor's interest in property is "not adequately protected if the security is depreciating during the term of the stay," and that if the property in that case had been declining in value "[the secured creditor] would have been entitled, under § 362(d)(1), to cash payments or

additional security in the amount of the decline, as § 361 describes." Id. at 370. In In re Deico Electronics, Inc., 139 B.R. 945, 947 (B.A.P. 9th Cir. 1992), the Bankruptcy Appellate Panel for the Ninth Circuit held that undersecured creditors are entitled to adequate protection to compensate them for the depreciation in their collateral that results from the delay caused by bankruptcy's stay of the exercise of their state law remedies. The amount of adequate protection to which an undersecured creditor is entitled is equal to the amount of depreciation its collateral suffers after the undersecured creditor would have exercised its state law remedies. Id. Deico further held the bankruptcy court has "discretion to fix any initial lump sum amount, the amount payable periodically, the frequency of payments, and the beginning date, all as dictated by the circumstances of the case and the sound exercise of that discretion." Id.; see also Big3D, 438 B.R. at 230 (declining to modify Deico).

Since filing its motion, Secured Creditor argues that the retail value of the Contract 45001 Freightliner has decreased by \$8,400.00 in less than one month, from \$84,850.00 based on a July 21, 2020 valuation to \$76,450.00 based on an August 17, 2020 valuation. Doc. #94, Taylor Decl. at ¶ 4; compare Doc. #54, Ex. D with Doc. #95, Ex. E. The retail value of the Contract 32001 Freightliner does not appear to show any depreciation since the filing of this motion. Id. The court notes the Debtors' total monthly payment for the two vehicles the Debtors intend to retain is supposed to be \$5,701.84.

While the Debtors have not had the opportunity to respond to the evidence of value provided in Secured Creditor's reply, it appears to the court that Secured Creditor's interest in the Freightliner vehicles is not adequately protected and the Debtors have not met their burden of proof to show that Secured Creditor's interest in the Freightliner vehicles is adequately protected. If the Debtors wish to continue to use the Contract 45001 Freightliner and Contract 32001 Freightliner until their plan of reorganization is confirmed, the court is inclined to require adequate protection payment(s) to Secured Creditor to compensate Secured Creditor for the loss in value of its collateral as a result of the stay. The court is mindful of the admonition in Deico that "collateral may not always depreciate according to a precise monthly schedule" and "requiring a lump sum of past due protection could suffocate a debtor otherwise able to reorganize." Deico, 139 B.R. at 947. The court proposes the Debtors provide proof of insurance for all three vehicles by August 28, 2020, and, at the hearing, the court will listen to argument regarding the timing and amount of adequate protection payment(s) for the continued use of the Contract 45001 Freightliner and Contract 32001 Freightliner until the Debtors' plan of reorganization is confirmed.

Although Secured Creditor did not submit an updated valuation report for the Contract 31001 Freightliner that the Debtors intend to surrender, the court observes that it is substantially similar to the Contract 45001 Freightliner that the Debtors intend to keep, subject to an adjustment for a single rear axle. Assuming the Debtors do not dispute the decline in value of the Contract 45001 Freightliner as provided in Secured Creditor's reply, the NADA Market Reports dated July 21, 2020 for these two vehicles show the same base valuations and the vehicles are likely subject to similar declines in value of about \$8,400.00. The Debtors stated their intention to not surrender their possession of the Contract 31001 Freightliner until confirmation of their reorganization plan without proposing any adequate protection payment(s) and offering only to maintain insurance on the vehicle, for which the Debtors have submitted no proof. See Doc. #71. The court notes from a review of the docket in this case that the Debtors have filed a reorganization plan and set a confirmation hearing for September 30, 2020. See LKW-5, Doc. ##87-92. This is over a month away. Section 6.14 of the Debtors' plan provides for the surrender of the Contract 31001 Freightliner upon the effective date of the plan and

confirmation of the plan will constitute an order for relief from the automatic stay in favor of Secured Creditor. See Doc. #89. The Debtors do not dispute there is no equity in the Contract 31001 Freightliner, and it appears this vehicle is not necessary to an effective reorganization. Moreover, there is no legal basis for allowing the Debtors to continue to possess and use the Contract 31001 Freightliner without adequate protection payments when Secured Creditor's collateral is depreciating. Accordingly, it appears Secured Creditor has grounds for relief from the stay under sections 362(d)(1) or (2), and the court is inclined to grant Secured Creditor relief from the automatic stay as to the Contract 31001 Freightliner and waive the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) because the vehicle is a depreciating asset.

3. 12-12998-A-11 **IN RE: FARSHAD TAFTI**

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
4-2-2012 [1]

PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to September 30, 2020 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 matter was set pursuant to an order setting status conference filed on July 20, 2020 (Doc. #394) and will proceed as scheduled. For the reasons discussed below, the court is inclined to continue the hearing on this matter to September 30, 2020 at 9:30 a.m.

This matter was set because a review of the docket showed that the quarterly post-confirmation report for the quarter ending December 31, 2018, filed by the debtor on January 14, 2019, listed an anticipated date for a motion for final decree of June 15, 2019 (Doc. #385), and there had been essentially no docket activity since January 2019, and no motion for a final decree had been filed.

On August 19, 2020, the debtor filed a status report indicating that the debtor intends to file a motion for entry of a discharge and to set that motion for hearing on September 30, 2020. Doc. #396. Based on that representation, the court is inclined to continue this status conference to September 30, 2020 at 9:30 a.m.

1. [20-12208](#)-A-13 **IN RE: MICHELLE LEWIS**
[DJP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY EDUCATIONAL EMPLOYEES
CREDIT UNION
8-11-2020 [[18](#)]

EDUCATIONAL EMPLOYEES CREDIT
UNION/MV
JOEL WINTER/ATTY. FOR DBT.
DON POOL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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 objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. 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.

Creditor Educational Employees Credit Union ("Creditor" or "EECU") objects to confirmation of the Debtor's proposed Chapter 13 plan filed on June 30, 2020 (Doc. #2). Doc. #18.

Creditor objects pursuant to 11 U.S.C. § 1325(a)(3) on the basis that the plan is not proposed in good faith because the plan misstates the monthly payments due to Creditor as \$0.00. Doc. #18. Creditor filed a proof of claim in the amount of \$39,437.00 for a home equity line of credit secured by a deed of trust. See Claim No. 4-1. The Debtor's Schedule J lists an expense for additional mortgage payments in the amount of \$296.00 per month, and the Statement of Financial Affairs disclose monthly pre-petition mortgage payments to EECU of \$269.00. See Doc. #1. However, the Debtor's plan at section 3.10 listed EECU as a Class 4 creditor with a secured claim to be paid directly by the Debtor or a third party, but provides for a monthly contract installment payment of \$0.00. See Doc. #2.

Federal Rule of Bankruptcy Procedure 3001(f) provides that the execution and filing of a proof of claim is *prima facie* evidence of the validity and amount of the claim. The Debtor has not filed an objection, if any, to Creditor's proof of claim. The Debtor's plan cannot be confirmed because it fails to provide for any payment of Creditor's secured claim.

Accordingly, unless opposition is presented at the hearing, the objection will be SUSTAINED.

2. [16-12409](#)-A-13 **IN RE: LISA BRADBURY**
[SLL-3](#)

MOTION TO MODIFY PLAN
7-20-2020 [[61](#)]

LISA BRADBURY/MV
STEPHEN LABIAK/ATTY. FOR DBT.
PLAN WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on August 10, 2020. Doc. #69.

3. [20-11415](#)-A-13 **IN RE: ALBERTO GALICIA FLORES AND JOANNA CANO**
[MAZ-2](#)

MOTION TO CONFIRM PLAN
7-21-2020 [[44](#)]

ALBERTO GALICIA FLORES/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part.

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 set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1) and will proceed as scheduled.

The Chapter 13 trustee (the "Trustee") filed a timely objection pursuant to 11 U.S.C. § 1322(a) to the Debtors' motion to confirm a second modified plan (MAZ-2, Doc. ##44, 48) on the basis that the plan fails to provide for the submission of all or such portion of future earnings or other future income to the supervision and control of the Trustee as is necessary for the execution of the plan. Doc. #53. Specifically, the Trustee asserts the plan payments are insufficient by \$63.78 per month for months 1-2 and \$33.57 per month for month 3 through the term of the plan in order to fund the required monthly dividends. Id.

The Debtors filed a response agreeing to increase payments for months 1-2 by \$63.78 per month and for month 3 onward by \$33.57 per month, and state they will make the delinquent plan payments to the Trustee immediately. Doc. #55. At the hearing, the court will inquire whether the Debtors are current on their plan payments.

The court is inclined to grant the motion, subject to the changes agreed to by the Debtors. The confirmation order shall reflect the payments increased by \$63.78 per month for months 1-2 and by \$33.57 per month for month 3 through the

term of the plan, bringing plan payments for every month of the plan to \$3,336.78. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

4. [20-11821](#)-A-13 **IN RE: ARMIDA GOMEZ**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
7-9-2020 [[17](#)]

MICHAEL MEYER/MV
PETER NISSON/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This matter was continued from a hearing on July 23, 2020. Doc. #27.

The Chapter 13 trustee moved to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the Debtor that is prejudicial to creditors. Specifically, the Trustee alleges the Debtor (1) failed to appear at the scheduled 341 meeting of creditors; (2) failed to provide the Trustee with required documentation; and (3) failed to set a plan for hearing with notice to creditors. Doc #17.

Debtor's counsel filed a declaration in opposition to the Trustee's motion to dismiss, representing that (1) the Debtor has cancer and is isolated during this time due to COVID-19, (2) the Debtor's failure to appear at the 341 meeting was due to counsel's scheduling error, and (3) the Debtor has had difficulty sending in the required documents due to her limitations but was working on getting them to counsel and the Trustee. Doc. #22.

At the hearing on July 23, 2020, the Trustee explained that the Debtor has ongoing mortgage payments but had made no plan payments since the commencement of this case. Doc. #26. Unless the delinquencies are cured, the Debtor will be behind by three monthly plan payments for June 2020, July 2020, and August 2020 by the date of the continued hearing on August 26, 2020. Id. The court ordered the Debtor to attend the 341 meeting on August 4, 2020, and to file an amended plan and make all payments due under the plan by August 14, 2020. Doc. #27.

A review of the court's docket in this case shows the Debtor has failed to file any amended plan to date. According to the Trustee's report, the Debtor and Debtor's counsel did not appear at the 341 meeting on August 4, 2020. Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for "cause." "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the Debtor that is prejudicial to creditors.

Unless this motion is adequately opposed at the hearing, or withdrawn, the Trustee's motion will be GRANTED, and the case dismissed.

5. [20-12228](#)-A-13 **IN RE: KHALID CHAOUI**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
7-27-2020 [[35](#)]

WELLS FARGO BANK, N.A./MV
WENDY LOCKE/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The Debtor filed a modified plan on August 12, 2020. See Doc. #48. The court notes, however, that the Debtor has not set a hearing to confirm the modified plan, and the Chapter 13 trustee has a motion to dismiss the case set for hearing on September 3, 2020 at 9:30 a.m.

6. [20-12228](#)-A-13 **IN RE: KHALID CHAOUI**
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL
ASSOCIATION
8-12-2020 [[45](#)]

U.S. BANK NATIONAL
ASSOCIATION/MV
SEAN FERRY/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The Debtor filed a modified plan on August 12, 2020. See Doc. #48. The court notes, however, that the Debtor has not set a hearing to confirm the modified plan, and the Chapter 13 trustee has a motion to dismiss the case set for hearing on September 3, 2020 at 9:30 a.m.

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL GROUP, LLC
7-28-2020 [31]

MARY ROMERO/MV
PHILLIP GILLET/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part.

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 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). 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.

Mary Victoria Romero (the "Debtor"), the debtor in this Chapter 13 case, moves the court pursuant to 11 U.S.C. §§ 506(a) and (d), 1325(a)(5)(B), and Federal Rule of Bankruptcy Procedure ("FRBP") 3012 for an order (1) valuing the Debtor's vehicle, a 2003 Dodge Ram (the "Vehicle"), which is the collateral of Onemain Financial Group, LLC ("Creditor"); (2) determining the amount of Creditor's claim in excess of the value of the Vehicle as unsecured; (3) deeming Creditor's claim as provided for in the plan; (4) finding service was proper on Creditor; (5) finding that upon competition of the payments under the plan this lien is satisfied; and (6) determining that the plan's treatment of Creditor's claim shall be binding on any successors and assigns. Doc. #31. The Debtor also moves pursuant to LBR 3015-1(j), however there is no such subsection in the LBR. The Debtor should be prepared to address this issue on the record at the hearing.

FRBP 3012 provides, "[o]n request by a party in interest and after notice to the holder of the claim and any other entity the court designates and a hearing, the court may determine: (1) the amount of a secured claim under § 506(a) of the Code." Fed. R. Bankr. P. 3012. Bankruptcy Code section 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." 11 U.S.C. § 506(a)(1). Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2). Section 506(d) provides "[t]o the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void."

The Debtor contends the replacement value of the Vehicle is at most \$3,940.00 based on the Debtor's research of vehicles of similar age and condition for sale in newspapers, magazines, internet sources, and reference to the NADA guide. Doc. #33, Romero Decl. ¶¶ 4-5. The Debtor is competent to testify as to the value of the Vehicle. Given the absence of contrary evidence, the Debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

Accordingly, the court is inclined to grant the motion in part after the Debtor clarifies the record at the hearing. The court is inclined to find the value of the Vehicle is \$3,940.00. The court shall fix Creditor's secured claimant the Vehicle's replacement value of \$3,940.00, and any amount of the Creditor's claim in excess of the value of the Vehicle shall be treated as unsecured. No other relief is granted. The Debtor's request for a determination that Creditor's claim is provided for in the plan, that such treatment shall be binding on Creditor and its successors and assigns, and finding that upon competition of the payments under the plan this lien is satisfied seem better suited in a motion to confirm a Chapter 13 plan. A proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the Chapter 13 plan.

8. [20-10189](#)-A-13 **IN RE: JOSHUA CRABLE**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
5-18-2020 [[31](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This matter was continued from a hearing scheduled for July 23, 2020.
Doc. ##57, 59.

The Chapter 13 trustee moved to dismiss this case under 11 U.S.C. § 1307(c)(1) based on the Debtor's unreasonable delay and section 1307(c) for failure to confirm a plan. Doc. #31. The Debtor filed a response on June 9, 2020, opposing dismissal because the Debtor had filed a motion to confirm a Chapter 13 plan set for hearing on July 23, 2020. Doc. #45, see also Doc. #38. The Trustee had filed an objection to the Debtor's motion to confirm the Chapter 13 plan. Doc. #51. The Trustee's motion to dismiss was continued to track with the Debtor's motion to confirm the plan. Doc. ##57, 59

Pursuant to this court's order on the Debtor's motion to confirm the Chapter 13 plan entered on July 24, 2020, the Debtor was required to file and serve a written response to the Trustee's objection to confirmation no later than August 5, 2020; or file, serve, and set a confirmable modified plan for hearing not later than August 12, 2020. Doc. #60. A review of the court's docket in

this case shows the Debtor filed a second modified plan and a motion to confirm the modified plan on August 20, 2020 (TAM-3, Doc. ##63, 68), which was past the court's ordered deadline of August 12, 2020 (Doc. #60).

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for "cause." "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the Debtor that is prejudicial to creditors.

Unless the failure of the Debtor to comply timely with the court's prior deadline is adequately addressed at the hearing or the motion is withdrawn, the Trustee's motion will be GRANTED, and the case dismissed.

9. [20-10189](#)-A-13 **IN RE: JOSHUA CRABLE**
[TAM-1](#)

CONTINUED MOTION TO CONFIRM PLAN
6-9-2020 [[38](#)]

JOSHUA CRABLE/MV
THOMAS MOORE/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The Debtor filed a modified plan on August 20, 2020. See Doc. #60.

10. [19-14394](#)-A-13 **IN RE: ROBERT/MARIA PFEIFLE**
[DMG-1](#)

MOTION FOR COMPENSATION FOR D. MAX GARDNER, DEBTORS
ATTORNEY(S)
7-24-2020 [[30](#)]

D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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

In this Chapter 13 case, D. Max Gardner, attorney for debtors Robert Pfeifle and Maria Pfeifle, has applied for an allowance of interim compensation and reimbursement of expenses. Doc. #30. The applicant requests that the court allow compensation in the amount of \$4,111.00 and reimbursement of expenses in the amount of \$41.70, totaling \$4,152.70, for legal services rendered from October 17, 2019 through July 24, 2020. Id.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See id. § 330(a)(3). The services rendered for the relevant time period of this application include, without limitation, pre-petition consultation; preparing and filing of the voluntary petition, schedules, and statement of financial affairs; preparing for and attending the meeting of creditors; preparing, filing, and getting the Chapter 13 plan confirmed; reviewing and opposing a motion to dismiss the case; and case administration. Doc. ##30, 32, 33. The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis.

This motion is GRANTED. The court allows interim compensation in the amount of \$4,111.00 and reimbursement of expenses in the amount of \$41.70 to be paid in a manner consistent with the terms of the confirmed plan.

11. [20-12547](#)-A-7 **IN RE: NICANOR BARRIGA AND MIRIAM BARRIGA**
MACIEL
[EPE-1](#)

MOTION TO COMPEL ABANDONMENT
8-2-2020 [5]

NICANOR BARRIGA/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
OST 8/17/20

TENTATIVE 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 filed and served pursuant to an order shortening time ("OST") entered on August 17, 2020. Pursuant to the OST, opposition may be presented at the hearing. Doc. #19.

Nicanor Barriga ("Mr. Barriga") and Miriam Barriga Maciel ("Ms. Maciel") (collectively, the "Debtors") the debtors in this Chapter 7 case, move the court pursuant to 11 U.S.C. § 554 for an order compelling Peter L. Fear (the "Trustee"), the trustee of the bankruptcy estate, to abandon the estate's interest in the Debtors' sole proprietorship businesses, (1) Mr. Barriga's truck driving business and (2) Ms. Maciel's day care service; and property used for these businesses, including a 2010 Kenworth T660, a 2016 Dry-Van Utility Trailer, an Apple Tablet, a 2016 Chevrolet Suburban, and day care furniture and supplies (collectively, the "Business Assets"). Doc. #5.

The Debtors filed this Chapter 7 case on July 31, 2020. See Doc. #1. The Debtors filed this motion on August 2, 2020. Doc. #5. On August 5, 2020, the Trustee filed an *ex parte* application for an order requiring the Debtors to shut down their businesses. See Doc. #12. On August 13, 2020, the court entered an order granting the Trustee's application and ordering the Debtors to immediately cease operating any and all businesses that are property of the estate until such time as such businesses and the assets of such businesses are no longer property of the estate. See Doc. #16. Thereafter, on August 14, 2020, the Debtors moved to shorten the time for a hearing on this motion. Doc. #17. The court entered the OST on August 17, 2020. Doc. #19.

Bankruptcy Code section 554(b) provides that, on the request of a party in interest and after notice and a hearing, "the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." Thus, in order to approve a motion to abandon property, the court must find either that (1) the property is burdensome to the estate or (2) of inconsequential value and benefit to the estate.

The Debtors' motion is supported by the declarations of Mr. Barriga and Ms. Maciel and their schedules filed in this case. Doc. ##1, 7, 8.

Mr. Barriga declares that he is self-employed and has operated a truck driving business as a sole proprietor for approximately 28 years (the "Trucking Business"). Doc. #7, Barriga Decl. at ¶ 4. The Debtors' schedules list Mr. Barriga doing business as "Nick Trucking." Doc. #1. The motion alleges Mr. Barriga operated the Trucking Business from the Debtors' residence. Doc. #5, p. 2, at ¶ 3. Mr. Barriga states that he has no employees and he performs all the services required to provide transportation. Doc. #7, Barriga Decl. at ¶ 5. Mr. Barriga states that the assets of the Trucking Business consist of only a 2010 Kenworth T660 Commercial Diesel Tractor, a 2016 Dry-Van Utility Trailer, and an Apple Tablet. Id. at ¶¶ 6, 8. The Debtors scheduled the Trucking Business' assets with the following values, encumbrances, subject to the Debtors' claims of exemption:

Property	Scheduled Value	Lien(s)	Claim of Exemption
2010 Kenworth T660 Commercial Diesel Tractor	\$10,000.00	\$0.00	\$10,000.00 Cal. Civ. Proc. ("CCP") § 703.140(b)(2) and (6)
2016 Dry-Van Utility Trailer	\$15,000.00	\$12,536.00	\$2,464.00 CCP § 703.140(b)(2)
Apple Tablet	\$100.00	\$0.00	\$100.00 CCP § 703.140(b)(5)

See Doc. #1, Schedules A/B, C, D.

Ms. Maciel declares that she is self-employed and has operated a day care business out of the Debtors' residence as a sole proprietor for approximately 20 years (the "Day Care Business"). Doc. #8, Maciel Decl. at ¶ 4. The Debtors' schedules list Ms. Maciel doing business as "Barriga Daycare." Doc. #1. Ms. Maciel states that she has no employees and she performs all the services required to provide day care services. Doc. #8, Maciel Decl. at ¶ 5. Ms. Maciel states that the assets of the Day Care Business consist of only a 2016 Chevrolet Suburban and furniture and supplies. Id. at ¶¶ 6, 8. The Debtors scheduled the Day Care Business' assets with the following values, encumbrances, subject to the Debtors' claims of exemption:

Property	Scheduled Value	Lien(s)	Claim of Exemption
2016 Chevrolet Suburban	\$35,700.00	\$42,536.00	\$0.00
Day Care Furniture and Supplies	\$1,000.00	\$0.00	\$1,000.00 CCP § 703.140(b)(5)

See Doc. #1, Schedules A/B, C, D.

The Debtors have claimed exemptions in all the apparent equity in the property used for these businesses. Although not listed in the motion, the court observes the Debtors also exempted the full value of \$2,830.00 in the Trucking Business' business checking account under California Code of Civil Procedure § 703.140(b)(5). Doc. #1, Schedule C. The court notes that while Ms. Maciel's declaration lists the Daycare Supplies as worth \$700.00 with only \$500.00 claimed as exempt, Schedule C lists the value of furniture and supplies as \$1,000.00 and is claimed as fully exempt. Doc. #8, Maciel Decl. at ¶ 6. The Debtors further claimed a 100% interest in the Day Care Business, valued at \$0.00, exempt under California Code of Civil Procedure § 703.140(b)(5). Doc. #1, Schedule C. A review of the court's docket in this case shows the Trustee has not yet filed any objection to the Debtor's claims of exemption. The Debtors have stated their intention to surrender the 2016 Chevrolet Suburban. Doc. #1. Based on the value of the Business Assets presented in the Debtors' schedules, and taking into consideration the liens and claims of exemption against the property, the court is inclined to find there is no equity available in the Business Assets to the estate. Moreover, the court notes the income from the Trucking Business and the Day Care Business appear to derive entirely from the Debtors' services, respectively, and any value from the Debtors' post-petition services would be excluded from property of the estate under 11 U.S.C. § 521(a)(6).

Accordingly, unless opposition is presented at the hearing, the court is inclined to find the Business Assets are of inconsequential value and benefit to the estate and will grant the Debtors' motion to compel the Trustee to abandon the estate's interest the Business Assets.

3:30 PM

1. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[20-1041](#)

STATUS CONFERENCE RE: COMPLAINT
6-26-2020 [[1](#)]

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

NO RULING.

At the adversary proceeding status conference, the parties should be prepared to explain to the court why they have not complied with the filing deadlines set forth in the Order to Confer on Initial Disclosures and Setting Deadlines filed in this adversary proceeding on June 26, 2020. Doc. #5.

2. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[20-1042](#)

STATUS CONFERENCE RE: COMPLAINT
6-26-2020 [[1](#)]

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

NO RULING.

At the adversary proceeding status conference, the parties should be prepared to explain to the court why they have not complied with the filing deadlines set forth in the Order to Confer on Initial Disclosures and Setting Deadlines filed in this adversary proceeding on June 26, 2020. Doc. #5.