UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, September 2, 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. 20-10945-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
DRJ-4

OBJECTION TO CLAIM OF JASKARAN SIHOTA, KEWAL SINGH, AND JASWINDER KAUR, CLAIM NUMBER 5
7-20-2020 [92]

AJITPAL SINGH/MV
DAVID JENKINS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

This objection to claim ("Objection") was set for hearing on 44 days' notice as required by Local Rule of Practice 3007-1(b)(1) and will proceed as scheduled.

On May 20, 2020, Jaskaran Sihota, Kewal Singh and Jaswinder Kaur (collectively, "Claimants") filed proof of claim number 5 ("Claim") in the bankruptcy case of Debtors Ajitpal Singh and Jatinderjeet Sihota ("Debtors"). Debtors object to the Claim on the following three grounds: (1) the Claim incorrectly asserts that it is a secured claim; (2) the Claim improperly asserts a right to prejudgment interest; and (3) if the recording of the lis pendens created a lien on real property in which Debtors' have an interest, that lien is avoidable as a preferential transfer. Doc. #92. Claimants filed a timely opposition to the Objection. Doc. #106.

Since the Objection was filed, Claimants have amended their proof of claim to assert only an unsecured claim in Debtors' case. See Claim No. 8. Accordingly, while Debtors seek to disallow the Claim in its entirety, the only remaining ground specifically set forth in the Objection is to the alleged improper assertion of prejudgment interest.

The Claim is based on a final arbitration award issued on January 25, 2020, that was not confirmed by the California state court prior to the filing of Debtors' bankruptcy case ("Award"). Pursuant to the Award, Claimants assert a Claim in the amount of $1,669,298.84 as of March 12, 2020, based on the following:

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Basis	Principal	Prejudgment Interest	Offset	Post-judgment Interest
Ducor & Mountain View Properties	$616,236.60			$23,636.47
Kamm Property Profits	$98,564.01			$3,780.54
Kamm Property Rent	$38,400.00	$23,145.21		$2,360.64
Loan Offset			(140,105.64)	
Interest on $140,000 Loan		$19,636.37		$753.18
Family Venture Equipment Value	$40,000.00			$1,534.25
Disgorgement of Bhajan's Salary	$145,454.54			$5,579.08
Attorney's Fees Paid Using Family Venture Funds	$30,000.00			$1,150.68
Punitive Damages	$100,000.00			$3,835.62
Prejudgment Interest on Jaskaran Offset		$58,460.40	(194,868.00)	$2,242.32
Attorney Fees	$330,000.00			$4,249.32
Costs	$202,643.88			$2,609.39
Pump Payment	$250,000.00			
Totals	**$1,851,299.03**	**$101,241.98**	**(334,973.64)**	**$51,731.47**

As a preliminary matter, Claimants assert that the court should permissively abstain from determining the issues raised in the Objection pursuant to 28 U.S.C. § 1334(c)(1). Doc. #106. Debtors oppose this request. Doc. #118.

The Ninth Circuit has stated that the factors a bankruptcy court should consider when deciding whether to abstain are:

> (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,
>
> (2) the extent to which state law issues predominate over bankruptcy issues,
>
> (3) the difficulty or unsettled nature of the applicable law,
>
> (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court,
>
> (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,
>
> (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case,
>
> (7) the substance rather than form of an asserted "core" proceeding,
>
> (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court,
>
> (9) the burden of [the bankruptcy court's] docket,

(10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties,

(11) the existence of a right to a jury trial, and

(12) the presence in the proceeding of nondebtor parties.

In re Tucson Estates, Inc., 912 F.2d 1162, 1167 (9th Cir. 1990) (quoting In re Republic Reader's Serv., Inc., 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987).

Here, the narrow issue remaining with respect to the Objection is whether prejudgment interest is appropriate for certain aspects of the Claim. The court's application of the Tucson Estate factors to the Objection is as follows:

1. Effect on Administration of the Estate if Court Abstains: Claimants filed the Claim based on the Award. Abstaining would delay a resolution of the Objection. While the proposed chapter 12 plan can be confirmed without determining the Claim (Doc. #113), this court can expeditiously rule on the narrow issue of whether prejudgment interest was properly asserted in the Claim. It is the determination of the court that abstention would delay the administration of the estate. This factor weighs against abstention.

2. Extent to Which State Law Issues Predominate: Claim allowance involves issues of federal bankruptcy law and whether prejudgment interest is permitted implicates state law. The state law issues clearly do not predominate over the bankruptcy issues. This factor weighs against abstention.

3. Difficulty or Unsettled Nature of Applicable Law: Neither party has indicated that when to award prejudgment interest is an unsettled issue of California law. This court is capable of adjudicating the remaining issue of California law raised by the Objection. This factor is neutral.

4. Presence of Pending Related Proceeding: There is a related arbitration and state court lawsuit pending in the California state court. However, the arbitrator has issued the Award and any confirmation of the Award by the California state court is currently subject to the automatic stay. This factor weighs against abstention.

5. The Jurisdictional Basis Other than 28 U.S.C. § 1334: The only basis for jurisdiction appears to be 28 U.S.C. § 1334. This factor weighs in favor of abstention or is neutral.

6. Degree of Relatedness or Remoteness of the Proceeding to the Bankruptcy Case: This Objection involves the allowance of a proof of claim filed by Claimants in Debtors' bankruptcy case and is directly related to and intertwined with the administration of the Debtors' bankruptcy case. This factor weighs against abstention.

7. Substance of the Asserted Core Proceeding: Although the substance of the underlying Claim involves state law, claim allowance is clearly a core proceeding that implicates federal bankruptcy law. 28 U.S.C. § 157(b)(2)(B). This factor weighs against abstention.

8. Feasibility of Severing State Law Claims from Core Bankruptcy Matters: The arbitrator has liquidated the Claim through the Award, and the Objection is a core proceeding, so it is not feasible to sever the state law claims from core bankruptcy matters with respect to the Objection. This factor weighs against abstention.

9. Burden on Bankruptcy Court's Docket: The Claim is based on the Award, which has liquidated the underlying claims between Claimants and Debtors. This court is able to hear and rule expeditiously on the Objection pending before it. This factor weighs against abstention.

10. Likelihood of Forum Shopping: There is no evidence that Debtors have filed this bankruptcy case to forum shop. This factor is neutral.

11. Existence of Right to Jury Trial: The parties agree that the right to a jury trial is not implicated with respect to the Objection. This factor weighs against abstention.

12. Presence of Non-Debtor Parties in Related Proceeding: The only non-debtor parties in the related arbitration with respect to the Award are Claimants. This factor weighs against abstention.

Given that most of the Tucson Estates factors weigh against abstention, and given that this court is in a position to expeditiously resolve the narrow remaining issue raised in the Objection, the court will not abstain from ruling on the Objection.

Turning to the merits of the Objection, 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under section 501, is deemed allowed, unless a party in interest objects.

Federal Rule of Bankruptcy Procedure 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000). Here, while Debtors request disallowance of the Claim in its entirety in the Objection, Debtors only state grounds for reducing the Claim by the allegedly improper prejudgment interest amount. Debtors present no other basis for reducing the amount of the Claim. Accordingly, as to all other portions of the Claim, Debtors have not met their burden of proof.

Debtors object to the prejudgment interest amounts on the ground that the original state court complaint sought over $6 million and the arbitrator awarded less than $2 million, so prejudgment interest in inappropriate under Wisper Corp. v. California Commerce Bank, 49 Cal. App. 4th 948 (1996). However, under Wisper, the prejudgment interest awarded to Claimants by the arbitrator is properly asserted in the Claim. In Wisper, the California Court of Appeal reversed an award of prejudgment interest on an award for comparative negligence. Wisper, 49 Cal. App. 4th at 960. However, the trial court in Wisper also awarded prejudgment interest on damages for a claim for relief based on the conversion of a check that was part of the same litigation. Id. at n.16. The award of that prejudgment interest was not appealed.

California Civil Code section 3287(a) permits recovery of prejudgment interest where the amount of the recovery is certain as of a particular day. Similar to Wisper, the arbitrator in the state court litigation between Claimants and Debtors addressed whether prejudgment interest was appropriate based on the underlying claims for relief. As to some claims for relief, such as failure to

forward profits, liability for damages related to equipment, and disgorgement of salary paid, prejudgment interest was not awarded by the arbitrator. See Doc. #95, Ex. A (Final Arbitration Award) at ¶¶ 9, 18, and 19. For other claims, the arbitrator determined that the amounts at issue were in a liquidated amount as of a date certain and prejudgment interest was appropriate. See id. at ¶¶ 10, 16, and 27. The claims of relief for which prejudgment interest was awarded by the arbitrator include the failure to pay rent received on jointly owned property, misuse of loan funds, and damages for conversion of two checks.

In each of the instances in which prejudgment interest was awarded as part of the Award, a specific amount was certain and calculable as of a date certain. With respect to the prejudgment interest for rent that was received on jointly owned property and not forwarded to Claimants, the amount of the rent is a sum certain and the date it was received can be determined. Likewise, the date and amount of $140,000.00 in loan funds that were misused can be determined and so prejudgment interest for that claim is proper. Finally, like in Wisper, damages arising from the conversion of two checks is subject to prejudgment interest. Accordingly, Debtors have failed to meet their burden of proof that the prejudgment interest awarded in the Award is improper and should be disallowed.

Because Claimants have voluntarily amended the Claim to assert only an unsecured claim and because Debtors have failed to meet their burden of proof with respect to allowance of the Claim as an unsecured claim, the Objection will be OVERRULED.

2. 20-11367-A-11 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**
BPE-2

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC STAY
8-11-2020 [106]

CALIFORNIA ENERGY EXCHANGE CORPORATION/MV
LEONARD WELSH/ATTY. FOR DBT.
D. KEITH DUNNAGAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The court is inclined to grant this motion.

A stipulation was entered into by and between creditor California Energy Exchange Corporation ("CEE") and debtor in possession Temblor Petroleum Company, LLC ("DIP") to vacate the automatic stay with respect to defendants CEE and Vern Jones Oil & Gas Corporation in connection with a civil action filed by DIP against CEE on May 6, 2020 and currently pending in the Sacramento County Superior Court as Case No. 34-2020-00278366 (the "Civil Case"). See Doc. #106.

Where a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues, cause may exist for lifting the stay to allow the state court litigation to go forward. In re Tucson Estates, Inc., 912 F.2d 1162, 1166 (9th Cir. 1990); see also 11 U.S.C. § 362(d)(1). The circumstances under which a bankruptcy court should abstain are set forth in 28 U.S.C. § 1334. In Tucson Estates, the Ninth Circuit stated the factors a bankruptcy court should consider when deciding whether to abstain are:

> (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,
>
> (2) the extent to which state law issues predominate over bankruptcy issues,
>
> (3) the difficulty or unsettled nature of the applicable law,
>
> (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court,
>
> (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,
>
> (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case,
>
> (7) the substance rather than form of an asserted "core" proceeding,
>
> (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court,
>
> (9) the burden of [the bankruptcy court's] docket,
>
> (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties,
>
> (11) the existence of a right to a jury trial, and
>
> (12) the presence in the proceeding of nondebtor parties.

912 F.2d at 1167 (quoting In re Republic Reader's Serv., Inc., 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987)).

The court finds that cause exists to grant relief from the automatic stay to allow the parties to pursue the Civil Case in the Sacramento County Superior Court. The Civil Case includes nondebtor parties and claims and counter claims that involve exclusively state law issues. Doc. #108, Dunnagan Decl. at ¶ 4. The ends of justice will not be served in the bankruptcy court or District Court because complete relief cannot be afforded due to the presence of claims

against nonbankruptcy parties that will be brought into the Civil Action. Id. The interest of judicial economy and an expeditious determination will be served by granting relief because the claims and counter claims are capable of being timely adjudicated in state court. Id. Permitting the litigation to go forward in state court will allow the parties to liquidate the validity of the claims and counter claims in the Civil Case. Id.

Accordingly, unless opposition is presented at the hearing, the stipulation will be approved.

3. 20-10569-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
DRJ-7

OBJECTION TO CLAIM OF JASKARAN SIHOTA, JASWINDER KAUR AND KEWAL SINGH, CLAIM NUMBER 9
7-20-2020 [249]

BHAJAN SINGH/MV
DAVID JENKINS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

This objection to claim ("Objection") was set for hearing on 44 days' notice as required by Local Rule of Practice 3007-1(b)(1) and will proceed as scheduled.

On April 28, 2020, Jaskaran Sihota, Kewal Singh and Jaswinder Kaur (collectively, "Claimants") filed proof of claim number 9 ("Claim") in the bankruptcy case of Debtors Bhajan Singh and Balvinder Kaur ("Debtors"). Debtors object to the Claim on the following three grounds: (1) the Claim incorrectly asserts that it is a secured claim; (2) the Claim improperly asserts a right to prejudgment interest; and (3) if the recording of the lis pendens created a lien on real property in which Debtors' have an interest, that lien is avoidable as a preferential transfer. Doc. #249. Claimants filed a timely opposition to the Objection. Doc. #289.

Since the Objection was filed, Claimants no longer assert a secured claim in Debtors' case. Doc# 289. Accordingly, while Debtors seek to disallow the Claim in its entirety, the only remaining ground specifically set forth in the Objection is to the alleged improper assertion of prejudgment interest.

The Claim is based on a final arbitration award issued on January 25, 2020, that was not confirmed by the California state court prior to the filing of Debtors' bankruptcy case ("Award"). Pursuant to the Award, Claimants assert a Claim in the amount of $1,658,570.50 as of February 18, 2020, based on the following:

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Basis	Principal	Prejudgment Interest	Offset	Post-judgment Interest
Ducor & Mountain View Properties	$616,236.60			$19,753.34
Kamm Property Profits	$98,564.01			$3,159.45
Kamm Property Rent	$38,400.00	$23,145.21		$1,972.82
Loan Offset			(140,105.64)	
Interest on $140,000 Loan		$19,636.37		$629.44
Family Venture Equipment Value	$40,000.00			$1,282.19
Disgorgement of Bhajan's Salary	$145,454.54			$4,662.52
Attorney's Fees Paid Using Family Venture Funds	$30,000.00			$961.64
Punitive Damages	$100,000.00			$3,205.48
Prejudgment Interest on Jaskaran Offset		$58,460.40	(194,868.00)	$1,873.94
Attorney Fees	$330,000.00			$2,169.86
Costs	$202,643.88			$1,332.45
Pump Payment	$250,000.00			
Totals	**$1,851,299.03**	**$101,241.98**	**(334,973.64)**	**$41,003.13**

As a preliminary matter, Claimants assert that the court should permissively abstain from determining the issues raised in the Objection pursuant to 28 U.S.C. § 1334(c)(1). Doc. #289. Debtors oppose this request. Doc. #301.

The Ninth Circuit has stated that the factors a bankruptcy court should consider when deciding whether to abstain are:

> (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,
>
> (2) the extent to which state law issues predominate over bankruptcy issues,
>
> (3) the difficulty or unsettled nature of the applicable law,
>
> (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court,
>
> (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,
>
> (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case,
>
> (7) the substance rather than form of an asserted "core" proceeding,
>
> (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court,
>
> (9) the burden of [the bankruptcy court's] docket,

(10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties,

(11) the existence of a right to a jury trial, and

(12) the presence in the proceeding of nondebtor parties.

In re Tucson Estates, Inc., 912 F.2d 1162, 1167 (9th Cir. 1990) (quoting In re Republic Reader's Serv., Inc., 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987).

Here, the narrow issue remaining with respect to the Objection is whether prejudgment interest is appropriate for certain aspects of the Claim. The court's application of the Tucson Estate factors to the Objection is as follows:

1. Effect on Administration of the Estate if Court Abstains: Claimants filed the Claim based on the Award. Abstaining would delay a resolution of the Objection. While the proposed chapter 12 plan can be confirmed without determining the Claim (Doc. #297), this court can expeditiously rule on the narrow issue of whether prejudgment interest was properly asserted in the Claim. It is the determination of the court that abstention would delay the administration of the estate. This factor weighs against abstention.

2. Extent to Which State Law Issues Predominate: Claim allowance involves issues of federal bankruptcy law and whether prejudgment interest is permitted implicates state law. The state law issues clearly do not predominate over the bankruptcy issues. This factor weighs against abstention.

3. Difficulty or Unsettled Nature of Applicable Law: Neither party has indicated that when to award prejudgment interest is an unsettled issue of California law. This court is capable of adjudicating the remaining issue of California law raised by the Objection. This factor is neutral.

4. Presence of Pending Related Proceeding: There is a related arbitration and state court lawsuit pending in the California state court. However, the arbitrator has issued the Award and any confirmation of the Award by the California state court is currently subject to the automatic stay. This factor weighs against abstention.

5. The Jurisdictional Basis Other than 28 U.S.C. § 1334: The only basis for jurisdiction appears to be 28 U.S.C. § 1334. This factor weighs in favor of abstention or is neutral.

6. Degree of Relatedness or Remoteness of the Proceeding to the Bankruptcy Case: This Objection involves the allowance of a proof of claim filed by Claimants in Debtors' bankruptcy case and is directly related to and intertwined with the administration of the Debtors' bankruptcy case. This factor weighs against abstention.

7. Substance of the Asserted Core Proceeding: Although the substance of the underlying Claim involves state law, claim allowance is clearly a core proceeding that implicates federal bankruptcy law. 28 U.S.C. § 157(b)(2)(B). This factor weighs against abstention.

8. Feasibility of Severing State Law Claims from Core Bankruptcy Matters: The arbitrator has liquidated the Claim through the Award, and the Objection is a core proceeding, so it is not feasible to sever the state law claims from core bankruptcy matters with respect to the Objection. This factor weighs against abstention.

9. Burden on Bankruptcy Court's Docket: The Claim is based on the Award, which has liquidated the underlying claims between Claimants and Debtors. This court is able to hear and rule expeditiously on the Objection pending before it. This factor weighs against abstention.

10. Likelihood of Forum Shopping: There is no evidence that Debtors have filed this bankruptcy case to forum shop. This factor is neutral.

11. Existence of Right to Jury Trial: The parties agree that the right to a jury trial is not implicated with respect to the Objection. This factor weighs against abstention.

12. Presence of Non-Debtor Parties in Related Proceeding: The only non-debtor parties in the related arbitration with respect to the Award are Claimants. This factor weighs against abstention.

Given that most of the Tucson Estates factors weigh against abstention, and given that this court is in a position to expeditiously resolve the narrow remaining issue raised in the Objection, the court will not abstain from ruling on the Objection.

Turning to the merits of the Objection, 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under section 501, is deemed allowed, unless a party in interest objects.

Federal Rule of Bankruptcy Procedure 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000). Here, while Debtors request disallowance of the Claim in its entirety in the Objection, Debtors only state grounds for reducing the Claim by the allegedly improper prejudgment interest amount. Debtors present no other basis for reducing the amount of the Claim. Accordingly, as to all other portions of the Claim, Debtors have not met their burden of proof.

Debtors object to the prejudgment interest amounts on the ground that the original state court complaint sought over $6 million and the arbitrator awarded less than $2 million, so prejudgment interest in inappropriate under Wisper Corp. v. California Commerce Bank, 49 Cal. App. 4th 948 (1996). However, under Wisper, the prejudgment interest awarded to Claimants by the arbitrator is properly asserted in the Claim. In Wisper, the California Court of Appeal reversed an award of prejudgment interest on an award for comparative negligence. Wisper, 49 Cal. App. 4th at 960. However, the trial court in Wisper also awarded prejudgment interest on damages for a claim for relief based on the conversion of a check that was part of the same litigation. Id. at n.16. The award of that prejudgment interest was not appealed.

California Civil Code section 3287(a) permits recovery of prejudgment interest where the amount of the recovery is certain as of a particular day. Similar to Wisper, the arbitrator in the state court litigation between Claimants and Debtors addressed whether prejudgment interest was appropriate based on the underlying claims for relief. As to some claims for relief, such as failure to

forward profits, liability for damages related to equipment, and disgorgement of salary paid, prejudgment interest was not awarded by the arbitrator. See Doc. #252, Ex. A (Final Arbitration Award) at ¶¶ 9, 18, and 19. For other claims, the arbitrator determined that the amounts at issue were in a liquidated amount as of a date certain and prejudgment interest was appropriate. See id. at ¶¶ 10, 16, and 27. The claims of relief for which prejudgment interest was awarded by the arbitrator include the failure to pay rent received on jointly owned property, misuse of loan funds, and damages for conversion of two checks.

In each of the instances in which prejudgment interest was awarded as part of the Award, a specific amount was certain and calculable as of a date certain. With respect to the prejudgment interest for rent that was received on jointly owned property and not forwarded to Claimants, the amount of the rent is a sum certain and the date it was received can be determined. Likewise, the date and amount of $140,000.00 in loan funds that were misused can be determined and so prejudgment interest for that claim is proper. Finally, like in Wisper, damages arising from the conversion of two checks is subject to prejudgment interest. Accordingly, Debtors have failed to meet their burden of proof that the prejudgment interest awarded in the Award is improper and should be disallowed.

Because Claimants have voluntarily amended the Claim to assert only an unsecured claim and because Debtors have failed to meet their burden of proof with respect to allowance of the Claim as an unsecured claim, the Objection will be OVERRULED.

4. 20-10486-A-11 **IN RE: ELIZABETH/LANRE JOHNSON**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
2-10-2020 [1]

CHINONYE UGORJI/ATTY. FOR DBT.

NO RULING.

5. 20-10486-A-11 **IN RE: ELIZABETH/LANRE JOHNSON**
NUU-1

MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 13
8-13-2020 [63]

CHINONYE UGORJI/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.

Debtors Elizabeth Johnson ("Ms. Johnson") and Lanre Johnson ("Mr. Johnson") (collectively, the "Debtors") move the court for an order converting this case under Chapter 11 to a case under Chapter 13 pursuant to 11 U.S.C. § 1112(d). Doc. #63. The court notes the United States Trustee ("UST") has a pending motion to dismiss the Debtors' case or alternatively convert this Chapter 11 case to Chapter 7 pursuant to 11 U.S.C. §1112(a)(1). Doc. #47. The UST has moved to dismiss or convert this current Chapter 11 case to Chapter 7 on the grounds that (1) the Debtors have not filed the required monthly operating report for May 2020 and the monthly operating reports filed for February, March and April 2020 are incomplete; (2) the Debtors failed to serve a motion to approve their disclosure statement as required by the court; (3) the Debtors have not provided a copy of Mr. Johnson's social security card to the UST; and (4) the Debtors failed to appear at various 341 meetings of creditors. Id.

Bankruptcy Code section 1112(d) gives the Debtors broad rights of conversion from Chapter 11. Section 1112(d) provides that the court may convert a case under Chapter 11 to a case under Chapter 13 only if the debtor requests such conversion and the debtor has not been discharged under 11 U.S.C. § 1141(d). Moreover, the debtor must be eligible for relief under Chapter 13 to be eligible for conversion to Chapter 13. To be a debtor under Chapter 13, 11 U.S.C. § 109(e) requires the debtor be an individual with regular income who owes, on the petition date, noncontingent, liquidated, unsecured debts of less than $394,725.00 and noncontingent, liquidated, secured debts of less than $1,184,200.00. Chapter 13 eligibility is determined as of the date the petition is filed. Slack v. Wilshire Ins. Co. (In re Slack), 187 F.3d 1070, 1073 (9th Cir. 1999). A debt is liquidated for the purposes of calculating eligibility for relief under section 109(e) if the amount of the debt is readily determinable. Id.

The court is inclined to grant the Debtors' motion to convert this Chapter 11 case to Chapter 13. The Debtors filed this Chapter 11 case in *pro se*. See Doc. #1. The Debtors also filed a prior Chapter 11 case in *pro se* on December 16, 2019, which was dismissed on January 6, 2020 for the Debtors' failure to file required documents. See Case No. 19-15206-A-11 (Bankr. E.D. Cal). The Debtors state that they filed bankruptcy to save their primary residence. Doc. #63. The Debtors further state they were unable to seek professional assistance prior to filing their emergency petition and erroneously filed a Chapter 11 petition. Id. The Debtors have since retained counsel, Chinonye Ugorji, who has substituted in as the Debtors' attorney of record in this case. Doc. #62. The Debtors' attorney has advised the Debtors that Chapter 13 would better serve their interest, and the Debtors have moved to voluntarily convert this case to Chapter 13 pursuant to 11 U.S.C. § 1112(d). Doc. #63. The Debtors have not received a discharge under 11 U.S.C. § 1141(d). According to the Debtors' amended schedules, which corrects errors and omissions in the original schedules, the Debtors are eligible to be debtors under Chapter 13. See Doc. ##1, 12, 30. Mr. Johnson is not employed, but Ms. Johnson is a registered nurse employed at Delano Regional Medical Center and her income is sufficiently stable and regular to enable the Debtors to make payments pursuant to a plan under Chapter 13. Doc. ##12, 30. The Debtors list unsecured debt of $81,726.73 and secured debt of $77,261.00. Doc. #30.

Now that the Debtors are represented by counsel who can help the Debtors comply with their obligations in bankruptcy, the court is inclined to agree that the interests of the Debtors and creditors are best served by conversion of the Debtors' case to Chapter 13 to Chapter 13, under which the Debtors may adjust their debts and pay their creditors over time, and general unsecured creditors must receive at least the amount they would receive if the Debtors' unexempted assets were liquidated under Chapter 7, instead of dismissal or conversion to Chapter 7.

6. 20-10486-A-11 **IN RE: ELIZABETH/LANRE JOHNSON**
UST-1

CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7, MOTION TO DISMISS CASE
7-9-2020 [47]

TRACY DAVIS/MV
CHINONYE UGORJI/ATTY. FOR DBT.
JASON BLUMBERG/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The hearing on this matter was continued from August 19, 2020. Doc. ##67, 69. Assuming the Debtors' motion to convert their Chapter 11 case to Chapter 13 pursuant to 11 U.S.C. § 1112(d) is granted, as set forth in Item #5 on this calendar above, this motion will be DENIED AS MOOT.

7. 20-12577-A-11 **IN RE: MARIA LUNA MANZO**
HLF-3

MOTION TO EXTEND AUTOMATIC STAY
8-19-2020 [20]

MARIA LUNA MANZO/MV
JUSTIN HARRIS/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 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. While not required, creditor Shogy Ahmed ("Ahmed") has filed an opposition to the Debtor's motion to extend the automatic stay. Doc. #34. The court has considered the opposition and believes good cause exists to continue the hearing to permit the filing of additional evidence and briefs pursuant to LBR 9014-1(f)(2).

Maria Guadalupe Luna Manzo (the "Debtor"), the debtor in this Chapter 11, Subchapter V case, moves the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3). Doc. #20.

The Debtor had one Chapter 13 case pending within the preceding one-year period that was dismissed, Case No. 20-10591-A-13 (Bankr. E.D. Cal) (the "Prior Case"). The Prior Case was filed on February 19, 2020 and dismissed on July 17, 2020. Under 11 U.S.C. § 362(c)(3)(A), if a debtor who is an individual has had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease, shall terminate with respect to the debtor on the 30th day after the filing of the current case. The Debtor filed this case on August 5, 2020. Doc. #1. Thus, the automatic stay will terminate in the present case on September 4, 2020.

Bankruptcy Code section 362(c)(3)(B) allows the court to extend the stay to any or all creditors, subject to any limitations the court may impose, after a notice and hearing where the debtor or a party in interest demonstrates that the filing of the latter case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(3)(B). The burden of establishing the presence of presumptive bad faith rests upon an opponent to the motion. In re Montoya, 342 B.R. 312, 316 (Bankr. S.D. Cal. 2006).

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

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

If the court finds there is no presumption of bad faith arising under section 362(c)(3)(C)(i), then the burden on the movant to establish good faith is reduced to preponderance of the evidence. Montoya, 342 B.R. at 316. Section 362(c)(3)(B) provides that the court may extend the stay only if the moving party demonstrates that the filing of the latter case is in good faith. Consideration of good faith in bankruptcy cases is based on the totality of the circumstances. See In re Smith, Case No. 12-34470-E-13, 2012 Bankr. LEXIS 6174, at *18-19 (Bankr. E.D. Cal. Aug. 16, 2012) (applying the nonexclusive list of good faith factors in Villanueva v. Dowell (In re Villanueva), 274 B.R. 836, 841 (B.A.P. 9th Cir. 2002), to a motion to extend the automatic stay).

The Prior Case was dismissed for unreasonable delay under 11 U.S.C. § 1307(c)(1) and failure to make all payments due pursuant to an unconfirmed plan under sections 1307(c)(1) and (c)(4), without opposition from the Debtor. Case No. 20-10591-A-13, Doc. #47. The Debtor declares that "[she] let [her]

chapter 13 case be dismissed . . . with the intention to refile a bankruptcy pursuant to chapter 11, subchapter V." Doc. #22, Manzo Decl. at ¶ 5. The Debtor states that she came to believe that "chapter 13 would not provide [her] the flexibility needed to effectively reorganize," particularly with respect to approximately 22 acres of farm land (the "Property") that secures loans with Blackridge Corporation, Jesse Canales dba America 1st Mortgage, and Ahmed. Id. at ¶¶ 2, 5. The Debtor states she owes approximately $180,000.00 to Blackridge Corporation, about $23,000.00 to America 1st Mortgage, and disputes a third deed of trust in favor of Ahmed in the claimed amount of $267,000.00 (altogether totaling $470,000.00 in encumbrances). Id. at ¶ 2. The Debtor alleges the Property is worth about $800,000.00. Id. The Debtor filed the Prior Case and this present case to stop foreclosure sales by Ahmed of the Property that the Debtor asserts has equity of more than $300,000.00. Id. at ¶¶ 4, 7a. The Debtor believes the filing of this case and continuance of the automatic stay will allow the Debtor to reorganize her business and financial affairs, contest and liquidate Ahmed's claim, remain in business, and satisfy the creditors' claims over time. Id. at ¶ 7b.

Ahmed opposes continuing the stay, arguing the Debtor fails to show that this case was filed in good faith as to the creditors to be affected. Doc. #34. Ahmed contends there has not been a substantial change in the Debtor's financial or personal affairs since the dismissal of the Prior Case except for a sudden increase in the scheduled value of the Property. Id., p. 2, lines 1-9. The Debtor scheduled the value of the Property as $650,000.00 when she filed the Prior Case approximately six months ago. Case No. 20-10591-A-13, Doc. #9, Sched. A/B, Line 1.2. The deadline for the Debtor to file schedules and other required documents in this case has been extended to September 2, 2020. Doc. #29. Although the Debtor has not yet filed schedules in the present case, the Debtor states in her declaration supporting the motion to extend the stay that the Property is worth about $800,000.00. Doc. #22, Manzo Decl. at ¶ 2. Ahmed disputes the Debtor's major argument that the filing of this case is necessary to preserve sudden newfound equity that, Ahmed claims, is not explained, supported by evidence or documentation. Doc. #34. Rather, Ahmed argues the filing of this present case is not in good faith and merely "an effort to stop a legitimate foreclosure on property with little to no equity." Id., p. 3, lines 26-27.

Ahmed also points to several other inconsistencies between this case and the Prior Case. Ahmed notes that in the Prior Case, the Debtor disclosed a 50% interest in Hill Valley Farms, LLC (Case No. 20-10591-A-13, Doc. #9, Sched. A/B, Line 19), but does not mention this interest in this motion. Doc. #34, p. 3, lines 2-5. Ahmed alleges he is the owner of the other 50% interest. Id. at lines 5-6. Ahmed notes that the Debtor described the Property as "vacant land" in her schedules in the Prior Case (Case No. 20-10591-A-13, Doc. #9, Sched. A/B, Line 1.2), but that the Debtor was aware the Property is planted with blueberries and acknowledges the Property is planted with blueberries in this motion (Doc. #20, p. 1, lines 26-28). Doc. #34, p. 3, lines 6-9. Ahmed also alleges that the Property is subject to a 25-year lease to Hill Valley Farms, which is farming the land. Id. at lines 10-15. It is not clear to the court whether the Debtor is attributing the value of the lease and/or blueberries to the value of the Property. However, the court observes that even under the Debtor's previous valuation of $650,000.00, the Property appears to have about $180,000.00 in equity.

Ahmed further points to the Debtor's failure to provide proof of filing tax returns and to make payments under the Chapter 13 plan in the Prior Case. Doc. #34, p. 2, lines 16-23. In the Prior Case, the Chapter 13 trustee filed two motions to dismiss the Debtor's case: first, pursuant to 11 U.S.C. § 1307(c)(1) and (c)(4) for failure to make all payments due under a plan; and

second, pursuant to section 1307(e) for failure to file tax returns for years 2017, 2018, and 2019. Case No. 20-10591-A-13, Doc. ##34, 41. The Debtor filed no opposition to dismissal. The court denied as moot the motion to dismiss based on the Debtor's alleged failure to file tax returns, because the court dismissed the Prior Case based on the Debtor's failure to make plan payments. Case No. 20-10591-A-13, Doc. ##47, 48. This at least raises some concern the Debtor did not file or provide required documents in the Prior Case, and that the current case will not result in a discharge or fully performed plan.

The court recognizes that at the time of publication of this pre-hearing disposition, the Debtor has not yet filed her schedules in the current case. The Debtor has until September 2, 2020 to comply with the court's order extending the deadline to file required documents. However, after review of the record currently before the court, the court believes Ahmed has successfully raised a presumption of bad faith arising under 11 U.S.C. § 362(c)(3)(C)(i) based on the apparent lack of substantial change to the Debtor's financial or personal affairs since the dismissal of the Prior Case. The Debtor must rebut the presumption by clear and convincing evidence. The court is inclined to (1) allow the Debtor time to respond to Ahmed's opposition to this motion by filing and serving a written response with supporting evidence sufficient to rebut the presumption of bad faith no later than September 16, 2020, (2) permit Ahmed to respond to the Debtor's additional pleadings no later than September 23, 2020, and (3) continue the hearing on this motion to September 30, 2020 at 9:30 a.m. The court will enter an interim order extending the automatic stay as to all creditors until September 30, 2020, to accommodate the continued hearing.

1. 20-12133-A-7 **IN RE: CARLOS SANCHEZ MORALES**
SW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-5-2020 [13]

CALIFORNIA PHYSICIANS'
SERVICE/MV
ANDREW STILL/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 at least 28 days' notice pursuant to 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). 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.

California Physicians' Service dba Blue Shield of California ("Blue Shield") moves this court for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and Federal Rule of Bankruptcy Procedure ("FRBP") 4001(a) to permit Blue Shield to comply with the Affordable Care Act's ("ACA") notice and termination requirements with respect to the debtor's health insurance policy. Doc. #13.

Debtor Carlos Sanchez Morales (the "Debtor") filed this Chapter 7 case on June 25, 2020. Doc. #1. Prior to filing for bankruptcy, the Debtor purchased a Blue Shield health insurance policy through the Covered California health insurance exchange. Doc. # 15, Lagura Decl. at ¶ 3. After advance tax credits, the Debtor's monthly premium payments were $238.42, which were due on the first of each month. Id. at ¶¶ 4-5. The Debtor defaulted on the premium due on May 1, 2020, and the Debtor has not made any premium payments since. Id. at ¶¶ 6, 8. The Debtor failed to make two pre-petition payments totaling $476.84 and one post-petition payment of $238.42. Doc. #17.

The ACA and the accompanying Code of Federal Regulations ("C.F.R.") require Blue Shield to (1) provide notice of payment delinquencies (45 C.F.R. § 156.270(f)); (2) give 30 days' notice following an insured's failure to make premium payments before Blue Shield may terminate coverage (45 C.F.R.

§ 156.270(b)(1)); and (3) terminate coverage in the event of non-payment on the last day of the first month of the three-month grace period after the grace period has been exhausted (45 C.F.R. § 156.270(b)(2)(ii)(A)). Accordingly, Blue Shield sent the Debtor a past due reminder letter on May 3, 2020. Doc. # 15, Lagura Decl. at ¶ 6. Blue Shield sent the Debtor a past due reminder letter and notice of suspension on May 26, 2020. Doc. # 15, Id. at ¶ 7. Blue Shield was unaware of the Debtor's bankruptcy filing when it sent the Debtor another past due notice on or about July 1, 2020, that informed the Debtor that his health care coverage was subject to cancelation effective June 1, 2020 (the day following the last day of May 2020 – the first month of the three-month grace period) if payment was not received by July 31, 2020 (the end of the three-month grace period). Id. at ¶¶ 10-11.

Bankruptcy Code section 362(d)(1) allows the court to grant relief from the stay – such as by terminating, annulling, modifying, or conditioning such 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). As the party seeking relief, Blue Shield 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)). "[S]ection 362(d) gives the bankruptcy court wide latitude in crafting relief from the automatic stay, including the power to grant retroactive relief from the stay." In re Schwartz, 954 F.2d 569, 572 (9th Cir. 1992).

After review of the included evidence, the court finds that cause exists to grant relief from the automatic stay to allow Blue Shield to proceed with the termination of the Debtor's health insurance policy as required by law. The Debtor failed to make premium payments for May 2020, June 2020, and July 2020, and the Debtor's three-month grace period ended on July 31, 2020. Doc. #15, Lagura Decl. at ¶ 8. Under the ACA and accompanying C.F.R., Blue Shield is required to terminate the Debtor's coverage as of the last day of the first month of the grace period in the event of non-payment of premiums and after the three-month grace period has been exhausted. Moreover, since the deadline to pay delinquent premiums and reinstate coverage passed on July 31, 2020, the court will waive the 14-day stay under FRBP 4001(a)(3).

Blue Shield also requests annulment of the stay to the extent that the past due notice sent on or about July 1, 2020 (the "Past Due Notice") violated the automatic stay. Annulment is retroactive relief by which the court may validate actions taken in violation of the stay that would otherwise be void. See Schwartz, 954 F.2d at 573 ("[i]f a creditor obtains retroactive relief under section 362(d), there is no violation of the automatic stay"). Whether to annul the automatic stay is within the court's sound discretion. Mataya v. Kissinger (In re Kissinger), 72 F.3d 107, 108 (9th Cir. 1995). The court finds several factors weigh in favor of annulling the stay as to the Past Due Notice. See, e.g., In re Schumann, 546 B.R. 223, 229 (Bankr. D.N.M. 2016) (citing factors relevant to whether retroactive relief from the automatic stay should be granted). Blue Shield has offered testimony that Blue Shield had no knowledge of the Debtor's bankruptcy filing on June 25, 2020 when the Past Due Notice was sent on or about July 1, 2020. Doc. # 15, Lagura Decl. at ¶¶ 10-11. Blue Shield was required by law to send the Past Due Notice to the Debtor 30 days before Blue Shield may terminate the Debtor's coverage. As discussed above, grounds for granting Blue Shield relief from the stay existed and a motion, if filed, would likely have been granted prior to any stay violation. It does not appear that Blue Shield committed any other potential violations of the stay after learning of the Debtor's bankruptcy filing. On the contrary, Blue Shield filed

this motion soon after the commencement of the Debtor's bankruptcy to seek annulment of the stay as to the Past Due Notice and relief to proceed with the termination of the Debtor's health insurance policy as required by the ACA. There is no prejudice to creditors or third parties if the court annulled the stay as to the Past Due Notice.

Accordingly, the motion is GRANTED. Blue Shield shall have relief from the automatic stay to proceed with its rights and remedies to terminate the Debtor's health insurance policy pursuant to non-bankruptcy law. The court annuls the automatic stay as to the Past Due Notice sent on or about July 1, 2020. The court also waives the 14-day stay of its order under FRBP 4001(a)(3).

2. 20-11934-A-7 **IN RE: CHRISO'S TREE TRIMMING, INC.**
HRH-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-19-2020 [34]

BMO HARRIS BANK N.A./MV
JAMES MILLER/ATTY. FOR DBT.
RAFFI KHATCHADOURIAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 90141(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 90141(f)(2). The court will issue an order if a further hearing is necessary.

The movant, BMO HARRIS BANK N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2018 WESTERN STAR 4700SB Truck ("Vehicle"). Doc. #34.

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 one complete post-petition payment. The movant has produced evidence that debtor is delinquent by at least $4,366.20. Doc. #34, 37.

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 $90,000.00 and debtor owes $112,181.48. Doc. #37.

Therefore, unless opposition is presented at the hearing, 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 will be awarded.

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

3. 20-11441-A-7 **IN RE: HERVE/KATHLEEN FAVRE-FELIX**
KMM-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-28-2020 [14]

FIFTH THIRD BANK/MV
D. GARDNER/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
DISCHARGED 8/18/20

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

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

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

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

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 August 18, 2020. Doc. #20. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Fifth Third Bank ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2019 Scarab 165 Ghost 16 and trailer ("Vehicle"). Doc. #14.

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 2 pre- and post-petition payments to Movant and the Vehicle is a depreciating asset. Doc. #16

The court also finds that the debtors do not have any equity in the property and the property is not necessary to an effective reorganization because debtors are in chapter 7. Movant has valued the Property at $12,000.00. Doc. #1. The amount owed to Movant is $21,573.77. Doc. #17. Debtors’ Statement of Intention indicates that debtors intend to surrender the property. Doc. #1.

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.

4. 17-11245-A-7 **IN RE: ORLONZO HEDRINGTON**
FW-3

MOTION TO EMPLOY BRUCE A. NEILSON AS SPECIAL COUNSEL
8-5-2020 [63]

PETER FEAR/MV
BRUCE NEILSON/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days’ notice pursuant to 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). Therefore, the defaults of the above-mentioned parties in interest are entered. 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). However, constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought.

Peter L. Fear (the “Trustee”), the Chapter 7 trustee of the bankruptcy estate of Orlonzo Hedrington (the “Debtor”), wishes to employ Bruce A. Neilson

("Special Counsel") to serve as special counsel for the specified purpose of continuing to prosecute a lawsuit against the United States of America in the case entitled Hedrington v. USA, Case No. 2:18-cv-02333-KJM-DB (the "Medical Malpractice Action"), pending in the U.S. District Court for the Eastern District of California. Doc. #63.

As a preliminary matter, the court notes that the Trustee's motion proposes to employ Special Counsel pursuant to 11 U.S.C. § 237(e), but the correct statute for the employment of professional persons for such specified special purpose is 11 U.S.C. § 327(e). This matter will proceed as scheduled in part to clarify the record.

Pursuant to 11 U.S.C. § 327(e), the Trustee may employ, with the court's approval and for a specified special purpose, an attorney who has represented the debtor if it is in the best interest of the estate and if the attorney does not represent nor hold an adverse interest to the debtor or to the estate with respect to the matter on which such attorney is to be employed. The requirements of section 327(e) are less restrictive than section 327(a) in that there is no disinterestedness requirement. In re Fondiller, 15 B.R. 890, 892 (B.A.P. 9th Cir. 1981), appeal dismissed, 707 F.2d 441 (9th Cir. 1983).

The Debtor filed this Chapter 7 case on April 1, 2017, and the case was closed with no distribution on July 11, 2018. Doc. ##1, 33. On or about August 24, 2018, the Debtor filed the Medical Malpractice Action based on a cause of action for medical negligence resulting from a pre-bankruptcy sexual assault/battery at the VA hospital at Travis Air Force Base. See Doc. #63. Special Counsel represented the Debtor in the Medical Malpractice Action. Doc. #66, Nielson Decl. at ¶ 3. On September 5, 2019, the Debtor filed a motion to reopen this bankruptcy case to allow for the administration of the estate's interest in the Medical Malpractice Action. Doc. #36.

The Trustee proposes to employ Special Counsel to prosecute the Medical Malpractice Action due to his experience in related legal fields. See Doc. #63; Doc. #66, Nielson Decl. at ¶ 1. Pursuant to an attorney-client fee agreement between the Trustee, the Debtor, and Special Counsel entered into on August 3, 2020 (the "Agreement"), Special Counsel will be compensated for legal services rendered only if there is a recovery. Doc. #67, Ex. A. If no recovery is obtained, Special Counsel is entitled only to costs, disbursements, and expenses to be paid for by the Debtor. Id. The Trustee is not and will not be responsible for payment of any costs, disbursements, and expenses unless a recovery is obtained. Id. Special Counsel will receive a contingency fee that is a net percentage of the net recovery, depending on when a settlement or judgment is reached: (1) if the Medical Malpractice Action is resolved prior to 30 days before the initial trial or arbitration date, then Special Counsel's fee will be 20% of the net recovery; (2) if the Medical Malpractice Action is resolved thereafter, Special Counsel's fee will be 25% of the net recovery. Id.

Bankruptcy Code section 328(a) provides, in relevant part: "The trustee . . . with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title … on any reasonable terms and conditions of employment, including . . . on a contingency fee basis." However, in the Ninth Circuit, parties seeking the court's pre-approval of contingency fee agreements must specifically mention section 328 in the employment application. See, e.g., Circle K Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002) ("We hold that unless a professional's retention application unambiguously specifies that it seeks approval under § 328, it is subject to review under § 330."). Neither the Agreement nor the Trustee's application to employ Special Counsel specifically refer to approval under section 328. Therefore, any compensation of attorney's

fees or reimbursement of expenses from the estate shall be subject to the bankruptcy court's approval pursuant to 11 U.S.C. § 330(a).

Although Special Counsel represented the Debtor in the Medical Malpractice Action (Doc. #66), substituted in as the Debtor's counsel in this bankruptcy case when the case reopened (Doc. #35), and the Debtor is a party to the Agreement (Doc. #67, Ex. A), it appears to the court that Special Counsel does not represent or hold any interest adverse to the Debtor or to the estate with respect to the matters for which employment is sought. Special Counsel has reviewed the Debtor's list of creditors and creditors' attorneys, and verified that there are no connections between Special Counsel or any of Special Counsel's employees and any of the creditors, creditors' attorneys or accountants, the United States Trustee, or any person employed in the Office of the United States Trustee, or between Special Counsel and any other party in interest. Doc. #66, Nielson Decl. at ¶ 2.

Bankruptcy Code section 327(e) provides the Trustee, with the court's approval, may employ Special Counsel for a specified special purpose if such employment is in the best interest of the estate. The court recognizes that Special Counsel is already familiar with the Medical Malpractice Action, and the employment of Special Counsel by the Trustee would avoid duplication of costs and legal fees which would otherwise be incurred with new counsel. See In re Film Ventures International, Inc., 75 B.R. 250 (B.A.P. 9th Cir. 1987) (citing In re Iorizzo, 35 B.R. 465, 469 (Bankr. E.D.N.Y. 1983)). However, the Trustee's motion and the Trustee's declaration in support thereof do not state that Special Counsel's employment is in the best interests of the estate. The Trustee should be prepared to address this at the scheduled hearing.

The court is inclined to grant the Trustee's motion to employ Special Counsel, but the Trustee should be prepared to clarify the issues identified above on the record at the hearing. The purpose for Special Counsel's employment is specifically to continue representation of the estate's interest in the Medical Malpractice Action. If the motion is granted, the Trustee will be authorized to employ Special Counsel for the purposes stated above and in the motion; the effective date of employment shall be August 3, 2020, and the payment, if any, to which Special Counsel is entitled shall be, upon court approval, the attorney's contingency fee and reimbursement for actual expenses incurred as set forth in the Agreement. The order authorizing employment of Special Counsel shall specify that any compensation or reimbursement from the estate is subject to the bankruptcy court's approval pursuant to 11 U.S.C. § 330(a).

5. 18-14751-A-7 **IN RE: DANIEL PIPER**
PFC-1

TRUSTEE'S FINAL REPORT AND APPLICATION FOR COMPENSATION
7-29-2020 [39]

SUSAN HEMB/ATTY. FOR DBT.
LISA HOLDER/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 at least 28 days' notice pursuant to 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. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Peter L. Fear (the "Trustee"), the Chapter 7 trustee of the bankruptcy estate of Daniel G. Piper (the "Debtor"), filed the final report and requests fees of $11,164.75 and expenses of $174.49, for a total of $11,320.34, as statutory compensation and actual and necessary expenses.

Bankruptcy Code sections 326 and 330 allow reasonable compensation to the Chapter 7 trustee for the Trustee's services. Section 326(a) sets the maximum compensation allowable to 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 holders of secured claims." Section 330(a) 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.

The Debtor filed this Chapter 7 case on November 28, 2018. Doc. #1. The Trustee is the duly appointed, qualified, and acting Chapter 7 trustee of the Debtor's bankruptcy estate. Doc. #2. The Trustee sought and obtained the court's authorization to employ accountant James E. Salven and counsel Lisa Holder to provide services in the administration of the estate. Doc. ##21, 27. During the course of this case, the Trustee investigated the Debtor's assets, including an Edward Jones account and the transfer of real property and distribution of sale proceeds between trusts. Doc. #46. The Trustee discovered the account with Edward Jones was not a retirement account and therefore could not be exempt as such. Id. The Debtor amended his schedules and claims of exemption in the Edward Jones account, and the Trustee worked with Edward Jones to liquidate the asset for the estate, resulting in the receipt of $168,648.32. Doc. ##1, 23, 46. The Trustee set a claims bar date. Doc. #15, 46. The Trustee determined the estate had collected enough funds to pay all claims in full. Doc. #46. The court finds Trustee's services were actual and necessary to the estate, and the fees are reasonable and in compliance with the statutory limits.

Accordingly, the application is approved, and Trustee is awarded the requested fees of $11,164.75 and expenses of $174.49, for a total of $11,320.34.

6. 20-12055-A-7 **IN RE: REBECCA MORENO**
ALG-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-29-2020 [15]

FIRST TECH FEDERAL CREDIT UNION/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
ARNOLD GRAFF/ATTY. FOR MV.
NON-OPPOSITION

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, First Tech Federal Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2017 Nissan Altima ("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 two complete pre- and post-petition payments. The movant has produced evidence that debtor is delinquent by at least $1,025.80. Doc. #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 debtors are in chapter 7. Id. The Vehicle is valued at $14,550.00 and debtor owes $24,520.04. 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. Doc. #1.

The debtor has filed a notice of non-opposition to the motion. Doc. #23.

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

7. 20-12256-A-7 **IN RE: SALVADOR CRUZ**
MSM-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-31-2020 [11]

THE GOLDEN 1 CREDIT UNION/MV
MARK HANNON/ATTY. FOR DBT.
MICHAEL MYERS/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, The Golden 1 Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2015 Nissan Sentra ("Vehicle"). Doc. #11.

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 $1,603.55. Doc. #13.

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 debtors are in chapter 7. Id. The Vehicle is valued at $4,655.00 and debtor owes $10,070.00. Doc. #13.

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.

8. 18-10873-A-7 **IN RE: PAMELA WILLIS-GARCIA**
RWR-9

MOTION FOR COMPENSATION BY THE LAW OFFICE OF COLEMAN & HOROWITT, LLP TRUSTEES ATTORNEY(S)
7-30-2020 [86]

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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). 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 Law Office of Coleman & Horowitt, LLP ("Movant"), counsel for Chapter 7 trustee James E. Salven (the "Trustee"), requests allowance of final compensation in the amount of $31,645.25 and reimbursement of expenses in the

amount of $895.28 for services rendered March 15, 2018 through July 21, 2020. Doc. #86. However, Movant seeks payment of only $15,554.72 for attorneys' fees and $895.28 for expenses, totaling a requested payment of $16,450.00 from the Trustee. Id.; see also Doc. #89, Seib Decl. at ¶ 7.

Sections 330(a)(1)(A) and (B) of the Bankruptcy Code permit 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). Reasonable compensation is determined by considering all relevant factors. See id. § 330(a)(3).

Movant's legal services included, without limitation, the investigation, collection, and liquidation of a large number of community property assets that involved a determination of interests between the Debtor, her non-debtor estranged husband, and the Debtor's in-laws. See Doc. #90. Movant filed and prosecuted and adversary proceeding for, *inter alia*, avoidance of preferential and/or fraudulent transfers; recovery of the property or the value of such property transferred; turnover of property of the estate; determination of the parties' interest in property; authorization to sell co-owner's interest in property; and objection to proofs of claim, which concluded with a global settlement, for which Movant obtained the court's approval of the compromise. Id. Movant also prepared the applications for, and obtained the court's approval for the Trustee to employ auctioneers to sell property of the estate. Id. The court finds these services reasonable and necessary and the expenses requested actual and necessary.

Accordingly, the motion is GRANTED on a final basis. The court allows final compensation in the amount of $31,645.25 and reimbursement of expenses in the amount of $895.28; however, the Trustee is authorized to make a combined payment of only $16,450.00, representing for attorneys' fees of $15,554.72 and expenses of $895.28, to Movant. The Trustee is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

9. 19-13280-A-7 **IN RE: JOE/LILLIANA ALVES**
JBA-2

MOTION TO COMPEL ABANDONMENT
7-27-2020 [58]

JOE ALVES/MV
JOSEPH ANGELO/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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). 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.

Joe Anthony Alves and Liliana Adelaide Alves (collectively, the "Debtors"), the debtors in this Chapter 7 case, move the court pursuant to 11 U.S.C. § 554 and Federal Rule of Bankruptcy Procedure ("FRBP") 6007(b) for an order compelling Irma Edmonds (the "Trustee"), the trustee of the bankruptcy estate, to abandon the Debtors' principals residence commonly known as 2399 Fruitland Avenue, Atwater, California 95301 (the "Property"). Doc. #58.

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." FRBP 6007(b) permits a party in interest, including the Debtors, to file a motion to compel the Trustee to abandon property of the estate. The burden is on the movant to make a *prima facie* that the property to be abandoned is burdensome or of inconsequential value. In re DiDario, 232 B.R. 311, 313 (Bankr. D.N.J. 1999).

The Debtors scheduled the value of the Property as $234,000.00 on the petition date. Doc. #1. The Debtors believe the value of the Property has risen slightly since filing to approximately $241,000.00. Doc. #61, Alves Decl. at ¶ 4. The Property is encumbered by a deed of trust in favor of Wells Fargo Bank, N.A. ("Wells Fargo") in the approximate amount of $136,200.00. Id. at ¶ 5-7. The Debtors claimed a homestead exemption of $100,000.00 in the Property under California Code of Civil Procedure § 704.730. Doc. #1, Schedule C, Line 2. Deducting Wells Fargo's lien ($136,200.00) and the Debtors' claim of exemption ($100,000.00) from the fair market value ($241,000.00) leaves potential equity of only $4,800.00. However, an 8% deduction for costs of sale ($19,280.00) would eliminate any potential equity for the estate. This is because "in the usual sale of real property by a trustee the costs of sale are an expense of administration and are paid from estate funds . . . they reduce the amount of sale proceeds available to satisfy claims against the estate." In re Abrahimzadeh, 162 B.R. 676, 678 (Bankr. D.N.J. 1994). Based on the Debtors' fair market valuation of the Property, minus the amount of Wells Fargo's secured claim and the Debtors' homestead exemption, the court finds there is no equity available to the estate.

Accordingly, the court finds the Property is of inconsequential value and benefit to the estate and grants the Debtors' motion to compel the Trustee to abandon the Property.