

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, September 30, 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. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-12](#)

MOTION TO EMPLOY GABRIEL GODINEZ AS SPECIAL COUNSEL
9-3-2020 [[253](#)]

EDUARDO GARCIA/MV
LEONARD WELSH/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 the 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 in possession Eduardo Zavala Garcia and Amalia Perez Garcia (collectively, "Debtors" or "DIP"), move pursuant to 11 U.S.C. § 327(e) for authorization to employ Gabriel Godinez ("Special Counsel") to serve as special counsel in connection with the cancelation of a grant deed in favor of GIV Ranches, LLC ("GIV"), and the prosecution of the objections to allowance of claims against David Nino ("Nino") and businesses he owns or controls. Doc. #253.

Debtors filed this Chapter 11 case on January 2, 2020. Doc. #1. On January 1, 2020, Debtors executed a grant deed to 2,559.66 acres of grazing land in favor of GIV, with the expectation of working with Nino through GIV. Doc. #256, Welsh Decl. at ¶ 3. Debtors and Nino are the members of GIV. Id. Debtors allege GIV paid no consideration for the grazing land, and the grant deed may not have been delivered or accepted by GIV. Id. Debtors believe their relationship with Nino is fractured and irreconcilable. Id. Nino and businesses he owns or controls have filed proofs of claim in this Chapter 11 case. Id. at ¶ 4. Debtors wish to cancel the grant deed and object to the claims of Nino and related entities. Doc. #235, at ¶ 5. For this specified special purpose, Debtors wish to retain special counsel to represent them in their disputes with GIV, Nino and his businesses. Id.

Bankruptcy Code section 1107 gives DIP all the rights and powers of a trustee and DIP shall perform all the functions and duties of a trustee, subject to certain exceptions not applicable here. Pursuant to 11 U.S.C. § 327(e), DIP 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).

Special Counsel states he does not represent or hold any interest adverse to Debtors or to the estate with respect to the matters for which employment is sought. Doc. #255, Godinez Decl. at ¶ 5. Special Counsel believes he is a "disinterested person" as defined by 11 U.S.C. § 101(14). Id. Special Counsel has verified that there are no connections between Special Counsel and Debtors, their creditors, any other party in interest, or their attorneys and accountants, the United States Trustee, or any person employed in the Office of the United States Trustee, except for Special Counsel's representation of 4G Farming, Inc. and Debtors as set forth in the motion. Id. at ¶¶ 5-6.

DIP has selected Special Counsel because Special Counsel is experienced in business, contract, real estate law, and real property transactions, and is familiar with the facts surrounding the claims asserted by Nino against Debtors. Doc. #256, Welsh Decl. at ¶ 5. DIP and Special Counsel have entered into an attorney-client agreement executed on or about August 21, 2020 (the "Agreement"), which provides *inter alia* Special Counsel will be paid an hourly rate of \$300.00; DIP are required to pay Special Counsel a deposit of \$10,000.00 at the time of the signing of the agreement, which shall be replenished on demand; and Special Counsel will send to DIP periodic billing statements for fees and costs incurred, to be paid within 10 days of each statement's mailing date. See Doc. #257, Ex. B, pp. 3-5.

Bankruptcy Code section 328 provides "[t]he [debtor in possession], . . . with the court's approval, may employ or authorize the employment of a professional person under section 327 . . . of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." However, in the Ninth Circuit, parties seeking the court's pre-approval of 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 DIP's motion to employ Special Counsel specifically refer to approval under Bankruptcy Code 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). Before DIP may compensate and reimburse Special Counsel from the estate, Special Counsel must obtain the court's approval for "reasonable compensation for actual, necessary services rendered by the . . . attorney" and "reimbursement for actual, necessary expenses" after notice to the parties in interest and the United States Trustee and a hearing. 11 U.S.C. § 330(a). The Agreement and the motion do not expressly state that any compensation of attorney's fees or reimbursement of expenses from the estate shall be subject to the bankruptcy court's approval as required by 11 U.S.C. § 330(a). However, the motion and declaration of Special Counsel state that compensation will only be paid after application to and approval by the bankruptcy court. Doc. ##253, 255.

After review of the evidence, the court finds that Special Counsel does not represent nor hold an adverse interest to Debtors or to the estate with respect to the matter on which Special Counsel is to be employed.

Accordingly, the court is inclined to grant DIP's motion to employ Special Counsel for the specific purpose of representing Debtors in the cancelation of

a grant deed in favor of GIV and the prosecution of objections to allowance of claims against Nino and related entities. DIP will be authorized to employ Special Counsel for the purposes stated above and in the motion, and the effective date of employment shall be August 21, 2020. 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).

2. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-13](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
9-9-2020 [[260](#)]

LEONARD WELSH/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 the 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 Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtors and debtors in possession Eduardo Zavala Garcia and Amalia Perez Garcia (collectively, "DIP"), has applied for an allowance of interim compensation and reimbursement of expenses. Doc. #260. The application requests that the court allow compensation in the amount of \$24,647.50 and reimbursement of expenses in the amount of \$849.15 for legal services rendered between June 1, 2020 and August 31, 2020. Id.

Section 330(a)(1)(A) and (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). According to the order authorizing employment of general counsel, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. See Doc. #33. Reasonable compensation is determined by considering all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) case administration; (2) responding to Keevmo, LLC's motion to dismiss, appoint a trustee, or convert to Chapter 7; (3) responding to Keevmo, LLC's and Stephanie Hudson's motions for relief from stay; (4) preparing and prosecuting a motion to sell the Portillo Ranch property free and clear of liens; (5) advising DIP about selling additional farmland; (6) preparing and prosecuting a motion to borrow money; (7) assisting DIP and accountant with preparation of monthly operating reports and income tax returns; (8) reviewing and advising DIP about proofs of claim; (9) preparing DIP's plan of reorganization and disclosure statement;

(10) reviewing matters in litigation with Big N Deep and claims against David Nino and his businesses, and advising DIP. Doc. ##260, 264. The court finds that the compensation and expenses sought are reasonable, actual and necessary.

Accordingly, unless opposition is presented at the hearing, the motion is GRANTED on an interim basis. The court allows interim compensation in the amount of \$24,647.50 and reimbursement of expenses in the amount of \$849.15. Movant is authorized to draw on any retainer held. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. DIP 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.

3. [17-13112](#)-A-11 **IN RE: PIONEER NURSERY, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
8-11-2017 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

4. [17-13112](#)-A-11 **IN RE: PIONEER NURSERY, LLC**
[FW-58](#)

CONFIRMATION HEARING RE: AMENDED CHAPTER 11 PLAN
8-21-2020 [[956](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

5. [17-10427](#)-A-12 **IN RE: LUIS/ANGELA OLIVEIRA**
[WJH-1](#)

MOTION FOR ENTRY OF DISCHARGE
9-2-2020 [[229](#)]

LUIS OLIVEIRA/MV
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Continued to November 3, 2020, at 9:30 a.m.

NO ORDER REQUIRED.

The parties have stipulated to continue the hearing on the motion for entry of discharge to November 3, 2020, at 9:30 a.m. The court has already issued an order on September 23, 2020. Doc. #233.

6. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY
PETITION
3-12-2020 [[1](#)]

DAVID JENKINS/ATTY. FOR DBT.

NO RULING.

7. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[DRJ-5](#)

MOTION TO CONFIRM CHAPTER 12 PLAN
8-21-2020 [[108](#)]

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

NO RULING.

8. [20-12258](#)-A-11 **IN RE: JARED/SARAH WATTS**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V
VOLUNTARY PETITION
7-2-2020 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

9. [20-12258](#)-A-11 **IN RE: JARED/SARAH WATTS**
[JWC-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
8-11-2020 [[80](#)]

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

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The motion was resolved by stipulation filed on September 23, 2020. Doc. #138.

10. [20-12258](#)-A-11 **IN RE: JARED/SARAH WATTS**
[LKW-5](#)

MOTION TO CONFIRM CHAPTER 11 PLAN
8-14-2020 [[87](#)]

JARED WATTS/MV
LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

11. [20-12258](#)-A-11 **IN RE: JARED/SARAH WATTS**
[LKW-7](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
9-4-2020 [[110](#)]

LEONARD WELSH/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 the 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 Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtors and debtors in possession Jared Allen Watts and Sarah Danielle Watts (collectively, "DIP"), has applied for an allowance of interim compensation and reimbursement of expenses. Doc. #110. The application requests that the court allow compensation in the amount of \$10,700.00 and reimbursement of expenses in the amount of \$511.95 for legal services rendered between August 1, 2020 and August 31, 2020. Id.

Section 330(a)(1)(A) and (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). According to the order authorizing employment of general counsel, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. See Doc. #51. Reasonable compensation is determined by considering all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) case administration; (2) opposing motions for relief from stay by Mercedes-Benz and BMO Harris Bank; (3) reaching a stipulation with Mercedes-Benz as to adequate protection payments and treatment of Mercedes-Benz's claims in the plan of reorganization; (4) prepared for and attended the meeting of creditors; (5) negotiating and reaching agreements with several secured creditors regarding the treatment of their claims in the reorganization plan; and (6) preparing the plan of reorganization. Doc. ##110, 114. The court finds that the compensation and expenses sought are reasonable, actual and necessary.

Accordingly, unless opposition is presented at the hearing, the motion is GRANTED on an interim basis. The court allows interim compensation in the amount of \$10,700.00 and reimbursement of expenses in the amount of \$511.95. Movant is authorized to draw on any retainer held. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. DIP 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.

12. [20-11367](#)-A-11 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
4-9-2020 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

13. [20-11367](#)-A-11 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**
[LKW-7](#)

MOTION TO EMPLOY ENERGY ADVISORS GROUP AS MARKETING AND
SALES AGENT
9-2-2020 [[138](#)]

TEMBLOR PETROLEUM COMPANY,
LLC/MV
LEONARD WELSH/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 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.

Temblor Petroleum Company, LLC ("Debtor" or "DIP"), the debtor and debtor in possession in this Chapter 11 case, moves pursuant to 11 U.S.C. § 327(a) for authorization to employ Energy Advisors Group ("EAG") as its marketing and sales agent in connection with the sale of working interests in oil producing properties (the "Working Interests"). Doc. #138.

Bankruptcy Code section 1107 gives DIP all the rights and powers of a trustee and DIP shall perform all the functions and duties of a trustee, subject to certain exceptions not applicable here. Pursuant to 11 U.S.C. § 327(a), DIP may employ, with the court's approval, professionals who are disinterested persons and do not hold or represent an interest adverse to the estate, to represent or assist DIP in carrying out DIP's duties under the Bankruptcy Code.

DIP believes the employment of EAG to market and sell the Working Interests is necessary to the administration of this bankruptcy case and in the best interest of all parties, since selling the Working Interests will be part of its plan of reorganization. Doc. #141, Bell Decl. at ¶¶ 3, 6. Debtor and EAG entered into an exclusive marketing and services agreement dated August 3, 2020 (the "Agreement"), which provides *inter alia* EAG is engaged for a 5-months term that will extend month-to-month until terminated by Debtor, and EAG will be paid a fee of 4% of the total transactional value or \$100,000.00, whichever is greater, at the closing of each successful sale. Doc. #142, Ex. B. The motion specifically states that any compensation paid to EAG will be from proceeds of the sale or sales of the Working Interests and subject to approval by the bankruptcy court. Doc. #138, at ¶ 7. The Agreement further provides for an engagement fee, which DIP has stated will be paid by Debtor's members and not from the estate. Doc. #141, Bell Decl. at ¶ 8.

EAG has verified that it has no connection with Debtor, its creditors, any other party in interest, or its attorneys and accountants, the United States Trustee, or any person employed in the Office of the United States Trustee, except that EAG will be employed by Debtor pursuant to the Agreement. Doc. #140, Kennedy Decl. at ¶ 6. EAG believes it is a "disinterested person" as defined by 11 U.S.C. § 101(14). Id.

After review of the evidence, the court finds that EAG is a disinterested person who does not represent nor hold an adverse interest to Debtor or to the estate with respect to the matter on which EAG is to be employed.

Accordingly, DIP's motion to employ EAG is GRANTED, and DIP is authorized to employ EAG for the purposes stated above and in the motion. Any compensation to EAG shall be subject to the bankruptcy court's approval pursuant to 11 U.S.C. § 330(a).

14. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY
PETITION
2-18-2020 [[1](#)]

DAVID JENKINS/ATTY. FOR DBT.

NO RULING.

15. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[DRJ-1](#)

CONTINUED MOTION TO USE CASH COLLATERAL
3-2-2020 [[24](#)]

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

NO RULING.

16. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[DRJ-8](#)

MOTION TO CONFIRM CHAPTER 12 PLAN
8-21-2020 [[293](#)]

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

NO RULING.

17. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[DRJ-9](#)

MOTION TO VALUE COLLATERAL OF FARM CREDIT WEST, PCA
9-2-2020 [[319](#)]

BHAJAN SINGH/MV
DAVID JENKINS/ATTY. FOR DBT.
ORDER, DOCKET #338

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The motion was resolved by stipulation filed on
September 21, 2020. Doc. #348.

18. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[FRB-5](#)

CONTINUED MOTION TO CONVERT CASE FROM CHAPTER 12 TO CHAPTER 11
AND/OR MOTION TO DISMISS CASE
5-29-2020 [[134](#)]

FARM CREDIT WEST, PCA/MV
DAVID JENKINS/ATTY. FOR DBT.
GERRICK WARRINGTON/ATTY. FOR MV.
ORDER, DOCKET #338

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The motion was withdrawn without prejudice on
September 16, 2020. Doc. #338.

19. [20-12577](#)-A-11 **IN RE: MARIA LUNA MANZO**

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
8-5-2020 [[1](#)]

JUSTIN HARRIS/ATTY. FOR DBT.

NO RULING.

20. [20-12577](#)-A-11 **IN RE: MARIA LUNA MANZO**
[HLF-3](#)

CONTINUED MOTION TO EXTEND AUTOMATIC STAY
8-19-2020 [[20](#)]

MARIA LUNA MANZO/MV
JUSTIN HARRIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2). Doc. ##20, 21, 22, 28. On August 27, 2020, Creditor Shogy Ahmed ("Ahmed") filed an opposition to the debtor's motion to extend the automatic stay. Doc. #34. This matter came for hearing on September 2, 2020. Doc. #38. The appearances of counsel for Maria Luna Manzo ("Debtor"), Ahmed, and Blackridge Corporation ("Blackridge") were noted on the record. Id. The court continued the hearing on this motion to allow Debtor to file required documents by September 2, 2020 and respond to Ahmed's opposition by September 16, 2020, permit Ahmed to reply to Debtor's additional pleadings by September 23, 2020, and allow Blackridge and any other creditor to file written opposition to

Debtor's motion and additional pleadings by September 23, 2020. Id. The court entered an interim order extending the automatic stay as to all creditors until September 30, 2020, to accommodate the continued hearing. Id.

Debtor moved the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3). Doc. #20. 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. Case No. 20-10591-A-13, Doc. ##1, 47. Debtor filed this case on August 5, 2020. Doc. #1.

Under 11 U.S.C. § 362(c)(3)(A), if a debtor 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.

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 notice and a 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)).

The Prior Case was dismissed for unreasonable delay under 11 U.S.C. § 1307(c)(1) and Debtor's failure to make all payments due pursuant to an unconfirmed plan under sections 1307(c)(1) and (c)(4), without opposition from Debtor. Case No. 20-10591-A-13, Doc. #47. 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. 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, Jesse Canales dba America 1st Mortgage ("America 1st Mortgage"), and Ahmed. Id. at ¶¶ 2, 5. However, in additional pleadings, Debtor attests "[she] was out of [her] depth and did not have the level of assistance [she] would have liked" in the Prior Case. Doc. #41, Manzo Decl. at ¶ 6.

Secured Creditors Ahmed and Blackridge oppose 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, 45. Ahmed and Blackridge contend 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 asserted value of the Property. Doc. #34, p. 2, lines 1-9 and Doc. #45, pp. 5-6. In the Prior Case, Debtor scheduled the Property as "vacant land" worth \$650,000.00. Case No. 20-10591-A-13, Doc. #9, Schedule A/B, line 1.2. However, in this motion and subsequently filed schedules in this case, Debtor describes the Property as "farm" land worth \$800,000.00. Doc. #20 and Doc. #39, Schedule A/B, line 1.2. Debtor explains the difference by stating that she derived the new value of the Property from a real estate agent. Doc. #41, Manzo Decl. at ¶ 2.

As Blackridge points out in its opposition, there are numerous discrepancies in Debtor's disclosures between the Prior Case and this current case, including the asserted value of the Property and the total amount of debt secured by the Property. See Doc. #45.

In this motion, Debtor states she owes approximately \$180,000.00 to Blackridge, 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). Doc. #22, Manzo Decl. at ¶ 2.

However, in the Prior Case, Debtor listed the Property as securing the claims of Blackridge in the amount of \$180,000.00, First American Real Estate in the amount of \$327,000.00, and Ahmed in the disputed amount of \$267,000.00. Case No. 20-10591-A-13, Doc. #9, Schedule D, lines 2.1, 2.3, 2.5.

In schedules filed in this case on September 2, 2020, after the filing of this motion, Debtor now discloses Blackridge's secured claim as \$226,000.00, lists a second deed of trust in favor of America 1st Mortgage with a different address than First American Real Estate and a significantly lower secured claim of only \$23,000.00, and the disputed claim of Ahmed for \$267,000.00. Doc. #39, Schedule D, lines 2.1, 2.4, 2.6.

According to Blackridge's opposition, Debtor owes at least \$238,675.62 on Blackridge's secured claim, and Debtor is in default by failing to make all timely payments. Doc. #45, at ¶¶ 5-6.

Yet, in Debtor's supplemental declaration in support of the motion filed on September 16, 2020, Debtor continues to maintain she owes only \$180,000.00 to Blackridge, about \$23,000.00 to America 1st Mortgage, and \$267,000.00 to Ahmed, contradicting Debtor's own schedules. Doc. #41, Manzo Decl. at ¶ 3.

Debtor does not explain if First American Real Estate is the same party as America 1st Mortgage. The court notes that these two entities are listed with different addresses. If First American Real Estate and America 1st Mortgage are the same party, Debtor fails to explain how she reduced the secured claim from \$327,000.00 in the Prior Case to only \$23,000.00 in this case. In the Statement of Financial Affairs, Debtor attests that she did not pay any creditor a total of \$6,825.00 or more within the 90 days prior to filing this current case. Doc. #39, Statement of Fin. Affairs, line 6.

Because of the inconsistencies, Debtor may have secured claims against the Property of as little as \$470,000.00 according to the motion; \$516,000.00 according to the schedules filed after the motion; \$528,675.62 based on Blackridge's claim of \$238,675.62, the \$23,000.00 owed to Jesse Canales, and the disputed claim of Ahmed for \$267,000.00; or as much as \$855,675.62 if

Debtor also owes another \$327,000.00 to First American Real Estate as scheduled in the Prior Case.

The court notes several other unexplained discrepancies in Debtor's schedules in this case compared to the Prior Case. In the Prior Case, Debtor disclosed combined monthly income of \$7,933.00; but in this case, Debtor lists combined monthly income of \$10,900.00. Compare Case No. 20-10591-A-13, Doc. #9, Schedule I, line 12 with Doc. #39, Schedule I, line 12. In the Statement of Financial Affairs, Debtor stated her total gross income for 2019 was \$58,900.00 in the Prior Case, but changed the total gross income for 2019 to \$79,000.00 in this current case. Compare Case No. 20-10591-A-13, Doc. #9, Statement of Fin. Affairs, line 4 with Doc. #39, Statement of Fin. Affairs, line 4. In this case, Debtor failed to disclose her interest in \$40,000.00 worth of blueberry crops that were scheduled in the Prior Case, and which appears to have made up part of her income. See Case No. 20-10591-A-13, Doc. #9, Schedule B, line 48; Schedule I, line 8h; Statement of Fin. Affairs, line 4. Debtor does not explain the changes of income in her additional pleadings despite its potential relevance to whether Debtor has had a substantial change in her financial or personal affairs.

Having reviewed Debtor's statements in support of this motion, the opposition presented, and the records in this case and the Prior Case, the court does not find clear and convincing evidence that Debtor has had a substantial change in her financial or personal affairs since the dismissal of the Prior Case to rebut the presumption of bad faith that arises in this case. While the numbers presented in the Prior Case and this case are different, these inconsistencies are largely left unexplained despite Debtor's opportunity to file additional pleadings.

Debtor argues that even if the court denies the motion to extend the automatic stay, the termination of the stay "with respect to the debtor" under 11 U.S.C. § 362(c)(3) does not extend to the estate and property of the estate. Doc. #42, p. 3, lines 16-25. In a recent published opinion, Judge Klein reasoned that 11 U.S.C. § 362(c)(3) must be interpreted to avoid dysfunction in and among the applicable chapters and held section 362(c)(3) does not terminate the stay protecting property of the estate. In re Thu Thi Dao, 616 B.R. 103 (Bankr. E.D. Cal. 2020). This court is persuaded by Judge Klein's reading of 11 U.S.C. § 362(c)(3) in Thu Thi Dao.

Accordingly, the court is inclined to DENY Debtor's motion to extend the automatic stay "with respect to the debtor" pursuant to 11 U.S.C. § 362(c)(3); however, termination of the automatic stay under section 362(c)(3) shall not extend to the estate and property of the estate.

21. [12-12998](#)-A-11 **IN RE: FARSHAD TAFTI**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
4-2-2012 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

MOTION FOR ENTRY OF DISCHARGE
9-16-2020 [[409](#)]

FARSHAD TAFTI/MV
PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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.

Debtor Farshad Aghai Tafti ("Debtor") moves the court for an order entering a Chapter 11 discharge. Doc. # 409 (FW-13).

11 U.S.C. § 1141(d)(5) provides that the confirmation of a plan for an individual in Chapter 11 does not automatically discharge them of their debts. Rather, the court must hold a properly noticed hearing and find "that there is no reasonable cause to believe that (i) section 522(q)(1) may be applicable to the debtor; and (ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B); and if the requirements of subparagraph (A) and (B) are met." Bankruptcy Code section 1141(d)(5)(A) requires all plan payments to be met, which is not applicable in this case. Bankruptcy Code section 1141(d)(5)(B) permits entry of a discharge to an individual debtor

who has not completed payments required under the plan if -

- (i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date;
- (ii) modification of the plan under section 1127 is not practicable; and
- (iii) subparagraph (C) permits the court to grant a discharge[.]

The Chapter 11 plan ("Plan") was confirmed by order dated February 14, 2014. Doc. # 261. Article XV, section 15.02 of the Plan requires completion of "all payments to administrative, priority and unsecured creditors required by the Plan" before the discharge can be entered. Doc. #194. According to Debtor's declaration, all plan payments to administrative, priority and unsecured creditors required by the Plan have been made with the exception of the administrative claim of Debtor's accountant, which Debtor agrees will not be

discharged for any amount Debtor owes his accountant. Doc. #411, Tafti Decl. at ¶¶ 4-5. Accordingly, the requirements of section 1141(d)(5)(B) must be met.

Here, Debtor's disclosure statement shows that this case would have been administratively insolvent in Chapter 7, and unsecured creditors would not have received anything. Exhibit D to Doc. #194. Under the Plan, Debtor has paid \$16,500 to general unsecured creditors, so the court finds that the value of property actually distributed under the Plan on account of each allowed unsecured claim is more than the amount that would have been paid on such claim if Debtor's estate had been liquidated under Chapter 7 on the effective date of the Plan. Doc. #411, Tafti Decl. at ¶ 5. Moreover, the court finds modification of the plan under Bankruptcy Code section 1127 is not practicable because the Plan has been substantially consummated. 11 U.S.C. § 1127(b); Doc. #411, Tafti Decl. at ¶¶ 5-9.

Additionally, based on the included evidence, the court finds that (i) there is no reasonable cause to believe that section 522(q)(1) may be applicable to Debtor and (ii) there is not pending any proceeding in which Debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B). Doc. #411, Tafti Decl. at ¶ 13.

Accordingly, unless opposition is presented at the hearing, the court is inclined to enter Debtor's discharge, discharging all dischargeable debts, except for the administrative claim of M. Kathleen Klein, CPA.

While the motion requests entry of a final decree, the motion provides no legal basis or factual analysis for this court to determine that this case is ready for entry of a final decree. Accordingly, that requested relief is denied without prejudice.

1. [20-12400](#)-A-7 **IN RE: ALAN RAMIREZ**
[NES-1](#)

MOTION TO COMPEL ABANDONMENT
8-26-2020 [[11](#)]

ALAN RAMIREZ/MV
NEIL SCHWARTZ/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 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.

Alan Francisco Ramirez ("Debtor"), the debtor in this Chapter 7 case, moves the court pursuant to 11 U.S.C. § 554(b) for an order compelling Jeffrey M. Vetter ("Trustee"), the trustee of Debtor's bankruptcy estate, to abandon the estate's interest in Debtor's business known as "Ramirez Road Service" (the "Business") and the assets of that business, including a 2001 Chevrolet Silverado 2500, machinery, fixtures, equipment, business supplies, and tools of the trade (collectively, the "Business Assets"). Doc. #11; see also Doc. #14, Ex. B.

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.

Debtor seeks the abandonment of the following property:

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Property	Scheduled Value	Lien(s)	Claim of Exemption
Ramirez Road Service	\$0.00	\$0.00	
2001 Chevrolet Silverado 2500	\$750.00	\$0.00	\$750.00 Cal. Civ. Proc. § 704.010
Machinery, fixtures, equipment, business supplies, and tools of the trade	\$7,500.00	\$0.00	\$7,500.00 Cal. Civ. Proc. § 704.060

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

Debtor claimed exemptions in all the apparent equity in the Business Assets. Doc. #1, Schedule C, line 2. Debtor is the owner/operator of Ramirez Road Service, which has a scheduled value of \$0.00. Doc. #1, Schedule A/B, line 19. The court notes the income from the Business appears to derive entirely from Debtor's services, and any value from Debtor's post-petition services would be excluded from property of the estate under 11 U.S.C. § 521(a)(6). See *id.*, Schedule I, line 8a.

Accordingly, the court finds the Business and the Business Assets are of inconsequential value and benefit to the estate, and Debtor's motion to compel Trustee to abandon the estate's interest the Business and the Business Assets is GRANTED. The order shall include a specific description of the property to be abandoned.

2. [19-15301](#)-A-7 **IN RE: ALFONSO/JOANNA ISIAH**
[ICE-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CYNTHIA MCGEE
8-25-2020 [[34](#)]

IRMA EDMONDS/MV
IRMA EDMONDS/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.

Irma Edmonds ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Alfonso R. Isiah and Joanna Isiah (collectively, "Debtors"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of all claims and disputes with Cynthia McGee ("McGee"), the mother of one of the Debtors. Doc. #34.

Among the assets of the estate is a claim against McGee for the avoidance and recovery of preferential and/or fraudulent transfers of \$2,600.00 made by Debtors to McGee in the year preceding the bankruptcy filing. Doc. #36, Tr.'s Decl. at ¶ 3. Debtors and the Trustee have agreed to settle the claim of the avoidable transfers to McGee with a payment of \$2,600.00 to the estate. Id. at ¶ 4. Trustee is in receipt of the \$2,600.00. Id. at ¶ 5.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Properties), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #34. Although Trustee believes she will ultimately succeed in litigation, the terms of the settlement with Debtors obviates the need to continue litigation of the estate's claims. Doc. #36, Tr.'s Decl. at ¶ 3. The litigation would be a mix of law and facts. Id. at ¶ 7. However, Trustee does not believe Debtors have any defenses to the estate's claims. Id. The settlement provides the estate with as much money as what Trustee sought to recover from litigation and places that amount back in the estate, without the expenses of litigation costs or issues in the matter of collection. Id. Trustee believes in her business judgment that the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Id. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion is GRANTED, and the settlement between Trustee and Debtors is approved.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JASMINE CASTREJON
8-25-2020 [[19](#)]

IRMA EDMONDS/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
IRMA EDMONDS/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.

Irma Edmonds ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Jesus Castrejon Lopez and Erica Anguiano (collectively, "Debtors"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of all claims and disputes with Debtors' daughter, Jasmine Castrejon ("Castrejon"). Doc. #19.

Among the assets of the estate is a claim against Castrejon for the avoidance and recovery of preferential and/or fraudulent transfers of \$14,000.00 made by Debtors to Castrejon in the year preceding the bankruptcy filing. Doc. #21, Tr.'s Decl. at ¶ 3. Debtors and the Trustee have agreed to settle the claim of the avoidable transfers to McGee with a payment of \$14,000.00 to the estate. Id. at ¶ 4. Trustee is in receipt of the \$14,000.00. Id. at ¶ 5.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Properties), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #19. Although Trustee believes she will ultimately succeed in litigation, the terms of the settlement with Debtors obviates the need to continue litigation of the estate's claims. Doc. #21, Tr.'s Decl. at ¶ 3. The litigation would be a mix of law and facts. Id. at ¶ 7. However, Trustee does not believe Debtors have any defenses to the estate's claims. Id. The settlement provides the estate with as much money as what Trustee sought to recover from litigation and places that amount back in the estate, without the expenses of litigation costs or issues in the matter of collection. Id. Trustee believes in her business judgment that the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Id. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion is GRANTED, and the settlement between Trustee and Debtors is approved.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

4. [20-12627](#)-A-7 **IN RE: RALPH/LEANNA HODGE**
[MMW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-26-2020 [[11](#)]

METRO CAPITAL FUND LLC/MV
NICHOLAS WAJDA/ATTY. FOR DBT.
MICHAEL WINTRINGER/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion will be DENIED WITHOUT PREJUDICE. The form and/or content of the notice do not comply with Local Rule of Practice ("LBR") 9014-1(d)(3)(B)(iii). The court urges counsel to review the local rules in order to be compliant in future matters. The rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

5. [14-11336](#)-A-7 **IN RE: RAUL/REBECCA JARA**
[SW-4](#)

MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC
8-24-2020 [[116](#)]

RAUL JARA/MV
STARR WARSON/ATTY. FOR DBT.

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. Debtor filed a subsequent motion to avoid the same judicial lien of Midland Funding, LLC at Docket #125 as SW-5, which the court will grant for the reasons stated at Item #7 on this calendar below.

6. [14-11336](#)-A-7 **IN RE: RAUL/REBECCA JARA**
[SW-4](#)

MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC
8-24-2020 [[119](#)]

RAUL JARA/MV
STARR WARSON/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on August 28, 2020. Doc. #122.

7. [14-11336](#)-A-7 **IN RE: RAUL/REBECCA JARA**
[SW-5](#)

MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC
8-28-2020 [[125](#)]

RAUL JARA/MV
STARR WARSON/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.

Raul Jara and Rebecca Jara (collectively, "Debtors"), the debtors in this Chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Midland Funding, LLC ("Creditor") on their residential real property bearing the APN 201-010-004, commonly known as 596 W Fir St, Lindsay, California 93247 (the "Property"). Doc. #125; see also Doc. #34, Amend. Schedule C.

As a preliminary matter, Local Rule of Practice ("LBR") 9004-2(c)(1) requires that "[m]otions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings" to be filed as separate documents. Debtors' filing at Docket #125 combines the motion to avoid judicial lien with an exhibit in support of the motion. The exhibit is not attested to in a declaration; however, the motion references the exhibit and includes the signed verification of Raul Jara. Doc. #125. Failure to comply with the LBR is grounds for denial without prejudice, but the court will waive this procedural defect in this instance.

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 Rebecca Jara in the amount of \$22,765.95 in favor of Creditor on December 27, 2011. Doc. #125, Ex. 1. The abstract of judgment was recorded with Tulare County on January 9, 2014. Id. That lien attached to Debtors' interest in the Property located in Tulare County. Doc. #125. The current amount owed on Creditor's judicial lien is approximately \$40,331.27. Id. at ¶ 5. The Property is also encumbered by a first priority deed of trust in favor of the Bank of New York for \$41,632.00, a second deed of trust in favor of SRP 2014-15 for \$179,651.97, and the senior judicial lien of Discover Bank in the amount of \$27,118.66. Id. Debtors claimed a homestead exemption of \$75,000.00 in the Property under California Code of Civil Procedure § 704.730(a). See Doc. #34, Amend. Schedule C. Debtors valued their interest in the Property as of the petition date at \$200,000.00. See Doc. #25, Amend. Schedule A.

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Amount of Midland Funding, LLC's Judicial Lien	+	\$40,331.27
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$248,402.63
Amount of Debtors' claim of exemption in the Property	+	\$75,000.00
Value of Debtors' interest in the Property	-	\$200,000.00
Extent of impairment of Debtors' exemption in the Property	=	(\$163,733.90)

After application of the arithmetical formula required by section 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

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

8. [19-14953](#)-A-7 **IN RE: STARLENE VEGA**
[FW-2](#)

MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR CMT
PROPERTIES, BROKER(S)
9-1-2020 [[32](#)]

JAMES SALVEN/MV
BENNY BARCO/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled for higher and
better offers.

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 the hearing.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled for higher and better offers. The failure of the creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter. 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.

James E. Salven ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Starlene Bright Vega ("Debtor") moves the court pursuant to 11 U.S.C. § 363(b) for an order authorizing the sale of real property of the estate commonly known as 270 S. Kona Avenue, Fresno, California (the "Property"), as-is with no warranty, to Mark Lafferre and Michele Lafferre (collectively, "Buyers") for the sale price of \$300,000.00, subject to higher and better bids at the hearing and bankruptcy court approval. Doc. #32. Trustee also seeks authorization to pay a 6% commission of the sale price to the estate's broker CMT Properties

("Broker"), to be split equally with the ultimate buyer's broker, from the proceeds of the sale. Id.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under section 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Ala. 2018), citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996) (citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991)). In the context of sales of estate property under section 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" Id. at 889-90, citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007) (citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998)).

Debtor scheduled the value of the Property at \$287,000.00. Doc. #1, Schedule A/B, line 1.1. Debtor amended her schedules to claim an exemption of \$21,471.18 in the Property under California Code of Civil Procedure § 703.140(b)(5). Doc. #18, Amend. Schedule C, line 2. The Property is encumbered by a deed of trust in favor of LoanCare Servicing, in the approximate amount of \$179,472.00. Doc. #1, Schedule D, line 2.3. Trustee has agreed with Buyers on a sale price of \$300,000.00, subject to higher and better bids at the hearing and bankruptcy court approval. Doc. #32, at ¶ 6.

Trustee estimates costs of sale to be approximately 8% of the sale price. Doc. #32, at ¶ 7. Trustee's application to employ Broker provides for a 6% commission. Doc. #19, at ¶ 6. Pursuant to order authorizing employment of Broker, Broker's compensation is subject to court approval on noticed motion. Doc. #22. Net proceeds of sale are to be distributed to pay off LoanCare Servicing's lien and Debtor's claim of exemption, with the remaining balance paid to the estate. Doc. #32, at ¶ 7.

It appears that the sale of the Property is in the best interests of the estate, will obtain a fair and reasonable price, is supported by a valid business judgment, and proposed in good faith. Under 11 U.S.C. § 704(a)(1), Trustee has a duty to "collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest." Trustee employed Broker and through Broker's efforts, Trustee received multiple offers to purchase the Property. Doc. #32, at ¶ 6. Trustee negotiated with Buyers and reached a higher sale price of \$300,000.00, subject to overbid to maximize the value to the bankruptcy estate. Id. at ¶¶ 6, 8. The sale would liquidate the unencumbered, nonexempt value in the Property for the benefit of the estate and its creditors.

Section 330(a)(1)(A) and (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). Broker's services included marketing the Property, which generated considerable interest and produced multiple offers to Trustee, including Buyers' offer. Doc. #35, Thomas Decl., at ¶¶ 3-6. The court finds that Broker's services were reasonable and necessary.

Any party wishing to overbid must deposit with Trustee's counsel the sum of \$10,000.00 prior to or at the time of the hearing. Doc. #32, at ¶ 8. Overbids will proceed in \$5,000.00 increments. Id. Bidders shall provide written proof of their ability to cover the necessary overbid amount, close the sale within 15 days of the delivery of a certified copy of the court's order approving the sale, and execute an agreement for the purchase of the Property. Id. The deposit will be returned to the unsuccessful bidder or applied toward the successful bidder's purchase price but becomes nonrefundable if the buyer does not timely execute the purchase agreement and close the sale. Id.

Accordingly, subject to higher and better offers at the hearing, the court will GRANT the Trustee's motion and authorize the sale of the Property on the terms set forth in the motion. Trustee is authorized to execute all documents necessary to effectuate the sale of the Property. Trustee is further authorized to pay a 6% commission of the sale price from the proceeds of the sale to Broker to be split equally with any cooperating broker. The settlement agent is authorized to pay from escrow the usual and customary closing costs of sale. The 14-day stay of the sale pursuant to Federal Rule of Bankruptcy Procedure 6004(h) is waived to permit the timely closing of the sale.

9. [20-11860](#)-A-7 **IN RE: ARTURO CERVANTES AND GRISEL BANUELOS**
[SL-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
8-28-2020 [[21](#)]

SCOTT LYONS/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.

Arturo Cervantes, Jr. and Grisel Esmeralda Banuelos (collectively, "Debtors") move pursuant to 11 U.S.C. § 706(a) to convert their Chapter 7 case to Chapter 13. Doc. #21.

Bankruptcy Code section 706(a) allows a debtor in Chapter 7 to convert his or her case to Chapter 13 at any time, unless the case was previously converted to Chapter 7 from another chapter. However, the Supreme Court in Marrama v. Citizens Bank of Mass., 549 U.S. 365, 371-72 (2007), held that a debtor does not have an absolute right to convert to Chapter 13 under section 706(a), but also must be eligible to be a debtor under Chapter 13. The Supreme Court held that "[i]n practical effect, a ruling that an individual's Chapter 13 case should be dismissed or converted to Chapter 7 because of prepetition bad-faith conduct, including fraudulent acts committed in an earlier Chapter 7 proceeding, is tantamount to a ruling that the individual does not qualify as a debtor under Chapter 13." Id. at 373-74.

The court finds that this case has not been previously converted to Chapter 7 from another chapter, and that Debtors are eligible to be debtors under Chapter 13 in conformance with 11 U.S.C. § 1307(c). 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). 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. Debtors have regular income and list unsecured debt of \$55,104.00 and secured debt of \$104,140.00. See Doc. #1, Schedules D, E/F, I.

Accordingly, the motion is GRANTED, and this case shall be converted to Chapter 13.

10. [20-12672](#)-A-7 **IN RE: RICHARD/SARAH PEREZ**
[LEH-1](#)

MOTION TO DISMISS CASE
8-17-2020 [\[10\]](#)

RICHARD PEREZ/MV
LAYNE HAYDEN/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Richard Perez and Sarah Perez (collectively, "Debtors"), move to dismiss this duplicative Chapter 7 case on the grounds that Debtors' counsel inadvertently filed two, duplicative Chapter 7 bankruptcy petitions on August 13, 2020, commencing Case No. 20-12671-A-7 and this instant case, Case No. 20-12672-A-7. Doc. #10.

The motion is DENIED WITHOUT PREJUDICE for failure to comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure ("FRBP"), and the Local Rules of Practice ("LBR").

First, LBR 9004-2(c)(1) requires that "[m]otions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings" to be filed as separate documents. However, LBR 9014-1(d)(4) allows a motion and a memorandum of points and

authorities to be filed together as a single document when not exceeding six pages in length, including the caption page. Debtors' filing at Docket #10 combines the motion to dismiss and memorandum of points and authorities (the "Motion") with the proof of service. Likewise, the notice of hearing (the "Notice") is combined with the proof of service as one document filed at Docket #11.

Second, FRBP 2002(a) requires at least 21 days' notice by mail to parties in interest, including the Chapter 7 trustee, all creditors and indenture trustees, of a hearing on the dismissal of the case under Chapter 7. It appears from Debtors' proofs of service that Debtors served the Motion and the Notice of Hearing to only Irma Edmonds, the Chapter 7 trustee of Debtors' bankruptcy estate, and the United States Trustee. Doc. ##10, 11. The Motion and the Notice of Hearing were not noticed and served to all creditors.

Accordingly, because the Motion is procedurally deficient, the Motion is DENIED WITHOUT PREJUDICE to Debtors filing a motion to dismiss, notice of the hearing on the motion to dismiss, and proof of service as separate documents, with notice to all creditors, the Chapter 7 trustee, and the United States Trustee.

11. [20-12275](#)-A-7 **IN RE: ARISE CONSTRUCTION, INC.**
[JES-1](#)

MOTION TO SELL
8-21-2020 [8]

JAMES SALVEN/MV
JUSTIN HARRIS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled for higher and better offers.

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 the hearing.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled for higher and better offers. The failure of the creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter. 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.

James E. Salven ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Arise Construction, Inc. ("Debtor") moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the estate's interest in a 2012 Cadillac (the "Vehicle") to Debtor, subject to all liens and encumbrances of record, for the net purchase price of \$6,000.00, and subject to higher and better offers at the hearing. Doc. #8.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under section 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Ala. 2018), citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996) (citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991)). In the context of sales of estate property under section 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" Id. at 889-90, citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007) (citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of the creditors of the estate. Doc. #10, Tr.'s Decl. at ¶ 5. The proposed sale to Debtor reflects the full and fair market value of the Vehicle, with no claimed exemption credit. Id. at ¶ 3. Debtor has offered to buy the Vehicle for the net purchase price of \$6,000.00, subject to higher and better bids at the hearing. Id. at ¶¶ 3, 5. The court recognizes that because the sale is to Debtor, no commission will need to be paid. Id. at ¶ 4. Trustee is in receipt of \$3,000.00 from Debtor, and Debtor will pay the remaining \$3,000.00 to Trustee prior to the hearing. Id. at ¶ 3.

It appears that the sale of the estate's interest in the Vehicle is in the best interests of the estate, will obtain a fair and reasonable price, is supported by a valid business judgment, and proposed in good faith.

Accordingly, subject to higher and better offers at the hearing, the court is inclined to GRANT the Trustee's motion and authorize the sale of the estate's interest in the Vehicle to Debtor on the terms set forth in the motion.

12. [17-13776](#)-A-7 **IN RE: JESSICA GREER**
[ALG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-17-2020 [[100](#)]

FIRST TECH FEDERAL CREDIT
UNION/MV
PETER FEAR/ATTY. FOR DBT.
ARNOLD GRAFF/ATTY. FOR MV.
DISCHARGED 01/09/2018

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 debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on January 9, 2018. Doc. #43. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

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 Kia Sorento ("Vehicle").

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 the debtor has failed to make at least two complete post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$1,259.04. Doc. #100.

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 the debtor is in chapter 7. Movant values the Vehicle at \$15,750.00 and the amount owed to Movant is \$20,049.46. Doc. #102.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit 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 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least two post-petition payments to Movant and the Vehicle is a depreciating asset.

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-1-2020 [[15](#)]

THE GOLDEN 1 CREDIT UNION/MV
D. GARDNER/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 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 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 2017 Dodge Ram ("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 the debtors have failed to make at least five complete pre-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$4,297.55. 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 the debtors are in chapter 7. Id. The Vehicle is valued at \$36,751.00 and the amount owed to Movant is \$41,333.39. Doc. #15.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit 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 debtors' 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 the debtors have failed to make at least five pre-petition payments to Movant and the Vehicle is a depreciating asset.