

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, October 8, 2020
Place: Department A - 510 19th Street
Bakersfield, California

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [16-10720](#)-A-13 **IN RE: PHILIP/SUSANNE ICARDO**
[RSW-7](#)

MOTION FOR HARDSHIP DISCHARGE
8-31-2020 [[117](#)]

SUSANNE ICARDO/MV
ROBERT WILLIAMS/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 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. 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 a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Debtor Susanne Lieselotte Icardo ("Debtor"), a debtor in the Chapter 13 bankruptcy case of Philip Arthur Icardo ("Decedent") and Debtor (collectively, "Debtors"), move the court for a hardship discharge pursuant to 11 U.S.C. §1328(b).

Debtors filed this Chapter 13 case on March 8, 2016. Doc. #1. Pursuant to Debtors' confirmed third modified Chapter 13 plan, Debtors had made a total of \$158,476.00 in plan payments through June 2020 and was to begin monthly plan payments of \$1,900.00 in July 2020. Doc. ##107, 114. However, Decedent passed away on July 1, 2020. Doc. #115. Debtor contends she is now unable to afford the payments under the third modified plan, and she would not be able to make plan payments even under a further modified plan. Doc. #117.

Bankruptcy Code section 1328(b) permits the court to grant a "hardship" discharge to a debtor who has not completed payments if certain requirements are met. The section states as follows:

Subject to subsection (d), at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if –

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) 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 of this title on such date; and

(3) modification of the plan under section 1329 of this title is not practicable.

The debtor bears the burden of proof on all elements of section 1328(b). In re Harrison, 1999 WL 33114273 *1 (Bankr. E.D. Va. 1999). The grant or denial of a request for a hardship discharge is within the discretion of the bankruptcy court. Bandilli v. Boyajian (In re Bandilli), 231 B.R. 836, 838 (B.A.P. 1st Cir. 1999).

The court finds Debtor has satisfied the first condition under section 1328(b)(1). Debtors made payments up until the time of Decedent's death, and Debtor's failure to complete the payments under the plan is due to circumstances beyond her control. See Doc. ##107, 114. Debtor attests Decedent always made the plan payments from Decedent's income. Doc. #119, Icardo Decl. at ¶ 1. Decedent's income was lost at the time of his death and became unavailable to fund a plan. Decedent's death is a circumstance for which Debtor should not justly be held accountable.

The court finds the second condition under section 1328(b)(2) also is met. Debtors made a total of \$158,476.00 in plan payments through June 2020. Doc. #107. The value distributed under Debtors' plans is greater than the 0% that unsecured creditors would have received from liquidation under Chapter 7 because Debtors had no nonexempt property that could have been liquidated. See Doc. #1, Schedules A/B and C.

Finally, the court finds the third condition under section 1328(b)(3) also is satisfied. Debtor attests that her sole source of income is a monthly pension of \$3,724.13. Doc. #119, Icardo Decl. at ¶ 1. The motion claims Debtor's monthly expenses are \$3,768.41. Doc. #117. Debtors' most recent schedules filed on June 2, 2020 show Debtor has monthly income of \$3,724.13 and monthly expenses for her separate household of \$3,768.41. Doc. #111, Amend. Schedules I and J. Accordingly, it appears Debtor has a monthly deficit of \$44.28 and is unable to afford payments under the current plan or any modified plan.

Because the court finds that Debtor has met her burden of proof on all elements of section 1328(b), this motion is GRANTED.

2. [18-10929](#)-A-13 **IN RE: LARRY/SILVIA HULSEY**
[WDO-1](#)

CONTINUED MOTION TO MODIFY PLAN
7-8-2020 [[36](#)]

LARRY HULSEY/MV
WILLIAM OLCOTT/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors Larry Hulsey and Silvia Hulsey (collectively, "Debtors") filed and served this motion to confirm the first modified Chapter 13 plan pursuant to Local Rule of Practice ("LBR") 3015-1(d)(1) and set for hearing on August 13, 2020. Doc. ##36-40. The Chapter 13 trustee ("Trustee") filed an objection to Debtors' motion. Doc. #41. The court continued this matter to October 8, 2020 and ordered Debtors to file and serve a written response to Trustee's objection by September 17, 2020; or if Debtors elected to withdraw this plan, then Debtors had to file, serve, and set for hearing a confirmable modified plan by September 24, 2020. Doc. #45.

Having reviewed the docket in this case, the court finds Debtors have not voluntarily converted this case to Chapter 7 or dismissed this case, and Trustee's objection has not been withdrawn. Further, Debtors have not filed and served any written response to Trustee's objection. Debtors have not filed, served, and set for hearing a confirmable modified plan by the time set by the court.

Accordingly, Debtors' motion to confirm their first amended Chapter 13 plan is DENIED on the grounds set forth in Trustee's objection.

3. [20-10931](#)-A-13 **IN RE: EDWARD FELICIANO**
[MHM-3](#)

MOTION TO DISMISS CASE
9-9-2020 [[61](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on September 29, 2020.
Doc. #75.

4. [20-12137](#)-A-13 **IN RE: DENISE THOMAS**
[LKW-1](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
9-10-2020 [[19](#)]

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 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 a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The Law Offices of Leonard K. Welsh ("Movant"), counsel for Denise Thomas ("Debtor"), the debtor in this chapter 13 case, requests allowance of interim compensation in the amount of \$1,887.50 and reimbursement for expenses in the amount of \$9.45 for services rendered June 25, 2020 through August 31, 2020. Doc. #19.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) case administration; (2) the meeting of creditors; (3) tax issues; (4) claims administration and objections; and (5) the chapter 13 plan. Doc. 19. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on an interim basis.

This motion is GRANTED. The court allows interim compensation in the amount of \$1,887.50 and reimbursement for expenses in the amount of \$9.45 to be paid in a manner consistent with the terms of the confirmed plan.

5. [20-11946](#)-A-13 **IN RE: ENRIQUE CASTELLANOS**
[MHM-1](#)

MOTION TO DISMISS CASE
9-9-2020 [[41](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

NO RULING.

The Chapter 13 trustee ("Trustee") filed, served and set this motion for hearing on September 9, 2020, with at least 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Doc. ##41-44. Trustee moved to dismiss this case on the grounds of unreasonable delay by the debtor that is prejudicial to creditors under 11 U.S.C. § 1307(c)(1), and the debtor's failure to make all payments due under the plan under 11 U.S.C. § 1307(c)(4). Doc. #41. Debtor Enrique Castellanos ("Debtor") did not file a written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B).

At a hearing held on September 17, 2020, the court granted Debtor's motion to confirm the amended Chapter 13 plan. Doc. #46. Trustee did not file an objection to confirmation of the amended plan. Trustee appeared at the confirmation hearing and did not indicate Debtor was in default of payments due under the plan. See Doc. 45. An order confirming Debtor's amended Chapter 13 plan was entered on October 2, 2020. Doc. #49.

This matter will proceed to determine whether Trustee's motion to dismiss has been resolved by or since the confirmation of Debtor's amended Chapter 13 plan.

6. [20-12147](#)-A-7 **IN RE: TAMEKIA NOVEL**
[MHM-1](#)

MOTION TO DISMISS CASE
8-20-2020 [[14](#)]

MICHAEL MEYER/MV
MICHAEL REID/ATTY. FOR DBT.
WITHDRAWN, CONVERTED 9/15/20

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on September 21, 2020.
Doc. #28.

7. [20-11149](#)-A-13 **IN RE: RAYSHAWN LYONS**
[RSW-3](#)

CONTINUED MOTION TO CONFIRM PLAN
6-25-2020 [[39](#)]

RAYSHAWN LYONS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

8. [20-11553](#)-A-13 **IN RE: DENNIS MARROQUIN**
[PK-1](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
9-16-2020 [[17](#)]

PATRICK KAVANAGH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

Patrick Kavanagh ("Movant"), counsel for the Chapter 13 debtor, requests allowance of interim compensation in the amount of \$3,690.00 and reimbursement for expenses in the amount of \$51.99 for services rendered April 1, 2020 through September 15, 2020. Doc. #17.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a Chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant's services in the relevant period included, without limitation: (1) pre-petition consultation and fact gathering; (2) preparing and filing the petition, schedules, and forms; (3) hearings; and (4) claim administration and objections. Doc. #17. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on an interim basis.

This motion is GRANTED. The court allows interim compensation in the amount of \$3,690.00 and reimbursement for expenses in the amount of \$51.99 to be paid in a manner consistent with the terms of the confirmed plan.

9. [20-11354](#)-A-13 **IN RE: SERGIO ANDRADE**
[RSW-2](#)

CONTINUED MOTION TO CONFIRM PLAN
6-26-2020 [[41](#)]

SERGIO ANDRADE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

10. [20-11354](#)-A-13 **IN RE: SERGIO ANDRADE**
[RSW-3](#)

CONTINUED MOTION TO AVOID LIEN OF FRANCISCO JAVIER AVALOS
7-17-2020 [[51](#)]

SERGIO ANDRADE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

11. [20-11354](#)-A-13 **IN RE: SERGIO ANDRADE**
[RSW-4](#)

CONTINUED MOTION TO AVOID LIEN OF FRANCISCO JAVIER AVALOS
7-17-2020 [[56](#)]

SERGIO ANDRADE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

12. [19-12156](#)-A-13 **IN RE: TRACY FORTNER**
[RSW-1](#)

MOTION TO MODIFY PLAN
8-13-2020 [[33](#)]

TRACY FORTNER/MV
ROBERT WILLIAMS/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of 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). 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 a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

13. [20-12160](#)-A-13 **IN RE: ALLAN/MELODY GILBERT**
[DMG-1](#)

MOTION TO CONFIRM PLAN
8-28-2020 [28]

ALLAN GILBERT/MV
D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of 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). 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 a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

14. [19-13473](#)-A-13 **IN RE: CHRISTOPHER LOCASCIO**
[RSW-2](#)

MOTION TO MODIFY PLAN
8-13-2020 [[64](#)]

CHRISTOPHER LOCASCIO/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The debtor filed a modified plan on September 23, 2020 (RSW-3, Doc. #78), with a motion to confirm the modified plan set for hearing on November 5, 2020 at 9:00 a.m. Doc. ##74-79.

15. [19-10791](#)-A-13 **IN RE: JASON/RANDI PATTERSON**
[RSW-4](#)

MOTION TO MODIFY PLAN
8-14-2020 [[60](#)]

JASON PATTERSON/MV
ROBERT WILLIAMS/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of 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). 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 a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

16. [18-14494](#)-A-13 **IN RE: BRENDA CANFIELD**
[RSW-3](#)

MOTION TO MODIFY PLAN
8-13-2020 [[46](#)]

BRENDA CANFIELD/MV
ROBERT WILLIAMS/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of 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). 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 a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

17. [19-11496](#)-A-13 **IN RE: CHARISSA EDWARDS**
[RSW-5](#)

MOTION TO MODIFY PLAN
8-13-2020 [[52](#)]

CHARISSA EDWARDS/MV
ROBERT WILLIAMS/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of 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). 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 a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

18. [19-12898](#)-A-13 **IN RE: JEFFREY VANDERNOOR**
[RSW-3](#)

MOTION TO MODIFY PLAN
8-13-2020 [[66](#)]

JEFFREY VANDERNOOR/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

1. [17-10608](#)-A-7 **IN RE: JOHN ANTONGIOVANNI**
[JMV-3](#)

MOTION FOR COMPENSATION FOR JEFFREY M. VETTER, CHAPTER 7 TRUSTEE(S)
9-8-2020 [[192](#)]

JEFFREY VETTER/MV
PATRICK KAVANAGH/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 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 a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Jeffrey M. Vetter (the "Trustee"), the trustee in this Chapter 7 case, requests statutory compensation in the amount of \$34,913.75 and reimbursement for actual and necessary expenses totaling \$479.35. Doc. #192. During the case, Trustee conducted the meeting of creditors, employed counsel and accountants, sold estate property, reviewed and reconciled financial records, and prepared the final report.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to the Chapter 7 trustee. In determining the amount of reasonable compensation to be awarded a Chapter 7 trustee, the court shall treat such compensation as a commission, based on section 326. 11 U.S.C. § 330(a)(7). Here, Trustee demonstrates reasonable compensation in accordance with the statutory framework of section 326. Doc. #195, Ex. A. Further, the court finds Trustee's services and requested expenses were actual and necessary to the administration of this estate.

This motion is GRANTED. The court allows statutory compensation in the amount of \$34,913.75 and reimbursement for expenses in the amount of \$479.35.

2. [19-14310](#)-A-7 **IN RE: TRACY FLAHERTY**
[UST-1](#)

CONTINUED MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C.
SECTION 707(B)
7-2-2020 [[85](#)]

TRACY DAVIS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
TREVOR FEHR/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

3. [20-12416](#)-A-7 **IN RE: JOE BROWN**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-1-2020 [[14](#)]

TD AUTO FINANCE LLC/MV
R. BELL/ATTY. FOR DBT.
JENNIFER WANG/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 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 a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, TD Auto Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2018 Fiat 500X ("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 debtor has failed to make at least six complete pre- and post-petition payments. Movant has produced evidence that debtor is delinquent by at least \$2,144.79. Doc. #17.

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 \$16,200.00 and debtor owes \$21,922.25. Doc. #14.

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 debtor has failed to make at least six pre- and post-petition payments to Movant and the Vehicle is a depreciating asset.

4. [20-12740](#)-A-7 **IN RE: DAVID/MARILYN SULLIVAN**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-3-2020 [[11](#)]

AMERICREDIT FINANCIAL
SERVICES, INC./MV
PATRICK KAVANAGH/ATTY. FOR DBT.
JENNIFER WANG/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 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 a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Americredit Financial Services, Inc. DBA GM Financial ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2019 GMC Sierra ("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 debtors have failed to make at least two complete pre-petition payments. Movant has produced evidence that debtors are delinquent by at least \$1,198.41. Doc. #14.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtors are in chapter 7. Id. The Vehicle is valued at \$17,550.00 and debtors owe \$29,348.17. Doc. #11.

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 court notes debtors' non-opposition to the motion filed September 30, 2020. Doc. #21.

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

5. [20-12341](#)-A-7 **IN RE: GLORIA SANTIAGO**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-17-2020 [[12](#)]

AMERICREDIT FINANCIAL
SERVICES, INC./MV
WILLIAM OLCOTT/ATTY. FOR DBT.
JENNIFER WANG/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 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 a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Americredit Financial Services, Inc. DBA GM Financial ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2018 Nissan Rogue ("Vehicle"). Doc. #12.

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 three complete pre-petition payments. Movant has produced evidence that debtor is delinquent by at least \$2,211.22. Doc. #15.

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 \$16,925.00 and debtor owes \$29,188.82. Doc. #12.

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.

6. [20-12450](#)-A-7 **IN RE: LIDIA SANCHEZ-BARRAGAN**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
7-23-2020 [[5](#)]

LIDIA SANCHEZ-BARRAGAN/MV

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The filing fee was paid in full on September 16, 2020. Therefore, this motion will be denied as moot. No appearance is necessary.

7. 20-12260-A-7 **IN RE: ERIC/KELLIE ROESLER**
JMV-1

MOTION TO SELL
9-17-2020 [16]

JEFFREY VETTER/MV
STEVEN ALPERT/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.

Jeffrey Vetter ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Eric and Kellie Roesler (the "Debtors"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the bankruptcy estate's interest in a 2013 GMC Acadia (the "Vehicle") to Debtors for the purchase price of \$6,875.00, and subject to overbid offers exceeding \$10,200.00 to be made at the hearing. Doc. #16.

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. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). 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 Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of the creditors and the estate. Doc. ##16, 18. Trustee's proposed sale to Debtors is made in consideration of the claimed exemptions in the Vehicle, the full and fair market value of the Vehicle, the cost to take possession of the Vehicle, the costs associated with a public sale, and the risk of receiving a lesser amount. Doc. ##16, 18. Debtors have offered to buy the Vehicle for the net purchase price of \$6,875.00, subject to

overbid at the hearing. Doc. #16. The court recognizes that because the sale is to Debtors, no commission will need to be paid.

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

Accordingly, subject to overbid offers exceeding \$10,200.00 to be made at the hearing, the court is inclined to GRANT Trustee's motion and authorize the sale of the estate's interest in the Vehicle to Debtors on the terms set forth in the motion.

1. [14-14241](#)-A-11 **IN RE: ARTHUR FONTAINE**
[DMG-21](#)

MOTION FOR ENTRY OF DISCHARGE
9-8-2020 [[277](#)]

ARTHUR FONTAINE/MV
D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion is DENIED WITHOUT PREJUDICE. The moving papers do not comply with the Local Rules of Practice, which require every motion "be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested." LBR 9014-1(d)(3)(D). No declaration was filed and served with this motion.

Further, Debtor requests a discharge of his individual Chapter 11 case pursuant to 11 U.S.C. § 1141(d)(5)(A). Doc. #277. However, before granting a discharge under section 1141(d)(5), and if the requirements of subparagraph (A) and (B) are met, the court must find 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)

11 U.S.C. § 1141(d)(5)(C). The debtor failed to provide any evidence to support such a finding in this motion.

This motion is DENIED WITHOUT PREJUDICE.

2. [20-11367](#)-A-11 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**
[LKW-8](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
9-9-2020 [[148](#)]

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 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 damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtor and debtor in possession Temblor Petroleum Company, LLC ("DIP"), has applied for an allowance of interim compensation and reimbursement of expenses. Doc. #148. Movant requests that the court allow compensation in the amount of \$6,290.00 and reimbursement for expenses in the amount of \$433.30 for legal services rendered July 1, 2020 through August 31, 2020. Doc. #148.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 11 case. 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. Doc. #21. In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) case administration; (2) asset analysis and recover; (3) asset disposition; (4) relief from stay proceedings; (5) fee and employment applications; and (6) claims administration. Doc. #148. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$6,290.00 and reimbursement for expenses in the amount of \$433.90. 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.