UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, November 10, 2020
Place: Department B – Courtroom #13
Fresno, California

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

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

MOTION TO EMPLOY DWIGHT L. SMITH AS CONSULTANT(S)
10-13-2020 [286]

4-S RANCH PARTNERS, LLC/MV
RENO FERNANDEZ/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

The debtor-in-possession ("DIP") wishes to employ Dwight L. Smith ("Consultant"), P.G., C.Hg, Principal Hydrogeologist of McGinley & Associates, Inc. ("McGinley"), as its hydrogeological consultant for its chapter 11 estate during the pendency of this case. Doc. #286.

This motion will be DENIED WITHOUT PREJUDICE.

11 U.S.C. § 1107 gives DIP all the rights and powers of a trustee and shall perform all the functions and duties, certain exceptions notwithstanding are inapplicable here.

Pursuant to 11 U.S.C. § 327(a), DIP may employ, with the court's approval, one or more professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist DIP in carrying out its duties.

Here, DIP seeks to employ Consultant and McGinley as its hydrogeological consultant under § 327(a). The reason for Consultant's employment is to assist DIP in navigating anticipated and unanticipated hydrogeological and regulatory issues that will arise in its effort to sell and store water, which is central to its plan of reorganization. Doc. #288.

Before this bankruptcy case, McGinley entered into a consulting services agreement with the debtor in support of Emerald California Natural Water, LLC ("Emerald"), which involved a hydrology report being conducted to support obtaining certification for bottling 4-S

Ranch water as mineral water. The final report was delivered May 13, 2019. *Id.* Work on obtaining certification for bottling 4-S ranch water as mineral water was halted on January 1, 2020. *Id.* On August 4, 2020, Consultant entered into an agreement with DIP to serve as a rebuttal expert witness. *Id.*

Consultant filed a declaration stating that both he and McGinley are "disinterested" persons within the meaning of § 101(14) and required by § 327(a). Doc. #289. Neither Consultant nor McGinley hold any pre-petition claims against DIP and Consultant was not involved in the prior report conducted by McGinley in support of Emerald. *Id.*

Additionally, DIP requests approval of a Hydrogeologic Consulting Services Agreement ("Consulting Agreement") that DIP and McGinley executed on May 19, 2020. Doc. #288; *see also* Doc. #291, Ex. A. DIP states that it did not request approval sooner because it "was not immediately aware of the necessity of obtaining approval . . . because the payment of the services under the [Consulting Agreement] were and are to be paid by Sloan Cattle with non-estate funds." Doc. #288 at ¶ 10.

The DIP requests, pursuant to § 328(a), to authorize the employment of a professional person under § 327 "on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." 11 U.S.C. § 328(a); *Circle K. Corp. v. Houlihan, Lokey Howard & Zuken, Inc. (In re Circle K Corp.)*, 279 F.3d 669, 671 (9th Cir. 2001) (holding that unless the retention application of a professional unambiguously specifies that approval is sought under section 328, any fee award is subject to review under § 330).

The DIP specifies that McGinley has already been paid a retainer in the amount of $8,000.00 by Sloan Cattle Company ("Sloan Cattle") on May 20, 2020 as retainer for services under the Consulting Agreement. Sloan Cattle has agreed to pay for all services rendered by McGinley and Consultant under the Consulting Agreement from its assets that are not part of the DIP's estate claims DIP. The agreement is not conditioned on Sloan Cattle having any control or input as to the services provided to the DIP and is without right to reimbursement.

The DIP has not reimbursed or made any other payments to McGinley or anyone else for work conducted under the Consulting Agreement. DIP will not compensate McGinley for its services and the work done under the Consulting Agreement, it seeks approval for employment of Consultant for work performed for its benefit to provide for a procedure for disclosure and approval of Consultant's fees.

As of August 23, 2020, an outstanding balance of $4,564.77 remains after application of the $8,000.00 in retainer funds paid by Sloan Cattle.

No party in interest apparently opposes this application. But there are numerous issues with the Consulting Agreement that prevent this court from approving it. *See* Doc. #291, Ex. A.

11 U.S.C. § 328(a) permits court approval of professional retention "on any reasonable terms and conditions of employment." This motion tests the definition of "reasonable terms." No evidence is presented that any of the provisions mentioned by the court are necessary for the professional to perform the services, are reasonable, or that such provisions are even consistent with industry practice. *In re Metricom, Inc.*, 275 BR 364, 371 (Bankr. N.D. Cal. 2002). "Terms and conditions of employment for professionals at the expense of the bankruptcy estate are determined by the bankruptcy court, within limits set by the Bankruptcy Code and case law." *In re Mortgage & Realty Trust*, 123 BR 626, 631 (Bankr. C.D. Ca. 1991).

To be sure, the code does not specifically preclude some of the questionable provisions discussed here. But that does not mean the terms are reasonable in this case. Though proposed payment for services may be from a source other than the estate, the problems with the proposed agreement preclude a finding that these terms are reasonable from the estate's perspective.

First, the Consulting Agreement states that McGinley "will provide hydrogeologic consulting services to the 4-S Ranch[,]" but later that McGinley will collect water samples "on the 4-S and SHS ranches for chemical analysis." Doc. #291, Ex. A. The Consulting Agreement additionally states that "[s]ix wells are planned for sampling, four on the 4-S Ranch . . . and two on the SHS Ranch. . ." Does this imply that SHS a beneficiary of the Consulting Agreement?

Second, how are charges incurred by SHS paid? Does Sloan Cattle agree to pay for these charges as well?

Third, the terms for professional services (Doc. #291 at 6) refer to a "CLIENT", but "CLIENT" is never defined or specified in the agreement.

Fourth, Stephen Sloan evidently signed the agreement, but does not specify on whose behalf he is signing. Is he signing on behalf of 4-S Ranch, the estate of Stephen Sloan, Sloan Cattle, or some other entity?

Fifth, on page six in the "SITE ACCESS AND SITE CONDITIONS" section, the Consulting Agreement states:

> COMPANY will take reasonable precautions to avoid known subterranean structures and utilities, and CLIENT waves any claim against COMPANY, and agrees to defend, indemnify, and hold COMPANY harmless from any claim or liability for injury or loss, including costs of defense, arising from damage done to subterranean structures and utilities not identified or accurately located. In addition, CLIENT agrees to compensate COMPANY for any time spent or expenses incurred by COMPANY in defense of any such claim, with compensation to be based upon COMPANY's prevailing fee schedule and expense reimbursement policy.

Doc. #291 at 6. As discussed above, the Consulting Agreement does not identify "CLIENT," so this court is unable to decipher precisely

who is bound to indemnify McGinley. Is it 4-S, Stephen Sloan, SHS, Sloan Cattle, or someone else?

Sixth, the "RISK ALLOCATION" section states that COMPANY's aggregate liability "will not exceed $50,000.00, or the cost of professional services, whichever is the lesser for negligent professional acts, errors, or omissions, and CLIENT agrees to hold harmless COMPANY from and against all liabilities in excess of the monetary limit." *Id.* As discussed above, "CLIENT" is not defined. Will this clause limit the estate's ability to recover on claims derived from McGinley's consulting services? If so, this will be a problem.

Seventh, on page 7, the "RISK ALLOCATION" section continues, stating that the limitations on liability and indemnities:

> shall apply to all theories of recovery including, but not limited to, breach of contract, warranty, tort (including negligence), strict of statutory liability, or any other cause of action, except for willful misconduct or gross negligence. The parties also agree that CLIENT will not seek damages in excess of the limitations indirectly through suits with other parties who may join COMPANY as a third-part [sic] defendant . . . Both CLIENT and COMPANY agree that they will not be liable to each other, under any circumstances, for special, indirect, consequential, or punitive damages arising out of or related to this AGREEMENT.

Id. at 7. If this case were voluntarily converted or if a trustee were to be appointed, this appears to limit said potential trustee's possible recovery if the estate incurs damages. If a Plan is confirmed, what then?

Eighth, the agreement provides that "[t]he law of the State of Nevada will govern the validity of these TERMS, their interpretation and performance." *Ibid.* Does this imply that Nevada would be the venue if a dispute arose under the Consulting Agreement?

For the foregoing reasons, the court cannot approve this agreement unless its terms are further clarified and changed to clearly delineate the beneficiaries of the agreement, the identity of the "CLIENT" and resolve other issues identified above. Therefore, this motion will be DENIED WITHOUT PREJUDICE.

2. 20-10809-B-11 **IN RE: STEPHEN SLOAN**
KMT-2

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR
9-23-2020 [234]

SAN LUIS & DELTA MENDOTA WATER AUTHORITY/MV
PETER FEAR/ATTY. FOR DBT.
BRET ROSSI/ATTY. FOR MV.
ORDER GRANTING DOC #246

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

DISPOSITION: Granted.

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

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

Creditor San Luis & Delta Mendota Water Authority ("Authority"), on behalf of its members, including Eagle Field Water District, Pacheco Water District, Camp 13 Drainage District, Charleston Drainage District, Firebaugh Canal Water District, and Panoche Drainage District ("Panoche"), filed this motion to extend the deadline to object to Debtor Stephen William Sloan's ("Debtor") discharge from October 1, 2020 to August 31, 2021 under Fed. R. Bankr. P. 4004(b) and 4007(c). Doc. #234. The parties signed a stipulation extending the deadline to August 31, 2021. Doc. #236. This stipulation appears to omit Firebaugh Canal Water District. *Id.*

This motion will be GRANTED.

This court previously entered an order granting the motion on September 25, 2020. *See* Doc. #246. The order extended the deadlines to object to the Debtor's discharge under § 727 and to dischargeability of certain debts under § 523 until August 31, 2021 for the following parties: San Luis & Delta Mendota Water Authority,

Eagle Field Water District, Pacheco Water District, Camp 13 Drainage District, Charleston Drainage District, and Panoche. *Id.* As noted above with the stipulation, the order omitted Firebaugh Canal Water District.

Debtor filed a voluntary chapter 11 petition on March 2, 2020. Doc. #1. The initial meeting of creditors was set for April 1, 2020 but was continued to May 13, 2020 due to COVID-19 and the Court's emergency orders. Doc. #10. General Order 20-02 extended the deadlines by sixty days to July 13, 2020, to commence an objection to Debtor's discharge under 11 U.S.C. § 727 and to object to the dischargeability of certain debts under 11 U.S.C. § 523.

Meanwhile, on March 16, 2020, Creditor Sandton Credit Solutions Master Fund IV, LP ("Sandton"), filed a motion for relief from the automatic stay under 11 U.S.C. § 362(d)(2) with respect to certain real property pledged as collateral. This motion was scheduled for an evidentiary hearing September 17 and 18, 2020, but has been delayed.

On June 10, 2020, the Authority and Debtor entered into a stipulation to extend the deadlines to October 1, 2020, which was approved on June 11, 2020 as to the following: the Authority and the following members of the Authority; Eagle Field Water District, Pacheco Water District, Camp 13 Drainage District, Charleston Drainage District, and Panoche. *See* Doc. #168.

On September 9, 2020, Stephen Smith and the SHS Family Limited Partnership filed a motion seeking to intervene or otherwise be added as a party in the contested matter relating to Sandton's motion for relief from the automatic stay. The court temporarily recused itself and the intervention motion was heard by the Honorable Jennifer E. Niemann on October 14, 2020 and denied on October 19, 2020. *See In re 4-S Ranch Partners, LLC*, case no. 20-10800, Doc. #303.

On September 22, 2020, the Authority entered into a stipulation agreement wherein the Authority and its members would be given until August 31, 2021 to object to Debtor's discharge or dischargeability of certain debts. *See* Doc. #236, #246.

This agreement stated that the deadlines to object to Debtor's discharge pursuant to 11 U.S.C. § 727 and to object to the dischargeability of certain debts pursuant to 11 U.S.C. § 523 will be extended to August 31, 2021 with respect to the Authority and its following members: Eagle Field Water District, Pacheco Water District, Camp 13 Drainage District, Charleston Drainage District, and Panoche. *Id.* Debtor, the Authority, and its members seek approval of this stipulation and extension of their deadlines for cause.

Rule 4004(b) states:

> (1) On a motion of any party in interest, after notice and hearing, the court may for cause extend the time to object

> to discharge. Except as provided in subdivision (b)(2), the motion shall be filed before the time has expired.
>
> (2) A motion to extend the time to object to discharge may be filed after the time for objection has expired and before discharge is granted if (A) the objection is based on facts that, if learned after the discharge, would provide a basis for revocation under § 727(d) of the Code, and (B) the movant did not have knowledge of those facts in time to permit an objection. The motion shall be filed promptly after the movant discovers the facts on which the objection is based.

Fed. R. Bankr. P. 4004(b)(1) & (2). Rule 4007(c) states:

> Except as otherwise provided in subdivision (d) a complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days' notice of the time so fixed in the manner provided in Rule 2002. On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

Fed. R. Bankr. P. 4007(c).

Courts have analyzed "cause" for the purposes of requesting an extension of time to object to a debtor's discharge. These factors include:

(1) Whether the moving party had sufficient notice of the deadline and information to file an objection;
(2) The complexity of the case;
(3) Whether the moving party has exercised diligence; and
(4) Whether the debtor has been uncooperative or acted in bad faith.

In re Bomarito, 448 B.R. 242, 249 (Bankr. E.D. Cal. 2011) citing *In re Nowinski*, 291 B.R. 302 (Bankr. S.D. N.Y. 2004).

Here, the Authority contends that cause exists to extend the deadline with respect to itself and its members. The Authority states that Debtor's proposed plan of reorganization is contingent upon defeating Sandton's motion for relief from stay. The Authority sought to delay prosecuting its adversary proceeding until after the relief from stay motion was resolved to save judicial resources and the parties resources. Once the evidentiary hearing was removed from calendar due to the motion to intervene, the Authority realized these matters would not be resolved prior to the October 1, 2020 deadline.

In light of the delays, the Authority contacted Debtor and proposed a further extension pursuant to 11 U.S.C. §§ 523 and 727. The parties agreed that good cause exists to extend these deadlines to

August 31, 2021, as stipulated to in their agreement. Doc. #236. The Authority states its belief that this extension will provide it with sufficient time to complete its evaluation of whether an adversary proceeding for nondischargeability may be necessary.

No parties in interest have opposed this motion. Accordingly, this motion will be GRANTED. Cause exists for this court to extend the deadlines to object to the Debtor's discharge or the dischargeability of certain debts pursuant to 11 U.S.C. §§ 523 and 727 to August 31, 2021.

The previous order (Doc. #246) will be modified to state the order was entered after notice and hearing.

3. 20-10809-B-11 **IN RE: STEPHEN SLOAN**
WJH-4

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGEABILITY OF A DEBT
9-30-2020 [251]

SANDTON CREDIT SOLUTIONS
MASTER FUND IV, LP/MV
PETER FEAR/ATTY. FOR DBT.
KURT VOTE/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Creditor Sandton Credit Solutions Master Fund IV, LP ("Sandton"), filed this motion to extend the deadline to object to Debtor Stephen William Sloan's ("Debtor") discharge from October 1, 2020 to

November 30, 2020 under Fed. R. Bankr. P. 4004(b) and 4007(c). Doc. #251.

This motion will be GRANTED.

Debtor filed a voluntary chapter 11 petition on March 2, 2020. Doc. #1. The initial meeting of creditors was set for April 1, 2020, but was continued to May 13, 2020 due to COVID-19 and the Court's emergency orders. Doc. #10. General Order 20-02 extended the deadlines by sixty days to July 13, 2020, to commence an objection to Debtor's discharge under 11 U.S.C. § 727 and to object to the dischargeability of certain debts under 11 U.S.C. § 523.

On March 16, Sandton filed a motion for relief from the automatic stay under 11 U.S.C. § 362(d)(2) with respect to certain real property pledged as collateral. This court eventually scheduled an evidentiary hearing September 17 and 18, 2020, which was later dropped from calendar.

On June 12, Sandton and Debtor entered into a stipulation to extend the deadlines to October 1, 2020, which was approved on July 14, 2020. *See* Doc. #192.

On September 9, 2020, Stephen Smith and the SHS Family Limited Partnership filed a motion seeking to intervene or otherwise be added as a party in the contested matter relating to Sandton's motion for relief from the automatic stay. The court temporarily recused itself and the intervention motion was heard by the Honorable Jennifer E. Niemann on October 14, 2020 and denied on October 19, 2020. *See In re 4-S Ranch Partners, LLC*, case no. 20-10800, Doc. #303.

On September 22, 2020, Creditor San Luis & Delta Mendota Water Authority requested an extension of time and Debtor agreed, entering into a stipulation agreement wherein the Authority and its members would be given until August 31, 2021 to object to Debtor's discharge or dischargeability of certain debts. *See* Doc. #236, #246.

Sandton and Debtor entered into a stipulation on September 30, 2020. Doc. #254. This agreement stated that the deadlines to object to Debtor's discharge pursuant to 11 U.S.C. § 727 and to object to the dischargeability of certain debts pursuant to 11 U.S.C. § 523 should be extended to November 30, 2020 with respect to Sandton. Additionally, the agreement provides that a motion to extend discharge deadlines cannot be heard on regular notice prior to the expiration of the current deadline, so the deadline to file should be extended to at least November 10, 2020. Sandton and Debtor seek approval of this stipulation and extension of time to object under Rule 4004(b).

Rule 4004(b) states:

> (1) On a motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge. Except as provided in

subdivision (b)(2), the motion shall be filed before the time has expired.

(2) A motion to extend the time to object to discharge may be filed after the time for objection has expired and before discharge is granted if (A) the objection is based on facts that, if learned after the discharge, would provide a basis for revocation under § 727(d) of the Code, and (B) the movant did not have knowledge of those facts in time to permit an objection. The motion shall be filed promptly after the movant discovers the facts on which the objection is based.

Fed. R. Bankr. P. 4004(b)(1) & (2). Rule 4007(c) states:

> Except as otherwise provided in subdivision (d) a complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days' notice of the time so fixed in the manner provided in Rule 2002. On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

Fed. R. Bankr. P. 4007(c).

Courts have analyzed "cause" for the purposes of requesting an extension of time to object to a debtor's discharge. These factors include:

(1) Whether the moving party had sufficient notice of the deadline and information to file an objection;
(2) The complexity of the case;
(3) Whether the moving party has exercised diligence; and
(4) Whether the debtor has been uncooperative or acted in bad faith.

In re Bomarito, 448 B.R. 242, 249 (Bankr. E.D. Cal. 2011) citing *In re Nowinski*, 291 B.R. 302 (Bankr. S.D. N.Y. 2004).

Here, Sandton contends that cause exists to extend the deadline with respect to itself. Sandton states that it has conducted "significant discovery" but it has been "confined to matters related to its pending Motions for Relief from the Automatic Stay[.]" Doc. #251 at ¶ 9. Sandton states that it believed the motion for relief from the automatic stay would be resolved, which would change its procedural posture and treatment of its claim. Sandton expected this to be completed prior to the deadline of October 1, 2020. However, resolution of this motion was delayed until after the deadline because the motion to intervene was filed and needed to be resolved.

Sandton additionally contends that it did become apparent that its motion would not be decided by the deadline until September 11,

2020, at which point it was too late to file a notice motion to seek an extension of the discharge deadline.

In light of the delay, Sandton contacted Debtor and proposed a further extension pursuant to 11 U.S.C. §§ 523 and 727. The parties agreed that good cause exists to extend these deadlines to November 30, 2020, as stipulated to in their agreement. Doc. #254. Sandton states its belief that this extension will provide it with sufficient time to complete its evaluation of whether an adversary proceeding for nondischargeability may be necessary. Sandton contends that this extension will not unnecessarily delay the progress of this bankruptcy case because the court just recently granted a far lengthier extension to the San Luis & Delta Mendota Water Authority.

This motion will be GRANTED. Cause exists for this court to extend the deadlines to object to the Debtor's discharge or the dischargeability of certain debts pursuant to 11 U.S.C. §§ 523 and 727 to November 30, 2020.

4. 20-12642-B-11 **IN RE: 3MB, LLC**
AG-2

MOTION FOR EXAMINATION AND FOR PRODUCTION OF DOCUMENTS
10-26-2020 [84]

LEONARD WELSH/ATTY. FOR DBT.
AMIR GAMLIEL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

Secured Creditor U.S. Bank, N.A. ("Creditor"), filed this motion seeking to conduct a Rule 2004 examination of Debtor 3MB, LLC ("Debtor"). Doc. #84.

Under Fed. R. Bankr. P. 2004, the court may order the examination of any entity, including Debtor, relating to "the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." Fed. R. Bankr. P. 2004(b).

Courts have held that discovery under Rule 2004 may even be used in the nature of a "fishing expedition," but cannot be used to unduly harass a witness or frivolously waste assets of the estate. *In re Duratech Indus.*, 241 B.R. 283 (E.D. N.Y. 1999); *accord In re Lufkin*, 255 B.R. 204 (Bankr. E.D. Tenn. 2000); *In re Szadkowski*, 198 B.R. 140 (Bankr. D. Md. 1996).

Creditor seeks to (1) examine Debtor's managing member, Robert Bell ("Mr. Bell") and Mark E. Thomas ("Mr. Thomas"), who is identified as a 50% equity holder and member of debtor; and (2) compel the production of documents by December 4, 2020. Doc. #84.

Creditor seeks to investigate Debtor's source of financial resources, the condition of the subject property, efforts to cure monetary and non-monetary defaults, Debtor's financial condition, valuation of assets, dealings with existing and expiring leases, property compliance with environmental laws, Debtor's ability to reorganize, Debtor's efforts to find new tenants; Debtor's efforts to find a new investor, lender, or buyer; and other issues that affect the administration of the estate. *Id.* Because there are no contested matters or adversary proceedings, Creditor states it cannot conduct an examination under Rule 7030 or 7014, and therefore requests the court enter an order requiring Debtor, Mr. Bell, and Mr. Thomas to appear for an examination and produce documents under Rule 2004. *Id.*

Creditor seeks information pertaining to the following:

(1) Debtor's financial condition;
(2) Valuation of Debtor's assets, including any appraisals and/or broker's opinions of value obtained by Debtor pre- or post-petition;
(3) Payments made by Debtor within one year of the Petition Date;
(4) Dealings with existing, expiring, and/or prospective leases;
(5) Efforts to refinance, sell, and/or obtain additional investment in the Property;
(6) Debtor's ability to reorganize;
(7) The claims of Debtor's creditors; and
(8) The documents produced pursuant to "Attachment B," which consists of nineteen requests for production of documents.

This motion will be GRANTED. Debtor, Mr. Bell, and Mr. Thomas shall appear at a Rule 2004 examination set at a later date determined by the parties. Additionally, Debtor, Mr. Bell, and Mr. Thomas shall respond to the request for production of documents by December 4, 2020.

If the parties cannot agree on an examination date or document production, the parties may ask the court for further relief.

This order is WITHOUT PREJUDICE and Debtor, Mr. Bell, and Mr. Thomas reserve their rights to file appropriate motion(s) for protective order(s).

11:00 AM

1. 20-12245-B-7 **IN RE: VICTOR GONZALEZ AND FELICITAS DE CARRILLO**

REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
10-14-2020 [25]

MARK HANNON/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Counsel shall inform his clients that no appearance is necessary at this hearing.

Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), "'if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney' attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok. 2009) (emphasis in original). In this case, the debtors' attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

1:30 PM

1. 20-13300-B-7 **IN RE: BRIANNA HARDIE**
SL-1

MOTION TO COMPEL ABANDONMENT
10-22-2020 [21]

BRIANNA HARDIE/MV
SCOTT LYONS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The debtor, Brianna Hardie ("Debtor"), asks this court to compel the chapter 7 trustee to abandon the estate's interest in Debtor's sole proprietorship business, "Brianna Lee," a private art studio. Doc. #21. The assets ("Business Assets") include the following:

Asset	Value	Lien	Exemption amount	C.C.P. §	Net Value
Goodwill	$0.00	$0.00	$0.00	-	$0.00
Art pieces, drawings listed with gallery	$8,000.00	$0.00	$8,000.00	703.140(b)(5)	$0.00
Easel, tables, oil paints, paint brushes, and drawing supplies	$230.00	$0.00	$230.00	703.140(b)(6)	$0.00
Office furniture	$200.00	$0.00	$200.00	703.140(b)(6)	$0.00
Paint materials	$500.00	$0.00	$500.00	703.140(b)(6)	$0.00

Doc. #23. The Business Assets consist of finished art pieces, office furniture, art supplies, and materials with a total value of $8,930.00. *Id.* All Business Assets have been exempted for their full value under California Code of Civil Procedure ("C.C.P.") §§ 703.140(b)(5) & (b)(6). Debtor contends that all income from the business is the result of her labor. Doc. #23. Debtor further contends that the only goodwill in the business is the personal

relationship she has developed with each of her clients throughout doing business, which could not be sold by the trustee. *Id.*

11 U.S.C. § 554(b) provides that "on 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." To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). *In re Galloway*, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at *16-17 (B.A.P. 9th Cir. 2014).

The court finds that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately scheduled and exempted in their entirety. *See* Doc. #1, Schedules A/B & C. Therefore, this motion will be GRANTED.

The order shall include a specific list of the property abandoned.

2. 20-13303-B-7 **IN RE: LILIA JUAREZ**
SL-1

MOTION TO COMPEL ABANDONMENT
10-22-2020 [14]

LILIA JUAREZ/MV
SCOTT LYONS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The debtor, Lilia Juarez ("Debtor"), asks this court to compel the chapter 7 trustee to abandon the estate's interest in Debtor's sole proprietorship business, "Lilia Juarez Child Day Care," a child daycare business. Doc. #14. The assets ("Business Assets") include the following:

Asset	Value	Lien	Exemption amount	C.C.P. §	Net Value
Goodwill	$0.00	$0.00	$0.00	-	$0.00
Toys, tables, and chairs	$500.00	$0.00	$500.00	704.060	$0.00
Business Daycare License facility #153905169	$0.00	$0.00	$0.00	-	$0.00
Bank of America Business Checking Account #9826	$0.00	$0.00	$0.00	-	$0.00

Doc. #16. The Business Assets consist of a business license, a business checking account with Union Bank that had approximately $0.00 in it at the time of filing, and toys, tables, and chairs with a total value of $500.00. *Id.* All Business Assets have been exempted for their full value under California Code of Civil Procedure ("C.C.P.") § 704.060. Debtor contends that all income from the business is the result of her labor. Doc. #16. Debtor further contends that the only goodwill in the business is the personal relationship she has developed with each of her clients while doing business, which could not be sold by the trustee. *Id.*

11 U.S.C. § 554(b) provides that "on 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." To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). *In re Galloway*, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at *16-17 (B.A.P. 9th Cir. 2014).

The court finds that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately

scheduled and exempted in their entirety. *See* Doc. #12, Schedules A/B & C. Therefore, this motion will be GRANTED.

The order shall include a specific list of the property abandoned.

3. 12-19709-B-7 **IN RE: TIPAPORN BOERGER**

CONTINUED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-25-2020 [88]

PHILLIP GILLET/ATTY. FOR DBT.

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the fees due were paid on October 23, 2020. Therefore, the Order to Show Cause will be vacated.

4. 19-12631-B-7 **IN RE: JOEL SALAZAR**
RTW-2

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG, ACCOUNTANT(S)
10-9-2020 [58]

RATZLAFF TAMBERI & WONG/MV
MARIO LANGONE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion will be GRANTED. The chapter 7 trustee's ("Trustee") certified public accountancy firm, Ratzlaff Tamberi & Wong ("Movant"), requests fees of $1,078.00 and costs of $14.50 for a total of $1,092.50 for accountancy services rendered from June 30, 2020 through September 22, 2020. Doc. #58. Trustee filed a statement of no objection to this fee application. Doc. #62.

This court previously approved applicant's employment under 11 U.S.C. § 327. Doc. #42. The order specified that compensation may be requested under 11 U.S.C. § 330(a) and will be at the "lode star rate" applicable at the time that services are rendered in accordance with the Ninth Circuit decision in *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Additionally, the employment term shall cover all fees and services rendered on or after May 22, 2020. Doc. #42.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Review of petition and Trustee accounting documents for information related to tax matters and the sale of property of the estate; (2) Preparation of the final federal and state fiduciary income tax returns for the period ending August 31, 2020; and (3) Preparation of this final fee application. Doc. #61. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $1,078.00 in fees and $14.50 in costs.

5. 12-16946-B-7 **IN RE: DOLORES GALLEGOS**
SL-2

MOTION TO AVOID LIEN OF FORD MOTOR CREDIT COMPANY LLC
10-26-2020 [27]

DOLORES GALLEGOS/MV
SCOTT LYONS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The debtor, Dolores Gallegos ("Debtor"), filed this motion seeking to avoid a judicial lien in favor of Creditor Ford Motor Credit Company, LLC ("Creditor"), and encumbering residential real property located at 1387 Nicole Ave., Hanford, CA 93230 ("Property"). Doc. #27.

This motion will be GRANTED. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003), quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd* 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against Debtor in favor of Creditor in the sum of $23,066.58 on May 25, 2011. Doc. #30, Ex. D. The abstract of judgment was recorded in Kings County on June 20, 2011. *Id.* That lien attached to Debtor's interest in Property. Doc. #29.

On the petition date, Property had an approximate value of $116,200.00. Doc. #29; #1, Schedule A. The unavoidable liens totaled $88,700.54 on that same date, consisting of a deed of trust in favor of Bank of America. Doc. #24, Schedule D. Debtor claimed an exemption pursuant to California Civ. Proc. Code ("C.C.P.") § 704.730 in the amount of $75,000.00. Doc. #1, Schedule C; Doc. #30, Ex. C.

Fair Market Value of the Property on the date of filing		$116,200.00
Total amount of all other liens on the Property on the date of filing (excluding judicial liens)	-	$88,700.54
Amount of Equity Available in Property	=	**$27,499.46**
Amount of Debtor's claimed exemption in the Property under C.C.P. § 704.730	-	$75,000.00
Amount of Creditor's Judicial Lien	-	$23,066.58
Extent of impairment of Debtor's exemption in the Property	=	**($70,567.12)**

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

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Therefore, this motion will be GRANTED.

6. 11-16248-B-7 **IN RE: DEAN/DEBRA THOMPSON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES - $13.00
10-19-2020 [64]

MARK ZIMMERMAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings and conclusions.

ORDER: The court will issue an order.

The record shows that a partial payment of the certification and photocopy fees were paid in the amount of $11.50 on October 19, 2020. There is a remaining balance of $1.50.

7. 11-16248-B-7 **IN RE: DEAN/DEBRA THOMPSON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES - $13.50
10-19-2020 [65]

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the certification and photocopy fees due in the amount of $13.50 were paid on October 19, 2020. Therefore, the Order to Show Cause will be vacated.

8. 19-14858-B-7 **IN RE: CAREY SHOFNER AND CHRISTINA MILLER**
RSB-1

MOTION TO AVOID LIEN OF ABACA BAIL BONDS
9-30-2020 [36]

CAREY SHOFNER/MV
R. BELL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

The debtors, Carey Shofner and Christina Miller (collectively "Debtors"), filed this motion seeking to avoid a judicial lien in favor of Abaca Bail Bonds ("Creditor") and encumbering residential real property located at 761 Greenwood Meadow, Bakersfield, CA 93308 ("Property"). Doc. #36.

This motion will be GRANTED. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003)(quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd* 24 F.3d 247 (9th Cir. 1994)).

A judgment was entered against Debtors in favor of Creditor in the sum of $2,692.09 on May 17, 2016. Doc. #38, Ex. A. The abstract of judgment was recorded in Kern County on May 27, 2016. *Id.* That lien attached to Debtors' interest in Property. Doc. #39, #40.

On the petition date, Property had an approximate value of $190,440.00. Doc. #39, #40; #1, Schedule A/B. The unavoidable liens totaled $124,253.00 on that same date, consisting of a deed of trust in favor of Freedom Mortgage Corp. Doc. #1, Schedule D. The debtor claimed an exemption pursuant to California Civ. Proc. Code ("C.C.P.") § 704.730(a)(2) in the amount of $66,187.00. Doc. #1, Schedule C; Doc. #38, Ex. B.

Fair Market Value of the Property on the date of filing		$190,440.00
Total amount of all other liens on the Property on the date of filing (excluding judicial liens)	-	$124,253.00
Amount of Equity Available in Property	=	**$66,187.00**
Amount of Debtor's claimed exemption in the Property under C.C.P. § 704.730	-	$66,187.00
Amount of Creditor's Judicial Lien	-	$2,692.09
Extent of impairment of Debtor's exemption in the Property	=	**($2,692.09)**

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

Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). Therefore, this motion will be GRANTED.

9. 20-12389-B-7 **IN RE: IRENE LEYVA**
UST-1

MOTION TO DISMISS CASE
10-16-2020 [23]

TRACY DAVIS/MV
JASON BLUMBERG/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

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

Second, LBR 9014-1(d)(3)(B) requires the notice of hearing to "advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition." LBR 9014-1(d)(3)(B)(i).

LBR 9014-1(f)(2)(C) states:

> When fewer than twenty-eight (28) days' notice of a hearing is given, no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.

LBR 9014-1(f)(2)(C). This motion was filed on October 16, 2020 and set for hearing on November 10, 2020. November 10, 2020 is 25 days after October 16, 2020, and therefore this motion was filed on less than 28 days' notice. Doc. #23.

Here, the notice of hearing stated:

> If you do not want the court to grant the motion, or if you want the court to consider your views on the motion, then you or your attorney must attend the hearing scheduled to be held on November 10, 2020 . . . It is not necessary for you to file a written response to this motion.

Doc. #24. This language, while not technically incorrect, is ambiguous as to whether written opposition is required. The notice of hearing does not definitively state that no party in interest shall be required to file written opposition, just that "it is not necessary. . ." Rather than an unconditional statement that opposition shall be presented at the hearing, the notice is not decisive as to whether parties wishing to oppose must attend the hearing.

For the foregoing reasons, this motion will be DENIED WITHOUT PREJUDICE.

10. 20-12296-B-7 **IN RE: SALVADOR/RAMONA UVALLE**
TCS-1

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT,WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, AND FOR APPOINTMENT OF REPRESENTATIVE AS TO DEBTOR
10-10-2020 [18]

RAMONA UVALLE/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
DATE DISCHARGED: 10/16/2020 (JDB)

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

DISPOSITION: Granted.

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

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

On July 9, 2020, Ramona Uvalle and Salvador Uvalle (collectively "Debtors") filed their chapter 7 petition. Doc. #1. On September 10, 2020, Joint Debtor Salvador Uvalle died and is survived by his wife, Joint Debtor Ramona Uvalle (individually "Debtor"). Doc. #21.

Debtor asks this court to be appointed as Salvador Uvalle's successor and waiver of filing a post-petition financial education certificate under § 1328(g) and a certification that the requirements of § 1328 have been met. Doc. #120.

This court notes that 11 U.S.C. § 1328 does not apply because this case was filed under chapter 7, not chapter 13. However, the court will infer that Debtor's counsel intended to waive the chapter 7 requirement to file a certificate of post-petition financial education under 11 U.S.C. § 727(a)(11).

This motion will be GRANTED.

LBR 1016-1 states:

> (a) In a bankruptcy case which has not been closed, a Notice of Death of the debtor [Fed. R. Civ. P. 25(a), Fed. R. Bankr. P. 7025] shall be filed within sixty (60) days of the death of a debtor by the counsel for the deceased debtor or the person who intends to be appointed as the representative for or successor to a deceased debtor. The Notice of Death shall be served on the trustee, U.S. Trustee, and all other parties in interest. A copy of the death certificate (redacted as appropriate) shall be filed as an exhibit to the Notice of Death.
>
> The Notice of Death may be combined with the single motion permitted by paragraph (b) of this Rule. . .
>
> . . .
> (b) When the debtor has died or has become incompetent prior to a closing of a bankruptcy case, the provisions of Federal Rule of Civil Procedure 18(a) [Fed. R. Bankr. P.

> 7018, 9014(c)] apply to the following claims for relief which may be requested in a single motion:
>
> 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [Fed. R. Civ. P. 25(a), (b); Fed. R. Bankr. P. 1004.1 & 7025];
> 2) Continued administration of a case under chapter 11, 12, or 13 [Fed. R. Bankr. P. 1016];
> 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
> 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications [11 U.S.C. § 1328].

LBR 1016-1. Pursuant to LBR 1016-1, Debtor filed this motion asking the court to appoint her as Salvador Uvalle's representative because she is the best qualified person to represent his estate in this chapter 7 case. Doc. #18. With respect to Mr. Uvalle only, Debtor also asks for waiver of the post-petition financial education requirement for entry of discharge under 11 U.S.C. § 727(a)(11).

Federal Rule of Bankruptcy Procedure 1016 provides:

> Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. . .

Fed. R. Bankr. P. 1016.

Here, Debtors filed under chapter 7 on July 9, 2020. Doc. #1. Debtor filed her post-petition financial education certificate on September 28, 2020. Doc. #17. Debtor filed a declaration stating that her husband did not complete the second credit counseling course prior to his passing. Doc. #20. She further stated, to the best of her knowledge:

> (1) there has never been any court order requiring Salvador Uvalle to pay domestic support obligations;
> (2) this chapter 7 case is the only bankruptcy case Salvador Uvalle has filed in the past fifteen years; and
> (3) Salvador Uvalle has never been charged with or convicted of a felony.

Id. at ¶ 7. This case was still pending at the time this motion was filed. On October 16, 2020, an order of discharge was entered as to Joint Debtor Ramona Uvalle. *See* Doc. #24.

No party in interest has filed opposition to this motion. Therefore, pursuant to Fed. R. Bankr. P. 1016, the court will appoint Ramona Uvalle as representative for the estate of Salvador Uvalle because

she is the best qualified person to represent his estate in this case.

In accordance with Fed. R. Bankr. P. 1016, the estate of Salvador Uvalle will be excused from completing and filing a certificate of completion of the financial management course required by § 727(a)(11). The clerk's office is to treat this case as it would if Joint Debtor Salvador Uvalle had filed a certificate of completion of the financial management course.

Therefore, this motion will be GRANTED.

The court notes that Counsel did not redact personally identifiable information from filed documents. LBR 9037-1(a)(1) states "[t]he responsibility for redacting personally identifiable information (as defined in Fed. R. Bankr. P. 9037) rests solely with counsel, parties in interest and non-parties." Counsel is advised to review LBR 9037-1(b) for procedure on redacting personally identifiable information in documents on the court's docket.

11. 20-10297-B-7 **IN RE: ALEXANDRA MIYASATO**
ICE-1

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JAY MOORE
10-8-2020 [24]

IRMA EDMONDS/MV
JANINE ESQUIVEL OJI/ATTY. FOR DBT.
IRMA EDMONDS/ATTY. FOR MV.
DISCHARGED 5/4/2020

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

DISPOSITION: Granted.

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

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

prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion will be GRANTED. It appears from the moving papers that the chapter 7 trustee ("Trustee") has considered the standards of *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1987) and *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986):

(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 and a proper deference to their reasonable views in the premises.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The order should be limited to the claims compromised as described in the motion.

Trustee requests approval of a settlement agreement between the estate and the debtor's uncle, Jay Moore, regarding preferential payments or fraudulent conveyances totaling $3,182.00 made by the debtor to her uncle from March to December 2019 and within one year preceding the petition date. Doc. #24.

Under the terms of the compromise, Mr. Moore will pay $3,182.00 to the estate and the estate will release its claim against Mr. Moore in its entirety as to the preference payment. *Id.* Trustee submits that she has been paid $3,182.00 in full. Doc. #26.

On a motion by 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. *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. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: (1) although Trustee believes the probability of success is high, the need to continue litigation is obviated because the proposed settlement provides as much money to the bankruptcy estate as was owing at the time of filing; (2) collection is no longer an issue because the estate has already received the full settlement and forgo litigation costs; (3) the litigation would be a mix of law and facts; though not very complex, moving forward with litigation would decrease the net to the estate due to the legal fees; and (4) the estate has recovered the full value of its claim against Mr. Moore, so creditors will greatly

benefit from the net to the estate. Therefore, the settlement is fair and equitable.

Accordingly, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of Trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.* This motion will be GRANTED.

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