

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, November 17, 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. [20-11606](#)-B-11 IN RE: MICHAEL PENA

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
5-4-2020 [[1](#)]

JUSTIN HARRIS/ATTY. FOR DBT.

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

DISPOSITION: Continued to December 15, 2020 at 9:30 a.m.

ORDER: The court will issue an order.

Per the court's last order, the debtor was to file a chapter 11 plan and disclosure statement not later than October 30, 2020. Doc. #57. The debtor filed a plan and disclosure statement on October 30, 2020, which are set for hearing on December 15, 2020. See Doc. #62, #65. Accordingly, this status conference will be continued to December 15, 2020 to be heard in connection with the hearing on the approval of the disclosure statement.

2. [20-10809](#)-B-11 IN RE: STEPHEN SLOAN

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
3-2-2020 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

3. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[FW-6](#)

CONTINUED AMENDED CHAPTER 11 DISCLOSURE STATEMENT FILED BY
DEBTOR STEPHEN WILLIAM SLOAN
8-28-2020 [[222](#)]

PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The Disclosure Statement is not approved.

ORDER: The court will issue the order.

After the court did not approve the initial Disclosure Statement filed by Stephen Sloan, debtor-in-possession ("DIP") (Doc. 217), DIP submitted an Amended Plan and Disclosure Statement and a "redline" of the original Disclosure Statement (Doc. 221-222). No party in interest has objected to the Amended Disclosure Statement except Sandton Credit Solutions Master Fund IV, L.P. ("Sandton").

Sandton objects, first, that the Amended Disclosure Statement contains numerous inaccuracies about alleged transfers of certain real estate by Sloan to his children's trusts shortly before filing this case. Specifically:

- 1) Sloan held certain transferred parcels for a longer time than suggested in the Amended Disclosure Statement.
- 2) Certain parcels were not acquired from Sloan's parents-part of an apparent "hurried" estate planning process-but rather from third parties.
- 3) Property in Lake County-not mentioned in the first or Amended Disclosure Statement-was purportedly transferred from Sloan's parents to Sloan as Trustee for the Sloan Family Irrevocable Trust.

Second, Sandton contends the liquidation analysis in the Amended Disclosure Statement is lacking. The alleged deficiencies are: failure to provide an estimate of funds that might benefit unsecured creditors from a sale of all non-exempt assets, and an inadequate discussion of the value of DIP's interests in various Limited Liability Companies ("LLCs").

DIP replied (Doc. 268-269). First, addressing the transfer issues, DIP urges the Amended Disclosure Statement contains "adequate information." In addition to reminding the court that the proposed Plan calls for 100% payment of allowed unsecured claims making avoidance actions unnecessary, DIP reports it reached agreement with the trustees of the transferee trusts. The agreement purportedly requires that the trusts hold on to the property interests and extend the statute of limitations for avoidance actions until DIP's creditors are to be paid in full under the Plan.

DIP also contends Sandton is simply wrong about the Lake County property. Sloan never had an equitable interest and only held title as a trustee of the Sloan Family Trust.

Second, DIP urges that the existing liquidation analysis is enough. The Amended Disclosure Statement, says DIP, contains a discussion of the debtor's asset values and the impact of disagreements concerning value. Also, DIP urges that its discussion shows the reason the Plan must pay 100% of allowed claims and now contains an extensive exposition of risks. So, the Amended Disclosure Statement is adequate.

Section 1125 (a) requires "adequate information" (defined there) not "comprehensive information." The "hypothetical investor of the relevant class" must have sufficient information "to make an informed judgment about the plan." *Id.* Also, "the court should consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." *Id.*

The court notes DIP has proposed additional language in the Amended Disclosure Statement which has the effect of separating the purportedly "hurriedly transferred" properties from those Sloan held for a longer period. This is helpful. But the importance of whether Sloan held the properties for more than fleeting moments immediately before pre-filing transfers is minimal for a creditor to make an informed judgment about the plan.

What is helpful is knowing that these transfers could be avoidable—they may be—and what is needed to avoid them. If avoidance is disputed, it means litigation with its attendant costs and risks. The discussion on this topic is murky and should be clarified. The purported agreements with the transferees of these transfers certainly eases some concerns but does not discuss the steps necessary to avoid the transfers, even if necessary.

The court agrees with DIP's statement in the reply that the equitable vs. legal ownership question about the Lake County property will not be litigated in a Disclosure Statement hearing.

The court agrees with Sandton about two aspects of the liquidation analysis. First, the creditors need to know what liquidation really means. There are costs of sale and commissions that will reduce recoveries. Realistic marketing times would inevitably delay payments in a chapter 7 scenario.

Second, the realistic realization from the liquidation of the LLC interests should at least be estimated. True enough, a DIP's interest is defined not by the value of the LLC but the nature of the interest under the controlling LLC formation documents. But the schedules show total values of over \$11.5 million. What are DIPs interests worth? Can they be liquidated? The court assumes the value will be disputed but the existence of the dispute should be enough for a creditor to make an informed judgment about the Plan.

The Amended Disclosure Statement should be modified. The court will inquire about a realistic schedule for amendment.

11:00 AM

1. [20-12629](#)-B-7 IN RE: ANNA RUIZ

REAFFIRMATION AGREEMENT WITH AMERICAN HONDA FINANCE CORP.
10-19-2020 [[13](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when she entered into the reaffirmation agreement. Creditor, American Honda Finance Corporation, failed to sign the Reaffirmation Agreement (see page 6, Part B: Reaffirmation Agreement). Therefore, the reaffirmation agreement is not enforceable. The debtor shall have 14 days to refile the reaffirmation agreement properly signed by all parties.

2. [20-12629](#)-B-7 IN RE: ANNA RUIZ

REAFFIRMATION AGREEMENT WITH PREFERRED CREDIT, INC.
10-19-2020 [[14](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

Debtor was represented by counsel when she 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 debtor's attorney affirmatively represented that the agreement established a presumption of undue hardship and that his opinion the debtor was not able to make the required payments. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

3. [20-12641](#)-B-7 **IN RE: RUBI BERNAL**

PRO SE REAFFIRMATION AGREEMENT WITH AMERICAN HONDA FINANCE
CORP.
10-29-2020 [[12](#)]

NO RULING.

1:30 PM

1. [20-11701](#)-B-7 **IN RE: BRENDA PARKER**
[GB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-14-2020 [[26](#)]

BRIDGECREST CREDIT COMPANY,
LLC/MV
WILLIAM OLCOTT/ATTY. FOR DBT.
ERICA LOFTIS/ATTY. FOR MV.
DISCHARGED 9/15/20

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

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

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

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

The movant, Bridgecrest Credit Company, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2008 Lexus ES 350 ("Vehicle"). Doc. #26.

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The debtor's discharge was entered on September 15, 2020. Doc. #15. Therefore, the automatic stay terminated with respect to the debtor on September 15, 2020. This motion will be DENIED AS MOOT IN PART as to the debtor's interest and will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary

relief from the stay must be determined on a case by case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least 11 complete pre- and post-petition payments. The movant has produced evidence that debtor is delinquent at least \$2,791.68. Doc. #28, #30.

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 \$7,525.00 and debtor owes \$15,374.24. Doc. #28, #30.

Accordingly, the motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest under § 362(c)(2)(C).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the Vehicle is a depreciating asset, and the debtor has indicated in her Statement of Intention an intent to surrender the Vehicle.

2. [20-12501](#)-B-7 **IN RE: PARMINDER SINGH**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-29-2020 [[23](#)]

PATRICIA CARRILLO/ATTY. FOR DBT.
\$25.00 FEE PAID 10/30/20

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 fee of \$25.00 was paid on October 30, 2020. Therefore, the Order to Show Cause will be vacated.

3. [20-11912](#)-B-7 **IN RE: SHARANJIT SINGH**
[UST-1](#)

MOTION TO APPROVE STIPULATION TO DISMISS CHAPTER 7
BANKRUPTCY CASE WITHOUT ENTRY OF DISCHARGE
10-19-2020 [[25](#)]

TRACY DAVIS/MV
LAYNE HAYDEN/ATTY. FOR DBT.
TREVOR FEHR/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 trustee, 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 United States Trustee ("UST") filed this motion moving the court to approve Stipulation to Dismiss Chapter 7 Case Without Entry of Discharge. Doc. #25.

A chapter 7 case may be dismissed only after a notice and hearing and only for "cause," including three enumerated causes under 11 U.S.C. § 707(a), which states, in relevant part:

- (a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including—
 - (1) unreasonable delay by the debtor that is prejudicial to creditors;
 - (2) nonpayment of any fees or charges required under chapter 123 of title 28; and
 - (3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by

paragraph (1) of section 521(a), but only on a motion by the United States trustee.

11 U.S.C. § 707(a). These statutorily enumerated grounds are not exclusive. *Sherman v. SEC (In re Sherman)*, 491 F.3d 948, 970 (9th Cir. 2007); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 840 (B.A.P. 9th Cir. 2008). Under 11 U.S.C. § 707(b), an individual chapter 7 consumer debtor's case may be dismissed for presumed abuse or where abuse is demonstrated by bad faith or the totality of the circumstances of the debtor's financial condition. See 11 U.S.C. §§ 707(b)(1), (b)(2), and (b)(3).

Here, the UST is prepared to file motions under 11 U.S.C. §§ 707(b)(1) and (b)(3), but the debtor stipulated to dismissal without entry of discharge on October 19, 2020. See Doc. #24. The debtor filed bankruptcy on June 2, 2020. Doc. #1. The § 341 meeting of creditors was held on July 9, 2020, continued to July 21, 2020, and continued again to September 10, 2020. No creditors objected to this motion and there does not appear to be any benefit to creditors in keeping the bankruptcy case open.

This motion to approve the stipulation to dismiss the debtor's chapter 7 case without entry of discharge will be GRANTED.

4. [20-12515](#)-B-7 **IN RE: LUIS/ALEXANDRA SANCHEZ**
[JES-1](#)

MOTION TO EMPLOY BAIRD'S AUCTION & APPRAISALS AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
10-14-2020 [\[18\]](#)

JAMES SALVEN/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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

This motion will be GRANTED.

The chapter 7 trustee, James Salven ("Trustee") asks to employ Baird Auctions & Appraisals ("Auctioneer") as auctioneer to sell property of the estate consisting of a 2008 Jeep Wrangler ("Vehicle") at a public auction, which is set for December 1, 2020 at Baird Auctions & Appraisals located at 1328 N. Sierra Vista, Suite B in Fresno, California. Doc. #18. Trustee requests to pay 15% of the gross proceeds from the sale as compensation under 11 U.S.C. § 327(a), along with \$400.00 for anticipated expenses.

11 U.S.C. § 327 provides:

(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

11 U.S.C. § 327(a). 11 U.S.C. § 328(a) permits employment of "a professional person under section 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).

11 U.S.C. § 328(a) "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.'" *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002).

Trustee will be authorized to employ Auctioneer to sell Vehicle at a public auction. Trustee proposes to compensate Auctioneer on a percentage collected basis, 15% of the gross proceeds from the sale. Doc. #20. Trustee is also authorized to reimburse Auctioneer up to \$400.00 for expenses.

The court finds the proposed arrangement reasonable in this instance. If the arrangement proves improvident, the court may allow different compensation under 11 U.S.C. § 328(a).

Sale by auction under these circumstances should maximize potential recovery for the estate. Therefore, it is an appropriate exercise of the trustee's business judgment.

This motion will be GRANTED. Trustee is authorized to employ and pay Auctioneer for his services as outlined above, and the proposed sale at auction of the Vehicle is approved.

5. [20-12717](#)-B-7 **IN RE: LAURA ROJAS**
[JES-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-12-2020 [[18](#)]

JAMES SALVEN/MV

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled as moot.

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

This objection was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. No party in interest, including the debtor, timely filed opposition as required by LBR 9014-1(f)(1)(B).

This objection will be OVERRULED AS MOOT.

The chapter 7 trustee, James Salven ("Trustee"), filed this objection to the *pro se* debtor, Laura Roja's ("Debtor"), claim of exemptions for a 2016 Chevy Malibu ("Vehicle") in the amount of \$4,886.00 under California Code of Civil Procedure ("C.C.P.") § 704.010. Doc. #18. While this objection was pending, Debtor amended Schedule C, which will be discussed below. Doc. #24.

Federal Rule of Bankruptcy Procedure 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 meeting of creditors is held or within 30 days after any amendment to Schedule C is filed, whichever is later. In this case, the § 341 meeting was concluded on September 24, 2020 and this objection was filed on October 12, 2020, which is within the 30-day timeframe.

Trustee objects on grounds that Debtor claimed an exemption of \$4,886.00 for Vehicle under C.C.P. § 704.010, but the statutory limit is set at \$3,325.00. Doc. #20. Per C.C.P. § 703.150, the current exemption dollar amounts are set in Form EJ-156 by the Judicial Council, which can be found at the California State Courts website, www.courts.ca.gov. Form EJ-156 was last revised September 1, 2020, though it states that it became effective on April 1, 2019. See EJ-156 (Rev. Sept. 1, 2020).

Exemption dollar amounts are adjusted at each three-year interval, ending on March 31. *Id.* The amount of adjustment of exemption dollar amounts is "based on the change in the annual California Consumer

Price Index for All Urban Consumers for the most recent three-year period ending on the preceding December 31, with each adjusted amount rounded to the nearest \$25." *Id.*; see also C.C.P. § 703.150(d).

Interestingly, Senate Bill ("SB") 868, which amends § 703.010 by increasing its dollar amount to \$3,325, was filed with the Secretary of State and approved by the Governor on September 11, 2020. See 2020 Cal ALS 81, 2020 CAL SB 898, 2020 Cal Stats, ch. 81. SB 868 is not effective until January 1, 2021. *Id.* Form EJ-156, however, was revised prior to SB 868's execution and states the exemption increased to \$3,325 effective April 1, 2019.

C.C.P. § 704.010 provides:

(a) Any combination of the following is exempt in the amount of [\$3,325]:

- (1) The aggregate equity in motor vehicles.
- (2) The proceeds of an execution sale of a motor vehicle.
- (3) The proceeds of insurance or other indemnification for the loss, damage, or destruction of a motor vehicle.

(b) Proceeds exempt under subdivision (a) are exempt for a period of 90 days after the time the proceeds are actually received by the judgment debtor.

(c) For the purpose of determining the equity, the fair market value of a motor vehicle shall be determined by reference to used car price guides customarily used by California automobile dealers unless the motor vehicle is not listed in such price guides.

(d) If the judgment debtor has only one motor vehicle and it is sold at an execution sale, the proceeds of the execution sale are exempt in the amount of [\$3,325] without making a claim. The levying officer shall consult and may rely upon the records of the Department of Motor Vehicles in determining whether the judgment debtor has only one motor vehicle. In the case covered by this subdivision, the exemption provided by subdivision (a) is not available.

C.C.P. § 704.010(a); see also EJ-156.

The Eastern District of California Bankruptcy Court in *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [C.C.P.] and the extent to which that exemption applies."

As noted above, Debtor filed an amended Schedule C wherein she exempted Vehicle—and only Vehicle—under C.C.P. § 704.010. See Doc. #24; *cf.* #1 at Schedule C. Debtor's original Schedule C

contained exemptions for the following pieces of real and personal property:

Property	A/B Line ¶	Value Owned	Value Exempted	Exemption C.C.P. §
705 S. HARRIS ST.	1.1	\$200,000.00	\$64,961.00	704.730(a)(2)
2016 CHEVY MALI	3.2	\$10,000.00	\$4,886.00	704.010
FURNITURE	6	\$800.00	\$800.00	704.020
ELECTRONICS	7	\$920.00	\$920.00	704.020
CLOTHING	11	\$300.00	\$300.00	704.020
CHECKING EECU	17.1	\$20.00	\$20.00	704.070
SAVINGS EECU	17.3	\$5.00	\$5.00	704.070
RETIREMENT	21	\$64,902.00	\$64,902.00	704.110

Doc. #1, Schedule C (emphasis added). Debtor's most recent modification contains *only* the following exemption:

Property	A/B Line ¶	Value Owned	Value Exempted	Exemption C.C.P. §
2016 CHEVY MALI	3.2	\$10,000.00	\$3,325.00	704.010

Doc. #24 (emphasis added). Debtor's current Schedule C apparently indicates that she is not exempting anything other than Vehicle but does change the exemption amount for Vehicle to \$3,325.00 in accordance with the statutory limit of § 704.010, as specified in EJ-156. This appears to be a mistake, because Debtor has effectively lost \$131,908.00 total value in previously claimed exemptions that do not appear in this amendment. As stated above, Debtor is *pro se*. Notably, Debtor used a bankruptcy petition preparer to make this amendment. See Doc. #24 at 5-7.

Debtor is advised to review Amended Schedule C (Doc. #24) and consider whether she intended to only exempt Vehicle and exclude \$131,908.00 in value for previously claimed exemptions. If Debtor did not intend to remove these exemptions, she should file and serve a new Amended Schedule C that includes all exemptions she wishes to claim.

The court finds that Trustee is correct. The statutory limit of C.C.P. § 704.010 is \$3,325.00, as set by the Judicial Council and specified in Form EJ-156. Debtor's original Schedule C exempted Vehicle for \$4,886.00, which is more than the statutory limit. Doc. #1. Debtor amended Schedule C and reduced the value of her exemption for Vehicle to \$3,325.00, which is within the statutory limit. Doc. #24. However, Debtor's Schedule C omits all other previously claimed exemptions thereby no longer exempting a total property value of \$131,908.00. This appears to be erroneous.

This objection will be OVERRULED AS MOOT because Debtor has amended her Schedule C and corrected the amount of Vehicle's exemption. However, Debtor is advised to review her Amended Schedule C, determine whether she intended to exempt property other than

Vehicle, and if so, amend her Schedule C again to include all property she intends to exempt. While endeavoring to make this amendment, Debtor shall keep Vehicle within the \$3,325.00 statutory limit imposed by C.C.P. § 704.010.

6. [20-12727](#)-B-7 **IN RE: JACQUELINE PEREZ HARO**
[UST-2](#)

MOTION TO APPROVE STIPULATION TO DISMISS CHAPTER 7 CASE
WITHOUT ENTRY OF DISCHARGE
10-27-2020 [[24](#)]

TRACY DAVIS/MV
SHAWN GEORGE/ATTY. FOR DBT.
JORGE GAITAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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.

This motion will be GRANTED. The United States Trustee ("UST") filed this motion moving the court to approve Stipulation to Dismiss Chapter 7 Case Without Entry of Discharge. Doc. #24.

A chapter 7 case may be dismissed only after a notice and hearing and only for "cause," including three enumerated causes under 11 U.S.C. § 707(a), which states, in relevant part:

- (a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including—
 - (1) unreasonable delay by the debtor that is prejudicial to creditors;
 - (2) nonpayment of any fees or charges required under chapter 123 of title 28; and
 - (3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a), but only on a motion by the United States trustee.

11 U.S.C. § 707(a). These statutorily enumerated grounds are not exclusive. *Sherman v. SEC (In re Sherman)*, 491 F.3d 948, 970 (9th Cir. 2007); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 840 (B.A.P. 9th Cir. 2008). Under 11 U.S.C. § 707(b), an individual chapter 7 consumer debtor's case may be dismissed for presumed abuse or where abuse is demonstrated by bad faith or the totality of the circumstances of the debtor's financial condition. See 11 U.S.C. §§ 707(b)(1), (b)(2), and (b)(3).

Here, the UST is prepared to file motions under 11 U.S.C. §§ 707(a) and (b)(3), but the debtor stipulated to dismissal without entry of discharge. See Doc. #24. The debtor filed bankruptcy on August 18, 2020. Doc. #1. The § 341 meeting of creditors was held on September 14, 2020 and continued to November 19, 2020. No creditors objected to this motion and there does not appear to be any benefit to creditors in keeping the bankruptcy case open.

This motion to approve the stipulation to dismiss the debtor's chapter 7 case without entry of discharge will be GRANTED.

7. [19-12631](#)-B-7 **IN RE: JOEL SALAZAR**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, CHAPTER 7
TRUSTEE(S)
10-12-2020 [\[65\]](#)

JAMES SALVEN/MV
MARIO LANGONE/ATTY. FOR DBT.
PETER FEAR/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.

This motion will be GRANTED. Chapter 7 Trustee James Salven ("Trustee") requests fees of \$12,400.00 and costs of \$257.52 for a total of \$12,657.52 as statutory compensation and actual and necessary expenses. Doc. #317.

11 U.S.C. § 326 permits the court to allow reasonable compensation to the chapter 7 trustee under § 330 for the trustee's services. Section 326(a) states:

In a case under chapter 7 or 11, other than a case under subchapter V of chapter 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including all holders of secured claims.

11 U.S.C. § 326(a).

11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses. 11 U.S.C. § 330(a)(1)(A) & (B).

Here, Trustee has requested:

- (1) \$1,250.00 (25%) of the first \$5,000.00;
- (2) \$4,500.00 (10%) of the next \$45,000.00; and,
- (3) \$6,650.00 (5%) of the next \$133,000.00.

Doc. #68, Ex. A. These percentages comply with the percentage restrictions imposed by § 326(a) and total \$12,400.00. These fees were incurred by Trustee during the course of this case, in which Trustee: (1) conducted the meeting of creditors; (2) reviewed and reconciled financial records; (3) sold real property; (4) stipulated to a settlement on the debtor's claimed exemptions; (5) made distributions totaling \$183,000.00 to creditors; and (6) prepared the final report, which is currently pending review. *Id.* The court also finds these fees and costs to be for actual and necessary services and expenses.

The court finds Trustee's services were actual and necessary to the estate, the fees are reasonable, and the costs are actual and necessary in accordance with §§ 326(a) and 330(a). Accordingly, this motion will be GRANTED, and Trustee will be awarded \$12,400.00 in fees and \$257.52 in costs.

8. [20-12038](#)-B-7 **IN RE: RAMIRO VELAZQUEZ AND PAULINA PATRON**
[JES-1](#)

MOTION TO COMPEL
10-9-2020 [[18](#)]

JAMES SALVEN/MV
MARK HANNON/ATTY. FOR DBT.
WITHDRAWN 10/28/2020

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

This motion was withdrawn by the chapter 7 trustee on October 28, 2020. Doc. #22. Therefore, the motion will be dropped from calendar.

9. [19-14943](#)-B-7 **IN RE: PEDRO/ERNESTINA CARRILLO**
[JES-2](#)

MOTION TO COMPEL
10-9-2020 [[27](#)]

JAMES SALVEN/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

The chapter 7 trustee, James Salven ("Trustee"), filed this motion seeking to compel the debtors, Pedro and Ernestina Carrillo ("Debtors"), to turnover to the estate either (1) 2019 Federal and State tax returns ("Tax Returns") with their 2019 Federal and State tax refunds ("Tax Refunds"); or (2) data necessary to cause the Tax Returns to be prepared. Doc. #27.

Trustee estimates that the 2019 Tax Refunds may have equity over and above any available exemption in the amount of at least \$2,001.00, based on prior Tax Returns. Doc. #29 at ¶ 2.

Debtors timely responded stating that they have complied with Trustee's request and turned over all funds to Trustee. Doc. #31. Debtors state that there was a delay because a prior legal secretary

assigned to their case was terminated for failure to perform her duties. *Ibid.* A new legal secretary, Delores Rodriguez ("Ms. Rodriguez") was assigned to the position and has been forced to "catch up" on her predecessor's work. Doc. #32 at ¶ 2. Ms. Rodriguez filed a declaration stating that, as result of the "backlog of work that had not been performed by the prior legal secretary[,] "the turnover[,] and a great number of Chapter 7 Petitions that needed to be worked on," she "overlooked the Chapter 7 Trustee's request for the documents[.]" *Id.* at ¶ 5. Ms. Rodriguez further states she uploaded copies of the 2019 Tax Returns to the Trustee's document dropbox at apps.bluestylus.com. *Id.* at ¶ 6. Though not mentioned in Ms. Rodriguez's declaration, the response states that Debtors have "turned over all prior funds to the Chapter 7 Trustee." Doc. #31 at 1.

11 U.S.C. § 541 establishes Tax Refunds as assets of the estate and provides, in relevant part:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interest of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

11 U.S.C. § 541(a). 11 U.S.C. § 542(a) requires Debtors to deliver Tax Refunds to Trustee as follows:

(a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

11 U.S.C. § 542(a). If Debtors have not yet filed the 2019 Tax Returns, 11 U.S.C. § 521(a)(4) requires Debtors to deliver data necessary to prepare the returns under 11 U.S.C. § 521:

- (a) The debtor shall—
(4) if a trustee is serving in the case or an auditor is serving under section 586(f) of title 28, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title[.]

11 U.S.C. § 521(a)(4).

This matter will be called as scheduled to inquire whether Trustee has received copies of the Debtors' 2019 Tax Returns, and if so, whether Trustee requires turnover of all or part of the 2019 Tax Refunds insofar as the value exceeds Debtors' claimed exemptions. If Trustee requires more documentation relating to the Tax Returns or turnover of all or part of the 2019 Tax Refunds, then this motion will be GRANTED.

It may be ordered that Debtors shall comply with Trustee's request for turnover of documents related to their 2019 Tax Returns and refund all or part of any Tax Refunds exceeding their claimed exemptions not later than 7 calendar days after an order granting this motion is issued and served on Debtors. Failure to comply may result in an order imposing sanctions, including movant's attorney's fees, upon further motion.

If Trustee has received the requested documents and the estate has been paid to the extent it is entitled, then this motion may be DENIED AS MOOT if the Trustee does not withdraw this motion.

10. [20-12743](#)-B-7 **IN RE: DELFINO/MARIA RAMIREZ**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-15-2020 [[21](#)]

FORD MOTOR CREDIT COMPANY
LLC/MV
GRISELDA TORRES/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.
RESPONSIVE PLEADING

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). Debtor filed non-opposition on October 28, 2020. Doc. #28. The failure of the creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required

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

The movant, Ford Motor Credit Company LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2015 Ford Mustang ("Vehicle"). Doc. #21.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least one post-petition payment, with an additional payment due on October 30, 2020. The movant has produced evidence that debtor is delinquent at least \$727.97. Doc. #24, #26.

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 \$24,800.00 and debtor owes \$20,335.90. Doc. #24, #26.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the debtor's statement of Intention, the Vehicle will be surrendered.

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

11. [20-10059](#)-B-7 **IN RE: HEATHER/STEPHEN CLAY**
[JES-4](#)

MOTION TO COMPEL
10-9-2020 [\[48\]](#)

JAMES SALVEN/MV

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. The failure of the creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. 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 chapter 7 trustee, James Salven ("Trustee"), filed this motion seeking to compel the *pro se* debtors, Heather and Stephen Clay ("Debtors"), to turnover either: (1) 2019 Federal and State tax returns ("Tax Returns") with their 2019 Federal and State tax refunds ("Tax Refunds"); or (2) data necessary to prepare their Tax Returns. Doc. #48.

Trustee estimates that the 2019 Tax Refunds may have equity over and above any available exemption in the amount of at least \$5,870.00, based on prior Tax Returns. Doc. #50 at ¶ 2. Debtors did not timely file opposition.

11 U.S.C. § 541 establishes Tax Returns and Tax Refunds as assets of the estate and provides, in relevant part:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interest of the debtor and the debtor's spouse in community property as of the commencement of the case that is-

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

11 U.S.C. § 541(a). 11 U.S.C. § 542(a) requires Debtors to deliver Tax Returns and Tax Refunds to Trustee as follows:

(a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

11 U.S.C. § 542(a). If Debtors have not yet filed the 2019 Tax Returns, 11 U.S.C. § 521(a)(4) requires Debtors to deliver data necessary to prepare the returns under 11 U.S.C. § 521:

(a) The debtor shall-

(4) if a trustee is serving in the case or an auditor is serving under section 586(f) of title 28, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title[.]

11 U.S.C. § 521(a)(4).

Trustee has demonstrated that the 2019 Tax Returns and any or all Tax Refunds exceeding Debtors' claimed exemptions are property of the estate and Trustee has the right to receipt for the benefit of the estate. Therefore, this motion will be GRANTED.

It will be ordered that Debtors shall comply with Trustee's request for turnover of documents related to their 2019 Tax Returns and refund all or part of any Tax Refunds exceeding their claimed exemptions not later than 7 calendar days after an order granting this motion is issued and served on Debtors. Failure to comply may result in an order imposing sanctions, including movant's attorney's fees, upon further motion.

12. [19-14170](#)-B-7 **IN RE: JOHNNY GONZALES**
[KAS-6](#)

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
6-26-2020 [[105](#)]

PETER FEAR/MV
KELSEY SEIB/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling
conference.

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

Per the court's last order on October 28, 2020, Mr. Johnny Gonzales ("Debtor") had until November 6, 2020 to provide either admissions or denials for Request for Admissions numbers 4-6, 8, 9, 11-13, 18, and 19, to the law office of Coleman & Horowitz, LLP, not later than November 6, 2020. Doc. #147. Debtor was also required to file a statement under penalty of perjury stating that all responsive documents for the Requests for Production have been provided not later than November 6, 2020. *Id.*

Debtor filed a letter under penalty of perjury on November 6, 2020, which states that he has complied with the order and all responsive documents were completed and hand delivered on November 6, 2020. Doc. #150.

Accordingly, this matter will proceed as a scheduling conference. The parties shall be prepared to discuss discovery dates and deadlines at the time of the hearing.

13. [19-13276](#)-B-7 **IN RE: JAIME MESA AND MARITZA CHIANG MESA**
[JES-1](#)

MOTION TO COMPEL
10-19-2020 [[24](#)]

JAMES SALVEN/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the

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

The chapter 7 trustee, James Salven ("Trustee"), filed this motion seeking to compel the debtors, Jaime and Maritza Chiang Mesa ("Debtors"), to turnover either: (1) 2019 Federal and State tax returns ("Tax Returns") with their 2019 Federal and State tax refunds ("Tax Refunds"); or (2) data necessary to prepare their Tax Returns. Doc. #24.

Trustee estimates that the 2019 Tax Refunds may have equity over and above any available exemption in the amount of at least \$4,682.00, based on prior Tax Returns. Doc. #26 at ¶ 2. Debtors did not file opposition and default will be entered.

11 U.S.C. § 541 establishes Tax Returns and Tax Refunds as assets of the estate and provides, in relevant part:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interest of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

11 U.S.C. § 541(a). 11 U.S.C. § 542(a) requires Debtors to deliver Tax Returns and Tax Refunds to Trustee as follows:

(a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the

trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

11 U.S.C. § 542(a). If Debtors have not yet filed the 2019 Tax Returns, 11 U.S.C. § 521(a)(4) requires Debtors to deliver data necessary to prepare the returns under 11 U.S.C. § 521:

(a) The debtor shall—

(4) if a trustee is serving in the case or an auditor is serving under section 586(f) of title 28, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title[.]

11 U.S.C. § 521(a)(4).

Trustee has demonstrated that the 2019 Tax Returns and any or all Tax Refunds exceeding Debtors' claimed exemptions are property of the estate and Trustee has the right to receipt for the benefit of the estate. Therefore, this motion will be GRANTED.

It will be ordered that Debtors shall comply with Trustee's request for turnover of documents related to their 2019 Tax Returns and refund all or part of any Tax Refunds exceeding their claimed exemptions not later than 7 calendar days after an order granting this motion is issued and served on Debtors. Failure to comply may result in an order imposing sanctions, including movant's attorney's fees, upon further motion.

14. [19-14891](#)-B-7 **IN RE: GREGORIO/TANYA SALAS**
[JES-2](#)

MOTION TO COMPEL
10-12-2020 [[35](#)]

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

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the

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

The chapter 7 trustee, James Salven ("Trustee"), filed this motion seeking to compel the debtors, Gregorio Alvarez and Tanya Maria Salas ("Debtors"), to turnover either: (1) 2019 Federal and State tax returns ("Tax Returns") with their 2019 Federal and State tax refunds ("Tax Refunds"); or (2) data necessary to prepare their Tax Returns. Doc. #35.

Trustee estimates that the 2019 Tax Refunds may have equity over and above any available exemption in the amount of at least \$6,491.00, based on prior Tax Returns. Doc. #37 at ¶ 2. Debtors did not file opposition and default will be entered.

11 U.S.C. § 541 establishes Tax Returns and Tax Refunds as assets of the estate and provides, in relevant part:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interest of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

11 U.S.C. § 541(a). 11 U.S.C. § 542(a) requires Debtors to deliver Tax Returns and Tax Refunds to Trustee as follows:

(a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of

this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

11 U.S.C. § 542(a). If Debtors have not yet filed the 2019 Tax Returns, 11 U.S.C. § 521(a)(4) requires Debtors to deliver data necessary to prepare the returns under 11 U.S.C. § 521:

(a) The debtor shall—

(4) if a trustee is serving in the case or an auditor is serving under section 586(f) of title 28, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title[.]

11 U.S.C. § 521(a)(4).

Trustee has demonstrated that the 2019 Tax Returns and any or all Tax Refunds exceeding Debtors' claimed exemptions are property of the estate and Trustee has the right to receipt for the benefit of the estate. Therefore, this motion will be GRANTED.

It will be ordered that Debtors shall comply with Trustee's request for turnover of documents related to their 2019 Tax Returns and refund all or part of any Tax Refunds exceeding their claimed exemptions not later than 7 calendar days after an order granting this motion is issued and served on Debtors. Failure to comply may result in an order imposing sanctions, including movant's attorney's fees, upon further motion.

15. [19-13792](#)-B-7 **IN RE: NOEMY SANCHEZ**
[JES-1](#)

MOTION TO COMPEL
10-17-2020 [[52](#)]

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

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

DISPOSITION: Granted.

ORDER: The Moving Party will 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 chapter 7 trustee, James Salven ("Trustee"), filed this motion seeking to compel the debtor, Noemy Sanchez ("Debtor"), to turnover either: (1) 2019 Federal and State tax returns ("Tax Returns") with her 2019 Federal and State tax refunds ("Tax Refunds"); or (2) data necessary to prepare her Tax Returns. Doc. #52.

Trustee estimates that the 2019 Tax Refunds may have equity over and above any available exemption in the amount of at least \$7,519.00, based on prior Tax Returns. Doc. #54 at ¶ 2. Debtor did not file opposition and default will be entered.

11 U.S.C. § 541 establishes Tax Returns and Tax Refunds as assets of the estate and provides, in relevant part:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interest of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

11 U.S.C. § 541(a). 11 U.S.C. § 542(a) requires Debtor to deliver Tax Returns and Tax Refunds to Trustee as follows:

(a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such

property is of inconsequential value or benefit to the estate.

11 U.S.C. § 542(a). If Debtor has not yet filed the 2019 Tax Returns, 11 U.S.C. § 521(a)(4) requires Debtors to deliver data necessary to prepare the returns under 11 U.S.C. § 521:

(a) The debtor shall—

(4) if a trustee is serving in the case or an auditor is serving under section 586(f) of title 28, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title[.]

11 U.S.C. § 521(a)(4).

Trustee has demonstrated that the 2019 Tax Returns and any or all Tax Refunds exceeding Debtor's claimed exemptions are property of the estate and Trustee has the right to receipt for the benefit of the estate. Therefore, this motion will be GRANTED.

It will be ordered that Debtor shall comply with Trustee's request for turnover of documents related to her 2019 Tax Returns and refund all or part of any Tax Refunds exceeding her claimed exemptions not later than 7 calendar days after an order granting this motion is issued and served on Debtor. Failure to comply may result in an order imposing sanctions, including movant's attorney's fees, upon further motion.

16. [20-10357](#)-B-7 **IN RE: STEPHEN MEZA**
[FW-3](#)

MOTION TO AMEND
11-10-2020 [[73](#)]

PETER FEAR/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.
OST 11/10/2020

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 in conformance with the ruling below.

This motion to amend was filed, set, and served under an order shortening time and Local Rule of Practice 9014-1(f)(3). Doc. #74, #75, #80. Consequently, the creditors, the trustee, the U.S.

Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The chapter 7 trustee, Peter Fear ("Trustee"), filed an *ex parte* application for an order shortening time on this motion to amend its order (Doc. #72) on a motion to approve sale of real property free and clear of certain interests under 11 U.S.C. § 363(f), subject to higher and better bids ("Order"). Doc. #74; *see also* FW-2. Trustee filed a declaration stating that he previously obtained court approval on October 21, 2020 for the sale of a parcel of real property located at 648 Auburn Street, Tulare, CA 93274 ("Property") to proposed buyers, Carlos Desantiago and Sylvia Duran ("Buyers"). Doc. #76. Since entry of the order, Trustee has been informed that Buyers were "unable to obtain the loan necessary to consummate the approved purchase due to their oversight and omission of the necessity of adding a third buyer in order to obtain the loan." *Id.* at ¶ 4. Buyers need to add a third proposed buyer, Angelica Meza ("Third Buyer"), to finalize the sale. *Ibid.*

Trustee believes this approved sale will fall through if the request is not approved on an expedited basis, which will result in significant expense and delay to the bankruptcy estate and a potential diminution in recovery. As result, Trustee requested an order shortening time, which was granted on November 10, 2020. Doc. #80.

The order shortening time specified that notice of the hearing shall be adequate if mailed to all parties in interest by first-class mail on or before November 10, 2020. *Id.* at ¶ 3. Two certificates of service were filed. The first indicates that all parties in interest included in the master address list were sent the Notice of the Motion to Amend (Doc. #75) "by regular, first class United States mail" with the United States Post Office ("USPS") on November 10, 2020. Doc. #78. The second certificate states that the debtor, his attorney, United States Trustee, Berkshire Hathaway Home Services, and other parties who have requested judicial notice were sent the motion documents by regular, first class United States mail via USPS. Doc. #79. The certificates of service appear to be adequate and in compliance with the order shortening time.

As noted above, Trustee asks the court to modify Order authorizing the sale of Property to Buyers to include Third Buyer as an additional buyer. Doc. #73. As stated above, Trustee fears that this sale will "fall through" if this requested is not approved quickly. Doc. #76 at ¶ 6. Trustee states that other than adding Third Buyer, all other terms remain the same. *Ibid.*

Under 11 U.S.C. § 363(f), Trustee may sell property of the estate outside the ordinary course of business, after notice and a hearing, free and clear of "any interest in such property of an entity other than the estate" if "such interest is in bona fide dispute." 11 U.S.C. § 363(f)(4). "Under this standard, a court need not determine the probable outcome of the dispute, but merely whether one exists." *In re Octagon Roofing*, 123 B.R. 583 (Bankr. N.D. Ill. 1991) (citing *In re Busick*, 831 F.2d 745, 750 (7th Cir. 1987)). "The parties must provide some factual grounds to show some objective basis for the dispute." *In re Kellogg-Taxe*, No. 2:12-BK-51208-RN, 2014 WL 1016045, *6 (Bankr. C.D. Cal. Mar. 17, 2014) (citing *In re Gaylord Grain L.C.C.*, 306 B.R. 614, 627 (B.A.P. 8th Cir. 2004).

As discussed in our last ruling, the debtor placed the Property in the 2015 Stephen L. Meza Separate Property Trust ("Meza Trust"). Doc. #67, Ex. C. On May 3, 2018, the Property was transferred from the Meza Trust to the debtor's daughters, Elizabeth Meza and Nicoletta Meza, as a gift. *Id.* at Ex. D. Before this bankruptcy was filed, the debtor's daughters recorded a deed that transferred the property to the debtor because they learned that a bankruptcy trustee could avoid the previous gift transfer. *Id.* at Ex. E.

Trustee disputed any interest claimed by the Meza Trust, Elizabeth Meza, or Nicoletta Meza, and wished to sell the Property free and clear of these interests because they were in bona fide dispute under 11 U.S.C. § 364(f)(4). Trustee provided factual grounds to show an objective basis for a bona fide dispute about these interests, and therefore was authorized to sell the property free and clear of the interests of the Meza Trust and Elizabeth and Nicoletta Meza under § 363(f)(4). See Doc. #72.

Additionally, the court authorized Trustee to pay the real estate broker a six percent (6%) commission on the final sale price for reasonable compensation for actual, necessary services, which was to be split equally with the buyer's broker at three percent (3%) each. Doc. #66. This court previously authorized the employment of Berkshire Hathaway HomeServices California Realty Broker ("Broker") on July 24, 2020 pursuant to 11 U.S.C. § 327. Doc. #52. For purposes of this motion, the court allowed the commission to be paid as prayed. The court found the compensation to be reasonable. Doc. #72.

The first motion contained an allegation that neither the debtor nor his daughters intended to have an equitable interest in the property. Doc. 64 at ¶ 13. Trustee's declaration (Doc. 64) recounted the debtor's testimony at the meeting of creditors confirming the transfers but there is no evidence of intent. The court made no finding about the validity of the interests of the Meza Trust or Elizabeth or Nicoletta Meza, if any. Doc. #72.

Because the interests of the Meza Trust, Elizabeth Meza, and Nicoletta Meza were in bona fide dispute, Trustee was authorized to sell the Property located at 648 Auburn Street, Tulare, CA 93274 to Buyers for \$202,000.00 subject to higher and better bids, and free and clear of the interests of the Meza Trust, Elizabeth Meza, and Nicoletta Meza, if any. Those interests, the homestead exemption,

real property taxes, costs of sale, and the Broker's fee were transferred to the proceeds.

Trustee notes that Third Buyer, Angelica Meza, has the same last name as the debtor, Stephen Meza. Doc. #76. However, Trustee specifically notes that this is purely coincidental. "It should be noted that, in spite of the fact that the added party has the same last name as the debtor in this case, she is unrelated to the debtor. She has no connection to the debtor or any other interest party in this bankruptcy matter (other than [Buyers])." *Id.* at 5. Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). The court is satisfied with Trustee's statement that Third Buyer is not an insider.

Therefore, this motion will be GRANTED. The Order (Doc. #72) will be modified to include Third Buyer Angelica Meza with Buyers Carlos Desantiago and Sylvia Duran in the order approving the sale free and clear of the interests of the Meza Trust, Elizabeth Meza, and Nicoletta Meza, if any. Those interests, the homestead exemption, real property taxes, costs of sale, and the Broker's fee will again be transferred to the proceeds. The court makes no finding about the validity of the interests of the Meza Trust or Elizabeth or Nicoletta Meza, if any.

Apart from the addition of Third Buyer Angelica Meza as an approved buyer, no other terms of the Order will be modified. Trustee is again authorized to pay brokerage fees of a six percent (6%) commission on the final sale price as reasonable compensation for actual, necessary services, to be split equally with Broker and Buyer's broker at 3% each.