

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, January 6, 2021
Place: Department A - Courtroom #11
Fresno, California

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [20-11606](#)-A-11 **IN RE: MICHAEL PENA**

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

JUSTIN HARRIS/ATTY. FOR DBT.

NO RULING.

2. [20-11606](#)-A-11 **IN RE: MICHAEL PENA**
[HLF-2](#)

CONTINUED CHAPTER 11 DISCLOSURE STATEMENT FILED BY DEBTOR
MICHAEL ANTHONY PENA
10-30-2020 [[62](#)]

JUSTIN HARRIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

3. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[DJP-2](#)

CONTINUED MOTION BY DON J. POOL TO WITHDRAW AS ATTORNEY
11-18-2020 [[370](#)]

LEONARD WELSH/ATTY. FOR DBT.
DON POOL/ATTY. FOR MV.

NO RULING.

4. [20-12577](#)-A-11 **IN RE: MARIA LUNA MANZO**

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

JUSTIN HARRIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Continued to February 10, 2021 at 9:30 a.m.

Order: The court will issue an order.

This chapter 11 status conference is being continued to the same date and time
as the continued hearing to confirm Debtor's chapter 11 plan.

5. [20-12577](#)-A-11 **IN RE: MARIA LUNA MANZO**
[HLF-4](#)

CONFIRMATION HEARING RE: CHAPTER 11 SMALL BUSINESS PLAN
11-10-2020 [[76](#)]

JUSTIN HARRIS/ATTY. FOR DBT.
CONT'D TO 2/10/21 PER ECF ORDER #98

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

DISPOSITION: Continued to February 10, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

On December 22, 2020, the court issued an order continuing the confirmation hearing to February 10, 2021 at 9:30 a.m. Doc. #98

6. [20-13293](#)-A-11 **IN RE: PATRICK JAMES, INC.**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V
VOLUNTARY PETITION
10-9-2020 [[1](#)]

HAGOP BEDOYAN/ATTY. FOR DBT.

NO RULING.

7. [20-13293](#)-A-11 **IN RE: PATRICK JAMES, INC.**
[MB-11](#)

MOTION TO EXTEND EXCLUSIVITY PERIOD FOR FILING A CHAPTER 11
PLAN AND MOTION/APPLICATION TO EXTEND EXCLUSIVITY PERIOD FOR
FILING A CHAPTER 11 PLAN AND DISCLOSURE STATEMENT FILED BY
DEBTOR PATRICK JAMES, INC.
12-11-2020 [[137](#)]

PATRICK JAMES, INC./MV
HAGOP BEDOYAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

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

Patrick James, Inc. ("DIP") moves the court to extend the time period to file its Chapter 11 Subchapter V plan pursuant to 11 U.S.C. § 1189. Doc. #137. DIP's Chapter 11 Subchapter V plan is currently due on January 7, 2021. DIP seeks a 45-day extension to file its plan on February 21, 2021. The court is inclined to grant this motion.

Section 1189 of the Bankruptcy Code governs the filing of a Chapter 11 subchapter V plan. 11 U.S.C. § 1189. Section 1189(b) states that "the court may extend the period [for filing a plan] if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable." 11 U.S.C. § 1189(b). Subchapter V is a new area of bankruptcy law, having become effective on February 19, 2020. Thus, there is limited case law interpreting its code sections.

In interpreting § 1189, DIP proposes the court weigh factors commonly considered under 11 U.S.C. § 1121(d), which permits an extension of time, for cause, for a debtor to propose a plan in Chapter 11. Citing In re Henry May Newhall Mem'l Hosp., 282 B.R. 444, 452 (B.A.P. 9th Cir. 2002), DIP recommends the court conduct an analysis similar to the "cause" analysis in Chapter 11 and consider such factors as: the number of extensions; the complexity of the case; the time the case has been pending relative to its size and complexity; whether the debtor is proceeding in good faith; reasonable prospect for filing a viable plan; and others.

However, the language in § 1189 is nearly identical to the language in § 1221, which provides that "the court may extend such period if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable." 11 U.S.C. § 1221. The court will look to cases analyzing § 1221 to interpret § 1189. Cf. Gustafson v. Alloyd Co., 513 U.S. 561, 570 (1995) (applying the "normal rule of statutory construction" that "identical words used in different parts of the same act are intended to have the same meaning") (citations omitted).

Under § 1221, "the bankruptcy court may grant an extension only if the debtor's inability to file a timely plan is due to circumstances beyond the debtor's control." First Sec. Bank & Tr. Co. v. Vander Vegt, 511 B.R. 567, 585 (N.D. Iowa 2014); Davis v. United States Bank N.A. (In re Davis), BAP No. CC-16-1390-KuLTa, 2017 Bankr. LEXIS 2169, at *6 (B.A.P. 9th Cir. Aug. 2, 2017). "The standard set forth in § 1221 is more stringent than the ordinary 'for cause shown' standard set forth in [Bankruptcy] Rule 9006(b)." In re Davis, 2017 Bankr. LEXIS 2169 at *6-7. Under this standard, the court's focus is centered on "the cause for the delay and whether the debtor reasonably and justly could have been expected to have prevented it." Id. at *8.

The court finds that the circumstances combine to qualify DIP for the requested 45-day extension. DIP is in the men's retail clothing business. The holiday season is DIP's busiest time of year, and DIP's effort need to be focused on the holiday season so DIP can generate maximum revenues, evaluate the performance of each of its stores for the year ending 2020, and prepare credible cash-flow projections to support confirmation of a plan of reorganization. Decl. of Patrick M. Mon Pere in support of Motion ("Mon Pere Decl.") at ¶ 6, Doc. #140. Also, DIP's plan of reorganization will restructure its existing debt and will be based on a reduced "brick and mortar" retain footprint and more robust online and catalog sales. Mon Pere Decl. at ¶ 7. DIP is in active negotiations for rent modifications with its remaining locations

(Aptos, Reno, Sacramento, Santa Rosa, San Luis Obispo, Del Mar, and Carmel).
Status Conference Statement at ¶ 7, Doc. #175.

The court finds that the impact of the holiday season on DIP's business as well as ongoing negotiations to restructure DIP's business have delayed DIP's ability to file a Chapter 11 plan within the 90-day period required by § 1189 and, under the circumstances of this case, DIP should not reasonably and justly have been expected to have prevented it.

Accordingly, this motion is GRANTED. DIP shall file a plan no later than February 21, 2021.

8. [20-13293](#)-A-11 **IN RE: PATRICK JAMES, INC.**
[MB-9](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
11-13-2020 [\[99\]](#)

PATRICK JAMES, INC./MV
HAGOP BEDOYAN/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the remaining portions of the motion on December 23, 2020.
Doc. #171.

1. [20-13410](#)-A-7 **IN RE: JULIAN/LAURA MARTINEZ**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-24-2020 [[17](#)]

TOYOTA MOTOR CREDIT CORPORATION/MV
R. BELL/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Toyota Motor Credit Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2017 Toyota Prius ("Vehicle"). Doc. #17.

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 debtors do not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least four complete pre-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$1,836.53. Doc. #19. Moreover, the debtors have failed to provide valid, written proof of insurance coverage for the Vehicle.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. The Vehicle is valued at \$17,900.00 and the debtors owe

\$21,281.87. Doc. #19. The moving papers show the collateral is a depreciating asset and there is lack of insurance.

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

2. [20-12519](#)-A-7 **IN RE: ISIDRO RAMOS**
[JES-2](#)

MOTION FOR TURNOVER OF PROPERTY
11-23-2020 [\[24\]](#)

JAMES SALVEN/MV
JERRY LOWE/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on December 23, 2020. Doc. #30.

3. [20-12828](#)-A-7 **IN RE: MIGUEL CUEVAS**
[GB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-18-2020 [\[14\]](#)

DEUTSCHE BANK NATIONAL TRUST COMPANY/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
ERICA LOFTIS/ATTY. FOR MV.
DISCHARGED 12/29/2020

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

DISPOSITION: Granted in part and denied 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 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The motion will be GRANTED IN PART as to the trustee's interest and DENIED IN PART AS MOOT as to the debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on December 29, 2020. Doc. #23. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Deutsche Bank National Trust Company ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to real property located at 1311 Lucerne Drive, Bakersfield, California ("Property"). Pre-petition, on January 22, 2020, Movant purchased the Property at a foreclosure sale. The debtor filed this voluntary chapter 7 case on August 28, 2020. Movant commenced an unlawful detainer action on May 27, 2020, by causing to be served a Notice to Quit. Movant's unlawful detainer action is currently stayed due to the filing of the debtor's bankruptcy case. Doc. #14.

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

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

The court finds that the debtor does not have any equity in the Property because Movant is the owner of the Property pursuant to the Trustee's Deed Upon Sale recorded on January 30, 2020. Therefore, the debtor has no ownership interest in the Property and thus does not have any equity in the Property.

On December 29, 2020, the debtor's discharge was entered terminating the automatic stay of any act other than as to property of the estate under 11 U.S.C. § 362(c)(2). Doc. #23. The chapter 7 trustee has not opposed the motion.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to continue with its unlawful detainer action pursuant to applicable law. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the Property is not part of the debtor's bankruptcy estate.

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-7-2020 [[14](#)]

TOYOTA MOTOR CREDIT CORPORATION/MV
LAYNE HAYDEN/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Toyota Motor Credit Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2018 Toyota Corolla ("Vehicle"). Doc. #14.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least four complete pre-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$1,670.21. Doc. #16. Moreover, the debtors have failed to provide valid, written proof of insurance coverage for the Vehicle.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. The Vehicle is valued at \$13,000.00 and the debtors owe \$19,303.40. Doc. #16. The moving papers show the collateral is a depreciating asset and there is lack of insurance.

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

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

5. [20-12952](#)-A-7 **IN RE: ERNIE LUJAN**
[ICE-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
12-10-2020 [\[23\]](#)

JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue the order.

The docket indicates that the debtor attended the meeting of creditors rescheduled for December 21, 2020 at 2:00 p.m. Therefore, the chapter 7 trustee's motion to dismiss is DENIED AS MOOT.

6. [20-12554](#)-A-7 **IN RE: ARAXY MARKARIAN**
[UST-1](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR, AND/OR MOTION TO EXTEND TIME TO
FILE A MOTION TO DISMISS CASE UNDER SEC. 707(B)
11-9-2020 [\[25\]](#)

TRACY DAVIS/MV
BARRY WEBER/ATTY. FOR DBT.
JUSTIN VALENCIA/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Tracy Hope Davis ("UST"), the United States Trustee in the Chapter 7 bankruptcy case of Araxy Markarian ("Debtor"), moves the court for an order extending the time for filing a complaint objecting to Debtor's discharge under 11 U.S.C. § 727 and/or a motion to dismiss under § 707(b). Doc. #25.

Federal Rule of Bankruptcy Procedure ("FRBP") 4004(b)(1) provides that, "[o]n motion of any party in interest, after notice and a hearing, the court may for cause extend the time to object to discharge." Similarly, FRBP 1017(e)(1) allows the court, "for cause" to extend the time for filing a motion to dismiss under 11 U.S.C. § 707(b). UST's motion was filed within sixty days of the first date set for the meeting of creditors and is timely.

After review of the included evidence, the court finds that "cause" exists to extend the filing deadlines because Debtor's 341 meeting of creditors has been continued to December 28, 2020, UST has attempted, unsuccessfully, to contact Debtor's attorney to obtain additional information and to stipulate to an extension of deadlines. UST needs additional time to investigate the veracity of Debtor's assets, non-filing spouse's income, and ownership of certain corporations stated by Debtor. Doc. #27.

Accordingly, this motion is GRANTED. The time for UST to file a complaint objecting to Debtor's discharge is extended to February 8, 2021, and the time for UST to file a motion to dismiss Debtor's case for abuse under § 707(b) or (c) is extended to February 8, 2021.

7. [20-12866-A-7](#) **IN RE: STEPHEN FABRIS**
[UST-1](#)

MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B)
12-7-2020 [\[19\]](#)

TRACY DAVIS/MV
STEVEN ALPERT/ATTY. FOR DBT.
JORGE GAITAN/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 at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Debtor timely filed a written response to this motion, but withdrew his opposition on January 5, 2021. Doc. #28. The failure of creditors 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Tracy Hope Davis ("UST"), the United States Trustee in the Chapter 7 bankruptcy case of Steven Domenic Fabris ("Debtor"), moves the court to dismiss Debtor's bankruptcy case for abuse under 11 U.S.C. § 707(b)(3)(B). In Debtor's withdrawal of his opposition, Debtor stated that he prefers the court dismiss his bankruptcy case. Doc. #28.

The court "may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts . . . if it finds that the granting of relief would be an abuse of the provisions of" Chapter 7. 11 U.S.C. § 707(b)(1). The court may find abuse if the presumption of abuse arises pursuant to § 707(b)(2) or, under § 707(b)(3)(B), if the totality of the circumstances of the debtor's financial situation demonstrates abuse. 11 U.S.C. § 707(b)(3); In re Katz, 451 B.R. 512, 515 (Bankr. C.D. Cal. 2011).

UST's motion is made pursuant to § 707(b)(3)(B), which directs the court to consider whether "the totality of the circumstances . . . of the debtor's financial situation demonstrates abuse." 11 U.S.C. § 707(b)(3)(B). The court is not bound to an exclusive list of factors, but may be guided by "the same non-exhaustive list of factors used by the Ninth Circuit for the determination of substantial abuse under pre-BAPCPA law." Drury v. United States Tr. (In re Drury), No. CC-15-1441-KuFD, 2016 Bankr. LEXIS 3104, at *23(B.A.P. 9th Cir. Aug. 23, 2016). These factors include: whether the debtor has a likelihood of sufficient future income to fund a plan which would pay a substantial portion of the unsecured claims; whether the debtor's petition was filed as a consequence of illness, disability, unemployment, or some other calamity; and whether the debtor's statement of income and expenses is misrepresentative of the debtor's financial condition. Id.

UST argues that Debtor failed to include contributions to household income made by Debtor's live-in partner, Ms. Landros, and that including Ms. Landros's income increases Debtor's income such that Debtor is able to repay a meaningful portion of his general unsecured debt.

11 U.S.C. § 101(10A) includes in the definition of "current monthly income" "any amount paid by any entity other than the debtor . . . on a regular basis for the household expenses of the debtor or the debtor's dependents." To the extent that Ms. Landros's income is used to support Debtor or Debtor's dependents, Debtor must include that amount in his current monthly income. Any amount of Ms. Landros's income not used "on a regular basis for the household expenses of the debtor or the debtor's dependents" is not included as current monthly income. In re Ellringer, 370 B.R. 905, 911 (Bankr. D. Minn. 2007). In calculating Ms. Landros's contribution to Debtor, UST deducted credit card payments, taxes, and PERS contributions from the amount Ms. Landros's paid toward household expenses of Debtor and Debtor's dependents. Doc. #21.

Here, Debtor's statement of income and expenses misrepresent Debtor's financial condition because contributions by Ms. Landros have not been included in Debtor's schedules. Schedules I, J, and Form 122A-1, Doc. #1. UST's calculations demonstrate a likelihood that Debtor would be able to pay a substantial portion of unsecured claims. Doc. #21. Debtor does not dispute

UST's assertions. The court finds that the totality of the circumstances of Debtor's financial circumstances, in light of the contributions made by Ms. Landros, demonstrate abuse.

Accordingly, UST's motion to dismiss under § 707(b)(3) is GRANTED.

8. [20-12874](#)-A-7 **IN RE: MANUEL PEREZ AND OLGA CHAVEZ ZAVALA**
[JDW-1](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
11-25-2020 [[14](#)]

MANUEL PEREZ/MV
JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Manuel Perez and Olga O Chavez Zavala (collectively, "Debtors"), the debtors in this Chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Capital One Bank (USA), N.A. ("Creditor") on their residential real property commonly referred to as 4312 W. Ashland Ave., Visalia, CA 93277 (the "Property"). Doc. #14; Schedule C, Doc. #1. Debtors' Schedule C reflects a claimed exemption in the Property of \$72,147.00. Doc. #1.

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 debtors would be entitled under § 522(b); (2) the property must be listed on the debtors' 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). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

A judgment was entered against Olga Chavez in the amount of \$4,958.48 in favor of Creditor on August 13, 2019. Ex. 1, Doc. #18. The abstract of judgment was recorded in Tulare County on November 13, 2019. Ex. 1, Doc. #18. The lien

attached to Debtors' interest in the Property located in Tulare County. Doc. #16. The Property also is encumbered by a first mortgage in favor of US Bank Home Mortgage in the amount \$150,656.00. Decl. of Maria Olga Chavez Zavala, Doc. #16. Debtors claimed an exemption of \$72,147.00 in the Property under California Code of Civil Procedure § 704.730(b)(1). Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at \$222,803.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$4,958.48
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$150,656.00
Amount of Debtors' claim of exemption in the Property	+	\$72,147.00
	sum	\$227,761.48
Value of Debtors' interest in the Property absent liens	-	\$222,803.00
Extent of impairment of Debtors' exemption	=	\$4,958.48

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

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

9. [20-13395](#)-A-7 **IN RE: ELIAS VAZQUEZ LEMUS**
[DJP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-22-2020 [[19](#)]

EDUCATIONAL EMPLOYEES CREDIT UNION/MV
DON POOL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 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 movant, Educational Employees Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2015 Chevrolet Traverse ("Vehicle"). Doc. #19.

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 any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor is 2 payments past due in the amount of \$848.60 plus late fees of \$25.46. Doc. #22.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. Movant values the Vehicle at \$15,000.00 and the amount owed to Movant is \$17,747.76. Doc. #22.

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

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

10. [20-13499](#)-A-7 **IN RE: ALBERTO MUNOZ AND SILVIA DE PARRA**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-1-2020 [\[13\]](#)

SANTANDER CONSUMER USA INC./MV
T. O'TOOLE/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Santander Consumer USA Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2016 Toyota Sienna ("Vehicle"). Doc. #13.

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 debtors do not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least three complete pre-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$1,628.24. Doc. #17.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. The Vehicle is valued at \$18,100.00 and debtors owe \$25,873.71. Doc. #17.

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

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

1. [20-12910](#)-A-7 **IN RE: JOHN VALENCIA**

REAFFIRMATION AGREEMENT WITH FORD MOTOR CREDIT COMPANY LLC
12-16-2020 [[29](#)]

MARK ZIMMERMAN/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.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship that has not been rebutted in the reaffirmation agreement. Although the debtor's attorney executed the agreement, no evidence has been presented to the court to indicate how the debtor can afford to make the payment. The debtor claims that he has filed on all of their debt and can afford the payment but has not provided the court with an amended Schedule J. Therefore, the reaffirmation agreement with Ford Motor Credit Company LLC will be DENIED.

2. [20-13147](#)-A-7 **IN RE: NANCY VARGAS**

REAFFIRMATION AGREEMENT WITH TRUIST BANK
12-4-2020 [[16](#)]

MARK ZIMMERMAN/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.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship that has not been rebutted in the reaffirmation agreement. Although the debtor's attorney executed the agreement, no evidence has been presented to the court to indicate how the debtor can afford to make the payment. The debtor claims that she has filed on all of their debt and can afford the payment but has not provided the court with an amended Schedule J. Therefore, the reaffirmation agreement with Truist Bank will be DENIED.

3. [20-12972](#)-A-7 **IN RE: MARIA AGUILERA**

REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
12-7-2020 [[15](#)]

T. O'TOOLE/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 shall notify the debtor that no appearance is necessary.

No hearing or order is required. The form of the Reaffirmation Agreement complies with 11 U.S.C. §524(c) and 524(k), and it was signed by the debtor's attorney with the appropriate attestations. Pursuant to 11 U.S.C. §524(d), the court need not approve the agreement.

4. [20-13086](#)-A-7 **IN RE: ANTONIO IBARRA AND LAURA QUEZADA**

REAFFIRMATION AGREEMENT WITH NISSAN MOTOR ACCEPTANCE CORPORATION
12-8-2020 [[22](#)]

T. O'TOOLE/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors' counsel will inform debtor that no appearance is necessary.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship that has not been rebutted in the reaffirmation agreement. Although the debtors' attorney executed the agreement, no evidence has been presented to the court to indicate how the debtors can afford to make the payment. The debtors claim that they have filed on all of their debt and can afford the payment but has not provided the court with an amended Schedule J. Therefore, the reaffirmation agreement with Nissan Motor Acceptance Corporation will be DENIED.

5. [20-12987](#)-A-7 **IN RE: OTILIO RODRIGUEZ**

REAFFIRMATION AGREEMENT WITH ALLY BANK
12-3-2020 [[14](#)]

T. O'TOOLE/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.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship that has not been rebutted in the reaffirmation agreement. Although the debtor's attorney executed the agreement, the attorney could not affirm that, (a) the agreement was not a hardship and, (b) the debtor would be able to make the payments.

1. [20-12810](#)-A-13 **IN RE: JOSE REYES**
[PBB-2](#)

MOTION TO AVOID LIEN OF BH FINANCIAL SERVICES, LLC
11-24-2020 [\[27\]](#)

JOSE REYES/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Jose Garcia Reyes ("Debtor"), the debtor in this Chapter 13 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of BH Financial Services, LLC ("Creditor") on his residential real property commonly referred to as 2882 14th Ave., Kingsburg, CA 93631 (the "Property"). Doc. #27; Schedule C, Doc. #1.

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). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

A judgment was entered against Jose Garcia Reyes in the amount of \$5,576.26 in favor of Creditor on February 12, 2013. Ex. D, Doc. #30. The abstract of judgment was recorded in Fresno County on March 27, 2013. Ex. D, Doc. #30. The lien attached to Debtor's interest in the Property located in Fresno County. Doc. #30. On September 25, 2020, Creditor filed a proof of claim establishing the current balance of the lien as \$7,938.15. Claim 3. The Property also is encumbered by a lien in favor of Deutsche Bank National Trust Co. in the amount \$364,352.87. Decl. of Jose Garcia Reyes, Doc. #29. Debtor claimed an exemption of \$29,275.00 in the Property under California Code of Civil Procedure

§ 703.140(b)(1). Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$335,000.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$7,938.15
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$364,352.87
Amount of Debtor's claim of exemption in the Property	+	\$29,275.00
	sum	\$401,566.02
Value of Debtor's interest in the Property absent liens	-	\$335,000.00
Extent of impairment of Debtor's exemption	=	\$66,566.02

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

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

2. [19-11515](#)-A-13 **IN RE: KARL KENNEL**
[GR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-4-2020 [[44](#)]

CELTIC BANK CORPORATION/MV
SCOTT LYONS/ATTY. FOR DBT.
KATHRYN CATHERWOOD/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

3. [20-13322](#)-A-13 **IN RE: JORDAN MUNOZ**
[SLL-3](#)

MOTION TO CONFIRM PLAN
11-30-2020 [[29](#)]

JORDAN MUNOZ/MV
STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v.

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

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

4. [20-13322](#)-A-13 **IN RE: JORDAN MUNOZ**
[SLL-4](#)

MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL
12-3-2020 [[34](#)]

JORDAN MUNOZ/MV
STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The motion was resolved by stipulation filed on December 30, 2020. Doc. #40.

5. [20-13341](#)-A-13 **IN RE: ANN MARIE RUIZ**
[PBB-1](#)

MOTION TO CONFIRM PLAN
12-1-2020 [[16](#)]

ANN MARIE RUIZ/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered

and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

6. [20-13341](#)-A-13 **IN RE: ANN MARIE RUIZ**
[PBB-2](#)

MOTION TO VALUE COLLATERAL OF GOLDEN 1 CREDIT UNION
12-1-2020 [[23](#)]

ANN MARIE RUIZ/MV
PETER BUNTING/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 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Ann Marie Ramirez Ruiz ("Debtor"), the debtor in this Chapter 13 case, moves the court for an order valuing the Debtor's vehicle, a 2016 Kia Sorento SX ("Vehicle"), which is the collateral of Golden 1 Credit Union ("Creditor"). Doc. #23.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the vehicle and the debt was not incurred within the 910-day period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is

"acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Debtor asserts a replacement value of the Vehicle of \$21,954.00 and asks the court for an order valuing the Vehicle at \$21,954.00. Doc. #23. Debtor's Schedules state the Vehicle's value at \$21,954.00, and Creditor's proof of claim asserts a secured claim of \$21,954.00. Given the absence of contrary evidence, Debtor's opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at \$21,954.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the Chapter 13 plan.

7. [18-13643](#)-A-13 **IN RE: ANNA RAMIREZ**
[PBB-3](#)

MOTION TO MODIFY PLAN
11-25-2020 [\[58\]](#)

ANNA RAMIREZ/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

OBJECTION TO CONFIRMATION OF PLAN BY FREEDOM MORTGAGE
CORPORATION
12-8-2020 [[17](#)]

FREEDOM MORTGAGE CORPORATION/MV
SCOTT LYONS/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. 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 debtors filed their Chapter 13 plan ("Plan") on October 30, 2020. Doc. #3. Freedom Mortgage Corporation ("Creditor") objects to confirmation of the Plan on the grounds that the Plan does not provide for payment of pre-petition arrears owed to Creditor. Doc. #17.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under § 501, is deemed allowed unless a party in interest objects. Creditor filed its proof of claim on December 7, 2020. Claim 17.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #10. The debtors' plan fails to account for the pre-petition arrears in Creditor's claim. Claim 17; Doc. #3.

Accordingly, pending any opposition at hearing, the objection will be
SUSTAINED.

9. [20-11944](#)-A-13 **IN RE: CHAD/ALLISON GILLIES**
[MBW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR VALLEY STRONG
CREDIT UNION
12-23-2020 [[31](#)]

VALLEY STRONG CREDIT UNION/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
DANIEL BURBOTT/ATTY. FOR MV.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on January 4, 2021. Doc. #41.

10. [20-11944](#)-A-13 **IN RE: CHAD/ALLISON GILLIES**
[NES-1](#)

MOTION TO MODIFY PLAN
12-2-2020 [[27](#)]

CHAD GILLIES/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Denied as moot.

Order: The court will issue an order.

This motion is DENIED AS MOOT. The debtors filed a modified plan on December 28, 2020 with a motion to confirm the second modified plan set for hearing on January 28, 2021 at 9:30 a.m. NES-2, Doc. ##37-40.

11. [20-13164](#)-A-13 **IN RE: BETSSY MANDUJANO**
[HDN-2](#)

MOTION TO CONFIRM PLAN
11-25-2020 [[29](#)]

BETSSY MANDUJANO/MV
HENRY NUNEZ/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on December 23, 2020. Doc. #49.

12. [20-13164](#)-A-13 **IN RE: BETSSY MANDUJANO**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-7-2020 [[40](#)]

MICHAEL MEYER/MV
HENRY NUNEZ/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING There will be no hearing on this matter.

DISPOSITION: Overruled as moot.

Order: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtor filed an amended Schedule C on December 23, 2020 (Doc. #52), which does not include the exemption to which the Chapter 13 trustee objects.

13. [15-14766](#)-A-13 **IN RE: EULALIO ORNELAS AND ISABEL BERNAL**
[MHM-1](#)

MOTION TO DISMISS CASE
11-23-2020 [[36](#)]

MICHAEL MEYER/MV
THOMAS GILLIS/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on January 5, 2021. Doc. #40.

14. [19-12168](#)-A-13 **IN RE: SANDRA BOMBITA**
[RPZ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-1-2020 [[91](#)]

SELECT PORTFOLIO SERVICING, INC/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
ROBERT ZAHRADKA/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part, denied in part.

ORDER: The court will issue an order after the hearing.

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

least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here with respect to the relief sought under 11 U.S.C. § 362(d)(4).

The movant, Select Portfolio Servicing, Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(4) with respect to real property commonly known as 17230 Chatsworth Street, Unit #1, Granada Hills Area, California 91344 (the "Property"). Doc. #91. Nothing in the Schedules, plan, or other disclosures of Sandra Jeanette Bombita ("Debtor"), the Chapter 13 debtor, indicate that Debtor has an interest in the Property.

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).

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has no interest in the Property.

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay with respect to real property

if the court finds that the filing of the [bankruptcy] petition was part of a scheme to delay, hinder, or defraud creditors that involved either [] a transfer of all or part ownership of, or other interest in such real property without the consent of the secured creditor or court approval; or [] multiple bankruptcy filings affecting such real property.

11 U.S.C. § 362(d)(4).

Here, the court finds that a showing under § 362(d)(4) has not been made. Movant has provided no evidence that (1) this bankruptcy case is part of a scheme, or (2) the object of the scheme was to hinder, delay, or defraud creditor. See First Yorkshire Holdings, Inc. v. Pacifica L 22 (In re First Yorkshire Holdings, Inc.), 470 B.R. 864, 870 (B.A.P. 9th Cir. 2011). Movant suggests that Debtor's bankruptcy was "hijacked" as part of a scheme by Edward Babalians to defraud creditors, as evidence by Debtor's failure to show any interest in the Property. Doc. #95. However, that Debtor has no interest in the Property does not by itself show a scheme under § 362(d)(4).

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law. No other relief is awarded.

15. [20-12668](#)-A-13 **IN RE: MICHAEL/ALICIA AGUIRRE**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-30-2020 [[27](#)]

HARLEY-DAVIDSON CREDIT CORP./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Harley-Davidson Credit Corp. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to insurance proceeds to be paid as a result of the total loss of the collateral securing Movant's claim, a Harley-Davidson motorcycle (the "Motorcycle"). Doc. #27.

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).

After review of the included evidence, the court finds that "cause" exists to lift the stay. Movant is a secured creditor under the debtor's confirmed plan. Plan, Doc ##2, 33. The Motorcycle securing Movant's claim was involved in an accident and was determined by the insurance company to be a total loss. Doc. #29. The insurance company has agreed to settle the claim of loss for \$9,127.81, which will satisfy Movant's secured claim. Doc. #29. Movant will pay back to the debtors the difference between Movant's secured claim and the amount received from the insurance company, an amount of \$251.79. Doc. #29. Satisfying Movant's secured claim will not prejudice other creditors.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1). Movant shall receive from the insurance proceeds that balance due it as a

secured creditor under the debtors' Chapter 13 plan, with the remainder of the insurance proceeds to be disbursed to the debtors.

16. [17-14873](#)-A-13 **IN RE: KATHERINE MUNSEY**
[DRJ-1](#)

MOTION FOR ENTRY OF ORDER AUTHORIZING AND INSTRUCTING DEBTOR TO
COMPLY WITH CERTAIN PROVISIONS OF THE MARITAL DISSOLUTION JUDGMENT
12-2-2020 [[118](#)]

DAVID MUNSEY/MV
PETER BUNTING/ATTY. FOR DBT.
DAVID JENKINS/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

17. [20-13578](#)-A-13 **IN RE: MARCO LOPEZ-AGUIRRE AND MAYRA LOPEZ**
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN SERVICING, LLC
12-17-2020 [[26](#)]

LAKEVIEW LOAN SERVICING, LLC/MV
LEROY AUSTIN/ATTY. FOR DBT.
CASSANDRA RICHEY/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. 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 debtors filed their Chapter 13 plan ("Plan") on November 17, 2020. Doc. #11. Lakeview Loan Servicing, LLC ("Creditor") objects to confirmation of the Plan on the grounds that: (1) the Plan does not provide for cure of all pre-petition arrears claimed by Creditor; and (2) the proposed Plan payment is insufficient to maintain ongoing mortgage payments to Creditor. Doc. #26. Creditor holds a Class 1 claim under the Plan. Doc. #11.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under § 501, is deemed allowed unless a party in interest objects.

Creditor has not filed a proof of claim, and Creditor failed to file any evidence supporting its charge of pre-petitions arrears totaling \$10,285.33. Without any supporting evidence, the court will overrule Creditor's objection relating to the Plan's treatment of Creditor's pre-petition arrears.

However, the Plan calls for the Chapter 13 trustee to maintain all post-petition monthly payments to Creditor, and requires that "each monthly plan payment must be sufficient to pay in full . . . post-petition monthly payments due on Class 1 claims." Plan ¶ 5.02, Doc. #11. Section 2.01 defines monthly plan payments as monthly payments of \$1,000.00, yet the Plan calls for post-petition monthly payments to Class 1 claims totaling \$1,678.72. Plan 3.07, Doc. #11. Because the proposed Plan payment is insufficient to maintain ongoing payments to Creditor, Creditor's objection will be sustained.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

18. [20-13578](#)-A-13 **IN RE: MARCO LOPEZ-AGUIRRE AND MAYRA LOPEZ**
[JDM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRAVIS CREDIT UNION
12-16-2020 [[21](#)]

TRAVIS CREDIT UNION/MV
LEROY AUSTIN/ATTY. FOR DBT.
JOHN MENDONZA/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. 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 debtors filed their Chapter 13 plan ("Plan") on November 17, 2020. Doc. #11. Travis Credit Union ("Creditor") objects to confirmation of the Plan on the grounds that: (1) the Plan does not provide for interest on Creditor's secured claim; and (2) the Plan does not provide for adequate pre-confirmation protection payments. Doc. #21.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under § 501, is deemed allowed unless a party in interest objects. Creditor filed its proof of claim on December 10, 2020. Claim 5.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #10. Section 506(b) provides that, "[t]o the extent that an allowed secured claim is secured by property the value of which . . . is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim." 11 U.S.C. § 506(b). Creditor's proof of claim value's the property securing the claim at \$25,514.00 and asserts a secured claim of \$23,631.73. Claim #5. The debtors' plan does not provide for interest on Creditor's claim. Claim 5-1; Doc. #11.

Additionally, Creditor provided evidence of the Retail Installment Sale Contract (Doc. #24), which shows that Creditor's secured claim is attributable to the purchase of such property by the debtors. Therefore, Creditor is entitled to payments under § 1326(a)(1)(C).

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

19. [19-14187](#)-A-13 **IN RE: KELLY BURNS AND MARIA SANTORA-BURNS**
[TCS-3](#)

MOTION TO MODIFY PLAN
11-25-2020 [[48](#)]

KELLY BURNS/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 11, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The Chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to modify the Chapter 13 plan. Tr.'s Opp'n, Doc. #55. Unless this case is voluntarily converted to Chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response no later than January 20, 2021. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. Trustee shall file and serve a reply, if any, by January 27, 2021.

If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than January 27, 2021. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

20. [20-11191](#)-A-13 **IN RE: JOHN/MELISSA TAPIA**
[FW-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
12-8-2020 [[24](#)]

GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Fear Waddell, P.C. ("Movant"), counsel for John Arthur Tapia and Melissa Christine Tapia, the debtors in this chapter 13 case, requests allowance of interim compensation in the amount of \$2,562.00 and reimbursement for expenses in the amount of \$323.90 for services rendered January 14, 2020 through November 30, 2020. Doc. #24.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) pre-petition consultation and fact gathering; (2) case administration and amendments; (3) original plan, hearings, and objections; and (4) claims administration and objections. Doc. #26. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on an interim basis.

This motion is GRANTED. The court allows interim compensation in the amount of \$2,562.00 and reimbursement for expenses in the amount of \$323.90 to be paid in a manner consistent with the terms of the confirmed plan.

1. [18-14546](#)-A-7 **IN RE: LANE ANDERSON**
[20-1062](#)

STATUS CONFERENCE RE: COMPLAINT
11-5-2020 [[1](#)]

FEAR V. RODGERS ET AL
LISA HOLDER/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [19-12763](#)-A-7 **IN RE: ANTONIO/JUANA VELASQUEZ**
[19-1124](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
11-4-2019 [[1](#)]

FORD MOTOR CREDIT COMPANY V. VELASQUEZ ET AL
AUSTIN NAGEL/ATTY. FOR PL.

NO RULING.

3. [19-12763](#)-A-7 **IN RE: ANTONIO/JUANA VELASQUEZ**
[19-1124](#) [APN-3](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT
12-4-2020 [[48](#)]

FORD MOTOR CREDIT COMPANY V. VELASQUEZ ET AL
AUSTIN NAGEL/ATTY. FOR MV.

NO RULING.