

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Friday, January 7, 2022  
Place: Department B – Courtroom #13  
Fresno, California

*The court resumed in-person courtroom proceedings in Fresno ONLY on June 28, 2021. Parties may still appear telephonically provided that they comply with the court's telephonic appearance procedures. For more information click [here](#).*

**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, **and all parties will need to appear at the hearing unless otherwise ordered.** 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. [21-12407](#)-B-13     **IN RE: MANUELA BETTENCOURT**  
[MMJ-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO  
FINANCE  
11-15-2021     [\[18\]](#)

CAPITAL ONE AUTO FINANCE/MV  
SUSAN SILVEIRA/ATTY. FOR DBT.  
MARJORIE JOHNSON/ATTY. FOR MV.  
WITHDRAWN

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

DISPOSITION:     Dropped from calendar.

NO ORDER REQUIRED.

Creditor Capital One Auto Finance withdrew this objection on December 29, 2021. Doc. #39. Accordingly, this objection will be DROPPED FROM CALENDAR.

2. [17-14112](#)-B-13     **IN RE: ARMANDO NATERA**  
[WEW-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-29-2021     [\[130\]](#)

RICHARD BARNES/MV  
GABRIEL WADDELL/ATTY. FOR DBT.  
WILLIAM WINFIELD/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:     Denied without prejudice.

ORDER:     The court will issue an order.

Richard Barnes ("Movant") requests to retroactively annul the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to the foreclosure sale of 2430 East Orrland Avenue, Pixley, California ("Property"), which occurred at 2:00 p.m. on October 25, 2017. Doc. #130.

Armando Natera ("Debtor") timely opposed. Doc. #154. Debtor argues that Movant was aware of the bankruptcy, ignored it, and therefore was

not a bona fide purchaser of the Property. *Id.* Further, Debtor contends that Movant is not entitled to annul the stay under § 362(d)(1) and (d)(2).

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

First, no proof of service was filed with this motion. LBR 9014-1(e)(2) requires a proof of service, in the form of a certificate of service, to be filed with the Clerk of the court concurrently with the pleadings or documents served, or not more than three days after the papers are filed.

Further, Rule 4001(a) requires motions for relief from the automatic stay to be made in accordance with Rule 9014. Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. Rule 7004 allows service in the United States by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business" and "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 7004(b)(1), (b)(3). Rule 7004(b)(9) requires service upon the debtor by mailing a copy of the pleadings to the address shown in the petition or to such other address as the debtor may designate in a filed writing.

Second, the *Notice of Hearing* (Doc. #131) contained the wrong address for the court website. LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Here, respondents were directed to [www.caed.uscourts.gov](http://www.caed.uscourts.gov), which is the District Court's website, rather than to the Bankruptcy Court's website. *Id.*

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

3. [17-10033](#)-B-13     **IN RE: JARED/BRIDGETTE WEBB**  
[DRJ-3](#)

MOTION FOR COMPENSATION FOR DAVID R. JENKINS, DEBTORS  
ATTORNEY(S)  
11-26-2021    [\[35\]](#)

DAVID JENKINS/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.

David R. Jenkins ("Applicant"), attorney for Jared Lee John Webb and Bridgette Renee Webb ("Debtors"), seeks final compensation in the sum of \$4,000.00 under to 11 U.S.C. § 330. Doc. #35. Applicant's provided services for \$7,385.00 in fees and incurred \$107.90 in actual, necessary expenses from January 5, 2017 through November 20, 2021, but Applicant has waived \$1,492.90 and the remaining \$2,000.00 was paid by CCPOA U.S. Legal Insurance. *Id.*

Debtors signed a statement of consent on November 22, 2021 indicating that Debtors had received and read the fee application and approves the same. Doc. #37, *Ex. D.*

No party in interest timely filed written opposition. This motion will be GRANTED.

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 chapter 13 trustee, 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 amounts of damages). *Televideo Sys., 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 First Modified Chapter 13 Plan is the operative plan in this case. Docs. #20; #29. Section 3.05 indicates that Applicant was paid \$0.00 prior to filing the case and, subject to court approval, additional

fees of \$4,000.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. § 329, 330, and Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #20. The non-standard provisions in Section 7 note for Paragraph 2.06 that Applicant was paid \$2,000 post-petition by Debtors' legal insurance plan. *Id.* Applicant declares that this amount was paid by US Legal Insurance, which is disclosed in paragraph 16 of the *Statement of Financial Affairs and Disclosure of Attorney Compensation*. Doc. #37, Ex. A; cf. Doc. #13, Forms 107, 2030. Applicant further declares that he has not accepted or demanded from Debtors or any other person any payment for services or costs without first seeking a court order permitting payment of those fees and costs. Doc. #37, Ex. A.

This is Applicant's first and final request for compensation. Doc. #35. The source of funds for payment of the fees will be from the chapter 13 trustee in accordance with the confirmed chapter 13 plan.

Applicant provided 21.10 billable hours of legal services at a rate of \$350.00 per hour, totaling \$7,385.00 in fees and incurred \$107.90 in costs, but Applicant provided a courtesy discount limiting fees and expenses to **\$4,000.00**. *Id.*; Doc. #37, Ex. B.

Applicant's services included, without limitation: (1) advising Debtors about bankruptcy and non-bankruptcy alternatives; (2) gathering information and documents to prepare the petition, schedules, and plan, and reviewing Debtors' financial information, the effects of exemptions and value of assets; (3) preparing the petition, schedules, statements, and chapter 13 plan; (4) preparing and sending § 341 meeting documents to the trustee; (5) attending and completing the § 341 meeting of creditors; (6) confirming the First Modified Plan (DRJ-2); and (7) preparing and filing this motion for compensation. Doc. #37, Exs. A, B, C. The court finds the services and expenses reasonable, actual, and necessary. Debtors have consented to the fee application. *Id.*, Ex. D.

No party in interest timely filed written opposition. As noted above, Debtor has consented to the application. *Id.*, Ex. D. Accordingly, this motion will be GRANTED. Applicant will be awarded \$4,000.00 in fees and expenses on a final basis pursuant to § 330. The chapter 13 trustee is authorized, in his discretion, to pay Applicant \$4,000.00 in accordance with the chapter 13 plan for services rendered from January 5, 2017 through November 20, 2021.

4. [19-12041](#)-B-13     **IN RE: JERRY WALKER**  
[WLG-3](#)

MOTION TO SELL  
12-2-2021    [\[54\]](#)

JERRY WALKER/MV  
NICHOLAS WAJDA/ATTY. FOR DBT.

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

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

Jerry Keith Walker ("Debtor") seeks authorization to sell real property located at 904 Silver Oak Drive, Bakersfield, CA 93312 to Zachary Lee Kolb and Madison Kolb for \$340,000.00, subject to higher and better bids. Doc. #54.

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

For motions filed on 28 days' notice, LBR 9014-1(f)(1)(B) requires the movant to notify respondents that any opposition to the motion must be in writing and filed with the court at least 14 days preceding the date of the hearing.

Here, the motion was filed and served on December 2, 2021 and set for hearing on January 7, 2022. Doc. #58. December 2, 2021 is 36 days before January 7, 2022. Therefore, this motion was set for hearing on 28 days' notice under LBR 9014-1(f)(1). However, the notice stated:

Pursuant to Local Bankruptcy Rule 9014-1(f)(2), no party in interest shall be required to file written opposition to the Motion. Opposition, if any, shall be presented at the hearing on the Motion. If no opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.

Doc. #55, at 1, ¶¶ 24-28. This is incorrect. Because the hearing was set on 28 days' notice, LBR 9014-1(f)(1) is applicable and the notice should have stated that written opposition was required, must be filed 14 days before the hearing, and failure to file written opposition may be deemed a waiver of any opposition to the granting of the motion. Instead, the respondent was told not to file and serve written opposition even though it was necessary. Therefore, the notice was materially deficient. If the movant gives 28 days or more of notice of the hearing, there is no option to simply pretend that the motion was set for hearing on less than 28 days of notice to dispense with the court's requirement that any opposition must be in writing and filed with the court.

For the above reason, this motion will be DENIED WITHOUT PREJUDICE.

5. [21-12385](#)-B-13     **IN RE: IRENE/TINISHA PEREZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-21-2021    [\[26\]](#)

JAMES MILLER/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

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

ORDER:                        The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

If the installment fees due at the time of hearing are paid before the hearing, the order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

6. [21-12385](#)-B-13     **IN RE: IRENE/TINISHA PEREZ**  
[JDM-1](#)

MOTION TO CONFIRM PLAN  
11-22-2021    [\[21\]](#)

TINISHA PEREZ/MV  
JAMES MILLER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Denied or continued.

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

Irene Alarcon Perez and Tinisha Chavez Perez ("Debtors") seek confirmation of their First Amended Chapter 13 Plan. Doc. #21.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(6) because Debtors will not be able to make all payments under the plan and comply with the plan. Doc. #27. Trustee says that Debtors are delinquent for their November 2021 payment in the amount of \$1,810.00. *Id.* An additional payment in the same amount became due for December 2021 before this hearing. *Cf.* Doc. #24. Additionally, Trustee indicates that Section 3.06 of the plan does not provide a dividend for administrative expenses, which can be corrected in the order confirming plan by providing that Debtors' attorney will be paid pro rata with unsecured creditors. Doc. #27.

This matter will be called as scheduled. In matter #5 above, Debtors are required to pay installment fees before the time of the hearing, or this case will be dismissed. If the fees are not paid and the case is dismissed, this motion will be DENIED AS MOOT. If the fees are paid, the order to show cause is vacated, and the case is not dismissed, then this motion will be CONTINUED to February 9, 2022 at 9:30 a.m.

If continued, the Debtors shall file and serve a written response not later than January 26, 2022 unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn. The response shall specifically address each issue raised in the opposition 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 February 2, 2022.

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 February 2, 2022. If the Debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

7. [19-12388](#)-B-13     **IN RE: CHRISTOPHER/LAURIE MILAUCKAS**  
[DRJ-3](#)

MOTION FOR COMPENSATION FOR DAVID R. JENKINS, DEBTORS  
ATTORNEY(S)  
12-10-2021     [\[95\]](#)

DAVID JENKINS/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.



David R. Jenkins ("Applicant"), attorney for Christopher A. Milauckas and Laurie Milauckas ("Debtors"), seeks final compensation in the sum of \$12,000.00 under to 11 U.S.C. § 330. Doc. #95. Applicant's provided services for \$20,457.50 in fees and incurred \$267.49 in actual, necessary expenses from February 27, 2019 through November 21, 2021, but Applicant has waived \$6,724.99 and the remaining \$2,000.00 was paid by Debtors pre-petition, leaving a balance of \$12,000.00. *Id.*

Debtors signed a statement of consent on December 5 and 9, 2021 indicating that Debtors had received and read the fee application and approves the same. Doc. #97, *Ex. D.*

No party in interest timely filed written opposition. This motion will be GRANTED.

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 chapter 13 trustee, 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 amounts of damages). *Televideo Sys., 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 original chapter 13 plan is the operative plan in this case. Docs. #3; #90. Section 3.05 indicates that Applicant was paid \$2,000.00 prior to filing the case and, subject to court approval, additional fees of \$4,000.00 shall be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. § 329, 330, and Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #3. Applicant declares, other than the \$2,000 paid prior to filing, Applicant has not accepted or demanded from Debtors or any other person any payment for services or costs without first seeking a court order permitting payment of those fees and costs. Doc. #97, *Ex. A.*

This is Applicant's first and final request for compensation. Doc. #95. The source of funds for payment of the fees will be \$4,000.00 from the chapter 13 trustee in accordance with the confirmed chapter 13 plan, and the remaining \$8,000.00 to be paid by Debtors after discharge. *Id.*

Applicant provided 58.45 billable hours of legal services at a rate of \$350.00 per hour, totaling \$20,457.50 in fees and incurred \$267.49 in

costs, but Applicant provided a courtesy discount of \$6,724.99 and Debtors paid \$2,000 prior to filing, so requested fees and expenses are limited to **\$12,000.00**. *Id.*; Doc. #97, *Ex. B*.

Applicant's services included, without limitation: (1) advising Debtors about bankruptcy and non-bankruptcy alternatives; (2) gathering information and documents to prepare the petition, schedules, and plan, and reviewing Debtors' financial information, the effects of exemptions and value of assets; (3) preparing the petition, schedules, statements, and chapter 13 plan; (4) preparing and sending § 341 meeting documents to the trustee; (5) attending and completing the § 341 meeting of creditors; (6) confirming the original chapter 13 plan over objections (MWP-1); (7) prosecuting a motion to value collateral (DRJ-2); and (8) preparing and filing this motion for compensation (DRJ-3). Doc. #97, *Exs. A, B, C*. The court finds the services and expenses reasonable, actual, and necessary. Debtors have consented to the fee application. *Id.*, *Ex. D*.

No party in interest timely filed written opposition. As noted above, Debtor has consented to the application. *Id.*, *Ex. D*. Accordingly, this motion will be GRANTED. Applicant will be awarded \$12,000.00 in fees and expenses on a final basis pursuant to § 330. The chapter 13 trustee is authorized, in his discretion, to pay Applicant \$4,000.00 in accordance with the chapter 13 plan, and Debtors are authorized to pay Applicant \$8,000.00 after entry of discharge, for services rendered from February 27, 2019 through November 21, 2021.

8. [21-12392](#)-B-13     **IN RE: REGINALD KERNEY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
12-21-2021    [\[37\]](#)

PETER BUNTING/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

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

ORDER:                        The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

If the installment fees due at the time of hearing are paid before the hearing, the order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

9. [21-12394](#)-B-13     **IN RE: FELIX/RAMONA LEDESMA**  
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-23-2021    [\[20\]](#)

JPMORGAN CHASE BANK, N.A./MV  
SCOTT LYONS/ATTY. FOR DBT.  
WENDY LOCKE/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.

JPMorgan Chase Bank, N.A. ("Movant") seeks relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1) with respect to a 2021 Dodge Charger ("Vehicle"). Doc. #20. Movant took possession of the Vehicle on September 12, 2021, which is before Felix Ledesma and Ramona Ledesma ("Debtors") filed chapter 13 bankruptcy. Additionally, Movant seeks waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3). *Id.*

No party in interest timely filed written opposition. This motion will be GRANTED.

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 chapter 13 trustee, 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 amounts of damages). *Televideo Sys., 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.

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).

Here, Debtors financed the purchase of Vehicle for \$44,210.40 on March 31, 2021. Doc. #23, *Ex. 1*. Under the loan agreement, Movant was granted a security interest in the Vehicle, which was perfected with a certificate of title. *Id.*, *Ex. 2*. Debtors' last payment was received by Movants on May 10, 2021 and Debtors subsequently defaulted under the loan agreement. Doc. #21. On September 12, 2021, Movant repossessed Vehicle. Doc. #24.

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtors failed to make five pre-petition payments totaling \$3,538.65. *Id.* Movant has produced evidence that Debtors are delinquent at least \$45,913.48 as of October 27, 2021. Docs. #21; #25. Movant further repossessed Vehicle pre-petition and Debtors did not provide for Movant's claim in the confirmed chapter 13 plan, which by itself constitutes cause to terminate the automatic stay. Docs. #7, § 3.11(b); #34.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) 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.

The 14-day stay of Rule 4001(a)(3) will be ordered waived because Movant already has possession of Vehicle, Movant is not provided for in the plan, and Vehicle is a depreciating asset.

10. [19-15396](#)-B-13     **IN RE: JUAN/MARYLOU BARRAGAN**  
[SL-2](#)

MOTION TO MODIFY PLAN  
12-2-2021    [\[56\]](#)

MARYLOU BARRAGAN/MV  
SCOTT LYONS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to February 9, 2022 at 9:30 a.m.

ORDER:             The court will issue an order.

Juan Barragan and Marylou Barragan ("Debtors") seek confirmation of their First Modified Chapter 13 Plan. Doc. #56. Debtors wish to extend the duration of their plan from 60 to 84 months under the COVID-19 Bankruptcy Relief Extension Act of 2021. 117 P.L. 5, 135 Stat. 249.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. §§ 1325(a)(1) and (6) because the plan fails to comply with applicable provisions of the Bankruptcy Code and Debtors will not be

able to make all payments under the plan and comply with the plan.  
Doc. #65.

Trustee contends that Section 7.01 of the plan indicates that Debtors have paid \$54,356.20 through November 25, 2021, but Debtors have actually paid \$63,000.00 through November 2021. *Id.*

Additionally, Debtors' schedules indicate that Debtors do not have sufficient income to fund the proposed plan payment, and expenses have increased without sufficient supporting documentation. *Id.*; *cf.* Doc. #63, *Am. Sched. J*. To substantiate the Debtors' declaration (Doc. #60) that income has decreased significantly, and expenses have increased substantially, Trustee requests that Debtors provide their most current paystubs with year-to-date earnings, the last two months of utility bills, and proof of food and housekeeping, fuel and automobile maintenance, and closing costs. Doc. #65.

This motion will be CONTINUED to February 9, 2022 at 9:30 a.m.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, Debtors shall file and serve a written response not later than January 26, 2022. The response shall specifically address each issue raised in the opposition 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 February 2, 2022.

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 February 2, 2022. If the Debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the opposition without a further hearing.

11. [21-12297](#)-B-13     **IN RE: ISAAC/WANDA SANTOS**  
[TCS-2](#)

MOTION TO CONFIRM PLAN  
11-22-2021     [\[37\]](#)

WANDA SANTOS/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:     Dropped from calendar.

NO ORDER REQUIRED.

Debtors Isaac Genaro Santos and Wanda Santos withdrew this motion on December 17, 2021. Doc. #46. Accordingly, the motion will be DROPPED FROM CALENDAR.

11:00 AM

1. [17-14112](#)-B-13     **IN RE: ARMANDO NATERA**  
[20-1035](#)     [WEW-1](#)

MOTION FOR LEAVE TO FILE A THIRD-PARTY COMPLAINT  
11-9-2021     [\[203\]](#)

NATERA V. BARNES ET AL  
WILLIAM WINFIELD/ATTY. FOR MV.

TENTATIVE RULING:             This matter will proceed as scheduled.

DISPOSITION:                     Granted.

ORDER:                             The Moving Party shall prepare the order  
conforming to this ruling.

Defendants Richard Barnes, individually and as Trustee of the Richard Allen Barnes Trust ("Barnes") and Parker Foreclosure Services, LLC ("Parker") (collectively "Movants") ask the court to permit them to implead WFG National Title Insurance Company ("WFG") as a third-party defendant in this adversary proceeding. Doc. #203. For the reasons below, the motion will be GRANTED.

I

About one year ago, Plaintiff Armando Natera filed the operative amended complaint here alleging that Movants violated the automatic stay of § 362(a) when a foreclosure sale went forward on October 25, 2017. Doc. #92. Natera's property located at 2430 E. Orrland Ave., Pixley, CA was lost in that sale. Natera alleges he filed a Chapter 13 case moments before the foreclosure sale. The chapter 13 case was subsequently dismissed. Natera seeks unspecified damages under § 362(k).

Now, Movants claim that through discovery, they learned that WFG and its agents may have advised Parker that under Cal. Civ. Code § 2924h (c), a timely post-petition recordation of the Trustee's Deed Upon Sale would perfect title in favor of Barnes. Doc. #205. WFG disputes that such advice was given. Movants want to assert claims against WFG for any damages Natera may recover from them.

In their proposed third-party complaint, Movants allege that WFG was negligent in providing advice about perfection of title and should have advised that it would be "more effective" for Movants to seek stay relief. Their theories include negligence, negligent representation, breach of oral contract, and abstractor negligence. Movants argue no party would be prejudiced at this stage and later

litigation may result in inconsistent rulings and duplication of fact and expert testimony.

Natera does not oppose this motion. Doc. #239.

WFG does oppose. Doc. #236. They contend that factually, Movants are wrong and WFG gave no such advice. In fact, WFG claims its agent told Parker that knowledge of the bankruptcy prior to the sale "may be a different story." *Id.* They also claim the Trustee Sale Guarantee WFG provided Movants does not include assurances about bankruptcy activity. Also, WFG asserts that procedurally, Movants proposed third-party complaint should not be permitted because it asserts "non-core claims," does not allege derivative nor indemnity liability, and is not a proper adversary proceeding. WFG urges that permitting the third-party complaint now will prejudice them because of the status of this litigation.

## II

Federal Rule of Civil Procedure ("Civ. Rule") 14(a), incorporated by Federal Rule of Bankruptcy Procedure ("Rule") 7014, permits a defending party to serve a summons and complaint on a nonparty "who is or may be liable to it for all or part of the claim against it." Court leave is required if the third-party complaint is filed more than 14 days after service of the original answer. *Id.*

Court leave is necessary here. The decision to allow the third-party complaint is entrusted to the sound discretion of the trial court. *United States v. One 1977 Mercedes Benz*, 708 F.2d 444, 451 (9th Cir. 1983), *cert. denied*, 464 U.S. 1071 (1984). There are two requirements for an appropriate third-party complaint:

- Liability must be derivative and must flow to the third-party plaintiff.
- Liability must be for losses that the third-party plaintiff suffers in the capacity of defendant on plaintiff's claim.

*Hawkins v. Eads (In re Eads)*, 135 B.R. 387, 395 (Bankr. E.D. Cal. 1991). Non-derivative claims cannot be advanced under Civ. Rule 14 even though they arise out of the same transaction or occurrence. *Id.* Joinder under Civ. Rule 14(a) should be freely granted to promote efficiency. *FMC Corp. v. Vendo Co.*, 196 F. Supp. 2d 1023, 1038 (E.D. Cal. 2002), quoting *New York v. Solvent Chem. Co.*, 179 F.R.D. 90, 93 (W.D.N.Y. 1998).

Movant's proposed third-party complaint asserts derivative claims. Movants allege theories and claims that rest on whether any damages are awarded against Movants as defendants on Natera's claims. At this stage Movants do not assert claims against WFG separate from the potential liability they face in their capacity as defendants here. The claims stem from the alleged stay violation. If Movants prevail, there is no claim against WFG for awarded damages. If Movants are



found liable and damages are awarded, those are the damages Movants want to transfer to WFG.

Whether Movant's claims are "core" or not makes no difference now. First, it is undisputed Movant's are part of the "core" dispute relating to the effect of the automatic stay. See 28 U.S.C. § 157(b) (2)(A), (G), and (O). Second, even if the Movants/WFG dispute is non-core that does not deprive this court of jurisdiction. If WFG does not consent to this court entering final judgment, this court is still empowered to issue findings and conclusions that can be reviewed by the district court. 28 U.S.C. § 157(c). Third, an independent basis for jurisdiction for the third-party claim is unnecessary provided the original complaint satisfies the federal requirements for jurisdiction. *Banks v. Emeryville*, 109 F.R.D. 535, 538 (N.D. Cal. 1985), citing *United States v. United Pacific Insurance Co.*, 472 F.2d 792, 794 (9th Cir. 1973), cert. denied, 411 U.S. 982 (1973). WFG does not dispute that this court has jurisdiction over Natera's claim.

Nor do the different theories pled by Natera and Movants change the derivative nature of the third-party claim here. Plaintiff's theories and third-party plaintiff's theories need not be the same. *Banks*, 109 F.R.D. at 540; *Eads*, 135 B.R. at 395 ("If derivative liability is shown it matters not that the theory is negligence rather than indemnity or contribution"). The third-party claim here and the underlying claim arise out of the very transaction that is being contested in the primary lawsuit and bears a close logical and factual nexus with the primary claim. *Id.*, at 396.

The factual challenges raised by WFG should not be determined in this motion. WLG raises two substantial issues. First, that it never made the representation alleged by Movants. Second, the Trustee Sale Guarantee does not ensure Movants for Natera's claim. The court cannot decide those issues now. Both require factual development no party can muster at this time on this motion.<sup>1</sup>

WFG's challenge that the third-party claim is not an appropriate adversary proceeding under Rule 7001 is misplaced. That procedural rule outlines what claims must be brought as adversary proceedings and provides for the application of Part VII of the Rules. The underlying claim is an appropriate adversary proceeding under Rules 7001 (1), (7), and (9). Rule 7014 is one of those Part VII rules which governs third-party claims.

The cases cited by WFG are not binding in this circuit and distinguishable. In *Zerand-Bernal Group v. Cox*, 23 F.3d 159 (7th Cir. 1994) there was a dispute between a purchaser at a bankruptcy sale and a person who had nothing to do with the bankruptcy. A plan had been confirmed and the seventh circuit held the third-party claim was beyond bankruptcy jurisdiction. Similarly, *HA 2003 Liquidating Trust v. Carramore Ltd. (In re HA-LO Indus.)*, 330 B.R. 663 (Bankr. N.D. Ill. 2005) which has not been cited in this circuit, held there was no jurisdiction supporting a bankruptcy court hearing a third-party claim

for misrepresentation when the defendant is being sued by a liquidating trust. Neither case involved the issues here.

### III

Courts must construe third-party claims liberally in favor of impleader. *Lehman v. Resolution Portfolio LLC*, 166 F.3d 389, 393 (1st Cir. 1999). But the court's discretion is tempered by applying four factors. Those are: prejudice to the plaintiff; complication of issues at trial; likelihood of trial delay; and timeliness of the impleader motion. *Irwin v. Mascott*, 94 F. Supp. 2d 1052, 1056 (N.D. Cal. 2000). The factors favor allowing impleader, here.

#### A.

There is no prejudice claimed by Plaintiff here. Plaintiff does not oppose this motion.

Though perhaps unnecessary to consider, any prejudice claimed by WFG is eliminated by scheduling changes. No pre-trial order is entered in this case. There have been numerous scheduling orders which have been changed because of dynamic pleadings. This motion is one example. Consideration of WFG's recent addition to the proceedings when scheduling matters solves this issue.

#### B.

Very little complication of issues seems likely. The primary issue is the application of the automatic stay. If found applicable, the issue will be one of damages which is precisely the issue raised in the proposed third-party complaint. The additional evidence the third-party claim may require seems straight forward and minimal, at this stage.

#### C.

Trial delay is not a factor. No trial date has been set.

#### D.

Timeliness of this motion has not been separately raised by WFG. At any rate, the operative amended complaint (without recently added supplemental allegations) has been pending for about one year. Movants' uncontradicted evidence is the potential third-party claim came to light during discovery.

The court has been provided nothing suggesting Movants have delayed in bringing this motion.

The motion will be GRANTED.

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<sup>1</sup> Accordingly, WFG's "objection" to application of LBR 9014-1 requirements as to specification of disputed material facts is inapplicable.

2. [21-10734](#)-B-7     **IN RE: MANUEL GONZALES**  
[21-1030](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
7-8-2021    [[1](#)]

STRATA FEDERAL CREDIT UNION V.  
GONZALES, III  
BRANDON ORMONDE/ATTY. FOR PL.

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

DISPOSITION:        Dropped from calendar.

ORDER:                The court will issue an order.

The court granted the motion for entry of default judgment against the Defendant in favor of the Plaintiff on January 5, 2022. Doc. #52. This status conference will be dropped from calendar. After entry of judgment, the clerk of the court will close the adversary proceeding without notice. After the adversary proceeding has been closed, the parties will have to file an application to reopen the adversary proceeding if further action is required. The court will issue an order.