**UNITED STATES BANKRUPTCY COURT**
**Eastern District of California**
**Honorable Jennifer E. Niemann**
**Hearing Date: Wednesday, January 25, 2023**
**Department A – Courtroom #11**
**Fresno, California**

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## 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.**

1. 20-10010-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
1-2-2020 [1]

LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to February 1, 2023 at 9:30 a.m.

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

Because the court is continuing the debtors' motion for a final decree and entry of discharge to February 1, 2023, the chapter 11 status conference will be continued to February 1, 2023 at 9:30 a.m.

2. 20-10010-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
LKW-49

MOTION FOR ENTRY OF DISCHARGE AND/OR MOTION FOR FINAL DECREE
12-15-2022 [1306]

AMALIA GARCIA/MV
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to February 1, 2023 at 9:30 a.m.

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

"After an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on a motion of a party in interest, shall enter a final decree closing the case." Fed. R. Bankr. P. 3022. Neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure define "full administration" of a chapter 11 case, but the Advisory Committee Notes to the 1991 amendments to Federal Rule of Bankruptcy Procedure 3022 outline several factors the court should consider when making that determination, including whether all motions, contested matters, and adversary proceedings have been resolved.

Here, the debtors have filed and set for hearing on February 1, 2023, an application to approve the payment of fourth and final fees and expenses for the debtors' accountant. Doc. ##1316, 1317. Thus, not all motions will be resolved by January 25, 2023, so the hearing on the motion for final decree and entry of discharge will be continued to February 1, 2023 at 9:30 a.m.

3. 20-10010-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
LKW-50

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
1-4-2023 [1310]

LEONARD WELSH/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 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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 Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtors and debtors in possession Eduardo Zavala Garcia and Amalia Perez Garcia (collectively, "DIP"), requests allowance of final compensation in the amount of $12,575.00 and reimbursement for expenses in the amount of $369.66 for services rendered from November 1, 2022 through December 31, 2022. Doc. #1310. DIP consents to the amount requested in Movant's application. Decl. of Eduardo Zavala Garcia, Doc. #1312.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a professional person. 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to counsel, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing general case administration; (2) preparing memorandum of points and authorities in support of confirmation of DIP's fourth amended plan of reorganization; (3) preparing supporting documents for DIP's fourth amended plan; (4) preparing letters regarding DIP's fourth amended plan; (5) preparing order confirming DIP's fourth amended plan; and (6) preparing and filing fee applications. Decl. of Leonard K. Welsh, Doc. #1313; Ex. B, Doc. #1314. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary. The court finds the compensation of $12,575.00 and reimbursement for expenses of $369.66 sought for the period from November 1, 2022 through December 31, 2022 are reasonable, actual, and necessary and should be allowed on a final basis.

Movant also requests the court conduct a final review pursuant to 11 U.S.C. § 330 of all fees and expenses previously allowed pursuant to 11 U.S.C. § 331 on an interim basis. Specifically, Movant seeks final allowance of the following compensation and reimbursement for expenses previously awarded to Movant:

| Date of Hearing | Fees Allowed | Costs Allowed |
|---|---|---|
| March 5, 2020 | $11,995.00 | $45.10 |
| May 7, 2020 | $7,315.00 | $182.00 |
| July 9, 2020 | $8,407.50 | $103.70 |
| September 30, 2020 | $24,647.50 | $849.15 |
| November 5, 2020 | $8,405.00 | $307.80 |
| January 7, 2021 | $6,710.00 | $305.05 |
| July 28, 2021 | $44,830.00 | $1,288.48 |
| September 9, 2021 | $10,150.00 | $165.01 |
| November 4, 2021 | $12,875.00 | $267.47 |
| December 1, 2021 | $5,282.50 | $436.70 |
| January 12, 2022 | $11,197.50 | $551.25 |
| March 9, 2022 | $3,870.00 | $214.16 |
| May 5, 2022 | $9,025.00 | $281.49 |
| July 7, 2022 | $12,520.00 | $412.90 |
| August 24, 2022 | $8,610.00 | $338.63 |
| September 14, 2022 | $8,540.00 | $339.05 |
| October 19, 2022 | $7,525.00 | $269.40 |
| November 16, 2022 | $5,860.00 | $153.90 |
| November 30, 2022 | $11,092.50 | $739.01 |

The court approves on a final basis all fees and expenses of Movant previously allowed on an interim basis.

Accordingly, the court is inclined to GRANT Movant's motion for compensation. The court allows on a final basis compensation in the amount of $12,575.00 and reimbursement for expenses in the amount of $369.66. The court also allows on a final basis all fees and expenses previously allowed to Movant on an interim basis, as set forth in the above chart.

4. 22-12016-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
DMG-2

MOTION TO UTILIZE FUNDS HELD IN ESCROW
12-28-2022 [21]

FUTURE VALUE CONSTRUCTION, INC./MV
D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 9, 2023 at 10:30 a.m.

NO ORDER REQUIRED.

On January 13, 2023, at the request of the movant, the court issued an order continuing the hearing on the motion to utilize funds held in escrow to February 9, 2023, at 10:30 a.m. Doc. #44.

5. 22-12016-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
DMG-3

MOTION TO PAY
12-28-2022 [26]

FUTURE VALUE CONSTRUCTION, INC./MV
D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 9, 2023 at 10:30 a.m.

NO ORDER REQUIRED.

On January 13, 2023, at the request of the movant, the court issued an order continuing the hearing on the motion to pay critical vendor/administrative claim to February 9, 2023, at 10:30 a.m. Doc. #45.

6. 22-11226-A-11 **IN RE: ALVARENGA TRANSPORT, LLC**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
7-18-2022 [1]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

7. 22-11226-A-11 **IN RE: ALVARENGA TRANSPORT, LLC**
FW-3

CONTINUED CONFIRMATION HEARING RE: CHAPTER 11 SMALL BUSINESS PLAN
10-17-2022 [48]

PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Confirmed if monthly operating reports for November 2022 and December 2022 have been filed.

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.

Alvarenga Transport LLC ("Debtor"), the Subchapter V Chapter 11 debtor and debtor in possession in this case, moves the court for confirmation of its Plan of Reorganization dated October 17, 2022 (the "Plan"). Doc. #48. The hearing to confirm the Plan was set by order of the court filed on October 19, 2022 ("Order"). Doc. #51. In the Order, the court ordered transmission of the Plan, Order, ballots, and notice of the confirmation hearing by October 26, 2022; acceptances or rejections of the Plan, and objections to confirmation by

November 23, 2022; and responses to objections, tabulation of ballots, and brief by December 7, 2022. The court finds notice and service of the Plan and related documents were proper and the confirmation hearing should proceed. Doc. ##61, 62, 78. No objections to confirmation of the Plan have been filed.

At a hearing held on December 14, 2022, the court requested that Debtor supplement the record before the court would confirm the Plan. Debtor filed supplemental pleadings on December 27, 2022. Doc. ##97-99. Based on the record before the court, the court will confirm the Plan so long as Debtor has filed the missing monthly operating reports for November 2022 and December 2022.

The court finds that the Plan meets the requirements of 11 U.S.C. § 1190. Specifically, the Plan includes a brief history of Debtor's business operations, a liquidation analysis, and projections with respect to the ability of Debtor to make payments under the proposed Plan as required by § 1190(1). The Plan provides for the submission of all or such portion of Debtor's future earnings or other future income to the supervision and control of the Subchapter V Trustee as is necessary for the execution of the Plan as required by § 1190(2). The court finds § 1190(3) does not apply to the Plan.

Section 1191 of the Bankruptcy Code governs plan confirmation in Subchapter V. In the Plan, Debtor requests confirmation on a non-consensual basis under § 1191(b). Plan, § 8.03, Doc. #48. Class 2 did not return ballots either accepting or rejecting the Plan, therefore there is no acceptance of the Plan by at least one impaired non-insider class under the Plan. While Class 3 voted to accept the Plan, such vote does not count under 11 U.S.C. § 1129(a)(10) because Class 3 are statutory insiders.

11 U.S.C. § 1191 governs plan confirmation in Subchapter V. Here, one class of impaired claims, consisting of one class of general unsecured creditor claims, did not return ballots accepting the Plan. Thus, confirmation of the Plan must proceed under 11 U.S.C. § 1191(b). That section provides in relevant part:

> [I]f all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1191(b). For a plan to be fair and equitable with respect to a class of unsecured creditors that is impaired and that has not accepted the Plan, the Plan must meet the requirements of § 1191(c)(2) and § 1191(c)(3). 11 U.S.C. § 1191(b), (c)(2)-(3).

With respect to § 1129(a)(1), the Plan complies with the applicable provisions of Chapter 11 and meets the applicable mandatory provisions of 11 U.S.C. § 1123(a). The provisions of § 1123(a)(6) of the Code, which relate to the issuance of securities pursuant to a reorganization plan, are not applicable in this case. The Plan:

(1) Designates classes of claims other than claims of a kind specified in Bankruptcy Code sections 507(a)(2), 507(a)(3), or 507(a)(8) as required by § 1123(a)(1). The claims are Class 1 (secured claims); Class 2 (general unsecured claims); and Class 3 (equity interests).

(2) Specifies the classes that are not impaired under the Plan (Class 1) as required by § 1123(a)(2).

(3) Specifies the treatment of any class of claims or class of interest which is impaired under the Plan (Classes 2 and 3) as required by § 1123(a)(3).

(4) Provides for the same treatment for each claim or interest of a particular class as required by § 1123(a)(4).

(5) Provides adequate means for the implementation and execution of the Plan as required by § 1123(a)(5).

(6) Contains no provisions inconsistent with the interests of creditors and equity security holders and public policy with respect to the manner of selection of any officer, director, or trustee under the Plan and any successor to such officer, director, or trustee as required by § 1123(a)(7).

(7) The provisions of § 1123(a)(8) do not apply in a Subchapter V case. 11 U.S.C. § 1181.

(8) Provides for the assumption of all executory contracts not expressly rejected by Debtor in accordance with Debtor's sound business judgment as required by § 1123(b)(2).

Debtor, as proponent of the Plan, provided adequate disclosure regarding the Plan to all creditors and interest holders in good faith and has complied with the applicable provisions of Chapter 11 as required by § 1129(a)(2) so long as the missing monthly operating reports for November 2022 and December 2022 have been filed by the time of the confirmation hearing.

The Plan has been proposed in good faith and not by any means forbidden by law as required by § 1129(a)(3).

Pursuant to § 1129(a)(4), the Plan provides that payments made or to be made to Debtor's attorneys and other professionals in connection with the case or the Plan are subject to approval of the court.

The Plan provides that Debtor will be responsible for implementation of the Plan and Debtor's existing member will continue as a member of Debtor, which is consistent with interests of creditors and equity security holders and with public policy as required by § 1129(a)(5). In addition, Debtor's sole member, Jose Alvarenga ("Alvarenga"), has negotiated a settlement with Debtor that has been approved by the court. Order, Doc. #96. The approved settlement is helpful in demonstrating that the Plan is feasible.

Section 1129(a)(6) is inapplicable and no changes in regulatory rates are provided for in the Plan.

Pursuant to § 1129(a)(7), each holder of a claim or interest in an impaired class has either accepted the Plan or will receive an amount equal to or greater than the amount such holder of a claim or interest would receive in a Chapter 7 case. No member of Class 2 returned a ballot, but Debtor estimates that distribution to Class 2 claimants will be approximately $100,000. Because Class 2 claimants would not receive any distribution in a hypothetical Chapter 7 liquidation, the Plan provides more to unsecured creditors than those creditors would receive in a Chapter 7 case. Plan, § 6.02, Doc. #48; Plan, Ex. C, Doc. #48.

Section 1129(a)(8) has not been satisfied because Class 2 did not return any ballots either accepting or rejecting the Plan. Bell Road Inv. Co. v. M Long

Arabians (In re M Long Arabians), 103 B.R. 211, 215-16 (B.A.P. 9th Cir. 1989) (holding that when no creditors within a class vote to accept a plan, that class is deemed to have rejected the plan). Nevertheless, Section 1129(a)(8) need not be satisfied if the subchapter V Plan is confirmed, as here, under § 1191(b).

Pursuant to § 1129(a)(9), the Plan provides for treatment of claims under 11 U.S.C. § 507(a)(2). The Plan does not provide for treatment of claims under 11 U.S.C. § 507(a)(3) because this is a voluntary case. Debtor does not have any claims under 11 U.S.C. §§ 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), 507(a)(7), or 507(a)(8). Doc. #77.

Section 1129(a)(10) need not be satisfied if the Subchapter V plan is confirmed, as here, under § 1191(b).

Regarding § 1129(a)(11), the court finds, based on the evidence submitted by Debtor, that the Plan is feasible and confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of Debtor or any successor to Debtor under the Plan. Payments under the Plan are to be made from funds that result from an approved settlement of a preferential transfer claim against Debtor's owner, Alvarenga. Plan, Doc. #48. Under the settlement, Debtor will receive credit of $4,684.96 each month for the 60 month-term of the Plan and deferral of certain rental payments owed to Alvarenga for use of office space, yard space, trucks and trailers owned by Alvarenga. Decl. of Jose Alvarenga, Doc. #75. Further, as a part of the settlement with Alvarenga, Alvarenga has agreed to defer (but not forgive) payments for monthly rental of real estate and equipment (totaling $22,500.00) in an amount sufficient to allow Debtor to make the payments required by the Plan in this case, if Debtor would be otherwise unable to make the payments. Id. Based on the declaration of Alvarenga, Debtor could have up to $9,108.97 in available cash flow to make the monthly payments of $7,500.00 required by the Plan. Id.

Section 1129(a)(12) has been satisfied because all fees due under 28 U.S.C. § 1930 have been paid.

Sections 1129(a)(13)-(16) are not applicable to this case.

Pursuant to § 1191(c)(1), with respect to a class of secured claims, the Plan meets the requirements of § 1129(b)(2)(A).

Because Class 2 is a class of unsecured claims, the Plan must comply with § 1191(c)(2) and (c)(3). Section 1191(c)(2) requires that all projected disposable income received in the five years of the Plan be applied to make payments under the Plan or that the value of the property to be distributed under the Plan is greater than the projected disposable income of Debtor. Debtor asserts that there have been substantial changed in the trucking industry in recent years due to increased regulation and other changes so its post-confirmation projected disposable income should be analyzed based on Debtor's monthly deposits, withdrawals, and owner contributions for the twelve months prior to Debtor's bankruptcy petition ("Pre-Petition Data") rather than Debtor's earlier financial performance. Decl. of Jose Alvarenga, Doc. #75. The Pre-Petition Data is compiled in a chart included in both the Plan and the supporting declaration of Debtor's owner, Alvarenga. Plan, Doc. #48; Alvarenga Decl., Doc. #75. Based on an analysis of Debtor's monthly deposits and withdrawals from the last twelve months prior to the filing of the bankruptcy case, including contributions from Alvarenga, Debtor had an average monthly net income of negative ($13,931.03). Alvarenga Decl., Doc. #75.

The court has compared the total deposits and withdrawals listed in the August 2022 through October 2022 monthly operating reports with the total deposits and withdrawals for August 2021 through October 2021 as set forth in Alvarenga's declaration. Based on the court's analysis, the amount of the total deposits less the total withdrawals for August 2021 through October 2021 is $59,089.25, and the amount of the total deposits less the total withdrawals for August 2022 through October 2022 is $66,361.24, a difference of only $7,271.99. Thus, the court agrees with Debtor that Debtor's post-confirmation projected disposable income can be analyzed based on the Pre-Petition Data.

While "projected disposable income" is not defined in the Bankruptcy Code, § 1191(d) provides that, for purposes of § 1191, "the term 'disposable income' means the income that is received by the debtor and that is not reasonably necessary to be expended . . . for the payment of expenditures necessary for the continuation, preservation or operation of the business of the debtor." 11 U.S.C. § 1191(d)(2). Based on the Pre-Petition Data, Debtor has less monthly average income ($722,657.07) than monthly average expenses ($731,044.65), leaving an average negative projected monthly income of $8,387.58, not including any transactions with Alvarenga. As a result, the court find that all of the projected disposable income Debtor will receive during the five-year term of the Plan is being applied to make payments under the Plan as is required under 11 U.S.C. § 1191(c)(2)(A). Likewise, the court finds that the value of the property to be distributed under the Plan, monthly plan payments of $7,500.00 per month for 60 months, is not less than the projected disposable income of Debtor as is required under 11 U.S.C. § 1191(c)(2)(B).

With respect to § 1191(c)(3)(A), payments under the Plan are to be made from funds that result from an approved settlement of a preferential transfer claim against Debtor's owner, Alvarenga. Plan, Doc. #48. As a part of that approved settlement, Alvarenga has agreed to defer (but not forgive) payments for monthly rental of real estate and equipment (totaling $22,500.00) Debtor owes to Alvarenga in an amount sufficient to allow Debtor to make the monthly plan payments of $7,500.00 in this case, if Debtor would be otherwise unable to make those payments. Alvarenga Decl., Doc. #75. Accordingly, the court finds Debtor will be able to make all payments under the Plan, so the Plan satisfies § 1191(c)(3)(A).

With respect to § 1191(c)(3)(B), the Plan satisfies Section 1191(c)(3)(A); therefore, the Plan does not need to provide any remedies to protect the holders of claims or interests in the event payments due under the Plan are not made. Accordingly, § 1191(c)(3)(B) does not need to be satisfied.

Accordingly, confirmation of the Plan is proper under 11 U.S.C. § 1191(b), and the Plan will be confirmed so long as the missing monthly operating reports for November 2022 and December 2022 have been filed by the time of the confirmation hearing.

8. 22-10778-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
5-8-2022 [1]

NOEL KNIGHT/ATTY. FOR DBT.

NO RULING.

1. 22-11903-A-7 **IN RE: JOSHUA MARTIN AND DEANNA LUNA**
PFT-1

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
12-13-2022 [12]

STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtors shall attend the meeting of creditors rescheduled for February 6, 2023, at 3:00 p.m. If the debtors fail to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Federal Rules of Bankruptcy Procedure 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtors' discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.

2. 18-14207-A-7 **IN RE: ELMER/KATHLEEN FALK**
JES-4

MOTION FOR COMPENSATION FOR JAMES SALVEN, ACCOUNTANT(S)
12-16-2022 [145]

JAMES SALVEN/MV
JERRY LOWE/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The joint debtor filed a timely response. Doc. #151. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53

(9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

As an informative matter, the movant incorrectly completed Section 7 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #150. The declarant properly checked Section 7 of the Certificate of Service form by checking Rule 5 Service § 6B(2)(a): US Mail in Section 7 of the Certificate of Service form. In addition, the declarant should have checked Rule 5 Service § 6B(2)(b): Request for Special Notice.

James E. Salven ("Movant"), certified public accountant for chapter 7 trustee James E. Salven ("Trustee"), requests allowance of final compensation and reimbursement for expenses for accounting services rendered pursuant to employment authorized on December 9, 2022. Doc. #145; Ex. A, Doc. #148. Movant provided accounting services valued at $1,820.00, and requests compensation for that amount. Doc. #145. Movant requests reimbursement for expenses in the amount of $396.03. Doc. #145. This is Movant's first and final fee application.

Joint Debtor Kathleen Falk filed a timely response on January 9, 2023, stating that she does not have the funds to pay the requested amount because the only income she receives is through social security. Doc. #151. Further, Mrs. Falk says that notice was mailed to an address at which she no longer resides and that she did not receive notice of the motion until December 24, 2022. Id. Mrs. Falk plans to attend the hearing on January 25, 2023. Id.

Because it is the bankruptcy estate, not Mrs. Falk, that will be responsible for the payment of the requested fees and expenses if allowed by the court, the court is inclined to GRANT Movant's motion, notwithstanding the response filed by Mrs. Falk.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) conflict review and prepare employment application; (2) analyze gross receipts to determine best tax year end; (3) input tax return data and process both debtors' tax returns; (4) finalize returns and tax clearance letters; and (5) prepare, file and serve fee application. Decl. of James E. Salven, Doc. #147; Ex. A, Doc. #148. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

Accordingly, the court is inclined to GRANT Movant's motion notwithstanding the response filed by Mrs. Falk. The court allows final compensation in the amount of $1,820.00 and reimbursement for expenses in the amount of $396.03. Trustee is authorized to make a combined payment of $2,216.03, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

3. 13-15711-A-7 **IN RE: GEORGE SALDATE AND ELISE HERNANDEZ**
FW-4

MOTION TO APPROVE STIPULATION RESOLVING TRUSTEE'S OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS AND SETTING AMOUNT OF THE SAME
12-20-2022 [59]

JAMES SALVEN/MV
LAYNE HAYDEN/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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.

As an informational matter, the movant filed two mandatory certificates of service forms (EDC Form 7-005, Rev. 10/22) with respect to service of the motion that counsel was required to use starting on November 1, 2022 pursuant to General Order 22-03. Doc. ##63, 64. However, the movant could have shown all service of the motion on one certificate of service form. The movant served notice of the hearing on all creditors and served the notice and motion papers on a smaller list. Instead of filing a separate certificate of service with respect to the notice of hearing on all creditors, the movant could have, in addition to indicating service of all pleadings on Debtor(s), Debtor attorney(s), Trustee, U.S. Trustee, and Persons who have filed a Request for Notice, checked the "All creditors and parties in interest (Notice of Hearing Only)" in section 5 of Doc. #64 and attached the list of creditors receiving notice as Attachment 6B2. The mandatory certificate of service form is designed so that all pleadings served can be listed and, if the "All creditors and parties in interest (Notice of Hearing Only)" or "Only creditors that have filed claims (Notice of Hearing Only)" boxes are checked, then that indicates that those creditors and parties in interest were served with only a copy of the notice of hearing and were not served with the other pleadings.

James E. Salven ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of George Saldate and Elise Saldate, moves the court for an order, pursuant to Federal Rule of Bankruptcy Procedure 9019, approving a stipulation resolving Trustee's objection to debtor Elise Saldate's claim of an exemption in a product liability claim. Doc. #59.

Debtors George Saldate and Elise Saldate received a discharge on December 5, 2013, and the case closed by Final Decree two days thereafter. Doc. #14. Debtor Elise Saldate ("Debtor") and her now ex-spouse George Saldate divorced following the entry of discharge. Ex. A. Doc. #61. Thereafter, the United States Trustee was informed that Debtor and her now ex-spouse failed to schedule an interest in a lawsuit ("Claim") that was property of the estate. Doc. #59. The Claim appears to have resulted in a potential settlement. Id. Trustee and Debtor dispute what exemption, if any, Debtor would be entitled to claim in the Claim. Doc. #59. Debtor contends the Claim and any proceeds thereof are her sole and separate property and are in no way the property of her now ex-spouse. Ex. A, Doc. #61. Trustee and Debtor entered into a stipulation that provides for a precise formula by which Debtor will be entitled to claim a portion of the Claim proceeds as exempt, but also provides for the payment of administrative costs of the bankruptcy estate and a dividend to creditors of the estate. Ex. A, Doc. #61.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #59. Although Trustee believes he will ultimately succeed in litigation, the terms of the stipulation with Debtor obviates the need to continue litigation of the estate's claims. Doc. #62, Tr.'s Decl. at ¶ 3. Further, even if Trustee prevails, it is possible a portion of the proceeds may be exemptible. Id. The litigation would not be unduly complex on the principles of law, but the factual dispute, depending on what exemptions were claimed and surrendered or switched would be difficult and require considerable discovery and expense. Id. at ¶ 5. The stipulation provides that the estate and Debtor will know the maximum exemptions Debtor will be permitted in the proceeds of a pending civil litigation claim, and that the non-exempt funds will be available to pay administrative costs of the estate and a dividend to the general unsecured creditors. Id. at ¶ 6. Trustee believes in his business judgment that the stipulation is fair, reasonable, and obtains an economically advantageous result for the estate. Id. at ¶ 5. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion is GRANTED, and the settlement between Trustee and Debtor is approved.

This ruling is not authorizing the payment of any fees or costs associated with the dispute that is the basis for the stipulation.

4. 13-15711-A-7 **IN RE: GEORGE SALDATE AND ELISE HERNANDEZ**
JES-2

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
12-19-2022 [53]

JAMES SALVEN/MV
LAYNE HAYDEN/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.

James E. Salven ("Movant"), certified public accountant for chapter 7 trustee James E. Salven ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered since employment was authorized by this court on September 19, 2022. Doc. #53; Ex. A, Doc. #56. Movant provided accounting services valued at $1,260.00, and requests compensation for that amount. Doc. 53. Movant requests reimbursement for expenses in the amount of $279.37. Doc. #53. This is Movant's first and final fee application. Trustee filed a statement of no objection. Doc. #58.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) conflict review and prepare employment application; (2) analyze and input data for both debtors' returns; (3) finalize returns and tax clearance letters; and (4) prepare, file and serve fee application. Decl. of James E. Salven, Doc. #55; Ex. A, Doc. #56. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of $1,260.00 and reimbursement for expenses in the amount of $279.37. Trustee is authorized to make a combined payment of $1,539.37 representing compensation and reimbursement, to Movant. Trustee is authorized

to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

5. 22-11019-A-7 **IN RE: CATHRYN SMITH**
JCW-1

MOTION TO ANNUL THE AUTOMATIC STAY, MOTION FOR RELIEF FROM AUTOMATIC STAY
12-23-2022 [101]

U.S. BANK NATIONAL ASSOCIATION/MV
PETER BUNTING/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor does not oppose the motion. Doc. #108. The chapter 7 trustee filed a conditional non-opposition to the motion stating that the trustee only opposes the motion to the extent that the moving party requests any further relief against the bankruptcy estate, such as attorney's fees imposed against the estate. Doc. #110. The failure of creditors, the U.S. Trustee, or any other non-responding 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 non-responding parties in interest are entered.

The movant, U.S. Bank National Association, as trustee ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(4) with respect to the real property located at 2 Bentley Ct, Petaluma, CA 94952 (the "Property"). Doc. #101. Movant also requests the court retroactively annul the automatic stay as to Movant so Movant can validate a foreclosure sale of the Property that occurred post-petition. Id. The court is inclined to grant all relief requested by Movant except for Movant's request for imposition of attorneys' fees and costs or any further relief against the bankruptcy estate.

**11 U.S.C. § 362(d)(1) Analysis**

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).

Cathryn Smith ("Debtor") filed a chapter 7 petition on June 20, 2022. Doc. #1. Debtor did not acknowledge the Property in her schedules or in the bankruptcy petition, and her interest in the Property was obtained post-petition. Id.; Ex. D, Doc. #105.

Debtor is not the original borrower on Movant's loan. Decl. of Heather Johnson, ¶ 9, Doc. #104. Tamara Freitas and Gary R. Freitas ("Borrowers") are the borrowers on Movant's loan dated November 27, 2006. Id. at ¶ 5. Borrowers defaulted on Movant's loan, and Movant held a foreclosure sale on the Property on November 2, 2022. Id. at ¶ 8.

On or around October 31, 2022, Borrowers transferred an alleged interest in the Property ("Grant Deed") to Borrowers and Debtor, all as joint tenants without the knowledge or consent of the Movant in violation of the terms of the Deed of Trust that Borrowers signed. Id. at ¶ 9, Exs. A & D, Doc. #105.

On June 21, 2022, an Order Terminating Automatic Stay (In Rem) ("In Rem Order") pursuant to 11 U.S.C. § 362(d)(4) was entered with respect to the Property in another bankruptcy case. Doc. #101; Ex. E, Doc. #105. The In Rem Order was recorded in Sonoma County on June 28, 2022. Id. Debtor's bankruptcy case was filed one day prior to the entry of the In Rem Order. Doc. #101. The Grant Deed was executed on October 31, 2022, just days before Movant's scheduled foreclosure sale. Id. Movant did not receive notice of either Debtor's bankruptcy case or Debtor's interest the Property until after the foreclosure sale took place. Id.

Based on the evidence before the court, it appears that Debtor does not have an interest in the Property. Rather, it appears that

> this case is consistent with the pattern in so-called "hijacked" or "dumping" cases – *i.e.*, cases in which a transferor of property, acting *without* the debtor's participation or acquiescence, seeks to implicate the automatic stay for the transferor's *own* benefit by purporting to transfer property into a random bankruptcy estate[.]

In re 4th St. E. Investors, Inc., 474 B.R. 709, 711 (Bankr. C.D. Cal. 2012) (emphasis in original). Because it appears that Borrowers have "hijacked" the automatic stay in Debtor's bankruptcy case, cause exists to grant relief from the automatic stay.

**11 U.S.C. § 362(d)(4) Analysis**

Section 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). To obtain relief under § 362(d)(4), the court must affirmatively find: (1) the debtor's bankruptcy filing is part of a scheme; (2) the object of the scheme is to delay, hinder, or defraud creditors; and (3) the scheme involves either (i) the transfer of some interest in real property without the secured creditor's consent or court approval or (ii) multiple bankruptcy filings affecting the property. First Yorkshire Holdings, Inc. v. Pacifica L 22 (In re First Yorkshire Holdings, Inc.), 470 B.R. 864, 870-71 (B.A.P. 9th Cir. 2011). "[T]he multiple filings thus must somehow be connected with or included in the scheme to delay, hinder and defraud creditors." In re Muhaimin, 343 B.R. 159, 168 (Bankr. D. Md. 2006).

"A scheme is an intentional construct. It does not happen by misadventure or negligence." In re Duncan & Forbes Dev., Inc., 368 B.R. 27, 32 (Bankr. C.D. Cal. 2007). Because direct evidence of a scheme is uncommon, "the court must infer the existence and contents of a scheme from circumstantial evidence. The party claiming such a scheme must present evidence sufficient for the trier of fact to infer the existence and content of the scheme." Id.; see Jimenez v. ARCPE 1, LLP (In re Jimenez), 613 B.R. 537, 545 (B.A.P. 9th Cir. 2020).

Section 362(d)(4) "does not require that it be the debtor who has created the scheme or carried it out, or even that the debtor be a party to the scheme at all." Duncan & Forbes, 368 B.R. at 32. "The language of § 362(d)(4) is likewise devoid of any requirement of a finding of bad faith by the Debtor." In re Dorsey, 476 B.R. 261, 267 (Bankr. C.D. Cal. 2012).

Based on the evidence before the court, it appears that Debtor does not have an interest in the Property. Rather, it appears that Borrowers have "hijacked" the automatic stay in Debtor's bankruptcy case. In re 4th St. E. Investors, Inc., 474 B.R. 709, 711 (Bankr. C.D. Cal. 2012). Accordingly, the court finds that Debtor's bankruptcy case is part of a scheme to delay, hinder, or defraud Movant and Movant's scheduled foreclosure sale of the Property.

Movant has alleged only one bankruptcy case, the current bankruptcy case, to be involved in delaying, hindering or defrauding Movant in completing Movant's foreclosure sale of the Property. Thus, Movant must show the transfer of some interest in the Property without Movant's consent or court approval for the court to find sufficient grounds to grant relief from the automatic stay under § 362(d)(4). There is a basis for this court to grant relief from stay under § 362(d)(4) if the purported granting of some interest in the Property to Debtor and Borrowers was without Movant's consent. Pursuant to the declaration filed on December 23, 2022 and supporting exhibits, Borrowers transferred an alleged interest in the Property to Borrowers and Debtor without Movant's consent. Johnson Decl., ¶ 9, Doc. #104; Ex. D, Doc. #105. Moreover, another bankruptcy court has already determined that relief from stay under § 362(d)(4) with respect to the Property is appropriate. In Rem Order, Ex. E, Doc. #105.

Accordingly, in rem relief from stay as to Movant is warranted under 11 U.S.C. § 362(d)(4).

**Retroactive Annulment of Automatic Stay Analysis**

Section 362(d) allows the court to grant relief from the stay with respect to real property by terminating, annulling, modifying, or conditioning such stay. The bankruptcy court has "wide latitude in crafting relief from the automatic stay, including the power to grant retroactive relief from the stay." Schwartz v. United States (In re Schwartz), 954 F.2d 569, 572-73 (9th Cir. 1992). In the Ninth Circuit, a court "balances the equities in order to determine whether retroactive annulment is justified." See Nat'l Envtl. Waste Corp. v. City of Riverside (In re Nat'l Envtl. Waste Corp.), 129 F.3d 1052, 1055 (9th Cir. 1997) (citations omitted). Factors in determining whether cause exists to annul the stay retroactively include whether the creditor was aware of the bankruptcy filing and whether the debtor engaged in bad faith. See id. at 1055. Additional factors demonstrating cause for retroactive annulment of the automatic stay include the number of bankruptcy filings, the extent of prejudice to third parties if stay relief is not retroactive, whether creditors knew of the stay but nonetheless took action and whether annulment would cause irreparable injury to the debtor. See In re Fjeldsted, 293 B.R. 12, 24-26 (B.A.P. 9th Cir. 2003).

Here, Movant did not have notice of Debtor's bankruptcy filing when the foreclosure sale took place. Johnson Decl., Doc. #104. Further, Movant was also unaware of the post-petition transfer of an interest in the Property to Debtor when the foreclosure sale of the Property took place. Id. Movant only obtained notice of Debtor's alleged interest in the Property on November 2, 2022 when a facsimile was received requesting the foreclosure sale scheduled to be conducted that day be stopped along with a notice of Debtor's bankruptcy filing and copy of the Grant Deed. Id. Movant had already conducted the foreclosure sale on November 2, 2022 without knowledge of Debtor's bankruptcy case. Id. Once Movant learned of Debtor's bankruptcy filing, Movant retained counsel to obtain the appropriate relief. Motion, Doc. #101. Movant previously obtained relief against the Property pursuant to 11 U.S.C. 362(d)(4) based on numerous bankruptcy filings and transfers of interest in the Property. In Rem Order, Ex. E, Doc. #105.

Retroactive annulment of the automatic stay to validate the foreclosure sale on November 2, 2022 will not cause irreparable injury to Debtor because Debtor claims no interest in the Property. Debtor's Non-Opp., Doc. #108.

Based on the factors listed above, the court finds that cause exists for annulment.

**Conclusion**

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. The court further finds that cause exists to annul the automatic stay retroactively so as to validate the foreclosure sale of the Property that occurred on November 2, 2022. The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because it appears that Borrowers improperly "hijacked" the automatic stay in Debtor's bankruptcy case. Finally, in rem relief from stay as to Movant is warranted under 11 U.S.C. § 362(d)(4). No other relief is awarded.

6. 22-12133-A-7 **IN RE: COMMUNITY REGIONAL ANESTHESIA MEDICAL GROUP, INC.**
FW-1

MOTION TO EMPLOY PETER L FEAR AS ATTORNEY(S)
12-23-2022 [8]

IRMA EDMONDS/MV
RILEY WALTER/ATTY. FOR DBT.
IRMA EDMONDS/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, 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.

As an informational matter, the movant filed two mandatory certificates of service forms (EDC Form 7-005, Rev. 10/22) with respect to service of the motion that counsel was required to use starting on November 1, 2022 pursuant to General Order 22-03. Doc. ##13, 14. However, the movant could have shown all service of the motion on one certificate of service form. The movant served notice of the hearing on all creditors and served the notice and motion papers on a smaller list. Instead of filing a separate certificate of service with respect to the notice of hearing on all creditors, the movant could have, in addition to indicating service of all pleadings on Debtor(s), Debtor attorney(s), Trustee, U.S. Trustee, and Persons who have filed a Request for Notice, checked the "All creditors and parties in interest (Notice of Hearing Only)" in section 5 of Doc. #13 and attached the list of creditors receiving notice as Attachment 6B2. The mandatory certificate of service form is designed so that all pleadings served can be listed and, if the "All creditors and parties in interest (Notice of Hearing Only)" or "Only creditors that have filed claims (Notice of Hearing Only)" boxes are checked, then that indicates that those creditors and parties in interest were served with only a copy of the notice of hearing and were not served with the other pleadings.

Irma Edmonds ("Trustee"), the chapter 7 trustee, moves pursuant to 11 U.S.C. § 327(a) and (c) for authorization to employ Fear Waddell, PC ("General Counsel") to serve as general bankruptcy counsel in this chapter 7 case. Doc. #8.

Section 327(a) of the Bankruptcy Code permits Trustee to employ, with court approval, professionals "that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a).

Trustee requires General Counsel's services related to the administration of assets in the bankruptcy case without purporting to limit the proposed engagement, such as: (1) investigating financial affairs of the debtor; (2) analyzing potential avoidance actions; and (3) assisting with the collection of receivables owned by the estate. Doc. #8. Trustee proposes to pay General Counsel on an hourly basis subject to Bankruptcy Court approval. Ex. A, Doc. #12.

General Counsel has verified that it has no connection with the chapter 7 debtors, professionals, or any other party in interest other than those connections disclosed. Decl. of Peter L. Fear, Doc. #11. In particular, General Counsel previously represented creditors Jennifer Chi and Rhonda Hardy-Joel in the debtor's now dismissed chapter 11 petition, No. 21-11542, but General Counsel no longer represents Jennifer Chi and Rhonda Hardy-Joel and is not owed any money related to this representation. Id. Creditors Jennifer Chi and Rhonda Hardy-Joel have filed proofs of claim in this case and have filed a motion for stay relief to permit state court litigation to liquidate the amount of those claims, as well as to continue that litigation against other parties in the state court matter. Claims 1 and 2; Doc. #15.

Neither of these actions is materially adverse to the Trustee, as the Trustee will be working to recover funds for the benefit of all creditors, including creditors Jennifer Chi and Rhonda Hardy-Joel. Doc. #8. General Counsel believes it is a disinterested person as defined in 11 U.S.C. § 101(14). Fear Decl., Doc. #11.

Section 327(c) further provides that a professional is not disqualified for employment under 11 U.S.C. § 327 "solely because of such [professional's] employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest." 11 U.S.C. § 327(c). Here, Trustee has noticed this motion to the United States trustee, all creditors and other parties in interest. Doc. #13. Neither the United States trustee nor any creditor has objected to Trustee's employment of General Counsel.

After review of the evidence, the court finds that General Counsel does not represent or hold an adverse interest to Trustee or to the estate.

Accordingly, Trustee's motion to employ General Counsel is GRANTED. Trustee will be authorized to employ General Counsel. The order authorizing employment of General Counsel shall specify that any compensation or reimbursement from the estate is subject to the court's approval pursuant to 11 U.S.C. § 330(a).

7. 21-11034-A-7 **IN RE: ESPERANZA GONZALEZ**
DMG-5

MOTION FOR COMPENSATION FOR D. MAX GARDNER, TRUSTEES ATTORNEY(S)
1-4-2023 [208]

D. GARDNER/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 the hearing.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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.

D. Max Gardner, Attorney at Law ("Movant"), attorney for chapter 7 trustee James E. Salven ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from October 21, 2021 through December 28, 2022. Doc. #208. Movant provided legal services valued at $21,590.00, and requests compensation for that amount. Doc. #208. Movant requests reimbursement for expenses in the amount of $284.21. Doc. #208. This is Movant's first and final fee application.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing counsel to Trustee as to the administration of the chapter 7 case; (2) drafting motion to compromise interest in property; (3) completing reply documents to opposition to motion to compromise; (4) drafting motion to abandon; (5) preparing supplemental points and authorities and supplemental declaration of Trustee regarding motion to compromise ABLP litigation; and (6) preparing and filing employment and fee applications. Decl. of D. Max Gardner, Doc. #210; Ex. A, Doc. #211. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

Accordingly, the court is inclined to GRANT Movant's motion to for compensation. The court allows final compensation in the amount of $21,590.00 and reimbursement for expenses in the amount of $284.21. Trustee is authorized to make a combined payment of $21,874.21, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

8. 22-11945-A-7 **IN RE: JULIA BIVENS**
APN-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-15-2022 [15]

GLOBAL LENDING SERVICES LLC/MV
MARK ZIMMERMAN/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 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.

As an informative matter, the certificate of service filed in connection with this motion for relief from stay (Doc. #20) was filed as a fillable version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/2022) instead of being printed prior to filing with the court. The version that was filed with the court can be altered because it is still the fillable version. In the future, counsel for the moving party should print the completed certificate of service form and not file the fillable version.

The movant, Global Lending Services LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2015 Honda Accord ("Vehicle"). Doc. #15.

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 has failed to make at least three complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least $1,215.39. Doc. #15. The moving papers show the collateral is a depreciating asset and there is lack of insurance. Doc. #15. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

However, the court does not find relief from stay is proper under § 362(d)(2), While the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7, the debtor does have equity in the Vehicle because the Vehicle is valued at $14,200.00 and the debtor owes $13,769.92. Doc. #17.

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 and to use the proceeds from its disposition to satisfy its claim. The motion is denied pursuant to 11 U.S.C. § 362(d)(2). No other relief is awarded.

9. 18-11949-A-7 **IN RE: MOGUL ENERGY PARTNERS I, LLC**
LNH-6

MOTION FOR COMPENSATION FOR LISA HOLDER, TRUSTEES ATTORNEY(S)
1-3-2023 [228]

D. GARDNER/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 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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.

As a procedural matter, the Clerk's Matrix of Creditors used by the moving party to serve notice of the motion does not comply with LBR 7005-1(d), which requires that the Clerk's Matrix of Creditors used to serve a notice be downloaded not more than 7 days prior to the date notice is served. Here, the moving party served notice of the motion on January 3, 2023 using a Clerk's Matrix of Creditors that was generated on December 20, 2022. Doc. #233. Further, the list of persons who have filed Requests for Special Notice and list of ECF Registered Users were generated on December 16, 2022.

Lisa Noxon Holder, PC ("Movant"), general counsel for chapter 7 trustee Jeffrey M. Vetter ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from May 1, 2019 through December 31, 2022. Doc. #228. Movant provided legal services valued at $16,451.00, and requests compensation for that amount. Doc. #228. Movant requests reimbursement for expenses in the amount of $282.24. Doc. #228. This is Movant's first and final fee application.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) drafting 9019 motion; (2) preparing tolling agreement regarding 9019 motion; (3) drafting and revising motion for order confirming sale; (4) researching law regarding executory contract assumption and assignment; (5) preparing demand letter regarding notes payable; and (6) preparing and filing employment and fee applications. Decl. of Lisa Holder, Doc. #232; Ex. A, Doc. #231. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

Accordingly, the court is inclined to GRANT Movant's motion to for compensation. The court allows final compensation in the amount of $16,451.00 and reimbursement for expenses in the amount of $282.24. Trustee is authorized to make a combined payment of $16,733.24, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

10. 22-12156-A-7 **IN RE: RENE ESQUIVEL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-5-2023 [17]

JOEL WINTER/ATTY. FOR DBT.
DISMISSED 1/9/23

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on January 9, 2023, Doc. #19. The order to show cause will be dropped as moot. No appearance is necessary.

11. 08-13957-A-7 **IN RE: HERBERT/THERESE ANDERSON**
FW-2

MOTION TO EMPLOY AIMEE WAGSTAFF AS SPECIAL COUNSEL AND/OR MOTION TO EMPLOY JOHN HENSLEY AS SPECIAL COUNSEL, MOTION TO EMPLOY SARAH A. WOLTER AS SPECIAL COUNSEL
12-27-2022 [47]

JAMES SALVEN/MV
ADRIAN WILLIAMS/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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.

As a procedural matter, both Certificates of Service show service on more than six people, so a custom list is not permitted under LBR 7005-1(a). Doc. ##53, 54. Moreover, the matrices used by the moving party to show electronic service of the motion do not indicate when the lists were generated and do not comply with LBR 7005-1(d), which requires that the Clerk's Matrix of Creditors used to

serve a pleading reflect the date of downloading. Here, Attachments 6B1 were not generated from the court's website and do not indicate the date on which each matrix was generated. Doc. ##53, 54. The moving party should have used the court's website to generate Attachment 6B1. The link to generate such lists can be found at: http://www.caeb.circ9.dcn/MatrixOfRegisteredUsers.

As an informational matter, the movant filed two mandatory certificates of service forms (EDC Form 7-005, Rev. 10/22) with respect to service of the motion that counsel was required to use starting on November 1, 2022 pursuant to General Order 22-03. Doc. ##53, 54. However, the movant could have shown all service of the motion on one certificate of service form. The movant served notice of the hearing on all creditors and served the notice and motion papers on a smaller list. Instead of filing a separate certificate of service with respect to the notice of hearing on all creditors, the movant could have, in addition to indicating service of all pleadings on Debtor(s), Debtor attorney(s), Trustee, U.S. Trustee, Persons who have filed a Request for Notice, and Other Party(ies) in interest, checked the "All creditors and parties in interest (Notice of Hearing Only)" in section 5 of Doc. #53 and attached the list of creditors receiving notice as Attachment 6B2. The mandatory certificate of service form is designed so that all pleadings served can be listed and, if the "All creditors and parties in interest (Notice of Hearing Only)" or "Only creditors that have filed claims (Notice of Hearing Only)" boxes are checked, then that indicates that those creditors and parties in interest were served with only a copy of the notice of hearing and were not served with the other pleadings.

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Herbert Anderson and Therese Anderson, moves the court for an order authorizing the employment of the law firms of Andrus Wagstaff ("AW"), Balaban Law ("BL"), and Hensley Legal Group, P.C. ("HLG") (jointly "Special Purpose Counsel") to serve as special purpose counsel in this chapter 7 case pursuant to 11 U.S.C. §§ 327 and 328. Doc. #47. Trustee seeks authority to employ Special Purpose Counsel on a contingent fee basis and unambiguously requests approval under § 328. Doc. #47.

Section 327(a) of the Bankruptcy Code permits Trustee to employ, with court approval, professionals "that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a). Section 327(e) of the Bankruptcy Code permits Trustee to employ, with court approval, for a specified special purpose, other than to represent the Trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney "does not represent or hold any interest adverse to the debtor or to the estate with respect to matter on which such attorney is to be employed." 11 U.S.C. § 327(e). The trustee may, with the court's approval, employ a professional on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. 11 U.S.C. § 328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

Trustee requires Special Purpose Counsel's services to assist with: (1) resolving liens; (2) performing the necessary terms to complete the settlement; and (3) obtaining bankruptcy court approval of any settlement offered or continuing litigation. Doc. #47. Trustee proposes to pay Special Purpose Counsel a contingency fee of forty percent (40%), to be split amongst

Special Purpose Counsel, plus costs incurred, but only once the settlement is approved by this court pursuant to 11 U.S.C. § 328(a). Doc. #47.

Special Purpose Counsel has been representing debtor Herbert Anderson for several years in a product liability case and has been instrumental in securing a settlement from a private resolution program that the manufacturer of the alleged toxic chemical set up to pay out claims of claimants represented by Special Purpose Counsel in which debtor Herbert Anderson's claim is eligible for inclusion. Doc. #47. Except as set forth above, Special Purpose Counsel has verified that they have no connection with the creditors, professionals, or any other party in interest. Decl. of Aimee Wagstaff, Doc. #50, Decl. of John Hensley, Doc. #51, Decl. of Sarah Wolter, Doc. #52. The court finds that Special Purpose Counsel is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate.

Trustee unambiguously requests pre-approval of payment to Special Purpose Counsel pursuant to § 328. Doc. #47. Upon court approval of the settlement, Trustee will pay a contingency fee of 40% to Special Purpose Counsel. Doc. #47. Special Purpose Counsel will split the contingency fee award between themselves. Doc. #47.

Accordingly, this motion is GRANTED. The arrangement between Trustee and Special Purpose Counsel is reasonable in this instance. Trustee shall submit a form of order specifically stating that employment of Special Purpose Counsel has been approved pursuant to 11 U.S.C. § 328.

12. 08-13957-A-7 **IN RE: HERBERT/THERESE ANDERSON**
FW-3

MOTION TO APPROVE STIPULATION REGARDING EXEMPTION IN PRODUCT LIABILITY CLAIM
12-22-2022 [41]

JAMES SALVEN/MV
ADRIAN WILLIAMS/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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.

As a procedural matter, the Certificate of Service shows service on more than six people, so a custom list is not permitted under LBR 7005-1(a). Doc. #46. Moreover, the matrix used by the moving party to show electronic service of the motion does not indicate when the list was generated and does not comply with LBR 7005-1(d), which requires that the Clerk's Matrix of Creditors used to serve a pleading reflect the date of downloading. Here, Attachment 6B1 was not generated from the court's website and does not indicate the date on which the matrix was generated. Doc. #46. The moving party should have used the court's website to generate Attachment 6B1. The link to generate such lists can be found at: http://www.caeb.circ9.dcn/MatrixOfRegisteredUsers.

As an informational matter, the movant filed two mandatory certificates of service forms (EDC Form 7-005, Rev. 10/22) with respect to service of the motion that counsel was required to use starting on November 1, 2022 pursuant to General Order 22-03. Doc. ##45, 46. However, the movant could have shown all service of the motion on one certificate of service form. The movant served notice of the hearing on all creditors and served the notice and motion papers on a smaller list. Instead of filing a separate certificate of service with respect to the notice of hearing on all creditors, the movant could have, in addition to indicating service of all pleadings on Debtor(s), Debtor attorney(s), Trustee, U.S. Trustee, and Persons who have filed a Request for Notice, checked the "All creditors and parties in interest (Notice of Hearing Only)" in section 5 of Doc. #45 and attached the list of creditors receiving notice as Attachment 6B2. The mandatory certificate of service form is designed so that all pleadings served can be listed and, if the "All creditors and parties in interest (Notice of Hearing Only)" or "Only creditors that have filed claims (Notice of Hearing Only)" boxes are checked, then that indicates that those creditors and parties in interest were served with only a copy of the notice of hearing and were not served with the other pleadings.

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Herbert Anderson and Therese Anderson (collectively, "Debtors"), moves the court for an order, pursuant to Federal Rule of Bankruptcy Procedure 9019, approving a stipulation resolving Trustee's objection to debtor Therese Anderson's claim of an exemption in a product liability claim. Doc. #41.

Trustee claimed Debtors failed to schedule an interest in a lawsuit ("Claim") pertaining to Herbert Anderson, debtor Therese Anderson's now-deceased spouse. Tr.'s Decl. ¶ 2, Doc. #43. The Claim appears to have resulted in a potential settlement. Id. Trustee and debtor Therese Anderson entered into a stipulation that provides for a precise formula by which debtor Therese Anderson will be entitled to claim a portion of the Claim proceeds as exempt, but also provides for the payment of administrative costs of the bankruptcy estate and a dividend to creditors of the estate. Motion ¶ 7, Doc. #41.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #41. Although Trustee believes he will ultimately succeed in litigation, the terms of the stipulation with debtor Therese Anderson obviates the need to continue litigation of the estate's claims. Tr.'s Decl. ¶ 3, Doc. #43. Further, even if Trustee prevails, it is possible a portion of the proceeds may be exemptible. Id. The litigation would not be unduly complex on the principles of law, but the factual dispute, depending on what exemptions were claimed and surrendered or switched would be difficult and require considerable discovery and expense. Id. at ¶ 5. The stipulation provides that the estate and debtor Therese Anderson will know the maximum exemptions debtor Therese Anderson will be permitted in the proceeds of a pending civil litigation claim, and that the non-exempt funds will be available to pay administrative costs of the estate and a dividend to the general unsecured creditors. Id. at ¶ 6. Trustee believes in his business judgment that the stipulation is fair, reasonable, and obtains an economically advantageous result for the estate. Id. at ¶ 5. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion is GRANTED, and the settlement between Trustee and debtor Therese Anderson is approved.

This ruling is not authorizing the payment of any fees or costs associated with the dispute that is the basis for the stipulation.

13. 22-12068-A-7 **IN RE: ARMANDO GUTIERREZ**

MOTION FOR ADEQUATE PROTECTION, MOTION TO RETURN SEIZED PERSONAL PROPERTY
12-29-2022 [15]

ARMANDO GUTIERREZ/MV
ARMANDO GUTIERREZ/ATTY. FOR MV.
RESCHEDULED TO 1/11/23 PER ECF ORDER #26
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

On January 3, 2020, the court issued an order shortening time to hear the debtor's motion for adequate protection and to return seized personal property on January 11, 2023. Doc. #26. On January 12, 2023, the court issued an order after the hearing denying the debtor's motion. Doc. #36. Therefore, this matter is dropped from calendar.

14. 22-11671-A-7 **IN RE: SAMUEL KENDRICK**
KMM-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-15-2022 [17]

TOYOTA MOTOR CREDIT CORPORATION/MV
R. BELL/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo 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 2021 Toyota Tacoma ("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 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 has failed to make at least three complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least $2,495.49. Decl. of Ana Marquina, Doc. #19.

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. The Vehicle is valued at $39,450.00 and the debtor owes $44,038.95. Doc. #19. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

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.

15. 22-12074-A-7 **IN RE: CLAUDIA ABU**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-27-2022 [23]

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. An amended schedule D (Doc. #20) was filed by the debtor on December 12, 2022, which added a creditor who was not listed on the previously filed schedule D. A fee of $32.00 was required at the time of filing because the amended schedule D added a creditor. The fee was not paid. A notice of payment due was served on the debtor on December 18, 2022. Doc. #22.

If the filing fee of $32.00 is not paid prior to the hearing, the amended schedule D (Doc. #20) may be stricken, and sanctions will be imposed on the debtor on the grounds stated in the order to show cause.