

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, February 10, 2021
Place: Department B - Courtroom #13
Fresno, California

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [19-10516](#)-B-13 **IN RE: FRANK CRUZ**
[TCS-4](#)

MOTION TO MODIFY PLAN
12-29-2020 [[198](#)]

FRANK CRUZ/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

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

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). Frank Cruz ("Debtor") seeks to modify his chapter 13 plan. Doc. #198. Chapter 13 trustee Michael H. Meyer ("Trustee") and creditor Salas Financial ("Salas") filed objections to Debtor's modified plan. Doc. #206; #208.

Trustee contends that the plan unfairly discriminates between classes of unsecured claims because the current plan provides for Mel Abdelaziz ("Unsecured Creditor") to be paid pre-petition arrears of \$14,000.00 at \$254.55 per month. Doc. #150. Unsecured Creditor filed a claim in the amount of \$510,000.00 and Trustee has paid \$1,272.75, which is 0.25% of Unsecured Creditor's claim. Doc. #206. Thus, Trustee contends that all general unsecured creditors must be paid at least 0.25% of their claims or the plan will unfairly discriminate in violation of § 1322(b)(1). *Id.* Additionally, Trustee argues that the plan fails to provide for submission of all or such portion of Debtor's future earnings or income to the supervision and control of Trustee as is necessary to execute the plan as required by § 1322(a)(1). *Id.* The plan fails to account for Debtor's Class 1 mortgage, which is delinquent \$3,496.92 through December 2020. *Id.*

Salas, meanwhile, objects to the plan because Debtor owes pre-petition arrears of \$1,833.50 and the plan provides for payments of \$69.32 per month towards curing this balance. Doc. #208. Salas contends that the arrearage will not be cured until 22 months after the loan matures, which constitutes a violation under § 1322(b)(5).

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's and Salas' opposition to confirmation is withdrawn,

Debtor shall file and serve a written response not later than February 24, 2021. 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 Debtor's position. Trustee and Salas shall file and serve a reply, if any, by March 3, 2021.

If Debtor elects 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 March 3, 2021. If Debtor does 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.

2. [20-13217](#)-B-13 **IN RE: LARRY/DOLORES SYRA**
[MAZ-2](#)

MOTION FOR COMPENSATION FOR MARK A. ZIMMERMAN, DEBTORS
ATTORNEY(S)
1-7-2021 [\[44\]](#)

LARRY SYRA/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Larry N. and Dolores G. Syra's ("Debtors") counsel, Mark A. Zimmerman ("Movant") requests fees of \$2,500.00 for services rendered and expenses incurred from September 25, 2020 through the completion of this case. Doc. #44. Debtors jointly filed a declaration stating that they agreed to pay Movant \$4,000.00 to complete this chapter 13 case. Doc. #46. Debtors paid movant

\$1,500.00 toward attorney fees prior to filing and consented to him being paid an additional \$2,500.00 through the chapter 13 plan. *Id.* No other parties in interest timely filed written opposition.

This motion will be GRANTED.

Section 3.05 of the plan and Form EDC 3-096 indicate that Movant was paid \$1,500.00 prior to the filing of the case with additional fees of \$2,500.00 to be paid through the plan. Doc. #3, ¶ 3.05; #4. The plan provides two options for payment of Debtors' attorney fees: (1) the "no look" fee of LBR 2016-1(c) or (2) by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #3. Here, the latter box was checked requiring Movant to seek fees by filing and serving a motion in accordance with §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017. *Ibid.*

Movant's motion states that Movant intended to opt-in to LBR 2016-1(c), but "box 3.05 of the Plan was incorrectly checked for attorney fees to be paid by way of filing a motion in accordance with 11 U.S.C. Section 329 and 330, when the correct box should have been, complying with Local Rule 2016-1(c)." Doc. #44. Thus, Movant asks the court to approve attorney fees of \$2,500.00. *Id.* No contemporaneous time records were submitted. As noted above, Debtors filed a declaration stating that they agreed to pay Movant \$4,000.00 for their chapter 13 case prior to filing their petition. Doc. #46. LBR 2016-1(c) provides in relevant part:

The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements in this Subpart.

- 1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.
- 2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*.
- 3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all pre-confirmation services and most post-confirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request

additional compensation. Form 3-095, *Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases*, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6). . . .

LBR 2016-1(c)(1)-(3). Movant charged Debtors a total fee of \$4,000.00 and filed a copy of Form EDC 3-096. Doc. #4. Debtors appear to have intended to compensate Movant for all pre-confirmation services and most post-confirmation services for the \$4,000.00 fee described in LBR 2016-1(c). Doc. #46. Although Movant did not check the box opting-in to LBR 2016-1(c), he fulfilled all other pre-confirmation obligations and will perform the remaining post-confirmation services until this case is completed.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services have included, without limitation: (1) advising Debtor about bankruptcy and non-bankruptcy alternatives; (2) gathering information and documents to prepare the petition; (3) preparing the petition, schedules, statements, and chapter 13 plan; (4) preparing and sending § 341 meeting documents to Trustee; (5) attending and completing the § 341 meeting of creditors; (6) filing a motion to value collateral and seeking confirmation of a chapter 13 plan. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

The court notes no timely opposition to the motion was filed by any interested parties. This motion was on full notice.

This motion will be GRANTED. Movant shall be awarded \$2,500.00 for attorney fees and will be authorized to draw upon the \$1,500.00 in fees paid pre-petition. These fees shall cover remaining post-confirmation services in this case as specified in LBR 2016-1(c)(3). Movant may seek additional compensation only if there is substantial and unanticipated post-confirmation work that is necessary warranting additional fees.

3. [20-11118](#)-B-13 **IN RE: MARC ROCHA**
[MHM-1](#)

OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 9
12-11-2020 [\[24\]](#)

MICHAEL MEYER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

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

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Claim #9 filed by Cavalry SPV I, LLC ("Creditor"), on May 22, 2020 in the sum of \$4,344.36 and seeks that it be disallowed in its entirety. Doc. #24.

This objection will be SUSTAINED.

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under section 501, is deemed allowed, unless a party in interest objects.

Fed. R. Bankr. P. 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute *prima facie* evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000).

Here, Trustee has established that the statute of limitations in California bars a creditor's action to recover on a contract, obligation, or liability founded on an oral contract after two years and one founded on a written instrument after four years. See Cal. Civ. Proc. Code §§ 312, 337(1). A claim that is unenforceable under state law is also not allowed under 11 U.S.C. § 502(b)(1) upon objection. *In re GI Indust., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000). The last transaction on the account occurred on February 27, 2009, which is beyond the four-year statute of limitations. Claim #9, at 5.

Therefore, this objection will be SUSTAINED. Claim #9 filed by Cavalry SPV I, LLC, will be disallowed in its entirety.

4. [18-14322](#)-B-13 **IN RE: PATSY ALLEN**
[PPR-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
12-15-2020 [\[54\]](#)

CHAMPION MORTGAGE COMPANY/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
BONNI MANTOVANI/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Resolved by stipulation.

NO ORDER REQUIRED.

This motion was continued to allow Champion Mortgage Company ("Movant") to file and serve an amended notice of hearing conforming with Local Rule of Practice ("LBR") 9014-1(d)(3)(B)(iii) and to give Patsy Allen ("Debtor") time to cure her delinquency prior to considering further relief from the stay. Doc. #63. The court notes that Movant filed an amended notice of hearing with the correct LBR 9014-1(d)(3)(B)(iii) language on January 13, 2021. Doc. #64.

Movant and Debtor stipulated to adequate protection with stay relief upon declaration of non-compliance on January 26, 2021. Doc. #68. Movant and Debtor filed a duplicate stipulation on January 27, 2021. Doc. #70. On February 4, 2021, the parties, including the chapter 13 trustee, filed a third stipulation containing the same material terms as the previous two. Doc. #72. This stipulation provided: (1) Debtor shall pay Movant a total of \$2,939.24 with a partial payment of \$2,400.00 before January 29, 2021 and arrears of \$539.24 before February 15, 2021; (2) Debtor shall provide Movant with proof of insurance naming Movant as a loss payee before January 25, 2021; and (3) Debtor shall maintain insurance and property taxes. *Id.* In the event of a breach, Movant may file a declaration regarding non-compliance with an order for relief for immediate stay relief with waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). The court issued an order approving the stipulation on that same day. Doc. #76.

Therefore, this motion was resolved by stipulation and will be dropped from calendar.

5. [20-12332](#)-B-13 **IN RE: RAMON FLORES**
[MET-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-13-2021 [\[27\]](#)

WESTAMERICA BANK/MV
SCOTT LYONS/ATTY. FOR DBT.
MARY TANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

WestAmerica Bank ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2015 Toyota Camry ("Vehicle"). Doc. #27. Movant repossessed Vehicle from Ramon Leonel Flores ("Debtor") pre-petition on July 7, 2020, which is reflected in the schedules. Doc. #31, Ex. 3. No party in interest timely filed written opposition.

This motion will be GRANTED.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has failed to make at least

five pre-petition and six post-petition payments. Doc. #30. The movant has produced evidence that debtor is delinquent at least \$6,261.18 plus interest of \$333.37 and costs of \$3,245.65. *Id.*; 68. Moreover, Movant already has possession of the Vehicle because it was repossessed pre-petition. Amended Schedule A/B omits Vehicle entirely and Movant is listed as an unsecured creditor in Schedule E/F. *Id.*, Schedule A/B; *cf.* Schedule E/F, ¶ 4.9

The court also finds that the Debtor does not have any equity in the property and the property is not necessary to an effective reorganization. Movant has valued the Vehicle at \$14,000.00. The amount owed to Movant is \$15,046.44 as of July 13, 2020, with interest, late charges, and fees accruing. Doc. #29.

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.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Movant acquired possession of the property pre-petition and it is a depreciating vehicle.

6. [20-13638](#)-B-13 **IN RE: MIGUEL RODRIGUEZ-CISNEROS AND MARIA CEJA**
[EPE-1](#)

MOTION TO CONFIRM PLAN
12-30-2020 [[21](#)]

MIGUEL RODRIGUEZ-CISNEROS/MV
ADELE SCHNEIDEREIT/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1) and will proceed as scheduled.

Miguel Rodriguez-Cisneros and Maria De Jesus Ceja ("Debtors") filed this motion to confirm their first amended chapter 13 plan. Doc. #21. Chapter 13 trustee Michael H. Meyer ("Trustee") timely filed written opposition contending: (1) the plan fails to distribute property to unsecured creditors at least in the amount that they would be paid if the estate was liquidated under chapter 7; (2) the plan does not provide for all of Debtors' projected disposable income to be applied to unsecured creditors under the plan; (3) Debtors have failed to file, serve, and set for hearing a motion to value collateral; and (4) the plan's additional provisions

have not demonstrated compliance with the Bankruptcy Code and Federal Rules of Bankruptcy Procedure ("Rules"). Doc. #43.

Debtors filed amended schedules and timely replied addressing each issue individually. Doc. #47.

This motion will be DENIED.

Service Defects

Rule 2002(a) and (b) require all creditors and others specified of the time fixed for filing objections to plan confirmation and the date of the confirmation hearing. LBR 3015-1(d)(1) is specific about incorporating this national rule. To conform with local requirements, at least 35 days' notice of the hearing is necessary.

Though Debtors here did provide sufficient notice of the hearing on the Plan filed in December 2020 they did not provide enough notice for the confirmation of the plan filed January 7, 2021. They also did not serve all creditors as required by the national and local rule. Docs. #27, #29, #31. The more recent amendment to Rule 2002(h) which may reduce those who are to be served is only effective 70 days after the order for relief. That was January 26, 2021 here. This motion was served much earlier. Also, the service list did not even contain those creditors who filed claims.

Debtors attach another modified plan as an exhibit to their reply. That is not an appropriate "reply" since it is a new plan. This "new plan" was not served on the necessary parties either and is not served with the proper amount of notice.

So, on this basis alone, the motion should be DENIED.

Liquidation Value

Trustee contends that the plan proposes to pay \$17,387.12 (25%) to unsecured creditors. Doc. #43. Trustee is currently preparing objections to Debtors' claims of exemption.

First, Debtors own real property located at 1370 Dynes St., Merced, CA ("Dynes Property") valued at \$355,496.00. Doc. #32. Debtors exempted \$300,000.00 in Dynes Property equity under California Code Civ. Proc. ("C.C.P.") § 704.730(a)(2).

Trustee argues that the homestead exemption is fixed as of the petition date, and thus Debtors cannot claim a \$300,000 homestead exemption. Doc. #43 citing *Wilson v. Rigby*, 909 F.3d 306, 310 (9th Cir. 2018); *White v. Stump*, 266 U.S. 310, 313 (1924); *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1199 (9th Cir. 2012). Because the \$300,000.00 homestead exemption was not effective until January 1, 2021 and Debtors filed their petition on November 17, 2020, the Debtors are not entitled to use the \$300,000 exemption.

Debtors also exempted a 1995 Dodge Ram Truck in the amount of \$1,500.00 as a tool of the trade under § 704.060. Trustee contends that requiring a vehicle to commute to work does not make the truck

"necessary to the debtor's trade, business, or profession." Doc. #43 citing *In re Lopez*, 2015 WL 5309580 (B.A.P. 9th Cir. Sept. 3, 2015). Thus, Trustee argues that Debtors are not entitled to this exemption and Debtors have the burden of proof as the exemption claimant. *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 336-37 (B.A.P. 9th Cir. 2016); *In re Tallerico*, 532 B.R. 774, 788-90 (Bankr. E.D. Cal. 2015); *In re Pashenee*, 531 B.R. 834, 839 (Bankr. E.D. Cal. 2015).

Debtors have an additional \$25,233.23 in non-exempt or partially-exempt assets consisting of 1998 Cadillac Deville, a "Ford Truck," and a savings account at Merced Employee Federal Credit Union, resulting in a total liquidation value of \$77,372.58. Trustee claims the total unsecured claims equal \$69,548.47 and thus Debtors must pay 100% to unsecured creditors to satisfy the best interests of the creditors test. Doc. #43.

In response, Debtors state that "the multiplier is revised from 25%, as generated by the internet application that generates the schedules, to 8.3%, the Current multiplier for the California Eastern District Bankruptcy Court." Doc. #47. Debtors amended Schedule C modifying their homestead exemption to \$100,000.00 under C.C.P. § 704.730(a)(2). Doc. #45, Schedule C. The Dodge Ram exemption under C.C.P. § 704.060 was corrected to § 704.010. The "Ford Truck" referenced by Trustee was a clerical error and Debtors only own one Ford Truck. After making these changes, Debtors claim their liquidation value is \$25,548.47 and Debtors will pay 100% to unsecured creditors at a federal judgment interest rate. Doc. #47.

The Trustee may or may not agree, but it appears the Debtors intend to pay 100% of allowed unsecured claims.

Projected Disposable Income

Second, Trustee claims that the plan does not provide for all of Debtors' projected disposable income to be applied to unsecured creditors. Doc. #43. The plan proposes to pay \$3,754.47 per month, but Schedules I and J show that Debtors have a net monthly income of \$4,713.76. In Schedule J, Debtors also deduct an ongoing mortgage payment and car payment, which are listed in Class 1 and 2 respectively and paid through the plan.

Debtors disagree. Doc. #47. Even after correcting the schedules, Debtors contend that their deductions allowed under § 707(b)(2)(A) are \$13,489.78 compared to \$9,447.29 in total currently monthly income, which provides for monthly disposable income of -\$4,042.49 under § 1325(b)(2). *Id.*, Ex. A, at 7. Debtors argue that the plan does provide for all their disposable income to be applied to unsecured creditors.

Motions to Value Collateral

Trustee insists that the plan proposes to reduce the Class 2 claim of Ford Motor Credit Company based on the value of collateral, but no such motions have been filed, served, or set for hearing. Doc. #43; #30, ¶ 3.08. Because there is only one Ford Truck, Debtors assert, no motions to value collateral are necessary.

That is not consistent with the terms of the Plan. Paragraph 3.08 (c) of the Plan is plain. A motion to value is needed before the plan can be confirmed.

Additional Provisions

Lastly, Trustee objects to Debtors' additional provisions. Doc. #43. Additional Provision 7.01 states:

Section 2.03 "Duration of payments" shall be modified to pay the Law Offices of Adele Schneidereit an amount of \$1,000.00 on a monthly basis no later than the 1st day of each successive month after the approval of this plan until the end of the duration of payment (2 months).

Doc. #30, ¶ 7.01. Since no evidentiary showing has been made nor supporting briefs filed, Debtors have not demonstrated compliance with the Code or the Federal Rules of Bankruptcy Procedure. Trustee seeks that this provision be stricken because the date the plan payment is due is specifically set forth in 2.01 of the plan. Doc. #43.

In response, Debtors state that the proposed order strikes provision 7.01 regarding attorney fees to comply with § 1325(a)(1).

Conclusion

As noted above, Debtors did not properly serve all required parties in accordance with Rule 2002(a) and (b) and LBR 3015-1(d)(1). Docs. #27, #29, #31. For that reason and the lack of a valuation motion, the motion will be DENIED.

7. [20-13542](#)-B-13 **IN RE: PEDRO SILVA RAMIREZ AND ROSA PRECIADO DE SILVA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-12-2021 [[28](#)]

JAMES CANALEZ/ATTY. FOR DBT.

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that a final installment payment of \$231.00 was paid on January 29, 2021. Accordingly, the Order to Show Cause will be vacated.

8. [19-12163](#)-B-13 **IN RE: JACINTO/DEE'ANNA OROSCO**
[TDD-1](#)

MOTION TO MODIFY PLAN
12-29-2020 [\[62\]](#)

JACINTO OROSCO/MV
TIMOTHY DUCAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). Jacinto Simon Orosco and Dee'Anna Marie Orosco ("Debtors") seek to modify their chapter 13 plan. Doc. #62. Chapter 13 trustee Michael H. Meyer ("Trustee") opposed confirmation of Debtors' modified plan on the basis that it fails to provide for submission of all or such portion of future earnings or other future income to the supervision and control of Trustee as is necessary to execute the plan. Doc. #71.

Debtors timely replied stating that they filed an amended plan (Doc. #75) and will seek its confirmation soon. Doc. #76. The amended plan is currently scheduled for hearing on March 10, 2021 at 9:30 a.m. Thus, Debtors request that this motion be denied.

Accordingly, this motion will be DENIED AS MOOT because Debtors filed an amended plan set for hearing on March 10, 2021.

The court notes that the certificate of service (Doc. #67) does not contain the names and addresses of the parties served as required by Fed. R. Civ. P. 4(a) and 4(1) (as incorporated by Fed. R. Bankr. P. 7004(a)(1)). The certificate states that copies of the specified documents were placed in an envelope "addressed to the parties listed in the attached service list." Doc. #67. But no such service list is attached, which is grounds for denial without prejudice. Though Debtors requested this motion be denied, their amended plan should comply with the certificate of service requirements specified in the local and federal rules. *Cf.* Doc. #82.

9. [15-13470](#)-B-13 **IN RE: JULIA MOREAU**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
11-16-2020 [\[34\]](#)

MICHAEL MEYER/MV
RICHARD STURDEVANT/ATTY. FOR DBT.
WITHDRAWN 01/29/2021

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

On December 16, 2020, this matter was continued to February 10, 2021 so that the debtor, Julia Ann Moreau, could cure her delinquent chapter 13 plan payments by the continued date of the hearing. Doc. #44. On January 29, 2021, chapter 13 trustee Michael H. Meyer withdrew this motion. Doc. #49. A second withdrawal was filed February 1, 2021 to specify the location of the hearing. Doc. #51. Accordingly, the motion will be dropped from calendar.

10. [20-13172](#)-B-13 **IN RE: LIAN JOHNSTON**
[TCS-1](#)

MOTION TO CONFIRM PLAN
12-29-2020 [\[17\]](#)

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

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

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

11. [20-13579](#)-B-13 **IN RE: ISMAEL SPINDOLA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-22-2021 [\[39\]](#)

JAMES CANALEZ/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.

12. [20-12486](#)-B-13 **IN RE: DOUGLAS/HEATHERLY MICHAEL**
[APN-2](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
12-2-2020 [\[34\]](#)

VW CREDIT, INC./MV
GABRIEL WADDELL/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 matter was originally set for hearing on 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and

scheduled for January 6, 2021. Doc. #35. The following day, an amended notice of hearing was filed setting the hearing for January 13, 2021. Doc. #42. Both notices properly served (1) Douglas Allan Michael and Healtherly Gene Michael ("Debtors"); (2) Debtors' attorney, Gabriel J. Waddell; and (3) chapter 13 trustee Michael H. Meyer ("Trustee"). Doc. #39; #43. The United States trustee ("UST") was not properly served. *Id.*

On January 7, 2021, trying to correct the service defect, VW Credit, Inc. ("Movant") filed a second amended notice of hearing continuing the matter to February 10, 2021 at 9:30 a.m. Doc. #46. The separately filed certificate of service indicated that only UST was served the second amended notice. Doc. #47. An additional certificate of service was attached to the second amended notice providing that Debtors, their attorney, and Trustee were served. Doc. #46. The court noted LBR 9004-2(c), (e)(1) and (e)(2) require that notices, proofs of service, and other specified pleadings are to be filed as separate documents and copies of the pleadings "SHALL NOT be attached to the proof of service." Doc. #48.

No parties appeared at the January 6, 2021 hearing and the court continued the matter to February 10, 2021 despite the violation of LBR 9014-1(j) because Debtors had already surrendered possession of the collateral for which stay relief was being sought. Doc. #49. The court also ordered Movant to file a conforming certificate of service. Doc. #48. No such certificate of service was filed.

Although these procedural deficiencies were not cured, they are *de minimis* in this case because all parties were served as required by Fed. R. Bankr. P. 4001, 7004, and 9014, and Debtors voluntarily surrendered possession of the vehicle to Movant and omitted it from Schedule A/B. Similar violations of the local rules in other matters may result in the motion being denied without prejudice.

Movant seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2015 Volkswagen Jetta Base ("Vehicle"). Doc. #34. Movant states that Debtors voluntarily surrendered possession of the Vehicle. *Id.* Debtors do not list Vehicle as property of the estate in Schedule A/B and indicate "Voluntary Surrender VW Jetta" with respect to Movant in Schedule E/F. Doc. #1, at 42, Schedule E/F, ¶ 4.52.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtors have failed to make at least 11 pre-petition and two post-petition payments. Doc. #38. Movant has produced evidence that Debtors are delinquent at least \$5,571.56 plus \$1,268.76 in late fees. *Id.*; Doc. #36. Moreover, Debtors already voluntarily surrendered possession of Vehicle to Movant.

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. No other relief is awarded.

13. [20-12287](#)-B-13 **IN RE: JEFFREY/ANGELA BROWN**
[NES-1](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS
ATTORNEY(S)
1-7-2021 [[16](#)]

NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Jeffrey and Angela Brown's ("Debtors") counsel, Neil E. Schwartz of the Law Offices of Neil E. Schwartz ("Movant"), requests fees of \$10,110.00 and costs of \$441.00 for a total of \$10,551.00 for services rendered from June 2, 2020 through January 6, 2021. Doc. #16. Debtors signed a declaration stating that they have reviewed the fee application and have no objection to the approval of this fee application authorizing the chapter 13 trustee Michael H. Meyer ("Trustee") to pay \$7,551.00 to Movant. *Id.*, at 5, ¶ 9(7).

This motion will be GRANTED.

This is Movant's first interim fee application.

Section 3.05 of the plan and Form EDC 3-096 indicate that Movant was paid \$2,690.00 prior to filing the case and subject to court approval, additional fees of \$12,000.00 shall be paid through this

plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #8, ¶ 3.05; #3. The fee application states that Movant received a \$3,000.00 retainer. Doc. #16, at 2, ¶ 2(b)(1). The \$310.00 discrepancy is likely due to inclusion of the filing fee, which is included as a request for reimbursement.

Movant indicates that his firm spent 38 billable hours totaling \$10,110.00 in fees as follows:

Professional	Rate	Hours	Fees
N.S. Attorney	\$300.00	29.4	\$8,820.00
J.L. Paralegal	\$150.00	8.6	\$1,290.00
Totals:		38.0	\$10,110.00

Doc. #16, at 4, ¶ 7. Movant also incurred the following expenses:

Postage	\$25.00
Filing Fees	\$310.00
Credit Counseling	\$106.00
Total Costs:	\$441.00

Id., ¶ 6. The total fees and expenses requested in this application total \$10,551.00. After application of the \$3,000.00 retainer, Movant is requesting that Trustee be authorized to pay \$7,551.00 through the chapter 13 plan. Doc. #18, Ex. A.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation:

(1) advising Debtor about bankruptcy and non-bankruptcy alternatives; (2) reviewing Debtor's financial information, the effects of exemptions, repossession, and value of assets; (3) gathering information and documents to prepare the petition; (4) preparing the petition, schedules, statements, and chapter 13 plan; (5) preparing and sending § 341 meeting documents to Trustee; (6) attending and completing the § 341 meeting of creditors; and (7) confirming a chapter 13 plan. Doc. #16. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

This motion will be GRANTED. Movant shall be awarded \$10,110.00 in fees and \$441.00 in costs. Movant will be authorized to apply the \$3,000.00 retainer to the balance of fees, and Trustee will be authorized to pay Movant \$7,551.00 in accordance with the plan.

14. [19-12096](#)-B-13 **IN RE: JUAN ALAMILLA AND PATRICIA DELGADILLO**
[RMP-1](#) **ALAMILLA**

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION REQUEST
FOR COMFORT ORDER
1-12-2021 [\[26\]](#)

GREAT AJAX OPERATING
PARTNERSHIP L.P./MV
SCOTT LYONS/ATTY. FOR DBT.
RENEE PARKER/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part, denied in part.

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

This motion was filed on 28 days' notice as required by Local Rule of Practice 9014-1(f) and will proceed as scheduled.¹ The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the above-mentioned parties in interest **except** chapter 13 trustee Michael H. Meyer ("Trustee") will be entered.

Great Ajax Operating Partnership, L.P. ("Movant"), as serviced by Gregory Funding LLC, seeks relief from the automatic stay under §§ 362(d)(1) and (d)(2) with respect to residential real property located at 465 E. Morton Ave., Porterville, CA 93257 ("Property") so that it can begin foreclosure proceedings. Doc. #26. In the alternative, Movant requests a "comfort order" stating that there is no violation of the automatic stay if it does proceed with foreclosure. Movant also seeks (1) waiver of the 14-day stay of Rule 4001(a)(3); (2) the order be binding in any and all chapters if this case is converted; (4) attorney fees of \$1,050.00 and costs of \$188.00 to be added to the outstanding balance under the note; and (5) such other relief as deemed appropriate. *Id.*

Trustee timely filed opposition noting discrepancies between Movant's memorandum of points and authorities (Doc. #30) and its proof of claim (Claim #6-1). Doc. #34. Because the moving papers and filed proofs of claim are unclear as to the amount of the claimed

¹ Unless otherwise indicated, references to "LBR" are to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California; "Rules" are to the Federal Rules of Bankruptcy Procedure; "Civil Rules" are to the Federal Rules of Civil Procedure; and all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

delinquency and whether the amounts were incurred pre- or post-petition, Trustee requests that this motion be denied. *Id.*

Movant replied with an amended memorandum of points and authorities filed with a supporting declaration. Doc. #36; #37. Movant states that she erroneously failed to update the number of missed payments for the senior lienholder, but the amount of arrears is and was correct. Doc. #37. After making corrections, Movant contends that Juan Alamilla and Patricia Delgadillo Alamilla ("Debtors") have missed at least 4 post-petition payments between October 2020 and January 2021 totaling \$9,278.80. *Id.* On this basis, Movant requests stay relief.

This motion will be GRANTED IN PART and DENIED IN PART.

First, the court notes that Trustee was improperly served. Doc. #33. 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. This motion could be a contested matter if any party in interest opposes.

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). Though not applicable here, if the United States trustee is acting solely as trustee, then "by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending." Rule 7004(b)(10).

Rule 9036 does allow for electronic service but provides: "This rule does not apply to any pleading or other paper required to be served in accordance with Rule 7004." Rule 7004's service requirement is not subject to waiver under Civil Rule 4(d). See Rule 7004(a)(1).

Property is listed in the schedules and is therefore property of the estate. Doc. #9, Schedule A/B, ¶ 1.1. Because this motion affects property of the estate, Trustee must be served as its representative in accordance with Rule 7004 and cannot be served electronically. Because relief is not being sought against the United States trustee, electronic notice is sufficient in this instance.

Second, LBR 4001-1(a)(3) requires Movants to file and serve a completed Form EDC 3-468, *Relief from Stay Summary Sheet*. Here, Movant's Form EDC 3-468 is incomplete because lines 6 through 10 have not been filled in. Doc. #28, ¶¶ 6-10.

As noted above, Trustee filed a response that did not raise the service defects. Doc. #34. The court elects to ignore the service defects here because of the Trustee's response. The failure to fully complete Form EDC 3-468 will be overlooked in this instance because

the necessary information is summarized in Movant's amended memorandum of points and authorities. Doc. #36. Future violations of the local rules will result in the motion being denied without prejudice.

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, Movant holds both the senior and junior deeds of trust in the amounts of approximately \$240,005.31 and \$39,461.30 as of the petition date. See Claim #3-1; #6-1; Doc. #9, Schedule D. Movant's senior claim is listed in the plan under Class 4 and paid directly by the Debtors with ongoing monthly payments of \$2,115.21. Doc. #10, ¶ 3.10. Pursuant to section 3.11(a) of the plan, Movant has stay relief for this claim. *Id.* Movant's junior deed of trust is listed in Class 2 of the plan and is paid \$574.92 monthly through the plan. *Id.*, ¶ 3.08. The junior claim does not have stay relief. Movant filed this motion seeking stay relief for the junior claim since the senior claim may enforce its rights and remedies under the first deed of trust if there is a default. Doc. #36.

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtors have failed to make at least four post-petition payments on Movant's senior claim in Class 4. *Id.* ¶ 13. Movant has produced evidence that Debtors are delinquent at least \$9,278.80 under the senior deed of trust for the months of October 2020 through January 2021. *Ibid.* Moreover, Movants complied with LBR 4001-1(b) by including a verified statement of Debtors' post-petition payment history. Doc. #31, Ex. G.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) with respect to the junior mortgage to permit the Movant to dispose of its collateral pursuant to both junior and senior claims and applicable law and to use the proceeds from its disposition to satisfy its claims.

The request for attorney's fees will be DENIED because Movant has not shown that it is over-secured under 11 U.S.C. § 506(b) and Movant must separately file and set for hearing a motion for compensation in compliance with the local and federal rules.

The request for an order making the ruling "binding" in the event of conversion will be DENIED as unnecessary.

No "comfort order" will be issued. Movant may file an adversary proceeding and ask for declaratory relief if Movant so elects.

The 14-day stay of Rule 4001(a)(3) will be ordered waived because Debtors have failed to make at least four post-petition payments to Movant.

15. [17-12940](#)-B-13 **IN RE: NICHOLAS/MARGARET GREEN**
[JDR-7](#)

MOTION TO WAIVE SECTION 1328 CERTIFICATE
REQUIREMENT, CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY,
AS TO DEBTOR
1-29-2021 [[124](#)]

MARGARET GREEN/MV
JEFFREY ROWE/ATTY. FOR DBT.
OST 2/1/21

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3). Movant asked for and received an order shortening time. Doc. #128. Consequently, the creditors, the chapter 13 trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

Joint Debtor Nicholas John Green ("Mr. Green") died on November 19, 2018 and is survived by his wife, Margaret Louise Green ("Debtor"). Doc. #110.

Debtor asks this court to (1) be substituted as Mr. Green's representative for the purposes of their joint chapter 13 case; (2) allow for continued administration of the chapter 13 case; and (3) allow Debtor to sign and file the declaration required by 11 U.S.C. § 1328 for entry of discharge for Mr. Green. Doc. #124.

In the absence of opposition, the court is inclined to grant this motion.

Debtor filed this motion with an order shortening time because she needs to modify her chapter 13 plan to extend the duration from 60 to 84 months under the Coronavirus Aid, Relief, and Economic Security ("CARES") Act. 116 P.L. 136, 134 Stat. 281. The CARES Act provision allowing a 24-month extension will expire on March 27, 2021 and the last hearing before that date is March 17, 2021. To

provide 35 days' notice under LBR 3015-1(d)(2), the motion to modify plan must be filed by February 10, 2021. Before that can be done, Debtor must first be substituted for Mr. Green.

The court issued the order shortening time on February 1, 2021. The order specified that notice of the hearing shall be adequate if it is: (1) served by facsimile or electronic mail on the United States trustee ("UST"), the chapter 13 trustee ("Trustee"), and any party requesting special notice by February 1, 2021; and (2) served on all other parties by regular first-class mail by February 1, 2021.

Doc. #128. Debtor's certificate of service filed February 1, 2021 indicates: (1) Trustee was served by facsimile and requests for special notice were served by electronic mail; (2) all parties were served by mail. Doc. #129. UST does not appear to have been served by electronic mail or facsimile. The court will inquire at the hearing whether UST was served by facsimile or electronic mail by February 1, 2021.

LBR 1016-1 states:

(a) In a bankruptcy case which has not been closed, a Notice of Death of the debtor [Fed. R. Civ. P. 25(a), Fed. R. Bankr. P. 7025] shall be filed within sixty (60) days of the death of a debtor by the counsel for the deceased debtor or the person who intends to be appointed as the representative for or successor to a deceased debtor. The Notice of Death shall be served on the trustee, U.S. Trustee, and all other parties in interest. A copy of the death certificate (redacted as appropriate) shall be filed as an exhibit to the Notice of Death.

. . .

(b) When the debtor has died or has become incompetent prior to a closing of a bankruptcy case, the provisions of Federal Rule of Civil Procedure 18(a) [Fed. R. Bankr. P. 7018, 9014(c)] apply to the following claims for relief which may be requested in a single motion:

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

LBR 1016-1. Pursuant to LBR 1016-1(a), Debtor filed a Notice of Death with a redacted death certificate on August 9, 2019. Doc. #110; #111. Under LBR 1016-1(b), Debtor now asks to be substituted as successor for the decedent, allow for continued

administration of the case, and authorization to file the § 1328 declaration on behalf of Mr. Green.

Federal Rule of Bankruptcy Procedure 1016 provides:

Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

Fed. R. Bankr. P. 1016. Courts have held that chapter 13 cases do not need to be dismissed and may continue if (1) the debtor proposed a confirmable plan before the debtor's death; and (2) the plan is feasible after the debtor's death. *In re Perkins*, 381 B.R. 520, 537 (Bankr. S.D. Ill. 2007); *cf. In re Spiser*, 232 B.R. 669, 674 (Bankr. N.D. Tex. 1999) (further administration deemed not possible because the debtors' chapter 13 plan was not confirmed before death); *In re Stewart*, 2004 Bankr. LEXIS 1042 (Bankr. D. Or. Mar. 2, 2004) (continued administration allowed if a personal representative is appointed and the confirmed chapter 13 plan payments are made current and paid through completion of plan).

This case was filed on July 31, 2017. Doc. #1. A plan was confirmed on December 19, 2017 and then modified under LBR 3015-1(d)(3) on August 26, 2019 by joint *ex parte* application with Trustee. Doc. #62; #117. The current plan provides for \$4,992.00 for months one and two and payments of \$2,699.74 for the remaining 58 months. Doc. #24. Debtor states that she has been able to remain current on plan payments because she began working full-time at Morgan Hill Unified School District, part-time at McDonalds, and her adult son, Matthew Green, began contributing substantially all of his paycheck to household expenses. Doc. #123, ¶ 8. Due to COVID-19, Debtor incurred a \$400 per month deficit, but can complete her plan if she extends it to 84 months under the CARES Act. *Id.*, ¶ 9.

Debtor filed a declaration stating that she wishes to continue administration of the case as Mr. Green's representative so she can sign any bankruptcy documents on his behalf. Doc. #127. Based on their long-term marriage, Debtor states that Mr. Green (1) did not have any outstanding domestic support obligations, (2) has not received any bankruptcy discharge within the four years prior to filing this case or a chapter 13 discharge within two years prior to filing this case; and (3) jointly owned all of his real property with Debtor, so she is prepared to answer questions as to his exemptions. *Id.*

No party in interest was required to file written opposition to this motion. In the absence of opposition, this motion will be GRANTED.

The court will substitute Margaret Louise Green as representative for Nicholas John Green for the purposes of this chapter 13 case. Administration of this case may continue because the chapter 13 plan is nearing completion and continued administration appears to be in the best interests of the estate, the creditors, and Debtor.

In accordance with Fed. R. Bankr. P. 1016, Mr. Green will be excused from completing and filing a certificate of completion of the financial management course required by § 1328(g). The clerk's office is to treat this case as it would if Joint Debtor Nicholas John Green had filed a certificate of completion of the financial management course.

Additionally, Debtor may sign the declaration required by § 1328 prior to entry of discharge on Mr. Green's behalf. Debtor must still certify completion of all § 1328 requirements with respect to herself.

16. [20-10152](#)-B-13 **IN RE: RANDY/EUFEMIA BROWN**
[MHM-5](#)

CHAPTER 13 TRUSTEE'S FORBEARANCE STATUS CONFERENCE
2-2-2021 [[108](#)]

MARK ZIMMERMAN/ATTY. FOR DBT.

NO RULING.

The parties shall be prepared to discuss treatment of secured creditor JP Morgan Chase Bank's ("Chase") recently filed notice that suspends mortgage payments for 12 months. Doc. #108.

Chapter 13 trustee Michael H. Meyer ("Trustee") set this forbearance status conference for hearing after receipt of Chase's notice filed January 19, 2021. Previous forbearance status conferences occurred on July 15, 2020 and November 12, 2020 after similar notices were filed suspending payments for three and nine months, respectively. The court previously ordered forbearance of mortgage payments effective for the months of June 2020 through February 2021. Doc. #77; #106.

The January 19, 2021 notice suspends mortgage payments for 12 months beginning April 2020 through March 2021, with payments to resume on April 1, 2021. However, Trustee has already paid the April and May 2020 mortgage payments and therefore requests that the forbearance be effective for only 10 months: June 2020 through March 2021. Doc. #108.

17. [19-10641](#)-B-13 **IN RE: MARTIN FLORES**
[MHM-1](#)

CHAPTER 13 TRUSTEE'S FORBEARANCE STATUS CONFERENCE
2-3-2021 [[48](#)]

PETER BUNTING/ATTY. FOR DBT.

NO RULING.

The parties shall be prepared to discuss treatment of secured creditor PennyMac Loan Services' ("PennyMac") recently filed notice that suspends mortgage payments for three months. Doc. #48.

Chapter 13 trustee Michael H. Meyer ("Trustee") set this forbearance status conference for hearing after receipt of PennyMac's notice filed January 19, 2021. This notice suspends mortgage payments for three months beginning December 2020 through February 2021, with payments to resume on March 1, 2021. However, Trustee has already paid the December 2020 mortgage payment and therefore requests that the forbearance be effective for only two months: January 2021 and February 2021. *Id.*

11:00 AM

1. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[MB-81](#)

PRE-TRIAL CONFERENCE RE: OBJECTION TO CLAIM OF JOSE LAURO
TELLO-JURADO, CLAIM NUMBER 40
12-27-2019 [[3009](#)]

RANDY SUGARMAN/MV
MICHAEL COLLINS/ATTY. FOR DBT.
JOHN MACCONAGHY/ATTY. FOR MV.
VACATED BY ECF ORDER #3241

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

DISPOSITION: Vacated.

NO ORDER REQUIRED.

Pursuant to the parties' stipulation filed April 29, 2020 (Doc. #3238), the court issued an order on May 1, 2020 (1) allowing Proof of Claim Number 40-1 held by Jose Lauro Tello-Jurado as stipulated; and (2) vacating the scheduling order (Doc. #3222) that set this pre-trial conference for hearing. Doc. #3241. Accordingly, this pre-trial conference has been vacated and will be dropped from calendar.

2. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[20-1001](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT
1-6-2020 [[1](#)]

SUGARMAN V. CRAWFORD ET AL
JOHN MACCONAGHY/ATTY. FOR PL.
RESPONSIVE PLEADING. CONT'D TO 6/28/21 PER ECF ORDER #21.

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

DISPOSITION: Continued to June 28, 2021 at 11:00 a.m.

NO ORDER REQUIRED.

Pursuant to the parties' stipulation to amend scheduling order, the court issued an amended scheduling order on September 25, 2020 modifying the date of this pre-trial conference from February 10, 2021 to June 28, 2021. Doc. #21. Accordingly, this matter will be continued to June 28, 2021 at 11:00 a.m.

3. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A
CALIFORNIA LOCAL HEALTH CARE DISTRICT
[20-1060](#)**

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-19-2020 [[1](#)]

COALINGA REGIONAL MEDICAL
CENTER, A CALIFORNIA LOC V.
RILEY WALTER/ATTY. FOR PL.

NO RULING.

4. [19-10297](#)-B-7 **IN RE: RICHARD/ANGELA MARINO
[19-1054](#)**

PRE-TRIAL CONFERENCE RE: COMPLAINT
6-3-2019 [[1](#)]

STRATEGIC FUNDING SOURCE, INC.
V. MARINO
JARRETT OSBORNE-REVIS/ATTY. FOR PL.
CONT'D TO 4/12/21 PER ECF ORDER #50. VACATED BY ECF ORDER #59.

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

DISPOSITION: Vacated.

NO ORDER REQUIRED.

This pre-trial conference was continued to April 12, 2021 per the parties' stipulation (Doc. #48) to amend the scheduling order. Doc. #50. The parties resolved the complaint by stipulation on December 24, 2020 (Doc. #53) and the court entered a stipulated judgment on December 29, 2020. Doc. #54. The court vacated this pre-trial conference on January 4, 2021 and the case was closed the same day. Doc. #59. Therefore, this matter will be dropped from calendar.