

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, February 25, 2020
Place: Department B – Courtroom #13
Fresno, California

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. [19-10423](#)-B-12 **IN RE: KULWINDER SINGH AND BINDER KAUR**
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
FOR PETER L. FEAR, DEBTORS ATTORNEY(S)
1-21-2020 [\[191\]](#)

DAVID JOHNSTON/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

The motion will be GRANTED. Debtor's co-counsel, Fear Waddell, P.C. ("Applicant"), requests fees of \$30,683.00 and costs of \$375.60 for a total of \$31,058.60 for services rendered from June 10, 2019 through December 31, 2019. Doc. #191.

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) Communicating with Debtors' co-counsel regarding case status, tasks, responsibilities, and deadlines; (2) Advising debtors concerning

their duties as debtors-in-possession in a Chapter 12 case; (3) Preparing motions to employ Applicant and authorization to pay Applicant a retainer; (4) Analyzing, opposing, and negotiating creditor's motion for fees and expenses; (5) Preparing a Chapter 12 plan, motion to approve the plan, and documents in support of confirmation; (6) Attending the 341 meeting of creditors with debtors; (7) Responding to and negotiating with secured creditors over objections to confirmation of the plan; and (8) Preparing and obtaining approval for assignment of debtors' crop to the Chapter 12 Trustee. Doc. #195. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$30,683.00 in fees and \$375.60 in costs.

2. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[MB-81](#)

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.
CONTINUED TO 3/31/20 PER ECF ORDER #3110

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

DISPOSITION: Continued to March 31, 2020 at 9:30 a.m.

NO ORDER REQUIRED: The court already issued an order. Doc. #3110.

3. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[BBR-1](#)

MOTION FOR ADMINISTRATIVE EXPENSES
1-24-2020 [[3084](#)]

STATE OF OREGON - DEPARTMENT OF AGRICULTURE/MV
MICHAEL COLLINS/ATTY. FOR DBT.
T. BELDEN/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). 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 is GRANTED. Movant asks the court for an order approving and allowing an administrative claim in the amount of \$62,160.00 pursuant to 11 U.S.C. § 503(b)(1)(A). Doc. #3084. Movant is the Oregon Department of Agriculture. Movant's claim arises from fines and penalties levied against the debtor post-petition for failure to comply with Oregon laws related to the operation of debtor's dairy.

11 U.S.C. § 503(b)(1)(A) states that after notice and a hearing, administrative expenses shall be allowed for "the actual necessary costs and expenses of preserving the estate"

The court finds that fines and penalties levied against the debtor for failure to comply with Oregon's laws protecting its environment are costs incidental to operating a business and therefore entitled to administrative expense priority. See Cumberland Farms v. Fla. Dep't of Env'tl. Prot., 116 F.3d 16, 21 (1st Cir. 1997) (citing In re Mammoth Mart, 536 F.2d 950, 954 (1st Cir. 1976) (superseded by statute on other grounds)).

The chapter 11 trust filed non-opposition. Doc. #3113. Therefore the motion is GRANTED.

4. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[MB-73](#)

CONTINUED OBJECTION TO CLAIM OF VALMONT NORTHWEST, INC., CLAIM
NUMBER 28
10-7-2019 [\[2799\]](#)

RANDY SUGARMAN/MV
MICHAEL COLLINS/ATTY. FOR DBT.
JOHN MACCONAGHY/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling
conference.

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

The hearing on this motion will be called as scheduled and will
proceed as a scheduling conference.

This matter is now deemed to be a contested matter. Pursuant to
Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of
discovery apply to contested matters. The parties shall be prepared
for the court to set an early evidentiary hearing.

Based on the record, the factual issues appear to include: whether
the irrigation system was defective; whether the defects were caused
by the claimant; whether the defects constituted breach of an
express or implied warranty; whether timely notice of the defects
was provided to the claimant, and; the nature and extent of the
consequential damages to the estate.

5. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[MB-82](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SCHWABE WILLIAMSON &
WYATT FOR ELIZABETH E. HOWARD, SPECIAL COUNSEL(S)
1-16-2020 [\[3033\]](#)

MICHAEL COLLINS/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 debtor, the U.S. Trustee, or any other party in

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

The motion will be GRANTED. Trustee's special counsel for environmental matters, The Law Office of Schwabe Williamson & Wyatt for Elizabeth E. Howard, requests fees of \$5,397.50 for services rendered from October 17, 2019 through December 26, 2019. Doc. #3033.

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) Providing legal guidance as to compliance with the specific terms of the estate's concentrated animal feeding operation ("CAFO") permit and the animal waste management plan; and (2) Evaluating and preparing documents to complete the assignment and transfer of the CAFO permit and Mutual Agreement and Order obligations to Easterday Farm Dairy LLC. Doc. #3036. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$5,397.50 in fees.

6. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[MB-83](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF MACCONAGHY AND
BARNIER, PLC FOR JOHN H. MACCONAGHY, TRUSTEES ATTORNEY(S)
1-15-2020 [\[3021\]](#)

MICHAEL COLLINS/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 debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the

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

The motion will be GRANTED. Trustee's general counsel, The Law Office of MacConaghy & Barnier, PLC for John H. MacConaghy, requests fees of \$235,578.34 and costs of \$19,949.50 for a total of \$255,527.84 for services rendered from July 1, 2019 through December 26, 2019. Doc. #3021, 3111. The court notes movant's second supplement to the motion for compensation addressing the clerical error of \$2,000.00 and the reduction of \$10,500.00 for fees that are not recoverable. Doc. #3111.

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) Paying out approximately \$93,000,000 to senior lien creditors and others; (2) Selling numerous assets of the Estate; (3) Resolving administrative claims in excess of \$10,000,000; (4) Avoiding administrative liabilities by resolving environmental problems; (5) Confirming a chapter 11 plan; and (6) Identifying and prosecuting litigation claims. Doc. #3021. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$235,578.34 in fees and \$19,949.50 in costs.

7. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[MB-84](#)

MOTION FOR COMPENSATION FOR FRAZER, LLP, ACCOUNTANT(S)
1-23-2020 [\[3068\]](#)

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

The motion will be GRANTED. Trustee's accountant, Frazer, LLP, requests fees of \$19,088.25 for services rendered from October 1, 2019 through December 26, 2019. Doc. #3021, 3111.

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) Providing accounting services for the Estate's three large dairies in two states with monthly income and expenses averaging approximately \$7,000,000; (2) Ensuring compliance with tax obligations and financial reporting obligations; (3) Assisting the Trustee in the sell of two of the dairies; and (4) Managing cash flow of the Estate to ensure the large dairy herd is well-maintained and the cash flow is improving. Doc #3068. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$19,088.25 in fees.

8. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[MB-85](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF OGLETREE DEAKINS
NASH SMOAK & STEWART, PC FOR TAMSEN L. LEACHMAN, SPECIAL
COUNSEL(S)
1-21-2020 [\[3054\]](#)

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

The motion will be GRANTED. Trustee's special counsel for labor matters, Ogletree Deakins Nash Smoak & Stewart, P.C., requests fees of \$10,320.00 for services rendered from July 1, 2019 through November 30, 2019. Doc. #3054.

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) Providing the Trustee with state and federal labor law assistance pertaining to all matters arising out of the sale and closing of the Estate's dairy operation; (2) WARN Act issues; (3) ongoing worker safety issues; (4) collective bargaining agreement between the Debtor and United Farm Workers, (5) employee severance issues; and (6) COBRA coverage. Doc. #3054. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$10,320.00 in fees.

9. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[MB-86](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SAGASER,
WATKINS & WIELAND, PC FOR IAN B. WIELAND, SPECIAL COUNSEL(S)
1-21-2020 [\[3060\]](#)

MICHAEL COLLINS/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 debtor, the U.S. Trustee, or any other party in

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

The motion will be GRANTED. Trustee's special counsel, The Law Office of Sagaser, Watkins & Wieland, P.C. for Ian B. Wieland, requests fees of \$1,424.00 and costs of \$278.00 for a total of \$1,702.00 for services rendered from October 1, 2019 through December 26, 2019. Doc. #3060.

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) Representing the Estate in a class action claim for alleged wage and hour employment violations; (2) Conferring with the Trustee, general counsel, and the claimant's counsel in an attempt to resolve the matter and limit the Estate's liability; (3) Representing Trustee in a State Court civil harassment action; (4) Directing a temporary restraining order against the Debtor after the Debtor made alleged death threats against the Trustee. Doc. #3063. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$1,424.00 in fees and \$278.00 in costs.

10. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[MB-87](#)

MOTION FOR COMPENSATION FOR RANDY SUGARMAN, CHAPTER 11
TRUSTEE(S)
1-20-2020 [\[3046\]](#)

RANDY SUGARMAN/MV
MICHAEL COLLINS/ATTY. FOR DBT.
JOHN MACCONAGHY/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. 11 U.S.C. §§ 326 and 330 allow reasonable compensation to the chapter 11 trustee for the trustee's services. 11 U.S.C. § 330 requires the court to consider the nature, the extent, and the value of such services, taking into account all relevant factors to assess whether the compensation is necessary and reasonable.

Chapter 11 Trustee Randy Sugarman ("Trustee") requests fees of \$313,418.08 and costs of \$18,218.39 for a total of \$331,636.47 covering the period from May 1, 2019 through December 26, 2019 as statutory compensation and actual and necessary expenses. Doc. #3046. Trustee's services included, without limitation: (1) Consummating a complex sale of the Lost Valley Farm for \$67,000,000; (2) Separately liquidating the Lost Valley Farm dairy herd on profitable terms; (3) Eliminating an administrative liability in favor of the State of Oregon Department of Agriculture, estimated to be as high as \$70,000,000; (4) Satisfying millions of dollars of statutory "Agricultural Service Liens", mechanics' liens, and purchase money equipment loans; (5) Negotiating and executing a second purchase agreement for the G.J. te Velde Dairy for

\$28,750,000 in cash; (6) Remediating labor and animal husbandry problems for all three dairies; (7) Cutting operating costs, dramatically improving the herd mix, and raising productivity at all three dairies; (8) Obtaining insurance coverage, managing cash collateral arrangements and budgets, and managing multiple important litigation claims; (9) Locating and liquidating three fractional limited partnership interests for \$1,100,000; (10) Aggressively pursuing the Trustee's avoidance and other litigation powers; and (11) Confirming a Chapter 11 Trustee's plan of reorganization, which was overwhelmingly accepted by all voting creditor classes. Doc. #3048.

The court finds Trustee's services were actual and necessary to the estate, and the fees are reasonable. The motion is GRANTED and Trustee is awarded the requested fees and costs.

11. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[MB-88](#)

MOTION FOR COMPENSATION FOR BACHECKI CROM & COMPANY, LLP,
ACCOUNTANT(S)
1-16-2020 [[3027](#)]

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

The motion will be GRANTED. Trustee's special tax and forensic accountant, Bachecki Crom & Company, LLP, requests fees of \$24,754.00 and costs of \$145.39 for a total of \$24,899.39 for services rendered from July 24, 2019 through December 26, 2019. Doc. #3027.

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) Assessing the income tax consequences of prior and pending sales and tax ramifications of potential future sales; (2) Reviewing transaction activity reported in the prepetition income tax returns and monthly operating reports; (3) Preparing a schedule of tax attributes for use in preparing the Estate's post-petition income tax returns; (4) Making recommendations for liquidation of assets within the estate to minimize income taxes; (5) Preparing a computation of the Estate's tax basis in the involuntary conversion and sales of dairy farm real and personal property; (6) Analyzing potential gains on future sale of each Estate interest in real property; (7) Preparing a memo regarding large apparent phantom gains reported on prior returns and documenting prior year losses and the tax basis of remaining assets; (8) Assessing the potential for amending the 2017 income tax return to claim additional tax basis and losses for interest payments made on real property sales; and (9) Preparing the Estate's Federal, California, and Oregon tax returns for the fiscal period ending March 31, 2019. Doc. #3027, 3031. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$24,754.00 in fees and \$145.39 in costs.

12. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[WJH-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WANGER JONES
HELSLEY PC FOR RILEY C. WALTER, SPECIAL COUNSEL(S)
1-16-2020 [\[3039\]](#)

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

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

The motion will be GRANTED. Trustee's special counsel, Wanger Jones Helsley PC, requests fees of \$23,670.50 and costs of \$1,256.17 for a total of \$24,926.67 for services rendered from October 1, 2019 through December 26, 2019. Doc. #3039.

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) Continuing to work with the Trustee and his counsel relative to environmental compliance; (2) Arranging for the sale of remaining assets at the Debtor's G.J. te Velde Dairy, which was set to close on January 23, 2020; (3) Making appearances for various matters relating to the pending litigation in and out of district; and (4) Preparing documents for the Estate's IRZ litigation. Doc. #3041. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$23,670.50 in fees and \$1,256.17 in costs.

13. [19-15277](#)-B-11 **IN RE: SVENHARD'S SWEDISH BAKERY**

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
12-19-2019 [\[1\]](#)

DERRICK TALERICO/ATTY. FOR DBT.

NO RULING.

14. [19-15277](#)-B-11 **IN RE: SVENHARD'S SWEDISH BAKERY**
[BR-1](#)

MOTION FOR TURNOVER OF FUNDS HELD BY THE DEBTOR THAT ARE NOT
PROPERTY OF THE ESTATE
1-28-2020 [\[42\]](#)

BIMBO BAKERIES USA, INC./MV
DERRICK TALERICO/ATTY. FOR DBT.
CHERYL CHANG/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 27, 2020 at 9:30 a.m.

ORDER: The parties shall submit an order.

11:00 AM

1. [19-15304](#)-B-7 **IN RE: JUAN/LAURA RIOS**

REAFFIRMATION AGREEMENT WITH CAPITAL ONE AUTO FINANCE
1-21-2020 [[13](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. In this case, the debtors' attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

2. [19-15320](#)-B-7 **IN RE: CYNTHIA SALERY**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION
2-4-2020 [[15](#)]

NO RULING.

3. [19-14849](#)-B-7 **IN RE: JOSE/MARGARITA VENEGAS**

REAFFIRMATION AGREEMENT WITH FIRST TECH FEDERAL CREDIT UNION
1-13-2020 [[19](#)]

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtors' counsel shall notify the debtors that no appearance is necessary.

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

4. [19-14655](#)-B-7 **IN RE: MARY PECKHAM**

REAFFIRMATION AGREEMENT WITH JPMORGAN CHASE BANK, N.A.
1-24-2020 [\[15\]](#)

NO RULING.

5. [19-14862](#)-B-7 **IN RE: CARL ARLINE**

REAFFIRMATION AGREEMENT WITH AMERICAN FIRST CREDIT UNION
1-31-2020 [\[17\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel shall notify the debtor that no appearance is necessary.

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

6. [19-15265](#)-B-7 **IN RE: MAYRA HERNANDEZ ALVAREZ**

PRO SE REAFFIRMATION AGREEMENT WITH WESTAMERICA BANK
1-27-2020 [\[16\]](#)

NO RULING.

7. [19-14889](#)-B-7 **IN RE: FIDELFA VILLEGAS**

REAFFIRMATION AGREEMENT WITH MECHANICS BANK
1-23-2020 [\[14\]](#)

THOMAS GILLIS/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Counsel shall inform his client that no appearance is necessary at this hearing.

Debtor was represented by counsel when she entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), "'if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney' attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok. 2009) (emphasis in original). In this case, the debtor's attorney affirmatively represented that the agreement established a presumption of undue hardship and that his opinion the debtors were not able to make the required payments. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

Also, the court notes that the signatures on Part D: Debtor's Statement in Support of Reaffirmation Agreement and Part E: Motion for Court Approval does not match the Debtor's signature or name.

8. [19-14891](#)-B-7 **IN RE: GREGORIO/TANYA SALAS**

REAFFIRMATION AGREEMENT WITH UNITED LOCAL CREDIT UNION
1-23-2020 [\[18\]](#)

THOMAS GILLIS/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Counsel shall inform his clients that no appearance is necessary at this hearing.

Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), "'if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney' attesting to the referenced items before the agreement will have legal effect." *In re*

Minardi, 399 B.R. 841, 846 (Bankr. N.D. Ok. 2009) (emphasis in original). In this case, the debtors' attorney affirmatively represented that the agreement established a presumption of undue hardship and that his opinion the debtors were not able to make the required payments. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

1:30 PM

1. [20-10320](#)-B-7 **IN RE: MARGARITA ESPINOZA**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-7-2020 [\[14\]](#)

AMERICAN HONDA FINANCE CORPORATION/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
VINCENT FROUNJIAN/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
will submit a proposed order after hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The movant, American Honda Finance Corp., seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) & (2). Doc. #14.

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

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

The collateral is a 2017 Honda Accord, which has a total unpaid balance of \$24,468.00. Doc. #18. Movant estimates the value of the vehicle to be between \$14,000.00 and \$17,450.00. Id. Movant also has possession of the vehicle, which was recovered pre-petition on January 14, 2020. Doc. #14, 16.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least two pre-petition payments. Doc. #18. Additionally, the debtor does not have an equity in the property and the property is not necessary to an effective reorganization. Id. The movant has produced evidence that debtor is delinquent at least \$1,480.21 plus late charges and fees of \$223.21. Doc. #16.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) & (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 the movant has possession of the collateral and it is depreciating in value. No other relief is awarded.

2. [18-13224](#)-B-7 **IN RE: ANTHONY CORRAL**
[FW-4](#)

MOTION TO AMEND ORDER APPROVING SALE OF REAL PROPERTY
1-28-2020 [\[109\]](#)

JAMES SALVEN/MV
DAVID JENKINS/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. The chapter 7 trustee ("Trustee") asks the court to amend its previous order granting Trustee's motion to sell real property. No party opposed this motion.

Trustee asks the court to amend the previous order because the "underwriter, for financing reasons, insists on adding the Buyer's sister, Maria de Jesus Cuenca Vargas, to the sales contract and financing documents." Doc. #109. The escrow agent refused to close the sale since the previous order does not reference Maria de Jesus Cuenca Vargas, as is required by the underwriter. Id.

Therefore the previous order (doc. #108) is amended, starting at page 2, line 8, to state that the Trustee is authorized to sell the property listed therein to "Yessenia Cuenca Vargas and Maria De Jesus Cuenca Vargas," with all other terms and conditions of the order remaining the same.

3. [19-14037](#)-B-7 **IN RE: GREGORIO/IDALIA TORRES**
[UST-1](#)

MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B)
1-14-2020 [\[20\]](#)

TRACY DAVIS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
TREVOR FEHR/ATTY. FOR MV.
CONTINUED TO 3/4/20 WITHOUT ORDER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to March 4, 2020 at 10:00 a.m.

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

This motion was originally scheduled for hearing on February 25, 2020 at 1:30 p.m. Doc. #21. The following day an amended notice of hearing was filed and served, setting the hearing for March 4, 2020 at 10:00 a.m. Doc. #25. Continuances without a court order are not permitted under the Local Rules of Practice ("LBR"). See LBR 9014-1(j).

However, LBR 9014-1(j) permits oral requests for continuances if made at the scheduled hearing, or in advance by written application.

If no written application for a continuance is received by the court before this hearing, and if debtor's counsel does not appear at the hearing to orally request a continuance, then the motion will be denied without prejudice for failure to comply with the Local Rules of Practice.

4. [14-15354](#)-B-7 **IN RE: CLARENCE HARRIS, JR. AND SARA HEDGPETH-HARRIS**
[FW-6](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR PETER L. FEAR, TRUSTEES ATTORNEY(S)
1-28-2020 [\[71\]](#)

THOMAS ARMSTRONG/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 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 is GRANTED. Movant is awarded \$4,824.00 in fees and \$173.10 in costs.

5. [18-14555](#)-B-7 **IN RE: ENCARNACION DE LA TORRE**
[DMG-3](#)

MOTION FOR COMPENSATION FOR D. MAX GARDNER, TRUSTEES ATTORNEY(S)
1-23-2020 [\[68\]](#)

PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: No appearance is necessary. The court will issue the
order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Bankruptcy Rules ("LBR").

LBR 9004-2(a)(6), (b)(5), (b)(6), (e) and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

A Motion to Amend Order on Motion to Sell was previously filed on June 17, 2019 (doc. #63) and granted on June 18, 2019 (doc. #67). The DCN for that motion was DMG-3. This motion also has a DCN of DMG-3 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

6. [18-15055](#)-B-7 **IN RE: DIXIE ESPINOSA**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-17-2020 [\[69\]](#)

SANTANDER CONSUMER USA INC./MV
JENNIFER WANG/ATTY. FOR MV.
DISCHARGED 5/6/19

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

DISPOSITION: Denied as moot.

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

This motion relates to an executory contract or lease of personal property. The case was filed on December 20, 2018 and the debtor's discharge was entered on May 6, 2019. Doc. #43. The property is a 2017 Fiat 500e, which was surrendered by debtor to movant on December 28, 2019. Doc. #72, 74.

The motion is DENIED AS MOOT as to the debtor pursuant to 11 U.S.C. § 362(c)(2)(C).

Under 11 U.S.C. § 365(p)(1), if a lease of personal property is rejected or not timely assumed by the trustee, the leased property is no longer property of the estate and the stay under § 362(a) is automatically terminated.

The chapter 7 trustee did not file a motion to assume the lease, so the lease is rejected pursuant to 11 U.S.C. § 365(d)(1). Therefore, the motion is DENIED AS MOOT as to the chapter 7 trustee because the leased property is no longer property of the estate and the automatic stay under § 362(a) has already terminated by operation of law. The court also notes that the lease matures on December 28, 2019 and the vehicle was returned to movant that same day. Doc. #72.

Movant may submit an order denying the motion and confirming that the automatic stay has already been terminated on the grounds set forth above. No other relief is granted.

7. [18-15055](#)-B-7 **IN RE: DIXIE ESPINOSA**
[JHW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-23-2020 [\[76\]](#)

SANTANDER CONSUMER USA INC./MV
JENNIFER WANG/ATTY. FOR MV.
DISCHARGED 5/6/19

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #86.

8. [19-13960](#)-B-7 **IN RE: DAVID/PAMELA SHANK**
[UST-1](#)

MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B)
1-21-2020 [\[57\]](#)

TRACY DAVIS/MV
SCOTT LYONS/ATTY. FOR DBT.
TREVOR FEHR/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). 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, except for the debtor's, 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 is GRANTED. The United States Trustee ("UST") asks that this case be dismissed because the presumption of abuse arises under 11 U.S.C. § 707(b)(2).

11 U.S.C. § 707(b) gives the UST standing to file a motion requesting dismissal in a case where the debts are primarily consumer debts "if . . . the granting of relief would be an abuse of the provisions of [chapter 7]." The UST states that dismissal is warranted because the debtors have monthly disposable income of over \$2,500.00 resulting in a 100 percent distribution to nonpriority unsecured creditors in another chapter. Doc. #57. Debtors filed non-opposition. Doc. #62.

Therefore this motion is granted and the case is dismissed.

9. [13-10867](#)-B-7 **IN RE: CHRIS/STACY MAZZEI**
[NES-2](#)

MOTION TO AVOID LIEN OF NATIONWIDE MUTUAL INSURANCE COMPANY
1-16-2020 [\[25\]](#)

CHRIS MAZZEI/MV
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 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 is GRANTED. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re

Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Nationwide Mutual Insurance Company in the sum of \$26,856.58 on October 25, 2010. Doc. #29. The abstract of judgment was recorded with Kern County on January 3, 2011. Id. That lien attached to the debtor's interest in a residential real property in Bakersfield, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$249,500.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$249,500.00 on that same date, consisting of a first deed of trust in favor of Flagstar Bank. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(2) in the amount of \$100,000.00. Id.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

10. [19-14274](#)-B-7 **IN RE: MICHELE GUERRERO-DE LA CRUZ**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
1-7-2020 [\[31\]](#)

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

DISPOSITION: Conditionally granted.

ORDER: The court will issue the order.

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

The debtor shall attend the meeting of creditors rescheduled for March 2, 2020 at 11:00 a.m. If the debtor fails 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 Rules 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.

11. [19-11776](#)-B-7 **IN RE: JUAN/ELIZABETH TIENDA**
[FW-2](#)

MOTION TO REDUCE TIME ALLOWED TO AMEND EXEMPTIONS
1-28-2020 [\[28\]](#)

PETER FEAR/MV
PETER BUNTING/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

The Trustee's motion is ambiguous. The motion seems to limit the relief to shortening the time within which the debtors can amend their exemptions in real estate commonly known as 870 Romero, Parlier, California. But the motion also requests in the prayer that the time be shortened to amend the exemptions at all to March 26, 2020. Doc. #28.

The debtors have purportedly waived any exemption claim in the 870 Romero real estate. Doc. #32. So, if the Trustee's motion is limited to the real estate, then the motion is moot and could be denied. On the other hand, if the Trustee has other concerns, then both the debtors and the trustee need to make a better record for each of their positions. It is also possible the Trustee, for some reason, finds the waiver insufficient. In any case, the record does not support an order either granting or denying the motion without clarification.

In any case, no order entered on this motion will include a finding whether the real property at issue is or is not property of the estate.

12. [19-14082](#)-B-7 **IN RE: JULIO GARCIA**
[PFT-1](#)

MOTION TO SELL
1-22-2020 [\[21\]](#)

PETER FEAR/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed for higher and better bids only.

DISPOSITION: Granted.

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

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

interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). 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 is GRANTED. 11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, No. 16-00327-GS, 2018 WL 6584772, at *2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 2018 WL 6584772, at *4, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference." Id., citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

The chapter 7 trustee asks this court for authorization to sell a 2013 Chevrolet Cruze and a 2009 Ford F-150 ("Vehicles") to the debtor, subject to higher and better bids at the hearing, for a total of \$8,175.00. Doc. #21. No party opposed this motion.

It appears that the sale of the Vehicles is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith.

Any party wishing to bid on any of the above items must appear at the date, time and place stated in the caption above, at which time an auction will be conducted. The vehicles will be sold as a unit and not separately. Trustee agreed to this sale at the above price with the understanding that the estate will not be required to incur additional work or any expenses related with transfer of title or possession of the asset. If the winning bidder is not the debtor, please note that the sale is as-is, where-is and the winning bidder is responsible to obtain possession of the asset and to change title to the asset, with no assistance from the Trustee. Winning bidders must pay the Trustee in certified funds to be received in the

Trustee's office no later than five (5) business days following conclusion of the auction. Back-up bids will be taken and once a back-up bidder is notified that the prior bidder has failed to perform, payment of the purchase price must be received by the Trustee from the back-up bidder within five (5) business days of the back-up bidder being notified that the back-up bid is now the winning bid.

13. [18-13784](#)-B-7 **IN RE: BERNADETTE GARCIA-DAR**
[PFT-4](#)

MOTION TO SELL AND/OR MOTION TO PAY
1-28-2020 [\[90\]](#)

PETER FEAR/MV
PETER BUNTING/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed for higher and better bids only.

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). 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 is GRANTED. 11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, No. 16-00327-GS, 2018 WL 6584772, at *2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court

"should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 2018 WL 6584772, at *4, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" Id., citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

The chapter 7 trustee asks this court for authorization to sell real property located at 8232 North Chance Avenue in Fresno, CA 93720 ("Property") to James and Nicole Howard, subject to higher and better bids at the hearing, for \$392,000.00. Doc. #90.

It appears that the sale of the Property is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith.

Trustee is also authorized to compensate broker Fresyes Realty ("Broker") the 3% commission agreed to.

This sale is subject to higher and better bid. These are the procedures that must be followed by any party wishing to bid on the Property. Any party wishing to bid on the Property must appear at the date, time and place stated in the caption above, at which time an auction will be conducted. Winning bidders must make a deposit into escrow an amount equal to 10% of the purchase price in certified funds no later than five (5) business days following conclusion of the auction and must close escrow within 30 days from conclusion of the hearing. Back-up bids will be taken and once a back-up bidder is notified that the prior bidder has failed to perform, the back-up bidder must deposit into escrow an amount equal to 10% of the purchase price in certified funds no later than five (5) business days following conclusion of the auction and must close escrow within 30 days from notification that the prior bidder has failed to perform. The bidding will be in \$2,000.00 increments. Any overbid must include either a reduction in buyer's broker's commission to 1% or a bid that includes an extra \$7,840.00 to pay for the buyer's broker's commission.

14. [18-14689](#)-B-7 **IN RE: JAVIER GONZALEZ**
[FW-8](#)

MOTION TO SELL FREE AND CLEAR OF LIENS
1-28-2020 [\[106\]](#)

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

TENTATIVE RULING: This matter will proceed for higher and better
bids only.

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). 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). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. Under 11 U.S.C. § 363(f), the chapter 7 trustee ("Trustee") may sell estate property of the estate outside the ordinary course of business, after notice and a hearing, free and clear of "any interest in such property of an entity other than the estate, only if . . . such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest."

Trustee wishes to sell real property located at 8531 Road 231, Terra Bella, in Tulare County, CA ("Property") for \$135,000.00 to debtor's wife Anna Gonzalez ("Buyer"). Doc. #106.

There are a total of eight liens against the Property: six to the California Employment Development Department, one to the California Franchise Tax Board, and one to Star Insurance Company on an abstract of judgment. Doc. #109.

Trustee argues that the tax lien distribution scheme of 11 U.S.C. § 724(b) is "precisely the kind of 'legal or equitable proceeding' that precisely fits the narrow Clear Channel view of Section 363(f)(5)." Doc. #106.

Several courts have found that Section 724(b) is precisely the type of "legal or equitable proceeding" described in Section 363(f)(5). See, e.g., In re Healthco Int'l, Inc., 174 B.R. 174, 177 (Bankr. D. Mass. 1994); In re Grand Slam U.S.A., Inc., 178 B.R. 460, 463-64 (E.D. Mich. 1995); In re A.G. Van Metre, Jr., Inc., 155 B.R. 118, 123 (Bankr. E.D. Va. 1993), subsequently aff'd, 16 F.3d 414 (4th Cir. 1994); In re Gulf States Steel, Inc. of Alabama, 285 B.R. 497, 509 (Bankr. N.D. Ala. 2002). The Ninth Circuit Bankruptcy Appellate Panel has cited the Gulf States Steel case. See Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC), 391 B.R. 25, 42-43 (B.A.P. 9th Cir. 2008).

Because "such entit[ies] could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest," the trustee may sell the property located at 8531 Road 231, Terra Bella, in Tulare County, CA ("Property") for \$135,000.00 free and clear of the state liens and Star Insurance Company's lien. The liens are transferred to the proceeds. The stay under Fed. R. Bankr. P. 6004(h) is waived. Trustee is authorized to execute all documents necessary to effectuate the sale of the estate's interest in the Property.

15. [18-14689](#)-B-7 **IN RE: JAVIER GONZALEZ**
[FW-9](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
WITH JAVIER RAMIREZ GONZALEZ, ANNA GONZALEZ AND THE 2016 JAVIER
AND ANNA GONZALEZ REVOCABLE FAMILY TRUST
1-27-2020 [\[98\]](#)

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

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

DISPOSITION: Granted.

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

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

1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. It appears from the moving papers that the chapter 7 trustee ("Trustee") has considered the standards of In re Woodson, 839 F.2d 610, 620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. the probability of success in the litigation;
- b. the difficulties, if any, to be encountered in the matter of collection;
- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The order should be limited to the claims compromised as described in the motion.

Trustee requests approval of a settlement agreement between the estate and debtor and his wife (collectively "Defendants"). Under the terms of the compromise, Defendants shall make installment payments totaling \$135,000.00 to settle the disputed claims and to buy the estate's interest in a parcel of property located at 8531 Road 231 in Terra Bella, CA; Trustee shall release the disputed claims against Defendants; Trustee shall seek bankruptcy court approval to sell the estate's interest to debtor's wife free and clear of liens, and; to secure Spouse's obligations, Debtor and Spouse shall grant Trustee (i) a security interest in the Property; and (ii) a security interest in all assets of Debtor and Spouse, now or hereafter acquired, including but not limited to, all cash, accounts receivable, notes receivable, contract rights, deposits, securities, investments, chattel paper, documents, instruments, general intangibles, inventory, raw materials, work in progress, finished goods, furnishings, fixtures, trade fixtures, equipment, machinery, motor vehicles, crops, and all other personal property, assets or rights of whatever nature now owned or hereafter acquired by Defendant and products and proceeds thereof. However, after payment to Trustee of each year's payment, as described above in paragraph 1.a., Defendant may use the remaining amount of that year's crop proceeds.

On a motion by 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. In re A & C Properties, 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. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: Trustee believes he could prevail at trial but acknowledges that litigation is never certain; collection would be a problem if Trustee were to prevail at trial because it would require Trustee to levy against the property; the litigation is both factually and legally complex and discovery would be problematic; and the creditors will greatly benefit from the net to the estate, that would otherwise not exist; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. 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). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

3:00 PM

1. [20-00101](#)-B-0 IN RE: THOMAS O. GILLIS: CHAPTER 13 FEES AND DISGORGEMENT MOTIONS

ORDER REGARDING FEES IN CHAPTER 13 CASES IN WHICH THOMAS O.
GILLIS IS COUNSEL OF RECORD
2-7-2020 [[15](#)]

NO RULING.

2. [20-00101](#)-B-0 IN RE: THOMAS O. GILLIS: CHAPTER 13 FEES AND DISGORGEMENT MOTIONS
[RHS-1](#)

PRESENTATION OF INFORMATION AND DOCUMENTS CONCERNING PENDING
SUBSTITUTIONS OF ATTORNEY
2-14-2020 [[26](#)]

NO RULING.