

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, March 17, 2021
Place: Department A - Courtroom #11
Fresno, California

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [21-10308](#)-A-11 **IN RE: THOMAS ANTON & ASSOCIATES, A LAW CORPORATION**
[LKW-2](#)

MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR ADEQUATE PROTECTION
3-4-2021 [\[50\]](#)

THOMAS ANTON & ASSOCIATES, A LAW CORPORATION/MV
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

On March 4, 2021, the court granted the debtor's ex parte Motion for Order Shortening Time for service of the notice of hearing on the motion of Thomas Anton & Associates, A Law Corporation ("DIP" or "Debtor"), debtor and debtor-in-possession herein, for authorization to use cash collateral and provide adequate protection. Order, Doc. #55. Pursuant to the Order, opposition to DIP's Motion for Order Authorizing Debtor to (a) Use Cash Collateral and (b) Provide Adequate Protection (the "Motion") may be presented at the hearing on the Motion. Because the Motion was set on less than 14-days' notice, this is a preliminary hearing pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 4001(b)(2). At the March 17 hearing, the court will consider supplementation and clarification of the Motion as well as set the date and time for a final hearing. If opposition to the Motion is presented at the preliminary hearing, the court will consider the opposition.

Pursuant to 11 U.S.C. § 363, a debtor in possession can use property of the estate that is cash collateral by obtaining either the consent of each entity that has an interest in such cash collateral or court authorization after notice and a hearing. 11 U.S.C. § 363(c)(2). "The primary concern of the court in determining whether cash collateral may be used is whether the secured creditors are adequately protected." In re Plaza Family P'ship, 95 B.R. 166 (E.D. Cal. 1989) (citing 11 U.S.C. § 363(e)). Bankruptcy Code section 361(1) states that adequate protection may be provided by "requiring the [debtor in possession] to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property." 11 U.S.C. § 361(1). Pursuant to 11 U.S.C. § 363(p), DIP carries the burden of proof on the issue of adequate protection.

When, as here, the motion requests a hearing before 14 days after service of the motion, Rule 4001(b)(2) permits the court to "authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing."

DIP moves the court for an order authorizing DIP to use cash collateral through confirmation of a plan of reorganization consistent with the budget filed as Ex. B, Doc. #53. Mot., Doc. #50. On March 11, 2021, the Internal Revenue Service ("IRS") filed a proof of claim asserting a claim against Debtor in the

amount of \$218,960.27, of which \$167,539.36 is secured by all of Debtor's right, title, and interest to property pursuant to 26 U.S.C. § 6321. See Claim 3. DIP values Debtor's assets at \$241,876.13. See Schedule A/B, Doc. #35; Decl. of Thomas Anton, Doc. #51. By the Motion, DIP seeks authority to use cash collateral from Debtor's accounts receivable and deposit accounts, which Debtor values at \$51,676.47 and \$484.12, respectively. Schedule A/B, Doc. #35; Decl., Doc. #51.

DIP seeks court authorization to use cash collateral to pay expenses incurred by DIP in the normal course of its business. Decl., Doc. #51. As adequate protection for DIP's use of cash collateral, DIP will grant a lien against its money on deposit and post-petition accounts receivable in favor of the IRS. Decl. ¶ 11, Doc. #51. As further adequate protection, DIP proposes to pay the IRS \$4,000 per month as well as pay post-petition tax obligations required by law pending confirmation of a plan of reorganization. Mot. ¶9, Doc. #50; Budget, Ex. B, Doc. #53.

DIP expects the IRS to consent to DIP's use of cash collateral before the March 17 hearing on the Motion. Mot. ¶10, Doc. #50. However, should the IRS not consent, the court is not able to determine whether the proposed replacement lien together with the monthly payment will provide adequate protection to the IRS for Debtor's proposed use of the IRS's cash collateral based on the current evidence before the court. Bankruptcy Code § 361 requires DIP to provide adequate protection to the IRS for DIP's use of the IRS's cash collateral for any decrease in the value of the IRS's interest in the accounts receivable and deposit accounts due to DIP's use of cash collateral. The evidence filed with the Motion does not state the projected value of new accounts receivable to be generated as a result of DIP's use of cash collateral. Accordingly, the court cannot determine what, if any, decrease there may be in the value of the IRS's interest in the accounts receivable and deposit accounts due to DIP's use of cash collateral and whether the proposed replacement lien together with the \$4,000 per month payment constitute adequate protection. The only information on the budget filed with the Motion is the expected monthly income, which is different from the value of accounts receivable generated and outstanding each month. Additionally, DIP has not stated what specific expenses listed in the budget are necessary to be paid prior to a final hearing to avoid immediate and irreparable harm to the estate. DIP only states that "Debtor will not be able to operate its business or conduct its reorganization without use of the cash collateral." Decl. ¶ 9, Doc. #51.

The court is inclined to GRANT the motion on an interim basis pending a final hearing if the IRS consents or if DIP can make an offer of proof at the preliminary hearing regarding the value of the accounts receivable that are to be generated as part of meeting DIP's burden of proof to show adequate protection. At the hearing on March 17, DIP also should be prepared to list those expenses that are necessary to be paid prior to a final hearing to avoid immediate and irreparable harm to the estate, as required for an interim order pursuant to Rule 4001(b) (2).

1. [19-12511](#)-A-7 **IN RE: FAULKNER TRUCKING, INC.**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
2-10-2021 [\[113\]](#)

JAMES SALVEN/MV
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

James E. Salven ("Movant"), accountant for Chapter 7 trustee Peter L. Fear ("Trustee"), requests an allowance of final compensation and reimbursement for expenses for services rendered November 21, 2019 through February 8, 2021. Doc. #113. Movant provided accounting services valued at \$7,325.00, and requests compensation for that amount. Doc. #113. Movant requests reimbursement for expenses in the amount of \$626.70. Doc. #113.

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

Movant's services included, without limitation: (1) finalizing and preparing tax returns; (2) creating financial statements; and (3) obtaining and processing financial information. Exs. A and B, Doc. #116. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$7,325.00 and reimbursement for expenses in the amount of \$626.70. Trustee is authorized to make a combined payment of \$7,951.70, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate

is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

2. [19-12511](#)-A-7 **IN RE: FAULKNER TRUCKING, INC.**
[THA-2](#)

MOTION TO PAY
2-11-2021 [\[123\]](#)

PETER FEAR/MV
RILEY WALTER/ATTY. FOR DBT.
KELSEY SEIB/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Peter L. Fear ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Faulkner Trucking Inc., moves the court for an order authorizing the payment of \$1,615.00 to the Franchise Tax Board as an administrative tax expense and for authorization to pay an additional amount up to \$500.00 for any unexpected tax liabilities, interest, or fees without further court approval. Doc. #123.

11 U.S.C. § 503(b)(1)(B) states that, after notice and a hearing, administrative expenses shall be allowed for "any tax [] incurred by the estate, whether secured or unsecured, including property taxes . . . except a tax of a kind specified in section 507(a)(8) of this title[.]" "Pursuant to this subsection of § 503, a claim is entitled to allowance as an administrative expense if two requirements are satisfied: the tax must be incurred by the estate and the tax must not be a tax of a kind specified in § 507[(a)(8)]." Towers for Pacific-Atlantic Trading Co. v. United States (In re Pacific-Atlantic Trading Co.), 64 F.3d 1292, 1298 (9th Cir. 1995). Here, Trustee has shown that the tax was incurred by the estate, and the tax is not a tax of the kind specified in § 507(a)(8).

Accordingly, this motion is GRANTED. Trustee is authorized to pay an additional amount not to exceed \$500 for any unexpected tax liability. Interest, or fees incurred by the estate and not for a tax of a kind specified in § 507(a)(8).

3. [21-10312](#)-A-7 **IN RE: FREDERICK CORDOVA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-23-2021 [\[11\]](#)

2/23/21 \$338 FILING FEE PAID

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 the filing fee was paid in full on February 25, 2021.

4. [21-10315](#)-A-7 **IN RE: ALBERT RODRIGUEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-23-2021 [\[16\]](#)

ORDER APPROVING PAYMENT OF FILING FEE IN INSTALLMENTS, DOC #23

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The debtor filed a motion to pay the filing fee in installments on February 25, 2021. Doc. #22. By order entered on February 26, 2021, the court granted the debtor's motion for installments. Doc. #23. Therefore, this order to show cause for failure to pay fees will be vacated.

5. [20-13528](#)-A-7 **IN RE: JOSE/MONICA MALDONADO**
[UST-1](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND TIME TO FILE
A MOTION TO DISMISS CASE UNDER SEC. 707(B)
2-2-2021 [\[48\]](#)

TRACY DAVIS/MV
LAYNE HAYDEN/ATTY. FOR DBT.
JASON BLUMBERG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local
Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors,

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

Tracy Hope Davis, the United States Trustee for Region 17 ("UST"), moves the court for an order extending the time periods for the UST to file a complaint objecting to the discharge of Jose Maldonado and Monica Maldonado (together, "Debtors") under 11 U.S.C. § 727 and a motion to dismiss under § 707(b)(1) and (3). Doc. #48. Filed in support of UST's motion is a Stipulation to Enlarge Time Periods signed by UST and Debtors. Doc. #49.

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

After review of the included evidence, the court finds that "cause" exists to extend the filing deadlines because UST requires more time to conduct and complete UST's investigation in this case and UST and Debtors have stipulated to an extension of the deadlines. Doc. ##48, 49.

Accordingly, this motion is GRANTED. The time for UST to file a complaint objecting to Debtors' discharge under § 727 is extended to May 3, 2021, and the time for UST to file a motion to dismiss Debtors' case under § 707(b)(1) and (3) is extended to May 3, 2021.

6. [20-13329](#)-A-7 **IN RE: STEVEN/DEBORAH POPOLIZIO**
[UST-1](#)

MOTION TO DISMISS CASE
2-2-2021 [\[21\]](#)

TRACY DAVIS/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
JASON BLUMBERG/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Debtor timely filed a written non-

opposition. Doc. #27. The failure of creditors or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Tracy Hope Davis, the United States Trustee for Region 17 ("UST"), moves the court to dismiss the chapter 7 bankruptcy case of Steven Albert Popolizio and Deborah Diane Popolizio (together, "Debtors") for abuse under 11 U.S.C. § 707(b)(2) (presumptive abuse) and § 707(b)(3)(B) (totality of the circumstances abuse). Doc. #21. Debtors do not oppose UST's motion. Doc. #27.

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

The provisions of § 707(b)(2) create a formulaic test to determine whether Debtors' chapter 7 bankruptcy case is presumed abusive. Whether the presumption of abuse arises and the case should be dismissed depends on the means test calculation. Reed v. Anderson (In re Reed), 422 B.R. 214, 221 (C.D. Cal. 2009). The means test is a mechanical computation that demonstrates either the presumption of abuse or not, and the court has minimal discretion. See Katz, 451 B.R. at 519. Section 707(b)(2)(A) establishes a presumption of abuse "if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of [] 25% of the debtor's nonpriority unsecured claims in the case, or \$8,175, whichever is greater, or [] \$13,650." 11 U.S.C. § 707(b)(2)(A)(i). Based on this calculation, if a debtor's monthly disposable income exceeds \$227.50 per month (or \$13,650 over a period of 60 months), "a presumption of abuse arises and the debtor's case can be dismissed under § 707(b)(2)." Reed, 422 B.R. at 221.

Debtors' CMI listed on Amended Form 122A-1, filed January 7, 2021, is \$10,733.36. Doc. #12. Debtors' monthly disposable income after the claimed deductions is \$4,944.92, which multiplied by 60 totals \$296,695.20. Doc. #12. Because Debtors' monthly disposable income, multiplied by 60 months, is greater than \$13,650, the presumption of abuse arises.

The presumption of abuse under § 707(b)(2) "may only be rebutted by demonstrating special circumstances . . . to the extent such special circumstances that [sic] justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative." 11 U.S.C. § 707(b)(2)(B)(i). The debtor must demonstrate special circumstances by "itemiz[ing] each additional expense or adjustment of income and [providing] documentation for such expense or adjustment to income [and] a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable." 11 U.S.C. § 707(b)(2)(B)(ii). The debtor

must also "attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required." 11 U.S.C. § 707(b)(2)(B)(iii).

Here, Debtors have not demonstrated any special circumstances and have not rebutted the presumption of abuse. Debtors do not contest UST's motion to dismiss. Doc. #27.

The presumption of abuse under § 707(b)(2) arises in this case. Because Debtors have not rebutted the presumption of abuse as required by Bankruptcy Code § 707(b)(2)(B), UST's motion to dismiss for abuse under § 707(b)(2) is GRANTED.

Because this case can be dismissed for abuse under § 707(b)(2), the court will not consider dismissal under § 707(b)(3)'s totality of the circumstances analysis.

7. [21-10344](#)-A-7 **IN RE: FAITH MARTIN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-26-2021 [\[15\]](#)

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 the filing fee has been paid in full.

8. [20-12953](#)-A-7 **IN RE: JOSHUA SMITH**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
2-2-2021 [\[27\]](#)
WITHDRAWN 2/8/2021

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on February 8, 2021. Doc. #29.

MOTION TO COMPEL ABANDONMENT
2-16-2021 [\[7\]](#)

AMY WELCH/MV
STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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 a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

John K. Welch and Amy E. Welch (together, "Debtors"), the chapter 7 debtors in this case, move the court to order the trustee to abandon property of the estate, particularly a vehicle identified as a 2020 Kia Soul (the "Property"). Doc. #7. Debtors assert that they have no non-exempt equity in the Property and the Property therefore has no value to the bankruptcy estate. Doc. #9. No opposition has been filed in response to this motion.

11 U.S.C. § 554(b) permits the court, on request of a party in interest and after notice and a hearing, to order the trustee to abandon property that is burdensome to the estate or of inconsequential value and benefit to the estate. Vu v. Kendall (In re Vu), 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). To grant a motion to abandon property, the bankruptcy court must find either that the property is (1) burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. Id. (citing In re K.C. Machine & Tool Co., 816 F.2d 238, 245 (6th Cir. 1987)). However, "an order compelling abandonment [under § 554(b)] is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset. . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." Id. (quoting K.C. Machine & Tool Co., 816 F.2d at 246).

Here, Debtors do not allege that the Property is burdensome to the estate. Mot., Doc. #7. Therefore, Debtors must establish that the Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Debtors' Property is valued at \$14,300.00 and is encumbered by a lien totaling \$17,403.00. Schedule D, Doc. #1; Decl. of Debtors, Doc. #9. By

the motion and supporting declaration, Debtors state that they claim an exemption in the Property under an unspecified subsection of California Civil Procedure Code § 703. Doc. ##7, 9. However, a review of Debtors' schedules reveals no claim of exemption in the Property. Schedule C, Doc. #1. Nevertheless, the Property is over-encumbered. The court finds that Debtors have met their burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate.

Accordingly, this motion is GRANTED. The order shall specifically identify the property abandoned.

10. [17-12781](#)-A-7 **IN RE: DALIP NIJJAR**
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG, ACCOUNTANT(S)
2-16-2021 [[263](#)]

RATZLAFF, TAMBERI & WONG/MV
JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Ratzlaff Tamberi & Wong, an Accountancy Corporation ("Movant"), accountant for Chapter 7 trustee James E. Salven ("Trustee"), requests an allowance of final compensation and reimbursement for expenses for services rendered December 28, 2018 through February 1, 2021. Doc. #263. Movant provided accounting services valued at \$2,428.50 and requests compensation for that amount. Doc. #263. Movant requests reimbursement for expenses in the amount of \$9.42. Doc. #263.

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

Movant's services included, without limitation: (1) preparing federal and state income tax returns; and (2) reviewing Trustee's accounting information. Ex. A, Doc. #267. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$2,428.50 and reimbursement for expenses in the amount of \$9.42. Trustee is authorized to make a combined payment of \$2,437.92, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

11. [20-13937](#)-A-7 **IN RE: ALBERT TAPIA**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
2-2-2021 [\[23\]](#)

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

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

On March 16, 2021, the trustee filed a statement of no objection to the court conditionally denying the motion to dismiss the case. Doc. #31.

The debtor shall attend the meeting of creditors rescheduled for March 22, 2021 at 4:00 p.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.