



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, March 28, 2024
Department A - Courtroom #11
Fresno, California

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at, Courtroom #11 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>. Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [24-10201](#)-A-13 **IN RE: JOSHUA/DEODETE MENESES**
[SDS-1](#)

MOTION TO AVOID LIEN OF ARMANDO SILVA AND SUSAN SILVA
2-20-2024 [[13](#)]

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

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #17. However, Federal Rule of Bankruptcy Procedure ("Rule") 9014 requires service on the lienholder of a motion to avoid a lien under 11 U.S.C. § 522(f) to be made pursuant to Rule 7004. The declarant should have marked boxes under Section 6A of the current form instead of boxes under Section 6B for service of the motion on the lienholder.

Joshua Allen Meneses and Deodete Maria-Avila Meneses (together, "Debtors"), the debtors in this chapter 13 case, move pursuant to 11 U.S.C. § 522(f) and Rules 4003(d) and 9014 to avoid the judicial lien of Armando Silva and Susan Silva and their Successors and Assigns (collectively, "Creditor") on the residential real property commonly referred to as 3514 N. Colpien Rd., Tulare, CA 93274 (the "Property"). Doc. #13; Schedule C & D, Doc. #1.

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). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtors filed their bankruptcy petition on January 29, 2024. Doc. #1. A judgment was entered against Debtors in the amount of \$88,696.00 in favor of Creditor on December 12, 2023. Ex. G, Doc. #16. The abstract of judgment was recorded pre-petition in Tulare County on December 22, 2023, as document number 2023-0060916. Id. The lien attached to Debtors' interest in the Property located in Tulare County. Schedule D, Doc. #1. The Property also is encumbered by a first mortgage held by Freedom Mortgage in the amount of \$380,199.00, a second mortgage held by Tulare County Federal Credit Union in the amount of \$20,799.47, and a property tax lien in favor of Tulare County Tax collector in the amount of \$2,172.30. Schedule D, Doc. #1. Debtors claimed an exemption of \$387,871.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at \$495,000.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$88,696.00
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$403,170.77
Amount of Debtors' claim of exemption in the Property	+	\$387,871.00
		\$879,737.77
Value of Debtors' interest in the Property absent liens	-	\$495,000.00
Amount Creditor's lien impairs Debtors' exemption		\$384,737.77

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED. The proposed order shall state that Creditor's judicial lien is avoided on the subject Property only and include a copy of the abstract of judgment as an exhibit.

2. [23-12914](#)-A-13 **IN RE: MARK WHITE AND SHEALON HILLIARD-WHITE**
[PBB-3](#)

MOTION TO CONFIRM PLAN
 2-12-2024 [[32](#)]

SHEALON HILLIARD-WHITE/MV
 PETER BUNTING/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 35 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo),

468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

3. [19-15138](#)-A-13 **IN RE: JULIO/VIOLENA CELAYA**
[PBB-3](#)

MOTION TO SET ASIDE DISMISSAL OF CASE AND/OR MOTION TO REINSTATE PLAN
2-23-2024 [\[104\]](#)

VIOLENA CELAYA/MV
PETER BUNTING/ATTY. FOR DBT.
DISMISSED 02/16/2024

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 court will issue an order after the hearing.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f) (1). The chapter 13 trustee timely filed a response to the motion. Doc. #112. The failure of other creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f) (1) (B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

Julio Cesar Celaya, Jr. and Violena Celaya (together, "Debtors") move the court to set aside the order dismissing Debtors' chapter 13 case and to reinstate Debtors' chapter 13 plan. Doc. #104. Debtors' bankruptcy case was dismissed on February 16, 2024, after failing to bring their delinquent plan payments current. Doc. #101.

Debtors move under Federal Rule of Civil Procedure ("Rule") 60(b), incorporated to this proceeding by Federal Rule of Bankruptcy Procedure 9024, to vacate the dismissal of their bankruptcy case. Rule 60(b) (1) permits the court to grant relief from a final order for, *inter alia*, mistake, inadvertence, surprise, excusable neglect, or any other reason that justifies relief. Rule 60(b) (1); Doc. #104. A motion to reconsider an order is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." Kona Enters. v. Estate of Bishop, 299 F.3d 877, 890 (9th Cir. 2000); see also Berman v. Freedom Fin. Network, LLC, 30 F.4th 849 (9th Cir. 2022) (applying the standard to Rule 60(b)).

Debtors argue that the order dismissing their chapter 13 case should be vacated under Rule 60(b) because of excusable neglect. "[F]or purposes of Rule 60(b), 'excusable neglect' is understood to encompass situations in which the failure

to comply with a filing deadline is attributable to negligence." Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 394 (1993). The determination of "what sorts of neglect will be considered 'excusable' . . . is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." Id. at 395. Relevant circumstances include "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." Id.

The court is inclined to grant Debtors' motion and vacate the dismissal due to excusable neglect. Debtors filed their chapter 13 bankruptcy petition on December 10, 2019. Doc. #1. The first chapter 13 plan was confirmed on June 10, 2020. Doc. #76. Debtors previously received a Notice of Default and Intent to Dismiss Case ("NODID") in January 2023 that required Debtors to be fully current on their plan by paying \$2,032.50 by January 31, 2023. Doc. #87. Debtors received a second NODID in June 2023 that required Debtors to be fully current on their plan by paying \$2,100.15 by June 30, 2023. Doc. #89.

Debtors received a third NODID in January 2024 that required Debtors to be fully current on their confirmed chapter 13 plan by paying \$4,254.52 by January 31, 2024. Decl. of Julio Cesar Celaya, Doc. #108. Debtors made a payment on January 4, 2024 in the amount of \$2,190.00 Id. at ¶ 9. Debtors also made a payment on January 29, 2024 in the amount of \$2,190.00, which is shown to have been received by TFS on February 1, 2024. Id. at ¶ 10. Debtors believed that these two payments were made in time to cure the default set forth in the third NODID by January 31, 2024. Id. at ¶ 11. Debtors provided their attorney with the receipt for the payment sent on January 29, 2024 by MoneyGram. Id. at ¶ 12. Debtors expected the chapter 13 trustee would have counted the payment as received. Id. at ¶ 14. Further, Debtors state if they had known the chapter 13 trustee counted the payment only after the payment was posted on the chapter 13 trustee's webpage, Debtors would have arranged to make the delinquent payment earlier. Id. at ¶ 15. On February 15, 2024, the chapter 13 trustee filed a declaration seeking dismissal of Debtors' case because Debtors failed to comply timely with the NODID. Doc. #99.

In her response to the motion, the chapter 13 trustee explains the process in her office as to when the chapter 13 trustee deems a NODID to be cured. Doc. #112. The chapter 13 trustee also acknowledges the hardship imposed upon Debtors due to the dismissal of their case, concedes to the relief Debtors seek, and requests the court to grant Debtors' motion. Id.

Debtors have only 10 months remaining on their 60-month plan and have made the majority of their plan payments to the chapter 13 trustee. Doc. #112. If the dismissal is vacated, Debtors intend to complete their plan and remove a voluntary lien in the approximate amount of \$139,000. Celaya Decl., Doc. #108.

The court finds that refusing to vacate the dismissal order would be highly prejudicial to Debtors, the length of delay between dismissal and Debtors' request to vacate dismissal is minimal, and Debtors acted in good faith. Further, the chapter 13 trustee supports granting the motion. The court finds that Debtors have established excusable neglect under Rule 60(b).

Accordingly, this motion will be GRANTED. The order entered on February 16, 2024 (Doc. #101) dismissing Debtors' bankruptcy case will be VACATED without prejudice to any actions taken by creditors in reliance on the dismissal order.

4. [24-10038](#)-A-13 **IN RE: GRACIELA RUVINO**
[PBB-2](#)

MOTION TO AVOID LIEN OF DEBT MANAGEMENT PARTNERS, LLC
2-21-2024 [[24](#)]

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

Graciela C. Ruvino ("Debtor"), the debtor in this chapter 13 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Debt Management Partners, LLC ("Creditor") on the residential real property commonly referred to as 428 S. Whitney Avenue, Fresno, CA 93702 (the "Property"). Doc. #24; Schedule C & D, Doc. #18.

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). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtor filed her bankruptcy petition on January 9, 2024. Doc. #1. A judgment was entered against Debtor in the amount of \$2,994.10 in favor of Creditor on April 7, 2022. Ex. D, Doc. #27. Per Creditor's proof of claim filed on February 5, 2024, the current amount of the lien is \$3,520.73. Claim 1-1; Motion, Doc. #24. The abstract of judgment was recorded pre-petition in Fresno County on July 15, 2022, as document number 2022-0091381. Ex. D, Doc. #27. The lien attached to Debtor's interest in the Property located in Fresno County. Schedule D, Doc. #18. The Property also is encumbered by a first deed of trust held by SN Servicing in the amount of \$85,703.26. Id. Debtor claimed an exemption of \$189,050.00 in the Property under California Code of Civil

Procedure § 704.730. Schedule C, Doc. #18. Debtor asserts a market value for the Property as of the petition date at \$178,000.00. Schedule A/B, Doc. #18.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$3,520.73
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$85,703.26
Amount of Debtor's claim of exemption in the Property	+	\$189,050.00
		\$278,273.99
Value of Debtor's interest in the Property absent liens	-	\$178,000.00
Amount Creditor's lien impairs Debtor's exemption		\$100,273.99

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED. The proposed order shall state that Creditor's judicial lien is avoided on the subject Property only and include a copy of the abstract of judgment as an exhibit.

5. [23-11539](#)-A-13 **IN RE: MARSHA MENDOZA**
[LGT-1](#)

MOTION TO DISMISS CASE
2-29-2024 [[103](#)]

LILIAN TSANG/MV
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to April 25, 2024 at 9:30 a.m.

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

The debtor timely filed written opposition on March 14, 2024. Doc. #107. The court is inclined to continue the trustee's motion to dismiss to April 25, 2024 at 9:30 a.m., to be heard in connection with the debtor's motion to confirm her latest chapter 13 plan (MM-5) also set for hearing on that date and time. Doc. ##110-114.

6. [24-10439](#)-A-13 **IN RE: MONICO ALEJANDREZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-12-2024 [[16](#)]

DISMISSED 3/18/24

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on March 18, 2024. Doc. #18. The order to show cause will be dropped as moot. No appearance is necessary.

7. [23-10344](#)-A-13 **IN RE: SUSAN QUINVILLE AND LOARINA DOMENA-QUINVILLE**
[JRL-3](#)

MOTION TO DISMISS CASE
3-11-2024 [[83](#)]

TRUSTEES OF THE GRANT F. SCHREIBER TRUST/MV
BENNY BARCO/ATTY. FOR DBT.
JERRY LOWE/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part; the case will be converted.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date 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 in part; the case will be converted. 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.

Trustees of the Grant F. Schreiber Family Trust ("Creditor") move to dismiss this chapter 13 bankruptcy case for the failure of the debtors to make all payments due under the plan. Motion, Doc. #83. Plan payments are in default by nearly three monthly payments, and a proposed modified plan that would have addressed the plan default has not been confirmed. Id.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for "cause". There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) and (c)(6) for failure to make all payments due under the plan. In re Davis, 64 B.R. 358, 359 (Bankr. S.D.N.Y. 1986).

Based on the confirmed plan, there was a liquidation amount of \$3,221.63 as of May 12, 2023. Order, Doc. #29. This amount is based primarily on non-exempt

equity in 275 shares of PG&E stock ("Stock"), valued at \$15.62 per share on the date of filing. Schedule A/B, Doc. #14. The court can take judicial notice of the value of a publicly traded stock posted by the New York Stock Exchange. Fed. R. Evid. 201(b)(2). The Stock is valued at \$16.41 per share as of the close of trading on March 25, 2024. Thus, there appears to be non-exempt equity in the debtors' assets to be realized for the benefit of the estate if the debtors' bankruptcy case is converted to chapter 7 instead of being dismissed. The court finds that conversion, rather than dismissal, is in the best interests of creditors and the estate.

Accordingly, pending opposition at the hearing, the motion will be GRANTED IN PART, and the case will be converted.

8. [20-12069](#)-A-13 **IN RE: SCOTT/SARINA DUTEY**
[EAM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-26-2024 [[159](#)]

YOSEMITE LAKES OWNERS ASSOCIATION/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
ERIN MALONEY/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 prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo 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.

As a procedural matter, the certificate of service filed in connection with this motion does not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022. Doc. #164.

As a further procedural matter, the exhibits filed in connection with this motion do not comply with LBR 9004-2(c)(1) and (d)(1), which require declarations and exhibits to be filed as separate documents. Here, the declaration included the movant's exhibits in a single document. Doc. #163.

The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to

comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

The movant, Yosemite Lakes Owners' Association ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property located at 30557 Seminole Drive, Coarsegold, CA 93614 (the "Property"). Doc. #159. Specifically, Movant seeks relief from stay to record a notice of delinquent assessments to secured post-petition delinquent assessments owed to Movant and proceed under applicable non-bankruptcy law to start the process of enforcing remedies to foreclose upon and obtain possession of the Property.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have only tendered one post-petition payment to Movant and have failed to make any other post-petition payments during the last four years. Movant has produced evidence that the debtors are delinquent by at least \$12,669.47. Decl. of Cheryl Bluhm, Doc. #163; Ex. 3, Doc. #163

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to record a notice of delinquent assessments and proceed under applicable non-bankruptcy law to start the process of enforcing remedies to foreclose upon and obtain possession of the Property. No other relief is awarded.

9. [24-10270](#)-A-13 **IN RE: RICHARD EDMINSTER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-11-2024 [[24](#)]

DISMISSED 3/14/24

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on March 14, 2024. Doc. #27. The order to show cause will be dropped as moot. No appearance is necessary.

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
2-19-2024 [\[43\]](#)

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

Scott Lyons ("Movant"), counsel for Travis Edward Bridgman ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$6,984.00 and reimbursement for expenses in the amount of \$627.64 for services rendered from April 13, 2023 through February 14, 2024. Doc. #43. Debtor's confirmed plan provides, in addition to \$2,042.00 paid prior to filing the case, for \$15,000.00 in attorney's fees to be paid through the plan. Plan, Doc. ##3, 33. No prior fee application has been filed. Debtor consents to the amount requested in Movant's application. Doc. #43.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, 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). Here, Movant demonstrates services rendered relating to: (1) fact gathering and filing chapter 13 case; (2) preparing petition, schedules, and related forms; (3) attending meeting of creditors; (4) preparing and confirming Debtor's plan; (5) preparing the fee application; and (6) general case administration. Exs. A & B, Doc. #45. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$6,984.00 and reimbursement for expenses in the amount of \$627.64 to be paid in a manner consistent with the terms of the confirmed plan.

MOTION FOR COMPENSATION FOR JEFFREY D. ROWE, DEBTORS ATTORNEY(S)
2-26-2024 [28]

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

Jeffrey D. Rowe ("Movant"), counsel for Susana Montanez ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$7,400.00 and reimbursement for expenses in the amount of \$322.54 for services rendered from September 24, 2019 through February 23, 2024. Doc. #28. Debtor's confirmed plan provides, in addition to \$1,500.00 paid prior to filing the case, for \$15,000.00 in attorney's fees to be paid through the plan. Am. Plan, Doc. ##2, 16, 21. No prior fee application has been filed. Debtor consents to the amount requested in Movant's application. Ex. F, Doc. #28.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, 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). Here, Movant demonstrates services rendered relating to: (1) fact gathering and filing chapter 13 case; (2) preparing petition, schedules, and related forms; (3) attending meeting of creditors; (4) preparing and confirming Debtor's plan; (5) communicating with Debtor's creditors and the chapter 13 trustee; (6) preparing the fee application; and (7) general case administration. Exs. A-D, Doc. #28. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$7,400.00 and reimbursement for expenses in the amount of \$322.54 to be paid in a manner consistent with the terms of the confirmed plan.

11:00 AM

1. [19-11628](#)-A-12 **IN RE: MIKAL JONES**
[19-1081](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-28-2019 [[1](#)]

DILDAY ET AL V. JONES
RILEY WALTER/ATTY. FOR PL.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to April 25, 2024 at 11:00 a.m.

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

Based on the joint status report filed by the parties on March 21, 2024
(Doc. #160), the court intends to continue this status conference to April 25,
2024 at 11:00 a.m. The court will require the parties to file a further joint
status report on or before April 18, 2024.