UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, March 31, 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.

9:30 AM

1. 20-11606-A-11 **IN RE: MICHAEL PENA**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
5-4-2020 [1]

JUSTIN HARRIS/ATTY. FOR DBT.

NO RULING.

2. 21-10308-A-11 **IN RE: THOMAS ANTON & ASSOCIATES, A LAW CORPORATION**
LKW-2

FINAL HEARING RE: 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.

This motion was set for hearing pursuant to an order authorizing interim use of cash collateral and granting adequate protection ("Interim Order"). Doc. #73. Pursuant to the Interim Order, written opposition to the relief requested by Thomas Anton & Associates, a Law Corporation ("Debtor" or "DIP") in this motion was not required to be filed prior to the hearing, and this matter 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. The court will issue an order if a further hearing is necessary.

DIP moves the court for an order authorizing Debtor to use the cash collateral of the Internal Revenue Service ("IRS") through confirmation of a chapter 11 subchapter V plan consistent with the budget filed as Ex. B, Doc. #53, and to provide adequate protection to the IRS in the form of a replacement lien and monthly cash payments to the IRS through plan confirmation ("Motion"). Doc. #50 (LKW-2). Debtor asserts the IRS holds a duly perfected security interest in nearly all of Debtor's assets. Doc. #50. On March 11, 2021, the 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.

The Motion was initially heard on March 17, 2021 and was granted on an interim basis by the Interim Order. Doc. #73. The Interim Order set a final hearing for March 31, 2021 at 9:30 a.m. Id. On March 17, 2021, notice of the final hearing was sent to all creditors, the Office of the United States Trustee, the Subchapter V Trustee, and entities requesting special notice as required by paragraph 8 of the Interim Order. Doc. #71.

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, 171 (E.D. Cal. 1989). Bankruptcy Code § 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.

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. The IRS consents to DIP's proposed use of the IRS's cash collateral as described in the Motion. Doc. #66.

Local Rule 4001-1(c)(3) requires DIP to recite whether the proposed authorization to use cash collateral contains any provision described therein, and if so, DIP must provide substantial justification in order for the provisions to be approved as part of an order authorizing use of cash collateral. Here, the proposed final order granting the Motion includes some of these provisions. The court will approve those provisions based on the following:

(1) Local Rule 4001-1(c)(3)(A) requires substantial justification before the court will permit "clauses that secure pre-petition debt by post-petition assets in which the secured party would not otherwise have a security interest by virtue of its pre-petition security agreement." The Motion gives the IRS a replacement lien in Debtor's money on deposit and post-petition accounts receivable for Debtor's use of cash collateral. The court finds substantial justification for permitting this provision to be included in the final order.

(2) Local Rule 4001-1(c)(3)(B) requires substantial justification before the court will permit "[p]rovisions or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection, or amount of the secured party's lien or debt." Debtor acknowledges and agrees through the Motion that Debtor is liable to the IRS for the amounts described in the Motion, that the debt owed to the IRS is an allowed claim under law, and that the debt owed to the IRS is secured by valid and perfected liens against its collateral. The court finds substantial justification for permitting this provision to be included in the final order.

The remaining provision of LBR 4001-1(c)(3) are not implicated by this Motion.

Accordingly, the Motion is GRANTED. DIP shall submit a proposed final order.

3. 21-10308-A-11 **IN RE: THOMAS ANTON & ASSOCIATES, A LAW CORPORATION**
LKW-3

MOTION TO DISMISS CASE
3-10-2021 [59]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally granted.

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

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rules of Bankruptcy Procedure 1017 and 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion conditioned upon the debtor filing all monthly operating reports due as of the date of dismissal. 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.

Thomas Anton & Associates, A Law Corporation ("Debtor" or "DIP") moves the court to dismiss Debtor's chapter 11, subchapter V bankruptcy case for cause pursuant to 11 U.S.C. § 1112(b). Doc. #59.

Any party in interest, including the debtor, may move to dismiss a chapter 11 bankruptcy case. 11 U.S.C. § 1112(b)(1). After notice and a hearing, the court may dismiss a chapter 11 case for "cause" unless the court finds "unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate." 11 U.S.C. § 1112(b)(1), (2).

"Dismissal of a chapter 11 case under 11 U.S.C. § 1112(b) requires a two-step analysis." Moore v. United States Tr. For Region 16 (In re Moore), 583 B.R. 507, 511 (C.D. Cal. 2018). It must first be determined that there is "cause" to act, and it then must be determined that dismissal, rather than conversion to chapter 7, is in the best interests of the creditors and the estate. Id. (citing Nelson v. Meyer (In re Nelson), 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006)). While § 1112(b)(4) of the Bankruptcy Code identifies specific conduct constituting cause, "bankruptcy courts may look beyond 11 U.S.C. § 1112(b)(4) and 'consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'" Id. at 512 (quoting Pioneer Liquidating Corp. v. United States Tr. (In re Consol. Pioneer Mortg. Entities), 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000)).

The court finds that cause exists to dismiss Debtor's chapter 11 case. Dismissing Debtor's case will enable Debtor to participate in the Paycheck

Protection Program ("PPP") enacted in response to the COVID-19 pandemic. Decl. of Thomas J. Anton ¶ 4, Doc. #61. COVID-19 has had a devastating impact on Debtor's business. Anton Decl. ¶ 3, Doc. #61. Debtor is unable to participate in the PPP while involved in a bankruptcy case. Anton Decl. ¶ 4, Doc. #61. Accordingly, cause exists to dismiss Debtor's chapter 11 case pursuant to § 1112(b) of the Bankruptcy Code.

The court also finds that dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate. Debtor believes that the infusion of capital received from the PPP will provide critical funds to operate Debtor's business. Anton Decl. ¶ 5, Doc. #61. Further, Debtor will be eligible for relief again under subchapter V of chapter 11 after receiving the funds from the PPP, and reorganization under a confirmed chapter 11 plan is preferable to liquidation. Anton Decl. ¶ 5, Doc. #61.

LBR 2015-1(a)(1) and (c) require chapter 11 debtors to file monthly operating reports "not later than the fourteenth (14th) day of the month following the month of the reported period. Reports shall be filed for the portion of a calendar month from the date of filing, and monthly thereafter through the month in which an order of confirmation, conversion or dismissal is entered. If the portion of a calendar month from the date of filing is seven (7) days or less, the report for such period may be combined with the report due for the following calendar month." LBR 2015-1(c). Debtor's chapter 11 case was filed on February 9, 2021, and no monthly operating report has been filed in this case.

The court is inclined to permit dismissal of Debtor's case conditioned on Debtor filing all monthly operating reports due as of the time Debtor's bankruptcy case is dismissed.

4. 20-10945-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
JES-1

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
2-24-2021 [159]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part, denied in part.

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

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

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires that the notice include the names and addresses of persons who must be served with any opposition. The court encourages the moving party 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.

James E. Salven, CPA ("Movant"), accountant for the chapter 12 debtors, requests an allowance of interim compensation and reimbursement for expenses for services rendered March 15, 2020 through February 24, 2021. Doc. #159.

The issue with Movant's fee application is that Movant requests compensation for services rendered beginning March 15, 2020, but Movant's employment was granted "effective as to services performed on or after June 1, 2020." Order ¶ 6, Doc. #82. For the period set forth in the motion commencing March 15, 2020, Movant provided accounting services valued at $22,900.00, and requests compensation for that amount. Doc. #159. Movant requests reimbursement for expenses during that period in the amount of $156.45. Doc. #159. Alternatively, for the period beginning June 1, 2020, Movant provided accounting services valued at $19,750.00 and expenses of $107.85. See Exs. A and B, Doc. #163.

Retroactive Approval of Services

Movant contends that an order authorizing payment for services rendered before the entry of the order authorizing employment is permissible in the Ninth Circuit under Atkins v. Wain, Samuel & Co. (In re Atkins), 69 F.3d 970 (9th Cir. 1995).

Professionals who perform services for a chapter 12 debtor cannot recover fees for services rendered to the estate unless those services have been previously authorized by the bankruptcy court. 11 U.S.C. § 327(a); Atkins, 69 F.3d at 973. In the Ninth Circuit, bankruptcy courts "possess the equitable power to approve retroactively a professional's valuable but unauthorized services." Atkins, 69 F.3d at 973. Such awards should be limited to exceptional circumstances where an applicant can show both (1) a satisfactory explanation for the failure to receive prior judicial approval and (2) that he or she has benefited the bankrupt estate in some significant manner. E.g., Atkins, 69 F.3d at 975-76; In re THC Fin. Corp., 837 F.2d 389, 392 (9th Cir. 1988). These two factors must be met in order for a professional to establish exceptional circumstances, while additional factors may, but need not, be considered by the court in exercising its discretion. Atkins, 69 F.3d at 976.

The court finds that Movant has not established the existence of exceptional circumstances. Movant has not offered any evidence providing a satisfactory explanation for Movant's failure to receive prior judicial approval of Movant's employment before June 1, 2020.

On July 10, 2020, the court retroactively authorized Movant's employment effective June 1, 2020 at the request of counsel for the debtors. See Application for Order Authorizing Employment of [Movant], Doc. #60; Order, Doc. #82. Neither the employment application nor Movant's declaration filed in support of the employment application indicated that Movant performed accounting services prior to the requested effective date of June 1, 2020. Doc. #61. Movant's narrative summary in support of this fee application states that the delay in filing the employment application was attributable to "oversight caused by urgency of case issues and the onset of the COVID-19 pandemic and not neglect." Ex. C, Doc. #163. However, Movant's explanation for the delay in filing the initial employment application does not establish the

existence of exceptional circumstances, particularly when Movant should have been aware that Movant performed services prior to the requested effective date of June 1, 2020, and the circumstances supporting exceptional circumstances were not raised at the time of the employment application.

Accordingly, this motion is DENIED IN PART. The court will authorize Movant's interim application only for fees and expenses earned or incurred beginning June 1, 2020.

Compensation under § 330

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).

Beginning June 1, 2020, Movant's services included, without limitation: (1) analyzing data and preparing monthly operating reports; (2) reviewing plan projections; (3) calculating and reviewing tax implications; (4) updating projections and taxes; and (5) consulting with the debtors' counsel and the debtors. Doc. #163. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED IN PART. The court allows interim compensation in the amount of $19,750.00 and reimbursement for expenses in the amount of $107.85. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. Movant is authorized to withdraw any amount held in trust with the remainder to be paid through the approved chapter 12 plan.

5. 20-11367-A-11 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
4-9-2020 [1]

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Continued to May 6, 2021 at 10:00 a.m.

NO ORDER REQUIRED.

On March 16, 2021, the court issued an order continuing the status conference to May 6, 2021 at 10:00 a.m. Doc. #303.

6. 20-11367-A-11 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**
LKW-15

CONTINUED AMENDED CHAPTER 11 DISCLOSURE STATEMENT
2-3-2021 [273]

LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 6, 2021 at 10:00 a.m.

NO ORDER REQUIRED.

On March 16, 2021, the court issued an order continuing the hearing on the chapter 11 disclosure statement to May 6, 2021 at 10:00 a.m. Doc. #303.

7. 20-10569-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
JES-1

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
2-26-2021 [402]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part, denied in part.

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

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

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires that the notice include the names and addresses of persons who must be served with any opposition. The court encourages the moving party 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.

James E. Salven, CPA ("Movant"), accountant for the chapter 12 debtors, requests an allowance of interim compensation and reimbursement for expenses for services rendered March 15, 2020 through February 26, 2021. Doc. #402.

The issue with Movant's fee application is that Movant requests compensation for services rendered beginning March 15, 2020, but Movant's employment was granted "effective as to services performed on or after June 1, 2020." Order ¶ 6, Doc. #221. For the period set forth in the motion commencing March 15, 2020, Movant provided accounting services valued at $34,750.00, and requests compensation for that amount. Doc. #402. Movant requests reimbursement for expenses during that period in the amount of $261.75. Doc. #402. Alternatively, for the period beginning June 1, 2020, Movant provided accounting services valued at $28,900.00 and expenses of $202.15. See Exs. A and B, Doc. #404.

Retroactive Approval of Services

Movant contends that an order authorizing payment for services rendered before the entry of the order authorizing employment is permissible in the Ninth Circuit under Atkins v. Wain, Samuel & Co. (In re Atkins), 69 F.3d 970 (9th Cir. 1995).

Professionals who perform services for a chapter 12 debtor cannot recover fees for services rendered to the estate unless those services have been previously authorized by the bankruptcy court. 11 U.S.C. § 327(a); Atkins, 69 F.3d at 973. In the Ninth Circuit, bankruptcy courts "possess the equitable power to approve retroactively a professional's valuable but unauthorized services." Atkins, 69 F.3d at 973. Such awards should be limited to exceptional circumstances where an applicant can show both (1) a satisfactory explanation for the failure to receive prior judicial approval and (2) that he or she has benefited the bankrupt estate in some significant manner. E.g., Atkins, 69 F.3d at 975-76; In re THC Fin. Corp., 837 F.2d 389, 392 (9th Cir. 1988). These two factors must be met in order for a professional to establish exceptional circumstances, while additional factors may, but need not, be considered by the court in exercising its discretion. Atkins, 69 F.3d at 976.

The court finds that Movant has not established the existence of exceptional circumstances. Movant has not offered any evidence providing a satisfactory explanation for Movant's failure to receive prior judicial approval of Movant's employment before June 1, 2020.

On July 10, 2020, the court retroactively authorized Movant's employment effective June 1, 2020 at the request of counsel for the debtors. See Application for Order Authorizing Employment of [Movant], Doc. #190; Order, Doc. #221. Neither the employment application nor Movant's declaration filed in support of the employment application indicated that Movant performed accounting services prior to the requested effective date of June 1, 2020. Doc. #191. Movant's narrative summary in support of this fee application states that the delay in filing the employment application was attributable to "oversight caused by urgency of case issues and the onset of the COVID-19 pandemic and not neglect." Ex. C, Doc. #404. However, Movant's explanation for the delay in filing the initial employment application does not establish the existence of exceptional circumstances, particularly when Movant should have been aware that Movant performed services prior to the requested effective date of June 1, 2020, and the circumstances supporting exceptional circumstances were not raised at the time of the employment application.

Accordingly, this motion is DENIED IN PART. The court will authorize Movant's interim application only for fees and expenses earned or incurred beginning June 1, 2020.

Compensation under § 330

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).

Beginning June 1, 2020, Movant's services included, without limitation: (1) analyzing data and preparing monthly operating reports; (2) reviewing plan projections; (3) calculating and reviewing tax implications; (4) updating projections and taxes; and (5) consulting with the debtors' counsel and the debtors. Doc. #404. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED IN PART. The court allows interim compensation in the amount of $28,900.00 and reimbursement for expenses in the amount of $202.15. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. Movant is authorized to withdraw any amount held in trust with the remainder to be paid through the approved chapter 12 plan.

8. 20-12577-A-11 **IN RE: MARIA LUNA MANZO**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
8-5-2020 [1]

JUSTIN HARRIS/ATTY. FOR DBT.
DISMISSED 3/11/21

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

An order dismissing this case was entered on March 11, 2021. Doc. #151. Therefore, the status conference will be dropped from calendar.

9. 20-13293-A-11 **IN RE: PATRICK JAMES, INC.**
MB-22

MOTION FOR COMPENSATION FOR STAPLETON GROUP, INC., OTHER PROFESSIONAL(S)
2-26-2021 [250]

STAPLETON GROUP, INC./MV
HAGOP BEDOYAN/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 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.

The Stapleton Group, Inc. ("Movant"), financial consultant for Patrick James, Inc. ("DIP"), requests an allowance of interim compensation and reimbursement of expenses for services rendered December 1, 2020 through January 31, 2021. Doc. #250. Movant provided financial services valued at $46,283.50, and requests compensation for that amount. Doc. #250. Pursuant to the court's order authorizing the employment of Movant, Movant may submit monthly applications for interim compensation exceeding $5,000.00 under 11 U.S.C. § 331. Doc. #105.

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). According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #105. 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) reviewing and revising financial projection models; (2) analyzing and forecasting DIP's cash flow and budgets;(3) analyzing and modeling DIP's revenue; (4) reviewing rent and contract proposals and adjusting models; (5) discussed work with general counsel and DIP; (6) revising and analyzing DIP's monthly operating report; and (7) assisting in creditor and vendor agreements. Doc. #252. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of $46,283.50. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consisted with the priorities of the Bankruptcy Code.

10. 20-13293-A-11 **IN RE: PATRICK JAMES, INC.**
MB-23

MOTION FOR COMPENSATION BY THE LAW OFFICE OF MCCORMICK, BARSTOW, SHEPPARD, WAYTE & CARRUTH LLP FOR HAGOP T. BEDOYAN, DEBTORS ATTORNEY(S)
2-26-2021 [245]

HAGOP BEDOYAN/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 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.

McCormick, Barstow, Sheppard, Wayte & Carruth, LLP ("Movant"), attorney for Patrick James, Inc. ("DIP"), requests an allowance of interim compensation and reimbursement for expenses for services rendered December 1, 2020 through January 31, 2021. Doc. #245. Movant provided legal services valued at $65,460.00, and requests compensation for that amount. Doc. #245. Movant requests reimbursement for expenses in the amount of $294.19. Doc. #245; Ex. C, Doc. #247. Pursuant to the court's order authorizing the employment of Movant, Movant may submit monthly applications for interim compensation exceeding $5,000.00 under 11 U.S.C. § 331. Doc. #104.

Section 330(a)(1) 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 11 case. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of general counsel,

Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #104. 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 and prosecuting motions to assume and reject leases and contracts; (2) preparing for and attending hearings; (3) preparing and filing motion to extend filing deadline; (4) maintaining financing and cash collateral; (5) claims analysis and administration; and (6) preparing and filing fee applications. Doc. #247. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of $65,460.00 and reimbursement for expenses in the amount of $294.19. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consisted with the priorities of the Bankruptcy Code.

11. 17-11261-A-7 **IN RE: STEVEN/REBECCA COLDREN**
WJH-2

MOTION TO AVOID LIEN OF LEAF CAPITAL FUNDING
3-19-2021 [55]

REBECCA COLDREN/MV
RILEY WALTER/ATTY. FOR DBT.
OST 3/19/21
RESPONSIVE PLEADING

NO RULING.

11:00 AM

1. 20-13753-A-7 **IN RE: ELIZABETH ZAVALA**

REAFFIRMATION AGREEMENT WITH WESTAMERICA BANK
3-1-2021 [18]

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor 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 that has not been rebutted in the reaffirmation agreement. Although the debtor's attorney executed the agreement, no evidence has been presented to the court to indicate how the debtor can afford to make the payment. The debtor claims she has filed on all of her debt and can afford the payment, but has not provided the court with an amended Schedule J. Therefore, the reaffirmation agreement with WestAmerica Bank will be DENIED.

2. 21-10081-A-7 **IN RE: DARNE/AYANNA KING**

PRO SE REAFFIRMATION AGREEMENT WITH ALASKA USA FEDERAL CREDIT UNION
3-3-2021 [16]

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.

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. Okla. 2009) (emphasis in original) (citation omitted). 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. Minardi, 399 B.R. at 847 ("If a debtor was represented during the course of negotiating a reaffirmation agreement, but debtor's counsel is unable or unwilling to make the required certifications, then the agreement does not satisfy § 524(c)(3) and is unenforceable."). The reaffirmation agreement with Alaska USA Federal Credit Union will be DENIED.

3. 21-10081-A-7 **IN RE: DARNE/AYANNA KING**

REAFFIRMATION AGREEMENT WITH EXETER FINANCE LLC
3-2-2021 [15]

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. In re Minardi, 399 B.R. 841, 847 (Bankr. N.D. Okla. 2009) ("If a debtor was represented during the course of negotiating a reaffirmation agreement, but debtor's counsel is unable or unwilling to make the required certifications, then the agreement does not satisfy § 524(c)(3) and is unenforceable."). The reaffirmation agreement with Exeter Finance LLC will be DENIED.

1:30 PM

1. 21-10313-A-7 **IN RE: OSCAR URIBE**
JHW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-19-2021 [10]

TD AUTO FINANCE LLC/MV
LAYNE HAYDEN/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, TD Auto Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2015 Dodge Challenger ("Vehicle"). Doc. #10.

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 debtor has failed to make at least two complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least $983.82, including late fees of $24.00. Doc. #13.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least two pre- and post-petition payments to Movant and the Vehicle is a depreciating asset.

2. 21-10318-A-7 **IN RE: JOE BARRERA**
APN-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-26-2021 [14]

HSBC BANK USA, NATIONAL ASSOCIATION/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, HSBC Bank USA, National Association ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to real property located at 15985 Edmiston Avenue in Ivanhoe, California ("Property"). 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 any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least 27 complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least $28,962.16 and the entire balance of $140,487.04 is due. Doc. #16.

The court also finds that the debtor does not have any equity in the Property and the Property is not necessary to an effective reorganization because the debtor is in chapter 7. The property is valued at $135,000.00 and the debtor owes $140,487.04. Doc. #14.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least 27 payments, both pre- and post-petition to Movant.

3. 18-14920-A-7 RAC-13 **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA GENERAL PARTNERSHIP**

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BLAKELEY LLP FOR RONALD A. CLIFFORD, SPECIAL COUNSEL(S)
3-4-2021 [355]

JACOB EATON/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.

Blakeley LLP ("Movant"), special counsel for Chapter 7 trustee David M. Sousa ("Trustee"), requests an allowance of interim compensation and reimbursement for expenses for services rendered May 18, 2020 through February 21, 2021. Doc. #355. Movant provided legal services valued at $104,845.50, and requests compensation for that amount. Doc. #355. Movant requests reimbursement for expenses in the amount of $758.85. Doc. #355.

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) extensive bankruptcy litigation, including claims objections and adversary proceedings; (2) drafting and filing a complaint in a multi-million dollar adversary proceeding, defending against a motion to dismiss, filing an amended complaint, and engaging in discovery; (3) attending hearings and status conferences; and (4) communicating and consulting with Trustee. Exs. 1, 2, and 3, Doc. #356. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on an interim basis. The court allows interim compensation in the amount of $104,845.50 and reimbursement for expenses in the amount of $758.85. Trustee is authorized to make a combined payment of $105,604.35, 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.

4. 19-14652-A-7 **IN RE: YOUTH CENTERS OF AMERICA, A CALIFORNIA CORPORATION**
RAC-2

MOTION TO SELL FREE AND CLEAR OF LIENS
2-26-2021 [24]

DAVID SOUSA/MV
DAVID JENKINS/ATTY. FOR DBT.
RONALD CLIFFORD/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled for higher and better offers.

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 the hearing.

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

David M. Sousa ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Youth Centers of America, a California Corporation, moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the bankruptcy estate's interest in: three used desks; three used office chairs; fourteen used folding chairs; three used filing cabinets; eight used conference table chairs; one used vacuum cleaner; two used calculators; one used Toshiba copier; three used desktop computers; fifteen used laptop computers; one used computer server; one used public address system; one used projector; two used projector screens; and

one used manual binding machine (collectively, the "Property") to Central Valley Resource Center Services, Corp. ("Buyer") for the purchase price of $2,000.00, subject to higher and better bids at the hearing. Doc. #24.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 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, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (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. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is reasonable and in the best interests of the bankruptcy estate. Doc. #28. Trustee's proposed sale to Buyer is made in consideration of the full and fair market value of the Property as is. Doc. #28. Buyer offered to buy the Property for the "as is, where is" purchase price of $2,000.00, subject to overbid at the hearing. Doc. #28. The court recognizes that no commission will need to be paid, and there will be no significant tax consequences. Doc. #28.

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

Accordingly, subject to overbid offers made at the hearing, the court is inclined to GRANT Trustee's motion and authorize the sale of the estate's interest in the Property to Buyer on the terms set forth in the motion.

5. 21-10060-A-7 **IN RE: JUAN LEMUS AND PRISCILLA ARIAS-LEMUS**
KMM-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-25-2021 [12]

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

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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.

The movant, Toyota Motor Credit Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2016 Toyota Tundra 2WD Truck ("Vehicle"). Doc. #12.

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 debtors do not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least three complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least $2,064.37, which includes $101.52 in late fees. Doc. #14.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. Id. The Vehicle is valued at $10,800.00 and the debtors owe $10,841.60.00. Doc. #12.

The moving papers show the collateral is a depreciating asset and there is lack of insurance.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtors have failed to make at least three pre- and post-petition payments to Movant. The Vehicle is a depreciating asset and there is lack of insurance.

6. 21-10469-A-7 **IN RE: ROSA RAMIREZ**
NSC-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-5-2021 [9]

THE GOLDEN 1 CREDIT UNION/MV
GABRIEL WADDELL/ATTY. FOR DBT.
NICHOLAS COUCHOT/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after 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, The Golden 1 Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2016 Honda Pilot LX ("Vehicle"). Doc. #9.

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 debtor is 2 payments past due in the amount of $1,041.22. Doc. #11.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least two pre- and post-petition payment and the Vehicle is a depreciating asset.

7. 19-13784-A-7 **IN RE: NANCY MEDEL**
AP-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-24-2021 [22]

QUICKEN LOANS, LLC/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.
DISCHARGED 01/21/2020

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

DISPOSITION: Granted in part and denied as moot in part.

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

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

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on January 21, 2020. Doc. #20. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Quicken Loans, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a piece of real property located at 3829 E. Laura Ave in Visalia, California ("Property"). Doc. #22.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least 10 complete post-petition payments. Movant has produced evidence that the debtor is delinquent by at least $15,594.90. Doc. #25.

According to the motion, the debtor has equity in the Property, so relief from stay pursuant to 11 U.S.C. § 362(d)(2) is denied. Doc. #22.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

8. 20-13887-A-7 **IN RE: RAYMOND VELEZ**
DMS-1

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
2-25-2021 [14]

NO RULING.

9. 16-13295-A-7 **IN RE: DAVID GONZALEZ AND CYNTHIA DE LA GARZA**
FW-4

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT OF CIVIL CLAIM AND/OR MOTION FOR COMPENSATION FOR MOSTYN LAW FIRM, SPECIAL COUNSEL(S)
3-1-2021 [51]

PETER FEAR/MV
KARNEY MEKHITARIAN/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Peter L. Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of David Mendez Gonzalez, Jr. and Cynthia De La Garza (together, "Debtors"), moves

the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019 approving the compromise of all claims and disputes arising out of co-Debtor Cynthia De La Garza's claim against a medical device manufacturer related to a surgically implanted medical device (the "Claim"). Doc. #51. Debtors retained Abram Blair & Associates, The Mostyn Law Firm, and Arnold & Itkin LLP (together, "Special Counsel") to represent co-Debtor Cynthia De La Garza in the Claim. Doc. #51. The court authorized the retroactive employment of Special Counsel on October 28, 2020. Order, Doc. #50. Trustee also requests authorization of final compensation for Special Counsel pursuant to 11 U.S.C. § 328 as required by the Order. Doc. #51; Order, Doc. #50.

Settlement Agreement

Among the assets of the estate is a claim against a medical device manufacturer for injuries to co-Debtor Cynthia De La Garza, which the manufacturer has offered to settle for $120,000.00. Decl. of Caroline Maida, Doc. #54. The terms of the proposed settlement are confidential, and Trustee would be expected to execute a full and complete release on behalf of Debtors in favor of the manufacturer. Decl., Doc. #54. The court of record overseeing the Claim has ordered a 5% holdback of the settlement amount, totaling $6,000, of which 2% will apply to attorneys' fees and 3% will apply to Debtors' portion. Decl., Doc. #54. The court has previously authorized the employment of Special Counsel pursuant to a contingency fee agreement. See Order, Doc. #50. The projected amount to be paid to the bankruptcy estate is $64,004.10. Doc. #51.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C 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. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #41. Special Counsel represents that the resolution of the Claim would require resolving difficult legal questions including when the defect actually arose, actual and proximate causation, and actual damages. Maida Decl., Doc. #54. Special Counsel estimates that trying Debtor Cynthia De La Garza's case individually would cost from $200,000 to $500,000. Decl., Doc. #54. The Trustee states the settlement will result in a cash payment to the estate that may provide for a dividend to general unsecured creditors should Trustee prevail on Trustee's objection to Debtors' claim of exemption in a portion of the settlement proceeds. Decl. of Peter L. Fear, Doc. #53. The court notes that no hearing has been set for Trustee's objection to Debtors' claim of exemption filed on May 12, 2020 (Doc. #36), and the court makes no determination as to the merit of Trustee's objection to Debtors' claim of exemption. Based on the evidence before the court, the court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

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

litigation for its own sake. Id. Accordingly, Trustee's request to authorize the compromise is GRANTED, and the settlement is approved.

Final Compensation

Trustee requests an allowance of final compensation and reimbursement for expenses payable to Special Counsel for services rendered in connection with the Claim. Doc. #51. Trustee was authorized to employ Special Counsel on a contingency basis whereby Special Counsel would receive 40% of any recovery, plus costs. Order, Doc. #50. The total fees to be awarded Special Counsel is $45,600.00. Doc. #51. The Mostyn Law Firm will receive $19,380, Arnold & Itkin LLP will receive $19,380, and Avram Blair & Associates, PC will receive $6,840. Doc. #51.

The trustee may, with the court's approval, employ a professional person on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. 11 U.S.C. § 328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

Here, the court previously authorized the employment of Special Counsel expressly under 11 U.S.C. § 328(a). Order, Doc. #50. The Order authorized Trustee to pay Special Counsel pursuant to the contingency fee agreement only after request by separate motion. Order, Doc. #50.

Trustee is authorized to pay Special Counsel in a manner consistent with Trustee's motion and the court's Order Granting Trustee's Motion for Order Authorizing Retroactive Employment of Special Counsel to the Estate Pursuant to 11 U.S.C. § 328(a), Doc. #50.

Accordingly, Trustee's motion is GRANTED. The settlement is approved, Trustee is authorized to enter into, execute, and deliver any releases and other documents as may be required to effectuate the settlement, payment to Special Counsel is authorized, and Trustee is authorized to pay the holdback deductions as required by the settlement.