

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Tuesday, March 31, 2020  
Place: Department B – Courtroom #13  
Fresno, California

*Pursuant to District Court General Order 612, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, which advises the court that it is waiving the fee for the use of its service by pro se (not represented by an attorney) parties through April 30, 2020. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.*

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

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

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

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

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

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

**9:30 AM**

1. [19-10423](#)-B-12     **IN RE: KULWINDER SINGH AND BINDER KAUR**  
[FW-5](#)

MOTION TO MODIFY CHAPTER 12 PLAN  
2-25-2020    [\[199\]](#)

KULWINDER SINGH/MV  
DAVID JOHNSTON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                This matter will proceed as a scheduling conference.

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

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

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

Based on the record, the factual issues appear to include: whether debtors made misrepresentations to the opposing secured creditor ("Jensen Trust", see doc. #209); whether the subject property was insured for the duration of the plan of reorganization as required; feasibility of the proposed modified plan; and good faith of the debtors-in-possession.

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

CONTINUED OBJECTION TO CLAIM OF JOSE LAURO TELLO-JURADO, CLAIM  
NUMBER 40  
12-27-2019    [[3009](#)]

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

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                This matter will proceed as a scheduling  
conference.

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

The parties are advised that the Judicial Law Clerk for this Department, Mr. Leatham, has accepted a position with the Wanger, Jones, Helsley law firm. Mr. Riley Walter of that firm is special counsel to Randy Sugarman, the Chapter 11 Trustee and Plan Administrator. Mr. Leatham is screened from considering this and any other matter involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screening process involving Mr. Leatham. The court will inquire about this at the hearing.

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

This matter is now deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to schedule upcoming events in this claim litigation.

The parties shall be prepared to discuss whether this court can enter a final ruling in this matter under 28 U.S.C. § 157 (b) (2) (B).

Based on the record, the factual issues appear to include:

- (1) whether Eduardo "Lalo" Velasquez ("Velasquez") was a supervisor of Jose Lauro Tello-Jurado ("Tello-Jurado"), as defined in Vance v. Ball State University, 570 U.S. 421, 133 S.Ct. 2434, 186 L.Ed.2d 565 (2013).
- (2) The basis for claimant's damage claim.
- (3) The amount of claimant's damage claim.
- (4) The positions of the alleged supervisors in the debtor's pre-petition operation.

The legal issues appear to include:

- (1) whether the trustee has submitted sufficient and admissible evidence and facts to overcome the *prima facie* validity and amount of Tello-Jurado's claim;
- (2) whether Tello-Jurado's claim for sexual harassment under Title VII of the Civil Rights Act of 1964 and Oregon Law is enforceable against the bankruptcy estate;
- (3) whether Tello-Jurado's claim for sex discrimination on account of sexual orientation or gender identity under Title VII and Oregon Law is enforceable against the bankruptcy estate;
- (4) whether the EEOC determination (Doc. #3012) is enforceable against the bankruptcy estate, which is dated April 30, 2018 and found: (a) there is reasonable cause to believe that Tello-Jurado was subjected to sexual harassment from July 15, 2016 through November 16, 2016; (b) Willow Creek Dairy, later renamed Lost Valley Farm ("WCD/LVF"), failed to take reasonable care to prevent and promptly correct the sexual harassment; and (c) WCD/LVF acted in retaliation when they reprimanded and reassigned Tello-Jurado to a less preferable work location, job duties, and job title in response to complaints about the sexual harassment;
- (5) whether the damages sought of \$600,000 in compensatory damages for emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses, as well as punitive damages under 42 U.S.C. § 1981a(a) & (b)(3) are excessive;
- (6) whether the damages result from a terminated employment contract and should be disallowed pursuant to 11 U.S.C. § 502(b)(7) to the extent that it exceeds the compensation payable to Tello-Jurado for a period of one year; and
- (7) If Velasquez was not a supervisor, whether the estate would still be liable based on the ordinary principles of negligence.

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

CONTINUED STATUS CONFERENCE CHAPTER 9 VOLUNTARY PETITION  
9-7-2018    [\[1\]](#)

RILEY WALTER/ATTY. FOR DBT.

NO RULING.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Leatham, has accepted a post-clerkship position at Wanger, Jones, Helsley ("WJH"). As long as Mr. Leatham remains employed by the court, he will be screened from any matters where WJH is counsel of record. Mr. Leatham was screened from this matter. Nevertheless, the court advises the parties to discuss with their clients whether they wish to ask the court to recuse itself on this or future matters.

4. [18-13677](#)-B-9     **IN RE: COALINGA REGIONAL MEDICAL CENTER, A  
CALIFORNIA LOCAL HEALTH CARE DISTRICT**  
[WJH-10](#)

CONFIRMATION AMENDED PLAN  
12-3-2019    [\[470\]](#)

RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION:                    Continued to April 28, 2020 at 9:30 a.m.

NO ORDER REQUIRED:            The court already issued an order. Doc. #527.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Leatham, has accepted a post-clerkship position at Wanger, Jones, Helsley ("WJH"). As long as Mr. Leatham remains employed by the court, he will be screened from any matters where WJH is counsel of record. Mr. Leatham was screened from this matter. Nevertheless, the court advises the parties to discuss with their clients whether they wish to ask the court to recuse itself on this or future matters.

5. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-18](#)

CONTINUED OBJECTION TO CLAIM OF TULARE HOSPITALIST GROUP, CLAIM  
NUMBER 231  
1-8-2020    [\[1784\]](#)

TULARE LOCAL HEALTHCARE DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.  
CONTINUED TO 5/12//20 PER ECF ORDER #2082

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

DISPOSITION:                    Continued to May 12, 2020 at 9:30 a.m.

NO ORDER REQUIRED:            The court already issued an order. Doc. #2082.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Leatham, has accepted a post-clerkship position at Wanger, Jones, Helsley ("WJH"). As long as Mr. Leatham remains employed by the court, he will be screened from any matters where WJH is counsel of record. Mr. Leatham was screened from this matter. Nevertheless, the court advises the parties to discuss with their clients whether they wish to ask the court to recuse itself on this or future matters.

6. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-19](#)

CONTINUED OBJECTION TO CLAIM OF GUPTA-KUMAR MEDICAL PRACTICE,  
CLAIM NUMBER 232  
1-8-2020    [\[1789\]](#)

TULARE LOCAL HEALTHCARE DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.  
CONTINUED TO 5/12/20 PER ECF ORDER #2083

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

DISPOSITION:                   Continued to May 12, 2020 at 9:30 a.m.

NO ORDER REQUIRED:        The court already issued an order. Doc. #2083.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Leatham, has accepted a post-clerkship position at Wanger, Jones, Helsley ("WJH"). As long as Mr. Leatham remains employed by the court, he will be screened from any matters where WJH is counsel of record. Mr. Leatham was screened from this matter. Nevertheless, the court advises the parties to discuss with their clients whether they wish to ask the court to recuse itself on this or future matters.

7. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-2](#)

OBJECTION TO CLAIM OF DEPARTMENT OF HEALTH CARE SERVICES, CLAIM  
NUMBER 186  
7-1-2019    [\[1506\]](#)

TULARE LOCAL HEALTHCARE DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION:                   Dropped from calendar.

NO ORDER REQUIRED:        Resolved by stipulation of the parties. Doc.  
#2101.

8. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-21](#)

CONTINUED OBJECTION TO CLAIM OF DVA HEALTHCARE RENAL CARE, INC.,  
CLAIM NUMBER 219  
1-8-2020    [[1799](#)]

TULARE LOCAL HEALTHCARE DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the objection. Doc. #1999.

9. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-25](#)

CONTINUED OBJECTION TO CLAIM OF INPATIENT HOSPITAL GROUP, INC.,  
CLAIM NUMBER 230  
1-10-2020    [[1834](#)]

TULARE LOCAL HEALTHCARE DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.  
CONTINUED TO 5/12/20 PER ECF ORDER #2084

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

DISPOSITION:                    Continued to May 12, 2020 at 9:30 a.m.

NO ORDER REQUIRED:            The court already issued an order. Doc. #2084.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Leatham, has accepted a post-clerkship position at Wanger, Jones, Helsley ("WJH"). As long as Mr. Leatham remains employed by the court, he will be screened from any matters where WJH is counsel of record. Mr. Leatham was screened from this matter. Nevertheless, the court advises the parties to discuss with their clients whether they wish to ask the court to recuse itself on this or future matters.

10. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-3](#)

OBJECTION TO CLAIM OF DEPARTMENT OF HEALTH CARE SERVICES, CLAIM  
NUMBER 187  
7-1-2019    [\[1509\]](#)

TULARE LOCAL HEALTHCARE DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:        Resolved by stipulation of the parties. Doc.  
#2099.

11. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-32](#)

CONTINUED OBJECTION TO CLAIM OF JOHNSON & JOHNSON HEALTH CARE  
SYSTEMS, INC., CLAIM NUMBER 165  
1-13-2020    [\[1881\]](#)

TULARE LOCAL HEALTHCARE DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:        Movant withdrew the objection. Doc. #2077.

12. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-33](#)

CONTINUED OBJECTION TO CLAIM OF MED ONE CAPITAL FUNDING, LLC,  
CLAIM NUMBER 203  
1-13-2020    [\[1886\]](#)

TULARE LOCAL HEALTHCARE DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.  
CONTINUED TO 5/12/20 PER ECF ORDER 2093

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

DISPOSITION:                    Continued to May 12, 2020 at 9:30 a.m.

NO ORDER REQUIRED:        The court already issued an order. Doc. #2093.

The parties are advised that the Judicial Law Clerk for this  
Department, Garrett Leatham, has accepted a post-clerkship position  
at Wanger, Jones, Helsley ("WJH"). As long as Mr. Leatham remains



employed by the court, he will be screened from any matters where WJH is counsel of record. Mr. Leatham was screened from this matter. Nevertheless, the court advises the parties to discuss with their clients whether they wish to ask the court to recuse itself on this or future matters.

13. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-36](#)

CONTINUED OBJECTION TO CLAIM OF RUTHERFORD CO., INC., CLAIM  
NUMBER 191  
1-13-2020    [[1896](#)]

TULARE LOCAL HEALTHCARE DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.  
CONTINUED TO 5/12/20 PER ECF ORDER #2094

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

DISPOSITION:                Continued to May 12, 2020 at 9:30 a.m.

NO ORDER REQUIRED:        The court already issued an order. Doc. #2094.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Leatham, has accepted a post-clerkship position at Wanger, Jones, Helsley ("WJH"). As long as Mr. Leatham remains employed by the court, he will be screened from any matters where WJH is counsel of record. Mr. Leatham was screened from this matter. Nevertheless, the court advises the parties to discuss with their clients whether they wish to ask the court to recuse itself on this or future matters.

14. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-39](#)

CONTINUED OBJECTION TO CLAIM OF CHANNELFORD ASSOCIATES, INC.,  
CLAIM NUMBER 93  
1-13-2020    [[1916](#)]

TULARE LOCAL HEALTHCARE DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.  
ECF ORDER #2072

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

DISPOSITION:                Dropped from calendar.

NO ORDER REQUIRED:        Resolved by stipulation of the parties. Doc.  
#2072.

15. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-4](#)

OBJECTION TO CLAIM OF DEPARTMENT OF HEALTH CARE SERVICES, CLAIM  
NUMBER 197  
7-1-2019    [[1512](#)]

TULARE LOCAL HEALTHCARE DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.  
CONTINUED TO 4/28/20 PER ECF ORDER #2091

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

DISPOSITION:                    Continued to April 28, 2020 at 9:30 a.m.

NO ORDER REQUIRED:            The court already issued an order. Doc. #2091.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Leatham, has accepted a post-clerkship position at Wanger, Jones, Helsley ("WJH"). As long as Mr. Leatham remains employed by the court, he will be screened from any matters where WJH is counsel of record. Mr. Leatham was screened from this matter. Nevertheless, the court advises the parties to discuss with their clients whether they wish to ask the court to recuse itself on this or future matters.

16. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-40](#)

CONTINUED OBJECTION TO CLAIM OF SOUTHERN CALIFORNIA EDISON,  
CLAIM NUMBER 16  
1-13-2020    [[1921](#)]

TULARE LOCAL HEALTHCARE DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the objection. Doc. #2075.

17. [17-13797](#)-B-9     **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**  
[WJH-5](#)

OBJECTION TO CLAIM OF DEPARTMENT OF HEALTH CARE SERVICES, CLAIM  
NUMBER 243  
7-1-2019    [\[1515\]](#)

TULARE LOCAL HEALTHCARE DISTRICT/MV  
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:        Resolved by stipulation of the parties.

18. [20-10740](#)-B-13     **IN RE: GUILLERMO DE LA ISLA**  
[JBC-1](#)

MOTION TO IMPOSE AUTOMATIC STAY  
3-17-2020    [\[11\]](#)

GUILLERMO DE LA ISLA/MV  
JAMES CANALEZ/ATTY. FOR DBT.  
OST 3/20/20

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  
the order.

This Motion to Impose the Automatic Stay was properly set for hearing on an order shortening time and Local Rule of Practice 9014-1(f)(3). Doc. #16. Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

Under 11 U.S.C. § 362(c)(4)(A), if a debtor has two or more cases pending within the previous year that were dismissed, the automatic stay will not go into effect when the later case was filed. This was case was filed on February 28, 2020. Doc. #1. Debtor had three cases that were pending but dismissed in the past year, case no. 19-11937

(filed on May 6, 2019 and dismissed on May 24, 2019), case no. 19-13152 (filed on July 23, 2019 and dismissed on September 30, 2019), and case no. 19-14249 (filed October 7, 2019 and dismissed on February 7, 2020).

11 U.S.C. § 362(c)(4)(B) allows the court to impose the stay to any or all creditors, subject to any limitations the court may impose, if within 30 days after the filing of the later case, a party in interest requests the court may order they stay to take effect after a notice and hearing. The debtor or a party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed.

The case was filed on February 28, 2020 and the request was made on March 17, 2020, which is within the 30 day deadline.

Cases are presumptively filed in bad faith if any of the conditions contained in 11 U.S.C. § 362(c)(3)(C) exist. The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable. Factual contentions are highly probable if the evidence offered in support of them 'instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence [the non-moving party] offered in opposition.'" Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288, n.11 (9th Cir. BAP 2016) (citations omitted) (overruled on other grounds by Taggart v. Lorenzen, No. 18-489, 2019 U.S. LEXIS 3890 (June 3, 2019)).

In this case the presumption of bad faith arises. The subsequently filed case is presumed to be filed in bad faith because two or more previous cases under this title in which the individual was a debtor were within the 1-year period. 11 U.S.C. § 362(c)(4)(D)(i)(I).

However, based on the moving papers and the record, and in the absence of opposition, the court is persuaded that the presumption has been rebutted, the debtors' petition was filed in good faith, and it intends to grant the motion to extend the automatic stay as to all creditors.

Debtor's first case was filed pro se. It was dismissed due to debtor's failure to file schedules and other necessary documents. Doc. #13. The debtor filed the second case with counsel's assistance but was dismissed for failure to provide certain necessary documents to the chapter 13 trustee's office. Id. The third case was dismissed for failure to confirm a chapter 13 plan and for failure to cooperate with the chapter 13 trustee. Id.

Debtor's current case was filed for the purpose of repaying his mortgage on his residence in Selma, CA. Debtor claims to have changed circumstances that warrant imposing the stay, including that his financial records and bookkeeping are up to date. Id. There is currently a foreclosure sale set for 10:00 a.m. on April 1, 2020. Id.

The motion will be granted and the automatic stay extended for all purposes as to all parties who received notice, unless terminated by further order of this court. 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.

**11:00 AM**

1. [19-15320](#)-B-7     **IN RE: CYNTHIA SALERY**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION  
3-10-2020    [[25](#)]

NO RULING.

1:30 PM

1. [11-11304](#)-B-7     **IN RE: VANESSA VALDEZ-PANTOJA AND ALVARO PANTOJA BSH-2**

MOTION TO AVOID LIEN OF CAPITAL ONE BANK USA, N.A.  
3-2-2020    [[18](#)]

VANESSA VALDEZ-PANTOJA/MV  
BRIAN HADDIX/ATTY. FOR DBT.  
CASE CLOSED 3/17/20

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

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

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

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing.

2. [19-13007](#)-B-7     **IN RE: MANUEL HERNANDEZ**

TRUSTEE'S FINAL REPORT  
2-7-2020    [[21](#)]

ERIC ESCAMILLA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

3. [19-13007](#)-B-7     **IN RE: MANUEL HERNANDEZ**  
[EPE-1](#)

MOTION FOR RETURN OF EXEMPT LEVIED FUNDS AND/OR MOTION FOR  
AVOIDANCE OF PREFERENTIAL TRANSFER OF EXEMPT PROPERTY IN THE  
POSSESSION OF THE CHAPTER 7 TRUSTEE JAMES SALVEN  
2-28-2020    [\[27\]](#)

MANUEL HERNANDEZ/MV  
ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the motion. Doc. #40.

4. [19-15212](#)-B-7     **IN RE: BRANDON/KACEY MORROW**  
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-20-2020    [\[21\]](#)

U.S. BANK NATIONAL ASSOCIATION/MV  
NEIL SCHWARTZ/ATTY. FOR DBT.  
SEAN FERRY/ATTY. FOR MV.

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED:            Movant withdrew the motion. Doc. #28.

5. [20-10221](#)-B-7     **IN RE: STEPHEN/TAMARA PERRY**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-25-2020    [\[14\]](#)

SANTANDER CONSUMER USA INC./MV  
GABRIEL WADDELL/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 the  
creditors, the debtor, the U.S. Trustee, or any other party in



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

The movant, Santander Consumer USA Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2011 Chevrolet Malibu ("Vehicle"). Doc. #19.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors have failed to make at least six complete post-petition payments. The movant has produced evidence that debtors are delinquent at least \$2,547.18. Doc. #17, 18.

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 debtors are in chapter 7. Id. The Vehicle is valued at \$6,050.00 and debtor owes \$10,070.00. Doc. #19.

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

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

6. [20-10531](#)-B-7      **IN RE: JOSE ROLDAN AND ERMELINDA CRUZ**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-27-2020    [\[16\]](#)

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

The movant, Americredit Financial Services, Inc. dba GM Financial ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2017 Cadillac CTS ("Vehicle"). Doc. #16.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors have failed to make at least four complete post-petition payments. The movant has produced evidence that debtors are delinquent at least \$2,670.94. Doc. #18, 21.

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 debtors are in chapter 7. Id. The Vehicle is valued at \$21,600.00 and debtor owes \$31,370.33. Doc. #22.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the debtors' statement of Intention, the Vehicle will be surrendered. See doc. #21, exh. E.

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

7. [18-15143](#)-B-7      **IN RE: RUSSELL/PAMELA NEWTON**  
[FW-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT  
WITH RUSSELL NEWTON AND PAMELA K NEWTON  
3-3-2020    [\[25\]](#)

JAMES SALVEN/MV  
SCOTT LYONS/ATTY. FOR DBT.  
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION:      Granted.

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

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

This motion is GRANTED. It appears from the moving papers that the chapter 7 trustee has considered the standards of In re Woodson, 839

F.2d 610, 620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

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

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

The trustee requests approval of a settlement agreement between the estate and the debtors concerning an objection to debtor exempting an interest in a personal injury claim. Doc. #25.

The debtors disclosed an asset described as a "personal injury claim" and was exempted under C.C.P. § 703.140(b)(11)(D). Doc. #1. Later, the debtors amended Schedules A/B and C and exempted the personal injury claim pursuant to C.C.P. § 704.140 in the amount of \$1,000.000.

The settlement was reached by stipulation to avoid the expense and delay of litigation over the exemption issues and must be reviewed by the court presiding over the litigation. Doc. #27.

Under the terms of the stipulation, the gross proceeds of the personal injury case are property of the estate, and the debtors and trustee agree that one-half of the net proceeds (defined as gross amounts recovered, less attorney's fees and costs incurred to achieve recovery and any liens on the recovery) shall be exempt, and the remaining amount of the claim shall not be exempt. Doc. #28.

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. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is far from assured, the trustee may succeed in part, but it is likely that a large portion of the proceeds from the personal injury claim would be exempt under C.C.P. § 704.140; collection will not be an issue in this case because the case revolves around whether the amount of recovery could be exempt; the litigation would be very factually

complex; and the creditors will greatly benefit by avoiding the expenses of litigation and still recovering assets for estate. Therefore, the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

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

8. [20-10446](#)-B-7      **IN RE: ROBII ROBINSON**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE  
2-7-2020    [\[6\]](#)

ROBII ROBINSON/MV  
ROBII ROBINSON/ATTY. FOR MV.

NO RULING.

The chapter 7 trustee opposed debtor's motion on February 13, 2020 (doc. #13) on the grounds that due to debtor's incomplete schedules "it [was] not possible . . . to determine debtor's qualification for waiver of the filing fee."

Debtor filed schedules on March 6, 2020. Doc. #24. The § 341 meeting was held and concluded on March 12, 2020. This is a no distribution case.

The chapter 7 trustee has not withdrawn the objection. At the hearing the Trustee shall address whether the objection is still appropriate.

9. [18-15055](#)-B-7      **IN RE: DIXIE ESPINOSA**  
[RWR-4](#)

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION TO PAY  
3-2-2020    [\[93\]](#)

JAMES SALVEN/MV  
RUSSELL REYNOLDS/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:              Granted 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 hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987).

This motion is GRANTED IN PART. Under 11 U.S.C. § 363(f), the chapter 7 trustee ("Trustee") may sell estate property outside the ordinary course of business, after notice and a hearing, free and clear of "any interest in such property of an entity other than the estate, only if . . . such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest." Section 363(f)(4) authorizes sales free and clear of interests that are in "bona fide dispute."

Trustee wishes to sell real property adjacent to 8126 S Hughes Ave. in Fresno CA 93706 bearing APN #335-230-03 ("Property") for \$35,000.00 to debtor's father, Alfonso Espinoza ("Buyer"). Doc. #93.

There are a total of seven liens against the Property:

1. A deed of trust in favor of Faye S. Anderson in the amount of \$30,000.00 given by Gail Asuncion Espinosa in 1994. The lienholder is deceased and it is unknown whether is an outstanding balance due.
2. A lis pendens recorded in November 2008, which followed the filing of a complaint in Fresno County Superior Court. The action was dismissed in May 2009, but a release of the lis pendens has not been recorded. Upon approval of the sale, the title company will seek a release.
3. A federal tax lien in the amount of \$607,905.69 recorded in January 2011.
4. A federal tax lien in the amount of \$17,210.84 recorded in 2011.
5. A federal tax lien in the amount of \$3,910.60 recorded in 2011.
6. A federal tax lien in the amount of \$19,498.76 recorded in 2011.
7. A state tax lien by the California Franchise Tax Board in the amount of \$41,032.86 recorded in 2011.

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

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

However, the court is not convinced that Trustee is entitled to all the relief requested.

First, Trustee has not met the requirements of § 724(e). In order to subordinate tax liens to administrative and other priority expenses under § 724(b), the Trustee must exhaust the unencumbered assets of the estate and recover appropriate preservation costs from secured creditors. There is nothing in the record of this motion that the Trustee has done that. This seems a requirement before using § 724(b) to satisfy the requisites of a free and clear sale under § 363(f)(5). Mr. Salven's declaration does not address that point. But even if there were no other unencumbered assets, there are still problems with the proposed free and clear sale.

Second, the deed of trust in favor of Faye Anderson is not in bona fide dispute. The Trustee has learned that Ms. Anderson is deceased. But that does not mean the obligation has been satisfied. No testimony has been offered that the obligation was satisfied. There is no service on or even a discussion of a successor. The documentary evidence offered by the Trustee is a "Vital Statistics" report that is hearsay but even if admitted into evidence does not establish anything other than Ms. Anderson's demise.

The Trustee's declaration states that based on his conversation with this debtor and the fact there are numerous tax liens against the property proposed to be sold he concludes the obligation is paid and the reconveyance was never recorded so the tax liens would not advance in priority. That may be true. But on this record that conclusion is too speculative to find a bona fide dispute.

That said, the declaration of the proposed "stalking horse" buyer states the Anderson deed of Trust need not be removed for him to complete the sale. So, as to the proposed buyer this is a non-issue. But any competing bidder will need to accept title subject to the Anderson deed of trust.

The Lis Pendens appears to be in bona fide dispute as the lawsuit it was related to has been dismissed. But the Trustee has not asked for the sale to be free and clear of the Lis Pendens because, evidently, the title company will clarify title to a buyer.

The tax liens can be subordinated under § 724(b). The lienholders have not opposed the motion. Also, there appear to be no liens subordinate to the tax liens.

The court notes there is no litigation by Trustee challenging Mr. Espinosa's ownership claim. Since Mr. Espinosa is the "stalking horse" this issue is irrelevant unless another bidder purchases the property. The court will not find on this motion that Mr. Espinosa has no interest.

The motion is GRANTED IN PART. Only the tax liens may be subordinated. There will be no waiver of Federal Rule of Bankruptcy Procedure 6004(h). It is unknown at this time whether a purpose is served by the stay of the effectiveness of the order. No other justification for the waiver was provided.

Note, because of restrictions on access to the court, if there are competing bidders, the court may continue the hearing.

10. [18-12556](#)-B-7      **IN RE: DANIEL SANCHEZ**  
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)  
2-26-2020    [\[48\]](#)

JAMES SALVEN/MV  
OSCAR SWINTON/ATTY. FOR DBT.

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

DISPOSITION:      Granted.

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

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

The motion will be GRANTED. Trustee's accountant, James Salven, requests fees of \$1,225.00 and costs of \$224.99 for a total of \$1,449.99 for services rendered from June 25, 2018 through February 19, 2020.



11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Preparation of employment and fee applications, (2) Reviewing documents to determine tax basis in items sold, (3) Processing returns, and (4) Finalizing returns and prompt determination letters. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$1,225.00 in fees and \$224.99 in costs.

11. [20-10058](#)-B-7     **IN RE: MICHEAL/NATALIE SATTERFIELD**  
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-20-2020    [\[11\]](#)

FREEDOM MORTGAGE CORPORATION/MV  
R. BELL/ATTY. FOR DBT.  
DANE EXNOWSKI/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

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

The movant, Freedom Mortgage Corporation ("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 2717 Granite Ridge Place in Bakersfield, CA ("Property"). Doc. #11.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary

relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors have failed to make at least 33 complete pre- and post-petition payments. The movant has produced evidence that debtors are delinquent at least \$45,121.44 and the entire balance of \$246,817.28 is due. Doc. #14.

The court also finds that the debtors do not have any equity in the Property and the Property is not necessary to an effective reorganization because debtors are in chapter 7. Id., #15. The property is valued at \$216,625.00 and debtor owes \$246,817.28. Doc. #16.

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

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 debtor has failed to make at least 33 payments, both pre- and post-petition to Movant and the Vehicle is a depreciating asset.

12. [15-14268](#)-B-7     **IN RE: WILFREDO CHAVEZ**  
[EPE-2](#)

CONTINUED MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A.  
2-28-2020    [\[26\]](#)

WILFREDO CHAVEZ/MV  
ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION:        Granted.

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

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

This motion is GRANTED. The motion was continued because it was not yet ripe for decision. Debtor filed an amended schedule C on February 28, 2020. The time to object to the amended schedule has now passed and no party has objected. The matter is now ripe for decision.

In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of FIA Card Services NA in the sum of \$4,507.43 on November 4, 2010. Doc. #31. The abstract of judgment was recorded with Fresno County on June 14, 2011. Id. That lien attached to the debtor's interest in a residential real property in Fresno, CA. The motion will be granted

pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$169,830.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$196,946.05 on that same date, consisting of a first deed of trust in favor of Bank of America and a second deed of trust in favor of Specialized Loan Servicing, LLC. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$14,700.00. Doc. #24.

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

13. [15-14268](#)-B-7     **IN RE: WILFREDO CHAVEZ**  
[EPE-3](#)

CONTINUED MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A.  
2-28-2020    [\[33\]](#)

WILFREDO CHAVEZ/MV  
ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

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

This motion is GRANTED. The motion was continued because it was not yet ripe for decision. Debtor filed an amended schedule C on February 28, 2020. The time to object to the amended schedule has now passed and no party has objected. The matter is now ripe for decision.

In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of FIA Card Services NA in the sum of \$10,135.75 on June 17, 2010. Doc. #38. The abstract of judgment was recorded with Fresno County on April 11, 2011. Id. That lien attached to the debtor's interest in a residential real property in Fresno, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$169,830.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$196,946.05 on that same date, consisting of a first deed of trust in favor of Bank of America and a second deed of trust in favor of Specialized Loan Servicing, LLC. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$14,700.00. Doc. #24.

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

14. [18-13678](#)-B-7     **IN RE: VERSA MARKETING, INC.**  
[SSA-2](#)

MOTION TO SELL  
3-9-2020    [\[552\]](#)

IRMA EDMONDS/MV  
RILEY WALTER/ATTY. FOR DBT.  
STEVEN ALTMAN/ATTY. FOR MV.

TENTATIVE RULING:     This matter will proceed as scheduled.

DISPOSITION:            Granted.

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

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

whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

This motion is GRANTED. 11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

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

When a motion to sell involves litigation claims, the court must consider proposed sale offers not only under § 363(b) but also as a settlement of such claims under Fed. R. Bankr. P. 9019. Simantob v. Claims Prosecutor, LLC (In re Lahijani), 325 B.R. 282, 290 (9th Cir. BAP 2005); Goodwin v. Mickey Thompson Entm't Grp., Inc. (In re Mickey Thompson Entm't Grp., Inc.), 292 B.R. 415, 420 (9th Cir. BAP 2003).

The chapter 7 trustee asks this court for authorization to sell the bankruptcy estate's interest and right to litigate claims it purportedly holds in the matter Versa Marketing, Inc. v. West Liberty Food, LLC, Adv. No. 19-01032, subject to higher and better bids at the hearing, for \$10,000.00. Doc. #552, 554. The claims include allegations of breach of contract, fraud, and objection to claim of Defendant West Liberty Foods, LLC. Doc. #555, Ex. 1.

The trustee contends that this sale is in the best interests of the estate resulting from a fair and reasonable price because the outcome of litigation is uncertain and success is far from assured; litigation fees and costs would be significant, expected to be in excess of \$75,000 to \$100,000; the bankruptcy estate is insolvent and the sale would bring in additional liquidity into the bankruptcy estate; and the proposed sale is subject to competitive overbid, ensuring the best price possible. Doc. #554, 556.

The trustee contends this is a valid business judgment because the bankruptcy estate is administratively insolvent and continued litigation, fees, and costs would be significant and easily exceed \$75,000 to \$100,000, and the result is uncertain.

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

Any party wishing to overbid must evidence proof of funds in the form of a bank account statement, letter of credit, cashier's check or money order or cash and approve the same terms and conditions of the present sale agreement advanced with the current buyer, save and except a higher sale price. In consideration for the conveyance and assignment of the claims, causes of actions, and demands, the purchaser shall tender to the estate the sum of \$10,000, or the higher sale price, in negotiable funds within ten (10) days to the chapter 7 trustee. Overbidders must be present at the hearing, make overbids in increments of \$1,000.00 and acknowledge that no warranties or representations are included with the property; it is sold "as-is."

15. [20-10878](#)-B-7     **IN RE: WENDY ZARNDT**  
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-13-2020    [\[11\]](#)

MECHANICS BANK/MV  
JERRY LOWE/ATTY. FOR DBT.  
VINCENT FROUNJIAN/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

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

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

The movant, Mechanics Bank ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2015 Chrysler 300 ("Vehicle").

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor is "1.77" payments past due in the amount of \$621.34 plus late fees of \$140.70. Doc. #13.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. Debtor values the Vehicle at \$14,000.00 and the amount owed to Movant is \$17,875.81. Doc. #13, 15.

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

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

16. [20-10481](#)-B-7     **IN RE: STAR GATE TRANSPORT, INC.**  
[HRH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-12-2020    [\[16\]](#)

BMO HARRIS BANK N.A./MV  
NEIL SCHWARTZ/ATTY. FOR DBT.  
RAFFI KHATCHADOURIAN/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

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

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

The movant, BMO Harris Bank N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a seven different vehicles and trailers: one Freightliner truck, three Volvo trucks, and three Great Dane trailers ("Property"). Doc. #18.



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

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

Debtor entered into three agreements in purchasing the Property.

- (1) The 2014 Freightliner Cascadia Series is in the possession of Movant and debtor is in arrears \$20,992.44. Doc. #19.
- (2) The three Great Dane trailers are in the possession of Movant and debtor is in arrears \$138,585.95. Doc. #19.
- (3) The three 2017 Volvos are in the possession of Movant and debtor is in arrears \$270,191.30. Doc. #19.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor is delinquent on all obligations the Property secure. Doc. #20, 21.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of the Property 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 Movant is in possession of the Property and debtor is delinquent in the obligations owed to Movant.

17. [19-15087](#)-B-7      **IN RE: KARMELA KHAJI**

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO  
DISCHARGE OF THE DEBTOR  
3-9-2020    [\[26\]](#)

ROBERT BADELBOU/MV  
GEORGE ALONSO/ATTY. FOR DBT.

TENTATIVE RULING:      The matter will proceed as scheduled.

DISPOSITION:      Deadline as to this movant, only, is extended  
to April 3, 2020.

ORDER:      The minutes will be the court's findings and  
conclusions. The court will prepare the order.

The movant, Robert Badelbou, submitted a request via letter seeking additional time to file a complaint objecting to the Debtor's discharge, stating that illness has prevented him from filing the proper documentation. Doc. #26. The court ordered that the deadline to object to Debtor's discharge be extended from March 9, 2020 to

April 3, 2020 as to movant only, and set this motion to extend the deadline for hearing. Doc. #27.

The court notes that no evidence that the request was served on necessary parties was provided. Local Rule of Practice ("LBR") 9014-1(e)(2) requires a proof of service, in the form of a certificate of service, to be filed with the Clerk of the court concurrently with the pleadings or documents served, or not more than three days after the papers are filed.

Further, LBR 9014-1(d)(3)(B) requires that the request for relief contain a notice of hearing advising potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition.

In this case, no proof of service or notice of hearing was filed. It appears from the moving papers that no party in interest was served the motion to extend the deadline to file a complaint objecting to discharge.

It appears that movant is not represented by counsel. Despite these procedural and substantive errors, the court must treat pro se litigants "with great leniency when evaluation compliance with the technical rules of civil procedure." Ferdik v. Bonzelet, 963 F.2d 1258, 1261 (9th Cir. 1992) (citing Draper v. Coombs, 795 F.2d 915, 924 (9th Cir. 1986), inter alia). "Thus, before dismissing a pro se complaint the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity amend effectively." Ferdik, 963 F.2d at 1261 (citing Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987)).

Even with that great leniency, the court is still constrained by the law. See King v. Burwell, 135 S. Ct. 2480, 2505 (2015) ("our task is to apply the text, not to improve upon it") (Scalia, J., dissenting) (citing Pavelic & LeFlore v. Marvel Entm't Grp., Div. of Cadence Indus. Corp., 493 U.S. 120, 110 S. Ct. 456 (1989), superseded by statute on other grounds).

The movant shall have until April 3, 2020 to properly file such an action, serve the debtor, the debtor's counsel, the chapter 7 trustee, the United States trustee, and any and all other interested parties, and file proof of service, in the form of a certificate of service, with the Clerk of the court.

18. [20-10194](#)-B-7     **IN RE: JUAN/PAULA RAYO**  
[ALG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR  
ADEQUATE PROTECTION  
2-21-2020    [\[16\]](#)

FIRST TECH FEDERAL CREDIT UNION/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
ARNOLD GRAFF/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

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

The movant, First Tech Federal Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2018 Chevrolet Camaro ("Vehicle"). Doc. #20.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors have failed to make at least 3 pre-petition payments. Doc. #18. Movant has produced evidence that debtors are delinquent at least \$1,812.03. Id.

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 debtors are in chapter 7. The Vehicle is valued at \$21,505.00 and Movant is owed \$36,521.45. Id.

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

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

19. [09-61798](#)-B-7     **IN RE: JEFFREY FAIRBAIRN**  
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.  
TRUSTEES ATTORNEY(S)  
3-2-2020     [\[108\]](#)

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

DISPOSITION:     Granted.

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

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

The motion will be GRANTED. The chapter 7 trustee's general counsel, Fear Waddell, P.C., requests fees of \$13,225.50 and costs of \$388.58 for a total of \$13,614.08 for services rendered from November 8, 2018 through February 28, 2020. Doc. #108. The trustee does not oppose. Doc. #111.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a]

professional person" and "reimbursement for actual, necessary expenses." Movant was employed as general counsel to provide legal services to the trustee regarding the estate's interest in a previously undisclosed tort litigation claim. Doc. #110, 112. Movant's services included, without limitation: (1) working with special counsel to prepare a motion seeking court authorization to approve a compromise of the estate's interest in a mass tort litigation; (2) analyzing the settlement agreement and applicable orders regarding the underlying litigation; (3) reviewing lien obligations; (4) and reviewing other evidence regarding the estate's entitlement to the proceeds of the claim plus the disposition of the proceeds. Doc. #112. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$13,225.50 in fees and \$388.58 in costs.

20. [09-61798](#)-B-7     **IN RE: JEFFREY FAIRBAIRN**  
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)  
2-18-2020    [\[101\]](#)

JAMES SALVEN/MV  
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

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

The motion will be GRANTED. Trustee's accountant, James Salven, requests fees of \$1,250.00 and costs of \$312.29 for a total of \$1,562.29 for services rendered from June 25, 2018 through February 19, 2020. Doc. #101.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Preparation of employment and fee applications, (2) Reviewing documents to determine tax basis in items sold, (3) Processing returns, and (4) Finalizing returns and prompt determination letters. The court finds the services reasonable and necessary and the expenses requested actual and necessary. Doc. #104.

Movant shall be awarded \$1,250.00 in fees and \$312.29 in costs.