

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Thursday, April 8, 2021  
Place: Department A – 510 19th Street  
Bakersfield, 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, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

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

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

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

1. [16-13302](#)-A-13     **IN RE: LUIS ORTEGA AND NANCY NUNEZ**  
[PK-7](#)

MOTION TO MODIFY PLAN  
2-8-2021    [\[114\]](#)

NANCY NUNEZ/MV  
PATRICK KAVANAGH/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The chapter 13 trustee ("Trustee") timely opposed this motion but withdrew the opposition after the debtors agreed to have Trustee's opposition addressed in the confirmation order. See Opp'n, Doc. #124; Reply, Doc. #126; Opp'n Withdrawal, Doc. #128. 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 non-responding parties in interest are entered. 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). 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.

Luis Ortega and Nancy C. Nunez (together, "Debtors"), the chapter 13 debtors, move the court to confirm Debtors' third modified chapter 13 plan. Doc. #114. Trustee initially objected because the modified plan reduced the percentage paid to unsecured creditors from 9% to 0%, despite Trustee having already paid 3.13% to unsecured creditors. Doc. #124. Trustee proposed that the following language be included in the order confirming Debtors' third modified plan:

"General unsecured creditors shall be paid 3.13%."

Per a reply filed on April 1, 2021 (Doc. #126), Debtors do not object to confirmation on the terms suggested by Trustee. Trustee subsequently withdrew the opposition.

Based on Debtors' consent, the motion to confirm Debtors' third modified plan is GRANTED. The proposed order shall reflect the percentage already paid to general unsecured creditors.

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE 3002.1  
2-10-2021    [\[86\]](#)

MICHAEL MEYER/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Dan Cook, Inc. d/b/a Equity 1 Loans ("Equity 1") filed written response to this motion on March 23, 2021. Doc. #94. The failure of other 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 non-responding parties in interest are entered. This matter will proceed as scheduled.

Michael H. Meyer ("Trustee"), the chapter 13 trustee, moves the court for a determination of final cure pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 3002.1. Doc. #86. Trustee filed and served a Notice of Final Cure Payment pursuant to Rule 3002.1(f), but Equity 1 failed to respond. See Doc. #76. However, in response to this motion, Equity 1 filed written response indicating that the debtor has cured the default with respect to Equity 1's prepetition claim and that the debtor has made all post-petition payments owed to Equity 1 from December 2015 through November 2020. Doc. #94. Equity 1 does not object to Trustee's motion. Doc. #94.

Rule 3002.1(g) requires that within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with 11 U.S.C. § 1322(b)(5).

If the holder of a claim fails to provide any information as required by Rule 3002.1(g), Rule 3002.1(i) permits the court, after notice and a hearing, to preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless. Rule 3002.1(i)(1).

Although Equity 1 failed to respond to Trustee's Notice of Final Cure Payment in the manner required by Rule 3002.1(g), Equity 1 has no objection to the granting of Trustee's motion. The court finds that Equity 1's failure to abide by Rule 3002.1(g) was harmless in this case. The record shows that the debtor has cured the default on the loan with Equity 1 and is current on mortgage payments to the same through November 2020. Therefore, this motion is GRANTED

IN PART. This motion is DENIED IN PART only to the relief requested pursuant to Rule 3002.1(i)(1).

3. 15-14303-A-13      **IN RE: LORI SILVA**  
MHM-2

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE 3002.1  
2-10-2021    [90]

MICHAEL MEYER/MV  
ROBERT WILLIAMS/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.

Michael H. Meyer ("Trustee"), the chapter 13 trustee, moves the court for a determination of final cure pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 3002.1 with respect to the claim held by Sunrise Estates HOA. Doc. #90. Trustee filed and served a Notice of Final Cure Payment pursuant to Rule 3002.1(f), but Sunrise Estates HOA failed to respond. See Doc. #78.

Rule 3002.1(g) requires that within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with 11 U.S.C. § 1322(b)(5).

If the holder of a claim fails to provide any information as required by Rule 3002.1(g), Rule 3002.1(i) permits the court, after notice and a hearing, to preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless. Rule 3002.1(i)(1).

The court finds that Sunrise Estates HOA failed to provide any information as required by Rule 3002.1(g) and will therefore preclude Sunrise Estates HOA from presenting the omitted information, in any form, as evidence in any contested

matter or adversary proceeding in this case pursuant to Rule 3002.1(i)(1). The court also finds that the debtor has cured the default on the loan with Sunrise Estates HOA and that the debtor is current on payments to Sunrise Estates HOA through November 2020.

Accordingly, this motion is GRANTED.

4. [19-14310](#)-A-13     **IN RE: TRACY FLAHERTY**  
[MHM-3](#)

MOTION TO DISMISS CASE  
3-11-2021    [\[159\]](#)

MICHAEL MEYER/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                  Continued to May 6, 2021 at 9:00 a.m.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition. Doc. #166. 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 non-responding parties in interest are entered.

Tracy Susanne Flaherty ("Debtor") filed her chapter 13 bankruptcy petition on October 13, 2019. Doc. #1. On December 26, 2019, Debtor voluntarily converted her chapter 13 case to chapter 7. Doc. #32. On January 5, 2021, Debtor's case was reconverted to chapter 13. Doc. #126.

Michael H. Meyer ("Trustee"), the chapter 13 trustee, asks the court to dismiss Debtor's chapter 13 case for unreasonable delay by Debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) because Debtor has failed to file Official Form 122C-1 as required by the court's Order on Extension of Deadline to File Missing Documents and Extension of Time for Dismissal of Case. Tr.'s Mot., Doc. #159; Order, Doc. #148.

On March 24, 2021, Debtor filed written opposition to Trustee's motion stating that Debtor is not required to file a new Form 122C-1 because Form 122C-1 was filed with Debtor's initial chapter 13 petition at Doc. #1. Debtor's Resp., Doc. #166.

On March 29, 2021, Trustee filed a reply setting forth inaccuracies in Debtor's original chapter 13 documents and requested that Debtor either be required to file amended forms 122C-1 and 122C-2 or that Debtor's case be dismissed. Doc. #168.

Federal Rule of Bankruptcy Procedure ("Rule") 1007(c) states that "[l]ists, schedules, statements, and other documents filed prior to the conversion of a

case to another chapter shall be deemed filed in the converted case unless the court directs otherwise." Fed. R. Bankr. P. 1007(c).

On January 15, 2021, the bankruptcy clerk filed a Notice to File Documents in Converted Case requiring Debtor to submit a chapter 13 plan and a Form 122C-1 to the bankruptcy clerk's office. Doc. #132. On February 5, 2021, Debtor filed an ex parte application to extend time. Doc. #142. By that motion, Debtor requested an extension of time to file a chapter 13 plan "and other required documents." Doc. #142. The court granted Debtor's request. See Order on Extension of Deadline to File Missing Documents and Extension of Time for Dismissal of Case Doc. #148. Rule 1007(c) permits the bankruptcy court to direct Debtor to file updated documents after conversion of a case to another chapter. While some confusion may be understandable as to what "required missing documents" should have been filed, Debtor has not filed an updated Form 122C-1 Statement of Monthly Income, despite the clear language of the Notice to File Documents in Converted Case. Doc. #132.

To avoid any further confusion, Debtor shall file (1) an amended form 122C-1, and (2) an amended form 122C-2 no later than April 22, 2021. No later than April 29, 2021, Trustee shall either withdraw the motion to dismiss without prejudice or supplement the motion to dismiss based on Debtor's updated forms. If Debtor does not timely file the required forms, Trustee's motion to dismiss will be granted on the grounds stated in Trustee's motion.

The hearing on this matter is continued to May 6, 2021 at 9:00 a.m.

5. [19-14310](#)-A-13     **IN RE: TRACY FLAHERTY**  
[RSW-7](#)

MOTION TO CONFIRM PLAN  
2-26-2021    [\[151\]](#)

TRACY FLAHERTY/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to May 6, 2021 at 9:00 a.m.

ORDER:             The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to confirm the debtor's first modified chapter 13 plan. Tr.'s Opp'n, Doc. #163. Unless this case is voluntarily dismissed or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response no later than April 22, 2021. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. Trustee shall file and serve a reply, if any, by April 29, 2021.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than April 29, 2021. If the debtor does not timely

file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

6. [21-10222](#)-A-13     **IN RE: DANNY/ROBIN MARSHALL**  
[CJK-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY PLATINUM HOME MORTGAGE CORPORATION  
3-23-2021     [\[38\]](#)

PLATINUM HOME MORTGAGE CORPORATION/MV  
D. GARDNER/ATTY. FOR DBT.  
CHRISTINA KHIL/ATTY. FOR MV.

TENTATIVE RULING:             This matter will proceed as scheduled.

DISPOSITION:                    Overruled.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. While not required, the debtors filed written opposition. Doc. #43. The court intends to overrule the objection. At the hearing, the court will consider additional 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.

Danny Wayne Marshall and Robin Lynn Marshall (together, "Debtors") filed their chapter 13 plan ("Plan") on February 12, 2021. Doc. #16. Platinum Home Mortgage Corporation by LoanCare, LLC as servicer and attorney-in-fact under limited power of attorney ("Creditor") objects to confirmation of the Plan on the ground that the Plan fails to provide for the cure of pre-petition arrears owed to Creditor pursuant to 11 U.S.C. § 1322(b)(5). Obj., Doc. #38.

Creditor has not filed a proof of claim. To the extent Creditor seeks reclassification of its claim under the Plan, Creditor has not made the requisite showing that Creditor is entitled to such treatment. In a chapter 13 case, a creditor who seeks to participate in the distribution of the debtors' assets must file a proof of claim. Spokane Law Enf't Fed. Credit Union v. Barker (In re Barker), 839 F.3d 1189, 1195 (9th Cir. 2016).

Further, under the Plan, Creditor holds a Class 4 claim. Plan ¶ 3.10, Doc. #16. Upon confirmation, the Plan terminates the automatic stay for Class 4 creditors. Plan ¶ 3.11(a), Doc. #16. If the Plan is confirmed, Creditor will have stay relief to enforce its rights.

Therefore, this objection is OVERRULED.



OBJECTION TO DISCHARGE BY MECHANICS BANK  
3-17-2021    [\[27\]](#)

D. GARDNER/ATTY. FOR DBT.  
MATTHEW KENNEDY/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                   Sustained.

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 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. While not required, the debtors filed written opposition on March 26, 2021. Doc. #45. Unless further opposition is presented at the hearing, the court intends to sustain the objection. The court will issue an order if a further hearing is necessary.

Mechanics Bank, successor by merger to Rabobank, N.A. ("Creditor"), moved the court for an order determining that Danny Wayne Marshall and Robin Lynn Marshall (together, "Debtors") are ineligible for chapter 13 discharge under 11 U.S.C. § 1328(f). Doc. #27. According to Creditor, Debtors filed a chapter 7 case on June 8, 2018, and each received a discharge in that case on October 15, 2018. Exs. 2-3, Doc. #30.

Debtors request additional time to respond to the objection, asserting that the Debtors' stipulation to discharge of Creditor's claim in their chapter 7 case may not preclude a "super-discharge" in this chapter 13 case. Doc. #45. However, Debtors' opposition assumes that Debtors are eligible for a discharge in this chapter 13 case, which is not the case under 11 U.S.C. § 1328(f)(1).

Section 1328(f)(1) of the Bankruptcy Code provides in relevant part that: "the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502[] if the debtor has received a discharge - (1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter[.]" 11 U.S.C. § 1328(f)(1).

Here, Debtors filed this chapter 13 case on January 21, 2021. Debtors received a discharge in a chapter 7 case that was filed within the four years preceding the filing of this chapter 13 case. Thus, Debtors are ineligible to receive a discharge in this chapter 13 case, and there is no need for this court to consider the scope of any potential discharge in this chapter 13 case with respect to Creditor's claim.

Accordingly, pending further opposition at hearing, the objection will be SUSTAINED.



OBJECTION TO CONFIRMATION OF PLAN BY MECHANICS BANK  
3-22-2021    [\[32\]](#)

MECHANICS BANK/MV  
D. GARDNER/ATTY. FOR DBT.  
MATTHEW KENNEDY/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                   Sustained.

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 objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. While not required, the debtors filed written opposition. Doc. #47. Unless further opposition is presented at the hearing, the court intends to sustain the objection. The court will issue an order if a further hearing is necessary.

As a procedural matter, this objection does not comply with LBR 9014-1(d)(3) and (4), which require the request for relief and supporting memorandum of points and authorities to be filed as separate documents if greater than six pages. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

Danny Wayne Marshall and Robin Lynn Marshall (together, "Debtors") filed their chapter 13 plan ("Plan") on February 12, 2021. Doc. #16. Mechanics Bank, successor by merger to Rabobank, N.A. ("Creditor"), objects to confirmation of the Plan on the ground that the Plan payments do not conform with the requirements of 11 U.S.C. § 1325(b), including the requirement that the Plan provide all of Debtors' projected disposable income toward unsecured creditors and the requirement of a five-year commitment period. Doc. #32. Creditor also objects to confirmation on the ground that the value of property to be distributed under the Plan is less than the amount that would be paid under a chapter 7 liquidation plan. Doc. #32.

Debtors responded to Creditor's objection, contending that Debtors are entitled to relief under chapter 13, that Debtors' bankruptcy case is filed in good faith, and that Creditor's claim may be subject to discharge in chapter 13. Doc. #47. Debtors request additional time to brief and respond to Creditor's objection. Doc. #47. The court is inclined to sustain Creditor's objection and will not allow for additional time to brief and respond to Creditor's objection to plan confirmation.

Debtors are above-median income debtors. See Form 122C-1, Doc. #15. Official Form 122C-1 completed by Debtors indicates that the commitment period of the plan is five years and disposable income is determined under 11 U.S.C. § 1325(b)(3). Form 122C-1, Doc. #15. Debtors state a monthly disposable income is \$5,171.75. Form 122C-2, Doc. #15. The Plan calls for monthly plan payments of \$850.00, and \$1,772.91 in monthly payments to be paid directly by Debtors.

Plan, Doc. #16. Under the Plan, monthly plan payments will continue for 36 months. Plan, Doc. #16.

It appears to the court that the Plan does not satisfy the requirements of 11 U.S.C. § 1325(b)(4). Section 1325(b)(4) "mandates a fixed minimum duration for confirmation – but only if the plan triggered an objection by the trustee or a creditor." In re Sisk, 962 F.3d 1133, 1146 reh'g denied, 973 F.3d 945 (9th Cir. 2020). Here, Creditor has objected to the Plan, and the five-year commitment period is brought into force. The court makes no findings with respect to Debtors' contentions that Debtors are entitled to relief under chapter 13 or that Debtors filed this case in good faith. Whether Creditor's claim may be discharged is addressed as part of #7 on this calendar.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED. To the extent Creditor seeks dismissal of this case, such relief requires a noticed motion.

9. [21-10222](#)-A-13     **IN RE: DANNY/ROBIN MARSHALL**  
[SW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK  
3-15-2021    [\[22\]](#)

ALLY BANK/MV  
D. GARDNER/ATTY. FOR DBT.  
ADAM BARASCH/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Sustained.

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 objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. While not required, the debtors filed written opposition. Doc. #49. Unless further opposition is presented at the hearing, the court intends to sustain the objection. The court will issue an order if a further hearing is necessary.

Danny Wayne Marshall and Robin Lynn Marshall (together, "Debtors") filed their chapter 13 plan ("Plan") on February 12, 2021. Doc. #16. Ally Bank ("Ally") objects to confirmation of the Plan on the ground that the Plan fails to provide for the full value of Ally's claim. Doc. #22. Ally also objects to the interest rate to be paid to Ally under the Plan. Doc. #22.

Debtors' opposition alleges that Ally's objection to plan confirmation was untimely, but this is incorrect. Objections to plan confirmation are governed by LBR 3015-1(c)(4) and may be filed and served within seven days after the first date set for the meeting of creditors. The Notice of Chapter 13 Bankruptcy Case Meeting of Creditors set the first meeting of creditors for March 16, 2021. Doc. #18. Ally timely objected to plan confirmation on March 15, 2021. Doc. #22.

Debtors alternatively request additional time to brief and respond to Ally's objections. Doc. #49. The court will deny this request.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under § 501, is deemed allowed unless a party in interest objects. Ally filed its proof of claim on February 19, 2021. Claim 2-1. No party in interest has objected to Ally's proof of claim.

Paragraph 3.02 of the Plan provides that the proof of claim, not the Plan or the schedules, determines the amount and classification of a claim. Doc. #16. The Plan fails to account for Ally's claim. Claim 2-1; Doc. #16.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

10. [17-10532](#)-A-13     **IN RE: COREY GARCIA**  
[RSW-2](#)

MOTION TO MODIFY PLAN  
2-16-2021    [\[48\]](#)

COREY GARCIA/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

11. [20-12439](#)-A-13     **IN RE: RAFAEL/BLANCA RIVERA**  
[PK-3](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)  
3-10-2021    [\[48\]](#)

PATRICK KAVANAGH/ATTY. FOR DBT.

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. The motion and related pleadings as filed do not comply with Local Rule of Practice ("LBR") 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. Additionally, this motion does not comply with LBR 9004-2(d) which requires exhibits to be filed as a separate document. The court urges counsel to review the local rules in order to be compliant in future matters. The rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

12. [15-13649](#)-A-13     **IN RE: TY RAWLES**  
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE  
11-16-2020    [\[22\]](#)

MICHAEL MEYER/MV  
PATRICK KAVANAGH/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:        Continued to May 6, 2021 at 9:00 a.m..

ORDER:                The court will issue the order.

This motion to dismiss was originally filed by the chapter 13 trustee ("Trustee") on November 16, 2020 and set for hearing on January 7, 2021 at 9:00 a.m. Doc. ##22-25. Trustee moved to dismiss for: (1) material default by the debtor with respect to a confirmed plan under § 1307(c)(6); and (2) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan under § 1307(c)(8). Doc. #22.

The hearing on this matter was continued to February 4, 2021 to track with the hearing on the motion to confirm the first modified plan filed by Ty Rawles ("Debtor"), the debtor in this chapter 13 case. Doc. #36.

At the hearing on February 4, 2021, the court denied Debtor's motion to confirm the first modified plan. Debtor's counsel represented that a second modified plan would be filed and a confirmation hearing set for April 8, 2021. With Trustee's approval, the court continued the hearing on this motion to be heard

in conjunction with the expected motion to confirm Debtor's second modified plan. Doc. #48; Court Audio, Doc. #45.

Although Debtor did not file or set for hearing a second modified plan in time for the April 8, 2021 hearing, a second modified chapter 13 plan has been filed and set for hearing on May 6, 2021 at 9:00 a.m. Doc. ##51-57.

Unless the Trustee's motion is withdrawn, the court is inclined to continue the hearing on Trustee's motion to dismiss to May 6, 2021 at 9:00 a.m.

13. [21-10051](#)-A-13     **IN RE: JUAN/DENICE VASQUEZ**  
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MOUNTAIN WEST FINANCIAL, INC.  
1-29-2021    [\[11\]](#)

MOUNTAIN WEST FINANCIAL, INC./MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Sustained.

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 objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. 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 debtors filed their chapter 13 plan ("Plan") on January 10, 2021. Doc. #3. Mountain West Financial, Inc. ("Creditor") objects to confirmation of the Plan on the grounds that: (1) the Plan does not provide for the curing of the \$2,278.33 default on Creditor's claim; and (2) the monthly Plan payments will be insufficient to fund the Plan once the arrears on Creditor's claim are fully provided for. Doc. #11.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under section 501, is deemed allowed unless a party in interest objects. Creditor filed its proof of claim on February 19, 2021. Claim 13.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #3. The Plan fails to account for Creditor's claim. Claim 13; Doc. #3.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

14. [19-14252](#)-A-13     **IN RE: MICHAEL/LUCIA LOPEZ**  
[RSW-3](#)

CONTINUED MOTION TO MODIFY PLAN  
11-12-2020    [\[59\]](#)

LUCIA LOPEZ/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The Chapter 13 trustee timely opposed this motion, but withdrew his opposition on April 6, 2021. Doc. # 76; Doc. # 84. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

15. [20-12867](#)-A-13     **IN RE: ULF JENSEN AND BARBARA KIRKEGAARD-JENSEN**  
[PK-1](#)

MOTION TO CONFIRM PLAN  
2-3-2021    [\[44\]](#)

BARBARA KIRKEGAARD-JENSEN/MV  
PATRICK KAVANAGH/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to May 6, 2021 at 9:00 a.m.

ORDER:             The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to confirm the debtors' first

modified chapter 13 plan. Tr.'s Opp'n, Doc. #54. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response no later than April 22, 2021. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. Trustee shall file and serve a reply, if any, by April 29, 2021.

If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than April 29, 2021. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

16. [21-10384](#)-A-13     **IN RE: ELLIOTT/TIFFANY SHIPES**  
[RSW-1](#)

MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE  
3-10-2021    [\[15\]](#)

TIFFANY SHIPES/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

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

Elliott Royce Shipes and Tiffany Leanne Shipes (together, "Debtors"), the debtors in this chapter 13 case, move the court for an order valuing the Debtors' 2018 Kia Niro ("Property"), which is the collateral of Capital One Auto Finance, a division of Capital One, N.A. ("Creditor"). Doc. #15.

11 U.S.C. § 1325(a)(\*) (the hanging paragraph) permits the debtor to value personal property acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the property and the debt was not incurred within the 910-day period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an



unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Debtors assert the Property was purchased more than 910 days before the filing of this case. Doc. #17. Debtors assert a replacement value of the Property of \$21,775.00 and ask the court for an order valuing the Property at \$21,775.00. Doc. #15; Doc. #17. Debtors are competent to testify as to the value of the Property. Creditor filed a proof of claim on March 10, 2021, which also valued the Property at \$21,775.00. Claim 7. Given the absence of contrary evidence, Debtors' opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at \$21,775.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

17. [20-13597](#)-A-13     **IN RE: GARY GEORGE**  
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-19-2021    [\[24\]](#)

CAB WEST, LLC/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
JOHN KIM/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, Cab West, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2018 Ford F-150 ("Vehicle"). Doc. #24.

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 post-petition payments. Doc. #28. Movant has produced evidence that the debtor is delinquent by at least \$759.98. Doc. #28. Movant states that the debtor has agreed to surrender the Vehicle. Doc. #28.

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 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 post-petition payments to Movant and the Vehicle is a depreciating asset.

1. [21-10426](#)-A-7     **IN RE: JONATHON/RASHELLE LEE**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-9-2021    [\[12\]](#)

EXETER FINANCE LLC/MV  
NEIL SCHWARTZ/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 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, Exeter Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2012 Chevrolet Silverado ("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-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$2,160.54, including late fees of \$272.97. 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 \$16,500.00 and the debtors owe \$21,324.04. Doc. #12.

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.

2. [21-10032](#)-A-7     **IN RE: PHILIP CRAWFORD**  
[RDW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY, AND/OR  
MOTION/APPLICATION FOR ADEQUATE PROTECTION  
3-1-2021    [\[14\]](#)

LOGIX FEDERAL CREDIT UNION/MV  
D. GARDNER/ATTY. FOR DBT.  
REILLY WILKINSON/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, Logix 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 2017 Chevrolet Corvette ("Vehicle"). 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 one complete post-petition payment. Movant has produced evidence that the debtor is delinquent by at least \$797.32. Doc. #17, 18. Moreover, on February 23, 2021, the debtor,

Movant and the chapter 7 trustee filed a stipulation granting relief from stay. Doc. #12.

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 the debtor is in chapter 7. Id. The Vehicle is valued at \$41,441.00 and the debtor owes \$45,298.89. 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. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

The request for attorney's fees will be denied pursuant to 11 U.S.C. § 506(b). The debtor has no equity in the property, and the request for attorney's fees was not included in the stipulation filed by the parties. Doc. #12.

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 one post-petition payments to Movant and the Vehicle is a depreciating asset.

3. [21-10058](#)-A-7     **IN RE: ROBERT MESTMAKER**  
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-3-2021    [\[15\]](#)

JPMORGAN CHASE BANK, N.A./MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
WENDY LOCKE/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, JPMorgan Chase Bank, N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2019 Subaru Ascent ("Vehicle"). Doc. #15.

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 three complete post-petition lease payments. Movant has produced evidence that the debtor is delinquent by at least \$1,389.50. Doc. #19.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to gain immediate possession of the Vehicle pursuant to applicable law. 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 three post-petition payments to Movant in accordance with the lease agreement.

4. [12-18860](#)-A-7     **IN RE: ERNESTO/CAREY ROSALES**  
[LNH-3](#)

MOTION FOR COMPENSATION FOR LISA HOLDER, TRUSTEES ATTORNEY(S),  
MOTION/APPLICATION FOR COMPENSATION FOR KLEIN DENATALE GOLDNER,  
TRUSTEES ATTORNEY(S)  
3-9-2021    [[86](#)]

NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

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

As part of the same motion, Klein DeNatale Goldner ("KDG") and Lisa Noxon Holder, P.C. ("Holder"), each having served as counsel for chapter 7 trustee Randell Parker ("Trustee") during the bankruptcy case of Ernesto Alonso Rosales

and Carey Ann Rosales (together, "Debtors"), request final compensation and reimbursement. Doc. #86.

KDG requests an allowance of final compensation for legal services valued at \$1,745.00 and reimbursement for expenses in the amount of \$14.35. Doc. #86.

Holder requests an allowance of final compensation for legal services valued at \$2,500.00 and reimbursement for expenses in the amount of \$154.91. Doc. #86.

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).

KDG's and Holder's services included, without limitation: (1) resolution of Debtors' personal injury claim, and claimed exemption, regarding a medical device that resulted in a settlement turned over to Trustee for the estate; (2) the motion to approve settlement and supporting documentations; and (3) fee and employment applications. Ex. A, Doc. #90. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation to KDG in the amount of \$1,745.0 and reimbursement for expenses in the amount of \$14.35. The court allows final compensation to Holder in the amount of \$2,500.00 and reimbursement for expenses in the amount of \$154.91. Trustee is authorized to make payments to KDG and Holder. Trustee is authorized to pay the amounts 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.

5. [21-10173](#)-A-7      **IN RE: MARCELINO LUNA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
2-18-2021    [\[13\]](#)

\$338.00 FILING FEE PAID 3/4/21

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

DISPOSITION:      The OSC will be vacated.

ORDER:              The court will issue an order.

The record shows that the filing fee was paid in full on March 4, 2021. The case shall remain pending.



MOTION TO AVOID LIEN OF KAMALJEET SINGH  
2-22-2021    [\[18\]](#)

RAJWINDER KAUR/MV  
ROBERT WILLIAMS/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.

Gurjit Singh and Rajwinder Kaur (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Kamaljeet Singh ("Creditor") on their residential real property commonly referred to as 5815 Caracas Ave., Bakersfield, CA 93313 (the "Property"). Doc. #18; Schedules C and D, Doc. #1. Debtors filed their chapter 7 case on December 5, 2020. Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under section 522(b); (2) the property must be listed on the debtors' 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 section 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtors filed their bankruptcy petition on December 5, 2020. A judgment was entered against Gurjit Singh d/b/a Manak Transport in the amount of \$81,444.72 in favor of Creditor on June 3, 2020. Ex. 4, Doc. #21. The abstract of judgment was recorded pre-petition in Kern County on August 6, 2020. Ex. 4, Doc. #21. The lien attached to Debtors' interest in the Property located in Kern County. Doc. #21. The Property also is encumbered by a lien in favor of Wells Fargo Home Mortgage in the amount \$236,791.00. Schedule D, Doc. #1. Debtors claimed an exemption of \$100,000.00 in the Property under California Code of Civil

Procedure § 704.730. Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at \$328,224.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$81,444.72
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$236,791.00
Amount of Debtors' claim of exemption in the Property	+	\$100,000.00
	sum	\$418,235.72
Value of Debtors' interest in the Property absent liens	-	\$328,224.00
Amount Creditor's lien impairs Debtors' exemption	=	\$90,011.72

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

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

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

STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION  
2-9-2021    [\[1\]](#)

LEONARD WELSH/ATTY. FOR DBT.

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 April 2, 2021. Doc. #86.  
Therefore, the status conference will be dropped from calendar.

2. [20-10945](#)-A-12     **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**  
[WLG-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-10-2021    [\[176\]](#)

KEWAL SINGH/MV  
DAVID JENKINS/ATTY. FOR DBT.  
LENDEN WEBB/ATTY. FOR MV.  
RESPONSIVE PLEADING

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 on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Debtors Ajitpal Singh and Jatinderjeet Sihota (together, "Debtors") timely filed written opposition on March 25, 2021. Doc. #185. The moving parties Jaskaran Sihota, Kewal Singh and Jaswinder Kaur (collectively, "Movants") timely replied to the opposition on April 1, 2021. Doc. #189.

The court has considered the motion, opposition, and reply. After due consideration, this motion will be GRANTED for cause shown to permit Movants to take the necessary actions to finalize the arbitration pending under the auspices of Jaskaran Sihota, et al. v. Bhajan Sihota, et al., Case No. 18CECG01393, Superior Court of California, County of Fresno ("State Court Action") and enter any arbitration award in the State Court Action.

Movants filed a proof of claim against Debtors based on an arbitration award issued on January 25, 2020, after a four-day arbitration under the auspices of the State Court Action. Claim No. 8. The arbitration award was not confirmed by the California state court prior to Debtors filing for bankruptcy. Doc. #176. Shortly after the arbitration award was issued on January 25, 2020, Movants

filed a motion in the state court to confirm the arbitration award. In response, Debtors moved to vacate the award. On the eve of the hearing on Movants' motion to confirm, and after a tentative ruling denying Debtors' motion to vacate and granting Movants' motion to confirm, Debtors filed a bankruptcy petition. Doc. #180.

Movants request relief from the automatic stay under 11 U.S.C. § 362(d)(1) to permit Movants to take the necessary actions to finalize the arbitration and enter any arbitration award in the State Court Action. Doc. #176.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause. "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).

Movants seek relief from stay for cause based on permissive abstention pursuant to 28 U.S.C. § 1334(c)(1). "Where a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues, cause may exist for lifting the stay as to the state court trial." Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162, 1166 (9th Cir. 1990). Moreover, the legislative history of § 362(d)(1) states that "a desire to permit an action to proceed to completion in another tribunal may provide [] cause" for relief from a stay. H.R. No. 595, 95th Cong., 1st Sess. 343, 1977 U.S. Code Cong. & Admin. News 5787, 630.

The Ninth Circuit in Tucson Estates set forth the following factors for a bankruptcy court to consider when deciding whether to abstain from exercising jurisdiction:

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention;
- (2) the extent to which state law issues predominate over bankruptcy issues;
- (3) the difficulty or unsettled nature of the applicable law;
- (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court;
- (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334;
- (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;
- (7) the substance rather than form of an asserted "core" proceeding;
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- (9) the burden of [the bankruptcy court's] docket;
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- (11) the existence of a right to a jury trial; and

(12) the presence in the proceeding of nondebtor parties.

Tucson Estates, 912 F.2d at 1166-67 (quoting In re Republic Reader's Serv., Inc., 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987)).

Debtors oppose the Motion to the extent that Movants seek mandatory abstention on the grounds that a motion for mandatory abstention was not filed timely. Doc. #185. However, Movants do not seek relief from stay based on mandatory abstention, and this court will not so treat the Motion. Debtors have not addressed or countered Movants' analysis applying the Tucson Estates factors for permissive abstention.

Applying the Tucson Estates factors, the court finds these factors support permissive abstention, and therefore relief from the automatic stay, as follows:

1. Effect on Administration of the Estate if Court Abstains: Granting relief from stay to permit the state court to finalize the arbitration award in the State Court Action will permit final resolution of the arbitration award. If that award is finalized, Movants can use the award to resolve outstanding issues in Movants' non-dischargeability adversary proceeding through issue preclusion. Khaligh v. Hadaegh (in re Khaligh), 338 B.R. 817 (B.A.P. 9th Cir. 2006), aff'd, 506 F.3d 956 (2007). Abstention therefore would facilitate the administration of the estate. This factor weighs in favor of permissive abstention.
2. Extent to Which State Law Issues Predominate: While dischargeability involves federal bankruptcy law, whether the arbitration award is final for issue preclusion purposes implicates state law. The state law issues predominate over the bankruptcy issues since the bankruptcy court can use issue preclusion to resolve the non-dischargeability lawsuit if the arbitration award is a final award. This factor weighs in favor of permissive abstention.
3. Difficulty or Unsettled Nature of Applicable Law: Whether and when the arbitration award in the State Court Action is final appears to be unsettled under California law and is best determined by the state court. See Lonky v. Patel, 51 Cal. App. 5th 831 (2020). This factor weighs in favor of permissive abstention.
4. Presence of Pending Related Proceeding: The State Court Action is pending in the California state court and could be finally resolved if the automatic stay is lifted. This factor weighs in favor of permissive abstention.
5. The Jurisdictional Basis Other than 28 U.S.C. § 1334: The only basis for jurisdiction appears to be 28 U.S.C. § 1334. This factor weighs in favor of permissive abstention.
6. Degree of Relatedness or Remoteness of the Proceeding to the Bankruptcy Case: The determination of dischargeability of Movants' claim is directly related to the administration of Debtors' bankruptcy case. However, this determination could be greatly facilitated by the issuance of a final arbitration award in the State Court Action. This factor weighs in favor of permissive abstention.
7. Substance of the Asserted Core Proceeding: Determination of dischargeability is a core proceeding. However, this determination could

be greatly facilitated by the issuance of a final arbitration award in the State Court Action. This factor weighs in favor of permissive abstention.

8. Feasibility of Severing State Law Claims from Core Bankruptcy Matters: The arbitrator has liquidated Movants' claim through an award after a four-day arbitration. However, that award has not been finalized so it currently cannot be used to resolve the non-dischargeability adversary proceeding through the application of collateral estoppel. If the arbitration award could be finalized, that award could be used to resolve the dischargeability complaint. This factor weighs in favor of permissive abstention.
9. Burden of Bankruptcy Court's Docket: Lifting the automatic stay to permit the state court to finalize the arbitration award likely would eliminate this court having to try the non-dischargeability adversary proceeding, which already has been the subject of a four-day arbitration, easing the burden on this court's docket. This factor weighs in favor of permissive abstention.
10. Likelihood of Forum Shopping: Because Debtors filed a bankruptcy case on the eve of the state court finalizing the arbitration award in the State Court Action in Movants' favor, it appears Debtors may be forum shopping to have this court try anew the evidence already presented in the four-day arbitration. This factor weighs in favor of permissive abstention.
11. Existence of Right to Jury Trial: The right to a jury trial is not implicated with respect to the arbitrated claims, and there is no right to a jury trial in the non-dischargeability adversary proceeding. This factor weighs against permissive abstention.
12. Presence of Non-Debtor Parties in Related Proceeding: The only non-debtor parties in the related arbitration with respect to the Award are Movants and other parties who also filed for bankruptcy. This factor weighs against permissive abstention.

Given that most of the Tucson Estates factors weigh in favor of this court abstaining from exercising its jurisdiction over the claims between Movants and Debtors that are already the subject of the State Court Action, the court finds that cause exists to lift the automatic stay to permit Movants to take the necessary actions to finalize the arbitration and enter any arbitration award in the State Court Action.

In addition to the analysis under Tucson Estates, when a movant seeks relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court may consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in determining whether to grant relief from the automatic stay" to allow litigation in another forum. Id. The relevant Curtis factors include: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the non-bankruptcy forum has the expertise to hear such cases; (4) whether litigation in another forum would prejudice the interests of other creditors; (5) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; (6) whether the litigation in the other forum has progressed to the point where the parties are prepared for trial; and (7) the impact of the automatic stay and the "balance of hurt." In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984). Here, the

Curtis factors support finding cause to grant relief from stay as requested in the motion.

Granting relief from stay to permit the state court to finalize the arbitration award in the State Court Action will finally resolve the arbitration award. If that award is finalized, Movants can use the award to resolve outstanding issues in Movants' non-dischargeability adversary proceeding through collateral estoppel. Khaligh v. Hadaegh (in re Khaligh), 338 B.R. 817 (B.A.P. 9th Cir. 2006), aff'd, 506 F.3d 956 (2007). Moreover, the state court has the expertise to hear motions to finalize an award based on an arbitration ordered by the state court. Here, a four-day arbitration has already been held, and the state court can readily finalize any award from that arbitration. It is in the interests of judicial economy and more expeditious and economical to lift the automatic stay to permit the state court to finalize the arbitration of the claims in the State Court Action before this court has to try anew all of the matters previously arbitrated. Because there are minimal additional proceedings that need to be undertaken in the State Court Action to finalize the arbitration award, lifting the automatic stay would benefit all parties by permitting the state court to determine what is needed to finalize the arbitration award so that award could be utilized efficiently in this court to resolve Movants' non-dischargeability adversary proceeding.

Accordingly, the court finds that cause exists to lift the stay and this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movants to take the necessary actions to finalize the arbitration and enter any arbitration award in the State Court Action. No other relief is awarded.

In the request for relief as part of the motion, Movants request waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3). However, Movants have provided no factual basis or legal analysis to support the requested waiver, and so the 14-day stay is not waived.

3. [21-10445](#)-A-11      **IN RE: HARDEEP KAUR**

STATUS CONFERENCE RE: SUBCHAPTER V CHAPTER 11 VOLUNTARY PETITION  
2-23-2021    [\[1\]](#)

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

4. [20-11367](#)-A-11      **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**  
[LKW-17](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)  
3-10-2021    [\[296\]](#)

LEONARD WELSH/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.

Law Offices of Leonard K. Welsh ("Movant"), counsel for debtor and debtor in possession Temblor Petroleum Company, LLC ("DIP"), requests an allowance of interim compensation and reimbursement for expenses for services rendered December 1, 2020 through February 28, 2021. Doc. #296. Movant provided legal services valued at \$9,722.50, and requests compensation for that amount. Doc. #296. Movant requests reimbursement for expenses in the amount of \$444.30. Doc. #296.

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. #21. 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) advising DIP on a disclosure statement that was disapproved by the court; (2) preparing and filing the first amended disclosure statement; (3) preparing and filing a notice of stay proceeding; (4) communicating with creditors' attorneys about state court litigation and disclosure statements; and (6) preparing fee applications. Exs., Doc. #300. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$9,722.50 and reimbursement for expenses in the amount of \$444.30. 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. DIP and/or DIP's members are authorized to pay the fees allowed by this order from available funds or in accordance with the Order Granting Motion for Order Authorizing Debtor's Members to Pay Fees and Costs Incurred by Debtor's Attorneys. Doc. #241.

MOTION FOR RELIEF FROM AUTOMATIC STAY, AND/OR  
MOTION/APPLICATION TO STAY ADVERSARY PROCEEDING  
3-10-2021    [\[413\]](#)

JASWINDER KAUR/MV  
DAVID JENKINS/ATTY. FOR DBT.  
LENDEN WEBB/ATTY. FOR MV.  
RESPONSIVE PLEADING

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 on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Debtors Bhajan Sihota and Balvinder Kaur (together, "Debtors") timely filed written opposition on March 25, 2021. Doc. #421. The moving parties Jaskaran Sihota, Kewal Singh and Jaswinder Kaur (collectively, "Movants") timely replied to the opposition on April 1, 2021. Doc. #425.

The court has considered the motion, opposition, and reply. After due consideration, this motion will be GRANTED for cause shown to permit Movants to take the necessary actions to finalize the arbitration pending under the auspices of Jaskaran Sihota, et al. v. Bhajan Sihota, et al., Case No. 18CECG01393, Superior Court of California, County of Fresno ("State Court Action") and enter any arbitration award in the State Court Action.

Movants filed a proof of claim against Debtors based on an arbitration award issued on January 25, 2020, after a four-day arbitration under the auspices of the State Court Action. Claim No. 9. The arbitration award was not confirmed by the California state court prior to Debtors filing for bankruptcy. Doc. #413. Shortly after the arbitration award was issued on January 25, 2020, Movants filed a motion in the state court to confirm the arbitration award. In response, Debtors moved to vacate the award. On the eve of the hearing on Movants' motion to confirm, and after a tentative ruling denying Debtors' motion to vacate and granting Movants' motion to confirm, Debtors filed a bankruptcy petition. Doc. #416.

Movants request relief from the automatic stay under 11 U.S.C. § 362(d)(1) to permit Movants to take the necessary actions to finalize the arbitration and enter any arbitration award in the State Court Action. Doc. #413.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause. "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).

Movants seek relief from stay for cause based on permissive abstention pursuant to 28 U.S.C. § 1334(c)(1). "Where a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues, cause may exist for lifting the stay as to the state court trial."

Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162, 1166 (9th Cir. 1990). Moreover, the legislative history of § 362(d)(1) states that "a desire to permit an action to proceed to completion in another tribunal may provide [] cause" for relief from a stay. H.R. No. 595, 95th Cong., 1st Sess. 343, 1977 U.S. Code Cong. & Admin. News 5787, 630.

The Ninth Circuit in Tucson Estates set forth the following factors for a bankruptcy court to consider when deciding whether to abstain from exercising jurisdiction:

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention;
- (2) the extent to which state law issues predominate over bankruptcy issues;
- (3) the difficulty or unsettled nature of the applicable law;
- (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court;
- (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334;
- (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;
- (7) the substance rather than form of an asserted "core" proceeding;
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- (9) the burden of [the bankruptcy court's] docket;
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- (11) the existence of a right to a jury trial; and
- (12) the presence in the proceeding of nondebtor parties.

Tucson Estates, 912 F.2d at 1166-67 (quoting In re Republic Reader's Serv., Inc., 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987)).

Debtors oppose the Motion to the extent that Movants seek mandatory abstention on the grounds that a motion for mandatory abstention was not filed timely. Doc. #421. However, Movants do not seek relief from stay based on mandatory abstention, and this court will not so treat the Motion. Debtors have not addressed or countered Movants' analysis applying the Tucson Estates factors for permissive abstention.

Applying the Tucson Estates factors, the court finds these factors support permissive abstention, and therefore relief from the automatic stay, as follows:

1. Effect on Administration of the Estate if Court Abstains: Granting relief from stay to permit the state court to finalize the arbitration award in the State Court Action will permit final resolution of the arbitration award. If that award is finalized, Movants can use the award to resolve outstanding issues in Movants' non-dischargeability adversary proceeding through issue preclusion. Khaligh v. Hadaegh (in re Khaligh), 338 B.R. 817 (B.A.P. 9th Cir. 2006), aff'd, 506 F.3d 956 (2007). Abstention therefore would facilitate the administration of the estate. This factor weighs in favor of permissive abstention.
2. Extent to Which State Law Issues Predominate: While dischargeability involves federal bankruptcy law, whether the arbitration award is final for issue preclusion purposes implicates state law. The state law issues predominate over the bankruptcy issues since the bankruptcy court can use issue preclusion to resolve the non-dischargeability lawsuit if the arbitration award is a final award. This factor weighs in favor of permissive abstention.
3. Difficulty or Unsettled Nature of Applicable Law: Whether and when the arbitration award in the State Court Action is final appears to be unsettled under California law and is best determined by the state court. See Lonky v. Patel, 51 Cal. App. 5th 831 (2020). This factor weighs in favor of permissive abstention.
4. Presence of Pending Related Proceeding: The State Court Action is pending in the California state court and could be finally resolved if the automatic stay is lifted. This factor weighs in favor of permissive abstention.
5. The Jurisdictional Basis Other than 28 U.S.C. § 1334: The only basis for jurisdiction appears to be 28 U.S.C. § 1334. This factor weighs in favor of permissive abstention.
6. Degree of Relatedness or Remoteness of the Proceeding to the Bankruptcy Case: The determination of dischargeability of Movants' claim is directly related to the administration of Debtors' bankruptcy case. However, this determination could be greatly facilitated by the issuance of a final arbitration award in the State Court Action. This factor weighs in favor of permissive abstention.
7. Substance of the Asserted Core Proceeding: Determination of dischargeability is a core proceeding. However, this determination could be greatly facilitated by the issuance of a final arbitration award in the State Court Action. This factor weighs in favor of permissive abstention.
8. Feasibility of Severing State Law Claims from Core Bankruptcy Matters: The arbitrator has liquidated Movants' claim through an award after a four-day arbitration. However, that award has not been finalized so it currently cannot be used to resolve the non-dischargeability adversary proceeding through the application of collateral estoppel. If the arbitration award could be finalized, that award could be used to resolve the dischargeability complaint. This factor weighs in favor of permissive abstention.
9. Burden of Bankruptcy Court's Docket: Lifting the automatic stay to permit the state court to finalize the arbitration award likely would eliminate this court having to try the non-dischargeability adversary proceeding, which already has been the subject of a four-day

arbitration, easing the burden on this court's docket. This factor weighs in favor of permissive abstention.

10. Likelihood of Forum Shopping: Because Debtors filed a bankruptcy case on the eve of the state court finalizing the arbitration award in the State Court Action in Movants' favor, it appears Debtors may be forum shopping to have this court try anew the evidence already presented in the four-day arbitration. This factor weighs in favor of permissive abstention.
11. Existence of Right to Jury Trial: The right to a jury trial is not implicated with respect to the arbitrated claims, and there is no right to a jury trial in the non-dischargeability adversary proceeding. This factor weighs against permissive abstention.
12. Presence of Non-Debtor Parties in Related Proceeding: The only non-debtor parties in the related arbitration with respect to the Award are Movants and other parties who also filed for bankruptcy. This factor weighs against permissive abstention.

Given that most of the Tucson Estates factors weigh in favor of this court abstaining from exercising its jurisdiction over the claims between Movants and Debtors that are already the subject of the State Court Action, the court finds that cause exists to lift the automatic stay to permit Movants to take the necessary actions to finalize the arbitration and enter any arbitration award in the State Court Action.

In addition to the analysis under Tucson Estates, when a movant seeks relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court may consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in determining whether to grant relief from the automatic stay" to allow litigation in another forum. Id. The relevant Curtis factors include: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the non-bankruptcy forum has the expertise to hear such cases; (4) whether litigation in another forum would prejudice the interests of other creditors; (5) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; (6) whether the litigation in the other forum has progressed to the point where the parties are prepared for trial; and (7) the impact of the automatic stay and the "balance of hurt." In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984). Here, the Curtis factors support finding cause to grant relief from stay as requested in the motion.

Granting relief from stay to permit the state court to finalize the arbitration award in the State Court Action will finally resolve the arbitration award. If that award is finalized, Movants can use the award to resolve outstanding issues in Movants' non-dischargeability adversary proceeding through collateral estoppel. Khaligh v. Hadaegh (in re Khaligh), 338 B.R. 817 (B.A.P. 9th Cir. 2006), aff'd, 506 F.3d 956 (2007). Moreover, the state court has the expertise to hear motions to finalize an award based on an arbitration ordered by the state court. Here, a four-day arbitration has already been held, and the state court can readily finalize any award from that arbitration. It is in the interests of judicial economy and more expeditious and economical to lift the automatic stay to permit the state court to finalize the arbitration of the claims in the State Court Action before this court has to try anew all of the matters previously arbitrated. Because there are minimal additional proceedings that need to be undertaken in the State Court Action to finalize the

arbitration award, lifting the automatic stay would benefit all parties by permitting the state court to determine what is needed to finalize the arbitration award so that award could be utilized efficiently in this court to resolve Movants' non-dischargeability adversary proceeding.

Accordingly, the court finds that cause exists to lift the stay and this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movants to take the necessary actions to finalize the arbitration and enter any arbitration award in the State Court Action. No other relief is awarded.

In the request for relief as part of the motion, Movants request waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3). However, Movants have provided no factual basis or legal analysis to support the requested waiver, and so the 14-day stay is not waived.

1. [20-10945](#)-A-12     **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**  
[20-1041](#)     [WLG-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY, AND/OR  
MOTION/APPLICATION TO STAY ADVERSARY PROCEEDING  
3-10-2021     [\[58\]](#)

SIHOTA ET AL V. SINGH ET AL  
PETER SAUER/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:     This matter will proceed and be called on the 10:30 a.m.  
calendar in connection with the related motion in the  
main case.

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 on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Debtors Ajitpal Singh and Jatinderjeet Sihota (together, "Debtors") timely filed written opposition on March 25, 2021. Doc. #73. The moving parties Jaskaran Sihota, Kewal Singh and Jaswinder Kaur (collectively, "Movants") timely replied to the opposition on April 1, 2021. Doc. #75.

The court has considered the motion, opposition, and reply. After due consideration, this motion will be GRANTED. This court will stay this adversary proceeding to permit Movants to take the necessary actions to finalize the arbitration pending under the auspices of Jaskaran Sihota, et al. v. Bhajan Sihota, et al., Case No. 18CECG01393, Superior Court of California, County of Fresno ("State Court Action") and enter any arbitration award in the State Court Action.

Movants filed a proof of claim against Debtors based on an arbitration award issued on January 25, 2020, after a four-day arbitration under the auspices of the State Court Action. Claim No. 8. The arbitration award was not confirmed by the California state court prior to Debtors filing for bankruptcy. Doc. #58. Shortly after the arbitration award was issued on January 25, 2020, Movants filed a motion in the state court to confirm the arbitration award. In response, Debtors moved to vacate the award. On the eve of the hearing on Movants' motion to confirm, and after a tentative ruling denying Debtors' motion to vacate and granting Movants' motion to confirm, Debtors filed a bankruptcy petition. Doc. #60.

Movants request this court stay the pending adversary proceeding between Movants and Debtors so Movants may take the necessary actions to finalize the arbitration and enter any arbitration award in the State Court Action. Doc. #58. Debtors' opposition does not address whether this adversary proceeding should be stayed if this court grants Movants' motion for relief from stay based on permissive abstention. Doc. #73.

In a related motion filed in the Debtors' bankruptcy case, Movants seek relief from stay for cause based on permissive abstention pursuant to 28 U.S.C.



§ 1334(c)(1), which this court intends to grant. Assuming this court grants relief from stay to permit Movants to take the necessary actions to finalize the arbitration and enter any arbitration award in the State Court Action, it is appropriate for this court to stay this adversary proceedings pending the finalization of the arbitration and entry of any arbitration award in the State Court Action. See Yates v. Oroojian (In re Oroojian), No. 2:19-bk-22853-RK, 2020 Bankr. LEXIS 1204 (Bankr. C.D. Cal. May 5, 2020).

Accordingly, this adversary proceeding is stayed to permit Movants to take the necessary actions to finalize the arbitration and enter any arbitration award in the State Court Action. The pre-trial conference currently set for June 17, 2021, pursuant to this court's Scheduling Order dated August 27, 2020 (Doc. #15) ("Scheduling Order"), will be treated as a status conference in this adversary proceeding. The parties shall file a joint status report on or before June 10, 2021 that includes the status of proceedings in the State Court Action. All other deadlines and filing requirements of the Scheduling Order are stayed.

2. [19-12047](#)-A-7     **IN RE: ROBERT FLETCHER**  
[19-1097](#)     [DRJ-7](#)

MOTION FOR SANCTIONS  
3-24-2021    [\[118\]](#)

FLETCHER V. FLETCHER ET AL  
DAVID JENKINS/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Conditionally granted and hearing continued to May 6, 2021 at 11:00 a.m.

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 14 days' notice prior to the hearing date pursuant to the scheduling order dated May 15, 2020 (Doc. #47) ("Scheduling Order"). Pursuant to the Scheduling Order, written opposition to the motion was to be filed on or before April 1, 2021. The defendant filed written opposition on April 2, 2021. Doc. #125. The failure of the defendant to file written opposition at least 7 days prior to the hearing as required by Scheduling Order 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). However, the court will consider the defendant's opposition and this matter will proceed as scheduled. Any reply shall be orally presented at the hearing. Scheduling Order, ¶ 5.3.

Robert John Fletcher ("Defendant") is a Chapter 7 debtor and the defendant in this adversary proceeding. Russell Remington Fletcher ("Plaintiff") alleges that certain debt, arising from Defendant's role as trustee for the Robert John Fletcher and Diane L. Fletcher Family Revocable Trust of 2007 ("Trust"), is nondischargeable. Having been unable to conduct meaningful discovery in this case, Plaintiff now asks the court to strike Defendant's Answer as sanctions under Federal Rule of Civil Procedure ("Rule") 37(b)(2)(A), incorporated to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7037. Doc. #118.

Plaintiff commenced this adversary proceeding and filed a complaint on August 19, 2019, and filed an amended complaint on September 30, 2019. Doc. #1; Doc. #8. Defendant filed his amended answer on October 31, 2019. Doc. #15. As part of his answer, Defendant stated that more complete answers to the allegations in Plaintiff's complaint would only be available upon Defendant's final accounting of Trust records, which would require additional time. See Am. Answer ¶ 10, Doc. #15. Defendant also incorporated a statement made in a state court proceeding whereby Defendant estimated that the accounting would be complete in 120 to 180 days from November 2018, although Defendant explains that no such accounting was completed because of Defendant's ongoing health concerns. Am. Answer ¶¶ 14 & 15, 16 Doc. #15.

On December 11, 2019, Plaintiff filed a unilateral status report and proposed schedule, indicating that discovery in this case likely would not be necessary due to a state court judgment. Doc. #16. On December 17, 2019, Defendant filed written opposition to the status report arguing that the state judgment was not binding and requesting an additional 120 days "in order to complete [Defendant's] accounting, which [Defendant] first started in the above referenced State Court action." Def.'s Opp'n to Pl.'s Status Report, Doc. #18. Defendant cited his ongoing health concerns as a reason for the continuance. Id. ¶ 2. Defendant proposed the court schedule a new status conference "for on or about April 29, 2020." Id. The court continued the status conference to March 11, 2020. Order, Doc. #21.

On February 25, 2020, Plaintiff moved for partial summary judgment and on February 26, 2020, the parties filed a joint status report requesting the March 11 status conference be continued to May 5, 2020 to be heard with Plaintiff's summary judgment motion. Order, Doc. #34. Plaintiff's summary judgment motion was denied, and the court entered a Scheduling Order on May 15, 2020. Doc. #47. Fact discovery and expert discovery were scheduled to close on October 13, 2020. Order, Doc. #47.

On October 5, 2020, the parties filed a stipulation to extend discovery deadlines and Plaintiff moved for the court's approval of the stipulation. Doc. #62. Plaintiff's co-counsel filed a declaration in support of the motion to approve the stipulation, which stated that "Plaintiff's completion of discovery has been delayed by the refusal of the Defendant to respond to certain discovery that has been propounded." Decl. of David R. Jenkins in support of Pl.'s Mot. [extending deadlines] ¶ 1, Doc. #66. The court extended the close of fact discovery to December 11, 2020. Order, Doc. #73.

On November 25, 2020, Plaintiff filed three separate motions to compel discovery related to requests for production of documents (DRJ-3), answers to interrogatories (DLJ-4), and requests for admissions (DLJ-5). Doc. ##76-100. Plaintiff argued that Defendant's responses to interrogatories and requests for admissions were nonresponsive, and requested the court compel amended responses. Plaintiff also requested the court order Defendant to produce documents. Defendant never responded to these motions. The court entered orders compelling Defendant to serve amended responses to Plaintiff's requests for admission and Plaintiff's interrogatories. Orders, Doc. #115 (DRJ-5), Doc. #114 (DRJ-4).

However, on December 4, 2020, the parties filed a stipulation to extend deadlines and Plaintiff once again moved the court to authorize the stipulation. Doc. #101 (DRJ-6). Plaintiff's co-counsel again filed a declaration explaining the circumstances giving rise to the stipulation, stating that Defendant had been unresponsive beginning on October 5, 2020, the day Plaintiff filed the first stipulation to extend discovery deadlines. Decl.

of David R. Jenkins in support of Pl.'s Second Mot. extending deadlines ¶¶ 3-4 ("Jenkins Second Decl."), Doc. #103. Only when Plaintiff filed his three motions to compel discovery did Defendant respond to an email from Plaintiff's co-counsel, resulting in the second stipulation to extend deadlines. Jenkins Second Decl. ¶ 4, Doc. #103. As of December 4, 2020, Plaintiff had not received any documents. Id. ¶ 5, Doc. #103.

The stipulation requested the close of discovery be extended to April 30, 2021. Doc. #102. It also stated that:

Parties stipulate with respect to any requested document described in Plaintiff's Meet and Confer letter dated September 11, 2020, attached hereto as Exhibit A, not provided by Defendant(s) by December 9, 2020, Defendant(s) agree to production via an "on-site copy/scan service" within 10 days after the entry of an Order approving this Stipulation, or a date as chosen by Plaintiff soon thereafter.

Stipulation for Order Extending Certain Deadlines from the Court's Order Approving Former Stipulation Filed October 29, 2020 as Docket Number 73 and for Production of Documents ¶ 2, Doc. #102 (DRJ-6). The court approved the stipulation on December 14, 2020. Doc. #116. Based on the court's approval of the stipulation, Plaintiff withdrew the motion to compel production of documents (DRJ-3). Civil Minutes, Doc. #110.

On March 24, 2021, Plaintiff filed the instant motion for sanctions, requesting that Defendant's answer to Plaintiff's complaint be stricken. Doc. #118. Plaintiff argues that the severe sanction of striking Defendant's answer is warranted because Defendant has not complied with the court's order compelling further answers to interrogatories and because Defendant has not produced documents. Doc. #118.

In support of the instant motion, Plaintiff's co-counsel filed a declaration in support of Plaintiff's motion for discovery sanctions. Decl. of David R. Jenkins in support of Pl.'s Mot. for Discovery Sanctions ("Jenkins Sanctions Decl."), Doc. #122. On or about January 15, 2021, Defendant served his first amended response to Plaintiff's first set of interrogatories. Jenkins Sanctions Decl. ¶ 4, Doc. #122. On February 1, 2021, finding Defendant's amended responses lacking, Plaintiff's counsel emailed a "Meet and Confer" letter to Defendant requesting further responses. Id. ¶ 5. Defendant responded on February 11, 2021 but did not provide any further answers to Plaintiff's interrogatories. Id. ¶ 6. Between February 12 and February 19, 2021, Defendant emailed batches of documents to Plaintiff. Id. ¶ 7. None of the produced documents were from the period most relevant to Plaintiff's complaint, the years from 2004 through 2018 when Trust funds allegedly went missing.

#### Inadequacy of Amended Responses

Although Defendant filed amended responses to Plaintiff's interrogatories, Plaintiff argues that Defendant's amended responses to interrogatories numbers 1-4, 6, 8, 40, and 41 are inadequate. The court agrees. Defendant's amended responses are hardly different than the original answers that Defendant was compelled to amend. For example, Defendant's original answer to Plaintiff's Interrogatory No. 1, dated August 14, 2020 and which Defendant was compelled to amend, stated:

This first interrogatory asks a specific number related question that of necessity is dependent upon responding party's final accounting and must await successful completion of this

accounting before it can be answered with any confidence of accuracy. Please see the discussion [whereby Defendant states more time is needed to complete the accounting, citing health concerns] which is hereby incorporated in its entirety by this reference as though fully set forth at length.

Def.'s Resp. to Pl.'s First Set of Interrogs. To Def. ¶ 1, Ex. 7, Doc. #90.

In comparison, Defendant's amended response to Plaintiff's Interrogatory No. 1, dated January 15, 2021, states:

This responding party believes the value of the assets held by Fletcher Trust, including real property, cash and other personal property as of May 23, 2002 is a currently unknown number in excess of one million dollars. The ultimate realization of the actual number for this interrogatory is dependent upon the successful completion of this party's accounting as the Surviving Trustee of his mother and father's family revocable trust of 1989 which he has been handicapped from completing by virtue of his actual chronic, pervasive and continuing health deteriorations which, together, constitute a primary reason for his stipulation and agreement for extension of close of discovery to April 30, 2021 and Law & Motion extended to May 21, 2021. This responding party is continuing to work to complete his said accounting and, once completed, hereby reserves the right to reform this response in compliance thereto.

Def.'s First Am. Resp. to Pl.'s First Set of Interrogs. To Def. ¶ 1, Ex. 1, Doc. #123.

The court finds that Defendant failed to comply with the court's Order on Plaintiff's Motion to Compel Further Answers to Written Interrogatories. Order, Doc. #115. Defendant's amended answers are no less evasive and incomplete than Defendant's original answers. The court also finds that Defendant failed to produce documents as required by the stipulation approved on December 14, 2020.

#### Defendant's Response to Sanctions Motion

On April 2, 2021, Defendant filed a declaration in opposition to Plaintiff's motion for discovery sanctions. Doc. #125. Although filed a day late, the court will consider the statements in Defendant's declaration.

In his declaration, Defendant states in relevant part:

In summary I have been suffering deteriorating physical health that has accelerated ever since I underwent cataract surgery on Valentine's Day, February 14, 2018. I am at my core a hard-to-control Diabetic with poor balance, unsteady gait, diabetic retinopathy, impairing neuropathy and urological disorders that impair my sleep, leading to fatigue for which daytime naps have become almost routine at certain times of the day especially when combined with episodes of low blood glucose levels. While my distance vision has significantly improved over the recent years my reading vision has deteriorated markedly making a magnifying glass necessary for very slow reading.

All of these conditions are acting in concert to impair the speed with which I can move about, gather together and adequately review any and all of the requisite and complex documentation

necessary for me to prepare my further answers to Mr. Jenkins' said interrogatories.

Def.'s Opp'n to Mot. for Discovery Sanctions ¶ 2, Doc. #125. Defendant goes on to state that "this whole motion for sanctions has been . . . a huge interruption of [work on the further answers to the interrogatories] and halt of progress." Id. ¶ 3. Defendant then suggests that Plaintiff's insistence that Defendant produce discovery, in light of Defendant's "physical disabilities," is "a bad faith violation of the manifest public policy that the disabled and infirm shall have equal access to all public services[.]" Id. ¶ 3.

To recap, since at least 2018, Defendant has consistently stated that his health issues prevent him from finalizing an accounting of Trust records. In this adversary proceeding, Defendant first asserted a need for more time on October 31, 2019. Doc. #15. Defendant then requested an additional 120 days to complete the accounting on December 17, 2019. Doc. #18. An accounting had yet to be completed by May 5, 2020, when the court ordered fact and expert discovery to close on October 13, 2020. Doc. #47. On October 29, 2020, the discovery deadline was extended to December 11, 2020 because Defendant refused to participate in discovery. On November 25, 2020, Plaintiff was forced to move to compel amended discovery responses from Defendant because Defendant refused to meaningfully participate in discovery, continuing to cite his multitudinous health issues and the need to finalize the accounting before Defendant could adequately respond to discovery. The parties again stipulated to extend the discovery deadline to April 30, 2021, yet here we are in early April 2021 and Defendant still refuses to participate meaningfully in discovery because his health.

Defendant does not assert in his declaration filed on April 2, 2021, that his amended responses dated January 15, 2021 are adequate or that he has in fact produced the requested documents as he stipulated in December 2020.

#### Plaintiff's Request for Sanctions

Under Rule 37(b), the court has broad discretion to impose sanctions as a remedy for non-compliance with a discovery order. See Roadway Express v. Piper, 447 U.S. 752, 763 (1980). Where the drastic sanctions of dismissal or default are imposed "the range of discretion is narrowed and the losing party's noncompliance must be due to willfulness, fault, or bad faith." Henry v. Gill Indus., Inc., 983 F.2d 943, 946 (9th Cir. 1993) (citations omitted). All that is required to demonstrate willfulness, bad faith, or fault is disobedient conduct not shown to be outside the control of the litigant. Id. at 948; see also Sigliano v. Mendoza 642 F.2d 309 (9th Cir. 1981) (affirming dismissal under Rule 37 despite the non-compliant party's representations that work on interrogatories, although burdensome, was proceeding).

The court must weigh five factors before imposing dismissal: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its dockets; (3) the risk of prejudice to the party seeking sanctions; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions. E.g., Henry v. Gill Indus., Inc., 983 F.2d at 948. The first two factors favor the imposition of sanctions, whereas the fourth factor cuts against drastic sanctions, "[t]hus the key factors are prejudice and the availability of lesser sanctions." Id.

"A [plaintiff] suffers prejudice if the [defendant's] actions impair the [plaintiff's] ability to go to trial or threaten to interfere with the rightful decision of the case." Adriania Int'l Corp. v. Lewis & Co., 913 F.2d 1406, 1412 (9th Cir. 1990). Delay alone may be insufficient, but the failure to produce

documents as ordered is considered sufficient prejudice. Id. Here, Defendant's refusal to comply with court-ordered discovery and the refusal to turn over the requested documents is prejudicial to Plaintiff. Defendant's ongoing health concerns merit consideration by the court, but the prejudice caused to Plaintiff should the court permit Defendant to continue evading discovery outweighs the prejudice to Defendant caused by requiring Defendant to produce documents and respond to written discovery.

The fifth factor, the availability of less drastic sanctions, requires the court to consider three sub-factors: (a) the availability of lesser sanctions; (b) the use of lesser sanctions before terminations; and (c) whether the party was adequately warned of the possibility of termination. Adriana, 913 F.2d at 1412-13. Here, the court's previous discovery order warned Defendant that failure to comply "will result in sanctions pursuant to Rule 37(b)." Order ¶ 5, Doc. #115.

Defendant's failure to produce documents as well as adequately amend discovery responses might well justify striking Defendant's answer, but the court concludes that it would be more fitting to afford Defendant one last chance to comply with the court's previous order and the approved stipulation for the production of documents.

In response to Defendant's request that the court permit in-person proceedings in this matter, the court declines Defendant's request, as the courthouse is currently closed to the public and all bankruptcy hearings are to be conducted by telephone.

Accordingly, this motion is CONDITIONALLY GRANTED. On or before April 22, 2021, Defendant shall (1) provide supplemental responses to interrogatories numbers 1-4, 6, 8, 40, and 41 served by Plaintiff that respond to the substance of the respective interrogatory without referencing Defendant's health or incomplete accounting, and (2) produce any outstanding documents heretofore requested by Plaintiff, including without limitation all documents requested for the years from 2004 through 2018. On or before April 29, 2021, Plaintiff shall file an affidavit attesting to whether Defendant complied with these requirements. The hearing on this motion will be continued to May 6, 2021 at 11:00 a.m. for a determination of whether Defendant has complied with these requirements. If Defendant has not complied, Defendant's answer will be stricken in its entirety.

3. [20-13451](#)-A-7     **IN RE: AMANDEEP SINGH**  
[21-1004](#)

STATUS CONFERENCE RE: COMPLAINT  
2-5-2021    [\[1\]](#)

BMO HARRIS BANK, N.A. V. SINGH  
RAFFI KHATCHADOURIAN/ATTY. FOR PL.  
RESPONSIVE PLEADING

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

DISPOSITION:        Continued to July 1, 2021 at 11:00 a.m.

ORDER:                The court will issue an order.

Pursuant to the joint status report filed on March 23, 2021, the status conference will be continued to July 1, 2021, at 11:00 a.m.

The parties shall file a joint or unilateral status conference statement(s) not later than June 24, 2021.

4. [20-10569](#)-A-12     **IN RE: BHAJAN SINGH AND BALVINDER KAUR**  
[20-1042](#)     [WLG-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY, AND/OR  
MOTION/APPLICATION TO STAY ADVERSARY PROCEEDING  
3-10-2021    [\[58\]](#)

SIHOTA ET AL V. SINGH ET AL  
LENDEN WEBB/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:        This matter will proceed and be called on the 10:30 a.m.  
calendar in connection with the related motion in the  
main case.

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 on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Debtors Bhajan Sihota and Balvinder Kaur (together, "Debtors") timely filed written opposition on March 25, 2021. Doc. #76. The moving parties Jaskaran Sihota, Kewal Singh and Jaswinder Kaur (collectively, "Movants") timely replied to the opposition on April 1, 2021. Doc. #78.

The court has considered the motion, opposition and reply. After due consideration, this motion will be GRANTED. This court will stay this adversary proceeding to permit Movants to take the necessary actions to finalize the arbitration pending under the auspices of Jaskaran Sihota, et al. v. Bhajan Sihota, et al., Case No. 18CECG01393, Superior Court of

California, County of Fresno ("State Court Action") and enter any arbitration award in the State Court Action.

Movants filed a proof of claim against Debtors based on an arbitration award issued on January 25, 2020, after a four-day arbitration under the auspices of the State Court Action. Claim No. 9. The arbitration award was not confirmed by the California state court prior to Debtors filing for bankruptcy. Doc. #58. Shortly after the arbitration award was issued on January 25, 2020, Movants filed a motion in the state court to confirm the arbitration award. In response, Debtors moved to vacate the award. On the eve of the hearing on Movants' motion to confirm, and after a tentative ruling denying Debtors' motion to vacate and granting Movants' motion to confirm, Debtors filed a bankruptcy petition. Doc. #60.

Movants request this court stay the pending adversary proceeding between Movants and Debtors so Movants may take the necessary actions to finalize the arbitration and enter any arbitration award in the State Court Action. Doc. #58. Debtors' opposition does not address whether this adversary proceeding should be stayed if this court grants Movants' motion for relief from stay based on permissive abstention. Doc. #76.

In a related motion filed in the Debtors' bankruptcy case, Movants seek relief from stay for cause based on permissive abstention pursuant to 28 U.S.C. § 1334(c)(1), which this court intends to grant. Assuming this court grants relief from stay to permit Movants to take the necessary actions to finalize the arbitration and enter any arbitration award in the State Court Action, it is appropriate for this court to stay this adversary proceedings pending the finalization of the arbitration and entry of any arbitration award in the State Court Action. See Yates v. Oroojian (In re Oroojian), No. 2:19-bk-22853-RK, 2020 Bankr. LEXIS 1204 (Bankr. C.D. Cal. May 5, 2020).

Accordingly, this adversary proceeding is stayed to permit Movants to take the necessary actions to finalize the arbitration and enter any arbitration award in the State Court Action. The pre-trial conference currently set for June 17, 2021, pursuant to this court's Scheduling Order dated August 27, 2020 (Doc. #15) ("Scheduling Order"), will be treated as a status conference in this adversary proceeding. The parties shall file a joint status report on or before June 10, 2021 that includes the status of proceedings in the State Court Action. All other deadlines and filing requirements of the Scheduling Order are stayed.



1. [20-13842](#)-A-7     **IN RE: ROSA RODRIGUEZ**

REAFFIRMATION AGREEMENT WITH ALLY BANK  
2-22-2021    [\[13\]](#)

JAMES MILLER/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 which 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 will adjust monthly expenses as needed and have family assistance, if necessary, but has not provided the court with an amended Schedule J. Therefore, the reaffirmation agreement with Ally Bank will be DENIED.