



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, April 25, 2024
Department A – Courtroom #11
Fresno, California

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

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

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

Please also note the following:

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

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

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

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

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [24-10203](#)-A-13 **IN RE: MARY TRUJILLO**
[LGT-1](#)

MOTION TO DISMISS CASE
3-26-2024 [[25](#)]

LILIAN TSANG/MV
DAVID JOHNSTON/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

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

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors. Doc. #25. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to: (1) set a hearing to confirm a plan as required by the Order Extending Time to File Missing Documents (Doc. #16); and (2) provide Trustee with complete and required documents. Doc. #25. The debtor did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors because the debtor has failed to set a hearing to confirm her chapter 13 plan and has failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4).

A review of the debtor's Schedules A/B and D shows that the debtor's significant assets, vehicles and real property, are over encumbered. Schedules A/B & D, Doc. #21. The debtor claimed exemptions in the remaining assets. Schedules A/B & C, Doc. #21. Therefore, there is no equity to be

realized for the benefit of the estate and dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate.

Accordingly, the motion will be GRANTED, and the case dismissed.

2. [24-10405](#)-A-13 **IN RE: JAVIER PENA**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
4-8-2024 [[14](#)]

SCOTT LYONS/ATTY. FOR DBT.

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

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

ORDER: The court will issue an order.

Javier Pena, Jr. ("Debtor") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan") on February 23, 2024. Doc. #1, 4. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because (1) the meeting of creditors has not yet concluded, and (2) Debtor has not filed all applicable tax returns. Doc. #14.

This objection will be continued to May 30, 2024 at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtor shall file and serve a written response no later than May 16, 2024. 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 Debtor's position. Trustee shall file and serve a reply, if any, by May 23, 2024.

If 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 May 23, 2024. If Debtor does not timely file a modified plan or a written response, this objection to confirmation will be sustained on the grounds stated in Trustee's objection without a further hearing.

3. [24-10413](#)-A-13 **IN RE: DOUGLAS MORAZAN-MOLINA**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
4-8-2024 [[18](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

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

ORDER: The court will issue an order.

Douglas Omar Morazan-Molina ("Debtor") filed a voluntary petition under chapter 13 on February 23, 2024 and a chapter 13 plan ("Plan") on March 2,

2024. Doc. ##1, 11. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because (1) the meeting of creditors has not yet concluded, and (2) Debtor has not filed all applicable tax returns. Doc. #18.

This objection will be continued to May 30, 2024 at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtor shall file and serve a written response no later than May 16, 2024. 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 Debtor's position. Trustee shall file and serve a reply, if any, by May 23, 2024.

If 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 May 23, 2024. If Debtor does not timely file a modified plan or a written response, this objection to confirmation will be sustained on the grounds stated in Trustee's objection without a further hearing.

4. [24-10515](#)-A-13 **IN RE: ISIDRO PARGA**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
4-8-2024 [[13](#)]

STEVEN ALPERT/ATTY. FOR DBT.

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

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

ORDER: The court will issue an order.

Isidro Parga ("Debtor") filed a voluntary petition under chapter 13 on March 1, 2024 along with a chapter 13 plan ("Plan"). Doc. ##1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because (1) the meeting of creditors has not yet concluded, and (2) the proposed Plan will take more than 60 months to fund. Doc. #13.

This objection will be continued to May 30, 2024 at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtor shall file and serve a written response no later than May 16, 2024. 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 Debtor's position. Trustee shall file and serve a reply, if any, by May 23, 2024.

If 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 May 23, 2024. If Debtor does not timely file a modified plan or a written response, this objection to confirmation will be sustained on the grounds stated in Trustee's objection without a further hearing.

5. [23-11520](#)-A-13 **IN RE: THEDFORD JONES**
[FW-2](#)

STATUS CONFERENCE RE: OBJECTION TO CLAIM OF DENISE BALESTIER, CLAIM NUMBER 1
8-21-2023 [[40](#)]

THEDFORD JONES/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

6. [23-11520](#)-A-13 **IN RE: THEDFORD JONES**
[FW-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
DEBTORS ATTORNEY(S)
3-15-2024 [[114](#)]

GABRIEL WADDELL/ATTY. FOR DBT.
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 at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Creditor Denise Balestier ("Creditor") timely filed written opposition on April 11, 2024. Doc. #126. The failure of other creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

Fear Waddell, P.C. ("Movant"), counsel for Thedford Lewis Jones, Jr. ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$50,256.00 and reimbursement for expenses in the amount of \$1,200.97 for services rendered from January 16, 2023 through February 21, 2024. Doc. #114. Debtor's confirmed plan provides, in addition to \$7,187.00 paid prior to filing the case, for \$50,000.00 in attorney's fees to be paid through the plan. Plan, Doc. #3; Order, Doc. #76. No prior fee application has been filed. Debtor consents to the amount requested in Movant's application. Ex. E, Doc. #116.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable

compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Here, Movant demonstrates services rendered relating to:

- (1) consulting with Debtor prior to filing this bankruptcy case (\$3,575.50);
- (2) preparing the petition, schedules and other paperwork required to be filed (\$2,986.00);
- (3) performing due diligence and verifying fact necessary to prepare the bankruptcy petition and other documents for filing the bankruptcy (\$1,988.00);
- (4) preparing for and attending 341 meeting of creditors (\$1,396.00);
- (5) preparing and prosecuting objection to claim of Creditor (\$34,461.50);
- (6) preparing and confirming chapter 13 plan over Creditor's objection (\$4,764.50);
- (7) preparing motion to extend the automatic stay and resolving objection to exemptions (\$3,345.50);
- (8) preparing fee application (\$2,426.00); and
- (9) general case administration (\$2,500.00).

Exs. A, B & C, Doc. #116.

Creditor objects to the motion for compensation on several grounds:

- (1) Movant requests fees that were incurred prior to the filing of this bankruptcy case and the closing of Debtor's prior bankruptcy case.
- (2) Movant incorrectly indicates in the fee application that all objections to claims have been filed and heard when the objection to Creditor's claim is still pending. Creditor opposes granting the requested fees until the objection to Creditor's claim has been resolved.
- (3) Movant's fee request is excessive, not reasonable and prejudicial to estate creditors because Movant states 95.10 hours have been expended on Claim Administration and Claim Objection, although the only objection to claim is the one filed by Debtor against Creditor.
- (4) Creditor holds a priority claim for an unpaid domestic support obligation that will not be paid if the court awards Movant's fee request in full, which is extremely prejudicial to Creditor.
- (5) This court has a duty to make decisions in the best interests of estate creditors, and only Movant and the chapter 13 trustee will benefit from Debtor's chapter 13 plan payments if the court approves Movant's fee application in full.
- (6) Movant's pre-petition fee in the amount of \$7,187.00 is over the maximum amount for "no look" fees in place at the time Debtor's chapter 13 bankruptcy case was filed.

Doc. #126. Movant responded to each of Creditor's objections and requests that Creditor's objection be overruled, and the fee application granted as filed.
Doc. #128.

Regarding Creditor's first objection, the court routinely awards attorneys' fees to counsel for a chapter 13 debtor for pre-petition services. Here, a review of the docket in Debtor's prior bankruptcy case shows that Movant did not represent Debtor in that case. See docket for Case No. 22-11116 (Bankr.

E.D. Cal.). Because there is no indication that Movant had knowledge about Debtor from its representation in a prior bankruptcy case, the court finds no basis to deny or reduce Movant's requested fees for services Movant provided to Debtor pre-petition.

Regarding Creditor's second objection, the fact that Movant checked a box indicating that all objections to claims had been filed and heard is not a basis for delaying the granting of this motion. The court knows of no legal authority, and Creditor provides none, for delaying the granting of this motion until Debtor's objection to Creditor's claim is fully resolved. Creditor's opposition to the granting of this motion on this basis is overruled.

Regarding Creditor's third objection, the court has reviewed Movant's fee application in detail and finds Movant's fee request with respect to work performed related to Debtor's objection to Creditor's claim to be reasonable, actual, and necessary. Debtor has objected to Creditor's assertion of a priority claim in the amount of \$405,090.68. Debtor's objection to Creditor's claim has been contentious and has involved significant discovery. Merely because Debtor only objected to Creditor's request for a priority claim in the amount of \$405,090.68 does not mean that Movant's time spent with respect to that objection is excessive, not reasonable and prejudicial to estate creditors. The court finds no basis to reduce Movant's requested fees for services related to Debtor's objection to Creditor's claim.

Regarding Creditor's fourth and fifth objections, the fact that the confirmed chapter 13 plan provides for the payment of attorney's fees and trustee's fees before the payment on priority claims is not a reason to deny Movant's motion. The court overrules these objections to the fee application.

Regarding Creditor's sixth objection, Movant has not opted for "no look" fees, so any cap on such fees is not applicable here. Creditor's opposition to the granting of this motion on this basis is overruled.

Based on the foregoing, the court overrules all grounds for Creditor's objection to the motion. The court finds that the compensation and reimbursement sought by Movant are reasonable, actual, and necessary, and the court will approve the motion.

Accordingly, this motion is GRANTED. The court allows on an interim basis compensation in the amount of \$50,256.00 and reimbursement for expenses in the amount of \$1,200.97 to be paid in a manner consistent with the terms of the confirmed plan.

7. [18-12923](#)-A-13 **IN RE: JESUS/ROCHELLE PORTILLO**
[PK-7](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
3-28-2024 [\[171\]](#)

PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE.

This fee application was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Pursuant to LBR 9014-1(f)(1)(B), any party opposing the fee application must file written opposition at least 14 days prior to the hearing. On April 18, 2024, the chapter 13 trustee filed a late objection, claiming this fee application appears to be duplicative of a previously approved application for attorney's fees. Order, Doc. ##101, 140; Doc. #175.

While the first page of this fee application is identical to the first page of the fee application previously filed on November 11, 2021, the exhibits and other pages of this fee application are inconsistent with the relief requested on the first page and seek approval of a different amount of fees that were incurred over a different time period. Compare pp. 2-5, Doc. #101 with pp. 2-5, Doc. #171. Because the motion and notice of hearing are inconsistent regarding the amount of fees sought by the movant and the time period during which those fees were incurred, the court finds that the motion does not properly inform the court and interested parties of the relief being requested and does not state with particularity the factual and legal grounds for that relief as required by LBR 9014-1(d)(3)(A). Accordingly, the motion is denied without prejudice for the failure of the moving party to comply with this court's Local Rules of Practice.

8. [23-12226](#)-A-13 **IN RE: CARI THORNTON**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-21-2024 [[69](#)]

AMERICAN CREDIT ACCEPTANCE/MV
JOEL WINTER/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date 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 Sys., 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, American Credit Acceptance ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2014 Chevrolet Sonic, VIN: 1G1JD6SH0E4221556 (the "Vehicle"). Motion, Doc. #69.

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 loan matured pre-petition on September 1, 2023, and the debtor owes \$14,910.87. Decl. of Usha Thomas, Doc. #74. The debtor's amended chapter 13 plan filed on March 3, 2024 does not include this loan. Plan, Doc. #60. Movant recovered the Vehicle pre-petition on October 2, 2023, and the Vehicle is being held pending relief from the automatic stay. Thomas Decl., Doc. #74.

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 Federal Rule of Bankruptcy Procedure 4001(a)(3) will be ordered waived because the loan matured pre-petition, the debtor has surrendered the Vehicle to Movant, and the Vehicle is a depreciating asset.

9. [23-11539](#)-A-13 **IN RE: MARSHA MENDOZA**
[LGT-1](#)

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

LILIAN TSANG/MV
LILIAN TSANG/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

On February 29, 2024, the chapter 13 trustee ("Trustee") moved to dismiss this bankruptcy case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors because the debtor had failed to confirm a plan. Doc. #103. The debtor responded on March 14, 2024, stating that the debtor would file a motion to confirm her chapter 13 plan on at least 35 days' notice. Doc. #107. On March 21, 2024, the debtor filed and served a motion to confirm the debtor's chapter 13 plan and set that motion for hearing on April 25, 2024. Doc. ##110-114. That motion has been granted by final ruling, matter #10 below.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. It appears that confirmation of the debtor's third modified plan satisfies all outstanding

grounds for Trustee's motion to dismiss, so there is no "cause" for dismissal under 11 U.S.C. § 1307(c) (1).

Accordingly, unless withdrawn prior to the hearing, this motion will be DENIED.

10. [23-11539](#)-A-13 **IN RE: MARSHA MENDOZA**
[MM-5](#)

MOTION TO CONFIRM PLAN
3-21-2024 [[110](#)]

MARSHA MENDOZA/MV

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

DISPOSITION: Granted.

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

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

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

11. [24-10540](#)-A-13 **IN RE: ANGEL/KELLI MORA**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
4-8-2024 [[15](#)]

STEVEN ALPERT/ATTY. FOR DBT.

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

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

ORDER: The court will issue an order.

Angel Mora and Kelli Diane Mora (together, "Debtors") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan") on March 4,

2024. Doc. #1, 3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because the meeting of creditors has not yet concluded. Doc. #15.

This objection will be continued to May 30, 2024 at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's objection to confirmation is withdrawn, Debtors shall file and serve a written response no later than May 16, 2024. 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 Debtors' position. Trustee shall file and serve a reply, if any, by May 23, 2024.

If 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 May 23, 2024. If Debtors do not timely file a modified plan or a written response, this objection to confirmation will be sustained on the grounds stated in Trustee's objection without a further hearing.

12. [24-10441](#)-A-13 **IN RE: JAMES WHITEHEAD**
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
4-8-2024 [17]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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 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. 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.

James Reland Whitehead ("Debtor") filed a voluntary petition under chapter 13 on February 27, 2024 along with a chapter 13 plan ("Plan") on March 5, 2024. Doc. #1, 10. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan because (1) the meeting of creditors has not yet concluded, and (2) Debtor's plan improperly classifies a secured creditor. Doc. #17.

Because one of the basis for Trustee's objection requires the filing of a new chapter 13 plan and the noticing of a motion to confirm that plan, the court is inclined to sustain the objection and deny confirmation rather than continue the hearing on Trustee's objection to confirmation to allow the meeting of creditors to be concluded.

11 U.S.C. § 1325(a)(1) requires the Plan to comply with the provisions of this chapter and with the other applicable provisions of this title. 11 U.S.C. § 1325(a)(1). Here, the Plan provides for Planet Home Lending, a creditor with a claim secured by Debtor's residence, as a Class 4 creditor. Plan, Doc. #10.

On March 18, 2024, Planet Home Lending filed a proof of claim asserting pre-petition arrears in the amount of \$11,856.93. Claim 5-1. Trustee contends Class 4 can only include secured claims that are not in default and, since Planet Home Lending appears to have pre-petition arrears per its filed proof of claim, Planet Home Lending should be provided for in Class 1 not Class 4. Doc. #17. Because Planet Home Lending needs to be listed in Class 1 and not in Class 4, a new plan needs to be filed and a motion to confirm that plan set for hearing. Thus, the current Plan cannot be confirmed.

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

13. [24-10846](#)-A-13 **IN RE: KENNETH MYERS**
[DCJ-1](#)

MOTION TO EXTEND AUTOMATIC STAY
4-11-2024 [9]

KENNETH MYERS/MV
DAVID JOHNSTON/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Stay extended until May 15, 2024, and hearing continued to May 15, 2024 at 2:00 p.m. to permit the debtor to supplement the record.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and continue the hearing on this motion to permit the debtor to file supplemental pleadings in support of his motion. If opposition is presented at the hearing, the court will consider the opposition in light of the proposed continuance.

Debtor Kenneth J. Myers ("Debtor"), the debtor in this chapter 13 case, moves the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B). Doc. #9.

Debtor had a chapter 13 case pending within the preceding one-year period that was dismissed, Case No. 22-12152 (Bankr. E.D. Cal.) (the "Prior Case"). The Prior Case was filed on December 20, 2022 and dismissed at Debtor's request on April 19, 2023. Decl. of Kenneth J. Myers, Doc. #11. Under 11 U.S.C. § 362(c)(3)(A), if a debtor had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the current case. Debtor filed this case on April 2, 2024. Petition, Doc. #1. The automatic stay will terminate in the present case on May 2, 2024.

Section 362(c)(3)(B) allows the court to extend the stay "to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-

day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed[.]” 11 U.S.C. § 362(c)(3)(B).

Section 362(c)(3)(C)(i) creates a presumption that the case was filed not in good faith if the debtor: (1) filed more than one prior case in the preceding year; (2) failed to file or amend the petition or other documents without substantial excuse, provide adequate protection as ordered by the court, or perform the terms of a confirmed plan; or (3) has not had a substantial change in his or her financial or personal affairs since the dismissal, or there is no other reason to believe that the current case will result in a discharge or fully performed plan. 11 U.S.C. § 362(c)(3)(C)(i).

The presumption of bad faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C). Under the clear and convincing standard, the evidence presented by the movant must “place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are ‘highly probable.’ Factual contentions are highly probable if the evidence offered in support of them instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition.” Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288 n.11 (B.A.P. 9th Cir. 2016) (citations omitted) vacated and remanded on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019).

In this case, the presumption of bad faith arises only if Debtor has not had a substantial change in his financial or personal affairs since dismissal of the Prior Case. In support of this motion to extend the automatic stay, Debtor declares that the instant case was filed to resolve substantial debt issues, to avoid a judicial lien which impairs Debtor’s homestead exemption, and to resolve a dispute in this court regarding an objection to an anticipated proof of claim. Decl. of Kenneth J. Myers, Doc. #11. Debtor asserts that his desire to save his home and vehicle are especially important to him because he has been determined by Social Security Administration to be totally disabled and would never be able to purchase another home with his limited income. Id.

The court finds that Debtor has not met his burden of rebutting the presumption that this case was not filed in good faith because the pleadings filed with the motion fail to explain a substantial change in Debtor’s financial or personal affairs since the dismissal of the Prior Case or provide any reason to believe that the current case will result in a discharge or fully performed plan as required under 11 U.S.C. § 362(c)(3)(C). Rather than allow the stay under § 362(a) to terminate pursuant to 11 U.S.C. § 362(c)(3)(C), the court is inclined to extend the automatic stay for a limited time to permit Debtor to supplement his motion and rebut the presumption by clear and convincing evidence that this chapter 13 case is not filed in good faith.

For the reasons discussed above, Debtor’s case “is presumptively filed not in good faith.” 11 U.S.C. § 362(c)(3)(C). Debtor has not rebutted this presumption by clear and convincing evidence in the pleadings currently filed with the motion. The court will extend the automatic stay until May 15, 2024 and will continue the hearing on this motion to May 15, 2024 at 2:00 p.m. Debtor shall file pleadings to supplement his motion to extend the stay no later than May 6, 2024. If Debtor does not timely file any supplemental pleadings, a further extension of the automatic stay will be denied without a further hearing.

14. [24-10372](#)-A-13 **IN RE: LAURA BORGES**
[ABV-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-21-2024 [\[10\]](#)

BRECKENRIDGE PROPERTY FUND 2016, LLC/MV
AMELIA VALENZUELA/ATTY. FOR MV.
DISMISSED 03/04/2024

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing the bankruptcy case was entered on March 4, 2024. Doc. #8. Therefore, the motion for relief from the automatic stay will be DENIED AS MOOT.

15. [24-10686](#)-A-13 **IN RE: ALBERT ZEPEDA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-3-2024 [\[12\]](#)

DISMISSED 04/08/2024

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on April 8, 2024. Doc. #14. The order to show cause will be DROPPED AS MOOT. No appearance is necessary.

11:00 AM

1. [16-14564](#)-A-13 **IN RE: FRANK/REBECCA MARTINEZ**
[23-1055](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-20-2023 [[1](#)]

MARTINEZ ET AL V. SOLARCITY FINANCE COMPANY, LLC ET AL
GABRIEL WADDELL/ATTY. FOR PL.

NO RULING.

2. [16-14564](#)-A-13 **IN RE: FRANK/REBECCA MARTINEZ**
[23-1055](#) [FW-1](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT
3-21-2024 [[20](#)]

MARTINEZ ET AL V. SOLARCITY FINANCE COMPANY, LLC ET AL
GABRIEL WADDELL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part; damages to be awarded reduced by
\$14,000.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the defendants 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 defendants are entered. The matter will proceed as scheduled.

Frank Martinez and Rebecca Martinez (together, "Plaintiffs") commenced this adversary proceeding by filing a complaint on December 20, 2023 (the "Complaint"). Doc. #1. By the Complaint, Plaintiffs seek a judgment declaring UCC financing statements and fixture filings to be satisfied, terminated and void as well as awarding damages and attorneys' fees for the failure of SolarCity Finance Company, LLC ("SolarCity Finance"), subsequently acquired by Tesla, Inc. ("Tesla" and together with SolarCity Finance, "Defendants"), to release a security interest in Plaintiffs' solar power production system after Plaintiffs had completed their chapter 13 plan that paid Defendants the full value of their collateral through Plaintiffs' chapter 13 plan. This court has jurisdiction pursuant to 28 U.S.C. § 157(b)(1).

Defendants failed to respond to the Complaint. On February 16, 2024, Plaintiffs filed a request for entry of default (Doc. ##10, 11), and on February 20, 2024, the defaults of both Defendants were entered. Doc. ##14, 15. Plaintiffs now move for a default judgment against both Defendants (the "Motion"). Doc. #20.

Defendants have not responded to the Complaint, to the entry of their respective defaults in this adversary proceeding or to this Motion.

In support of the Motion, Plaintiffs request the court take judicial notice of eleven documents: (1) Proof of Claim No. 9 filed as Claim 9-1 in bankruptcy case number 16-14564-A-13, United States Bankruptcy Court, Eastern District California (the "Bankruptcy Case"); (2) UCC Financing Statement recorded May 13, 2015, as document number 2015-0059041 in the Official Records of the County of Fresno, California; (3) Plaintiffs' chapter 13 petition and Schedule D filed as Doc. #1 in the Bankruptcy Case; (4) Plaintiffs' first modified chapter 13 plan filed as Doc. #50 in the Bankruptcy Case; (5) Motion to Value Collateral of Secured Creditor SolarCity Finance Company, LLC ("Motion to Value") filed as Doc. #54 in the Bankruptcy Case; (6) an order granting the Motion to Value filed as Doc. #63 in the Bankruptcy Case; (7) an order confirming Plaintiffs' first modified plan filed as Doc. #64 in the Bankruptcy Case; (8) UCC Financing Statement recorded September 8, 2020, as document number 2020-0118730 in the Official Records of the County of Fresno, California; (9) Notice to Debtor of Completed Plan Payments and Obligation to File Documents filed as Doc. #74 in the Bankruptcy Case; (10) Chapter 13 Standing Trustee's Amended Final Report and Account filed as Doc. #84 in the Bankruptcy Case; and (11) Order Approving Final Report and Account and Discharging Trustee filed as Doc. #89 in the Bankruptcy Case. Doc. #28.

Federal Rule of Evidence 201(b) provides the criteria for judicially noticed facts. Courts may take judicial notice of matters of public record, and the court takes judicial notice of the documents recorded in Fresno County. See Rosal v. First. Fed. Bank of Cal., 671 F. Supp. 2d 1111, 1120 (N.D. Cal. 2009). As to the documents filed in the Bankruptcy Case, the records of court proceedings cannot reasonably be questioned, and the court takes judicial notice of those documents. The court does not take judicial notice of the truth of the contents of any documents. Faulkner v. M & T Bank (In re Faulkner), 593 B.R. 263, 273 n.2 (Bankr. E.D. Pa. 2018).

Federal Rule of Civil Procedure 55, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7055, "gives the court considerable leeway as to what it may require as a prerequisite to the entry of a default judgment." Televideo, 826 F.2d at 917. "The general rule of law is that upon default the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true." Geddes v. United Fin. Grp., 559 F.2d 557, 560 (9th Cir. 1977). Factors which may be considered by the court in exercising discretion as to the entry of default judgment include: (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

The facts set out in the Complaint are as follows. Around May 2015, debtor Rebecca Martinez entered into a contract with SolarCity Corporation ("SolarCity") to install a solar power production system ("System") on Plaintiffs' residence at 343 E. Shimizu Ave, Reedley California 93654 (the "Property"). Complaint, Doc. #1. In order to finance the System, debtor Rebecca Martinez and co-obligor Edith Gonzalez signed a Closed End Note and Security Agreement (the "Note") payable to SolarCity Finance. Id. The Note provided a security agreement that allows a lien on the System and allows SolarCity Finance to collect reasonable attorneys' fees in case of a default. Ex. A, Doc. #25. The Note was perfected by a UCC Financing Statement recorded in the County of Fresno on May 13, 2015, document no. 20150059041 ("First Recorded Fixture Filing"), as a fixture filing secured by the Property. Exs. A & B,

Doc. #25. SolarCity Finance was subsequently acquired by Tesla. Ex. A, Doc. #25.

Plaintiffs filed chapter 13 bankruptcy on December 21, 2016. Ex. A, Doc. #25. In their bankruptcy case, Plaintiffs successfully obtained an order valuing Defendants' collateral at \$4,000. Ex. F, Doc. #25. In addition, a subsequent UCC Financing Statement was recorded in the County of Fresno as document no. 2020-0118730 ("Second Recorded Fixture Filing"). Ex. H, Doc. #25. This financing statement named the same collateral as in the First Recorded Fixture Filing and the secured party named was Tesla, not SolarCity Finance. Exs. F & H, Doc. #25. Through their confirmed chapter 13 plan, Plaintiffs paid the full secured claim owed to Defendants. Decl. of Rebecca Martinez ¶ 19, Doc. #22; Ex. I, Doc. #25. Plaintiffs successfully completed their chapter 13 plan and obtained a chapter 13 discharge, resulting in Defendants' lien being satisfied. Martinez Decl. ¶ 22, Doc. #22; Ex. I, Doc. #25.

After Plaintiffs received their discharge, Plaintiffs began the process of refinancing the Property. Martinez Decl. ¶¶ 23-28, Doc. #22. The refinance was ready to close in October 2023, and the only thing preventing the closing of the refinance was the presence of Defendants' liens on the System as reflected in the First Recorded Fixture Filing and the Second Recorded Fixture Filing. Id. ¶ 29; Decl. of Patrick Hourguettes ¶ 7, Doc. #23. On or about October 17, 2023, counsel for Plaintiffs sent a letter to Tesla as successor to SolarCity Finance demanding the release of the lien on the System. Martinez Decl. ¶¶ 30-31, Doc. #22; Ex. N, Doc. #26. Defendants have not terminated or otherwise released the First Recorded Fixture Filing or Second Recorded Fixture Filing. Martinez Decl. ¶ 34, Doc. #22. Because the First Recorded Fixture Filing and the Second Recorded Fixture Filing have not been released, Plaintiffs are unable to refinance their real property and have subsequently been forced to incur attorneys' fees to bring this adversary proceeding as well as other significant damages. Martinez Decl. ¶ 36, Doc. #22; Ex. O, Doc. #26. Further, Plaintiffs are at risk of losing their approved refinance interest rate of 7.125%. Id.

Taking the factual allegations in the Complaint as true and as supported by the supplemental evidence, Plaintiffs are entitled to the relief sought. Plaintiffs' chapter 13 plan has been fully performed and is binding on Plaintiff and Defendant as provided in 11 U.S.C. § 1327(a). See generally Martin v. CitiFinancial Servs. (In re Martin), 491 B.R. 122 (Bankr. E.D. Cal. 2013). Plaintiffs completed their chapter 13 plan payments and were granted a chapter 13 discharge, satisfying the debt owed to Defendant. Therefore, Plaintiff has provided evidence that supports the factual allegations of the Complaint.

The court finds that entry of default judgment is appropriate in this case. The merits of Plaintiffs' claim, the sufficiency of the Complaint, and the lack of the possibility of disputes concerning material fact favor entering default judgment. Plaintiffs are entitled to a judgment determining that: (a) the two UCC Financing Statements of SolarCity Finance and Tesla, respectively, have been satisfied and are terminated; and (b) the First Recorded Fixture Filing and the Second Recorded Fixture Filing have both been satisfied, are terminated and otherwise void as to any lien claimed by Defendants on the Property or the System.

Turning to the alleged damages, Plaintiffs contend they should be awarded statutory damages in the amount of \$500, actual damages in the amount of \$28,510.66, and attorney fees in the amount of \$18,383.24. Doc. ##20, 27.

California Commercial Code § 9625(e) provides statutory damages in the amount of \$500 in a case where a person fails to cause the recured party of record to

file or send a termination statement as required under § 9513. Here, Plaintiffs are debtors and consumer obligors, and Plaintiff Rebecca Martinez is named in the filed records. Doc. #27. Defendants are each recured parties who have failed to file or record a termination statement. Therefore, the court will approve statutory damages in the amount of \$500.

Plaintiffs claim the delay in the refinance caused by Defendants' wrongful maintenance of a lien clouding the Plaintiffs' title to the Property has caused the following damages:

- (1) updated appraisal costs in the amount of \$200;
- (2) fees paid to Plaintiffs' former attorney for the demand letter to Defendants to remove the lien in the amount of \$200;
- (3) additional mortgage interest on Plaintiffs' old mortgage in the amount of \$6,461.18;
- (4) financing fees for loan necessary to pay attorneys' fees in the amount of \$7,265.62;
- (5) additional accrued interest and penalties on amounts owed to the IRS that were to be paid through the refinance, totaling \$283.86; and
- (6) damages in the amount of \$14,000.00 for Plaintiff Rebecca Martinez' extreme stress and accompanying physical symptoms caused by Defendants' failure to remove their liens on the Property.

Martinez Decl., Doc. #22; Doc. #27.

In the Motion, Plaintiffs use the term "actual damages" when itemizing their damages and cite to California Commercial Code § 9625(b) as the basis for awarding those damages. Doc. #27. However, California Commercial Code § 9625(b) does not use the term "actual damages." Rather, California Commercial Code § 9625(b) provides that if a person does not proceed in accord with the statutory provisions governing secured transactions, subject to certain subdivisions that are not applicable here, "a person is liable for damages in the amount of any loss caused by a failure to comply with this division. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing." Cal. Com. Code § 9625(b). By comparison, 11 U.S.C. § 362(k) uses the term "actual damages" and permits an award of emotional distress damages if the bankruptcy petitioner "(1) suffer[s] significant harm, (2) clearly establish[es] the significant harm, and (3) demonstrate[s] a causal connection between that significant harm and the violation of the automatic stay (as distinct, for instance, from the anxiety and pressures inherent in the bankruptcy process)." Snowden v. Check into Cash of Wash., Inc. (In re Snowden), 769 F.3d 651, 656-657 (9th Cir. 2014) (quoting In re Dawson, 390 F.3d 1139, 1149 (9th Cir. 2004)).

The court is inclined to award the itemized damages requested by Plaintiffs numbered (1) through (5) above, as those damages appear to be covered by the more limited definition of damages under California Commercial Code § 9625(b). However, it is unclear if damage number (6) above is covered by the more limited definition of damages under California Commercial Code § 9625(b), and Plaintiffs provide no legal authority supporting such a determination. There is sparse legal authority to support awarding damages for extreme stress in a commercial context, such as this scenario. By example, "[t]he general rule in California is that damages for mental suffering may not be recovered in an action for breach of an ordinary commercial contract." Kwan v. Mercedes-Benz of North America, Inc., 23 Cal. App. 4th 174, 188 (1994) (citations omitted). In interpreting the California Commercial Code § 9625(b), the statute specifically details that damages are to be awarded if a debtor incurs loss from an

inability to obtain alternative financing but does not mention physical symptoms developed from a loss incurred. There is not enough legal authority provided by Plaintiffs for the court to award damages under California Commercial Code § 9625(b) for Plaintiffs' extreme stress.

California Code of Civil Procedure § 1717(a) states "[i]n any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce the contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs." Fees awarded pursuant to California Code of Civil Procedure § 1717(a) are generally based on the "lodestar" formula – the number of hours reasonably expended multiplied by the applicable hourly market rate for legal services. Buettner v. PHH Mortg. Corp. (In re Buettner), 2024 Bankr. LEXIS 637, at *4 (Bankr. E.D. Cal. March 8, 2024) In determining whether hours are reasonably expended, the fee applicant must provide appropriate documentation, exercise "billing judgment," and exclude hours not "reasonably expended." Id.

Gabriel J. Waddell ("Counsel"), counsel for the plaintiffs in this adversary proceeding, asserts he has incurred \$18,383.24 in reasonable and necessary fees and costs. Decl. of Gabriel J. Waddell, Doc. #24. Counsel demonstrates services rendered relating to: (1) preparing the complaint for this adversary proceeding; (2) preparing this motion for default judgment and supporting documents; and (3) general case administration by providing final invoices for December 2023 through February 2024 as well as draft invoices for March 2024. Ex. T, Doc. #26. Counsel's hourly rate is reflected as \$360 per hour which he declares is a customary hourly rate for attorneys in the Fresno area and that the rate is reasonable when compared to customary compensation charged by comparably skilled practitioners in nonbankruptcy cases. Waddell Decl., Doc. #24. The court finds that the compensation and costs sought are reasonable, actual, and necessary, and the court will award attorneys' fees and costs as requested.

Accordingly, Plaintiffs' Motion is GRANTED in part. Judgment shall be entered in favor of Plaintiffs declaring that: (a) the UCC Financing Statement of SolarCity Finance has been satisfied and is terminated; (b) the UCC Financing Statement of Tesla has been satisfied and is terminated; and (c) both the First Recorded Fixture Filing recorded by SolarCity Finance and the Second Recorded Fixture Filing recorded by Tesla have been satisfied, are terminated and otherwise void as to any lien claimed by Defendants on the Property or the System. In addition, Plaintiffs are awarded statutory and actual damages in the aggregate amount of \$33,393.90, with Defendants jointly and severally liable for those damages.

3. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[23-1029](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
7-12-2023 [\[1\]](#)

NICOLE V. AAA INSURANCE ET AL
RESPONSIVE PLEADING

NO RULING.