

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, April 28, 2020
Place: Department B - Courtroom #13
Fresno, California

Pursuant to District Court General Order 617, no persons are permitted to appear in court unless authorized by order of the court until June 1, 2020. All appearances of parties and attorneys shall be telephonic through CourtCall, which advises the court that it is waiving the fee for the use of its service by pro se (not represented by an attorney) parties through April 30, 2020. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[FW-1](#)

MOTION TO EMPLOY PETER FEAR AS ATTORNEY(S)
3-30-2020 [\[44\]](#)

STEPHEN SLOAN/MV
PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. Peter L. Fear and Fear Waddell, P.C. are authorized to be employed on the terms and for the performance set forth in the motion.

2. [11-10912](#)-B-11 **IN RE: JAMIE/JAMES THOMAS**
[MB-2](#)

CONTINUED MOTION TO AMEND
3-17-2020 [\[251\]](#)

JAMIE THOMAS/MV
KIRK BRENNAN/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE. At the original hearing, the court's tentative ruling was to deny the motion without prejudice for failure to properly serve the motion and accompanying documents. Movant requested at the hearing that the motion be continued. An amended notice of hearing was served and appears to have been properly served on the appropriate parties. See doc. #257, 258. However, the motion, declarations, and exhibits were not served on the parties - only the notice was properly served. Federal Rule of Bankruptcy Procedure 9013 requires "written motion[s] . . . shall be served by the moving party." Residential Mortgage Capital and Wells Fargo Bank, N.A.'s (collectively "Creditors") interest in the real property was impacted by the order this motion seeks to amend. Creditors therefore have standing and must be served the motion and accompanying documents. See Hasso v. Mozsgai (In re La Sierra Fin. Servs.), 290 B.R. 718, 727 (B.A.P. 9th Cir. 2002). For these reasons the motion is DENIED WITHOUT PREJUDICE.

3. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[MB-91](#)

CONTINUED OBJECTION TO CLAIM OF LAW OFFICES OF SANTOS GOMEZ,
CLAIM NUMBER 42
2-24-2020 [[3144](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained without prejudice to claimant filing
and serving an appropriate motion for FRBP
7023 to apply to this contested matter within
14 calendar days of entry of the order.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. The purported motion
asking the court to apply Federal Rule of
Bankruptcy Procedure 7023 is Denied for
procedural reasons. Order preparation
determined at the hearing.

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

This motion was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the 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 3007-1(b)(1)(A) 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). 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). The Creditor has opposed the objection. The default of all other responding parties is entered.

The Chapter 11 Trustee, Randy Sugarman ("Trustee"), objects to claim no. 42-1 filed by Law Offices of Santos Gomez ("Claimant") on August 29, 2018 in the amount of \$2,000,000.00. Doc. #3144; claim #42. This matter was duly noticed and set for hearing on April 14, 2020, but was continued to April 28, 2020 at 9:30 a.m. due to Claimant's failure to appear by counsel. Doc. #3219. Counsel for the Liquidating Trustee agreed to continue the matter to this date.

The underlying claim arises from a class action lawsuit initiated by Claimant's clients, and entitled De Luna, et al. v. Gregory J. Te Velde, et al., Case No. 14C0070 in the Kings County Superior Court. In 2015, Claimant's clients, Manuel de Luna, Jesus Daniel Garay, Francisco J. Perez Hernandez, and Jose Antonio ("Class Claimants"), filed a class action lawsuit against the debtor alleging failure to pay wages (minimum wage and overtime), failure to provide meal and rest breaks, failure to provide accurate wage statements, failure to pay wages upon termination, and violation of Cal. Bus. & Prof. § 17200 et seq. on behalf of more than 250 dairy workers. Doc. #3202. The class was certified by the Superior Court before this bankruptcy case was filed.

Trustee contends that the claim should be disallowed in its entirety on the grounds that (1) the Estate does not owe Claimant the sum of \$2,000,000.00 or any other amount and the claim is therefore unenforceable against the debtor or the property of the debtor; (2) the claim is barred because it has not been qualified as a "Class Claim" pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9014(c) and 7023 and the claims bar date has lapsed; (3) there is no evidence that the debtor failed to pay his employees overtime wages and meal periods, and to provide accurate wage statements; (4) the damages are excessive; and (5) of the \$2,000,000 claim, the sum of \$787,100 are penalties which are not compensation for actual pecuniary loss, and therefore must be subordinated to the payment of all other allowed general unsecured claims under 11 U.S.C. § 1129(a)(7) and 727(a)(4).

Claimant opposed the objection, arguing that the class claim is proper under Rules 9014 and 7023 because the court may apply 7023 at any time. Doc. #3202. In support of this contention, Claimant proffered Gentry v. Siegel, wherein the Fourth Circuit authorized the application of Rule 7023 after an objection to claim had been filed. Gentry v. Siegel, 668 F.3d 83, 91 (4th Cir. 2012). The Claimant additionally provided an unpublished non-binding decision where this same rule was applied in the Ninth Circuit. In re Sequoia Senior Sols., Inc., No. 16-11036, 2017 Bankr. LEXIS 1606 (N.D. Cal. June 9, 2017).

Applying these two cases, Claimant asserts that the claim was timely filed on August 29, 2018; before the Proof of Claim deadline. The claimant further argues that until the objection was filed on February 24, 2020, Rule 9014 did not apply and therefore application of Rule 7023 was not needed.

The third section of Claimant's opposition to Trustee's objection to claim appears to be a motion for application of Rule 7023. Doc. #3202. This motion is DENIED WITHOUT PREJUDICE for failure to comply with the local rules.

LBR 9001-1 defines a "motion" as "all motions, applications, objections, or other requests made to the Court for orders or other judicial activity." LBR 9014-1(a) states that parties shall serve and set for hearing all contested matters, including motions, and other matters for which a hearing is necessary.

LBR 9014-1(c)(1) requires that all filed motions, which includes counter-motions and other requests made to the Court for orders or other judicial activity under 9001-1, shall include a Docket Control Number ("DCN") by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions. LBR 9014-1(c)(4) states that ". . . counter motions shall be treated as separate motions with a new [DCN] assigned in the manner provided for above."

LBR 9014-1(d)(1) provides that all motions shall be comprised of a motion, notice, evidence, and a certificate of service.

LBR 9014-1(d)(3)(B) lists the requirements for the notice of hearing, of which Claimant has not complied.

The local and federal rules govern the procedure for proper submission of motions. Claimant must properly file and serve the motion, notice of hearing, and any other relevant documents upon interested parties before this court will consider its motion.

Claimant's purported motion for the court to apply the provisions of Federal Rule of Bankruptcy Procedure 7023 does not comply with the applicable local rules and is DENIED without prejudice.

The court takes notice of Claimant's argument on the merits of the wage claim.

The Trustee timely responded to the Claimant's opposition. Doc. #3211.

This matter is now deemed to be a contested matter. Pursuant to Fed. R. Bankr. P. 9014(c), the federal rules of discovery apply to contested matters.

The threshold issue is whether this claim should be summarily disallowed. There is no dispute that the claim was filed by Mr. Gomez; not on behalf of the class representatives. Mr. Gomez has no cognizable claim against the estate on his own behalf. It also appears that the class representatives did receive notice of the bankruptcy and did not timely file a claim. So, there are at least two issues. First, is Mr. Gomez's claim timely and effective on behalf of the class? Second is the class claim appropriate since there was no request for this court to allow consideration of a class claim before the bar date?

11 U.S.C. § 501(a) as applicable here says "a creditor" may file a proof of claim. A "creditor" under the bankruptcy code is defined (in part) as an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." 11 U.S.C. § 101(10)(A). A "claim" means "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured. . . ." 11 U.S.C. § 101(5)(A). Fed. R. Bankr. P. 3001(b) provides that subject to exceptions not relevant here, a proof of claim shall be executed by the creditor or the creditor's agent.

The claim itself is unhelpful to claimant. It is filed by and on behalf of Mr. Gomez. Mr. Gomez signed the claim under penalty of perjury as a creditor; he is not. The claim attaches the Superior Court complaint and a Mandatory Settlement Conference Statement. Both documents establish Mr. Gomez and his firm are attorneys representing the class certified by the Superior Court; not claimants. Mr. Gomez did not file the claim as an agent but asserted his right as a creditor. He has no claim.

Notably, Gentry, In re Charter Co., 876 F.2d 866, 874 (11th Cir. 1989) and Birting Fisheries v. Lane (In re Birting Fisheries), 92 F.3d 939, 940 (9th Cir. 1996) all involved class claims asserted by class representatives - not counsel. See also Birting Fisheries v. Lane (In re Birting Fisheries), 178 B.R. 849 (W.D. Wash. 1995).

These issues are significant because the claim here has no *prima facie* validity. The claim was not executed and filed in accordance with the bankruptcy rules. See Fed. R. Bankr. P. 3001(f).

That said, there appear to be two important undisputed facts: first, the class was certified pre-petition (albeit in accordance with California procedural law) and second, notice of this bankruptcy case was not given to all class members in time for them to timely file claims. What is not established is whether allowance of a class claim as a *procedural* device before determining the merits would adversely affect administration of the estate. See In re Musicland Holding Corp., 362 B.R. 644, 654 (Bankr. S.D.N.Y. 2007). This is complicated by the fact a plan is confirmed in this case. But that would not bind those without notice of the bankruptcy case. So, proof of whether permitting the class claim to be *procedurally* allowed is consistent with the goals of bankruptcy is necessary. See, In re Motors Liquidation, 591 B.R. 501, 523 (Bankr. S.D.N.Y. 2018).

The facts are the confirmed plan is essentially a "pot" plan. The liquidation of assets will result in a "pot" from which allowed claims are paid. If the class claim is *procedurally* allowed, it will not affect creditor distributions. Only after the merits are considered, if they are considered, will other creditors be impacted. On the one hand, allowance of any claim will affect creditor distributions under this plan. On the other hand, the claim suffers significant defects militating against allowance.

The legal issues appear to include:

- (1) Whether Claimant may file a class claim on behalf of the Class Claimants;
- (2) Whether the Class Claimants were required to file individual claims;
- (3) Whether the Class Claimants were properly notified of the Bankruptcy and the Claims Bar Date;
- (4) Whether the Claimant is time-barred from seeking authorization to apply Rule 7023;
- (5) Whether Claimant may convert its claim into a Class Claim;
- (6) Whether allowance of the claim would prejudice the legitimate interests of other creditors;

- (7) Whether the claimant is barred from asserting a Rule 7023 motion as untimely filed after the bar date;
- (8) Whether the motion to certify a class claim after confirmation of the plan or reorganization; and

If the claim is not summarily disallowed, then the factual issues would include:

- (1) The total amount of damages;
- (2) The debtor's wage and overtime policies during the period of time in which the alleged labor violation was said to occur;
- (3) Whether the debtor maintained accurate payroll records over the period of time in which the alleged labor violation was said to occur;
- (4) Whether the debtor implemented a meal period policy that provided its employees an opportunity to take 30-minute duty-free meals during the period of time in which the labor violation was said to occur;
- (5) Whether the debtors wage statements included all legally required information; if not, whether the debtor acted knowingly and intentionally; and if so, whether affected employees suffered injury as result of those inaccuracies and the extent of those injuries;
- (6) Whether the debtor paid terminated employees all wages owed, and if not, whether it was willful;
- (7) Whether the damages of \$452,000 for penalties for inaccurate wage statements and \$335,100 for "waiting time penalties" can be substantiated.

If the claim is not summarily disallowed, then the legal issues would also include:

- (1) Whether the claim can be substantiated as to liability
- (2) Whether the debtor met its burden of proving its employees were properly paid;
- (3) Whether the debtor met its burden showing that it provides a policy to provide meal periods on a widespread basis;
- (4) Whether the debtor's wage statements complied with the labor code;
- (5) Whether 11 U.S.C. § 726(a)(4) is derivatively applicable to Chapter 11 cases; and
- (6) Whether the portion of the claim consisting of penalties must be subordinated under 11 U.S.C. § 726(a)(4).

The objection is SUSTAINED without prejudice to claimant filing and serving an appropriate motion for an order applying FRBP 7023 to this claim litigation. Said motion to be filed and served within 14 calendar days after entry of the order.

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

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

RILEY WALTER/ATTY. FOR DBT.

NO RULING.

5. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A
CALIFORNIA LOCAL HEALTH CARE DISTRICT
[WJH-10](#)**

CONTINUED AMENDED/MODIFIED PLAN
12-3-2019 [\[470\]](#)

RILEY WALTER/ATTY. FOR DBT.

NO RULING.

6. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT
[FW-1](#)**

CONTINUED MOTION FOR ADMINISTRATIVE EXPENSES
8-1-2019 [\[1571\]](#)

SIEMENS MEDICAL SOLUTIONS USA, INC./MV
RILEY WALTER/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on April 21, 2020.
Doc. #2150.

The parties entered into a Settlement Agreement dated April 10, 2020 to resolve the motion (doc. #1571), the debtor's objection to the motion (doc. #1606), and the movant's reply in support of the motion (doc. #1623). Upon irrevocable payment as defined in the settlement agreement, the movant withdrew this motion without prejudice. Doc. #2150. Movant may bring this matter back on calendar with appropriate additional argument and evidence in the event of a default under the settlement agreement.

7. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-4](#)

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

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

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

DISPOSITION: Continued to September 1, 2020 at 9:30 a.m.

NO ORDER REQUIRED: The court already issued an order. Doc. #2148.

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

8. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[FW-2](#)

MOTION TO USE CASH COLLATERAL
4-21-2020 [\[100\]](#)

STEPHEN SLOAN/MV
PETER FEAR/ATTY. FOR DBT.

NO RULING.

11:00 AM

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

PRO SE REAFFIRMATION AGREEMENT WITH LAKEVIEW LOAN SERVICING, LLC
4-3-2020 [[36](#)]

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

DISPOSITION: Dropped.

NO ORDER REQUIRED.

This matter was automatically set for a hearing because the reaffirmation agreement is not signed by an attorney. However, this reaffirmation agreement appears to relate to a consumer debt secured by real property. Pursuant to 11 U.S.C. §524(c)(6)(B), the court is not required to hold a hearing and approve this agreement.

1:30 PM

1. [18-10419](#)-B-7 **IN RE: JARED NEIDLINGER**
[FW-4](#)

MOTION TO PAY
3-25-2020 [\[78\]](#)

JAMES SALVEN/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
PETER SAUER/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. The chapter 7 trustee is authorized to pay \$9,053.00 to the United States as an administrative expense for federal taxes and \$2,747.00 to the state of California as an administrative expense for state taxes.

2. [18-11222](#)-B-7 **IN RE: SAMUEL/CRYSTAL M. FLORES**
[FW-4](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
WITH SAMUEL J. FLORES AND CRYSTAL M. FLORES
3-31-2020 [\[58\]](#)

JAMES SALVEN/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
PETER SAUER/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. It appears from the moving papers that the trustee has considered the standards of In re Woodson, 839 F.2d 610, 620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

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

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

The trustee requests approval of a settlement agreement between the estate and debtors regarding a personal injury lawsuit ("PI Claim").

Doc. #58. Special counsel was previously hired to litigate the PI Claim.

Under the terms of the compromise, the debtors will have authority to proceed to litigate the PI Claim, or to compromise the PI Claim because the trustee will abandon the estate's interest in the PI Claim. In return, the proceeds from the PI Claim will be divided by the parties in the following manner:

- i. From the gross recovery, attorneys fees and the costs and expenses incurred up until the entry of the bankruptcy court's order approving the Settlement Agreement will be deducted first. Litigation fees shall not exceed 33% of the gross recovery, as provided for in this Court's Order Granting Application to Employ Special Purpose Counsel (see No. 43).
- ii. After deducting the foregoing fees and expenses, the remaining (net) proceeds shall be paid as follows: 65% shall be paid to Debtors, and 35% shall be paid to the Trustee.
- iii. From the Debtors share any additional liens, fees, and costs associated with the PI Claim, if any, shall be paid therefrom.

To enforce Trustee's rights in the net proceeds, and upon approval of this Motion, the special counsel acknowledges that it will no longer represent the estate, but that the estate's portion of any settlement or judgment funds received shall be held in trust for the benefit of the bankruptcy estate pursuant to California Rule of Professional Conduct 1.15. Debtor shall not claim as exempt any portion of the PI Claim proceeds payable to the trustee under this agreement. The settlement agreement is subject to bankruptcy court approval.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the trustee believes he would prevail, but the value of the PI Claim has not been determined and could be excluded from the estate entirely; collection would not likely be an issue as the trustee and special counsel are experienced and mindful of the rules of professional conduct; the litigation is not complex, but the amount to be received is not settled and any amounts recovered could be totally exempt and moving forward may therefore decrease the net to the estate due to the legal fees; and the creditors will greatly benefit from the net to

the estate, that would otherwise not exist; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The settlement agreement is approved and the trustee is authorized to abandon the PI Claim to the debtors and is abandoned, provided that the trustee continues to have an interest in the net proceeds of the lawsuit described in the settlement agreement. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

3. [20-10032](#)-B-7 **IN RE: SAMUEL BLYSTONE**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR
AT SEC. 341(A) MEETING OF CREDITORS
3-16-2020 [\[13\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.

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

DISPOSITION: Conditionally granted.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY GRANTED.

The debtors shall attend the meeting of creditors rescheduled for May 7, 2020 at 9:00 a.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtors' discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.

4. [20-11088](#)-B-7 **IN RE: JOSEPH BALTIERRA AND CECILIA DE LA CERDA**
[GT-1](#)

MOTION TO COMPEL ABANDONMENT
3-19-2020 [\[7\]](#)

JOSEPH BALTIERRA/MV
GRISelda TORRES/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE.

Federal Rule of Bankruptcy Procedure 6007(b) requires the motion and other documents to be served "on the trustee . . . the United States trustee, all creditors" The motion, notice of hearing, declaration and exhibits were only served on debtors, the chapter 7 trustee, and the United States trustee. No creditors were served. Therefore the motion is DENIED WITHOUT PREJUDICE.

5. [19-15096](#)-B-7 **IN RE: MELISSA MCGREGOR-MOORE**
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-18-2020 [\[14\]](#)

DEUTSCHE BANK NATIONAL TRUST COMPANY/MV
GABRIEL WADDELL/ATTY. FOR DBT.
SEAN FERRY/ATTY. FOR MV.
DISCHARGED 3/24/20

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

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

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved

without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on March 24, 2020. Doc. #20. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Deutsche Bank National Trust Company ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a piece of real property located at 3199 North Redda Road in Fresno, CA 93727 ("Property").

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors have been in default since June 1, 2019. Doc. #17.

The court also finds that the debtors do not have any equity in the property and the property is not necessary to an effective reorganization because debtors are in chapter 7. Movant has valued the Property at \$313,966.00. Doc. #1. The amount owed to Movant is \$315,338.01. Doc. #16. Debtors' statement of intention indicates that debtors intend to surrender the property. Doc. #1.

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

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

The request for attorney's fees is denied. Though debtor is over-secured under 11 U.S.C. § 506(b), movant must separately file and set for hearing a motion for compensation in compliance with the LBR and Federal Rules of Bankruptcy Procedure. If movant does, then the court will consider that motion on its merits at the appropriate time.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor intends to surrender the property.

6. [09-61798](#)-B-7 **IN RE: JEFFREY FAIRBAIRN**
[JES-3](#)

MOTION FOR COMPENSATION FOR JAMES EDWARD SALVEN, CHAPTER 7
TRUSTEE
3-19-2020 [\[115\]](#)

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

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. 11 U.S.C. §§ 326 and 330 allow reasonable compensation to the chapter 7 trustee for the trustee's services. 11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses.

Chapter 7 Trustee James Salven ("Trustee") requests fees of \$15,895.74 and costs of \$155.59 for a total of \$16,051.33 as statutory compensation and actual and necessary expenses. The case was reopened in late 2018 on motion from the United States Trustee ("UST") when the UST found out about an undisclosed and unscheduled interest in a personal injury/product liability lawsuit. Doc. #52, UST-1. Trustee was appointed the trustee after re-opening. Doc. #55. During the course of this case, Trustee employed counsel, employed special counsel, successfully litigated a motion to compromise controversy wherein the estate would net approximately \$184,295.21 (see FW-3, doc. #94), and filed the final report. See doc. #117.

The court finds Trustee's services were actual and necessary to the estate, and the fees are reasonable. The motion is GRANTED and Trustee is awarded the requested fees and costs.