

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, June 2, 2021
Place: Department B – 510 19th Street
Bakersfield, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:00 AM

1. [18-12731](#)-B-13 **IN RE: MARK/ALICIA GARAY**
[PK-5](#)

MOTION TO MODIFY PLAN
4-2-2021 [\[96\]](#)

ALICIA GARAY/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Federal Rules of Bankruptcy Procedure ("Rule").

Rule 9014 governs contested matters. A motion that seeks to affect the rights of respondents is a contested matter, regardless of whether the respondent files a response or appears at a hearing to oppose the motion. *U.S. v. Laughlin (In re Laughlin)*, 210 B.R. 659, 661 n.2 (B.A.P. 1st Cir. 1997) ("[I]t is existence of an unresolved dispute and a motion seeking relief, rather than formal opposition to the relief sought, that identifies a contested matter."). Since this motion to confirm plan will affect the interests of the estate and the rights of creditors, it is a contested matter regardless of whether any party in interest opposes. Rule 9014(b) requires motions in contested matters to be served in the manner provided for service of a summons and complaint by Rule 7004.

Rule 9036, meanwhile, governs notice and service generally. It does allow for service by electronic means, but "[t]his rule does not apply to any pleading or other paper required to be served in accordance with Rule 7004." Rule 9036. Since Rule 9014(b) provides for service in the manner provided by Rule 7004, the allowance in Rule 9036 for electronic service is inapplicable.

Rule 7004 allows for service in the United States by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business" and "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rules 7004(b)(1), (b)(3). Though not applicable here, if the United States trustee is acting solely as trustee, then "by mailing a copy

of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending." Rule 7004(b) (10).

Fed. R. Civ. P. 5 (incorporated by Rule 7005) also allows for electronic service, but only applies to subsequent pleadings and other papers filed after the initial complaint or motion. Rule 9014(b) still requires the initial service of motions to comply with Rule 7004.

Here, the certificates of service indicate that both the Trustee and UST were served electronically. Docs. #103; #105. The court notes that both are included in the certificate of service for the motion documents, but both are crossed out by hand, which indicates that neither were served under Rule 7004. Doc. #103, at 4.

Because this motion will affect property of the estate, Trustee must be served in accordance with Rule 9014. Rule 7004, which is applicable to contested matters under Rule 9014, is specifically precluded from electronic service pursuant to Rule 9036. This service requirement is not subject to waiver under Fed. R. Civ. P. 4(d). See Rule 7004(a) (1).

No relief is being sought from the UST, and UST's interests will not be affected by plan confirmation, so electronic service is sufficient in this instance.

Therefore, the movant must serve Trustee in accordance with Rule 7004.

For the above reason, this motion will be DENIED WITHOUT PREJUDICE.

2. [18-12731](#)-B-13 **IN RE: MARK/ALICIA GARAY**
[PK-6](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
5-10-2021 [[106](#)]

PATRICK KAVANAGH/ATTY. FOR DBT.

[Since posting its original rulings, the court has changed its intended ruling on this matter.]

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

DISPOSITION: Continued to June 16, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

This matter was originally pre-disposed and denied without prejudice because the chapter 13 trustee was electronically notified, rather than served by mail in accordance with Fed. R. Bankr. P. 7004. The court has reconsidered service requirements and determined that

electronic notification is sufficient for compensation motions under Fed. R. Bankr. P. 2006(a)(6) and 9036. Since the matter was filed on less than 28 days' notice, opposition was not required and could have been presented at the hearing. Accordingly, this matter will be continued to June 16, 2021 at 9:30 a.m. and opposition may be presented at the continued hearing date.

3. [21-10143](#)-B-13 **IN RE: GUILLERMO/ELA ALVARADO**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
4-5-2021 [\[13\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

ORDER: The Objecting Party shall file a proposed order in conformance with the ruling below.

This objection was originally filed and served pursuant to Local Rule of Practice 3015-1(c)(4) and continued so the debtors could file a responsive pleading.

This objection will be SUSTAINED.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to plan confirmation because the plan does not provide for all of the debtors' projected disposable income to be applied to unsecured creditors under the plan as required by 11 U.S.C. § 1325(b). Doc. #13. Trustee also disputes certain expenses deducted on the debtors' Form 122C-2.

By prior order of the court, Guillermo Alvarado and Ela Melissa Alvarado ("Debtors") had until May 19, 2020 to file and serve a written response, and Trustee had until May 26, 2021 to file and serve a reply. Doc. #20.

Debtors filed a response on May 24, 2021. Doc. #24. This response is untimely. Debtors claim the response was late because they were searching for additional documents in support of the response and note that they have no objection to a continuance if requested by Trustee or needed by the court. *Id.* Notably, Debtors did not include this contention in their declaration under penalty of perjury. Doc. #25.

Debtors also did not ask for an order modifying the filing requirements when they learned of the possible delay.

Trustee replied on May 26, 2021. Doc. #27. Trustee notes that Debtors' response was untimely and states that two days is inadequate for Trustee to review the response and draft and file a

reply by the May 26, 2021 deadline. Trustee also notes that Debtors failed to file an amended Form 122C-2. *Id.* For these reasons, Trustee requests that the objection to confirmation be sustained.

Debtors' response was untimely and will be stricken from the record. Accordingly, Trustee's objection to confirmation will be SUSTAINED. Debtors will need to file, serve, and set for confirmation a modified plan.

4. [19-10949](#)-B-13 **IN RE: OLGA LLAMAS**
[RSW-4](#)

MOTION TO MODIFY PLAN
4-9-2021 [\[68\]](#)

OLGA LLAMAS/MV
ROBERT WILLIAMS/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 court will issue an order.

This motion was filed and served on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2) and will proceed as scheduled.

Olga Ledia Llamas ("Debtor") seeks confirmation of her Fourth Modified Chapter 13 Plan. Doc. #68. Debtor seeks to retain the 84-month plan duration under 11 U.S.C. § 1329(d) as amended by the COVID-19 Bankruptcy Relief Extension Act of 2021.

Wilmington Savings Fund Society, FSB, as Owner Trustee of the Residential Credit Opportunities Trust V-D ("Creditor") timely opposed. Doc. #76. Chapter 13 trustee Michael H. Meyer ("Trustee") timely filed limited opposition. Doc. #79. Debtor responded. Doc. #81.

CONTENTIONS

Creditor's Objection

Creditor contends that Debtor's motion should be denied because Debtor did not propose the modification in good faith as required by 11 U.S.C. § 1325(a)(3). Doc. #76. Creditor notes that Debtor has sought modification four times because she did not have sufficient income to make plan payments, and further emphasizes the six motions to dismiss that were filed by Trustee for failure to make plan payments. Continuously modifying her plan when she lacks the ability to perform is evidence of bad faith, Creditor insists. If Debtor does not have sufficient income to fund her plan, Creditor argues

that she should convert her case to chapter 7 rather than continuously filing motions to modify plan. Instead, Creditor believes that Debtor has been enjoying a "free ride" by enjoying the benefit of the automatic stay while failing to make plan payments.

Creditor's primary evidence of bad faith is an alleged misrepresentation of facts to unfairly manipulate the bankruptcy code. Creditor points out Debtor's previous declaration signed November 12, 2020, which states that she tested negative for COVID-19. Doc. #57. Meanwhile, her declaration in support of this plan states that she did have COVID-19 in October and November 2020. Cf. Doc. #70.

Creditor also notes that Debtor has not provided any additional facts or evidence explaining why Debtor would be successful now given that she has defaulted on her confirmed plan multiple times. Although Debtor filed Amended Schedules I and J, she is still unemployed and still has the same income as in her previous schedules. On this basis, Creditor insists that Debtor has failed to explain any changes in circumstances now in existence that will make this plan be successful.

Trustee's Limited Objection

Trustee filed limited opposition on the basis that Debtor will not be able to make all plan payments under the plan and comply with the plan as required under 11 U.S.C. 1325(a)(6). Doc. #79. Trustee notes a typographical error in Section 7.05 of the plan that provides Creditor shall be paid a total of \$17,186.57 in regular monthly mortgage payments through April **2020**, rather than April **2021**. Doc. #72. Trustee believes that this can be corrected in the order confirming the plan. Doc. #79.

Debtor's Response

Debtor acknowledges that she has the burden to establish good faith but disputes that failure to make prior plan payments shows bad faith. Doc. #81. Bad faith, says Debtor, would be if she only filed her modified plans to avoid foreclosure with knowledge that she cannot afford plan payments. Debtor notes that she has paid \$23,871.00 to Trustee to date, but her circumstances have impacted her ability to timely make plan payments.

Debtor declares that she received a false-negative result on a COVID-19 test in November 2020 even though she had COVID-like symptoms. Because of her symptoms she was forced to quarantine for 72 hours, which is when she injured her shoulder. Doc. #82. Her April 2021 declaration was signed after contracting COVID-19 again in January/February 2021, when she realized that her previous symptoms in October and November 2020 were in fact caused by COVID-19.

Debtor states she can afford her new plan payment because she receives \$606 in disability payments every two weeks, and her boyfriend contributes \$900 every month. Debtor also anticipates returning to work on April 5, 2021 and states that she will file

Amended Schedules I and J with her new budget. Doc. #70. The court will inquire whether Debtor returned to work on April 5, 2021. If not, the court will inquire about Debtor's return-to-work schedule.

Mark Acuna, Debtor's boyfriend, also declares under penalty of perjury that he gives Debtor \$900 each month and commits to doing so for the remainder of the plan. Doc. #83. Mr. Acuna states that he can afford this because he works for Friant Canal and earns \$3,200 monthly.

DISCUSSION

Under 11 U.S.C. § 1325(a)(1), the court shall confirm a plan if the plan complies with the provisions of chapter 13 and other applicable provisions of the bankruptcy code.

Good faith determinations under 11 U.S.C. § 1325(a)(3) are made on a case-by-case basis after considering the totality of the circumstances. *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224-25 (9th Cir. 1999). The burden of proof is on the debtor. *In re Arnold and Baker Farms*, 177 B.R. 648, 654 (B.A.P. 9th Cir. 1994); *In re Warren*, 89 B.R. 87, 93 (B.A.P. 9th Cir. 1988).

This matter will be called as scheduled to inquire about the parties' positions and inquire about Debtor's return-to-work schedule. The court is inclined to find that Debtor has met her burden of demonstrating good faith. Debtor is able to afford plan payments with the help of Mr. Acuna, who has committed to giving Debtor \$900 each month for expenses. Debtor's frequent modifications were caused by COVID-19 and a shoulder injury, which required surgery. The typographical error noted by Trustee can be fixed in the order confirming plan.

Debtor's plan also provides for an 84-month duration under 11 U.S.C. § 1329(d). Under 11 U.S.C. § 1329(d), a plan can be extended to not more than 7 years after the time that the first payment under the original confirmed plan was due if the debtor is experiencing or has experienced a material financial hardship due to the COVID-19 pandemic. Section 1329(d)(1) requires the plan to have been confirmed prior to the COVID-19 Bankruptcy Relief Extension Act of 2021 (March 27, 2021). Here, Debtor was diagnosed with COVID-19 resulting in a loss of income. Doc. #82. Debtor's previous plan was confirmed on January 8, 2021 and was 84 months in duration under § 1329(d) as modified by the Coronavirus Aid, Relief, and Economic Security ("CARES") Act of 2020. Doc. #64. This is before the Bankruptcy Relief Extension Act was enacted on March 27, 2021. Accordingly, Debtor satisfies the requirements to extend her plan beyond 60 months under § 1329(d).

On this basis, the court is inclined to SUSTAIN Trustee's objection, which can be resolved by the order confirming plan, and OVERRULE Creditor's objection because Debtor has established that she filed the plan in good faith. This motion will be GRANTED. The confirmation order shall include the docket control number of the motion, shall reference the plan by the date it was filed, and correct the typographical error contained in Section 7.05.

Upon request by Trustee, Debtor shall amend Schedule I and J to reflect her restored income after returning to work. If Debtor is otherwise unable to make the plan payments, she shall file, serve, and set for hearing a motion to modify the plan.

5. [21-10070](#)-B-13 **IN RE: MARIA/RICARDO CUEVAS**
[MHM-1](#)

MOTION TO DISMISS CASE
5-4-2021 [\[28\]](#)

MICHAEL MEYER/MV
LEROY AUSTIN/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Chapter 13 trustee Michael H. Meyer withdrew this motion to dismiss on May 25, 2021. Doc. #39. Accordingly, this matter will be dropped from calendar.

6. [16-11072](#)-B-13 **IN RE: ELLYN LOPEZ**
[PK-4](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
5-12-2021 [\[150\]](#)

PATRICK KAVANAGH/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 will submit a proposed order after hearing.

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

Ellyn D. Lopez's ("Debtor") counsel, Patrick Kavanagh of the Law Office of Patrick Kavanagh ("Movant"), requests final compensation of \$750.00 for services rendered from November 1, 2017 through closing of the case. Doc. #150. Movant was previously awarded \$30,000.00 in compensation on an interim basis. Doc. #137. Debtor filed a declaration stating that she has read and approves the fee application, which will require her to pay Movant \$750.00. Doc. #155. Written opposition was not required and may be presented at the hearing.

In the absence of opposition, this motion will be GRANTED.

First, the court notes that chapter 13 trustee Michael H. Meyer ("Trustee") and the United States Trustee ("UST") were properly served notice of the hearing by mail in accordance with Fed. R. Bankr. P. 2002(a)(6), 7004, and 9014(b). Doc. #153, at 4. Subsequent pleadings were served electronically in accordance with Fed. R. Civ. P. 5 (applicable under Fed. R. Bankr. P. 7005) and LBR 7005-1. Docs. #154; #156.

Form EDC 3-096, *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, indicates that Movant was paid \$2,590.00 prior to the filing of the case. Doc. #7. Initial fees in this case are designated as "Hourly." *Id.* Section 3.05 of the Original Plan states that Movant was paid \$2,590.00 prior to the filing of the case and \$3,410.00 shall be paid through the plan. Doc. #5. The original plan was not confirmed. See MHM-1.

The First Modified Plan filed November 9, 2017, provided that \$2,590.00 were paid prior to filing and additional fees of \$27,410.00 would be paid through the plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017. Doc. #94. The Second Modified Plan filed February 12, 2018 also provided that fees of \$2,590.00 were paid pre-petition and \$27,410.00 will be paid through the plan. Doc. #131.

Movant's first interim fee application requested fees of \$31,680.00 for services rendered from October 13, 2015 through October 31, 2017, to be capped at \$30,000.00 under the plan. PK-3. The court approved the fee application on April 2, 2018 and Movant was authorized to draw upon the \$2,590.00 retainer, with \$27,410.00 payable through the plan. Doc. #137.

Movant now requests final compensation of \$750.00 in fees, which will be paid by Debtor directly. Doc. #150. Movant indicates that his firm spent 15.6 billable hours at \$300.00 per hour, totaling \$4,380.00 in fees. *Id.*, ¶ 5. However, all fees in excess of \$750.00, and all expenses, are waived. Movant notes that the current plan contains a *Johnson* waiver allowing fees to be paid post-discharge.¹ Doc. #152, Ex. A.

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

¹ *Wolff v. Johnson (In re Johnson)*, 344 B.R. 104 (B.A.P. 9th Cir. 2006).

professional person" and "reimbursement for actual, necessary expenses."

Movant's services included, without limitation: (1) preparing, filing, and prosecuting two motions to modify the plan (PK-2; PK-3); (2) preparing and filing the first motion for interim compensation (PK-3) and this motion for final compensation (PK-4); (3) reviewing payment adjustment notices; and (4) case administration. Doc. #152, Ex. A. Debtor states that she read the fee application and approves the same. Doc. #155. The court is inclined to find the services reasonable and necessary, and the expenses actual and necessary.

This matter will be called as scheduled to inquire whether any party in interest opposes this motion.

In the absence of opposition, this motion will be GRANTED on a final basis. All fees and expenses previously allowed on an interim basis are reasonable, necessary, and will be allowed on a final basis. In addition, the court will allow final compensation in the amount of \$750.00 for services rendered from November 1, 2017 through the closing of the case. Debtor will be authorized to pay Movant \$750.00.

7. [21-10391](#)-B-13 **IN RE: SHARON PARKS**
[MHM-1](#)

MOTION TO DISMISS CASE
5-5-2021 [[39](#)]

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

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

DISPOSITION: Continued to July 7, 2021 at 9:00 a.m.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") asks the court to dismiss this case under 11 U.S.C. §§ 1307(c)(1), (c)(4), and (e) for: (1) unreasonable delay by the debtor that is prejudicial to creditors; (2) failure to make all plan payments; and (3) failure to file 2019 tax returns. Doc. #39.

Sharon Kathleen Parks ("Debtor") timely responded. Doc. #49. Debtor declares that she incurred unexpected expenses relating to health insurance, supplemental house insurance, and automobile insurance and registration, which affected her ability to make plan payments. Doc. #50. Patrick Kavanagh, Debtor's attorney, declares that a motion to confirm a modified plan will be filed and set for hearing in July. Doc. #51. Mr. Kavanagh also states that the 2019 taxes are being completed by his tax preparer, who will prioritize the filing of her return to get it filed by Monday, May 24, 2021. *Id.*

Debtor filed an amended plan on May 20, 2021, which is set for hearing on July 7, 2021 at 9:00 a.m. See PK-3. Therefore, this motion will be continued to that date and time to be heard in conjunction with the motion to confirm plan.

8. [18-14396](#)-B-13 **IN RE: DARIO/MARIA MENDEZ**
[PK-2](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
4-19-2021 [\[34\]](#)

PATRICK KAVANAGH/ATTY. FOR DBT.

[Since posting its original rulings, the court has changed its intended ruling on this matter.]

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 amounts 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.

Dario Mendez and Maria Eustolia Mendez's ("Debtors") counsel, Patrick Kavanagh of the Law Office of Patrick Kavanagh ("Movant") requests final compensation of \$6,203.81 for services rendered from August 8, 2018 through the closing of this case. Doc. #34. Debtors filed a declaration stating that they have read the fee application and approve the same. Doc. #39.

This motion will be GRANTED.

Section 3.05 of the plan and Form EDC 3-096 indicate that Movant was paid \$1,000.00 prior to the filing of the case and subject to court approval, additional fees of \$5,000.00 shall be paid through this

plan by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017. Docs. ##2-3.

Movant indicates that his firm spent 18.40 billable hours at a rate of \$300.00 per hour totaling \$5,520.00 in fees. Doc. #36, Ex. B. Movant projects he will spend an addition 2 hours totaling \$600.00 on or before July 15, 2021, which will be spent on case administration to finalize and close this case. Movant states that \$600.00 will be paid from Merrick Bank as stipulated attorney fees for an out-of-statute claim. This results in total attorney fees of \$6,120.00. Movant also incurred the following expenses:

Deed of trust copies (4 @ \$10.00)	\$40.00
Copies (150 @ \$0.15)	\$22.50
Postage	\$21.31
Total Costs:	\$83.81

Id., Ex. D. In light of the \$1,000.00 retainer paid by Debtors, and the \$600.00 in a trust account paid by Merrick Bank, Movant requests \$4,603.81 to be paid by Trustee through the chapter 13 plan.

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

Movant's services included, without limitation: (1) advising Debtor about bankruptcy and non-bankruptcy alternatives; (2) gathering information and documents to prepare the petition; (3) preparing the petition, schedules, statements, and chapter 13 plan; (4) preparing and sending § 341 meeting documents to Trustee; (5) attending and completing the § 341 meeting of creditors; (6) confirming a chapter 13 plan. Doc. #36, Ex. A. The court finds the services reasonable and necessary, and the expenses requested actual and necessary.

Movant shall be awarded \$6,120.00 in fees and \$83.81 in costs on a final basis. In light of the \$1,000.00 retainer paid by Debtor and the \$600.00 in fees paid by Merrick Bank, Trustee will be authorized to pay Movant \$4,603.81.

10:00 AM

1. [21-10214](#)-B-7 **IN RE: GUSTAVO/PATRICIA CORTEZ**
[RSW-1](#)

MOTION TO AVOID LIEN OF MIDLAND FUNDING LLC
5-5-2021 [\[16\]](#)

PATRICIA CORTEZ/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Gustavo Antonio Cortez and Patricia Cortez ("Debtors") seek to avoid a judicial lien in favor of Midland Funding, LLC ("Creditor"), and encumbering residential real property located at 3320 Haven St., Rosamond, CA 93560 ("Property"). Doc. #16. No party in interest timely filed written opposition.

The court notes that Creditor's agent for service of process, CSC - Lawyers Incorporating Service, was properly served at the address listed in its Registered Corporate Agent for Service of Process Certificate filed with the California Secretary of State on February 10, 2021. Doc. #20; see also <https://businesssearch.sos.ca.gov>.

This motion will be GRANTED.

To avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair

the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd* 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtors in favor of Creditor in the sum of \$3,382.18 on January 5, 2012. Doc. #19, Ex. 4. The abstract of judgment was issued on March 9, 2012 and recorded in Kern County on May 21, 2012. *Id.* That lien attached to Debtors' interest in Property. Doc. #18. As of the petition date, Property had an approximate value of \$247,980.00. *Id.*; Doc. #1, Schedule A/B, ¶ 1.1. The unavoidable liens totaled \$206,600.00 on that same date, consisting of a deed of trust in favor of Dmi/Santander Bank, NA. *Id.*, Schedule D, ¶ 2.1 Debtors claimed an exemption pursuant to Cal. Civ. Proc. Code ("C.C.P.") § 704.730 in the amount of \$300,000.00. *Id.*, Schedule C. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property on petition date		\$247,980.00
Total amount of unavoidable liens	-	\$206,600.00
Remaining available equity	=	\$41,380.00
Debtors' homestead exemption	-	\$300,000.00
Creditor's judicial lien	-	\$3,382.18
Extent Debtors' exemption impaired	=	(\$262,002.18)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). Therefore, this motion will be GRANTED.

2. [17-10026](#)-B-7 **IN RE: FRYE CONSTRUCTION, INC.**
[JMV-1](#)

MOTION FOR ADMINISTRATIVE EXPENSES
5-13-2021 [\[43\]](#)

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

DISPOSITION: The court will issue an order.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") filed this motion for an order authorizing payment of administrative tax expenses. Doc. #43.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the local rules.

The original motion documents contained the wrong hearing date: June 3, 2021 at 10:00 a.m. Docs. ##43-49. Trustee corrected this issue with an amended notice filed on May 14, 2021. Doc. #51. However, this amended notice does not contain a certificate of service evidencing that it was served on all parties in interest.

Local Rule of Practice ("LBR") 9014-1(d)(1) requires every motion or other request for an order to be comprised of a motion, notice, evidence, and certificate of service. LBR 9014-1(e)(2) requires a proof of service, in the form of a certificate of service, to be filed with the Clerk of the court concurrently with the pleadings or documents served, or not more than three days after the papers are filed and separate from all other documents. LBR 9004-2(c)(1), (e)(1). See also *Dreyfuss v. Cory (In re Cloobek)*, 788 F.3d 1243 (9th Cir. 2015) (finding that trustee is required to give notice and opportunity to object to paying estates' administrative taxes).

For this reason, the motion will be DENIED WITHOUT PREJUDICE.

3. [21-10662](#)-B-7 **IN RE: HUGO PICHARDO GUAJARDO AND JEANETTE PICHARDO**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-9-2021 [\[16\]](#)

SANTANDER CONSUMER USA INC./MV
NEIL SCHWARTZ/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Santander Consumer USA, Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2018 Dodge Journey ("Vehicle"). Doc. #16.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors have failed to make at least eight complete payments. The movant has produced evidence that debtors are delinquent at least \$3,906.50. Doc. #21.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtors are in chapter 7. *Id.* The Vehicle is valued at \$15,575.00 and debtor owes \$21,117.70. Doc. #19, #21.

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

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

11:00 AM

1. [19-14513](#)-B-7 **IN RE: NAYLAN BENDER**
[20-1003](#)

CONTINUED SCHEDULING CONFERENCE RE: COMPLAINT
1-21-2020 [[1](#)]

LRS REALTY & MANAGEMENT, INC.
V. BENDER, III
JEREMY FAITH/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [19-14513](#)-B-7 **IN RE: NAYLAN BENDER**
[20-1003](#)

ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY
PROCEEDING FOR FAILURE TO PROSECUTE
4-8-2021 [[57](#)]

LRS REALTY & MANAGEMENT, INC.
V. BENDER, III
RESPONSIVE PLEADING

NO RULING.

LRS Realty & Management, Inc. ("Plaintiff"), claims that it has settled this matter with debtor Naylan George Bender, III ("Defendant"). Doc. #61. The settlement agreement is awaiting execution and then the adversary proceeding will be dismissed. Plaintiff expects that the stipulation will be filed prior to the June 2, 2021 hearing date. This matter will be called as scheduled to inquire about the status of the proposed settlement.

3. [20-13346](#)-B-7 **IN RE: RAMON GUTIERREZ**
[21-1007](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-16-2021 [[1](#)]

FIRST NATIONAL BANK OF OMAHA
V. GUTIERREZ
CORY ROONEY/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar as moot.

ORDER: The court will issue an order.

The court entered judgment in favor of Plaintiff on May 28, 2021 in accord with a stipulation signed by the parties. See Doc. #14. The status conference will be dropped from calendar as moot and the Clerk of the court will close the adversary proceeding.

4. [20-10465](#)-B-7 **IN RE: JASPREET DHILLON**
[20-1065](#)

CONTINUED SCHEDULING CONFERENCE RE: COMPLAINT, AND JURY
DEMAND
12-9-2020 [\[1\]](#)

ATCHLEY ET AL V. DHILLON
WILLIAM ALEXANDER/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 9, 2021 at 11:00 a.m.

ORDER: The court will issue an order.

Plaintiff Virginia Lee Atchley, Successor Trustee of the Atchley Living Trust, filed a motion to dismiss the complaint under Fed. R. Civ. P. 41 (as incorporated by Fed. R. Bankr. P. 7041). This motion is set for hearing on June 9, 2021. Accordingly, this scheduling conference will be continued to June 9, 2021 at 11:00 a.m. to be heard in connection with the motion to dismiss.

5. [19-13374](#)-B-7 **IN RE: KENNETH HUDSON**
[19-1128](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
11-26-2019 [\[1\]](#)

BROWN V. HUDSON
GLEN GATES/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 28, 2021 at 11:00 a.m.

ORDER: The court will issue an order.

The parties were ordered to file additional briefing for Plaintiff Michelle Brown's motion for summary judgment. Upon receipt of the simultaneously filed briefs, the motion for summary judgment will be taken under submission. See Doc. #130. Accordingly, this pre-trial conference will be continued to July 28, 2021 at 11:00 a.m. A ruling on the summary judgment motion may affect whether the continued Pre-Trial Conference will proceed.

11:30 AM

1. [21-10215](#)-B-7 **IN RE: TONY/CINDY CONTE**

REAFFIRMATION AGREEMENT WITH TD AUTO FINANCE LLC
4-8-2021 [\[17\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtors' counsel shall notify the debtors that no appearance is necessary.

This matter was set for hearing as the expenses listed in Schedule J, filed with the petition, did not match what was listed on the Reaffirmation Agreement, leaving the debtors with a negative amount of income (\$747.51) at the end of the month.

Amended Schedule J was filed on May 10, 2021 (Doc. #23), adding the truck payment of \$774.70. Debtors' expenses have decreased, leaving net income of \$40.49. No hearing or order is required. The form of the Reaffirmation Agreement complies with 11 U.S.C. §524(c) and 524(k), and it was signed by debtors' attorney with the appropriate attestations. Pursuant to 11 U.S.C. §524(d), the court need not approve the agreement.

2. [21-10215](#)-B-7 **IN RE: TONY/CINDY CONTE**

REAFFIRMATION AGREEMENT WITH FIRST CALIFORNIA FEDERAL CREDIT UNION
4-22-2021 [\[19\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtors' counsel shall notify the debtors that no appearance is necessary.

This matter was set for hearing as the expenses listed in Schedule J, filed with the petition, did not match what was listed on the

Reaffirmation Agreement, leaving the debtors with a negative amount of income (\$747.51) at the end of the month.

Amended Schedule J was filed on May 10, 2021 (Doc. #23), adding the truck payment of \$774.70. Debtors' expenses have decreased, leaving net income of \$40.49. No hearing or order is required. The form of the Reaffirmation Agreement complies with 11 U.S.C. §524(c) and 524(k), and it was signed by debtors' attorney with the appropriate attestations. Pursuant to 11 U.S.C. §524(d), the court need not approve the agreement.