UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday June 9, 2022
Place: Department A – 510 19th Street
Bakersfield, California

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

Pursuant to District Court General Order 631, courthouses for the Eastern District of California were reopened to the public effective June 14, 2021.

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. 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. 22-10300-A-13 **IN RE: RUDY LOPEZ**
JGB-2

MOTION TO CONFIRM PLAN
4-27-2022 [25]

RUDY LOPEZ/MV
JAMES BEIRNE/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on May 26, 2022. Doc. #42.

2. 18-12801-A-13 **IN RE: JEREMY/SHIRRELL COOK**
MHM-3

MOTION TO MODIFY PLAN
4-13-2022 [117]

MICHAEL MEYER/MV
GREGORY SHANFELD/ATTY. FOR DBT.
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.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). On May 26, 2022, the debtors filed an objection to the chapter 13 trustee's motion to confirm the fourth modified chapter 13 plan. Doc. #128. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the nonresponding parties in interest are entered. This matter will proceed as scheduled.

Michael H. Meyer ("Trustee"), the chapter 13 trustee, moves pursuant to 11 U.S.C. § 1329(a) to confirm the fourth amended chapter 13 plan filed April 13, 2022 (the "Proposed Plan"). Doc. ##117-122. Jeremy Daniel Cook and Shirrell Linette Cook (together, "Debtors") oppose confirmation of the Proposed Plan. Doc. #128.

Trustee moves to confirm the Proposed Plan in response to a third modified chapter 13 plan filed by Debtors that sought to reduce the dividend paid to nonpriority unsecured creditors from 5% to 0%. Doc. #117. The prior plan submitted by Debtors on January 4, 2022 was not confirmed (the "Denied Plan"). See Order, Doc. #125. Trustee's Proposed Plan increases the dividend to nonpriority unsecured creditors from 5% to 34.87% and leaves all other provisions of the previously confirmed plan unchanged. Plan, Doc. #121; Doc. #117. By their opposition filed on May 26, 2022, Debtors propose to pay a dividend to nonpriority unsecured creditors of 16.09%. Doc. #128. Trustee has not replied to Debtors' opposition.

The last confirmed plan was filed on January 3, 2020, together with amended Schedules I and J in support of the confirmed plan, and the plan was confirmed on March 14, 2020 (the "Confirmed Plan"). Doc. ##73, 79. Debtors' amended Schedule I filed on January 3, 2020 lists combined monthly income of $6,901.28. Doc. #69. Debtors' amended Schedule J, also filed on January 3, 2020, includes expenses of $200 per month for "horse care", $150 per month for "pet care", and asserts monthly net income of $3,594.82. Doc. #69.

To support the Denied Plan, Debtors filed another set of amended Schedules I and J. Debtors' amended Schedule I filed on March 15, 2022 lists combined monthly income of $8,285.64. Doc. #112. Debtors' amended Schedule J, also filed on March 15, 2022, includes a monthly expense of $176 for "horse care" and asserts monthly net income of $4,290. Doc. #112. Debtors then filed an amended Schedule J on May 26, 2022 in response to the Proposed Plan. Doc. #126. The amended Schedule J filed on May 26, 2022 includes a $176 monthly expense for "horse care" and asserts monthly net income of $4,446.99. Doc. #126.

Comparing these schedules shows that Debtors' combined monthly income has increased approximately 20% since January 2020. Using the amended Schedule J filed on May 26, 2022 in opposition to the Proposed Plan, Debtors' monthly net income has increased approximately 23.70% since January 2020. Using Debtors' Schedule J filed on March 15, 2022, Debtors asserted monthly net income had increased approximately 19.33% since January 2020.

Modification of a chapter 13 plan is governed by 11 U.S.C. § 1329. "Section 1329 specifies the way in which confirmed chapter 13 plans may be modified, but it does not state the circumstances in which a modification is proper." Berkley v. Burchard (In re Berkley), 613 B.R. 547, 551 (B.A.P. 9th Cir. 2020). It is left to the discretion of the bankruptcy court to determine whether plan modification is appropriate. Id. However, a proposed modified plan must still satisfy the requirements of §§ 1322(a), 1322(b), 1323(c), and 1325(a). 11 U.S.C. § 1329(b)(1). Although the disposable income test of § 1325(b)(1)(B) does not apply to plan modification, "[a]n unexpected increase in income is one such change that could warrant a plan modification to increase payments." Id.; Sunahara v. Burchard (In re Sunahara), 326 B.R. 768, 781 (B.A.P. 9th Cir. 2005). The party moving to confirm the modified plan bears the burden of proof to show facts supporting the proposed modification. Max Recovery v. Than (In re Than), 215 B.R. 430, 434 (B.A.P. 9th Cir. 1997).

Citing Debtors' increase in income during the chapter 13 case, Trustee moves to modify the chapter 13 plan solely to increase the dividend paid to nonpriority unsecured claims from 5% to 34.87%. Proposed Plan, Doc. #121. The approximate amount of nonpriority unsecured claims remains unchanged at $30,943.69. Id. To support the increase in the monthly dividend to nonpriority unsecured creditors, Trustee disputes certain of Debtors' monthly expenses. Specifically, Trustee disputes Debtors' (1) monthly electricity, heat, and natural gas expense; (2) pet care expense; (3) horse expense; and (4) home security expense. Decl. of Kelsey A. Seib, Doc. #119.

Based on a review of the bills provided by Debtors, Trustee believes Debtors spend approximately $318.53 per month for electricity and heating, not $497.34 as listed in the amended Schedule J filed on March 15, 2022 in support of the Denied Plan. Seib Decl., Doc. #119. Debtors' amended Schedule J filed on May 26, 2022 in response to the Proposed Plan reduces the "electricity, heat, natural gas" expense to $324 but adds a monthly expense of $86.35 for propane. Doc. #126. Debtors testify that they spend $961.17 per year on propone and pay $75.03 to lease their 320-gallon propane tank for the year. Decl. of Jeremy Daniel Cook, Doc. #128; Ex. 3, Doc. #130.

Based on a review of Debtors' expenses related to pets, Trustee believes that the pet care expense should be reduced by $40. Doc. #117. Debtors' amended Schedule J filed on May 26, 2022 in response to the Proposed Plan reduces the pet care expense by $40 to match Trustee's proposed expense. Doc. #128; Am. Schedule J, Doc. #126.

Trustee also opposes Debtors' $34.99 monthly expense for home security. Doc. #117. Trustee primarily disputes the home security expense because the home security expense was never previously accounted for. Doc. #117. Debtors kept the $34.99 home security expense in the amended Schedule J filed in response to the Proposed Plan. Doc. #126. Debtors testify that the home security system has been in place since November 2014 but was inadvertently overlooked in previous schedules. Cook Decl., Doc. #128; Ex. 4, Doc. #130. The home security system has an integrated fire alarm feature, and Debtors receive a discount of $284.06 off their home insurance premium due to the home security system. Id.; Ex. 5, Doc. #130.

Finally, Trustee disputes Debtors' expense for horse care. Trustee contests the reasonableness of the horse care expense when paid in lieu of payments to unsecured creditors. Doc. #117. A review of the record in this bankruptcy case shows that Debtors have always scheduled an expense for horse care. See Schedule J, Doc. #1; Am. Schedule J, Doc. #34; Doc. #51; Doc. #69. Debtors included the horse care expense on their Schedule J at the time the first chapter 13 plan was confirmed in 2018 and again when the Confirmed Plan was confirmed in 2020. In fact, the current $176 horse care expense scheduled by Debtors is a reduction of Debtors' typical $200 monthly horse care expense. Compare Am. Schedule J, Doc. #69 with Am. Schedule J, Doc. #126. No prior objections to the horse care expense have ever been raised. Debtors testify that the horses have helped relieve joint debtor Shirrell Cook's chronic medical issues. Cook Decl., Doc. #128. Debtors testify that caring for and riding the two horses has helped improve the health and well-being of joint debtor Shirrell Cook such that she is no longer wheelchair bound. Id. Horseback riding is one of the few activities that Debtors can enjoy together. Id.

The court is inclined to find that the horse care expense is reasonably necessary for the care of Debtors, particularly in light of the fact that Debtors have always claimed an expense for horse care, Trustee has never objected to the expense before, and the current horse care expense asserted is actually a reduction from the $200 expense scheduled in 2020 to support the Confirmed Plan. Further, the court is inclined to find that the other expenses scheduled by Debtors in response to the Proposed Plan are reasonably necessary for the care of Debtors. Debtors have supported their electricity and propane expenditures, reduced the pet care expense to match Trustee's calculation, have supported the home security expense, and have reduced their entertainment expense. Further, Debtors testify that the current inflationary economic environment has placed a strain on Debtors' budget. Cook Decl., Doc. #128.

Although the court finds that Debtors' expenses asserted in the amended Schedule J filed on May 26, 2022 are reasonably necessary, that is not to say

that the court believes an increase in the dividend to nonpriority unsecured creditors is unwarranted. As stated earlier, Debtors' monthly net income has increased approximately 23.70% since confirmation of the Confirmed Plan in 2020. The court also is aware of the "inflationary environment" straining Debtors' budget.

If Trustee and Debtors are willing to agree to an appropriate dividend to nonpriority unsecured creditors, and if such agreement can be provided in the order confirming the Proposed Plan, the court will GRANT Trustee's motion and confirm the Proposed Plan with the appropriate adjustment.

If no agreement can be reached, the court is inclined to DENY Trustee's motion on the grounds that a 34.87% dividend to nonpriority unsecured creditors is not feasible in light of Debtors' reasonably necessary expenses.

3. 19-13701-A-13 **IN RE: PAUL/KATHERINE MCCURRY**
DMG-4

MOTION TO SELL
5-12-2022 [82]

PAUL MCCURRY/MV
D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Paul McCurry and Katherine McCurry (collectively, "Debtors") petition the court for an order authorizing Debtors to sell real property located at 760 Maple Ave., Wasco, CA 93280 (the "Property") to Luz Maria Zanches and Javier Sanches Garza (together, "Buyers") for $279,000.00. Doc. #82. Debtors filed a voluntary chapter 13 petition on August 28, 2019. Doc. #1. Debtors' chapter 13 plan was confirmed on April 8, 2020 and provides for a 100% dividend to general unsecured creditors. Plan, Doc. #48; Order, Doc. #70.

LBR 3015-1(h)(1)(E) provides in relevant part that "if the debtor wishes to . . . transfer property on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it

on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

This motion was properly served and noticed, and no opposition has been filed. Debtors have a fee simple ownership interest in the Property. Schedule A/B, Doc. #1. Debtors' confirmed chapter 13 plan does not revest property of the estate in Debtors upon confirmation. Plan, Doc. #48; Order, Doc. #70. Joint debtor Katherine McCurry asserts the offer will benefit their estate by allowing Debtors to pay the balance owed on their chapter 13 plan. Decl. of Katherine McCurry, Doc. #84. The Property is owned by Debtors free and clear of a mortgage, and Debtors claimed the Property as fully exempt. Id.; Schedule C, Doc. #1. After a six percent commission is shared between the listing agent and Buyers' agent, the chapter 13 trustee will approve the close of escrow to receive funds necessary to pay the balance owed on Debtors' chapter 13 plan. Id. Debtors will pay all costs, commissions, consensual liens and taxes directly from escrow. Id. The court finds that the sale of the Property is in the best interests of the estate and will result in full payment of Debtors' confirmed chapter 13 plan.

Accordingly, this motion is GRANTED. Debtors are authorized, but not required, to sell the Property in a manner consistent with the residential purchase agreement filed as Exhibit A, Doc. #85.

4. 18-13003-A-13 **IN RE: JOHN/GINA LUCERO**
PK-5

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
5-20-2022 [81]

PATRICK KAVANAGH/ATTY. FOR DBT.

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 filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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.

Patrick Kavanagh ("Movant"), counsel for John Jose Lucero Sr. and Gina Marie Lucero ("Debtors"), the debtors in this chapter 13 case, requests interim allowance of compensation in the amount of $5,610.00 and no reimbursement for expenses for services rendered from June 13, 2018 through May 18, 2022. Doc. #81. Debtors' confirmed plan provides, in addition to $1,500 paid prior to filing the case, for $4,500.00 in additional attorney's fees to be paid through the plan. Plan, Doc. ##39, 75. No prior fee application has been filed.

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) pre-petition fact gathering and consultation; (2) preparing and prosecuting Debtors' first modified plan; (3) preparing and filing several motions to value collateral of Ally Financial, Inc.; (4) communicating with Debtors' creditors and the chapter 13 trustee; (5) preparing the fee application; and (6) general case administration. Exs. A-C, Doc. #83. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion will be GRANTED. The court will allow on an interim basis compensation and reimbursement for expenses in the amount of $5,610.00 to be paid in a manner consistent with the terms of the confirmed plan.

5. 22-10628-A-13 **IN RE: DAVID/NANCY HALL**
MHM-1

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
5-23-2022 [12]

ROBERT WILLIAMS/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.

David Lance Hall and Nancy Lee Hall (together, "Debtors") filed a voluntary petition under chapter 13 along with a chapter 13 plan ("Plan") on April 12, 2022. 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 Plan is not feasible. Doc. #12.

Rather than continue the hearing on Plan confirmation to allow the meeting of creditors to be concluded, the court is inclined to sustain the objection and deny confirmation because the Plan proposed by Debtors is not feasible as required by 11 U.S.C. § 1325(a)(6).

Section 1325(a)(6) of the Bankruptcy Code requires that the debtor be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a)(6). The party moving to confirm the chapter 13 plan bears the burden of proof to show facts supporting the proposed plan. Max Recovery v. Than (In re Than), 215 B.R. 430, 434 (B.A.P. 9th Cir. 1997).

The Plan calls for monthly payments of $1,300 for 60 months. Plan, Doc. #3. The Plan contains nonstandard provisions concerning mortgage arrearages totaling $200,000 provided for in Class 1 of the Plan. Id. The nonstandard provisions state that Debtors will increase the Plan payment when joint debtor becomes employed at a new job. Plan § 7, Doc. #3. The nonstandard provisions further state that no arrearage payment shall be made on behalf of Class 1 until joint debtor obtains new employment, or until a loan modification is obtained, or until the underlying property is sold. Id.

Trustee contends that the nonstandard provisions are ambiguous, and the court agrees. If Trustee were to begin making payments on the mortgage arrears in Class 1 without increasing the Plan payment, the Plan would take over 425 months to fund. Doc. #12. To pay the arrearage over 60 months, the Plan payment would need to nearly triple, yet Debtors propose to pay the arrearage in some period less than 60 months. Id. Additionally, Debtors provide no evidence demonstrating (1) whether joint debtor will be able to obtain, or is currently seeking, new employment, (2) whether Debtors will be able to obtain, or are currently seeking, a loan modification, and (3) an ability or plan to market and sell the property to satisfy the Class 1 claim. See In re Hogue, 78 B.R. 867, 872-73 (Bankr. S.D. Ohio 1987) ("Bankruptcy courts have consistently denied confirmation of Chapter 13 plans containing such speculative contingencies.").

The court finds that the ambiguities in the nonstandard provisions and Debtors' failure to demonstrate an ability to comply with the nonstandard provisions render the Plan unfeasible.

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

6. 21-12758-A-13 **IN RE: CRISTY PAREDES**
MHM-1

CONTINUED MOTION TO DISMISS CASE
12-23-2021 [14]

MICHAEL MEYER/MV
PETER NISSON/ATTY. FOR DBT.

NO RULING.

7. 21-12758-A-13 **IN RE: CRISTY PAREDES**
UST-1

MOTION FOR REVIEW OF FEES
5-4-2022 [51]

TRACY DAVIS/MV
PETER NISSON/ATTY. FOR DBT.
JASON BLUMBERG/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in accord with stipulated resolution.

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 pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Although no party in interest submitted written opposition to the motion, a stipulation resolving the motion was filed on May 27, 2022 ("Stipulation"). Doc. #61. This matter will proceed as scheduled to permit the debtor and other interested parties to comment on the proposed Stipulation.

Tracy Hope Davis ("UST"), United States Trustee for Region 17, moves the court for an order requiring the return of $8,750 in attorneys' fees paid by Cristy Eloisa Paredes ("Debtor") to Consumer Defense Law Group P.C. ("CDLG") pursuant to 11 U.S.C. § 329 and Federal Rule of Bankruptcy Procedure 2017. Doc. #51. The UST seeks review of attorneys' fees paid by Debtor to CDLG because CDLG did not disclose its attorneys' fees in Debtor's bankruptcy case and Debtor's bankruptcy case is subject to dismissal because Debtor failed to obtain credit counseling prior to filing her bankruptcy case. Doc. #51.

Although no party in interest submitted written opposition to the motion, the Stipulation resolving the motion, signed by UST and CDLG, was filed on May 27, 2022. Doc. #61. Pursuant to the Stipulation, CDLG agrees to entry of an order granting UST's motion on the following terms:

(1) CDLG shall refund $7,500 to Debtor pursuant to 11 U.S.C. § 329(b); and

(2) CDLG shall provide proof of such refund to the UST and file such proof of refund in the bankruptcy case within fourteen (14) days of entry of the order granting the motion.

Stipulation, Doc. #61. The Stipulation was served on Debtor and other parties in interest on May 31, 2022. Doc. #62. The court has reviewed the Stipulation and finds the Stipulation to be an appropriate resolution of the Motion.

Accordingly, subject to any comments raised at the hearing, the motion will be GRANTED on the terms set forth in the Stipulation.

8. 21-12061-A-13 **IN RE: EUGENE TOLOMEI**
MHM-2

CONTINUED MOTION TO DISMISS CASE
4-6-2022 [48]

MICHAEL MEYER/MV
MICHAEL REID/ATTY. FOR DBT.

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

DISPOSITION: Continued to June 16, 2022, at 9:30 a.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to June 16, 2022, at 9:30 a.m., to be heard with the debtor's motion to confirm plan.

9. 17-14163-A-13 **IN RE: JOHN/RITA CORSON**
MHM-3

MOTION TO DISMISS CASE
4-21-2022 [130]

MICHAEL MEYER/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
DISMISSED 5/10/22

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on May 10, 2022. Doc. #142. The motion will be DENIED AS MOOT.

10. 20-10567-A-13 **IN RE: DAVID ALFORD**
RSW-1

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH MERCURY INSURANCE COMPANY
5-2-2022 [28]

DAVID ALFORD/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

David Bernard Alford ("Debtor"), the chapter 13 debtor, moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of all claims and disputes between Debtor and Mercury Insurance Company arising out of a settlement offered from a vehicular accident involving Debtor. Doc. #28.

On October 12, 2019, Debtor was involved in a vehicular accident and sustained personal injuries as a result. Decl. of Debtor, Doc. #30. The other driver was at fault. Id. A settlement was offered to Debtor by Mercury Insurance Company in the gross amount of $40,000.00 for payment of medical liens, costs and attorney fees. Id. After these payments, Debtor will receive approximately $13,096.86. Id.

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. Martin v. Kane (In re A & C Props.), 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. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Debtor has considered the standards of A & C Properties and Woodson. Doc. #28. The proposed settlement allows for a payment of $13,096.86 to Debtor. Debtor has fully exempted the personal injury settlement pursuant to California Code of Civil Procedure § 703.140(b). Am. Schedule C, Doc. #26. The settlement is fair, reasonable, and obtains an economically advantageous result. The court concludes that the A & C Properties factors balance in favor of approving the compromise, and the compromise is in the best interest of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is reasonable. 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). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id.

Accordingly, the motion is GRANTED, and the settlement between Debtor and Mercury Insurance Company is approved. Debtor is authorized, but not required, to execute any and all documents necessary to satisfy the terms of the proposed settlement.

11. 21-11969-A-7 **IN RE: MAE MAGSBY**
MHM-1

CONTINUED MOTION TO DISMISS CASE
11-2-2021 [18]

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CONVERTED 4/21/22

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

On April 21, 2022, the case was converted from a case under chapter 13 to a case under chapter 7. Doc. #62. Therefore, the chapter 13 trustee's motion to dismiss will be dropped as moot.

12. 21-12175-A-13 **IN RE: SHANNON SIMPSON**
MHM-2

CONTINUED MOTION TO DISMISS CASE
11-17-2021 [22]

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

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

DISPOSITION: Continued to July 7, 2022 at 9:00 a.m.

ORDER: The court will issue an order.

The trustee's motion to dismiss will be continued to July 7, 2022 at 9:00 a.m., to be heard with the debtor's motion to confirm plan.

13. 21-12175-A-13 **IN RE: SHANNON SIMPSON**
RSW-4

MOTION TO CONFIRM PLAN
4-15-2022 [66]

SHANNON SIMPSON/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 7, 2022 at 9:00 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to confirm the second modified chapter 13 plan. Tr.'s Opp'n, Doc. #82. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response no later than June 23, 2022. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. Trustee shall file and serve a reply, if any, by June 30, 2022.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than June 30, 2022. However, filing a modified plan may not result in the continuation of Trustee's motion to dismiss, and Trustee's motion to dismiss may be granted notwithstanding a modified plan filed by the debtor. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

14. 22-10192-A-13 **IN RE: ROBERT MARKEL**
MHM-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
4-8-2022 [19]

D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

A motion to confirm an amended plan was filed on May 26, 2022. Doc. ##35, 36. Therefore, the objection will be OVERRULED AS MOOT.

15. 22-10192-A-13 **IN RE: ROBERT MARKEL**
MHM-2

MOTION TO DISMISS CASE
5-6-2022 [25]

MICHAEL MEYER/MV
D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 30, 2022 at 9:30 a.m.

ORDER: The court will issue an order.

At the request of the debtor, the trustee's motion to dismiss will be continued to June 30, 2022, at 9:30 a.m. to be heard with the debtor's motion to confirm the first amended chapter 13 plan.

16. 19-12898-A-13 **IN RE: JEFFREY VANDERNOOR**
RSW-4

CONTINUED MOTION TO MODIFY PLAN
2-15-2022 [94]

JEFFREY VANDERNOOR/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

10:00 AM

1. 22-10606-A-7 **IN RE: AUSHA PITTMAN**
JHK-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-3-2022 [18]

EXETER FINANCE LLC/MV
SUSAN SALEHI/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo 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, Exeter Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2013 Nissan Sentra ("Vehicle"). Doc. #18.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least three complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least $1,780.73, which includes late fees of $126.33. Doc. #20.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the

debtor is in chapter 7. The Vehicle is valued at $7,100.00, and the debtor owes $17,167.48.00. Doc. #20.

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

2. 21-10035-A-7 **IN RE: JASWINDER BHANGOO**
DMG-1

MOTION FOR ADMINISTRATIVE EXPENSES
5-12-2022 [78]

JASWINDER BHANGOO/MV
D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Creditor Ascentium Capital LLC ("Ascentium") timely filed written opposition on May 20, 2022. Doc. #83. 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.

Jaswinder Singh Bhangoo ("Debtor"), the chapter 7 debtor, moves the court for an order authorizing payment to Debtor of $8,677.78 as administrative expenses incurred for the benefit of the chapter 7 estate. Doc. #78.

Background

Previously in this case, Debtor claimed a homestead exemption in real property commonly known as 6907 Wild Rogue Court, Bakersfield, CA 93313 (the "Property"). Before filing the chapter 7 petition, Debtor rented the Property to tenants, and a dispute arose concerning Debtor's entitlement to the claimed homestead exemption. It was determined by this court, and affirmed on appeal to the B.A.P., that Debtor was not entitled to the claimed homestead exemption. See Bhangoo v. Engs Com. Fin. Co. (In re Bhangoo), 634 B.R. 80 (B.A.P. 9th Cir. 2021). The chapter 7 trustee ("Trustee") has considered plans to sell the Property. See Mot. to Employ Real Estate Broker, Doc. #73; Order Authorizing Employment, Doc. #77.

Having lost the homestead exemption, and with Trustee considering a sale of the Property, Debtor now seeks reimbursement from the chapter 7 estate for: (1) $1,791.16 paid by Debtor post-petition to reduce the principal owing on the mortgage encumbering the Property; and (2) $6,886.62 spent on repairs to return

the Property to a habitable condition when Debtor returned to the Property. Decl. of Debtor, Doc. #80.

Ascentium's Opposition

Ascentium filed timely written opposition on May 20, 2022. Doc. #83. As a procedural matter, Ascentium raises issue with the Notice of Hearing filed in connection with Debtor's motion. Ascentium contends that the Notice of Hearing sets forth requirements for submitting opposition that are improper as a matter of law. Doc. #83. It appears this concern stems from a likely typographical error in the Notice of Hearing. LBR 9014-1(f)(1)(B) provides the requirements for written opposition, including that opposition shall specify whether the responding party consents to the court's resolution of disputed material factual issues pursuant to Federal Rule of Civil Procedure 43(c). The Notice of Hearing incorrectly states Federal Rule of Civil Procedure 43(e). Doc. #79. The local rule goes on to state that "[f]ailure to file a separate statement shall be construed as consent to resolution of the motion and all disputed material factual issues pursuant to Fed. R. Civ. P 43(c)." LBR 9014-1(f)(1)(B). Ascentium did not file a separate statement, and its consent is so construed.

As a further procedural matter, Ascentium's opposition and proof of service thereof are filed as a single document. Doc. #83. LBR 9014-1(e)(3) requires a "proof of service for all pleadings and documents filed in support or opposition to a motion" to be "filed as a separate document [bearing] the Docket Control Number." Additionally, the proof of service purports to indicate that service was made by CM/ECF Notice of Electronic Filing, but the names of the parties so served are entirely illegible. Doc. #83. LBR 7005-1(d)(3) requires that, when service is accomplished by electronic means, "the certificate of service shall include the email addresses to which the document(s) were transmitted, and the party, if any, whom the recipient represents." LBR 7005-1(d)(3). Ascentium's certificate of service does not satisfy this requirement. It also appears that Ascentium does not have the correct address for Debtor's attorney, and that Debtor himself was not served with the opposition. See Fed. R. Bankr. P. 7004(b)(9).

Ascentium's opposition attacks Debtor's evidence and generally questions the legal validity of Debtor's motion. Doc. #83. Ascentium's attack on Debtor's evidence begins with authentication. Federal Rule of Evidence 901(a) requires the proponent submitting an item of evidence to "produce evidence sufficient to support a finding that the item is what the proponent claims it is." This authentication requirement is often satisfied by the proponent's testimony that the item is what the proponent claims it to be. See Fed. R. Evid. 901(b)(1).

To support the motion, Debtor submitted five documents, each purported to be an invoice for work or repairs done on the Property. Exs. A-E, Doc. #81. By the declaration, Debtor signals that each exhibit corresponds to a particular type of repair. Debtor's Decl. ¶ 4, Doc. #80. For example, Exhibit A has to do with painting repairs. Id. However, Debtor does not testify that the exhibits are the item that Debtor claims them to be. That is, for example, Debtor never states that Exhibit A is an invoice Debtor received from a painter hired to repair paint damage to the Property.

Similarly, Ascentium contends that the exhibits do not clearly indicate that they are invoices for work performed on the Property for Debtor, as opposed to repairs to some other property or for someone other than Debtor. Doc. #83. Further, some of the exhibits are illegible. Doc. #83.

Exhibit A, purportedly an invoice for painting, states that it was billed to Jesse Bhangoo at the Property address. Ex. A, Doc. #81. It is not clear if

Jesse Bhangoo is Debtor. Additionally, while Exhibit A was billed to the Property address, it is not obvious from the exhibit that the work was performed on the Property.

Exhibit B is an invoice for appliances billed to Debtor at the Property. Ex. B, Doc. #81. The invoice is for Samsung appliances totaling $2,077.29. However, in addition to the general authentication deficiencies applicable to all exhibits, Ascentium points out that Debtor testifies that Debtor "had to remove trash, replace cabinet doors, replace carpet, patch holes in the walls and deep clean our home prior to moving back." Debtor Decl. ¶ 4, Doc. #80. Assuming, without deciding, that Debtor does have an administrative expense claim for improvements made to the Property, Debtor does not explain why new appliances were necessary for returning the Property to a habitable condition.

Exhibit C is an invoice billed to Jesse Bhangoo presumably for some general plumbing and carpentry work performed by Benny Barrera. Ex. C, Doc. #81. Again, it is unclear if Jesse Bhangoo is Debtor. Further, there is no address listed on the exhibit, and it is not evident from the exhibit that the work stated on the invoice was performed on the Property.

Exhibit D is completely illegible. While it is apparent that some markings were made to the invoice form, the markings are so faint that they cannot be read. Ex. D, Doc. #81.

Exhibit E is the second invoice billed to Jesse Bhangoo by Benny Barrera. Ex. E, Doc. #81. Like Exhibit C, it is not evident from the exhibit that the work stated on the invoice was performed on the Property and it is unclear if Jesse Bhangoo is Debtor. Additionally, Exhibit E is purportedly an invoice for a new sprinkler system. Like the invoice for appliances, if the court assumes without deciding that Debtor does have an administrative expense claim for improvements to the Property, there is no indication that a new sprinkler system was required to return the Property to a habitable state, as Debtor contends.

After reviewing the evidence in light of Ascentium's opposition, the court finds that Debtor failed to properly authenticate any of the exhibits. Debtor has not produced evidence sufficient to support a finding that the exhibits are what Debtor claims them to be. Both parties have consented to resolution of the motion and all disputed material factual issues pursuant to Federal Rule of Civil Procedure 43(c), which allows the court to hear a matter on declarations. LBR 9014-1(f)(1)(B), (C). There does not appear to be any genuine dispute of material fact, the issues presented in Ascentium's opposition are issues of law and evidence. Therefore, the evidentiary record closed one week prior to the hearing date. LBR 9014-1(f)(1)(C). Meaning, for the purposes of this motion only, Debtor lost the opportunity to cure the defects in authentication.

With respect to the legal validity of the motion, Ascentium contends that Debtor's motion is premature. The Property has not yet been sold, and there may not be a sale by Trustee. The Property may be abandoned by Trustee, at which point the Property may be sold at a sheriff's sale and there would be no administrative expenses to pay. Doc. #83. While Ascentium does not offer any legal or factual support for this argument, the court does not believe that a decision on the merits of Debtor's motion is warranted at this time.

Section 503(b)(1)(A) allows administrative expense claims for "the actual, necessary costs and expenses of preserving the estate[.]" 11 U.S.C. § 503(b)(1)(A). Debtor correctly states that the burden of proving an administrative expense claim is on Debtor. Microsoft Corp. v. DAK Indus. (In re

DAK Indus.), 66 F.3d 1091, 1094 (9th Cir. 1995). In light of the evidentiary objections, Debtor has not carried the burden.

Further, the cases cited by Debtor state that the administrative expense claimant must show that the debt asserted to be an administrative expense

> (1) arose from a transaction with the debtor-in-possession as opposed to the preceding entity (or, alternatively, that the claimant gave consideration to the debtor-in-possession); and
> (2) directly and substantially benefitted the estate.

DAK Industries, 66 F.3d at 1094. Debtor has not shown that the debt asserted to be an administrative expense arose from a transaction with the chapter 7 trustee.

Accordingly, Debtor's motion will be DENIED WITHOUT PREJUDICE. The court's ruling on the instant motion is made without prejudice to Debtor curing the evidentiary defects and providing a more robust legal analysis should the Property be sold and proceeds from the sale become available for distribution by Trustee to administrative expense claimants.

3. 14-14739-A-7 **IN RE: ADAN GARCIA**
JMV-1

MOTION FOR ADMINISTRATIVE EXPENSES
5-12-2022 [65]

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

Jeffrey M. Vetter ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Adan Garcia ("Debtor"), moves the court for an order authorizing the payment of $1,226.00 to the Internal Revenue Service for income tax due for the 2021 tax year, $168.00 to the Franchise Tax Board for income tax due for the

2021 tax year, and for authorization to pay an additional amount up to $1,000.00 for any unexpected tax liabilities without court approval. Doc. #65.

11 U.S.C. § 503(b)(1)(B) states that, after notice and a hearing, administrative expenses shall be allowed for "any tax [] incurred by the estate, whether secured or unsecured, including property taxes . . . except a tax of a kind specified in section 507(a)(8) of this title[.]" "Pursuant to this subsection of § 503, a claim is entitled to allowance as an administrative expense if two requirements are satisfied: the tax must be incurred by the estate and the tax must not be a tax of a kind specified in § 507[(a)(8)]." Towers for Pacific-Atlantic Trading Co. v. United States (In re Pacific-Atlantic Trading Co.), 64 F.3d 1292, 1298 (9th Cir. 1995). Here, Trustee has shown that the tax was incurred by the estate, and the tax is not a tax of the kind specified in § 507(a)(8).

Accordingly, this motion is GRANTED. The estate is authorized to pay $1,226.00 to the Internal Revenue Service, $168.00 to the Franchise Tax Board and is authorized to pay an additional amount not to exceed $1,000 for any unexpected tax liability incurred by the estate.

4. 22-10555-A-7 **IN RE: ANGELA ACOSTA**
RDW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION/APPLICATION FOR ADEQUATE PROTECTION
5-16-2022 [19]

RECFI, LLC/MV
R. BELL/ATTY. FOR DBT.
REILLY WILKINSON/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The movant, RECFI, LLC – c/o Systems & Services Technologies Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2022 Forest River Cherokee 26 DBH ("Vehicle"). Doc. #19.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay. The debtor entered into a contract for the Vehicle just 21 days before the debtor filed her chapter 7 bankruptcy petition, and there is no indication that the debtor has made any payments owed to Movant for the Vehicle. Doc. #21. Moreover, the debtor stated in her statement of intentions that the debtor intends to surrender the Vehicle, which the debtor has not done. Doc. #19.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. Movant values the Vehicle at $24,000.00 and the amount owed to Movant is $34,881.21. Doc. #21.

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

The request for attorney's fees will be denied pursuant to 11 U.S.C. §506(b). The debtor has no equity in the property.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor entered into the contract with Movant only 21 days before filing her chapter 7 bankruptcy petition, the debtor has made no payments to Movant, the debtor has no equity, and the Vehicle is a depreciating asset.

5. 19-14772-A-7 **IN RE: ELECTRICAL POWER SERVICES, INC.**
LNH-4

MOTION FOR COMPENSATION FOR LISA HOLDER, TRUSTEES ATTORNEY(S)
5-13-2022 [72]

D. GARDNER/ATTY. FOR DBT.
LISA HOLDER/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 pursuant to 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 moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Lisa Noxon Holder, PC ("Movant"), general counsel for chapter 7 trustee Jeffrey M. Vetter ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered November 23, 2019 through May 11, 2022. Doc. #72. Movant provided legal services valued at $6,000.00, and requests compensation for that amount. Doc. #72. Movant requests reimbursement for expenses in the amount of $250.00. Doc. #72. This is Movant's first and final fee application.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing counsel to Trustee as to the administration of the chapter 7 case; (2) assisting Trustee in obtaining authority for various auction matters; (3) preparing and maintaining accurate business records for projects worked on; and (4) preparing and filing fee applications. Decl. of Lisa Holder, Doc. #75; Ex. A, Doc. #76. Trustee reviewed Movant's application and has no objection. Doc. #74. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of $6,000.00 and reimbursement for expenses in the amount of $250.00. Trustee is authorized to make a combined payment of $6,250.00, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

6. 22-10382-A-7 **IN RE: JEREMIAH BROWN**
JHK-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-11-2022 [14]

EXETER FINANCE LLC/MV
DAVID CHUNG/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at

least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo 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, Exeter Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2019 Chevrolet Camaro ("Vehicle"). Doc. #14.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least three complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least $2,041.94, including $185.24 in late fees. Doc. #17.

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. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

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

10:30 AM

1. 20-10010-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
1-2-2020 [1]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

2. 20-10010-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
DMG-3

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION/APPLICATION FOR ADEQUATE PROTECTION
3-10-2022 [906]

STEPHANIE HUDSON/MV
LEONARD WELSH/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

3. 20-10010-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
LKW-34

MOTION TO EMPLOY DREAM HOME REALTY AS REALTOR(S)
5-24-2022 [997]

EDUARDO GARCIA/MV
LEONARD WELSH/ATTY. FOR DBT.
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.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Though not required, Tracy Hope Davis ("UST"), United States Trustee for Region 17, filed written opposition on June 6, 2022. Doc. 1023. Further opposition may be presented at the hearing, and this matter will proceed as scheduled.

Debtors in possession Eduardo Zavala Garcia and Amalia Perez Garcia (collectively, "Debtors" or "DIP") move pursuant to 11 U.S.C. § 327(a) for authorization to employ Dream Home Realty ("Broker") to serve as a real estate

broker in connection with the sale of a single-family residence located at 388 Tucker Street, Arvin, California 93203 ("Property"). Doc. #997. Erika Garcia ("Listing Agent") is a real estate agent employed by Broker and will be the listing agent for the sale of the Property. Decl. of Eduardo Zavala Garcia, Doc. #1000. Listing Agent is Debtors' niece. Id.

Section 1107 of the Bankruptcy Code gives DIP all the rights and powers of a trustee and requires DIP perform all the functions and duties of a trustee, subject to certain exceptions not applicable here. 11 U.S.C. § 1107. Section 327(a) of the Bankruptcy Code permits DIP to employ, with court approval, professionals "that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist" DIP in carrying out DIP's duties under the Bankruptcy Code. 11 U.S.C. § 327(a). "The applicant bears the burden of proving that the standards of appointment have been met." In re Grant, 507 B.R. 306, 309 (Bankr. E.D. Cal. 2014).

UST argues that Listing Agent is not a disinterested person as required by § 327(a). A "disinterested person" is a person that is not an insider. 11 U.S.C. § 101(14). When the debtor is an individual, an "insider" includes a relative of the debtor within the third degree. 11 U.S.C. § 101(31)(A), (45). A niece is related in the third degree. See Cal. Prob. Code § 13(c). Therefore, Listing Agent is not a disinterested person within the meaning of the Bankruptcy Code.

UST further argues that Broker may be disqualified as not disinterested. UST contends that there is no vicarious disqualification provided in the Bankruptcy Code and that Listing Agent's disqualification may not require Broker's disqualification. However, UST states that Broker should be disqualified because DIP only engaged Broker to work with Listing Agent. In the context of law firm disqualifications, the Ninth Circuit Bankruptcy Appellate Panel ("B.A.P.") has stated that "when the only person working with Debtor is the person who is not disinterested, the disinterestedness standard would be eradicated by corporate form over substance." Official Comm. Of Unsecured Creditors v. ABC Cap. Mkts. Group (In re Capitol Metals Co., Inc.), 228 B.R. 724, 727 (B.A.P. 9th Cir. 1998). The court is inclined to agree with the reasoning of the B.A.P. and find that Listing Agent's lack of disinterestedness can be imputed to Broker, particularly because Listing Agent is to be the listing agent for Broker in connection with the sale of the Property, and Listing Agent is Debtors' niece. Listing Agent is the sole agent for Broker to have signed the residential listing agreement. Ex. D, Doc. #999.

Accordingly, the court is inclined to DENY DIP's motion to employ Broker in connection with the sale of the Property.

4. 21-12348-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**
IJL-4

MOTION FOR COMPENSATION FOR IGNACIO J. LAZO, DEBTORS ATTORNEY(S)
5-16-2022 [83]

IGNACIO LAZO/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 matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice by mail of this motion was sent on May 16, 2022 with a hearing date set for June 9, 2022. The motion was set for hearing on less than 28 days' notice and is governed by Local Rule of Practice ("LBR") 9014-1(f)(2) (in addition to Federal Rule of Bankruptcy Procedure 2002). Pursuant to LBR 9014-1(f)(2), written opposition was not required, and any opposition may be raised at the hearing. However, the Notice of Hearing filed with the motion stated that opposition must be filed and served no later than May 26, 2022 and that failure to file a written response may result in the court granting the motion prior to the hearing. The Notice of Hearing does not comply with LBR 9014-1(f)(2).

5. 21-12348-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**
IJL-5

MOTION FOR AUTHORIZATION TO ACCEPT A THIRD-PARTY POSTPETITION RETAINER
5-16-2022 [88]

JUAREZ BROTHERS INVESTMENTS, LLC/MV
IGNACIO LAZO/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 matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice by mail of this motion was sent on May 16, 2022 with a hearing date set for June 9, 2022. The motion was set for hearing on less than 28 days' notice and is governed by Local Rule of Practice ("LBR") 9014-1(f)(2) (in addition to Federal Rule of Bankruptcy Procedure 2002). Pursuant to LBR 9014-1(f)(2), written opposition was not required, and any opposition may be raised at the hearing. However, the Notice of Hearing filed with the motion stated that opposition must be filed and served no later than May 26, 2022 and that failure to file a written response may result in the court granting the motion prior to the hearing. The Notice of Hearing does not comply with LBR 9014-1(f)(2).

1. 21-12348-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**
22-1004 CAE-1

CONTINUED STATUS CONFERENCE RE: COMPLAINT
1-11-2022 [1]

JUAREZ BROTHERS INVESTMENTS, LLC V. GRIMMWAY ENTERPRISES, INC.
IGNACIO LAZO/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.