



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, June 15, 2023
Department A – Courtroom #11
Fresno, California**

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [23-11001](#)-A-13 **IN RE: RUTHANN SNYDER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-25-2023 [[15](#)]

NICHOLAS WAJDA/ATTY. FOR DBT.
\$313.00 FILING FEE PAID 5/25/23

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fees now due have been paid in full.

2. [23-10703](#)-A-13 **IN RE: CESAR BANDA AND SILVIA PENA**
[NLG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-5-2023 [[54](#)]

WILMINGTON SAVINGS FUND SOCIETY, FSB/MV
ZISHAN LOKHANDWALA/ATTY. FOR DBT.
NICHOLE GLOWIN/ATTY. FOR MV.
DISMISSED 5/25/23

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 25, 2023. Doc. #71. Therefore, this motion will be DENIED AS MOOT.

3. [23-10010](#)-A-13 **IN RE: PARMINDER SINGH AND RANJIT KAUR**
[APN-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON
2-15-2023 [[27](#)]

THE BANK OF NEW YORK MELLON/MV
JERRY LOWE/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

NO RULING.

4. [23-10819](#)-A-13 **IN RE: JUAN BERBER RAMIREZ AND YUDIANA HERNANDEZ BERBER**
[PBB-1](#)

MOTION TO VALUE COLLATERAL OF TD BANK, N.A.
5-8-2023 [\[21\]](#)

YUDIANA HERNANDEZ BERBER/MV
PETER BUNTING/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 30, 2023. Doc. #39.

5. [22-11124](#)-A-13 **IN RE: ROBERT ZAMORA AND NICOLE SELLERS**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
4-13-2023 [\[60\]](#)

MICHAEL MEYER/MV
SCOTT LYONS/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.

On April 13, 2023, the chapter 13 trustee ("Trustee") moved to dismiss under 11 U.S.C. § 1307(c)(1) and (c)(6) for failure to make all payments due under the plan. Doc. #60. Plan payments were delinquent in the amount of \$8,850.00 as of April 13, 2023, with an additional \$4,425.00 due on April 25, 2023. Id. On April 27, 2023, the debtors responded stating that the debtors intended to cure the plan payment default by filing and serving a modified plan. Doc. #64. On May 9, 2023, the debtors filed and served a motion to confirm the debtors' first modified plan and set that motion for hearing on June 15, 2023. Doc. ##66-71. That motion has been granted by final ruling, matter #6 below.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). It appears that confirmation of the debtors' first modified plan satisfies all outstanding grounds for Trustee's motion to dismiss, so there is no "cause" for dismissal under 11 U.S.C. § 1307(c)(1) or (c)(6).

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

6. [22-11124](#)-A-13 **IN RE: ROBERT ZAMORA AND NICOLE SELLERS**
[SL-4](#)

MOTION TO MODIFY PLAN
5-9-2023 [[66](#)]

NICOLE SELLERS/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

As a procedural matter, the movant checked the box indicating that service was made pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 7004. Doc. #71. The declarant also checked the box indicating they included an Attachment 6A1, which is required if service is effectuated under Rule 7004. However, the attachment with the certificate of service was a Clerk's Matrix of Creditors instead of "a list of the persons served, including their names/capacity to receive service, and address is appended [to motion] and numbered Attachment 6A1." If the movant intended to effectuate service pursuant to Rule 7004, the movant should have attached the correct item.

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

7. [23-10732](#)-A-13 **IN RE: JUAN SANDOVAL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-17-2023 [\[25\]](#)

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid.

The order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case may be dismissed without further notice or hearing.

8. [23-10732](#)-A-13 **IN RE: JUAN SANDOVAL**
[MB-1](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY AND/OR MOTION FOR ORDER TO REMAIN EFFECTIVE IN FUTURE BANKRUPTCY CASES, MOTION FOR A 180 DAY BAR
6-1-2023 [\[27\]](#)

EUSTOLIA CAMACHO/MV
GARRETT LEATHAM/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 the hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and 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.

Creditor Eustolia Camacho ("Movant") moves the court for an order confirming the termination of the automatic stay in this case pursuant to 11 U.S.C. § 362(c)(4) and staying dismissal of this bankruptcy case until Movant can complete the foreclosure process on debtor Juan Reynoso Sandoval's ("Debtor") property located at 1405 Whitson Avenue in Selma, CA (the "Property"), a restaurant Movant sold to Debtor. Motion, Doc. #27. Alternatively, pursuant to 11 U.S.C. § 362(c)(4)(A)(ii), Movant moves the court for an order confirming the termination remain effective in any future bankruptcy case concerning the Property or case filed by the Debtor for one year from the date the above order is issued, and a 180-day bar to filing any future bankruptcy cases pursuant to 11 U.S.C. § 109(g).

Movant requests the court take judicial notice of the following documents: (a) Voluntary Petition (Doc. #1) for Case No. 22-11489, (b) Order (Doc. #12) dismissing Case No. 22-11489, (c) Order (Doc. #31) closing Case No. 22-11489, (d) Voluntary Petition (Doc. #1) for Case No. 22-11789, (e) Order (Doc. #11) dismissing Case No. 22-11789, and (f) Order (Doc. #20) closing Case No. 22-11789. Doc. #31. This court may take judicial notice of and consider the records in this bankruptcy case, filings in other court proceedings, and public records. Fed. R. Evid. 201; Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of the existence of a filed document but does not take judicial notice of the truth or falsity of the contents of any such document for the purpose of making a finding of fact. In re Harmony Holdings, LLC, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008) (collecting cases).

Under 11 U.S.C. § 362(c)(4)(A)(ii), if a debtor has filed two or more cases that were dismissed the previous year, the automatic stay under 362(a) shall not go into effect. 11 U.S.C. § 362(c)(4)(A)(ii) also provides that on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect. After review of the included evidence, the court finds that no stay is in effect.

Debtor filed this case on April 12, 2023. Petition, Doc. #1. Debtor had two chapter 13 cases pending within the one-year period preceding the filing of this bankruptcy, Case No. 22-11489 (Bankr. E.D. Cal.) (the "First Prior Case") and Case No. 22-11789 (Bankr. E.D. Cal.) (the "Second Prior Case"). The First Prior Case was filed on August 28, 2022 and dismissed on September 16, 2022. The Second Prior Case was filed on October 19, 2022 and dismissed on November 7, 2022. Because Debtor's First Prior Case and Second Prior Case were dismissed within the one-year period preceding the filing of this case, the automatic stay did not go into effect.

In addition, the court is inclined to stay dismissal of this bankruptcy case until Movant can complete her foreclosure of the Property. Movant sold the Property, a restaurant, to Debtor for \$164,000.00. Doc. #27; Ex. 1, Doc. #30. Debtor executed a promissory note (the "Note") payable to Movant requiring payment of \$1,814.97 per month beginning on January 29, 2021 and continuing until December 29, 2023, at which time the entire unpaid principal balance would become due and payable. Doc. #27; Ex. 1, Doc. #30. The Property was transferred to Debtor on October 23, 2020, and the grant deed was recorded in Fresno County on December 29, 2020. Doc. #27; Ex. 3, Doc. #30. Debtor executed a deed of trust in conjunction with the Note, securing payment for the Note. Doc. #27, Ex. 2, Doc. #30. Prior to the Note being satisfied, the Property burned down in November 2021. Decl. of Eustolia Camacho, Doc. #29. Cal-Valley Insurance Services, Inc. issued a check in the amount of \$239,000.00 made payable to both Debtor and Movant. Ex. 4, Doc. #30. The check was endorsed by both Creditor and Debtor and cashed on or about March 14, 2022 at a Chase Bank located at 1380 W. Shaw Avenue in Fresno, CA. Ex. 5, Doc. #30. Movant adamantly denies signing the check and believes Debtor forged her signature in order to cash the check. Camacho Decl., Doc. #29. Since Debtor has defaulted on the Note, Movant has made multiple attempts to foreclose on the Property. Id. Each time Movant has moved to foreclose on the Property, Debtor has filed for bankruptcy to halt Movant's efforts. Id. Because Debtor has filed multiple bankruptcy cases to prevent Movant from foreclosing on the Property and this bankruptcy case cannot proceed because Debtor has not filed a credit counseling certificate, see motion to dismiss, (MHM-1), Doc. #21, the court is inclined to stay dismissal of Debtor's bankruptcy case until Movant can complete her foreclosure on the Property.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(c)(4) to confirm termination of the automatic stay and the court will stay dismissal of this bankruptcy case until Movant can complete the foreclosure process on the Property. Because the court is granting Movant's request confirming termination of the automatic stay and will stay dismissal of Debtor's bankruptcy case until Movant can complete her foreclosure of the Property, the court will not address Movant's requests for alternative relief.

9. [23-10732](#)-A-13 **IN RE: JUAN SANDOVAL**
[MHM-1](#)

MOTION TO DISMISS CASE
5-12-2023 [[21](#)]

NO RULING.

10. [22-12135](#)-A-13 **IN RE: KIMBERLY YONEMITSU-TODD**
[NES-2](#)

CONTINUED MOTION TO CONFIRM PLAN
3-29-2023 [[59](#)]

KIMBERLY YONEMITSU-TODD/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The debtor filed a modified plan on May 25, 2023 (NES-4, Doc. #89), with a motion to confirm the modified plan set for hearing on June 29, 2023 at 9:30 a.m. Doc. ##84-89.

11. [22-12135](#)-A-13 **IN RE: KIMBERLY YONEMITSU-TODD**
[NES-3](#)

CONTINUED MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS ATTORNEY(S)
4-27-2023 [[70](#)]

NEIL SCHWARTZ/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 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The chapter 13 trustee timely filed written opposition on May 8, 2023. Tr.'s Obj., Doc. #78. The matter will proceed as scheduled.

Neil E. Schwartz ("Movant"), counsel for Kimberly Yonemitsu-Todd ("Debtor"), the debtor in this chapter 13 case, requests approval of attorneys' fees and costs received post-petition in the amount of \$3,000.00. Ex. B, Doc. #72. Debtor's case was filed on December 16, 2022, as a pro-se filing. Doc. #1. On February 8, 2023, Movant substituted in as attorney of record for Debtor. Doc. #24.

Michael H. Meyer ("Trustee"), the chapter 13 trustee in this bankruptcy case, objects to Debtor's post-petition direct payment of attorney's fees to the extent that the payment of the post-petition retainer has not been approved by this court pursuant to LBR 2016-1(b). Tr.'s Obj., Doc. #78.

"After the filing of the petition, a debtor's attorney shall not accept or demand from the debtor or any other person any payment for services or cost reimbursement without first obtaining a court order authorizing the fees and/or costs and specifically permitting direct payment of those fees and/or costs by the debtor." LBR 2016-1(b). Movant's receipt of a post-petition retainer from Debtor is a post-petition transfer of property of the estate outside of the ordinary course of business that required prior court approval under 11 U.S.C. § 363(b), which was not done here, and this motion does not seek approval of the post-petition transfer of attorneys' fees pursuant to 11 U.S.C. § 363(b). See, e.g., In re Stein, 502 B.R. 81, 84-85 (Bankr. E.D. Pa. 2013).

Accordingly, this motion is DENIED.

12. [23-10845](#)-A-13 **IN RE: CHRISTOPHER LA FLAMME**
[DGK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-15-2023 [\[13\]](#)

TARA ESTATES/MV
STEVEN ALPERT/ATTY. FOR DBT.
DIXON KUMMER/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on June 1, 2023. Opposition, Doc. #19. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

As a procedural matter, the exhibits (Doc. ##15, 16) to this motion do not comply with LBR 9004-2(d)(1), which requires exhibits to include an exhibit index. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

The movant, Tara Estates ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d) with respect to residential real property located at 1550 20th Street West Space 72, Rosamond, California, 93560, Kern County ("Property"). Doc. #13. Movant is the owner of the Property, but Christopher LaFlamme ("Debtor") had an interest in the Property at the time his chapter 13 case was commenced stemming from a month-to-month residential lease agreement between Movant and Debtor. Ex. 1, Doc. #15. Pre-petition, Movant commenced an unlawful detainer action against Debtor in the Superior Court of California, Kern County, East District-Mojave Branch Case Number MCL-23-000077, which has been stayed because of the automatic stay. Ex. 2, Doc. #16. Movant seeks relief from the automatic stay to pursue the unlawful detainer action in state court and allow Movant to proceed under applicable non-bankruptcy law to enforce Movant's remedies to gain possession of the Property. Doc. #13.

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

Debtor opposes the motion because even though Debtor has pre-petition delinquencies on his rent, Debtor's chapter 13 plan proposes to assume the lease and cure the pre-petition arrears on the lease in full through the plan. Opposition, Doc. #19.

Debtor's bankruptcy petition was filed in this court on April 26, 2023. Doc. #1. Debtor's voluntary petition lists the Property as Debtor's mailing address, and Debtor scheduled the Property as Debtor's residence in which Debtor asserts an interest, possessory or otherwise. Petition, Doc. #1; Schedule A/B, Doc. #1. Further, Debtor's Schedule G lists an executory contract or unexpired lease for the Property, which is a mobile home lot. Schedule G, Doc. #1. Debtor's proposed chapter 13 plan proposes to assume the lease with Movant and to pay movant's arrears in full. Plan, Doc. #3. Objections to the proposed plan were to be filed and served by June 6, 2023. Notice, Doc. #10. A review of the docket in Debtor's bankruptcy case shows that no timely objections to confirmation of Debtor's proposed plan have been filed.

Because Debtor will assume the lease with Movant pursuant to his proposed chapter 13 plan and will pay all pre-petition arrears in full through the proposed plan, and there is no timely objection to confirmation of Debtor's proposed chapter 13 plan, the court finds that cause does not exist to grant relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

Accordingly, the motion will be DENIED.

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-17-2023 [\[9\]](#)

FIRST REGIONAL BANK/MV
SUSAN SILVEIRA/ATTY. FOR DBT.
EDWARD WEBER/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor, Sonia Lopez ("Debtor"), filed timely written opposition on June 2, 2023. Doc. #19. This matter will proceed as scheduled.

As a procedural matter, the certificate of service filed in connection with this motion (Doc. #14) does not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

As an informative matter, the certificate of service filed in connection with the opposition to the motion (Doc. #22) was filed as a fillable version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/2022) instead of being printed prior to filing with the court. The version that was filed with the court can be altered because it is still the fillable version. In the future, the declarant should print the completed certificate of service form prior to filing and not file the fillable version.

The movant, Brilena, Inc. as to an undivided 31.25% interest, Michael Bumbaca and Adele Bumbaca Husband and Wife as Joint Tenants as to an undivided 43.75% interest, and First Regional Bank, as Custodian FBO Robert Pastor IRA Acct. No. 051236, as to an undivided 25.00% interest (collectively, "Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to real property located at 819 North Divisadero Street, Visalia, California 93291 (the "Property"). Doc. #9. Movant also seeks relief under 11 U.S.C. § 362(d)(4). Id.

Relevant Facts

On or about August 9, 2007, Debtor executed a note in the original principal amount of \$80,000.00 ("Note"). Ex. A, Doc. #13. The debt under the Note is secured by a Deed of Trust recorded against the Property. Ex. B, Doc. #13. Movant is the current beneficiary under the Deed of Trust and current holder of the Note. Motion, Doc. #9.

According to Movant, Debtor is in default pursuant to the terms of the Note. Doc. #9. A Notice of Trustee's Sale was recorded on April 7, 2023, and a Trustee's Sale was set for May 4, 2023. Id. Debtor filed this chapter 13 case on May 2, 2023. Petition, Doc. #1.

Debtor's Schedule A/B lists the Property. Schedule A/B, Doc. #1. Debtor's Schedule D asserts that Movant holds a first Deed of Trust on the Property. Schedule D, Doc. #1. Debtor values the Property at \$389,000.00 and schedules Movant's secured claim at \$152,000.00 as a disputed claim. Id. On May 10, 2023, Movant filed a proof of claim in the amount of \$163,108.52 and asserted pre-petition arrears in the amount of \$84,089.19. Claim #2. Debtor has proposed a plan that provides for payment of Movant's pre-petition arrears in the estimated amount of \$70,000.00. Plan, Doc. #7.

Relief from Stay Under 11 U.S.C. § 362(d) (1)

11 U.S.C. § 362(d) (1) allows the court to grant relief from the stay for cause, including 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" does not exist to lift the stay.

Based on Debtor's schedules, the value of the Property is more than double the full amount of Movant's claims. Schedules A/B and D, Doc. #1. Moreover, Debtor has proposed a plan that provides for Movant's pre-petition arrears, although the proposed estimated arrears are less than the amount of arrears set forth in Movant's proof of claim. See Plan, Doc. #7; Claim 2. Section 3.02 of the proposed plan provides that the proof of claim determines the amount and classification of a claim, so Debtor will have to pay Movant's pre-petition arrears in full pursuant to the plan before the plan can be confirmed. Plan, Doc. #7. Because Movant has a significant equity cushion in the Property and Debtor will have to provide for payment of Movant's pre-petition arrears in full before her chapter 13 plan can be confirmed, the court finds cause does not exist pursuant to 11 U.S.C. § 362(d) (1) to lift the automatic stay based on the value of the Property and alleged pre-petition arrears.

Movant also argues that Debtor is in default of her obligations since Movant has not received a copy of an insurance policy that includes the Property. Doc. #9; Decl. of Michele Canty, Doc. #12. Debtor responded that Debtor has provided proof of insurance on the Property and has made a post-petition mortgage payment for June 2023. Debtor's Obj., Doc. #19; Ex. A & B, Doc. #21. The court finds that cause does not exist pursuant to 11 U.S.C. § 362(d) (1) to lift the automatic stay for Debtor's failure to confirm insurance on the Property.

Relief from Stay Under 11 U.S.C. § 362(d) (2)

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.

Movant seeks relief under 11 U.S.C. § 362(d) (2) without evidence or argument. The court finds Debtor has equity in the Property because the Property is valued at \$389,000.00 and Debtor owes \$163,108.52. Schedule A/B, Doc. #1; Claim 2. Further, the Property is necessary to an effective reorganization because Debtor is in chapter 13.

Accordingly, the motion will not be granted pursuant to 11 U.S.C. § 362(d) (2).

Relief from Stay Under 11 U.S.C. § 362(d) (4)

11 U.S.C. § 362(d) (4) allows the court to grant relief from the stay with respect to real property

if the court finds that the filing of the [bankruptcy] petition was part of a scheme to delay, hinder, or defraud creditors that involved either [] a transfer of all or part ownership of, or other interest in such real property without the consent of the secured creditor or court approval; or [] multiple bankruptcy filings affecting such real property.

11 U.S.C. § 362(d) (4). To obtain relief under § 362(d) (4), the court must affirmatively find: (1) the debtor's bankruptcy filing is part of a scheme; (2) the object of the scheme is to delay, hinder, or defraud creditors; and (3) the scheme involves either (i) the transfer of some interest in real property without the secured creditor's consent or court approval or (ii) multiple bankruptcy filings affecting the property. First Yorkshire Holdings, Inc. v. Pacifica L 22 (In re First Yorkshire Holdings, Inc.), 470 B.R. 864, 870-71 (B.A.P. 9th Cir. 2011). "[T]he multiple filings thus must somehow be connected with or included in the scheme to delay, hinder [or] defraud creditors." In re Muhaimin, 343 B.R. 159, 168 (Bankr. D. Md. 2006).

As set forth in the motion, Debtor has filed several bankruptcy cases since 2009. Doc. #9; See Case No. 09-90730 (Bankr. E.D. Cal.), Case No. 09-91977 (Bankr. E.D. Cal.), Case No. 11-94324 (Bankr. E.D. Cal.), Case No. 15-14086-mkn (Bankr. D. Nev.), Case No. 21-11266-mkn (Bankr. D. Nev.), and Case No. 21-12418-mkn (Bankr. D. Nev.).

Debtor filed this current case on May 2, 2023. Petition, Doc. #1; Case No. 23-10947. Movant believes Debtor filed this case in bad faith to delay Movant's foreclosure sale set for May 4, 2023 because: (1) the filing came right before the scheduled foreclosure sale; (2) Debtor has a lengthy history in and out of bankruptcy in several jurisdictions since 2009; (3) Debtor has not been able to reinstate or pay the loan in any of her cases; and (3) Debtor is collecting rent but not making payments to Movant. Doc. #9. Movant further asserts that Debtor does not have the intent or ability to perform under her proposed plan. Id.

In response, Debtor states that more than thirteen years ago, between 2009 and 2011, Debtor filed three chapter 7 bankruptcy cases and two of the cases (see Case Nos. 09-90730 and 11-94324) were dismissed fairly quickly because Debtor did not know how to file for bankruptcy properly. Decl. of Sonia Lopez, Doc. #20. Debtor's third case was converted to a chapter 13 (see Case No. 09-91977) where Debtor made all ongoing payments to Movant and satisfied most of Movant's arrears claim. Lopez Decl., Doc. #20. Unfortunately, Debtor was unable to successfully obtain her discharge in her third case and her third bankruptcy case was dismissed on April 22, 2015. Id. On July 16, 2015, Debtor filed for chapter 13 bankruptcy relief (see Case No. 15-14086-mkn) to catch up on missed mortgage payments and address other debt. Id. Debtor successfully completed this case and received her discharge order on January 20, 2021. Id. About the time Debtor received her discharge in January 2021, Debtor became ill with COVID-19, was unable to work and, again found herself behind in mortgage payments. Id. On March 16, 2021, Debtor filed for chapter 13 bankruptcy relief (see Case No. 21-11266-mkn), but this case was dismissed because Debtor was too ill to provide the necessary documentation on time. Id. On May 10, 2021, Debtor filed another chapter 13 case (see Case No. 21-12418-mkn), which was eventually converted to a chapter 11 and dismissed April 4, 2023. Id. Debtor states that

Debtor thought she could restructure her mortgage in a chapter 11 case, but a feasible plan could not be approved. Id.

On May 2, 2023, Debtor filed this case with every intention of getting caught up on her mortgage. Lopez Decl., Doc. #20. While Debtor lived in Las Vegas during her last three bankruptcy cases, Debtor has moved back to the Property securing the mortgage. Id. Debtor is getting her therapy license in California and intends to serve clients in California and Nevada. Id.

Section 362(d)(4) allows the court to grant relief from the stay as to a creditor whose claim is secured by an interest in real property if the court finds that the filing of the bankruptcy petition was "part of a scheme to delay, hinder, or defraud creditors," and that involved a transfer of ownership or other interest in such real property or multiple bankruptcy filings affecting such real property. 11 U.S.C. § 362(d)(4).

"A scheme is an intentional construct. It does not happen by misadventure or negligence." In re Duncan & Forbes Dev., Inc., 368 B.R. 27, 32 (Bankr. C.D. Cal. 2007). Because direct evidence of a scheme is uncommon, "the court must infer the existence and contents of a scheme from circumstantial evidence. The party claiming such a scheme must present evidence sufficient for the trier of fact to infer the existence and content of the scheme." Id.; see Jimenez v. ARCPE 1, LLP (In re Jimenez), 613 B.R. 537, 545 (B.A.P. 9th Cir. 2020).

While Movant has shown there are multiple bankruptcy filings by Debtor, Movant has not provided evidence or explained how the multiple filings have affected the Property or are part of a scheme and the object of that scheme is to delay, hinder, or defraud Movant. Based on Debtor's declaration, Movant received significant payments from Debtor in the third bankruptcy case filed before the case was dismissed. Lopez Decl., Doc. #20. Further, in Debtor's successful chapter 13 case filed after Debtor's third bankruptcy case, Debtor made all payments due to Movant and received her discharge order on January 20, 2021. Id. Movant has not explained in the motion or related pleadings how Debtor's subsequent bankruptcy cases were part of a scheme to delay, hinder, or defraud Movant, and the court does not infer the existence of such a scheme based on the evidence currently before the court.

Accordingly, the court finds that in rem relief is not warranted under 11 U.S.C. § 362(d)(4).

Conclusion

Accordingly, the motion will not be granted pursuant to 11 U.S.C. § 362(d)(1), (d)(2) or (d)(4).

MOTION FOR COMPENSATION FOR SCOTT LYONS, DEBTORS ATTORNEY(S)
5-5-2023 [\[22\]](#)

SCOTT LYONS/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.

Scott Lyons, Attorney at Law ("Movant"), counsel for Maria Luisa Madrigal ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of \$5,225.00 and reimbursement for expenses in the amount of \$456.97 for services rendered from October 7, 2022 through May 5, 2023. Doc. #22. Debtor's confirmed plan provides, in addition to \$1,537.00 paid prior to filing the case, for \$12,500.00 in attorney's fees to be paid through the plan. Plan, Doc. ##3, 19. No prior fee application has been filed. Debtor consents to the amount requested in Movant's application. Doc. #22.

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) preparing and prosecuting Debtor's plan; (2) preparing for and attending 341 meeting of creditors; (3) communicating with Debtor and the chapter 13 trustee; (4) preparing the fee application; and (5) general case administration. Exs. A & B, Doc. #26. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of \$5,225.00 and reimbursement for expenses in the amount of \$456.97 to be paid in a manner consistent with the terms of the confirmed plan.

15. [23-10549](#)-A-13 **IN RE: YESENIA MADRIGAL**
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
5-9-2023 [\[23\]](#)

SCOTT LYONS/ATTY. FOR DBT.

NO RULING.

16. [23-10549](#)-A-13 **IN RE: YESENIA MADRIGAL**
[SL-2](#)

MOTION TO VALUE COLLATERAL OF WESTLAKE FINANCIAL SERVICES
5-31-2023 [\[37\]](#)

YESENIA MADRIGAL/MV
SCOTT LYONS/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 May 31, 2023, with a hearing date set for June 15, 2023. 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). 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 (Doc. #38) stated that opposition must be filed and served no later than fourteen days before the hearing and that failure to file 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).

17. [23-10549](#)-A-13 **IN RE: YESENIA MADRIGAL**
[SL-3](#)

MOTION FOR ORDER APPROVING FORBEARANCE AGREEMENT
6-1-2023 [\[43\]](#)

YESENIA MADRIGAL/MV
SCOTT LYONS/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 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and 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.

Yesenia Samantha Madrigal ("Debtor"), the chapter 13 debtor in this case, moves the court for an order authorizing Debtor to modify her existing mortgage via a forbearance agreement ("Agreement") with Maple Leaf Capital Company ("Maple Leaf") pursuant to 11 U.S.C. § 105. Doc. #43. Debtor seeks to modify the mortgage on her primary residence located at 2536 N. Tilden St. Visalia, CA 93291 ("Residence"). Id.

Under the Agreement: (1) Maple Leaf consents to the treatment of its claim under Debtor's proposed chapter 13 plan; (2) Maple Leaf will forbear from proceeding against Debtor's Residence and will extend the maturity date of the loan until May 2, 2028, at which time all sums due under the Note shall be due and payable; (3) Debtor agrees to fully and timely make all pre-petition and post-petition payments required by Debtor's plan and Note; (4) Debtor will fully and timely comply with each and every obligation of Debtor's plan; (5) Debtor will remain a chapter 13 debtor in the instant case; and (6) Debtor will not engage in any further conduct that would constitute a default or breach of Debtor's plan. Agreement, Ex. A, Doc. #45. Failure of Debtor to perform timely any one or more of her obligations within the relevant time periods in the instant case shall automatically terminate Maple Leaf's obligations under the terms and conditions of the Agreement, and the Note's initial maturity date shall be reinstated without the need for further notice or order of the court. Id. The Agreement will allow Debtor to make current loan payments on her mortgage by extending the maturity date of the loan past the terms of Debtor's plan and pay the mortgage arrears through her chapter 13 plan. Decl. of Yesenia Madrigal, Doc. #46.

LBR 3015-1(h)(1)(E) provides that "if the debtor wishes to incur new debt . . . 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."

The court will analyze this motion under LBR 3015-1(h)(1)(E). There is no indication that Debtor is not current on her chapter 13 plan payments or that the chapter 13 plan is in default. Debtor's Schedules I and J demonstrate an ability to pay future plan payments, projected living expenses, and the modified debt. Am. Schedules I and J, Doc. #32. The modified debt is a single loan incurred only to modify the existing debt encumbering Debtor's Residence. The only security for the modification will be Debtor's Residence.

Accordingly, the motion is GRANTED. Debtor is authorized, but not required, to modify the existing mortgage in a manner consistent with the Agreement at Ex. A, Doc. #45.

18. [23-10755](#)-A-13 **IN RE: MICHAEL/CYNTHIA LOMONACO**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
5-15-2023 [\[20\]](#)

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

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. The debtors filed an amended Schedule C on May 26, 2023, removing the claimed exemption in a checking and savings account with Educational Employees Credit Union under C.C.P. § 704.070 in the amount of \$10,330.64. Am. Schedule C, Doc. #24.

19. [20-12257](#)-A-13 **IN RE: JESUS/ESTEFANIA FLORES**
[FW-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL PC FOR
GABRIEL J WADDELL, DEBTORS ATTORNEY(S)
5-5-2023 [\[33\]](#)

GABRIEL WADDELL/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.

Fear Waddell, P.C. ("Movant"), counsel for Jesus Villegas Flores and Estefania Avellaneda Flores (together, "Debtors"), the debtors in this chapter 13 case, requests allowance of final compensation in the amount of \$4,204.00 and reimbursement for expenses in the amount of \$139.61 for services rendered from April 16, 2021 through May 2, 2023. Doc. #33. Debtors' confirmed plan provides,

in addition to \$1,500.00 paid prior to filing the case, for \$9,000.00 in attorney's fees. Plan, Doc. ##2, 16. One prior fee application has been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 in the amount of \$3,860.00 and reimbursement for expenses totaling \$399.91. Order, Doc. #29. The debtor Estefania Avellaneda Flores consents to the amount requested in Movant's application.¹ Ex. E, Doc. #35.

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). 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) amendments to petitions and/or schedules; (2) claim administration and objections; (3) original plan, hearings, and objections; (4) fee application; (5) preparation for discharge and case closing; and (6) general case administration. Ex. A, Doc. #35. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court finds all fees and expenses of Movant previously allowed on an interim basis are reasonable and necessary. The court allows on a final basis all fees and expenses previously allowed to Movant on an interim basis, in addition to compensation requested by this motion in the amount of \$4,204.00 and reimbursement for expenses in the amount of \$139.61 to be paid in a manner consistent with the terms of the confirmed plan.

20. [23-10066](#)-A-13 **IN RE: MARIA HERNANDEZ VILLA**
[MHM-2](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
5-22-2023 [\[32\]](#)

ARETE KOSTOPOULOS/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.

The debtor filed her chapter 13 plan ("Plan") on January 30, 2023. Doc. #16. Michael H. Meyer, the chapter 13 trustee ("Trustee"), objects to confirmation

¹ Debtors' counsel filed a notice of death of the co-debtor Jesus Villegas Flores on January 11, 2021, stating that the co-debtor Jesus Villegas Flores died on December 6, 2020. Doc. #17; see Death Certificate, Ex. A, Doc. 18.

of the Plan on the grounds that the Plan: (1) does not provide for all of Debtor's projected disposable income to be applied to unsecured creditors pursuant to 11 U.S.C. § 1325(b); and (2) has not been proposed in good faith pursuant to 11 U.S.C. §1325(a)(3). Tr.'s Obj., Doc. #32.

Projected Disposable Income Calculation

Upon the objection of the trustee or the holder of an allowed unsecured claim, 11 U.S.C. § 1325(b) requires the plan provide for all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan. 11 U.S.C. § 1325(b).

Trustee objects pursuant to § 1325(b) asserting that the Plan fails to pay all of Debtor's disposable income to unsecured creditors as determined under § 1325(b)(3). Tr.'s Obj., Doc. #32.

At the initial 341 meeting of creditors held on March 7, 2023, Debtor testified that her live-in boyfriend contributes an estimated \$600.00 to \$700.00 for rent, utilities, and groceries every month. Tr.'s Obj., Doc. #32. Trustee's office requested an amendment to Debtor's Schedule I and J to reflect the monthly contribution by Debtor's live-in boyfriend. Id. Debtor filed amended Schedules I and J on April 3, 2023 that show Debtor's monthly net income to be \$3,410.00. Am. Schedule J, Doc. ##26, 27. At the continued 341 meeting of creditors held on April 4, 2023, Trustee's office requested the commitment of Debtor's entire monthly net income into the plan for repayment of creditors. Tr.'s Obj., Doc. #32. In response, Debtor changed her testimony and stated that her boyfriend only sometimes provides support. Id. Additionally, Debtor did not agree to increasing the plan payment amount to commit all her monthly net income into the plan. Id. The 341 meeting of creditors held on April 4, 2023 was continued and concluded on May 16, 2023. Id.

Trustee relies on the "economic unit approach" for calculating Debtor's household size. See Johnson v. Zimmer, 686 F.3d 224, 238 (4th Cir. 2012). Therefore, when a debtor and their significant other "share a significant amount of their income and expenses, the court concludes that they constitute a single economic unit." In re Morrison, 443 B.R. 378, 388 (Bankr. M.D.N.C. 2011). Since Debtor and her boyfriend are part of the same economic unit, Debtor's boyfriend should be included in Debtor's household size along with his financial contribution to the household. A household member's financial contribution increases the debtor's current monthly income under 11 U.S.C. § 1325(b)(2). Tr.'s Obj., Doc. #32.

The court agrees with Trustee that Debtor and her boyfriend are considered to be part of the same economic unit for calculating Debtor's household size and Debtor's boyfriend's financial contribution to the household should be included in determining Debtor's current monthly income. Because Debtor has not clarified how much support Debtor is receiving from her live-in boyfriend, the court is inclined to sustain Trustee's objection under § 1325(b).

Bad Faith

11 U.S.C. § 1325(a)(3) requires that a plan be proposed in good faith and not by any means forbidden by law. Section 1325(a)(7) requires that the action of the debtor in filing the petition be in good faith. 11 U.S.C. § 1325(a)(3), (a)(7).

Trustee contends that Debtor's amended Schedules I and J reflect monthly net income of \$3,410.00, while her plan payment is only \$2,710.00 a month. Tr.'s

Obj., Doc. #32. Trustee argues that there is \$700.00 that is unaccounted for in Debtor's monthly budget and that difference must be committed to the plan for repayment of Debtor's creditors in best efforts and good faith. Id.

"Although not defined under the [Bankruptcy] Code, 'good faith' is generally interpreted to mean 'a reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code.'" In re Mann Farms, Inc., 917 F.2d 1210, 1214 (9th Cir. 1990). A finding of good faith "requires the court to consider the totality of the circumstances." Id. "A good faith test . . . should examine the intentions of the debtor and the legal effect of the confirmation of a Chapter 13 plan in light of the spirit and purposes of Chapter 13." In re Chinichian, 784 F.2d 1440, 1444 (9th Cir. 1986).

Based on the evidence before the court and because Debtor is not contributing her entire monthly projected income to her plan and is not paying general unsecured creditors in full, it appears that the plan has not been proposed in good faith as required by 11 U.S.C. § 1325(a)(3).

Conclusion

Accordingly, pending any opposition at hearing, this court is inclined to SUSTAIN this objection.

21. [20-12069](#)-A-13 **IN RE: SCOTT/SARINA DUTEY**
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-15-2023 [\[133\]](#)

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

The movant, Freedom Mortgage Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) as to the debtors and the debtors' property with respect to real property located at 30557 Seminole Drive, Coarsegold, CA 93614 (the "Property"). Doc. #136. Movant seeks relief to the extent needed for the debtors to enter into a subordinated note involving the Department of Housing and Urban Development ("HUD"), by which HUD will issue funds to Movant to resolve, in whole or part, a default with respect to Movant's loan. Id. The funds issued by HUD to Movant are to be secured by a junior note and deed of trust in favor of HUD on the Property. Id.

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).

On or about April 12, 2022, the debtors executed a subordinate note in the principal sum of \$32,267.88 which is made payable to the Secretary of HUD (the "Subordinate Note"). Decl. of Nitzan Shazar, Doc. #137; Exs. E & F, Doc. #138. The Subordinate Note resolves delinquent amounts under the existing loan with Movant (who holds the first lien on the Property). Shazar Decl., Doc. #137. The Subordinate Note is secured by a junior deed of trust in favor of HUD. Id.; Exs. E & F, Doc. #138.

After review of the included evidence, the court finds that "cause" exists to lift the stay to allow the debtors to enter into and execute the HUD note, deed of trust, and related loan documents, and/or record the HUD deed of trust against the Property to resolve a default owed to Movant. Memo, Doc. #136.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the debtors to enter into the subordinated note with HUD.

22. [22-11395](#)-A-13 **IN RE: GLORIA GARCIA**
[SLL-3](#)

MOTION FOR COMPENSATION FOR STEPHEN L. LABIAK, DEBTORS ATTORNEY(S)
5-8-2023 [\[53\]](#)

STEPHEN LABIAK/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.

The Notice of Hearing filed in connection with this motion does not comply with Local Rule of Practice ("LBR") 9014-1(f)(1)(B) and does not provide proper notice of the period to file written opposition to the motion. In the Notice of Hearing, Movant stated that opposition is required to be filed 14 calendar days prior to the motion instead of stating that opposition must be filed 14 calendar days prior to the hearing. Doc. #54. The Notice of Hearing also does not comply with LBR 9014-1(d)(3)(B)(ii), which requires the notice to advise respondents that the failure to file timely written opposition may

result in the motion being resolved without oral argument and the striking of untimely written opposition.

As an informative matter, the movant did not attach a copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice applicable to this case with the court's mandatory Certificate of Service forms filed in connection with the motion (Doc. #58) and the notice of hearing (Doc. #54). Instead of using the Clerk of the Court's matrix that can be generated from the court's website, the movant attached a Pacer generated list of names and addresses served. In the future, the movant should attach a copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice applicable to this case that can be generated from this court's website.

Finally, in the motion, Stephen L. Labiak ("Movant") requests allowance of final compensation in the amount of \$10,406.35 and reimbursement for expenses in the amount of \$106.35 for services rendered from July 7, 2022 through December 31, 2025. Doc. #53. While the court may permit final compensation in an estimated amount when a confirmed plan is nearly complete, the court will not approve a final application for services Movant estimates will be performed more than two years in the future. The court will approve a fee application this early in the case for services that have already been performed on an interim basis only, with a final fee application to be made when the plan is nearly complete.

23. [23-10595](#)-A-13 **IN RE: HERNAN CORTEZ**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
5-22-2023 [\[25\]](#)

SCOTT LYONS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. While not required, the debtor filed a written response to the objection to confirmation of plan. Doc. ##31, 32. The court intends to overrule the objection. At the hearing, the court will consider additional opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The debtor filed his chapter 13 plan ("Plan") on April 4, 2023. Doc. #16. Michael H. Meyer, the chapter 13 trustee ("Trustee"), objects to confirmation of the Plan on the grounds that the Plan has not been proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3). Tr.'s Obj., Doc. #25.

11 U.S.C. § 1325(a)(3) requires that a plan be proposed in good faith and not by any means forbidden by law. Section 1325(a)(7) requires that the action of

the debtor in filing the petition be in good faith. 11 U.S.C. § 1325(a)(3), (a)(7).

At the 341 Meeting of Creditors held on May 16, 2023, Debtor testified that he is operating two businesses - a limousine business and a house-painting business. Tr.'s Obj., Doc. #25. Trustee's office requested that an attachment to Debtor's Schedule I be filed for each business to show gross income, expenses related to each business, and how the net business income at question 8A of his Schedule I was calculated. Id. On May 24, 2023, Debtor filed an amended Schedule I and attached his prior 6 months of Profit and Loss Statements to demonstrate how his business income was calculated for question 8A of his amended Schedule I. Reply, Doc. #31, Ex. A, Doc. #32.

Debtor further testified at the 341 Meeting of Creditors that his girlfriend contributes \$1,100.00 a month towards mortgage and household expenses. Tr.'s Obj., Doc. #25. Debtor's Schedule I shows that Debtor's girlfriend is contributing \$800.00 a month, but Debtor confirmed this amount is incorrect. Id. Trustee's office requested an amended Schedule I to reflect the correct amount that Debtor's girlfriend contributes. Id. On May 24, 2023, Debtor filed an amended Schedule I showing that his girlfriend contributes \$1,100.00 toward the mortgage and household expenses. Reply, Doc. #31, Ex. A, Doc. #32.

"Although not defined under the [Bankruptcy] Code, 'good faith' is generally interpreted to mean 'a reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code.'" In re Mann Farms, Inc., 917 F.2d 1210, 1214 (9th Cir. 1990). A finding of good faith "requires the court to consider the totality of the circumstances." Id. "A good faith test . . . should examine the intentions of the debtor and the legal effect of the confirmation of a Chapter 13 plan in light of the spirit and purposes of Chapter 13." In re Chinichian, 784 F.2d 1440, 1444 (9th Cir. 1986).

Since Debtor has filed an amended Schedule I and an attachment to Debtor's Amended Schedule I that satisfy the grounds for Trustee's objection, the court is inclined to overrule Trustee's objection.

Accordingly, pending any further opposition at hearing, this court is inclined to OVERRULE this objection.

1. [19-11901](#)-A-7 **IN RE: ARMANDO CRUZ**
[19-1095](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
8-12-2019 [[1](#)]

STRATEGIC FUNDING SOURCE, INC. V. CRUZ
JARRETT OSBORNE-REVIS/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[20-1041](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
6-26-2020 [[1](#)]

SIHOTA ET AL V. SINGH ET AL
PETER SAUER/ATTY. FOR PL.

NO RULING.

3. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[20-1041](#) [WLG-4](#)

MOTION FOR SUMMARY JUDGMENT
5-2-2023 [[157](#)]

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

NO RULING.

As a procedural matter, the certificate of service filed in connection with the motion does not comply with Local Rule of Practice ("LBR") 9014-1(c) because the certificate of service is missing a Docket Control Number. Doc. #162. "In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6).

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form filed in connection with the motion. Doc. #162. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service and checked boxes 6B1 and 6B2. Doc. #162. The declarant only attached a service list as 6B2. Therefore,

in Section 6, the declarant should have only checked the appropriate box under Section 6B2.

As a further informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form filed in connection with the reply brief in support of the motion. Doc. #182. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service and checked boxes 6B1 and 6B2. Doc. #182. The declarant only attached a service list as 6B2. Therefore, in Section 6, the declarant should have only checked the appropriate box under Section 6B2.

The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

4. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[22-1023](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-5-2022 [[1](#)]

BANK OF AMERICA, N.A. V. MEYER ET AL
ELEANOR ROMAN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

5. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[20-1042](#)

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
6-26-2020 [[1](#)]

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

NO RULING.

6. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[20-1042](#) [WLG-4](#)

MOTION FOR SUMMARY JUDGMENT
5-2-2023 [[154](#)]

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

NO RULING.

As a procedural matter, the certificate of service filed in connection with the motion does not comply with Local Rule of Practice ("LBR") 9014-1(c) because the certificate of service is missing a Docket Control Number. Doc. #160. "In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6).

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form filed in connection with the motion. Doc. #160. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service and checked boxes 6B1 and 6B2. Doc. #160. The declarant only attached a service list as 6B2. Therefore, in Section 6, the declarant should have only checked the appropriate box under Section 6B.

As a further informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form filed in connection with the reply brief in support of the motion. Doc. #178. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service and checked boxes 6B1 and 6B2. Doc. #178. The declarant only attached a service list as 6B2. Therefore, in Section 6, the declarant should have only checked the appropriate box under Section 6B.

The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

7. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[22-1022](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
10-5-2022 [\[1\]](#)

BANK OF AMERICA, N.A. V. MEYER ET AL
ELEANOR ROMAN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

8. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[23-1021](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
4-7-2023 [\[6\]](#)

NICOLE V. RAMIREZ ET AL
SYLVIA NICOLE/ATTY. FOR PL.

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

DISPOSITION: Continued to June 29, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

The status conference is continued to June 29, 2023 at 11:00 a.m. to be heard in connection with a motion to dismiss [CBC-1] and a motion to strike [CBC-2] previously continued to June 29, 2023 at 11:00 a.m. by the court. See Doc. ##48, 50.

9. [21-10679](#)-A-13 **IN RE: SYLVIA NICOLE**
[23-1021](#) [SYNL-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
5-9-2023 [\[24\]](#)

NICOLE V. RAMIREZ ET AL
UNKNOWN TIME OF FILING/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

The Notice of Hearing filed in connection with this motion does not provide proper notice of the period to file written opposition to the motion. Specifically, the Notice of Hearing does not comply with Local Rule of Practice ("LBR") 9014-1(d)(3)(B)(i), which requires "[t]he notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition." Doc. #24. Here, the notice of motion did not advise potential respondents on any of the required information regarding written opposition. The Notice of Hearing also does not comply with LBR 9014-1(d)(3)(B)(ii), which requires the notice to advise respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition. Finally, the Notice of Hearing also does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that

parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

As a procedural matter, the motion does not comply with LBR 9014-1(d)(4), which requires a motion and notice of motion to be filed as separate documents. Here, the notice of motion and motion were filed as a single document. Doc. #24. Also, the certificate of service filed in connection with this motion does not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form (EDC Form 7-005, Rev. 10/22) as of November 1, 2022. Finally, the Docket Control Number (SYNL-1) does not comply with LBR 9014-1(c)(3), which requires that a Docket Control Number consist of not more than three letters and one number.

The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.