

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, June 17, 2021
Place: Department A - Courtroom #11
Fresno, California

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

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

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court will begin in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

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. [21-10206](#)-A-13 **IN RE: MICHAEL/RANDI KESTNER**
[SLL-1](#)

MOTION FOR COMPENSATION FOR STEPHEN LABIAK, DEBTORS ATTORNEY(S)
5-20-2021 [\[31\]](#)

STEPHEN LABIAK/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 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 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.

Stephen L. Labiak ("Movant"), counsel for Michael G. Kestner and Randi B. Kestner ("Debtors"), the debtors in this chapter 13 case, requests allowance of interim compensation in the amount of \$5,520.00 and reimbursement for expenses in the amount of \$41.30 for services rendered from January 6, 2021 through May 4, 2021. Doc. #31.

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 consultation and fact gathering; (2) preparation of voluntary petition, schedules, and forms; (3) § 341 meeting preparation and attendance; (4) claim administration and claim objections; and (4) independent verification of information. Doc. #36. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on an interim basis.

This motion is GRANTED. The court allows interim compensation in the amount of \$5,520.00 and reimbursement for expenses in the amount of \$41.30 to be paid in a manner consistent with the terms of the confirmed plan.

2. [19-11515](#)-A-13 **IN RE: KARL KENNEL**
[SL-2](#)

MOTION TO MODIFY PLAN
5-12-2021 [[69](#)]

KARL KENNEL/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 movant has done here.

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

3. [17-14873](#)-A-13 **IN RE: KATHERINE MUNSEY**
[DRJ-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-19-2021 [[132](#)]

DAVID MUNSEY/MV
PETER BUNTING/ATTY. FOR DBT.
DAVID JENKINS/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.

After due consideration, this motion will be GRANTED for cause shown to permit David Munsey ("Movant") to take the necessary actions to commence and prosecute proceedings in the Family Law Division of the Fresno County Superior Court concerning case number 16CEFL00548, to enforce certain of the provisions of the marital dissolution judgment entered in that case (the "Marital Dissolution Judgment"). Mot., Doc. #132.

Movant and Katherine Marie Munsey ("Debtor"), the chapter 13 debtor, are parties to the Marital Dissolution Judgment entered into on May 31, 2017. Doc. #120. Pursuant to the Marital Dissolution Judgment, Movant holds as his sole and separate property residential real property commonly known as 4167 North Zediker Ave and 4035 North Zediker Ranch, Sanger California 93657 (the "Property"). Doc. #134. The Marital Dissolution Judgment calls for Debtor to "execute any documents necessary to transfer title of the [P]roperty to [Movant] as his sole and separate property." Ex. A, Doc. #136.

On January 12, 2021, this court entered an order authorizing Debtor to sign a deed transferring Debtor's fractional bare legal title interest in the Property to Movant. Order, Doc. #131. On April 15, 2021, Movant provided Debtor's counsel with an interspousal transfer grant deed that would transfer Debtor's interest in the Property in accordance with the Marital Dissolution Judgment. Doc. #135. As of May 19, 2021, Debtor has not executed and returned the document. Doc. #135.

Movant requests relief from the automatic stay under 11 U.S.C. § 362(d)(1) to permit Movant to take the necessary actions to enforce the Marital Dissolution Judgment in the Family Law Division of the Fresno County Superior Court. Doc. #132.

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).

When a movant seeks relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court may consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in determining whether to grant relief from the automatic stay" to allow litigation in another forum. Id. The relevant Curtis factors include: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the non-bankruptcy forum has the expertise to hear such cases; (4) whether litigation in another forum would prejudice the interests of other creditors; (5) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; and (6) the impact of the automatic stay and the "balance of hurt." In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984). Here, the Curtis factors support finding cause to grant relief from stay as requested in the motion.

Granting relief from stay to permit Movant to take the necessary actions to enforce the Marital Dissolution Judgment in the Family Law Division of the Fresno County Superior Court will allow Movant to resolve completely the issue surrounding Debtor's failure to transfer title to the Property. Further, relief from stay would promote judicial economy since the state court that entered the Marital Dissolution Judgment has expertise to hear the case and is familiar with the matter. The transfer of Debtor's bare legal interest in the Property will have no impact on the bankruptcy case and would not prejudice the interests of creditors. However, refusing to grant relief from stay would prevent Movant from clearing title to the Property granted to him by the Marital Dissolution Judgment. See In re Halub, 25 B.R. 617, 619 (Bankr. C.D. Cal. 1982) (finding that "[d]ivorce and domestic relations are areas which have traditionally been left to the states and there appears no good reason to depart from that tradition").

Accordingly, the court finds that cause exists to lift the stay and this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to take the necessary actions to enforce the Marital Dissolution Judgment in the Family Law Division of the Fresno County Superior Court.

4. [19-14750](#)-A-13 **IN RE: KENNETH/DANA HERRERA**
[RSW-1](#)

MOTION TO INCUR DEBT
6-4-2021 [\[28\]](#)

DANA HERRERA/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
OST 6/4/21

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.

On June 4, 2021, the court granted the debtors' ex parte Motion for Order Shortening Time to hear the debtors' motion to incur new debt. Doc. #32. This motion was set for hearing on June 17, 2021 at 9:30 a.m. pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3). 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.

Kenneth Paul Herrera and Dana Renae Herrera (together, "Debtors"), the chapter 13 debtors in this case, move the court for an order authorizing Debtors to incur new debt. Doc. #28. Debtors state that they need to purchase or lease three new vehicles because the leases on their current two vehicles are ending, and an additional vehicle is necessary for their daughter who is moving away for college. Decl. of Dana Renae Herrera, Doc. #30. Debtors expect to purchase or lease three less expensive vehicles than their current two leased vehicles. Id. Debtors expect their total monthly payment to remain the same as their current total monthly lease payments of \$1,325. Id. Debtors

contend that their budget has remained the same since filing for bankruptcy and the new vehicles will not affect their ability to pay their plan payments. Id.

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 is inclined to GRANT this motion. This motion was properly served and noticed, and opposition may be presented at the hearing. There is no indication that Debtors are not current on their chapter 13 plan payments or that the chapter 13 plan is in default. Debtors have not filed amended schedules, but state that their monthly vehicle expenses will remain unchanged. The new debt incurred to replace Debtors' current two leased vehicles and obtain a third vehicle for their daughter are reasonable and necessary for the maintenance or support of Debtors. The only possible security for the new debt will be the motor vehicles to be purchased by Debtors, should Debtors purchase instead of lease the motor vehicles.

Accordingly, subject to opposition raised at the hearing, this motion is GRANTED. Debtors are authorized, but not required, to purchase or lease three vehicles in a manner consistent with the motion.

1. [20-10705](#)-A-7 **IN RE: NORMA KELLY**
[20-1028](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT
5-1-2020 [[1](#)]

NUVISION FEDERAL CREDIT UNION V. KELLY
ALANA ANAYA/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

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

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

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

NO RULING.

3. [18-14546](#)-A-7 **IN RE: LANE ANDERSON**
[19-1024](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-15-2019 [[1](#)]

MURILLO V. ANDERSON ET AL
RICK MORIN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

4. [19-10952](#)-A-7 **IN RE: DAVID MUSE**
[19-1050](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-21-2019 [[1](#)]

MURILLO V. MUSE
RICK MORIN/ATTY. FOR PL.

NO RULING.

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

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

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

NO RULING.

6. [19-13871](#)-A-7 **IN RE: JENNA LONG**
[20-1014](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT
3-11-2020 [[1](#)]

LONG V. NELNET ET AL
NANCY KLEPAC/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

7. [17-13776](#)-A-7 **IN RE: JESSICA GREER**
[18-1017](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-23-2018 [[1](#)]

SALVEN V. CALIFORNIA DEPARTMENT OF FOOD & AGRICULTURE
SHARLENE ROBERTS-CAUDLE/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to July 29, 2021, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status conference statement the status conference will be continued to July 29, 2021, at 11:00 a.m. Doc. #84.

The parties shall file either joint or unilateral status report(s) not later than July 22, 2021.

8. [17-12389](#)-A-7 **IN RE: DON ROSE OIL CO., INC.**
[17-1086](#)

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
9-5-2018 [[131](#)]

KODIAK MINING & MINERALS II LLC ET AL V. DON ROSE OIL CO., INC.
VONN CHRISTENSON/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.