UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, June 20, 2024
Department A – Courtroom #11
Fresno, California

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at, Courtroom #11 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at https://www.caeb.uscourts.gov/Calendar/RemoteAppearances. Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the Pre-Hearing Dispositions prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the CourtCall Appearance Information.

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

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.

9:30 AM

1. 20-10945-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
FDA-5

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH THE TORONTO GROUP
5-23-2024 [383]

JATINDERJEET SIHOTA/MV
LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). AgWest Farm Credit, FLCA, successor in interest to Farm Credit West, FLCA ("FCW") timely filed written opposition on June 6, 2024. Doc. #391. The debtors filed a timely reply on June 13, 2024. Doc. ##393, 394. 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.

For the moving party's information, the stipulations attached as Exhibits A-C to the proposed settlement agreement (Doc. #387) do not comply with LBR 9004-1(e)(1)(A), which requires a proposed order to be submitted as a separate document from a stipulation. Currently, the exhibits to the settlement agreement have the relevant stipulations and proposed orders included in the same document. Before the stipulations that are exhibits to the settlement agreement are filed with this court, the applicable stipulation should be turned into a separate document that is filed with the court as well as attached to the proposed order as an exhibit in accord with LBR 9004-1(e)(2). In addition, the proposed order should not include the word "proposed" in the title of the order, as required by LBR 9004-1(e)(1)(B).

Ajitpal Singh and Jatinderjeet Kaur Sihota (collectively, "Debtors"), the debtors in this chapter 12 case, move the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of all claims and disputes between Debtors and Kewal Singh, Jaskaran Sihota and Jaswinder Kaur (collectively, the "Toronto Group"). Doc. #383.

Debtors filed this chapter 12 case on March 12, 2020. Doc. #1. Pre-petition, on or about April 20, 2018, the Toronto Group filed a complaint against Debtors, Bhajan Singh, Balvinder Kaur and other family members in the Fresno County Superior Court as case number 18CECG01393 ("State Court Action"). Ex. A, Doc. #389; Decl. of John W. Phillips at ¶ 3(a), Doc. #386. The State Court Action concerns the parties' performances, among other matters at issue, under that certain Operating Agreement for SSS International, LLC entered into on July 24, 2009 ("Operating Agreement"). Phillips Decl. at ¶ 3(a), Doc. #386.

Pursuant to the Operating Agreement, the matters at issue were submitted to binding arbitration from July 22, 2019 to July 25, 2019 before the Hon. Howard J. Broadman (Ret.). Phillips Decl. at ¶ 3(b), Doc. #386. On October 24, 2019, Judge Broadman issued the first of three awards ("Interim Award"). Id. The second award was issued on January 25, 2020, which modified the Interim Award and determined the Toronto Group to be the "prevailing parties" in the State Court Action ("Second Award"). Id. at ¶ 3(c). The Toronto Group filed a proof of claim for $1,669,298.04 and a dischargeability complaint in Debtors' bankruptcy case. Id. at ¶¶ 3(d), 3(e) & 3(g).

Post-petition, the Toronto Group was granted relief from the automatic stay and obtained a third award issued on August 10, 2022 and titled "Third Award of Clarifying Findings," which comprises the Interim Award and Second Award ("Final Arbitration Award"). Order, Doc. #195; Phillips Decl. at ¶ 3(h), Doc. #386. The Final Arbitration Award was issued by Judge Broadman jointly and severally as against Debtors, Bhajan Singh and Balvinder Kaur, and was approved by the state court on November 28, 2022. Id. at ¶¶ 3(h)-3(j). Debtors subsequently were granted relief from the automatic stay to appeal the Final Arbitration Award and filed a notice of appeal of that award on November 20, 2023. Id. at ¶¶ 3(l)-3(m).

Debtors and the Toronto Group have negotiated a settlement of all claims between them. Phillips Decl. at ¶ 4, Doc. #386. Pursuant to the negotiated settlement, the Toronto Group will receive payment of $1 million in full satisfaction of their proofs of claim in Debtors' bankruptcy case and the related bankruptcy case of Bhajan Singh and Balvinder Kaur. Id. at ¶ 5(a). The $1 million payment will be paid as follows: (a) a $500,000 payment via wire transfer within 60 days after this court approves the proposed settlement; (b) distribution to the Toronto Group of the remaining funds deposited with this court pursuant to two interpleader adversary proceedings related to Debtors and Bhajan Singh and Balvinder Kaur; (c) credit for the distribution the Toronto Group received through the chapter 12 plans of Debtors and Bhajan Singh and Balvinder Kaur; and (d) delivery by January 31, 2025 of approximately $405,345.46, or whatever amount is required for the Toronto Group to have received $1 million on account of their claims against Debtors and Bhajan Singh and Balvinder Kaur. Settlement Agreement, Ex. A, Doc. #387. In consideration of the $1 million payment, the Toronto Group will dismiss the State Court Action and the dischargeability complaint against Debtors, and Debtors will dismiss the notice of appeal of the Final Arbitration Award. Phillips Decl. at ¶¶ 5(b)-5(d), Doc. #386. The proposed settlement also will resolve two related interpleader adversary proceedings. Id. at ¶ 5(e). In addition, Manjit Kaur will receive an assignment of the remaining payments due the Toronto Group under Debtors' confirmed plan as Manjit Kaur's sole and separate property. Settlement Agreement, Ex. A, Doc. #387.

On motion by a chapter 12 debtor in possession 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).

FCW objects to the proposed settlement on the grounds that the proposed settlement violates the provisions of Debtors' confirmed chapter 12 plan. Doc. #391. Specifically, Debtors' confirmed plan limits payments to the Toronto

Group to $170,000.00, and the motion to approve the settlement does not explain how Debtors are going to pay the additional amount required to reach the $1 million settlement. Id. In addition, FCW objects to Manjit Kaur receiving an assignment of the remaining amounts to be paid under Debtors' confirmed plan to the Toronto Group on account of the Toronto Group's proof of claim. Id.

In response to FCW's opposition, Debtors reply that no part of the settlement funds are being paid by Debtors other than the credit for amounts already paid to the Toronto Group under Debtors' confirmed plan. Reply Decl. of Jatinderjeet Kaur Sihota, Doc. #394. Rather, family members Jagdeep Singh, Jasvir Singh, Manjit Kaur and Raj Kloy are providing the required settlement funds, and Debtors are under no legal obligation to repay the monies contributed by family members to fund the settlement with the Toronto Group. Id.

Based on the motion and reply, it appears that Debtors have considered the standards of A & C Properties and Woodson. Notwithstanding any belief of Debtors that they will prevail with their notice of appeal in the State Court Action and against the dischargeability complaint, the terms of the settlement with the Toronto Group obviates the need to continue litigation by Debtors. The proposed settlement settles a nearly $1.7 million claim of the Toronto Group for $1 million and ends ongoing litigation. The bulk of the $1 million to be paid to the Toronto Group will be paid by family members and not Debtors, and Debtor will not be required to repay the family members. Sihota Reply Decl., Doc. #394. The court may give weight to the opinions of Debtors, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. It appears the settlement is fair, reasonable, and obtains an economically advantageous result for Debtors, creditors and the estate. 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, the court is inclined to overrule FCW's opposition, grant the motion, and approve the settlement between Debtors and the Toronto Group. Debtors will be authorized, but not required, to execute any and all documents necessary to satisfy the terms of the proposed settlement.

2. 20-10569-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
FDA-5

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH THE TORONTO GROUP
5-23-2024 [654]

BALVINDER KAUR/MV
LEONARD WELSH/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 set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). AgWest Farm Credit, FLCA, successor in interest to Farm Credit West, FLCA ("FCW") timely filed written opposition on June 6, 2024. Doc. ##662-665. The debtors

filed a timely reply on June 13, 2024. Doc. ##666, 667. 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.

As a procedural matter, there was no certificate of service filed with the court showing that FCW's opposition papers were served on the moving party as required by LBR 9014-1(e)(3), which requires that proof of service of all pleadings be filed with the court not more than three days after the pleading is filed with the court. However, because the moving party filed a reply to FCW's opposition without asserting improper service, the court assumes that the moving party received a copy of FCW's opposition papers timely, and any failure by FCW to serve the opposition papers on the moving party is waived.

For the moving party's information, the stipulations attached as Exhibits A-C to the proposed settlement agreement (Doc. #659) do not comply with LBR 9004-1(e)(1)(A), which requires a proposed order to be submitted as a separate document from a stipulation. Currently, the exhibits to the settlement agreement have the relevant stipulations and proposed orders included in the same document. Before the stipulations that are exhibits to the settlement agreement are filed with this court, the applicable stipulation should be turned into a separate document that is filed with the court as well as attached to the proposed order as an exhibit in accord with LBR 9004-1(e)(2). In addition, the proposed order should not include the word "proposed" in the title of the order, as required by LBR 9004-1(e)(1)(B).

Bhajan Singh and Balvinder Kaur (collectively, "Debtors"), the debtors in this chapter 12 case, move the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of all claims and disputes between Debtors and Kewal Singh, Jaskaran Sihota and Jaswinder Kaur (collectively, the "Toronto Group"). Doc. #654.

Debtors filed this chapter 12 case on February 18, 2020. Doc. #1. Pre-petition, on or about April 20, 2018, the Toronto Group filed a complaint against Debtors, Ajitpal Singh, Jatinderjeet Kaur Sihota and other family members in the Fresno County Superior Court as case number 18CECG01393 ("State Court Action"). Ex. A, Doc. #660; Decl. of John W. Phillips at ¶ 3(a), Doc. #656. The State Court Action concerns the parties' performances, among other matters at issue, under that certain Operating Agreement for SSS International, LLC entered into on July 24, 2009 ("Operating Agreement"). Phillips Decl. at ¶ 3(b), Doc. #656.

Pursuant to the Operating Agreement, the matters at issue were submitted to binding arbitration from July 22, 2019 to July 25, 2019 before the Hon. Howard J. Broadman (Ret.). Phillips Decl. at ¶ 3(c), Doc. #656. On October 24, 2019, Judge Broadman issued the first of three awards ("Interim Award"). Id. The second award was issued on January 25, 2020, which modified the Interim Award and determined the Toronto Group to be the "prevailing parties" in the State Court Action ("Second Award"). Id. at ¶ 3(d). The Toronto Group filed a proof of claim for $1,658,570.50 and a dischargeability complaint in Debtors' bankruptcy case. Id. at ¶¶ 3(e), 3(f) & 3(j).

Post-petition, the Toronto Group was granted relief from the automatic stay and obtained a third award issued on August 10, 2022 and titled "Third Award of Clarifying Findings," which comprises the Interim Award and Second Award ("Final Arbitration Award"). Order, Doc. #431; Phillips Decl. at ¶ 3(h), Doc. #656. The Final Arbitration Award was issued by Judge Broadman jointly and severally as against Debtors, Ajitpal Singh and Jatinderjeet Kaur Sihota, and

was approved by the state court on November 28, 2022. Id. at ¶¶ 3(h), 3(l)-3(m). Debtors subsequently were granted relief from the automatic stay to appeal the Final Arbitration Award and filed a notice of appeal of that award on November 20, 2023. Id. at ¶¶ 3(o)-3(p).

Debtors and the Toronto Group have negotiated a settlement of all claims between them. Phillips Decl. at ¶ 4, Doc. #656. Pursuant to the negotiated settlement, the Toronto Group will receive payment of $1 million in full satisfaction of their proofs of claim in Debtors' bankruptcy case and the related bankruptcy case of Ajitpal Singh and Jatinderjeet Kaur Sihota. Id. at ¶ 5(a). The $1 million payment will be paid as follows: (a) a $500,000 payment via wire transfer within 60 days after this court approves the proposed settlement; (b) distribution to the Toronto Group of the remaining funds deposited with this court pursuant to two interpleader adversary proceedings related to Debtors and Ajitpal Singh and Jatinderjeet Kaur Sihota; (c) credit for the distribution the Toronto Group received through the chapter 12 plans of Debtors and Ajitpal Singh and Jatinderjeet Kaur Sihota; and (d) delivery by January 31, 2025 of approximately $405,345.46, or whatever amount is required for the Toronto Group to have received $1 million on account of their claims against Debtors and Ajitpal Singh and Jatinderjeet Kaur Sihota. Settlement Agreement, Ex. A, Doc. #659. In consideration of the $1 million payment, the Toronto Group will dismiss the State Court Action and the dischargeability complaint against Debtors, and Debtors will dismiss the notice of appeal of the Final Arbitration Award. Phillips Decl. at ¶¶ 5(b)-5(d), Doc. #656. The proposed settlement also will resolve two related interpleader adversary proceedings. Id. at ¶ 5(e). In addition, Manjit Kaur will receive an assignment of the remaining payments due the Toronto Group under Debtors' confirmed plan as Manjit Kaur's sole and separate property. Settlement Agreement, Ex. A, Doc. #659.

On motion by a chapter 12 debtor in possession 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).

FCW objects to the proposed settlement on the grounds that the proposed settlement violates the provisions of Debtors' confirmed chapter 12 plan. Doc. #662. Specifically, under Debtors' confirmed plan, the Toronto Group is to share pro rata in a $250,000.00 pot for general unsecured creditors and the motion to approve the settlement does not explain how Debtors are going to pay the Toronto Group the additional amount required to reach the $1 million settlement. Id. In addition, FCW is to receive priority payment on its secured claim to the extent Debtors have additional funds over those required for plan payments. Id. In their motion to approve the settlement, Debtors do not explain how Debtors pay the settlement amount without violating the terms of their confirmed plan. Id.

In response to FCW's opposition, Debtors reply that no part of the settlement funds are being paid by Debtors other than the credit for amounts already paid to the Toronto Group under Debtors' confirmed plan. Reply Decl. of Bhajan Singh, Doc. #667. Rather, family members Jagdeep Singh, Jasvir Singh, Manjit Kaur and Raj Kloy are providing the required settlement funds, and

Debtors are under no legal obligation to repay the monies contributed by family members to fund the settlement with the Toronto Group. Id.

Based on the motion and reply, it appears that Debtors have considered the standards of A & C Properties and Woodson. Notwithstanding any belief of Debtors that they will prevail with their notice of appeal in the State Court Action and against the dischargeability complaint, the terms of the settlement with the Toronto Group obviates the need to continue litigation by Debtors. The proposed settlement settles a nearly $1.7 million claim of the Toronto Group for $1 million and ends ongoing litigation. The bulk of the $1 million to be paid to the Toronto Group will be paid by family members and not Debtors, and Debtor will not be required to repay the family members. Singh Reply Decl., Doc. #667. The court may give weight to the opinions of Debtors, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. It appears the settlement is fair, reasonable, and obtains an economically advantageous result for Debtors, creditors and the estate. 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, the court is inclined to overrule FCW's opposition, grant the motion, and approve the settlement between Debtors and the Toronto Group. Debtors will be authorized, but not required, to execute any and all documents necessary to satisfy the terms of the proposed settlement.

3. 23-10571-A-11 **IN RE: NABIEKIM ENTERPRISES, INC.**
FW-2

FURTHER HEARING RE: MOTION TO USE CASH COLLATERAL
3-24-2023 [6]

NABIEKIM ENTERPRISES, INC./MV
PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted on a further interim basis through September 30, 2024.

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 pursuant to an interim order authorizing use of cash collateral ("Interim Order"). Doc. #218. The motion was heard initially on March 29, 2023, and again on April 12, 2023, June 28, 2023, September 27, 2023, December 13, 2023, and March 13, 2024, and was granted each time on an interim basis. See Doc. ##22, 46, 82, 132, 185, 218. A further hearing on use of cash collateral was set for June 20, 2024. Interim Order, Doc. #218. The Interim Order provided that the debtor may file and serve any supplemental documents, which may include a revised budget, on or before June 6, 2024. Id.

On June 6, 2024, the debtor filed a supplemental document and revised budget. Doc. ##252, 253. Because the request authorizing continued use of cash collateral was set on less than 28 days' notice prior to the hearing date, opposition to the continued use of cash collateral may be raised at the hearing. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant continued use of cash collateral on

an interim basis through September 30, 2024. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper. The court will issue an order if a further hearing is necessary.

NabieKim Enterprises, Inc. ("Debtor" or "DIP") moves the court for an order authorizing Debtor to use the cash collateral of Small Business Administration ("SBA") on a monthly basis subject to a revised budget. Ex. A, Doc. #253. Debtor asserts SBA holds a duly perfected security interest in nearly all of Debtor's cash collateral, including funds in Debtor's bank accounts at Wells Fargo. Motion, Doc. #6. Based on Debtor's schedules, SBA is owed $312,300.00 and its collateral, as of the petition date, was $49,657.38. Schedule D, Doc. #34. While there are other entities that may assert a security interest in Debtor's cash collateral, all other entities hold a junior security interest to the undersecured SBA and are, thus, unsecured.

Pursuant to 11 U.S.C. § 363, a debtor in possession can use property of the estate that is cash collateral by obtaining either the consent of each entity that has an interest in such cash collateral or court authorization after notice and a hearing. 11 U.S.C. § 363(c)(2). "The primary concern of the court in determining whether cash collateral may be used is whether the secured creditors are adequately protected." In re Plaza Family P'ship, 95 B.R. 166 (E.D. Cal. 1989) (citing 11 U.S.C. § 363(e)). Pursuant to 11 U.S.C. § 363(o), DIP carries the burden of proof on the issue of adequate protection.

Here, DIP seeks court authorization to use cash collateral to pay costs incurred by DIP in the normal course of its business from July 1, 2024 through September 30, 2024. Doc. #252; Ex. A, Doc. #253. As adequate protection for DIP's use of SBA's cash collateral, to the extent cash collateral is actually used, DIP will grant SBA a replacement lien against DIP's post-petition sales and other income as well as granting a replacement lien to any other creditor with a valid security interest in DIP's cash collateral that was served with notice of the motion. Decl. of Kaye Kim, Doc. ##8, 24.

By the supplemental statement, DIP explains that the amount of cash collateral needed for July 2024 through September 2024 is substantially similar to the budget submitted for the previous budgets. Supp. Stmt., Doc. #252.

Accordingly, pending any opposition at the hearing, the motion will be GRANTED on a further interim basis through September 30, 2024, consistent with the budget attached as Exhibit A to Doc. #253. At the hearing, counsel for DIP should be prepared to set a new hearing date for the further use of cash collateral and date to file and serve supplemental pleadings in case Debtor's chapter 11 plan is not confirmed by September 30, 2024.

4. 23-12784-A-11 **IN RE: KODIAK TRUCKING INC.**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION 12-15-2023 [1]

PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to August 1, 2024 at 10:30 a.m.

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

Because the debtor's monthly operating reports are current and because the court intends to continue the hearing to confirm the debtor's subchapter V plan of reorganization to August 1, 2024 at 10:30 a.m. (matter #5, below), the court intends to continue this status conference to August 1, 2024 at 10:30 a.m.

5. 23-12784-A-11 **IN RE: KODIAK TRUCKING INC.**
FW-9

CONFIRMATION HEARING RE: CHAPTER 11 SMALL BUSINESS SUBCHAPTER V PLAN 3-14-2024 [191]

PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to August 1, 2024 at 10:30 a.m.

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

Based on the status conference statement filed by the debtor on June 13, 2024 (Doc. #266), the court intends to continue the hearing to confirm the debtor's subchapter V plan of reorganization to August 1, 2024 at 10:30 a.m.

The court will modify paragraph 4 the order setting this confirmation hearing (Doc. #192) ("Order") to extend the deadline to July 18, 2024 for eCapital Freight Factoring Corp. and Integrated Vehicle Leasing, Inc. to file and serve any objection to confirmation of the Plan.

The deadlines set forth in paragraphs 6 and 7 of the Order shall be calculated from the August 1, 2024 hearing date.

All other provisions of the Order shall remain the same except as previously agreed to by the debtor.

1:30 PM

1. 23-11126-A-7 **IN RE: LEONEL GERONIMO-SEPULVEDA**
MJP-6

MOTION TO AVOID LIEN OF BANK OF AMERICA, N.A.
5-10-2024 [56]

LEONEL GERONIMO-SEPULVEDA/MV
MICHAEL PRIMUS/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 prior to the hearing date 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.

As an informative matter, the certificate of service filed in connection with this motion to avoid lien (Doc. #60) was filed as a fillable version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/2022) with the attachments filed as supporting documents (Doc. ##61, 62). The version of the certificate of service 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. In addition, the attachments should be incorporated into one pdf and filed as a single document with the court.

Leonel Geronimo-Sepulveda ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Bank of America, N.A. ("Creditor") on the residential real property commonly referred to as 2228 Birchwood Ct., Merced, California 95341 (the "Property"). Doc. #56; Schedule D, Doc. #1; Am. Schedule C, Doc. #45.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1);

Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtor filed his bankruptcy petition on May 26, 2023. Doc. #1. A judgment was entered against Debtor in the amount of $11,831.50 in favor of Creditor on September 1, 2022. Ex. A, Doc. #59. The abstract of judgment was recorded pre-petition in Merced County on January 20, 2023, as document number 2023001303. Id. The lien attached to Debtor's interest in the Property located in Merced County. Schedule D, Doc. #1. The Property also is encumbered by a mortgage held by Lakeview Loan Servicing, LLC in the amount of $212,456.00. Schedule D, Doc. #1. Debtor claimed an exemption of $500,000.00 in the Property under California Code of Civil Procedure § 704.730. Am. Schedule C, Doc. #45. Debtor asserts a market value for the Property as of the petition date at $365,000.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		$11,831.50
Total amount of all other liens on the Property (excluding junior judicial liens)	+	$212,456.00
Amount of Debtor's claim of exemption in the Property	+	$500,000.00
		$724,287.50
Value of Debtor's interest in the Property absent liens	-	$365,000.00
Amount Creditor's lien impairs Debtors' exemption		$359,287.50

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

Debtor has established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED. The proposed order shall state that Creditor's judicial lien is avoided on the subject Property only and include a copy of the abstract of judgment as an exhibit.

2. 24-10733-A-7 **IN RE: JOHN/KENDRA BURT**
PBB-1

MOTION TO AVOID LIEN OF CREDITORS BUREAU USA
5-21-2024 [15]

KENDRA BURT/MV
PETER BUNTING/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 prior to the hearing date 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 non-responding 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 movants have done here.

John Hamilton Burt and Kendra Lee Burt (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Creditors Bureau USA dba Fresno Credit Bureau ("Creditor") on the residential real property commonly referred to as 9170 East Sierra Avenue, Clovis, California 93619 (the "Property"). Doc. #15; Schedule C & D, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). "[J]udicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtors filed their bankruptcy petition on March 22, 2024. Doc. #1. A judgment was entered against Debtors in the amount of $6,857.97 in favor of Creditor on June 11, 2007. Ex. D, Doc. #18. A renewal of judgment was recorded in Fresno County on January 19, 2023, as document number 2023-0004656. Ex. D, Doc. #18. Debtors estimate the judicial lien to be $7,000.00 as of the petition date. Decl. of Kendra Lee Burt, Doc. #17. The lien attached to Debtors' interest in the Property located in Fresno County. Id. Debtors assert a market value for the Property as of the petition date at $600,000.00. Schedule A/B, Doc. #1; Burt Decl., Doc. #17. The Property also is encumbered by a first deed of trust in favor of Select Portfolio Servicing Inc. in the amount $399,906.01 and a tax lien in favor of the Franchise Tax Board in the amount of $171,770.94. Burt Decl., Doc. #17. John Hamilton Burt and Kendra Lee Burt each claimed an exemption of $175,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. There also appears to be one senior judicial lien on the Property. The senior judicial lien was recorded in Fresno County on May 15, 2014 for $1,068.22. Ex. D, Doc. #18. Debtors estimate the senior judicial lien to be $2,010.00 as of the petition date. Burt Decl., Doc. #17.

Applying the statutory formula:

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Amount of Creditor's judicial lien		$7,000.00
Total amount of all other liens on the Property (excluding junior judicial liens)	+	$573,686.95
Amount of Debtors' claim of exemption in the Property	+	$350,000.00
		$930,686.95
Value of Debtors' interest in the Property absent liens	-	$600,000.00
Amount Creditor's lien impairs Debtors' exemption		$330,686.95

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

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED. The proposed order shall state that Creditor's judicial lien is avoided on the subject Property only and include a copy of the abstract of judgment as an exhibit.

3. 24-10733-A-7 **IN RE: JOHN/KENDRA BURT**
PBB-2

MOTION TO AVOID LIEN OF COLLECTIBLES MANAGEMENT RESOURCES
5-21-2024 [20]

KENDRA BURT/MV
PETER BUNTING/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 prior to the hearing date 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 non-responding 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 movants have done here.

John Hamilton Burt and Kendra Lee Burt (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Collectibles Management Resources ("Creditor") on the residential real property commonly referred to as 9170 East Sierra Avenue, Clovis, California 93619 (the "Property"). Doc. #20; Schedule C & D, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). "[J]udicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtors filed their bankruptcy petition on March 22, 2024. Doc. #1. A judgment was entered against Debtors in the amount of $1,068.22 in favor of Creditor on June 27, 2013. Ex. D, Doc. #23. Debtors estimate the judicial lien to be $2,010.00 as of the petition date. Decl. of Kendra Lee Burt, Doc. #22. The abstract of judgment was recorded pre-petition in Fresno County on May 15, 2014, as document number 2014-0054801. Id. The lien attached to Debtors' interest in the Property located in Fresno County. Id. Debtors assert a market value for the Property as of the petition date at $600,000.00. Schedule A/B, Doc. #1; Burt Decl., Doc. #22. The Property also is encumbered by a first deed of trust in favor of Select Portfolio Servicing Inc. in the amount $399,906.01 and a tax lien in favor of the Franchise Tax Board in the amount of $171,770.94. Burt Decl., Doc. #22. John Hamilton Burt and Kendra Lee Burt each claimed an exemption of $175,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		$2,010.00
Total amount of all other liens on the Property (excluding junior judicial liens)	+	$571,676.95
Amount of Debtors' claim of exemption in the Property	+	$350,000.00
		$923,686.95
Value of Debtors' interest in the Property absent liens	-	$600,000.00
Amount Creditor's lien impairs Debtors' exemption		$323,686.95

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

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED. The proposed order shall state that Creditor's judicial lien is avoided on the subject Property only and include a copy of the abstract of judgment as an exhibit.

4. 23-10344-A-7 **IN RE: SUSAN QUINVILLE AND LOARINA DOMENA-QUINVILLE**
JRL-4

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-6-2024 [111]

TRUSTEES OF THE GRANT F. SCHREIBER TRUST/MV
BENNY BARCO/ATTY. FOR DBT.
JERRY LOWE/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for improper service based on the following.

The certificate of service filed in connection with this motion (Doc. #117) does not comply with Local Rule of Practice ("LBR") 7005-1 and General Order 22-03 because the certificate of service is missing pages 2 and 3. In addition, the certificate of service does not comply with LBR 9014-1(e)(3), which requires that proof of service of all pleadings be filed with the court not more than three days after the pleading is filed with the court. Here, the incomplete certificate of service was filed four days after the motion was filed. Doc. ##111, 117.

More importantly, the certificate of service that was filed in connection with this motion for relief from the automatic stay shows that the debtors were not served with this motion by first class mail and the chapter 7 trustee was only served electronically pursuant to Federal Rule of Civil Procedure 5 and Federal Rules of Bankruptcy Procedure ("Rule") 7005, 9036 Service. Doc. #117.

Rules 4001(a)(1) and 9014(b) require service of a motion for relief from the automatic stay to be made pursuant to Rule 7004. Rule 7004(b)(1) provides that service upon an individual be made "by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession." Rule 9036(e) does not permit electronic service when any paper is required to be served in accordance with Rule 7004, although Rule 7004(g) does permit electronic service on counsel for the debtors in addition to first class mail service on the debtors.

Because the moving party did not serve either the debtors or the chapter 7 trustee with this motion by first class mail as required by Rule 7004(b)(1), the motion was not served properly on either the debtors or the chapter 7 trustee.

As a further procedural matter, the declaration of Carrie S. Arrata filed in support of the motion (Doc. #114) is signed by attorney Jerry R. Lowe and not by the declarant. Thus, the declaration does not comply with 28 U.S.C. § 1746, which requires declarations filed in support of a motion to be signed and dated by the declarant. Absent a declaration signed and dated by Ms. Arrata, there is no competent evidence in support of the motion. The exhibits also are not authenticated.

5. 24-10568-A-7 **IN RE: DEBRA VAN CAMP**
DMG-1

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
5-10-2024 [16]

JON ATHERLY/MV
LEONARD WELSH/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.
RESPONSIVE PLEADING

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 debtor filed an amended Schedule C on June 6, 2024 (Doc. #31), amending the claimed exemption concerning the family residence.

6. 24-10883-A-7 **IN RE: NINA SWALM**
DVW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-3-2024 [16]

21ST MORTGAGE CORPORATION/MV
PETER BUNTING/ATTY. FOR DBT.
DIANE WEIFENBACH/ATTY. FOR MV.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion for relief from the automatic stay on June 11, 2024. Doc. #24.

7. 19-12084-A-7 **IN RE: CRYSTAL HEARD**
DMG-5

MOTION FOR ADMINISTRATIVE EXPENSES
5-29-2024 [69]

JEFFREY VETTER/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
D. GARDNER/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 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.

Jeffrey M. Vetter ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Crystal Ann Heard, moves the court for an order authorizing the payment of $1,673.00 to the Internal Revenue Service for estimated federal income tax due for the 2024 tax year and $84.00 for estimated state income tax due for the 2024 tax year. Doc. #69.

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). Decl. of Jeffrey M. Vetter, Doc. #71.

Accordingly, this motion is GRANTED. The estate is authorized to pay $1,673.00 to the Internal Revenue Service and $84.00 to the Franchise Tax Board as administrative expense claims.

8. 24-10890-A-7 **IN RE: JASPREET KAUR**
CLB-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-16-2024 [10]

BANK OF AMERICA, N.A./MV
JERRY LOWE/ATTY. FOR DBT.
CHAD BUTLER/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 prior to the hearing date 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, Bank of America, N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2021 Ford Mustang, VIN: 1FA6P8CF4M5118541 (the "Vehicle"). Doc. #10.

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 five complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least $4,389.55. Decl. of Shanine Duviella, Doc. #12.

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 $26,000.00 and the debtor owes $34,031.19. Duviella Decl., Doc. #12. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

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.

2:00 PM

1. 23-11701-A-13 **IN RE: ENRIQUE ARTURO IBARRA OLGUIN AND NORMA CORTEZ IBARRA**
SLL-2

MOTION TO MODIFY PLAN
5-13-2024 [43]

NORMA CORTEZ IBARRA/MV
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 35 days' notice prior to the hearing date pursuant to 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.

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.

2. 24-11047-A-13 **IN RE: HUGO MARTINEZ RODRIGUEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-30-2024 [26]

DISMISSED 6/6/24

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on June 6, 2024. Doc. #30. The order to show cause will be dropped as moot. No appearance is necessary.

3. 24-10850-A-13 **IN RE: CHRIS ALCANTARA**
LGT-1

MOTION TO DISMISS CASE
5-21-2024 [22]

LILIAN TSANG/MV

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor, 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 default of the debtor is 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.

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtor that is prejudicial to creditors. Doc. #22. Specifically, Trustee asks the court to dismiss this case for the failure of Chris Alcantara ("Debtor") to appear at the scheduled § 341 meeting of creditors. In addition, Debtor is ineligible to be a debtor in a chapter 13 pursuant to 11 U.S.C. § 109(h) because Debtor failed to complete the required credit counseling prior to the bankruptcy filing date. Doc. #22. Debtor did not oppose the motion.

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). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by Debtor that is prejudicial to creditors because Debtor failed to appear at the scheduled 341 meeting of creditors.

Under 11 U.S.C. § 109(h), an individual may not be a debtor unless the debtor received credit counseling within the 180-day period ending on the petition date. 11 U.S.C. § 109(h)(1). Debtor filed for relief under chapter 13 of the Bankruptcy Code on April 2, 2024. Doc. #1. The Certificate of Counseling filed with the bankruptcy petition shows that Debtor received credit counseling post-petition, on April 3, 2024, which is after the 180-day period set forth in § 109(h)(1). Doc. #1. The Bankruptcy Code allows Debtor to request a waiver of the § 109(h)(1) requirement to receive credit counseling pre-petition based on

exigent circumstances. 11 U.S.C. § 109(h)(3)(A). However, Debtor has not requested a waiver of the § 109(h)(1) requirements. Because Debtor did not receive credit counseling within the 180-days prior to filing the bankruptcy petition and has not received a waiver of that requirement, Debtor may not be a debtor pursuant to § 109(h).

Because Debtor has failed to appear at the meeting of creditors and is ineligible to be a bankruptcy debtor pursuant to 11 U.S.C. § 109(h), dismissal rather than conversion is appropriate.

Accordingly, the motion will be GRANTED, and the case dismissed.

4. 24-11057-A-13 **IN RE: RAMON/ELEANOR GONZALEZ**
CAS-1

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE
5-30-2024 [19]

CAPITAL ONE AUTO FINANCE/MV
JERRY LOWE/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.

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 to confirmation 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.

Ramon Jose Gonzalez and Eleanor Elisabeth Gonzalez (together, "Debtors") filed their chapter 13 plan (the "Plan") on April 26, 2024. Plan, Doc. #3. Secured creditor Capital One Auto Finance, a division of Capital One, N.A. ("Creditor"), objects to confirmation of the Plan because the Plan proposes to pay 5% interest on Creditor's claim, which does not comply with Till v. SCS Credit Corp., 541 U.S. 465 (2004). Plan, Doc. #3; Doc. #19.

The Till "formula approach" requires an interest rate "high enough to compensate the creditor for its risk but not so high as to doom the plan." Till v. SCS Credit Corp., 541 U.S. 465, 480 (2004). This is referred to as the "formula" or "prime-plus" rate, which the Supreme Court held best comports with the purposes of the Bankruptcy Code in the chapter 13 context. Id. at 479-80.

It is generally acknowledged that this approach starts with the national prime rate, which is then adjusted based on a number of factors. While the Supreme Court enunciated some factors to consider in adjusting the "prime-plus" rate upward, the Supreme Court also acknowledged some factors contribute to a reduction in risk (though not necessarily a rate less than prime). Till, 541 U.S. at 475 n.12. The Supreme Court in Till also noted that "if the court could somehow be certain a debtor would complete his plan, the prime rate would

be adequate to compensate any secured creditors forced to accept cram down loans." Till, 541 U.S. at 479 n.18.

Creditor argues that an interest rate of 5% fails to pay the applicable prime plus interest rate. As of June 18, 2024, the Wall Street Journal Prime Rate is 8.5%. The court can take judicial notice of the prime rates published in the Wall Street Journal. Stein v. JP Morgan Chase Bank, 297 F. Supp. 2d 286, 290 (S.D.N.Y. 2003); Fed. R. Evid. 201.

Setting the interest rate on Creditor's Class 2 claim at 5% when the current prime rate is 8.5% does not satisfy Till. Otherwise, the court makes no determination with respect to what a reasonable interest rate would be in this case.

Accordingly, the court is inclined to SUSTAIN Creditor's objection to confirmation of the Plan.

5. 24-10868-A-13 **IN RE: JASDEEP SANDHU**
SKI-1

MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION/APPLICATION FOR RELIEF FROM CO-DEBTOR STAY
5-16-2024 [31]

MERCEDES-BENZ VEHICLE TRUST/MV
PHILLIP GILLET/ATTY. FOR DBT.
SHERYL ITH/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 prior to the hearing date 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.

The movant, Mercedes-Benz Vehicle Trust Successor in Interest to Daimler Trust ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and relief from the codebtor stay under 11 U.S.C. § 1301(c) with respect to a 2021 Mercedes-Benz AMG G63, VIN: W1NYC7HJ6MX412624 (the "Vehicle"). Doc. #31. Jasdeep Singh Sandhu ("Debtor") and Ramandeep Sandhu ("Codebtor") entered into a California Motor Vehicle Lease Agreement on November 9, 2021 to lease the

Vehicle. Decl. of Star Faz, Doc. #33. Under the terms of the agreement, both Debtor and Codebtor are obligated to Movant. Id.

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).

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor defaulted on payments within the lease agreement, causing the account to be charged off on September 8, 2023, and triggering a provision in the lease which made the account in default for the entire balance of $195,159.26. Ex. A, Doc. #34. Debtor's chapter 13 plan ("Plan") was filed on May 28, 2024, which provides for Movant's secured claim to be satisfied by the surrender of the Vehicle to Movant. Plan ¶3.09, Doc. #48; Claim 6-1. Since the Vehicle is to be surrendered under Class 3 of the Plan, Movant requests relief from the automatic stay against Debtor be granted. Supp. Decl. of Sheryl K. Ith, Doc. #49.

Section 1301 of the Bankruptcy Code provides for a codebtor stay that prohibits a creditor from acting to collect any part of a consumer debt from an individual that is liable on the debt with the bankruptcy debtor. 11 U.S.C. § 1301(a). Relief from the codebtor stay must be granted if "the plan filed by the debtor proposes not to pay such claim." 11 U.S.C. § 1301(c)(2); see In re Williams, 374 B.R. 713, 715-16 (Bankr. W.D. Mo. 2007). Here, Debtor's chapter 13 plan does not provide for Movant's allowed secured claim and does not propose to pay such claim. Plan, Doc. #48. Since the Vehicle is to be surrendered under Class 3 of the Plan, Movant requests relief from the codebtor stay against Codebtor be granted. Ith Supp. Decl., Doc. #49.

Accordingly, the motion will be granted as to Debtor pursuant to 11 U.S.C. § 362(d)(1) and as to Codebtor pursuant to 11 U.S.C. § 1301(c) to permit Movant to gain immediate possession of the Vehicle pursuant to applicable law. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtor's chapter 13 plan does not provide for Movant's allowed secured claim and does not propose to pay such claim.

6. 24-10281-A-13 **IN RE: VAJOHN VANG AND VANG THAO**
JRL-1

AMENDED MOTION TO CONFIRM PLAN
5-7-2024 [31]

VANG THAO/MV
JERRY LOWE/ATTY. FOR DBT.
RESPONSIVE PLEADING WITHDRAWN

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 prior to the hearing date pursuant to Local Rule of Practice ("LBR") 3015-1(d)(1). The

chapter 13 trustee timely opposed this motion but withdrew her opposition on June 3, 2024. Doc. ##38, 46. 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.

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. 23-10691-A-13 **IN RE: KAYE KIM**
DNL-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CALVIN KIM
1-9-2024 [112]

CALVIN KIM/MV
LEONARD WELSH/ATTY. FOR DBT.
BENJAMIN TAGERT/ATTY. FOR MV.

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 debtor filed a modified plan on June 6, 2024 (YW-3, Doc. #171), with a motion to confirm the modified plan set for hearing on July 18, 2024 at 9:30 a.m. Doc. ##174-178.

8. 23-10691-A-13 **IN RE: KAYE KIM**
LGT-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
LILIAN G. TSANG
2-12-2024 [131]

LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

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 debtor filed a modified plan on June 6, 2024 (YW-3, Doc. #171), with a motion to confirm the modified plan set for hearing on July 18, 2024 at 9:30 a.m. Doc. ##174-178.

9. 24-10995-A-13 **IN RE: VICTOR TORRES FIGUEROA AND YAMAYRA SANTIAGO LOYO**
NLG-1

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN SERVICING, LLC
5-31-2024 [32]

LAKEVIEW LOAN SERVICING, LLC/MV
JERRY LOWE/ATTY. FOR DBT.
NICHOLE GLOWIN/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

The debtors withdrew the chapter 13 plan. Doc. #40. Therefore, this objection is overruled as moot.

3:00 PM

1. 23-10947-A-13 **IN RE: SONIA LOPEZ**
23-1039 SDS-1

MOTION FOR ENTRY OF DEFAULT JUDGMENT
5-22-2024 [68]

LOPEZ V. UNIFIED MORTGAGE SERVICE, INC. ET AL
SUSAN SILVEIRA/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied except to the extent that the matters in the Requests for Admissions are deemed admitted.

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 prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the defendants 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 defendants are entered. Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

The court is inclined to DENY the plaintiff's motion because counsel for the plaintiff did not meet the certification requirement of Federal Rule of Civil Procedure ("Rule") 37(d)(1)(B), incorporated into this adversary proceeding by Federal Rule of Bankruptcy Procedure 7037, before filing this motion with respect to sanctions for failing to respond to the plaintiff's interrogatories and request for production of documents. The court is inclined to deem the request for admissions admitted pursuant to Rule 36(a)(3), incorporated into this adversary proceeding by Federal Rule of Bankruptcy Procedure 7036. Because the court is substantially DENYING the plaintiff's motion and because counsel for the plaintiff did not comply with the certification requirement of Rule 37(d)(1)(B), the court will not award any attorney's fees and costs for bringing this motion.

Sonia Lopez ("Plaintiff") moves pursuant to Rule 37 for default judgment against all named defendants for their failure to respond to properly served Interrogatories, Requests for Production of Documents, and Requests for Admission. Doc. #68.

On September 21, 2023, Plaintiff filed a complaint against Unified Mortgage Service, Inc.; Capital Benefit Mortgage, Inc.; Brilena, Inc.; Michael and Adele Bumbaca; Equity Trust Company Successor in Interest to First Regional Bank as Custodian FBO Robert Pastor IRA Account #051236; Equity Trust Company as Custodian FBO Charles A. Gurule Jr. IRA Account #T058685; Equity Trust Company Custodian FBO Robert B. Pastor IRA Account #T058686; and Robert C. Edwards (collectively, "Defendants") alleging 18 claims for relief relating to improperly requested excessive charges asserted by Defendants under a note and deed of trust secured by real property located at 819, 819½, 821 and 821½ N. Divisadero Street, Visalia, California 93291 ("Complaint"). Doc. #1. Defendants

Unified Mortgage Service, Inc.; Brilena, Inc.; Michael and Adele Bumbaca; Equity Trust Company Successor in Interest to First Regional Bank as Custodian FBO Robert Pastor IRA Account #051236; Equity Trust Company as Custodian FBO Charles A. Gurule Jr. IRA Account #T058685; Equity Trust Company Custodian FBO Robert B. Pastor IRA Account #T058686; and Robert C. Edwards (collectively, "Answering Defendants") answered the Complaint on October 20, 2023. Doc. #9.

On February 16, 2024, Plaintiff served Answering Defendants with Plaintiff's First Set of Interrogatories and First Set of Requests for Production of Documents. Decl. of Susan D. Silveira at ¶¶ 1-2, Doc. #70; Exs. A-D, Doc. #71. On March 5, 2024, Plaintiff served Answering Defendants with Plaintiff's First Set of Requests for Admissions. Silveira Decl. at ¶ 3, Doc. #70; Exs. E-F, Doc. #71.

On March 15, 2024, counsel for Plaintiff received a request from counsel for Answering Defendants for an extension of time to respond to discovery, which was granted until April 5, 2024, the discovery cut-off date in this court's scheduling order. Silveira Decl. at ¶ 5, Doc. #70. On April 5, 2024, counsel for Plaintiff received another request from counsel for Answering Defendants for an extension of time to respond to discovery. Id. at ¶ 6. Counsel for Plaintiff agreed to an additional week subject to counsel for Answering Defendants preparing a stipulation and order extending the discovery deadline. Id. Counsel for Plaintiff did not hear further from counsel for Answering Defendants. Id.

On April 23, 2024, counsel for Plaintiff reached out to counsel for Answering Defendants requesting the status of discovery. Silveira Decl. at ¶ 8, Doc. #70. As of May 22, 2024, counsel for Plaintiff had not heard back from counsel for Answering Defendants. Id.

Answering Defendants never responded to the written discovery. Silveira Decl. at ¶¶ 4, 7, Doc. #70. Plaintiff filed the instant motion on May 22, 2024. Doc. #68.

Under Rule 37(d)(1)(A)(ii) and (d)(3), this court can issue sanctions listed in Rule 37(b)(2)(a)(i)-(vi) for the failure of a party to serve answers, objections or written response after being served properly with interrogatories under Rule 33 or request for inspection under Rule 34, including request for production of documents. However, Rule 37(d)(1)(A) requires that "[a] motion for sanctions for failing to answer or respond must include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without court action." Fed. R. Civ. P. 37(d)(1)(B) (emphasis added).

Here, there is no certification filed with the motion as required by Rule 37(d)(1)(A). The declaration of counsel for Plaintiff filed with the motion declares that counsel for Plaintiff reached out to counsel for Answering Defendants on April 23, 2024 requesting the status of discovery and filed this motion a month later, on May 22, 2024, without hearing back from counsel for Answering Defendants. Silveira Decl. at ¶ 8, Doc. #70. The court finds these limited actions of counsel for Plaintiff do not meet the requirement of Rule 37(d)(1)(A) that counsel for Plaintiff confer or attempt to confer in good faith with counsel for Answering Defendants to obtain answers to Plaintiff's Interrogatories or responses to Plaintiff's Request for Production of Documents prior to filing this motion.

With respect to the Request for Admissions, a matter is admitted unless within 30 days after being served with a request for admission, the party to whom the request is directed serves on the requesting party a written answer or objection. Fed. R. Civ. P. 36(a)(3). Here, Plaintiff served the Requests for

Admissions on counsel for Answering Defendants on March 5, 2024, and no timely written answer or objection was provided. Thus, the matters in the Requests for Admissions are deemed admitted pursuant to Rule 36(a)(3).

Accordingly, the motion for default judgment, including the request for attorney's fees and costs, is denied except to the extent that the matters in the Requests for Admissions are deemed admitted pursuant to Rule 36(a)(3).

2. 23-12893-A-7 **IN RE: RAYMOND HERNANDEZ**
24-1008 CAE-1

STATUS CONFERENCE RE: COMPLAINT
4-19-2024 [1]

FEAR V. HERNANDEZ
GABRIEL WADDELL/ATTY. FOR PL.

NO RULING.