

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, July 7, 2022
Place: Department A - 510 19th Street
Bakersfield, California

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

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

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [22-10300](#)-A-13 **IN RE: RUDY LOPEZ**
[JGB-3](#)

MOTION TO CONFIRM PLAN
6-2-2022 [\[45\]](#)

RUDY LOPEZ/MV
JAMES BEIRNE/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)(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.

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. [22-10615](#)-A-13 **IN RE: TINA CISNEROS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-15-2022 [\[22\]](#)

PATRICK KAVANAGH/ATTY. FOR DBT.
INSTALLMENT PAYMENT PAID 6/21/22

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

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

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

3. [21-10716](#)-A-13 **IN RE: VINOD SAHNI**
[MHM-3](#)

MOTION TO DISMISS CASE
5-16-2022 [\[98\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
DISMISSED 6/22/22

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on June 22, 2022. Doc. #104.
Therefore, this motion will be DENIED AS MOOT.

4. [22-10228](#)-A-13 **IN RE: ELIAS GARCIA CAMACHO**
[MHM-1](#)

MOTION TO DISMISS CASE
5-19-2022 [\[39\]](#)

MICHAEL MEYER/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 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor 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) and (c)(4) for unreasonable delay by debtor that is prejudicial to creditors. Doc #39. Specifically, Trustee asks the court to dismiss this case for:

- (1) Unreasonable delay by the debtor that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1).
- (2) The debtor's failure to appear at the scheduled § 341 meeting of creditors.
- (3) The debtor's failure to provide Trustee with any requested documents.
- (4) The debtor's failure to make all payments due under the plan.

Doc. #39. The debtor did not oppose.

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 the debtor failed to appear at the scheduled § 341 meeting of creditors and failed to provide Trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Cause also exists under 11 U.S.C. § 1307(c)(4) to dismiss this case as the debtor has failed to make all payments due under the plan.

Because the debtor has failed to appear at the meeting of creditors, dismissal rather than conversion is appropriate.

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

5. [22-10628](#)-A-13 **IN RE: DAVID/NANCY HALL**
[MHM-2](#)

MOTION TO DISMISS CASE
5-25-2022 [\[15\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to August 4, 2022 at 9:00 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.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtors timely filed written opposition on June 21, 2022. Doc. #26. This matter will proceed as scheduled.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case for unreasonable delay by the debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). Doc. #15. Specifically, Trustee asks the court to dismiss this case for:

- (5) Unreasonable delay by the debtors that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1).
- (6) The debtors' failure to appear at the scheduled § 341 meeting of creditors.
- (7) The debtors' failure to provide Trustee with all requested documents.
- (8) The debtors' failure to cooperate with Trustee and provide full details regarding the cabin listed in the debtors' schedules.

Doc. #15. A review of the debtors' Schedules A/B and D shows that the debtors' significant assets, vehicles and real property, are over encumbered, and the debtors claim exemptions in the remaining assets. Trustee states that dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate. Doc. #15.

On June 21, 2022, the debtors responded to the motion. Doc. #26. Although the debtors missed the first meeting of creditors, the debtors appeared at the continued meeting of creditors held on June 14, 2022. The meeting of creditors has been continued to July 12, 2022. The debtors assert that most of the missing documents have been provided to Trustee, and the debtors have advised that they are working on the remaining items for the July 12 continued meeting of creditors. Doc. #26.

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). A review of Trustee's § 341 meeting report docket entry shows that the debtors appeared at the meeting of creditors held on June 14, 2022. See Docket Entry 6/14/2022. In addition, the debtors explain that Mr. Hall was hospitalized with a very serious illness that precluded him from appearing at the initial meeting of creditors. The debtors also assert that they have provided most of the requested documents and are working to provide the outstanding documents at the continued meeting of creditors set for July 12, 2022. Doc. #26.

Based on the current status of this case, the court is inclined to continue the motion to August 4, 2022 at 9:00 a.m. to confirm the debtors have complied with all outstanding grounds for dismissal. Trustee shall file and serve a status report on or before July 28, 2022 if the motion to dismiss has not been withdrawn by then.

6. [22-10628](#)-A-13 **IN RE: DAVID/NANCY HALL**
[MHM-3](#)

MOTION TO DISMISS CASE
6-9-2022 [\[20\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to August 4, 2022 at 9:00 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.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtors timely filed written opposition on June 21, 2022. Doc. #28. This matter will proceed as scheduled.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case for failure to make all payments due under the plan, citing 11 U.S.C. § 1307(c)(1) and (4). Doc. #20.

On June 21, 2022, the debtors responded to the motion asserting that all payments will be made prior to the hearing even though the debtors have been ill. Doc. #28.

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).

If the motion is not withdrawn by the time of the hearing, the court is inclined to continue the motion to August 4, 2022 at 9:00 a.m. to confirm the debtors are current with all plan payments.

7. [19-14252](#)-A-13 **IN RE: MICHAEL/LUCIA LOPEZ**
[RSW-5](#)

MOTION TO MODIFY PLAN
5-18-2022 [\[116\]](#)

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

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

DISPOSITION: Continued to August 4, 2022 at 9:00 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The Chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to modify the Chapter 13 plan. Tr.'s Opp'n, Doc. #124. Unless this case is voluntarily converted to Chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response no later than July 21, 2022. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. Trustee shall file and serve a reply, if any, by July 28, 2022.

If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than July 21, 2022. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

8. [18-14853](#)-A-13 **IN RE: JERRICK/SANDRA BLOCK**
[RSW-5](#)

MOTION TO MODIFY PLAN
5-18-2022 [[87](#)]

JERRICK BLOCK/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

9. [21-12353](#)-A-13 **IN RE: RESTITUTO SALANG**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
6-16-2022 [[54](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.

NO RULING.

MOTION TO DISMISS CASE
6-17-2022 [\[59\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/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 court will issue an order after the hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the debtor's default 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.

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and for the debtor's failure to provide a purchase contract for a Honda automobile as well as amend Schedule F to include the debtor's non-filing spouse's creditors. Doc. #59.

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 by failing to cooperate fully with Trustee as required by 11 U.S.C. § 521(a)(3) and (4).

Because the debtor's bankruptcy case was originally filed under chapter 7 and the chapter 7 case was conditionally dismissed under 11 U.S.C. § 707(b), conversion to chapter 7 is not appropriate.

Accordingly, unless opposition is presented at the hearing, this motion will be GRANTED. The case will be dismissed.

11. [22-10257](#)-A-13 **IN RE: STACY KAISER**
[MHM-3](#)

MOTION TO DISMISS CASE
6-3-2022 [\[38\]](#)

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

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 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor 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) and (c)(4) for unreasonable delay by debtor that is prejudicial to creditors. Doc #38. The debtor did not oppose.

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 the debtor failed to appear at the scheduled 341 meeting of creditors and failed to set a plan for hearing with notice to creditors. Cause also exists under 11 U.S.C. § 1307(c)(4) to dismiss this case as the debtor has failed to make all payments due under the plan.

A review of the debtor's Schedules A/B and D shows that there is nominal non-exempt equity in the debtor's assets. Trustee states that dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate. Doc. #38.

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

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE 3002.1
6-7-2022 [\[82\]](#)

MICHAEL MEYER/MV
VINCENT GORSKI/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part, denied in part.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Ajax Mortgage Loan Trust 2018-G, Mortgage-Backed Securities, Series 2018-G, by U.S. Bank National Association, as Indenture Trustee, its successors and/or assignees ("Creditor") timely filed written response to this motion on June 23, 2022. Doc. #86. The failure of other 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). Therefore, the defaults of the non-responding parties in interest are entered. This matter will proceed as scheduled.

Michael H. Meyer ("Trustee"), the chapter 13 trustee, moves the court for a determination of final cure pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 3002.1. Doc. #82. On April 13, 2022, Trustee filed and served a Notice of Final Cure Payment ("Notice") pursuant to Rule 3002.1(f), but Creditor failed to respond. See Doc. #84. However, in response to this motion, Creditor filed a written response indicating that the debtor has cured the default with respect to Creditor's prepetition claim and Creditor further agrees that the debtor was current on all post-petition payments and was due for the April 15, 2022 mortgage payment at the time Trustee filed his Notice. Doc. #86. Creditor requests that Trustee's motion be denied. Doc. #86.

Rule 3002.1(g) requires that within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether the holder agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with 11 U.S.C. § 1322(b)(5).

If the holder of a claim fails to provide any information as required by Rule 3002.1(g), Rule 3002.1(i) permits the court, after notice and a hearing, to preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless. Rule 3002.1(i)(1).

Although Creditor failed to respond to Trustee's Notice of Final Cure Payment in the manner required by Rule 3002.1(g), Creditor has now filed a response and contends that the failure to file a timely response was due to the inadvertence

of Creditor's counsel. Opp., Doc. #86; Decl. of Reilly D. Wilkinson, Doc. #87. The court finds that Creditor's failure to abide by Rule 3002.1(g) was harmless in this case. The record shows that the debtor has cured the default on the loan with Creditor and was due for the April 15, 2022 mortgage payment at the time Trustee filed his Notice. Therefore, this motion is GRANTED IN PART, and the court will enter an order confirming that the debtor has cured the default on the loan with Creditor and was due for the April 15, 2022 mortgage payment at the time Trustee filed his Notice. This motion is DENIED IN PART only to the relief requested pursuant to Rule 3002.1(i)(1).

13. [21-12175](#)-A-13 **IN RE: SHANNON SIMPSON**
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE
11-17-2021 [\[22\]](#)

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

NO RULING.

14. [21-12175](#)-A-13 **IN RE: SHANNON SIMPSON**
[RSW-4](#)

CONTINUED MOTION TO CONFIRM PLAN
4-15-2022 [\[66\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). On May 26, 2022, the chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to confirm the chapter 13 plan. Doc. #82. On June 21, 2022, the debtor filed a response to Trustee's objection asserting that the current loan forbearance applies to both pre- and post-petition mortgage payments, including amounts due under Class 1 of the plan, so the debtor's current plan payments are sufficient to pay all payments required under the plan. Doc. #92. 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 original 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 above-mentioned parties in interest are entered. This matter will proceed as scheduled.

Shannon Elaine Simpson ("Debtor") filed her Chapter 13 bankruptcy case on September 11, 2021. Doc. #1. Debtor filed her Second Modified Chapter 13 Plan on April 15, 2022 (the "Plan"). Doc. #70. The Plan calls for monthly payments of \$885 through December 2022, with plan payments to increase to \$4,144.08 through month 60, with a 0% dividend to unsecured creditors. Doc. #70. Trustee objects to confirmation of the Plan because Debtor will not be able to make all payments under the plan and comply with the plan, as required by 11 U.S.C. § 1325(a)(6). Doc. #82.

Trustee contends that the Plan payment will need to be increased to more than \$1,971.28 starting in June 2022, which is month 9 of the Plan, to pay pre-petition arrears due under the Plan as well as a \$867.00 delinquency. Doc. #82. Class 1 of the Plan states that a \$60,320.85 arrearage is owed on Debtor's mortgage but does not provide for a start date on payment of Class 1 pre-petition arrears. If payment on Class 1 claims was to be paid starting in month 1, Debtor would currently have a plan delinquency of \$9,557.24. It appears that Debtor will not be able to make all payments under the Plan and comply with the Plan, as required by 11 U.S.C. § 1325(a)(6).

Debtor responds to Trustee's objection asserting that Debtor's mortgage loan is in forbearance, including pre-petition arrears, so Trustee does not need to make plan payments on Class 1 claims while the loan is in forbearance. Doc. #92. Thus, the current plan payment is sufficient to pay all required payments, and Debtor is current through May 2022.

Trustee responds that the current order stopping payments to Creditor based on forbearance applies only to ongoing mortgage payments and not to pre-petition arrear payments. Doc. #94. On April 21, 2022, Trustee noticed a forbearance status conference for April 28, 2022, at which Trustee requested clarification that Trustee did not need to make mortgage payments to Creditor from the months of September 1, 2021 through December 1, 2022. Doc. #72. Only Trustee appeared at the hearing on April 28, 2022. On April 29, 2022, the court entered an Order on Chapter 13 Trustee's Forbearance Status Conference ("Order") providing in relevant part: "Trustee shall make no ongoing mortgage payments to the Class 1 Creditor for the months of September 1, 2021, through December 1, 2022." Order, Doc. #80. There is no mention in the Order of any forbearance by Trustee with respect to pre-petition arrears.

Because the Order does not forbear pre-petition arrears, pre-petition arrears provided for under the Plan need to be current before the Plan can be confirmed.

Accordingly, Debtor's motion to confirm the Plan will be DENIED.

OBJECTION TO CONFIRMATION OF PLAN BY SELECT PORTFOLIO SERVICING, INC.
6-21-2022 [\[14\]](#)

SELECT PORTFOLIO SERVICING, INC./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
JENNIFER WONG/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 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.

Jackie Oats ("Debtor") filed the Chapter 13 Plan (the "Plan") on May 8, 2022. Doc. #3. Secured creditor Select Portfolio Servicing, Inc. as servicing agent for Wilmington Trust, NA, successor trustee to Citibank, N.A., as Trustee for the SACO I Trust 2006-2, Mortgages-Backed Certificates, Series 2006-2 ("Creditor") objects to confirmation of the Plan. Creditor's Obj., Doc. #14. Creditor's objection centers on the Plan's attempt to reduce the interest rate on Creditor's Class 2 claim. Doc. #14.

The Plan provides for Creditor in Class 2(A). Plan, Doc. #3. Class 2 includes all secured claims that are modified by the plan or that have matured or will mature before the plan is completed. Class 2(A) includes claims that are not reduced on the value of collateral. Creditor's claim, secured by a deed of trust on Debtor's property, matured pre-petition on December 1, 2020. Doc. #14.

Debtor's current Plan now attempts to reduce the interest rate from the contract rate of 12% to 4%. Plan, Doc. #3; Doc. #14. Creditor does not consent to the interest rate reduction and argues that the proposed reduction is unreasonable. Doc. #14. Creditor cites to the Supreme Court decision of Till v. SCS Credit Corp., 541 U.S. 465, 480 (2004), to support the argument that a reduction of the interest rate from 12% to 4% renders the Plan unconfirmable. Doc. #14.

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 greater than 4.75%, the current prime rate, is the appropriate rate. Creditor argues that a reduction to 4% is unreasonable given that Debtor significantly defaulted on Creditor's loan that matured more than 18 months ago. Doc. #14. 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.

Here, the proposed 4% interest rate is unreasonable under Till because it is below the current prime rate of 4.75% and there is no upward adjustment for the significant defaults of Debtor on Creditor's loan as well as the fact that the loan matured more than 18 months ago and is still not paid. Therefore, setting the interest rate on Creditor's Class 2 claim at 4%, below the current prime rate of 4.75%, is unreasonable. 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.

16. [21-11790](#)-A-13 **IN RE: JESUS/NATALIA ESCAJEDA**
[MHM-2](#)

MOTION TO DISMISS CASE
6-9-2022 [\[40\]](#)

MICHAEL MEYER/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

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 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtors 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 debtors are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(6) for failure to complete the terms of the confirmed plan. The debtors are delinquent in the amount of \$4,840.00. Before this hearing, another payment in that same amount will also come due. Doc #40. The debtors did not oppose.

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)(6) for failure to complete the terms of the confirmed plan.

A review of the debtors' Schedules A/B and D shows that there is nominal non-exempt equity in the debtors' assets such that dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate.

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

17. [19-10791](#)-A-13 **IN RE: JASON/RANDI PATTERSON**
[RSW-6](#)

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT,
WAIVE SECTION 1328 CERTIFICATE REQUIREMENT, CONTINUE CASE
ADMINISTRATION, SUBSTITUTE PARTY, AS TO JOINT DEBTOR
6-6-2022 [\[84\]](#)

JASON PATTERSON/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Jason Randall Patterson ("Movant"), the surviving spouse of Randi Jaylene Patterson ("Joint Debtor") and joint debtor in this chapter 13 case, requests the court name Movant as the successor to the deceased Joint Debtor, permit the

continued administration of this chapter 13 case and waive the § 1328 certification requirements. Doc. #84.

Upon the death of a debtor in Chapter 13, Federal Rule of Bankruptcy Procedure 1016 provides that the case may be dismissed or may proceed and be concluded in the same manner, so far as possible, as though the death had not occurred upon a showing that further administration is possible and in the best interest of the parties. Joint Debtor died on January 28, 2022. Decl. of Debtor, Doc. #87. Movant has filed an amended Schedule H and I to show Movant is able to afford the plan payments on his own. Am. Schedule H & I, Doc. #93; Debtor Decl., Doc. #87. Appointing Movant to be representative to proceed with case administration is in the best interest of the parties and creditors. No objections have been filed in response to this motion.

With respect to a waiver of Joint Debtor's certification requirements for entry of discharge under 11 U.S.C. § 1328, Joint Debtor failed to meet the post-petition financial education requirements before Joint Debtor died. Debtor Decl., Doc. #87. Joint Debtor's death demonstrates an inability to provide certifications required, and the certification requirements will be waived.

Accordingly, Movant's application to be appointed representative of Joint Debtor's estate for the further administration of this bankruptcy case is GRANTED. Movant's motion to waive Joint Debtor's § 1328 certification requirements is GRANTED.

18. [22-10593](#)-A-13 **IN RE: MARY RIN**
[MHM-1](#)

MOTION TO DISMISS CASE
6-9-2022 [\[14\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CASE DISMISSED 6/24/22

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on June 24, 2022. Doc. #31. Therefore, this motion will be DENIED AS MOOT.

19. [22-10593](#)-A-13 **IN RE: MARY RIN**
[MHM-2](#)

MOTION TO DISMISS CASE
6-9-2022 [[18](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CASE DISMISSED 6/24/22

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on June 24, 2022. Doc. #31.
Therefore, this motion will be DENIED AS MOOT.

20. [22-10593](#)-A-13 **IN RE: MARY RIN**
[MHM-3](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
6-21-2022 [[22](#)]

ROBERT WILLIAMS/ATTY. FOR DBT.
CASE DISMISSED 6/24/22

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on June 24, 2022. Doc. #31.
Therefore, this objection will be OVERRULED AS MOOT.

21. [22-10593](#)-A-13 **IN RE: MARY RIN**
[MHM-4](#)

MOTION TO DISMISS CASE
6-21-2022 [\[25\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CASE DISMISSED 6/24/22

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on June 24, 2022. Doc. #31.
Therefore, this motion will be DENIED AS MOOT.

1. [22-10201](#)-A-7 **IN RE: PRABHJIT SINGH**
[RSW-2](#)

MOTION TO AVOID LIEN OF HITACHI CAPITAL AMERICA CORP
5-19-2022 [\[20\]](#)

PRABHJIT SINGH/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Prabhjit Singh ("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 Hitachi Capital America Corp. ("Creditor") on the residential real property commonly referred to as 4106 Walker Lake Drive, Bakersfield, CA 93313 (the "Property"). Doc. #20; Schedules C and D, Doc. #1. On the day Debtor filed the instant motion, Debtor submitted one other motion to avoid liens under § 522(f). See Doc. #25. That motion involves the Property and seeks to avoid a different judicial lien.

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 debtors' 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." Meyer, 373 B.R. at 88. "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtor filed the bankruptcy petition on February 13, 2022. A judgment was entered against Prabhjit Singh individually and DBA Golden West Xpress Inc., et al., in the amount of \$37,885.44 in favor of Creditor on April 21, 2021. Ex. Pg.9, Doc. #23. The abstract of judgment was recorded pre-petition in Kern County on May 25, 2021 as document number 221098913. Ex. Pg.8, Doc. #23. The lien attached to Debtor's interest in the Property located in Kern County. Doc. #20. The Property also is encumbered by a first deed of trust in favor of Bayview Financial Loan in the amount \$334,056.00 and a second deed of trust in favor of Ranjit Singh in the amount of \$364,678.00. Schedule D, Doc. #1; Doc. #20. Debtor claims an exemption of \$1.00 in the Property under California Code of Civil Procedure § 703.140(b)(1). Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$490,800.00. Schedule A/B, Doc. #1. There appears to be one senior judicial lien on the Property. Doc. #25. The senior judicial lien was recorded in Kern County on February 5, 2021 with respect to a judgment of \$113,624.98. Doc. #25.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$37,885.44
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$812,358.98
Amount of Debtor's claim of exemption in the Property	+	\$1.00
		\$850,245.42
Value of Debtor's interest in the Property absent liens	-	\$490,800.00
Amount Creditor's lien impairs Debtor's exemption		\$359,445.42

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 Debtor's 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.

2. [22-10201](#)-A-7 **IN RE: PRABHJIT SINGH**
[RSW-3](#)

MOTION TO AVOID LIEN OF FRESNO TRUCK CENTER
5-19-2022 [\[25\]](#)

PRABHJIT SINGH/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Prabhjit Singh ("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 Fresno Truck Center DBA Lee Financial Services ("Creditor") on the residential real property commonly referred to as 4106 Walker Lake Drive, Bakersfield, CA 93313 (the "Property"). Doc. #25; Schedules C and D, Doc. #1. On the day Debtor filed the instant motion, Debtor submitted one other motion to avoid liens under § 522(f). See Doc. #20. That motion involves the Property and seeks to avoid a different judicial lien.

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 debtors' 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." Meyer, 373 B.R. at 88. "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtor filed the bankruptcy petition on February 13, 2022. A judgment was entered against Prabhjit Singh individually and DBA Golden West Xpress Inc., et al., in the amount of \$113,624.98 in favor of Creditor on October 27, 2020. Ex. Pg.9, Doc. #28. The abstract of judgment was recorded pre-petition in Kern County on February 5, 2021 as document number 221021895. Ex. Pg.8, Doc. #28. The lien attached to Debtor's interest in the Property located in Kern County. Doc. #25. The Property also is encumbered by a first deed of trust in favor of Bayview Financial Loan in the amount \$334,056.00 and a second deed of trust in favor of Ranjit Singh in the amount of \$364,678.00. Schedule D, Doc. #1; Doc. #25. Debtor claims an exemption of \$1.00 in the Property under California Code of Civil Procedure § 703.140(b)(1). Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$490,800.00. Schedule A/B, Doc. #1. There does not appear to be any senior judicial liens.

Applying the statutory formula:

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Amount of Creditor's judicial lien		\$113,624.98
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$698,734.00
Amount of Debtor's claim of exemption in the Property	+	\$1.00
		\$812,359.98
Value of Debtor's interest in the Property absent liens	-	\$490,800.00
Amount Creditor's lien impairs Debtor's exemption		\$321,559.98

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 Debtor's 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.

3. [22-10810](#)-A-7 **IN RE: FELIPE/GRACIA VALDEZ**
[MET-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-9-2022 [\[10\]](#)

BANK OF THE WEST/MV
DIXON KUMMER/ATTY. FOR DBT.
MARY TANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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 movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Bank of the West ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2017 Northland Pacific Coachworks Travel Trailer ("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 debtors do 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 debtors have failed to make at least two complete post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$676.72. Doc. #12, #14.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. The Vehicle is valued at \$32,000.00 and the debtors owe \$32,683.94. Doc. #12.

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

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

4. [22-10921](#)-A-7 **IN RE: JOSE URIBE-PRIETO**
[RDW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-17-2022 [\[16\]](#)

CAM XI TRUST/MV
REILLY WILKINSON/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied in part.

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

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

The movant, CAM XI TRUST, its successors and/or assignees in interest ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(4) with respect to real property located at 1803 Houston Ave., Clovis, California ("Property"). Doc. #16.

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11 U.S.C. § 362(d) (1) Analysis

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).

Jose Uribe-Prieto ("Debtor") filed a chapter 7 petition without an attorney on May 31, 2022. Doc. #1. With his bankruptcy petition, Debtor filed schedules and did not list an interest in any real property, including the Property. Id.

Debtor is not the borrower on Movant's loan. Decl. of Lindsey Dallmer ¶ 2, Doc. #19. Martha Wallwork and Keith Wallwork ("Borrowers") are the borrowers on Movant's loan dated March 18, 2008. Id. at ¶¶ 2, 5. Borrowers defaulted on Movant's loan, and Movant scheduled a foreclosure sale of the Property for June 2, 2022. Id. at ¶¶ 8, 11.

Early on the morning of Movant's foreclosure sale, borrower Martha Wallwork emailed Movant's foreclosure trustee and alleged that Debtor held a junior deed of trust on the Property and the automatic stay in Debtor's bankruptcy case prevented the foreclosure sale. Dallmer Decl. ¶ 11, Doc. #19. Ms. Wallwork attached a Short Form Deed of Trust purporting to convey a lien interest in the Property to Debtor and Frederick Woodfin on or about September 17, 2013. Id. at ¶ 12; Ex. E, Doc. #20. Ms. Wallwork also included copies of Schedules A/B and D purportedly filed in Debtor's bankruptcy case that list an interest in the Property ("Alleged Schedules"). Dallmer Decl. ¶ 12; Ex. D, Doc. #20.

The Alleged Schedules forwarded by Ms. Wallwork do not match the schedules filed in Debtor's bankruptcy case. Compare Ex. D, Doc. #20 with Doc. #1. While the Alleged Schedules purport to be amendments to the original schedules filed in Debtor's bankruptcy case, a review of the court's docket shows no amended schedules have been filed in Debtor's case. Further, the Alleged Schedules include a summary page that is used by the United States Bankruptcy Court for the Central District of California and is not used in this court. The Alleged Schedules also include the APN number for the Property as the bankruptcy case number for the purported amended schedule D.

Based on the evidence before the court, it appears that Debtor does not have an interest in the Property. Rather, it appears that

this case is consistent with the pattern in so-called "hijacked" or "dumping" cases - *i.e.*, cases in which a transferor of property, acting *without* the debtor's participation or acquiescence, seeks to implicate the automatic stay for the transferor's *own* benefit by purporting to transfer property into a random bankruptcy estate, or by back-dating or falsifying a grant deed to make it appear that such a transfer has occurred.

In re 4th St. E. Investors, Inc., 474 B.R. 709, 711 (Bankr. C.D. Cal. 2012) (emphasis in original). Because it appears that Movant's borrowers have "hijacked" the automatic stay in Debtor's bankruptcy case, cause exists to grant relief from the automatic stay.

11 U.S.C. § 362(d) (4) Analysis

Section 362(d) (4) allows the court to grant relief from the stay with respect to real property

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

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

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

Section 362(d)(4) "does not require that it be the debtor who has created the scheme or carried it out, or even that the debtor be a party to the scheme at all." Duncan & Forbes, 368 B.R. at 32. "The language of § 362(d)(4) is likewise devoid of any requirement of a finding of bad faith by the Debtor." In re Dorsey, 476 B.R. 261, 267 (Bankr. C.D. Cal. 2012).

Here, Movant has alleged only one bankruptcy case, Debtor's case, to be involved in delaying, hindering or defrauding Movant in completing Movant's foreclosure sale of the Property. Thus, Movant must show the transfer of some interest in Property without Movant's consent or court approval for the court to find sufficient grounds to grant relief from the automatic stay under § 362(d)(4). Because the alleged junior deed of trust was placed on the Property pre-petition, the only basis for this court to grant relief from stay under § 362(d)(4) is if the purported granting of a junior lien on the Property to Debtor and Frederick Woodfin was without Movant's consent. There is nothing in the evidence filed with the motion stating that any junior deed of trust was placed on the Property without Movant's consent.

Because the court cannot make all of the affirmative finding it must to grant relief under section 362(d)(4), that relief is not granted.

Conclusion

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because it appears that Movant's borrowers improperly "hijacked" the automatic stay in Debtor's bankruptcy case.

5. [15-11835](#)-A-7 **IN RE: JAMES/JAMIE CANNON**
[PWG-3](#)

MOTION TO COMPEL ABANDONMENT
6-10-2022 [\[759\]](#)

JAMES CANNON/MV
PHILLIP GILLET/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice by mail of this motion was sent on June 10, 2022, with a hearing date set for July 7, 2022. The motion was set for hearing on less than 28 days' notice and is governed by Local Rule of Practice ("LBR") 9014-1(f)(2). Pursuant to LBR 9014-1(f)(2), written opposition was not required, and any opposition may be raised at the hearing. However, the Notice of Hearing filed with the motion stated that opposition must be filed and served no later than fourteen days before the hearing and that failure to file written response may result in the court granting the motion prior to the hearing. The Notice of Hearing does not comply with LBR 9014-1(f)(2).

6. [14-14739](#)-A-7 **IN RE: ADAN GARCIA**
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG, ACCOUNTANT(S)
5-25-2022 [\[70\]](#)

RATZLAFF TAMBERI & WONG/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Ratzlaff Tamberi & Wong ("Movant"), accountants for chapter 7 trustee Jeffrey M. Vetter ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from February 16, 2022 through April 27, 2022. Doc. #70. Movant provided accounting services valued at \$1,305.00, and requests compensation for that amount. Doc. #70. Movant requests reimbursement for expenses in the amount of \$7.95. Doc. #70. This is Movant's first and final fee application.

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

Movant's services included, without limitation: (1) reviewing information relating to various settlement issues; (2) corresponding with Trustee; (3) preparing federal and state fiduciary income tax returns; and (4) preparing the employment and fee applications. Decl. of Christopher A. Ratzlaff, Doc. #73; Ex. A, Doc. #74. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$1,305.00 and reimbursement for expenses in the amount of \$7.95. Trustee is authorized to make a combined payment of \$1,312.95, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

7. [18-14445-A-7](#) **IN RE: KONARK RANCHES, LLC**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
6-6-2022 [[73](#)]

JAMES SALVEN/MV
LEONARD WELSH/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 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.

James E. Salven ("Movant"), certified public accountant for chapter 7 trustee Randell Parker ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from January 20, 2021 through June 2, 2022. Doc. #73; Ex. A, Doc. #76. Movant provided accounting services valued at \$7,000.00, and requests compensation for that amount. Doc. #73. Movant requests reimbursement for expenses in the amount of \$1,007.61. Doc. #73. This is Movant's first and final fee application.

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

Movant's services included, without limitation: (1) conflict review and prepare employment application; (2) various telephone calls and emails to debtor; (3) input various tax return data to tax system; (4) prepare letters to the IRS and FTB regarding penalty abatement; and (5) prepare, file and serve fee application. Decl. of James E. Salven, Doc. #75; Ex. A, Doc. #76. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$7,000.00 and reimbursement for expenses in the amount of \$1,007.61. Trustee is authorized to make a combined payment of \$8,007.61, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

8. [22-10854](#)-A-7 **IN RE: PABLO VALDIVIA AND LILIANA HUARACHA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-3-2022 [\[14\]](#)

VINCENT QUIGG/ATTY. FOR DBT.
\$338.00 FILING FEE PAID 6/6/22

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fees due have been paid in full. Therefore, the case shall remain pending.

1. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[DMG-3](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
3-10-2022 [[906](#)]

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

NO RULING.

2. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-35](#)

MOTION TO BORROW
6-3-2022 [[1017](#)]

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

NO RULING.

3. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-36](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
6-8-2022 [[1030](#)]

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtors and debtors in possession Eduardo Zavala Garcia and Amalia Perez Garcia (collectively, "DIP"), requests allowance of interim compensation in the amount of \$12,520.00 and reimbursement for expenses in the amount of \$412.90 for services rendered from April 1, 2022 through May 31, 2022. Doc. #1030.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a professional person. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #33. In determining the amount of reasonable compensation to be awarded to counsel, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing general case administration; (2) preparing various documents for chapter 11 status conference statement; (3) preparing and filing motion for order authorizing employment of real estate broker; (4) preparing and filing motion for authority to sell real property; (5) corresponding with various parties by email; (6) preparing documents requested in a contested matter; (7) preparing and filing motion for authority to borrow money secured by trust against real property; and (8) preparing and filing fee and employment applications. Decl. of Leonard K. Welsh, Doc. #1033; Ex. B, Doc. #1034. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$12,520.00 and reimbursement of expenses in the amount of \$412.90. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

4. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-37](#)

MOTION TO SELL
6-16-2022 [\[1050\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted subject to higher and better offers.

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 subject to higher and better offers. 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.

As an initial procedural matter, the motion and related pleadings were not served on the following secured creditors affected by the motion: New Rez, LLC dba Shellpoint Mortgage ("Shellpoint") and Helena Chemical Company ("Helena"). Doc. #1054. Only the notice of motion was served on these parties. Doc. #1055. Federal Rule of Bankruptcy Procedure ("Rule") 9014 requires service of a motion to comply with Rule 7004. At a minimum, because the motion purports to determine the amount to be paid to Shellpoint and Helena with respect to its secured claim against the real property that is the subject of the motion, the motion, declaration and exhibits in support of the motion should have been served on Helena. Because counsel for Helena and Shellpoint have appeared previously in this bankruptcy case, the court will consider waiving any defective service as to Helena and Shellpoint if counsel for Helena and Shellpoint sign off on the order granting this motion.

Among the assets of the estate is a single family residence located at 388 Tucker Street, Arvin, CA (the "Property"). Doc. #1050; Schedule A/B. Doc 1. Eduardo Zavala Garcia and Amalia Perez Garcia (together, "DIP"), the debtors and debtors in possession in this chapter 11 case, request an order authorizing the sale of the Property outside the ordinary course of business pursuant to 11 U.S.C. § 363(b)(1). Doc. #1050.

The Property secures the claim of the Shellpoint. DIP believes that the balance owed to Shellpoint based on Shellpoint's lien on the Property is \$82,000.00 as of June 15, 2022, and that the Property has a value of at least \$205,000.00. Decl. of Eduardo Zavala Garcia, Doc. #1053.

The Property also secures the claim of Helena. DIP believes that the balance owed to Helena is \$228,953.81 as of June 15, 2022, and that the Property has a value of \$205,000.00. Garcia Decl., Doc. #1053. DIP proposes to pay Helena \$96,600.00 from the sale of the Property. Id.

Section 363 of the Bankruptcy Code states that a trustee, or debtor in possession, may use, sell, or lease property of the estate outside the ordinary course of business after notice and a hearing. 11 U.S.C. §§ 363(b)(1), 1184. The debtor in possession proposing a sale under § 363(b) must demonstrate a valid business justification for the sale and that the sale is proposed in good faith. 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996). "Good faith encompasses fair value, and further speaks to the integrity of the transaction." Id. (quoting In re Wilde Horse Enters., Inc. 136 B.R. 830, 842 (Bankr. C.D. Cal. 1991)). To make such a determination, "the court and creditors must be provided with sufficient information to allow them to take a position on the proposed sale." Wilde Horse Enters., 136 B.R. at 842.

DIP has accepted an offer to purchase the Property from Isaac Martine ChavezPena for \$205,000.00. Garcia Decl., Doc. #1053. DIP understands that the sale of the Property is subject to higher and better bids at the court hearing. Id. DIP believes that the \$205,000.00 proceeds received from the sale of the Property will be distributed to pay the Shellpoint lien of \$82,000.00 in full,

real estate commission of \$10,250.00, costs of sale of \$6,150.00, attorney fees of \$5,000.00, and a seller credit of \$5,000.00. Id. The Helena lien will only be paid \$96,600.00 from the Property proceeds and will not be paid in full. Id.

The court is inclined to GRANT this motion. DIP's business judgment is reasonable and the proposed sale of the Property is made in good faith.

5. [21-12348](#)-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
10-5-2021 [\[1\]](#)

IGNACIO LAZO/ATTY. FOR DBT.

NO RULING.

6. [21-12348](#)-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**
[IJL-4](#)

AMENDED MOTION FOR COMPENSATION FOR IGNACIO J. LAZO, DEBTORS ATTORNEY(S)
6-9-2022 [\[97\]](#)

IGNACIO LAZO/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Cadden & Fuller LLP ("Movant"), counsel for the debtor and debtor in possession Juarez Brothers Investments, LLC ("DIP"), requests allowance of interim compensation in the amount of \$70,770.00 and reimbursement for expenses in the amount of \$75.60 for services rendered from October 5, 2021 through January 31, 2022. Doc. #97.

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

Movant's services included, without limitation: (1) providing general case administration; (2) providing asset analysis; (3) extensively amending DIP's bankruptcy schedules; (4) addressing major issues with DIP's monthly operating reports; (5) reviewing claims; (6) preparing employment application for Movant; (7) researching third-party post-petition retainers; (8) preparing, filing and serving an adversary proceeding against Grimmway Enterprises, Inc. to quiet title to DIP's primary asset; and (9) preparing for and attending the meeting of creditors. Decl. of Ignacio J. Lazo, Doc. #99; Ex. A, Doc. #100. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$70,770.00 and reimbursement of expenses in the amount of \$75.60. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

7. [21-12348](#)-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**
[IJL-5](#)

AMENDED MOTION FOR AUTHORIZATION TO ACCEPT A THIRD-PARTY
POSTPETITION RETAINER
6-9-2022 [[102](#)]

JUAREZ BROTHERS INVESTMENTS, LLC/MV
IGNACIO LAZO/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 hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Juarez Brothers Investments, LLC ("DIP"), the debtor and debtor in possession in this Chapter 11 case, moves the court for an order authorizing Salvador Rodriguez to pay legal fees incurred by DIP's attorney Cadden & Fuller LLP ("Legal Counsel"). Doc. #102. For the reasons set forth below, the court is inclined to grant this motion.

Bankruptcy courts in the Ninth Circuit have adopted a five-part test to serve as a guideline where counsel for the debtor is to be funded by debtor's insiders. In re Lotus Props., LP, 200 B.R. 388, 392-95 (Bankr. C.D. Cal. 1996)

(analyzing In re Kelton, 109 B.R. 641 (Bankr. D. Vt. 1989)). The test includes the following elements: (1) the arrangement must be fully disclosed to the debtor and the third party payor-insider; (2) the debtor must expressly consent to the arrangement; (3) the third party payor-insider must retain independent legal counsel and must understand that the debtor's attorney's duty of undivided loyalty is owed exclusively to the debtor as client; (4) the factual and legal relationship between the third party payor-insider, the debtor, their respective attorneys, and their contractual arrangement concerning fees must be fully disclosed to the court at the outset of the debtor's bankruptcy representation; and (5) the debtor's attorney must demonstrate and represent to the court's satisfaction the absence of facts that would otherwise create non-disinterestedness, actual conflict, or impermissible potential conflict of interest. Lotus Props., 200 B.R. at 393 (citing Kelton, 109 B.R. at 658).

Based on the executed Post-Petition Attorney-Client Fee Agreement ("Agreement"), the proposed arrangement has been fully disclosed to DIP and Mr. Rodriguez, and DIP fully consents to the arrangement. Ex. A, Doc. #106; Decl. of Walter Juarez ¶ 1, Doc. #105. Mr. Rodriguez has had the opportunity to retain and consult with legal counsel and understands that Legal Counsel's duty of undivided loyalty is owed exclusively to DIP as client. Agreement at 2(4), Ex. A, Doc. #106. DIP has fully disclosed that Mr. Rodriguez is the brother-in-law of the owners of DIP, is not a creditor of DIP and there are no agreements between Mr. Rodriguez and DIP regarding repayment of any or all of the fees to be paid by Mr. Rodriguez. Juarez Decl. ¶¶3-4, Doc. #105. Based on the declaration of Walter Juarez, no facts exist that would create non-disinterestedness, actual conflict, or impermissible potential conflict of interest. Juarez Decl. ¶¶3-4, Doc. #104.

This motion is GRANTED. The court finds that the elements of the Lotus Properties test are satisfied. Salvador Rodriguez is authorized to pay legal fees generated by Legal Counsel in the course of this Chapter 11 case. Concurrent with this motion, Legal Counsel has set for hearing its first application for fees and expenses ("First Application"). To the extent granted, Mr. Rodriguez is authorized to pay any amount granted pursuant to the First Application. Pursuant to 11 U.S.C. §§ 328, 329, and 330, any further compensation to Legal Counsel to be paid by Mr. Rodriguez must be reviewed and approved by the Court.

11:00 AM

1. [19-13783](#)-A-7 **IN RE: MARK/SUSAN CHAGOYA**
[19-1129](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
7-6-2020 [\[40\]](#)

BROWN V. CHAGOYA ET AL
JEFF BEAN/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 4, 2022, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the status reports filed (Doc. ##104, 107), the status conference will be continued to August 4, 2022, at 11:00 a.m.