

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, July 9, 2020
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 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

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. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

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

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

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

9:00 AM

1. [16-10720](#)-A-13 IN RE: PHILIP/SUSANNE ICARDO
[RSW-5](#)

MOTION TO MODIFY PLAN
5-28-2020 [[103](#)]

PHILIP ICARDO/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the 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 Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff 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. [19-15029](#)-A-13 **IN RE: ERIC/LIZA LEE**
[MHM-3](#)

MOTION TO DISMISS CASE
6-8-2020 [[40](#)]

MICHAEL MEYER/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
DISMISSED 6/16/20

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been entered. Doc. #45.

3. [18-13030](#)-A-13 **IN RE: JESUS PORTILLO-VAQUERO AND ELSA**
GONZALEZ-PORTILLO
[PK-8](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
6-11-2020 [[135](#)]

PATRICK KAVANAGH/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 the 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 Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

In this Chapter 13 case, Patrick Kavanagh, attorney for the debtor, has applied for an allowance of interim compensation and reimbursement of expenses. The movant requests that the court allow compensation in the amount of \$9,690.00 and reimbursement of expenses in the amount of \$236.70, totaling \$9,926.70 for services rendered from July 24, 2018 through May 30, 2020. Doc. #135. The movant received a retainer in the amount of \$2,000.00 and now seeks payment of \$7,926.70 through the plan. See id.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Reasonable compensation is determined by considering all relevant factors. See id. § 330(a)(3). The movant's services included, without limitation: (1) advising the debtors about the administration of their Chapter 13 case; (2) preparing and filing a Chapter 13 petition and plan; (3) attending the meeting of creditors; (4) preparing motions to value collateral and avoid lien; and (5) resolving objections to, modification and confirmation of the plan. Doc. #135. The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis.

The court notes that the movant's summary sheet lists the amount of expenses requested as \$0.00. Doc. #135. This appears to be in error, but the court finds the error to be immaterial because the motion, expense summary further down in the summary sheet, and exhibit D in support of the motion provide a breakdown of the types of expenses the movant incurred that total \$236.70, and the court finds the expenses to be actual and necessary.

This motion is GRANTED. The movant is awarded \$9,690.00 in fees and \$236.70 in costs. The movant is authorized to draw from the \$2,000.00 retainer and shall be paid the remaining \$7,926.70 through the Chapter 13 plan.

4. [20-10931](#)-A-13 **IN RE: EDWARD FELICIANO**
[RSW-2](#)

MOTION TO CONFIRM PLAN
6-3-2020 [[36](#)]

EDWARD FELICIANO/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 13, 2020 at 9:00 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice 3015-1(d)(1). The Chapter 13 trustee (the "Trustee") has filed an objection to the debtor's motion to confirm a Chapter 13 plan. Unless this case is voluntarily converted to Chapter 7, dismissed, or the Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than July 23, 2020. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. The Trustee shall file and serve a reply, if any, by July 30, 2020.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than July 30, 2020. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the Trustee's opposition without a further hearing.

5. [20-11149](#)-A-13 **IN RE: RAYSHAWN LYONS**
[RSW-2](#)

MOTION TO VALUE COLLATERAL OF FREEDOM TRUCK FINANCE
6-9-2020 [[23](#)]

RAYSHAWN LYONS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING

6. [19-14252](#)-A-13 **IN RE: MICHAEL/LUCIA LOPEZ**
[RSW-1](#)

MOTION TO MODIFY PLAN
5-11-2020 [[20](#)]

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

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

DISPOSITION: Continued to August 13, 2020 at 9:00 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice 3015-1(d)(1). The Chapter 13 trustee (the "Trustee") has filed an objection to the debtors' motion to modify a Chapter 13 plan. Unless this case is voluntarily converted to

Chapter 7, dismissed, or the Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response not later than July 23, 2020. 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. The Trustee shall file and serve a reply, if any, by July 30, 2020.

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 30, 2020. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the Trustee's opposition without a further hearing.

7. [19-12660](#)-A-13 **IN RE: JORGE/MELISSA VELEZ**
[RSW-1](#)

MOTION TO MODIFY PLAN
5-12-2020 [[59](#)]

JORGE VELEZ/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 13, 2020 at 9:00 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice 3015-1(d)(1). The Chapter 13 trustee (the "Trustee") has filed an objection to the debtors' motion to modify a Chapter 13 plan. Unless this case is voluntarily converted to Chapter 7, dismissed, or the Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response not later than July 23, 2020. 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. The Trustee shall file and serve a reply, if any, by July 30, 2020.

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 30, 2020. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the Trustee's opposition without a further hearing.

8. [20-10861](#)-A-13 **IN RE: DUSTIN ADAMS**
[RSW-1](#)

MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.
5-20-2020 [[21](#)]

DUSTIN ADAMS/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 the 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 Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED.

Dustin Paul Adams (the "debtor") moves pursuant to 11 U.S.C. § 522(f) and Federal Rule of Bankruptcy Procedure 4003(d) to avoid the judicial lien of Wells Fargo Bank, N.A. ("Wells Fargo") upon the debtor's residential real property commonly known as 3013 Spruce Street, Bakersfield, California 93301 (the "Property") as an impairment of the debtor's claimed exemption of \$75,000.00 under California Code of Civil Procedure § 704.730(a)(2).

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), aff'd 24 F.3d 247 (9th Cir. 1994)).

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). A judgment was entered against the debtor in favor of Wells Fargo in the sum of \$10,673.91 on April 16, 2019. Doc. #24, Ex. D. The abstract of judgment was recorded with Kern County on October 30, 2019. Id. That lien attached to the debtor's interest in the Property. Id. at Ex. A. The Property had a scheduled value of \$185,000.00 as of the petition date. Id. A first deed of trust in favor of Bank of America encumbered the Property in the amount of \$112,313.94 as of the same date, which lien is unavoidable. See id. at Ex. C. The debtor claimed an exemption of \$75,000.00 in the Property pursuant to California Code of Civil Procedure § 704.730(a)(2). Id. at Ex. B.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

9. [20-11576](#)-A-13 **IN RE: DANIEL MADRIAGA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-5-2020 [[24](#)]

PHILLIP GILLET/ATTY. FOR DBT.
\$77.50 INSTALLMENT PAYMENT 6/15/20

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.

10. [20-11576](#)-A-13 **IN RE: DANIEL MADRIAGA**
[MHM-1](#)

MOTION TO DISMISS CASE
6-10-2020 [[26](#)]

MICHAEL MEYER/MV
PHILLIP GILLET/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 matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). 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 that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtor failed to appear at the scheduled 341 meeting of creditors. Accordingly, the case will be dismissed.

11. [18-12678](#)-A-13 **IN RE: MICHAEL PFEIFFER**
[DMG-3](#)

MOTION TO MODIFY PLAN
6-2-2020 [76]

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

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

DISPOSITION: Continued to August 13, 2020 at 9:00 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice 3015-1(d)(1). The Chapter 13 trustee (the "Trustee") has filed an objection to the debtor's motion to modify a Chapter 13 plan. Unless this case is voluntarily converted to Chapter 7, dismissed, or the Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than July 23, 2020. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. The Trustee shall file and serve a reply, if any, by July 30, 2020.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than July 30, 2020.

If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the Trustee's opposition without a further hearing.

12. [17-14682](#)-A-13 **IN RE: SCOTT DOYLE**
[RSW-5](#)

MOTION TO MODIFY PLAN
5-12-2020 [[90](#)]

SCOTT DOYLE/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the 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 Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff 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.

13. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[DRJ-1](#)

CONTINUED MOTION TO USE CASH COLLATERAL
3-2-2020 [[24](#)]

BHAJAN SINGH/MV
DAVID JENKINS/ATTY. FOR DBT.

NO RULING

9:45 AM

1. [19-13006](#)-A-7 **IN RE: FERNANDO/CARMEN PORTILLO**
[TGF-1](#)

CONTINUED MOTION TO AVOID LIEN OF JOHN GSCHWEND
10-14-2019 [[14](#)]

FERNANDO PORTILLO/MV
VINCENT GORSKI/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 is GRANTED.

On October 14, 2019, Fernando Luis Portillo and Carmen Calistro Potillio (collectively, the "Debtors") moved pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judgment lien of John Gschwend ("Creditor") on their residential real property commonly known as 3061 Jacaranda Drive, Bakersfield, California 93301 (the "Property"). Doc. #14. On November 21, 2019, Creditor filed an opposition to the Debtors' motion. Doc. #22. Following negotiations between the Debtors and Creditor, Creditor withdrew his opposition on May 11, 2020. Doc. #49.

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), aff'd 24 F.3d 247 (9th Cir. 1994)).

A judgment was entered against the Debtors in favor of Creditor in the amount of \$82,060.71 on June 24, 2016. Doc. #17, Ex. D. The abstract of judgment was recorded with Kern County on September 15, 2016. Id. That lien attached to the Debtors' interest in the Property. See Doc. #17, Ex. A. The Debtors valued their interest in the Property at \$190,228.40, subject to the unavoidable liens of Mr. Cooper and Select Portfolio Servicing in the amounts of \$125,854.50 and \$47,840.94, respectively, and the Debtors' claim of exemption under California Code of Civil Procedure § 703.140(b)(1) of \$16,532.96. Doc. #1.

Creditor disputed the valuation of the Property and contended that there is sufficient equity to secure most of Creditor's judgment without impairing the Debtors' claimed exemption. Doc. #22. During negotiations between the Debtors and Creditor, the Debtors obtained an appraisal of the Property. See Doc. ##30, 36. On April 20, 2020, the Debtors amended their schedules to value the Property at \$243,800.00 and switched their claim of exemption to \$70,104.56 under California Code of Civil Procedure § 704.730. Doc. #47.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The Property that is the subject of Creditor's judicial lien has an approximate value of \$243,800.00, subject to unavoidable liens totaling \$173,695.44 and the Debtors' claim of exemption of \$70,104.56. After application of the arithmetical formula required by § 522(f)(2)(A), there is insufficient equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the Property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B). The Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). Accordingly, this motion is GRANTED.

2. [20-11007](#)-A-7 **IN RE: ALEXANDER/JESSICA SANTANA**
[JP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-12-2020 [[15](#)]

DENNIS SWANSON/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
JOSEPH PLUTA/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Movant appears to have used a form of notice from the United States Bankruptcy Court for the Central District of California, which Movant did not fully complete and fails to comply with the notice requirements of Local Rule of Practice ("LBR") 9014-1(f). See Doc. #15.

LBR 9014-1(f)(1) requires that motions set on 28 days' notice include notice that opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the court by the responding party at least fourteen (14) days preceding the date of the hearing; and that the moving party may, at least seven (7) days prior to the date of the hearing, serve and file with the court a written reply to any written opposition filed by a responding party.

LBR 9014-1(f)(2)(C) states that motions filed on less than 28 days' notice, but at least 14 days' notice, require the movant to notify the respondent or respondents that no party in interest shall be

required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs. LBR 9014-1(f)(2)(B) provides that the use of this alternative procedure in connection with a motion for relief from the automatic stay shall be deemed a waiver of the time limitations contained in 11 U.S.C. § 362(e).

Movant's proof of service states that Movant filed and served the motion, notices of motion and hearing, § 362 information sheet, and exhibits on June 12, 2020. Doc. #19. July 9, 2020 is 27 days after June 12, 2020, and therefore this hearing was set on less than 28 days' notice. Movant's form of notice from the Central District fails to include the language required by either LBR 9014-1(f)(1) or (2), and appears to reference the local rules for the Central District. Doc. #15.

Additionally, the notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the court's website at www.caeb.uscourts.gov after 4:00 P.M. the day before the hearing.

Finally, LBR 9004-2(c)(1) requires that motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents. Here, the motion, notice, and declaration were combined into one document at Doc. #15 and not filed separately.

The court routinely denies motions without prejudice for failure to comply with the Local Rules of Practice. Accordingly, this motion is DENIED WITHOUT PREJUDICE.

3. [20-11812](#)-A-7 **IN RE: MELINDA MARTINEZ**
[MET-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-10-2020 [[12](#)]

BANK OF THE WEST/MV
R. BELL/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 the 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 Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff 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 GMC Light Duty Acadia ("Vehicle"). Doc. #12.

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 an 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 debtor has failed to make at least one complete pre-petition payment. The movant has produced evidence that debtor is delinquent by at least \$849.23. Doc. #16.

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 debtor is in chapter 7. Id. The Vehicle is valued at \$22,697.00 and debtor owes \$39,224.14. Doc. #16.

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

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

4. [17-11918](#)-A-7 **IN RE: GARZA CONTRACTING, INC.**
[JMV-2](#)

MOTION FOR COMPENSATION FOR JEFFREY M. VETTER, CHAPTER 7
TRUSTEE(S)
6-10-2020 [[205](#)]

JEFFREY VETTER/MV
T. BELDEN/ATTY. FOR DBT.
PHILLIP GILLET/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 the 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 Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED.

11 U.S.C. §§ 326 and 330 allow reasonable compensation to the Chapter 7 trustee for the trustee's services. 11 U.S.C. § 330(a) requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses.

Jeffrey M. Vetter (the "Trustee"), the trustee in the Chapter 7 case of Garza Contracting, Inc., requests fees of \$41,858.52 and costs of \$264.17 for a total of \$42,122.69 as statutory compensation and actual and necessary expenses. This case was converted from Chapter 11 to Chapter 7 on October 10, 2017. Doc. ##106, 108. During the pendency of the Chapter 7 case, the Trustee, *inter alia*, conducted the meeting of creditors, employed an auctioneer and other professionals, liquidated assets of the estate, collected accounts receivable, arrived at a settlement with lienholders of property of the estate, and prepared the final report. See Doc. ##199, 200.

The court finds the Trustee's services were actual and necessary to the estate, and the fees are reasonable. The motion is GRANTED and Trustee is awarded the requested fees and costs.

5. [20-11469](#)-A-7 **IN RE: GAIL LLAMAS**
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-5-2020 [[12](#)]

MIDFIRST BANK/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
CASSANDRA RICHEY/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 the 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 Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The movant, MidFirst Bank, ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to real property located at 1003 Castaic Avenue in Bakersfield, CA ("Property"). Doc. #12.

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 an 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 debtor has failed to make at least 15 complete pre- and post-petition payments. The movant has produced evidence that debtor is delinquent by at least \$17,568.56 and the entire balance of \$157,708.64 is due. Doc. #12, #16.

The court also finds that the debtor does not have any equity in the Property and the Property is not necessary to an effective reorganization because debtor is in chapter 7. The property is valued at \$153,070.00 and debtor owes \$157,708.64. Doc. #16.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the 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 order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 15 payments, both pre- and post-petition, to Movant.

10:30 AM

1. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-10](#)

MOTION TO BORROW
6-17-2020 [[142](#)]

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

NO RULING

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. On July 7, 2020, unsecured creditor Nino Global, LLC ("Nino") filed an opposition to this motion. Doc. #153. Nino states that it does not oppose the relief requested by the motion in particular, but argues that the court should condition approval of the motion authorizing DIP to borrow \$137,900.00 from the SBA through the EIDL program on DIP filing their Plan and Disclosure Statement in the next 30 days. At the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2).

Eduardo Zavala Garcia and Amalia Perez Garcia (collectively, "DIP"), the debtors in possession in this Chapter 11 case, move the court for an order authorizing DIP to borrow \$137,900.00 from the Small Business Administration (the "SBA") through the Economic Injury Disaster Loan ("EIDL") program, provided the SBA determines that DIP qualify for an EIDL, pursuant to 11 U.S.C. § 364(c)(2) or (3). Doc. #142.

DIP own and operate an agricultural business located in Kern County, California. Doc. ##142, 144. DIP operate a cattle business under the name "Amalia's Ranch," and DIP are shareholders in 4G Farming, Inc. Id. DIP contend they need more working capital to expand their cattle business and that such expansion will make their business more profitable and increase the money available to fund a plan of reorganization. Id.

Section 364(c) provides:

If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt-

. . .

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

In a Chapter 11 case, the debtor in possession has the rights and powers of a trustee. 11 U.S.C. § 1107(a). Debtors in possession must obtain the approval of the bankruptcy court when they wish to incur secured debt. See 11 U.S.C. § 364(c)(2) and (3); In re Harbin, 486 F.3d 510, 521 (9th Cir. 2007)(citing Thompson v. Margen (In re McConville), 110 F.3d 47, 50 (9th Cir. 1997)). Section 364(c)(2) and (3) provide exceptions to the general prohibition of § 362 against creating post-petition encumbrances on property of the bankruptcy estate. Id.

Courts generally give debtors in possession considerable deference to determine, in their business judgment, the terms under which they obtain post-petition secured credit. See, e.g., In re Los Angeles Dodgers LLC, 457 B.R. 308, 313 (Bankr. D. Del. 2011) (“[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender.”); In re Ames Dep’t Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”).

To determine whether a debtor in possession has met this business judgment standard, a court need only “examine whether a reasonable business person would make a similar decision under similar circumstances.” In re Exide Techs., 340 B.R. 222, 239 (Bankr. D. Del. 2006); see also In re Curlew Valley Assocs., 14 B.R. 506, 513-14 (Bankr. D. Utah 1981)(recognizing the court should not entertain objections to a trustee’s business decision when that decision involves “a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the [Bankruptcy] Code”).

In this case, DIP submitted an application to the SBA for an EIDL, which terms provide a loan in the amount of \$137,900.00 to Amalia’s Ranch, to be repaid in installment payments of \$672.00 per month for 30 years, beginning 12 months from the date of the promissory note dated May 12, 2020, with an interest rate of 3.75%. Doc. #146, Exs. A and B. DIP states that the SBA will not make an EIDL on an unsecured basis. Doc. #144. This loan is to be secured by all tangible and intangible property of the estate, including, but not limited to:

- (a) inventory, (b) equipment, (c) instruments, including promissory notes (d) chattel paper, including tangible chattel paper and electronic chattel paper, (e) documents, (f) letter of credit rights, (g) accounts, including health-care insurance receivables and credit card receivables, (h) deposit accounts, (i) commercial tort claims, (j) general intangibles, including payment intangibles and software and (k) as-extracted collateral as such terms may from time to time be defined in the Uniform Commercial Code. The security interest [DIP] grants includes all accessions, attachments, accessories, parts, supplies and replacements for the Collateral, all products, proceeds and collections thereof and

all records and data relating thereto (collectively, the "Collateral").

Doc. #146, Ex. C. DIP do not believe that the personal property described as the Collateral is subject to any liens or encumbrances of record. Doc. #144. Therefore, the SBA would be given a first priority lien in the Collateral; or the SBA's lien will be junior and subordinate if there are in fact any existing liens encumbering the Collateral. Doc. #142.

DIP assert that the COVID-19 pandemic has hurt their cattle business by restricting the market and limiting their ability to expand the business. Doc. #144. DIP believe it is necessary to expand their cattle business to increase profitability and increase the money available to fund a reorganization plan, and DIP intends to use the loan proceeds as working capital to expand their business. *Id.* The court will not second guess DIP's business judgment to proceed with the expansion of their business or the selection of the SBA to provide post-petition secured financing if obtaining credit on other terms is unavailable. However, the court is concerned that DIP have made no allegation in the motion or the supporting declarations about what efforts, if any, DIP made to obtain unsecured credit from elsewhere on other terms, and such credit was not available. The court will inquire of DIP's counsel at hearing.

The court does not believe the terms of the EIDL are unreasonable considering the relative circumstances of DIP and the potential lender. *See, e.g., In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003)("[T]aken in context, and considering the relative circumstances of the parties, the Court does not believe that the terms are unreasonable."). The purpose of the EIDL program is to extend low-interest credit to small businesses that are impacted by disasters. Rather than presenting DIP with a hard bargain to acquire funds for their reorganization, the SBA has limited the program to agricultural businesses and established eligibility criteria for applicants for which there have been an "unprecedented submission of applications." Doc. ##146, 150.

LBR 4001-1(c)(3) requires that post-petition financing agreements that contain any of the following provisions identify and provide substantial justification for such any such provision:

1. Cross-collateralization clauses, i.e., clauses that secure pre-petition debt by post-petition assets in which the secured party would not otherwise have a security interest by virtue of its pre-petition security agreement. *See* 11 U.S.C. § 552.
2. Provisions or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection, or amount of the secured party's lien or debt.
3. Provisions or findings of fact that bind the estate or all parties in interest with respect to the relative priorities of the secured party's lien and liens held by persons who are not parties to the stipulation. (This would include, for example, an order approving a stipulation providing that the secured

party's lien is a "first priority" lien.)

4. Waivers of 11 U.S.C. § 506(c), unless the waiver is effective only during the period in which the debtor is authorized to use cash collateral or borrow funds.
5. Provisions that operate to divest the debtor-in-possession of any discretion in the formulation of a plan or administration of the estate or limit access to the court to seek any relief under other applicable provisions of law.
6. Releases of liability for the creditor's alleged pre-petition torts or breaches of contract.
7. Waivers of avoidance actions arising under the Bankruptcy Code.
8. Automatic relief from the automatic stay upon default, conversion to chapter 7, or appointment of a trustee.

DIP state the EIDL does not contain any of the provisions listed above, and the court does not find any. See Doc. ##142, 146.

However, the court is concerned that DIP taking on the EIDL will be unduly burdensome on the estate. The terms of the loan require DIP to make monthly installment payments of \$672.00 for 30 years, at 3.75% interest, beginning 12 months from May 12, 2020. The debtors filed this bankruptcy case on January 2, 2020. See Doc. #1. The court notes that DIP has been operating at increasing losses since the commencement of this case. The Monthly Operating Report ("MOR") for January 2020 disclosed a loss of \$45,759.21. Doc. #74. The February 2020 MOR listed cumulative losses since the petition date of \$77,198.35. Doc. #75. The March 2020 MOR listed cumulative losses of \$105,636.86. Doc. #83. The April 2020 MOR listed cumulative losses of \$122,316.18. Doc. #114. And cumulative losses deepened to \$149,243.01 on the May 2020 MOR. Doc. #156. This Chapter 11 case has been pending for over 6 months, but DIP have not yet filed a Disclosure Statement or Plan of Reorganization. It is not clear to the court how or if DIP can afford to repay the loan. Counsel for DIP should be prepared to address this issue at the hearing.

2. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-9](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
6-4-2020 [[125](#)]

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

3. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-9](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
6-4-2020 [[132](#)]

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED

This motion appears to be a duplicate of item number 2 above, Doc. No. 125. Therefore, it will be dropped from calendar.

4. [19-14052](#)-A-11 **IN RE: BALDOMERO CISNEROS**
[LKW-14](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
6-9-2020 [[203](#)]

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 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the 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 Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED.

In this Chapter 11 case, Leonard K. Welsh ("Movant"), counsel for the debtor in possession Baldomero V. Cisneros ("DIP"), has applied for an allowance of interim compensation and reimbursement of expenses. Doc. #203. The application requests that the court allow compensation in the amount of \$5,492.50 and reimbursement of expenses in the amount of \$261.40. Id.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by counsel for the debtor in possession in a Chapter 11 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See id. § 330(a)(3). Movant's services included, without limitation: (1) case administration; (2) attending hearings and completing work on the sales of an on-sale general eating place license and residential real property; (3) preparing for the employment and compensation of professionals; and (4) advising about proofs of claim filed in the case. Doc. #203. The court finds that the compensation and expenses sought are reasonable, actual and necessary.

Accordingly, the motion is GRANTED on an interim basis. The court allows interim compensation in the amount of \$5,492.50 and reimbursement of expenses in the amount of \$261.40. The applicant is authorized to draw on any retainer held. 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. 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.

5. [20-11367](#)-A-11 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**
[LKW-3](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
6-9-2020 [[53](#)]

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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 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 Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED.

In this Chapter 11 case, Leonard K. Welsh ("Movant"), counsel for the debtor in possession Temblor Petroleum Company, LLC ("DIP"), has applied for an allowance of interim compensation and reimbursement of expenses. Doc. #53. The application requests that the court allow compensation in the amount of \$7,112.50 and reimbursement of expenses in the amount of \$78.10. Id.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by counsel for the debtor in possession in a Chapter 11 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See id. § 330(a)(3). Movant's services included, without limitation: (1) case administration; (2) advising DIP about oil and gas interests, executory contracts, and unexpired leases; and (3) advising about claims against debtor. The court finds that the compensation and expenses sought are reasonable, actual and necessary.

Accordingly, the motion is GRANTED on an interim basis. The court allows interim compensation in the amount of \$7,112.50 and reimbursement of expenses in the amount of \$78.10. The applicant is authorized to draw on any retainer held. 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. 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.

6. [20-10486](#)-A-11 **IN RE: ELIZABETH/LANRE JOHNSON**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
2-10-2020 [[1](#)]

ELIZABETH JOHNSON/ATTY. FOR MV.

NO RULING