UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, July 15, 2020
Place: Department A – Courtroom #11
Fresno, California

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

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

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. 20-11808-A-7 **IN RE: DANELLE HEREDIA**
GB-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-18-2020 [19]

BRIDGECREST CREDIT COMPANY, LLC/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, Bridgecrest Credit Company, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2014 Dodge Dart ("Vehicle"). Doc. #19.

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 six complete pre- and post-petition payments. The movant has produced evidence that debtor is delinquent by at least $1,284.18. Doc. #19, 23.

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 $7,350.00 and debtor owes $10,965.79. Doc. #23.

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

2. 20-11808-A-7 **IN RE: DANELLE HEREDIA**
MMJ-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-12-2020 [11]

EXETER FINANCE, LLC/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, Exeter Finance, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2010 Buick LaCrosse CX Sedan 4D ("Vehicle"). Doc. #19.

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 six complete pre-petition payments. The movant has produced evidence that debtor is delinquent by at least $2,388.92. Doc. #11, 15.

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 $4,625.00 and debtor owes $13,208.24. Doc. #15.

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

3. 18-14920-A-7 **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA GENERAL PARTNERSHIP**
RAC-10

OBJECTION TO CLAIM OF FRED SCHAKEL, CLAIM NUMBER 28
6-5-2020 [286]

DAVID SOUSA/MV
RESOLVED PER ORDER, ECF #314

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: This matter was resolved by stipulation and order entered on July 1, 2020. Doc. #314.

4. 18-14920-A-7 **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA GENERAL PARTNERSHIP**
RAC-9

OBJECTION TO CLAIM OF M & R TRANSPORT, CLAIM NUMBER 35
6-5-2020 [281]

DAVID SOUSA/MV
RESOLVED PER ORDER, ECF #313

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: This matter was resolved by stipulation and order entered on July 1, 2020. Doc. #313.

5. 19-11236-A-7 **IN RE: ROBERT GARFIAS**
JCW-1

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
1-30-2020 [36]

WELLS FARGO BANK, N.A./MV
DISCHARGED; TRUSTEE OPPOSTION WITHDRAWN

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

DISPOSITION: Granted.

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

Wells Fargo Bank, N.A. ("Wells Fargo") moves for relief from the automatic stay pursuant to 11 U.S.C. § 362 to proceed with foreclosure under the deed of trust secured by residential real property at 36617 Blanca Avenue, Madera, California 93636 (the "Property"). Doc. #36. This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Doc. #37. James Edward Salven (the "Trustee"), the Chapter 7 trustee of the bankruptcy estate of Robert S. Garfias (the "Debtor"), filed a timely opposition to the motion. Doc. #44. The Trustee believed there was sufficient equity in the Property to try to market and sell the Property for the benefit of the estate. Id.

The court held a hearing on the motion on March 11, 2020, at which the court continued the matter for approximately 120 days to allow the Trustee time to market and attempt to sell the Property. Doc. #46. On June 18, 2020, the Trustee filed a notice of withdrawal of his opposition to Wells Fargo's motion citing problems marketing the Property during the ongoing COVID-19 pandemic and other reasons. Doc. #56.

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). The Trustee filed a timely opposition, which has since been withdrawn. See Doc. ##44, 56. No other opposition has been filed. Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); see Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Upon default, the court considers the record, accepting well-pleaded facts as true. Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which Wells Fargo has done here.

Section 362(d)(1) of the Bankruptcy Code 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). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

Section 362(d)(2) allows the court to grant relief from the stay if the debtor lacks equity in the property and such property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. In re Casgul of Nevada, Inc., 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982).

Wells Fargo seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (2) with respect to the Property. Doc. #36. Wells Fargo contends that it has not been receiving regular monthly payments from the Debtor. Id. At the time of the filing of this motion, Wells Fargo alleged that the Debtor was delinquent in four monthly payments. Doc. #39. Wells Fargo also argued that the Debtor had no equity in the Property, based upon the scheduled value of $225,000.00, which is subject to Wells Fargo's first deed of trust in the amount of at least $214,526.85, a junior lien in favor of SolarCity Finance Company, LLC in the approximate amount of $18,564.00, a tax lien in the approximate amount of $13,576.00, and considering a hypothetical 8% cost of sale. Id.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the Debtor has failed to make at least four complete post-petition payments. Wells Fargo has produced evidence that the Debtor is delinquent by at least $5,985.54. Doc. #39. 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 the Debtor is in Chapter 7. Id.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit Wells Fargo to proceed with foreclosure and sale under the deed of trust secured by the Property. The 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be ordered waived because the Debtor has failed to make at least four post-petition payments to Wells Fargo and interest continues to accrue. No other relief is awarded.

6. 20-11643-A-7 **IN RE: JACOB/VICTORIA GORBA**
JPW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-4-2020 [11]

NATIONSTAR MORTGAGE LLC/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.

Local Rule of Practice ("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 movant did not file the proof of service separately, but rather attached a proof of service to each supporting document, including the motion, notice of motion, summary sheet, memorandum of points and authorities, declaration, and exhibits. See Doc. ##11, 12, 13, 14, 15, 16. The court finds service was sufficient and will consider the motion on its merits despite the movant's failure to comply with LBR 9004-2(c)(1).

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.

Nationstar Mortgage LLC dba Mr. Cooper ("Nationstar" or "Mr. Cooper") moves for relief from the automatic stay pursuant to 11 U.S.C. § 362 to enforce its foreclosure remedies under state law pursuant to a deed of trust secured by the debtors' unscheduled residential real property at 1147 West Lansing Way, Fresno, California 93705 (the "Fresno Property"). Doc. #11.

Jacob Gorba and Victoria Gorba (collectively, the "Debtors") filed this Chapter 7 case on May 11, 2020. See Doc. #1. The Debtors have a duty to file a list of all assets and liabilities. 11 U.S.C. § 521(a)(1)(B)(i). The Debtors listed the Fresno Property as where they live on their Petition (Line 5), and that they rent their residence (Line 11). See Doc. #1, Petition. The Debtors stated on Schedule A/B that they own or have a legal or equitable interest in real property (Line 1), but the Debtors did not disclose any interest in the Fresno Property. Instead, they listed only a fee simple interest in real property in Killeen, Texas (Line 1.1). See Doc. #1, Schedule A/B. Evidence produced by Nationstar shows title to the Texas property is held by Brandon Mikael Chanon and Jorge Arturo Chanon. See Doc. #14, Ex. 6. The Debtors did not make any claim of exemption in their unscheduled interest in the Fresno Property. See Doc. #1, Schedule C. The Debtors listed Mr. Cooper as having a secured claim of $169,455.00 on the Texas property (Line 2.2), but the Debtors' interest in and any secured claims on the Fresno Property is not scheduled. See Doc. #1, Schedule D. The Debtors attested that their bankruptcy filings are true and correct under penalty of perjury. See Doc. #1.

However, Nationstar produced evidence showing the Debtors executed a promissory note dated December 6, 2017 in the principal sum of $175,000.00 (the "Note") related to the purchase of the Fresno Property. Doc. #16; see also Doc. #14 at Ex. 1. Nationstar also provided evidence that a deed of trust signed by and listing the Debtors as borrowers on the Note was recorded with the Fresno County Recorder on December 8, 2017. Doc. #16; see also Doc. #14 at Ex. 2. The deed of trust secures the Note and encumbers the Fresno Property. Id. The Debtors did not list any gifts or transfers of property made in the two years preceding the filing of this bankruptcy case (Lines 13 and 18). See Doc. #1, Statement of Fin. Affairs. The beneficial interest in the deed of trust was assigned to Nationstar and recorded in Fresno County on February 13, 2020, and a substitution of trustee was recorded in Fresno County on February 25, 2020. Doc. #16; see also Doc. #14 at Ex. 3 and 4. Nationstar recorded a notice of default ("NOD") against the Fresno Property on February 25, 2020. Doc. #16; see also Doc. #14 at Ex. 5.

Unscheduled assets remain property of the bankruptcy estate. 11 U.S.C. § 554(d); see also In re Dunning Brothers Co., 410 B.R. 877, 888 (Bankr. E.D. Cal. 2009). Section 362(d)(1) of the Bankruptcy Code 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). Adequate protection may consist of a lump sum cash payment or periodic cash

payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

After reviewing the included evidence, the court is convinced the Debtors have an interest in the Fresno Property, which is subject to the automatic stay; and Nationstar is the holder of the Note and entitled to enforce the Note and deed of trust. The court finds that "cause" exists to lift the stay because the Debtors have defaulted on their loan obligation by failing to make regular pre-petition monthly payments. Nationstar lacks adequate protection because the Debtors have failed to make payments of $914.06 for the months of October 2019, November 2019, December 2019, January 2020, February 2020, March 2020, April 2020, and May 2020, totaling at least $7,312.48 in arrears. Doc. #16. Nationstar estimates the total payoff amount totaled $179,365.66 as of May 14, 2020. Id.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Nationstar to proceed with foreclosure and sale under the deed of trust secured by the Fresno Property. The 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived.

7. 20-11146-A-7 **IN RE: ANDREW/HEATHER GAMEZ**
JRL-1

MOTION TO AVOID LIEN OF SANJAY M. RAJPARA
6-8-2020 [19]

ANDREW GAMEZ/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.

Andrew Gamez and Heather Gamez (collectively, the "Debtors") moved pursuant to 11 U.S.C. § 522(f) to avoid the judicial lien of Sanjay M. Rajpara ("Creditor") on their residential real property commonly known as 6966 East Ramona Way, Fresno, California 93727 (the "Property"). Doc. #19.

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 the amounts of $5,809.87 as to Andrew Gamez and $4,959.87 as to Heather Gamez, in favor of Creditor on July 6, 2011. Doc. #22, Ex. A. The abstract of judgment was recorded with Fresno County on November 17, 2011. Id. A renewed judgment of $10,813.60 against Andrew Gamez and $9,208.32 against Heather Gamez was entered on October 15, 2019. Doc. #22, Ex. B. An abstract of the renewed judgment was recorded with Fresno County on January 2, 2020. Id. That lien attached to the Debtors' interest in the Property. See Doc. #22, Ex. C. The Debtors valued their interest in the Property at $330,000.00, subject to the unavoidable lien of Loancare LLC in the amount of $318,977.00, and the Debtors' claim of exemption under California Code of Civil Procedure § 703.140(b)(1) of $11,023.00. Doc. #22, Ex. C. After application of the arithmetical formula required by § 522(f)(2)(A), there is insufficient equity to support Creditor's 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.

8. 20-11989-A-7 **IN RE: LYNN RIOS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-25-2020 [14]

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The debtor filed a motion to waive the filing fee on July 7, 2020.

Doc. #18. , By order entered on July 10, 2020, the court denied the debtor's motion to waive the filing fee and ordered the filing fee to be paid in installments. Doc. #20, #21. Therefore, this order to show cause for failure to pay fees will be vacated.

9. 10-15491-A-7 **IN RE: JOSEPH/DAWN MEDIATI**
FW-4

MOTION FOR COMPENSATION FOR FLINT LAW FIRM, LLC, SPECIAL COUNSEL(S)
6-16-2020 [104]

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

Peter L. Fear (the "Trustee"), the Chapter 7 successor trustee of the bankruptcy estate of Joseph J. Mediati and Dawn L. Mediati moves for approval of fees and costs of special counsel, Flint Law Firm, LLC ("FLF") and Lockridge Grindal Nauen, PLLP ("LGN") (collectively, "Special Counsel"), to be divided as follows: (1) fees of $45,656.25 and costs of $704.30 to FLF; and (2) fees of $5,643.75 and costs of $700.00 to LGN.

This Chapter 7 bankruptcy case was reopened on October 11, 2017 to administer a personal injury claim. Doc. #104. Special Counsel were employed *nunc pro tunc* to continue pursuing, on behalf of the bankruptcy estate, a personal injury product liability action against a medical device manufacturer for injuries Dawn L. Mediati incurred as a result of the implantation of an allegedly defective medical device. Id. Pursuant to the court's order authorizing

Special Counsel's employment, Special Counsel are entitled to costs and share in a 40% contingency fee from any recovery. See Doc. #66. Special Counsel proceeded with litigation and obtained a settlement offer of $142,500.00 in exchange for a release of the estate's claims. Doc. #104. The settlement amount was subject to a multidistrict litigation holdback of 4% from any attorneys' fees and 1% from each recipient's portion. Id. After accounting for the 4% holdback of $5,700.00, Special Counsel's fees were $51,300.00 to be shared between FLF and LGN, FLF's costs were $704.30, and LGN's costs were $700.00. Id.

Section 330(a)(1)(A) and (B) of the Bankruptcy Code permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Special Counsel's services resulted in obtaining a net recovery of $82,670.70 to the estate. Doc. #104. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Special Counsel shall be awarded fees and costs, as follows: (1) fees of $45,656.25 and costs of $704.30 to FLF; and (2) fees of $5,643.75 and costs of $700.00 to LGN.

10. 20-11393-A-7 **IN RE: SALVADOR/PAMELA CHIARAMONTE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-29-2020 [36]

$31.00 FILING FEE PAID 6/30/20

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 filing fees now due have been paid.

10:00 AM

1. 18-14920-A-7 **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA GENERAL PARTNERSHIP**
20-1034

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-19-2020 [16]

SOUSA V. FRED AND AUDREY SCHAKEL AS TRUSTEES OF THE
$350.00 FILING FEE PAID 6/19/20

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 filing fees now due have been paid.

2. 18-14542-A-7 **IN RE: LARRY SELL**
19-1025

CONTINUED PRE-TRIAL CONFERENCE RE: COMPLAINT
2-15-2019 [1]

THE LEAD CAPITAL, LLC V. SELL
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to October 1, 2020 at 11:00 a.m.

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

The court intends to continue the pre-trial conference to October 1, 2020 at 11:00 a.m. based upon the parties' joint status report, filed July 8, 2020. Doc. #29.

The parties shall file and serve a joint status report 7 days prior to the continued hearing.

10:30 AM

1. 20-11552-A-7 **IN RE: MARIA PACHECO**

PRO SE REAFFIRMATION AGREEMENT WITH FEDERAL HOME LOAN MORTGAGE CORPORATION
6-17-2020 [22]

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

DISPOSITION: Dropped.

ORDER: No order required.

This matter was automatically set for a hearing because the reaffirmation agreement is not signed by an attorney and the debtor is in pro per. 11 U.S.C. § 524(d) requires the court to hold a hearing when the debtor wants to make a reaffirmation agreement as provided in 11 U.S.C. § 524(c) and was not represented by an attorney during the course of negotiating such agreement. This reaffirmation agreement appears to relate to a consumer debt secured by real property. Pursuant to 11 U.S.C. § 524(c)(6)(B), the court is not required to hold a hearing and approve this agreement.

1:30 PM

1. 17-13112-A-11 **IN RE: PIONEER NURSERY, LLC**
FW-55

MOTION FOR ADMINISTRATIVE EXPENSES
6-17-2020 [903]

PIONEER NURSERY, LLC/MV

NO RULING

The motion seeks authority for DIP to pay a one-half share of deposition fees as an administrative expense, but does not cite to any applicable Bankruptcy Code section(s) or Rule(s) pursuant to which the movant is seeking relief. Local Rule of Practice ("LBR") 9014-1(d)(3)(A) requires a motion to "set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability." While the court could deny the motion without prejudice for the failure of the motion to cite the legal grounds for the relief sought, the court will hear the matter to confirm the legal grounds upon which relief is sought.

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.

Pioneer Nursery, LLC ("DIP"), the debtor in possession in this Chapter 11 case, seeks approval to pay Esquire Deposition Solutions ("Esquire") the sum of $2,240.00, representing the estate's one-half contribution to the payment of fees incurred at mediation.

Section 503(b)(1)(A) of the Bankruptcy Code states that after notice and a hearing, administrative expenses shall be allowed for "the actual necessary costs and expenses of preserving the estate . . . ." In Microsoft Corp. v. DAK Indus., Inc. (In re DAK Indus., Inc.), 66 F.3d 1091, 1094 (9th Cir. 1995)(citing In re White Motor Corp.,

831 F.2d 106, 110 (6th Cir. 1987)), the Ninth Circuit stated that the claimant must show that the debt asserted to be an administrative expense "(1) arose from a transaction with the debtor-in-possession as opposed to the preceding entity (or, alternatively, that the claimant gave consideration to the debtor-in-possession); and (2) directly and substantially benefitted the estate." The bankruptcy court has broad discretion whether to grant such a claim, and only "the actual, necessary costs and expenses of preserving the estate" shall be approved. Id. (citations omitted).

To resolve disputes regarding claims by DIP's customers against the bankruptcy estate related to damages allegedly caused by defective root stock sold by DIP and DIP's claim for insurance coverage for these grower creditors' claims against its insurers, DIP, various insurance entities, the Committee of Unsecured Creditors, and the grower creditors met for mediation on November 7 and 8, 2019. Doc. #905. Esquire provided the meeting rooms that facilitated the mediation, which resulted in settlement agreements with DIP's grower creditors on the one hand, and DIP's insurers on the other for the payment by the insurers of $4.5 million to the estate. Id. The court finds that Esquire provided valuable services to DIP, and such services substantially benefitted the estate.

All concerned parties agreed prior to mediation that DIP and the insurers would divide equally the payment of mediation fees. Doc. #905. This court previously granted DIP authority to pay one-half of the mediator's fees as an administrative expense by order entered on January 7, 2019. See Doc. #647. The only concern at hearing was DIP had also been granted authority to employ the mediator under 11 U.S.C. § 327(a) and the court wanted assurance that the mediator would not be paid twice, once as a professional under § 330(a) and again as an administrative expense under § 503(b)(1)(A). See Doc. #639. DIP's counsel represented the mediator's fee would be paid only once, and the two motions were made in the alternative out of an abundance of caution. Id. Here, DIP has not moved to employ Esquire in addition to this motion, and the record makes clear that Esquire will be paid only once by DIP as an administrative expense.

Assuming relief is sought pursuant to Bankruptcy Code section 503(b)(1)(A), the motion should be GRANTED and DIP should be authorized to pay as an administrative expense its one-half share of the fees of Esquire in the amount of $2,240.00.

2. 17-13112-A-11 **IN RE: PIONEER NURSERY, LLC**
FW-56

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR PETER L. FEAR, DEBTORS ATTORNEY(S)
6-12-2020 [894]

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, Fear Waddell, P.C. ("Movant"), counsel for the debtor in possession Pioneer Nursery, LLC ("DIP"), has applied for an allowance of interim compensation and reimbursement of expenses. Doc. #894. The application requests that the court allow compensation in the amount of $59,112.00 and reimbursement of expenses in the amount of $615.05 for services rendered from December 1, 2019 through April 30, 2020. 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). Most of the services rendered during the relevant time period of this application related to the negotiation, preparation, and obtaining court approval of two separate and relatively complex settlement agreements with DIP's customers on the one hand, and DIP's insurer on the other, which represent a broader compromise of DIP's claim for insurance coverage against the insurer of claims asserted by some of DIP's customers against the bankruptcy estate related to damages caused by defective root stock sold by DIP. Doc. #898. These settlement agreements will result in the insurer paying the estate the sum of $4.5 million for the purchase of certain insurance policies and rights free and clear of interests, mutual release by the parties, and resolution of the grower creditors' claims against the estate by calculating the claims using a uniform method. Id. Movant's services also included, without limitation: (1) case administration, such as preparing reports for and appearing at status conferences, and reviewing and filing monthly operating reports; (2) efforts to collect on a judgment obtained against Hardave Dulai; (3) preparing professional

fee applications; and (4) working on a draft of the Chapter 11 Plan and Disclosure Statement. Id. 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 $59,112.00 and reimbursement of expenses in the amount of $615.05. 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 and costs 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.

3. 17-13112-A-11 **IN RE: PIONEER NURSERY, LLC**
FW-57

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH MICRO PARADOX, INC.
6-17-2020 [909]

PIONEER NURSERY, LLC/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.

Pioneer Nursery, LLC ("DIP"), the debtor in possession in this Chapter 11 case, seeks approval of a settlement agreement and release between DIP and Micro Paradox, Inc. ("MP"). Doc. #909.

DIP operates a nursery that grows pistachio trees and prior to 2017 had contracted with MP to propagate pistachio root stocks for sale. Doc. #911. In or about August 2016, DIP learned that trees it sold in 2015 and 2016 may have been infected with the Rhodococcus bacteria. Id. Several of DIP's customers filed lawsuits or asserted similar claims alleging damages caused by the defective root stock, which precipitated the debtor's bankruptcy filing. Id. Because MP participated in the propagation of root stock sold by DIP, DIP alleges MP is responsible for the damages caused by the defective root stock and DIP believes it has a claim against MP. Id. DIP and MP have agreed to a settlement pursuant to which MP will pay DIP the sum of $60,000.00 in exchange for a release of all DIP's claims against MP. Doc. #912, Ex. A.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. In a Chapter 11 case, the debtor in possession has the rights and powers of a trustee. 11 U.S.C. § 1107(a). Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that the debtor in possession has considered the standards of A & C Properties and Woodson. Although DIP believes it would have prevailed in litigation, DIP recognizes that litigation is inherently uncertain and, even if DIP succeeded, the amount of damages awarded is uncertain. Doc. #911. DIP has substantial doubt whether MP would be able to satisfy a sizeable judgment, and efforts to collect any judgment could cause the estate to incur significant delay and expense. Id. DIP also believes proving DIP's claims against MP implicate complex issues of fact and would require significant expert testimony. Id. DIP has considered the uncertainty and expenses associated with litigation, and believes that the settlement with MP contemplates the highest return to the estate and for the benefit of the unsecured creditors. Id. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of DIP's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id. The motion is granted.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

4. 19-14052-A-11 **IN RE: BALDOMERO CISNEROS**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
9-25-2019 [1]

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to August 12, 2020 at 1:30 p.m. to allow debtor's counsel time to file a motion to dismiss for hearing

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

In the Debtor-in-Possession's Second Chapter 11 Status Conference Statement filed on July 8, 2020, Baldomero V. Cisneros ("Debtor") requests that the court dismiss this chapter 11 bankruptcy case *sua sponte* pursuant to this court's February 4, 2020 Order re Chapter 11 Status Conference and Notice Thereof (Doc. #97) ("February 4 Order") so Debtor can seek a loan under the Paycheck Protection Program. Doc. #213. While this court could dismiss this case pursuant to the February 4 Order, because this case has been pending since September 25, 2019 as an operating chapter 11 case and because the April 2020 monthly operating report (Doc. #212) indicates that the Debtor is not current in post-petition taxes, the court is inclined to require the Debtor to comply with Federal Rule of Bankruptcy Procedure 2002(a)(4) and file a motion to dismiss on at least 21 days' notice to all creditors, the U.S. Trustee and all entities with whom the Debtor has transacted post-petition to permit those parties the opportunity to be heard as to whether the Debtor's chapter 11 bankruptcy case should be dismissed.

The chapter 11 status conference will be continued to August 12, 2020 at 1:30 p.m. to be heard in conjunction with a properly noticed motion to dismiss filed by the Debtor.

5. 20-12258-A-11 **IN RE: JARED/SARAH WATTS**
LKW-2

MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR ADEQUATE PROTECTION
7-7-2020 [12]

JARED WATTS/MV
OST 7/8/20

NO RULING

This motion was filed and served pursuant to an order shortening time ("OST") entered on July 8, 2020. Pursuant to the OST, opposition may be presented at the hearing. Doc. #25.

Jared Watt and Sarah Watt (collectively, "DIP"), the debtors in possession in this Chapter 11 case, move the court for an order authorizing DIP to use the cash collateral of Farm Credit West ("FCW") from July 2, 2020 through December 31, 2020, and provide adequate protection to FCW in the form of a replacement lien and payment of $2,000 per month, pursuant to 11 U.S.C. § 363(b) and (c). Doc. #12.

The motion was served on creditors only 8 days before the July 15 hearing. Federal Rule of Bankruptcy Procedure 4001(b)(2) provides that a final hearing on a motion for authority to use cash collateral requires at least 14 days' notice. However, if requested, "the court may conduct a preliminary hearing before such 14 day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(b)(2). DIP do not expressly state in the motion that DIP seek a preliminary hearing to permit use of cash collateral pending a final hearing on at least 14 days' notice. However, the court would entertain such a request at the July 15 hearing.

DIP own and operate a hay brokerage business in the State of California that generated income of $4,639,460.00 in 2019 and $1,416,986.52 from January 1, 2020 to June 30, 2020. Doc. ##12, 15. DIP employ 11 people and expect their business to be profitable during their Chapter 11 case. Id.

DIP secured debt includes approximately $77,678.03 owed to FCW and secured by a lien against the personal property associated with the hay brokerage business of DIP, including equipment, machinery, deposit accounts, accounts receivable and other personal property used in the hay brokerage business of DIP. Id. DIP assert FCW perfected its lien against the personal property of DIP pre-petition. Id. DIP assert the value of FCW's collateral on the petition date was $674,244.48, and the value of the money on deposit and accounts receivable alone totaled $240,669.88. Id. DIP assert they will not be able to operate their business or conduct their reorganization without the use of FCW's cash collateral. Id.

Section 363(c)(2) provides in relevant part:

> The trustee may not use . . . cash collateral . . . unless—
>
> > (A) each entity that has an interest in such cash collateral consents; or
> >
> > (B) the court, after notice and a hearing, authorizes such use . . . in accordance with the provisions of this section.

In a Chapter 11 case, the debtor in possession has the rights and powers of a trustee. 11 U.S.C. § 1107(a). "Cash collateral" is defined in Section 363(a) as "cash negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest[.]" 11 U.S.C. § 363(a). Bankruptcy Code section 363(e) requires DIP to provide adequate protection should FCW request it. To provide adequate protection, DIP propose to give FCW a replacement lien on post-petition assets of the like kind and to the same extent as existed for FCW pre-petition as well as pay FCW $2,000 per month. Doc. ##12, 15. In addition, DIP note that FCW's interests are protected by an equity cushion of over $596,500. Doc. #12.

LBR 4001-1(c)(3) requires motions for authorization to use cash collateral 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 motion for proposed use of cash collateral does not contain any of the provisions listed above, and the court does not find any. See Doc. #12.

Pending consideration of any opposition presented at the July 15 hearing and a request made for interim use of cash collateral pending a final hearing, the court is inclined to permit the interim use of cash collateral through August 13, 2020, in the amount that is necessary to avoid immediate and irreparable harm to the estate pending a final hearing on the motion to be held on August 13, 2020. Counsel for the Debtors should be prepared with a revised budget for August 2020 that sets forth those expenses that are necessary to be paid to avoid immediate and irreparable harm to the estate pending the final hearing on August 13, 2020.