

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday August 4, 2022
Place: Department A – 510 19th Street
Bakersfield, California

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

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [19-15109](#)-A-13 **IN RE: HENRY/REBECCA COVARRUBIAS**
[RSW-2](#)

MOTION TO MODIFY PLAN
6-15-2022 [\[37\]](#)

REBECCA COVARRUBIAS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

2. [19-12010](#)-A-13 **IN RE: TORINO/GLORIA JACKSON**
[RSW-1](#)

MOTION TO MODIFY PLAN
6-29-2022 [\[65\]](#)

GLORIA JACKSON/MV
WILLIAM OLCOTT/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at

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

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

3. [22-10628](#)-A-13 **IN RE: DAVID/NANCY HALL**
[MHM-2](#)

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

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

Here, the chapter 13 trustee ("Trustee") asks the court to dismiss this case for:

- (1) Unreasonable delay by the debtors that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1).
- (2) The debtors' failure to appear at the scheduled § 341 meeting of creditors.
- (3) The debtors' failure to provide Trustee with all requested documents.
- (4) The debtors' failure to cooperate with Trustee as required by 11 U.S.C. § 521(a)(3) and (a)(4) and provide full details regarding the cabin listed in the debtors' schedules.

Doc. #15.

On June 21, 2022, the debtors responded to the motion. Doc. #26. Although the debtors missed the first meeting of creditors, the debtors appeared at the

continued meeting of creditors held on June 14, 2022. The meeting of creditors was continued to July 12, 2022. In their opposition, the debtors assert that most of the missing documents have been provided to Trustee, and the debtors have advised that they are working on the remaining items for the July 12 continued meeting of creditors. Doc. #26.

At a hearing on this motion held on July 7, 2022, the court continued the motion to August 4, 2022 at 9:00 a.m. to confirm that the debtors have complied with all outstanding grounds for dismissal. The court required Trustee to file and serve a status report on or before July 28, 2022, unless the motion to dismiss had been withdrawn by then.

On July 28, 2022, Trustee filed a status report as ordered by the court. Doc. #40. According to the status report, the debtors did not appear at the continued meeting of creditors held on July 12, 2022. A review of Trustee's § 341 meeting report docket entry shows that the debtors did not appear at the meeting of creditors held on July 12, 2022, although counsel for the debtors did appear. See Docket Entry 7/12/2022. The meeting of creditors was continued to August 9, 2022. Id. In addition, the debtors have not provided all requested documents to Trustee. As of the filing of the status report, Trustee had not received: (1) the Class 1 checklist; (2) evidence of payments to Class 1 claims; (3) lawsuit information; and (4) clear information regarding the status of rental income and clear information regarding the cabin. Doc. #40. Trustee also notes that the debtors are not current on their plan payments. Id.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). Based on the evidence before the court, there is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors because the debtors failed to appear at the scheduled 341 meeting of creditors held on July 12, 2022, and have failed to provide Trustee with all of the documentation requested by Trustee. Cause also exists under 11 U.S.C. § 1307(c)(4) to dismiss this case as the debtors have failed to make all payments due under the plan.

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

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

4. [22-10628](#)-A-13 **IN RE: DAVID/NANCY HALL**
[MHM-3](#)

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

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

NO RULING.

5. [22-10850](#)-A-13 **IN RE: WILLIAM/CHERYL MILLER**
[CLB-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TOWD POINT HE TRUST 2021-HE1,
U.S. BANK NATIONAL ASSOCIATION
7-1-2022 [\[14\]](#)

TOWD POINT HE TRUST 2021-HE1, U.S. BANK NATIONAL
ROBERT WILLIAMS/ATTY. FOR DBT.
CHAD BUTLER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The debtors filed their chapter 13 plan ("Plan") on May 20, 2022. Doc. #3. Towd Point HE Trust 2021-HE1, U.S. Bank National Association as Indenture Trustee ("Creditor") objects to confirmation of the Plan on the grounds that: (1) the Plan does not pay Creditor's total secured claim of \$20,995.88; and (2) the Plan proposes an interest rate of 4.00%. Doc. #14. Creditor is agreeable to its total secured claim being paid at an interest rate of 5.25%. Id.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under section 501, is deemed allowed unless a party in interest objects. Creditor filed its proof of claim on July 19, 2022. Claim 6.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #3. The Plan fails to account for Creditor's claim. Claim 6; Doc. #3.

Creditor cites to the Supreme Court decision of Till v. SCS Credit Corp., 541 U.S. 465, 480 (2004), to support the argument that the proposed interest rate of 4.00% is too low. Doc. #14.

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

It is generally acknowledged that this approach starts with the national prime rate, which is then adjusted based on a number of factors. While the Supreme Court enunciated some factors to consider in adjusting the "prime-plus" rate upward, the Supreme Court also acknowledged some factors contribute to a reduction in risk (though not necessarily a rate less than prime). Till, 541 U.S. at 475 n.12. The Supreme Court in Till also noted that "if the court could somehow be certain a debtor would complete his plan, the prime rate would be adequate to compensate any secured creditors forced to accept cram down loans." Till, 541 U.S. at 479 n.18.

Creditor is agreeable to an interest rate of 5.25%. As of August 2, 2022, the Wall Street Journal Prime Rate is 5.50%. The court can take judicial notice of the prime rates published in the Wall Street Journal. Stein v. JP Morgan Chase Bank, 297 F. Supp. 2d 286, 290 (S.D.N.Y. 2003); Fed. R. Evid. 201.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

6. [19-14252](#)-A-13 **IN RE: MICHAEL/LUCIA LOPEZ**
[RSW-5](#)

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

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

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors Michael Thomas Lopez and Lucia Lopez (collectively, "Debtors") filed and served this motion to confirm the first modified Chapter 13 plan pursuant to Local Rule of Practice 3015-1(d)(2) and set for hearing on July 7, 2022. Doc. ##116-121. The Chapter 13 trustee ("Trustee") filed an opposition to Debtors' motion. Doc. #124. The court continued this matter to August 4, 2022 and ordered Debtors to file and serve a written response to Trustee's objection by July 21, 2022; or if Debtors elected to withdraw this plan, then Debtors had to file, serve, and set for hearing a confirmable modified plan by July 21, 2022. Doc. #127.

Having reviewed the docket in this case, the court finds Debtors have not voluntarily converted this case to Chapter 7 or dismissed this case, and Trustee's objection has not been withdrawn. Further, Debtors have not filed and

served any written response to Trustee's objection. Debtors have not filed, served, and set for hearing a confirmable modified plan by the time set by the court.

Accordingly, Debtors' motion to confirm their first modified Chapter 13 plan is DENIED on the grounds set forth in Trustee's opposition.

7. [18-14853](#)-A-13 **IN RE: JERRICK/SANDRA BLOCK**
[RSW-5](#)

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

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice 3015-1(d)(2). The Chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to modify the Chapter 13 plan. Tr.'s Opp'n, Doc. #95.

Trustee's limited opposition is based on a dispute over the additional provisions in section 7.04 of the proposed modified plan. Section 7.04 of the proposed modified plan provides in relevant part that Class 1 secured creditor Ocwen Loan Servicing LLC / Deutsche Bank National Trust Co. ("Creditor") shall be paid a total of \$4,808.97 on the real estate arrears through May 2022. Doc. #89. However, Trustee has only paid Creditor \$3,867.55 through May 2022. Doc. #95.

At the hearing on this motion held on July 7, 2022, the court continued the hearing so Creditor could sign off on the confirmation order. The court ordered that if Creditor has not signed off on the confirmation order by or before August 4, 2022, Trustee's objection will be sustained. Doc. #100. As of the posting of this tentative ruling, the debtors and Trustee have not uploaded an order confirming the plan to which Creditor has signed off.

Accordingly, unless Creditor signs off on the order confirming the modified plan by or before August 4, 2022, Trustee's objection to confirmation of the modified plan will be sustained, and the motion will be DENIED.

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

ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

This objection was filed and served pursuant to Local Rule of Practice
("LBR") 3015-1(c)(4). At a hearing held on July 7, 2022, the debtor opposed the
objection to confirmation and requested that the hearing be continued to
August 4, 2022. Court Audio, Doc. #70.

Restituto Decena Salang, Jr. ("Debtor") filed a Chapter 7 petition on
October 6, 2021. Doc. #1. Debtor's Chapter 7 bankruptcy case was converted to
Chapter 13 on March 15, 2022, after the court conditionally granted a motion to
dismiss filed by the Office of the United States Trustee for dismissal under
11 U.S.C. § 707(b). Doc. ##34 and 40.

Debtor filed his Chapter 13 Plan on April 12, 2022 ("Plan"). Doc. #50. The
chapter 13 trustee ("Trustee") objects to confirmation of the Plan because
Debtor is married but filed his bankruptcy petition individually and has not
included community debts in his schedules or provided for such debts in the
Plan. Doc. #54. Trustee also objects that not all of Debtor's projected
disposable income is being applied to unsecured creditors under the plan
because Debtor includes as expenses \$395.91 in universal and whole life
insurance policies that are all held by Debtor's non-filing spouse, and such
expenses should not be deducted from Debtor's disposable income. Doc. #54.

On July 27, 2022, Trustee filed a status report with respect to the objection
to confirmation. Doc. #71. Per the status report, Debtor and Trustee have
agreed to a plan payment increase that satisfies Trustee's objection to
confirmation. The only remaining objection was that an amended Schedule F had
not been filed and creditors of Debtor's non-filing spouse had not been
notified of the chapter 13 case. Doc. #71. On July 28, 2022, Debtor filed an
amended Schedule E/F as well as a certificate of service showing service of
notice of this chapter 13 bankruptcy case on Debtor's non-filing spouse's
creditors. Doc. ##73, 76.

Based on the status report and documents filed by Debtor on July 28, 2022, it
appears that all issues raised by Trustee in the objection to confirmation have
been addressed and the objection to confirmation should be OVERRULED.

9. [21-12353](#)-A-13 **IN RE: RESTITUTO SALANG**
[MHM-2](#)

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

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

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on August 2, 2022. Doc. #77.

10. [17-13863](#)-A-13 **IN RE: MARK GENTRY AND KATRINA MCDONALD GENTRY**
[NES-5](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS ATTORNEY(S)
6-24-2022 [\[82\]](#)

NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Neil E. Schwartz ("Movant"), counsel for Mark Gentry and Katrina Gentry (together, "Debtors"), the debtors in this chapter 13 case, requests allowance of final compensation in the amount of \$2,070.00 and reimbursement for expenses in the amount of \$10.00 for services rendered from November 6, 2020 through June 21, 2022. Doc. #82. Debtors' confirmed plan provides, in addition to \$3,087.00 paid prior to filing the case, for \$12,000.00 in attorney's fees. Plan, Doc. ##57, 62. One prior fee application has been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 in the amount of

\$10,912.50 and reimbursement for expenses totaling \$426.00. Order, Doc. #78. Debtors' consent to the amount requested in Movant's application. Doc. #82.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing for discharge and case closing; (2) preparing and filing final fee application; and (3) general case administration. Exs. A & B; Doc. #84. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court finds all fees and expenses of Movant previously allowed on an interim basis are reasonable and necessary. The court allows on a final basis all fees and expenses previously allowed to Movant on an interim basis, in addition to compensation requested by this motion in the amount of \$2,070.00 and reimbursement for expenses in the amount of \$10.00 to be paid in a manner consistent with the terms of the confirmed plan.

11. [17-11264](#)-A-13 **IN RE: JUSTIN/KATHARINE FARMER**
[PK-6](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
7-15-2022 [[100](#)]

PATRICK KAVANAGH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

Patrick Kavanagh ("Movant"), counsel for Justin Edward Farmer and Katherine Eileen Farmer (together, "Debtors"), the debtors in this chapter 13 case, requests allowance of final compensation in the amount of \$1,200.00, reduced from \$4,140.00, and no reimbursement for expenses for services rendered from December 7, 2020 through July 15, 2022. Doc. #100. Debtors' confirmed plan provides, in addition to \$1,900.00 paid prior to filing the case, for \$6,950.00 in attorney's fees. Plan, Doc. #80, 99. Two prior fee applications have been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 in the combined amount of \$6,250.00 and no reimbursement for expenses. Order,

Doc. ##32, 86. Debtors' consent to the amount requested in Movant's application. Doc. #104.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and filing response to trustee's objection to confirmation; (2) attending various telephone conferences; (3) preparing and filing final fee application; (4) preparing for discharge and case closing; and (5) general case administration. Exs. B & C, Doc. #100. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court finds all fees and expenses of Movant previously allowed on an interim basis are reasonable and necessary. The court allows on a final basis all fees and expenses previously allowed to Movant on an interim basis, in addition to compensation requested by this motion in the amount of \$1,200.00 to be paid in a manner consistent with the terms of the confirmed plan.

12. [20-12578](#)-A-13 **IN RE: MARIO/SUSANA GONZALEZ**
[RSW-3](#)

MOTION TO MODIFY PLAN
6-15-2022 [\[68\]](#)

SUSANA GONZALEZ/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to September 8, 2022 at 9:00 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The Chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to modify the Chapter 13 plan. Tr.'s Opp'n, Doc. #76. Unless this case is voluntarily converted to Chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response no later than August 18, 2022. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. Trustee shall file and serve a reply, if any, by August 25, 2022.

If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than August 25, 2022. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

13. [21-10581](#)-A-13 **IN RE: ANTONIO PERALTA**
[RSW-1](#)

MOTION TO MODIFY PLAN
6-15-2022 [\[23\]](#)

ANTONIO PERALTA/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

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

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY, AND/OR
MOTION/APPLICATION FOR ADEQUATE PROTECTION
6-17-2022 [[16](#)]

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

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

DISPOSITION: Granted with respect to relief under 11 U.S.C. § 362(d)(4).

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

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

There was no opposition to the motion raised at the original hearing on the motion held on July 7, 2022. Doc. #25. On July 12, 2022, the court granted relief from stay under 11 U.S.C. § 362(d)(1) permitting Movant to foreclose on the Property and continued the hearing with respect to relief under 11 U.S.C. § 362(d)(4). Doc. #31. On July 21, 2022, Movant filed a supplemental declaration in support of its request for relief under 11 U.S.C. § 362(d)(4). Doc. #35. On July 29, 2022, Movant filed an amended supplemental declaration in support of its request for relief under 11 U.S.C. § 362(d)(4). Doc. #36.

As a procedural matter, neither the supplemental declaration and related proof of service filed on July 21, 2022 nor the amended supplemental declaration and related proof of service filed on July 29, 2022 comply with Local Rule of Practice ("LBR") 9004-2(e). LBR 9004-2(e) requires the proof of service for any document to be filed as a separate document. Here, both the supplemental declaration and amended supplemental declaration included a proof of service instead of the respective proofs of service being filed as separate documents. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

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

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

11 U.S.C. § 362(d)(4). To obtain relief under § 362(d)(4), the court must affirmatively find: (1) the debtor's bankruptcy filing is part of a scheme; (2) the object of the scheme is to delay, hinder, or defraud creditors; and

(3) the scheme involves either (i) the transfer of some interest in real property without the secured creditor's consent or court approval or (ii) multiple bankruptcy filings affecting the property. First Yorkshire Holdings, Inc. v. Pacifica L 22 (In re First Yorkshire Holdings, Inc.), 470 B.R. 864, 870-71 (B.A.P. 9th Cir. 2011). "[T]he multiple filings thus must somehow be connected with or included in the scheme to delay, hinder and defraud creditors." In re Muhaimin, 343 B.R. 159, 168 (Bankr. D. Md. 2006).

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

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

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

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

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

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

Based on the evidence before the court, it appears that Debtor does not have an interest in the Property. Rather, it appears that Movant's borrowers have "hijacked" the automatic stay in Debtor's bankruptcy case. In re 4th St. E. Investors, Inc., 474 B.R. 709, 711 (Bankr. C.D. Cal. 2012). Accordingly, the court finds that Debtor's bankruptcy case is part of a scheme to delay, hinder, or defraud Movant and Movant's scheduled foreclosure sale of the Property.

Movant has alleged only one bankruptcy case, the current bankruptcy case, to be involved in delaying, hindering or defrauding Movant in completing Movant's foreclosure sale of the Property. Thus, Movant must show the transfer of some interest in Property without Movant's consent or court approval for the court to find sufficient grounds to grant relief from the automatic stay under § 362(d)(4). Because the alleged junior deed of trust was placed on the Property pre-petition, the only basis for this court to grant relief from stay under § 362(d)(4) is if the purported granting of a junior lien on the Property to Debtor and Frederick Woodfin was without Movant's consent. Pursuant to the supplemental declaration filed on July 21, 2022 and the amended supplemental declaration filed on July 29, 2022, the junior deed of trust was placed on the Property without Movant's consent. Supp. Decl. of Lindsey Dallmer ¶ 9, Doc. #35; Amended Supp. Decl. of Juliet Muller, ¶ 8, Doc. #36.

Accordingly, in rem relief from stay as to Movant is warranted under 11 U.S.C. § 362(d)(4).

2. [21-10530](#)-A-7 **IN RE: CHRISTOPHER METAS**
[EJT-1](#)

CONTINUED OBJECTION TO CLAIM OF MELAINE METAS, CLAIM NUMBER 8
11-24-2021 [\[47\]](#)

LAW OFFICE OF EDWARD J. THOMAS/MV
LEONARD WELSH/ATTY. FOR DBT.
EDWARD THOMAS/ATTY. FOR MV.

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

DISPOSITION: Continued to October 6, 2022, at 10:00 a.m.

ORDER: The court will issue an order.

Pursuant to the status conference statement filed on July 29, 2022 (Doc. #86), this hearing will be continued to October 6, 2022, at 10:00 a.m.

The parties shall file either joint or unilateral status report(s) not later than September 29, 2022.

3. [22-10733](#)-A-7 **IN RE: TODD/TRISH TRANSMEIER**
[JMV-2](#)

MOTION TO SELL
7-6-2022 [\[20\]](#)

JEFFREY VETTER/MV
R. BELL/ATTY. FOR DBT.
JEFFREY VETTER/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. While the notice states that the names and addresses to be served with any opposition are identified in an attachment, there was no attachment included with the filed notice. The court encourages movant to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

Jeffrey Vetter ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Todd Nicholas Transmeier and Trish Deann Transmeier (together, "Debtors"), moves the court for an order (1) authorizing the sale of a 2016 Toyota Sienna VIN 5TDKK3DCXGS751395 ("Personal Property") at public auction on August 27, 2022 by Jerry Gould of Gould Auction and Appraisal Company ("Auctioneer") located at 6200 Price Way, Bakersfield, California, 93308; (2) authorizing the estate to pay Auctioneer commission and expenses; and (3) waiving the 14-day stay of Fed. R. Bankr. P. 6004(h). Doc. #20.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Decl. of Jeffery Vetter, Doc. #24. Trustee's experience indicates that a sale of the Property at public auction will yield the highest net recovery to the estate. Vetter Decl., Doc. #24. The proposed sale is made in good faith.

Trustee has been authorized to employ Auctioneer pursuant to 11 U.S.C. § 328(a) to advertise, manage, and conduct the auction for a commission of 15% of the gross sale price and estimated expenses of \$150.00. Doc. ##24, 27. Trustee's

unambiguous request in this motion for pre-approval of payment to Auctioneer pursuant to § 328 is consistent with the order authorizing employment of auctioneer company. Motion, Doc. #20; Order, Doc. #27.

Accordingly, this motion is GRANTED. Trustee's business judgment is reasonable and the proposed sale of the Personal Property at public auction is in the best interests of creditors and the estate. The arrangement between Trustee and Auctioneer is reasonable in this instance. Trustee is authorized to sell the Property on the terms set forth in the motion.

The 14-day stay of Fed. R. Bankr. P. 6004(h) will be ordered waived because the Personal Property is to be sold at public auction and permitting the sale of the Personal Property at public auction will benefit creditors and the estate.

4. [12-15554](#)-A-7 **IN RE: JOSEPH/LYDIA ESPARZA**
[WEE-2](#)

MOTION TO AVOID LIEN OF FIDELITY INDEMNITY COMPANY
6-8-2022 [\[35\]](#)

LYDIA ESPARZA/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

This motion is denied both for improper service on Fidelity Indemnity Company ("Creditor") as well as the failure of the moving party to make a *prima facie* showing that they are entitled to the relief sought.

Service of this motion does not comply with the Federal Rules of Bankruptcy Procedure ("Rule"). Rule 9014(b) requires a motion to avoid a judicial lien to be served "in the manner provided for service of a summons and complaint by Rule 7004." With respect to a domestic or foreign corporation or other unincorporated association, service under Rule 7004(b)(3) may be made by mailing, first class prepaid, "a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 7004(b)(3). Here, service was mailed to Fidelity Indemnity Company but was not addressed to the attention an officer or authorized agent.

Service of the motion on Creditor's counsel that filed the abstract of judgment also does not satisfy Rule 7004, as there is no indication that Creditor's counsel has appeared on behalf of Creditor in this bankruptcy case. In any event, a review of the California State Bar's website shows that the address to which the motion was served is not the current address for attorney Steven A. Booska. According to the California State Bar website, the current address for attorney Steven A. Booska is: Law Ofc Steven A Booska, 1141 Harbor Bay Pkwy Ste 221, Alameda, CA 94502-2214. The current telephone number for attorney Booska that is listed on the California State Bar website is the same phone number that is listed in the abstract of judgment, so it appears to be the same attorney. The court can take judicial notice of attorney records posted on the website of the California State Bar. Fed. R. Evid. 201(b)(2).

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

Turning to the substance of the motion, Joseph Esparza and Lydia Esparza ("Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Rules 4003(d) and 9014 to avoid Creditor's judicial lien on the residential real property commonly referred to as 508 Kingwood St., Bakersfield, CA 93314 (the "Property"). Doc. #35.

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 section 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)).

The debtor's eligibility to claim a homestead exemption and right to avoid a judicial lien is determined as of the date the bankruptcy petition is filed. Culver, LLC v. Chiu (In re Chiu), 266 B.R. 743, 751 (B.A.P. 9th Cir. 1998), aff'd, 304 F.3d 905 (9th Cir. 2002). "[T]he debtor, as the exemption claimant, bears the burden of proof which requires the debtor to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [California law] and the extent to which that exemption applies." In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015).

Debtors filed their bankruptcy petition on June 21, 2012. Doc. #1. However, Debtors did not list the Property in Schedule A or anywhere else on the schedules and also did not claim any exemption to the Property under Schedule C. Id. Accordingly, Debtors have failed to prove entitlement to claim an exemption in the Property as of the date Debtors filed their bankruptcy petition and have failed to establish the first and second elements required to avoid a lien that impairs Debtors' exemption.

For all of the reasons set forth above, the motion is DENIED.

5. [22-10662](#)-A-7 **IN RE: JULIE MATTOX**
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-30-2022 [\[14\]](#)

EXETER FINANCE LLC/MV
GEORGE BURKE/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on July 27, 2022. Doc. #31.

6. [19-13783](#)-A-7 **IN RE: MARK/SUSAN CHAGOYA**
[PK-5](#)

MOTION BY PATRICK KAVANAGH TO WITHDRAW AS ATTORNEY
7-7-2022 [\[40\]](#)

PATRICK KAVANAGH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if record sufficiently supplemented.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Because the court requires additional information before granting the motion, the matter will proceed as scheduled.

Patrick Kavanagh ("Movant"), counsel for Mark A. Chagoya and Susan M. Chagoya (collectively, "Debtors"), the debtors in this chapter 7 case, moves to withdraw as Debtors' attorney of record in Debtors' chapter 7 bankruptcy case. Doc. #40. Movant's withdrawal will leave Debtors unrepresented by counsel.

LBR 2017-1(e) states that "an attorney who has appeared may not withdraw leaving the client *in propria persona* without leave of court upon noticed motion and notice to the client and all other parties who have appeared." The local rule goes on to require the attorney seeking withdrawal to "provide an

affidavit stating the current or last known address" of the client and "the efforts made to notify the client of the motion to withdraw." LBR 2017-1(e).

Movant has not conformed with LBR 2017-1(e). Specifically, Movant's declaration does not provide the current or last known address of Debtors. Decl. of Patrick Kavanagh, Doc. #42. The court requires Movant to file a supplemental declaration stating Debtors' current or last known address(es) before the motion will be granted. In addition, Movant's declaration does not state the efforts Movant made to notify Debtors of Movant's intentions to withdraw as their attorney. Kavanagh Decl., Doc. #42. The court will permit Movant to supplement to record at the hearing with respect to such efforts before determining whether such efforts are sufficient to grant the motion. The certificate of service filed with this motion shows that Debtors received notice via electronic mail and U.S. mail. Doc. #43. Service was also made upon the plaintiff, the chapter 7 trustee, and the United States trustee. Doc. #43.

Withdrawal is governed by the California Rules of Professional Conduct. LBR 2017-1(e). Pursuant to California Rules of Professional Conduct Rule 1.16, formerly Rule 3-700, a lawyer may withdraw from representing a client if the client breaches a material term of an agreement with the lawyer and the lawyer has given the client reasonable warning of withdrawal, if a continuation of the representation is likely to result in a violation of the rules, if the client renders it unreasonably difficult for the lawyer to carry out the representation effectively, or if other good cause for withdrawal exists. Rules Prof. Conduct 1.16(b), <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules>.

Movant submits that no settlement agreement has been reached between Debtors and the plaintiff in an adversary proceeding filed in this court, and negotiations are stalled. Doc. #42. Movant further states that attending trial would consist of hours of travel and motel accommodations that could create a financial burden on Debtors. Id. Movant also states that one of the debtors is more interested in going to trial than the other and since there is an absence of unity between Debtors, Movant cannot try the case. Id. It appears that Movant has demonstrated cause for withdrawal.

Accordingly, subject to Movant sufficiently supplementing the record at the hearing and filing a supplemental declaration, this motion will be GRANTED.

7. [22-11086](#)-A-7 **IN RE: MISAEL ANGON PAZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-13-2022 [\[12\]](#)

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings and conclusions.

ORDER: The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-14-2022 [\[12\]](#)

PENTAGON FEDERAL CREDIT UNION/MV
D. GARDNER/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Pentagon Federal Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2019 Dodge Ram 1500 Classic ("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 any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least two complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$1,071.96 plus late charges of \$29.00. Doc. #17.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. The Vehicle is valued at \$30,625.00 and the debtor owes \$31,216.15. Doc. #17.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law

and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

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

10:30 AM

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

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

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

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

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

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice 9014-1(f)(1). Oppositions to the motion were filed timely by Tracy Hope Davis, United States Trustee for Region 17 ("UST"), and Stephanie Hudson ("Hudson"). Doc. ##1056, 1058. Replies in support of the motion were filed by: (a) Eduardo Garcia and Amalia Garcia (collectively, "DIP"), Doc. ##1066, 1075 and 1076; (b) general unsecured creditor Big N Deep, Inc., Doc. #1068; (c) secured and unsecured creditor David Oppenheimer and Company I, LLC ("Oppenheimer"), Doc. #1070; (d) general unsecured creditor Harris Law Firm, Doc. #1073; and (e) secured creditor Keevmo, LLC, Doc. #1078.

By this motion, DIP seek to borrow \$4 million from RoBott Land Company, Inc. ("RoBott") secured by a first deed of trust against 789.91 acres of DIP's real property. Doc. #1017. The borrowers on the new note are DIP and their son, Rene Garcia. Ex. A, Doc. #1102. The three parcels of real property that will secure the new loan are commonly referred to as: (1) Hacienda 2, (2) Hacienda Feed Lot; and (3) Pole Barn Ranch and Grazing Land. Ex. A, Doc. #1020. Based on papers filed previously in this bankruptcy case, Keevmo, LLC holds a deed of trust in Hacienda 2; Hudson holds a deed of trust in the Hacienda Feed Lot; and Oppenheimer holds a deed of trust in the Pole Barn Ranch and Grazing Land. Ex. C to disclosure statement dated February 21, 2021, Doc. #523. In addition, Helena Chemical Company ("Helena") asserts a secured claim against all three parcels of real property based on a recorded judicial lien. Doc. #1019.

At the July 7 hearing on the motion, DIP proposed to use the proceeds of the \$4 million loan to pay: loan origination and other fees related to the borrowing; all unpaid real property taxes on the properties to be used as

collateral for the new loan; all secured claims against all real property owned by DIP, including real property that was not to be used as collateral for the new loan, except for the secured claim of Hudson; certain unpaid administrative claims; and a partial payment to general unsecured creditors. In addition, DIP proposed to impound \$500,000 to make interest payments due to RoBott during the first 12 months of the loan, pay a certain amount to Hudson on account of her deed of trust and impound the remaining amount to be paid to Hudson pending resolution of a dispute over the amount of that claim.

In addition to objections raised by UST and Hudson, the court had several concerns it set forth on the record at the original hearing on this motion. At the July 7 hearing, the court raised service issues with respect to Hudson and Helena that were addressed at that hearing, and the court is satisfied that no service issues remain. The court also had concerns about the lack of evidence needed for the court to make certain findings required in granting the motion as well as DIP's request to pay general unsecured creditors without having a confirmed chapter 11 plan and secured claims for real property that was not to be used as collateral for the proposed new borrowing. The court continued the hearing on the motion to July 27, 2022 and required DIP to supplement the record. On July 20, 2022, DIP filed supplemental declarations of Eduardo Garcia, Rene Garcia, and DIP's counsel, Leonard Welsh. Doc. #1094 to 1096. On July 26, 2022, DIP filed copies of the proposed note and deed of trust to be entered into a part of the transaction with RoBott and also filed papers with respect to a settlement with Hudson. Doc. #1102 and 1104.

At the continued hearing on July 27, Oppenheimer raised for the first time an issue with respect to the amount to be paid to Oppenheimer from the proposed loan transaction with RoBott in exchange for reconveyance of Oppenheimer's deed of trust on the Pole Barn Ranch and Grazing Land. Court Audio, Doc. #1110. The court continued the hearing on the motion to August 4, 2022 to permit DIP and Oppenheimer to discuss, and possibly resolve, the dispute. On July 28, 2022, Oppenheimer filed a stipulation between DIP and Oppenheimer in which Oppenheimer agreed to accept \$375,000 in proceeds from the proposed borrowing in exchange for a reconveyance of Oppenheimer's deed of trust on the Pole Barn Ranch and Grazing Land. Doc. #1111.

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.

11 U.S.C. § 364(c). 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. 11 U.S.C. § 364(c)(2) and (3); In re Harbin, 486 F.3d 510, 521 (9th Cir. 2007). Section 364(c)(2) and (3) provide exceptions to the general prohibition against creating post-petition encumbrances on property of the bankruptcy estate. Harbin, 486 F.3d at 521.

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").

Based on the representations made at the July 27 hearing, the supplemental pleadings filed after the July 7 hearing and the stipulation with Oppenheimer, the court finds that DIP has addressed most of the concerns of the court and the UST, and the motion should be granted without permitting, at this time, the payment of loan funds to secured creditors whose collateral is not being used as collateral for the loan from RoBott as well as to general unsecured creditors. Specifically, the supplemental declarations of Eduardo Garcia and Rene Garcia provide evidence for the court to make a finding that DIP has shown that DIP is unable to obtain an unsecured loan for the amount requested by the motion. Doc. #1094 and 1095. In addition, the supplemental declaration of DIP's counsel, Leonard Welsh, provides details regarding provisions in the proposed transaction with RoBott that are not permitted by Local Rule of Practice 4001-1(c)(3) and, to the extent included, provides substantial justification for the relevant provision. Doc. #1096. The proposed note and deed of trust documents filed on July 26, 2022 confirm these representations. Doc. #1102. Finally, the stipulation between DIP and Oppenheimer resolves the dispute over the amount to be paid to Oppenheimer in exchange for the reconveyance of Oppenheimer's deed of trust on the Pole Barn Ranch and Grazing Land.

The court understands and appreciates that general unsecured creditors want to be paid immediately from the proposed funding, as set forth in the various replies filed by DIP and other unsecured creditors. The general unsecured creditors appear to seek partial payment prior to confirmation of a chapter 11 plan under the so-called "doctrine of necessity" that permits a bankruptcy court to authorize the payment of pre-petition claims prior to confirmation of a chapter 11 plan. The court notes that the doctrine of necessity may not even be viable in the Ninth Circuit under In re Adams Apple, Inc., 829 F.2d 1481, 1490 (9th Cir. 1987), but makes no such determination at this time.

Assuming *arguendo* that the doctrine of necessity applies in this court, as explained by the bankruptcy court in In re C.A.F. Bindery, 199 B.R. 828 (Bankr. S.D.N.Y. 1996), "[t]o invoke the [doctrine of necessity] . . . the debtor must show that the payment is 'critical to the debtor's reorganization.' The doctrine, however, receives limited application, and mere convenience, without necessity, is insufficient." C.A.F. Bindery, 199 B.R. at 835-86 (citations omitted). DIP has not made the required showing to invoke the doctrine of necessity under this standard.

In this case, DIP has operated in chapter 11 for over 30 months without needing to pay pre-petition general unsecured claims, so the court finds that there is no basis under the doctrine of necessity or any other authority to pay pre-petition general unsecured claims of DIP ("GUCs") outside of a confirmed plan of reorganization. DIP has no objection to impounding from the funds to be borrowed from RoBott the amounts DIP intends to use to pay Nationstar Mortgage, LLC dba Mr. Cooper ("Nationstar") and GUCs pending confirmation of a plan of reorganization. Supp. Decl. of Eduardo Garcia ¶ 4, Doc. #1094. Such funds will be impounded in a second debtor-in-possession account. Id.

For the reasons set forth above, the motion is granted as follows:

- (1) DIP is authorized to borrow \$4 million from RoBott Land Company on the terms set forth in the term sheet, proposed note and proposed deed of trust. Ex. A, Doc. #1020; Exs. A & B, Doc. #1102.
- (2) DIP is authorized to make the distributions set forth in the following chart from the proposed borrowing, with the provisions that: (a) lines a. and e. [marked with an "*"] are only estimates and may be higher based on the accrual of interest or other charges needed to be paid to close escrow; (b) line d. [marked with an "**"] is only an estimate and may be higher or lower depending upon the actual fees incurred; (c) line g. [marked with an "***"] is only an estimate and may be lower depending upon whether that judicial lien is reduced by the sale of other real property subject to that judicial lien before close of escrow on the proposed loan; and (d) line m. [marked with an "****"] is only an estimate and may be higher or lower depending upon the actual amounts paid with respect to other distributions.

a.	Kern County Tax Collector (tax liens)*	\$ 378,406.22
b.	Loan origination fees	205,000.00
c.	Proposed lender impound for interest	500,000.00
d.	Escrow fees, title fees, recording fees**	8,000.00
e.	Keevmo (secured claim)*	1,245,557.60
f.	Oppenheimer (secured claim)	375,000.00
g.	Helena (judgment lien)***	228,953.81
h.	Hudson (secured claim)	325,000.00
i.	DIP's attorneys' fees	35,000.00
j.	DIP's accountant fees	15,000.00
k.	Payment for capital gains taxes	210,000.00
l.	Reserve for UST fees	25,182.13
m.	Impounded for Nationstar and GUCs****	448,900.24
	Total	\$4,000,000.00

- (3) The funds impounded to pay Nationstar Mortgage, LLC dba Mr. Cooper and pre-petition general unsecured claims of DIP will be placed in a segregated debtor-in-possession account.

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

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

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

NO RULING.

2. [19-13783](#)-A-7 **IN RE: MARK/SUSAN CHAGOYA**
[19-1129](#) [PK-5](#)

MOTION BY PATRICK KAVANAGH TO WITHDRAW AS ATTORNEY
7-7-2022 [\[109\]](#)

BROWN V. CHAGOYA ET AL

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if record sufficiently supplemented.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the defendants to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the defendants are entered. Because the court requires additional information before granting the motion, the matter will proceed as scheduled.

Patrick Kavanagh ("Movant"), counsel for Mark A. Chagoya and Susan M. Chagoya ("Defendants"), the defendants in this adversary proceeding, moves to withdraw as Defendants' attorney of record in this adversary proceeding. Doc. #109. Movant's withdrawal will leave Defendants unrepresented by counsel.

LBR 2017-1(e) states that "an attorney who has appeared may not withdraw leaving the client *in propria persona* without leave of court upon noticed motion and notice to the client and all other parties who have appeared." The local rule goes on to require the attorney seeking withdrawal to "provide an affidavit stating the current or last known address" of the client and "the efforts made to notify the client of the motion to withdraw." LBR 2017-1(e).

Movant has not conformed with LBR 2017-1(e). Specifically, Movant's declaration does not provide the current or last known address of Defendants. Decl. of Patrick Kavanagh, Doc. #111. The court requires Movant to file a supplemental declaration stating Defendants' current or last known address(es) before the

motion will be granted. In addition, Movant's declaration does not state the efforts Movant made to notify Defendants of Movant's intentions to withdraw as their attorney. Kavanagh Decl., Doc. #111. The court will permit Movant to supplement to record at the hearing with respect to such efforts before determining whether such efforts are sufficient to grant the motion. The certificate of service filed with this motion shows that Defendants received notice via electronic mail and U.S. mail. Doc. #112. Service was also made upon the plaintiff, the chapter 7 trustee, and the United States trustee. Doc. #112.

Withdrawal is governed by the California Rules of Professional Conduct. LBR 2017-1(e). Pursuant to California Rules of Professional Conduct Rule 1.16, formerly Rule 3-700, a lawyer may withdraw from representing a client if the client breaches a material term of an agreement with the lawyer and the lawyer has given the client reasonable warning of withdrawal, if a continuation of the representation is likely to result in a violation of the rules, if the client renders it unreasonably difficult for the lawyer to carry out the representation effectively, or if other good cause for withdrawal exists. Rules Prof. Conduct 1.16(b), <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules>.

Movant submits that no settlement agreement has been reached between Defendants and the plaintiff in this adversary proceeding, and negotiations are stalled. Doc. #111. Movant further states that attending trial would consist of hours of travel and motel accommodations that could create a financial burden on Defendants. Id. Movant also states that one of the defendants is more interested in going to trial than the other and since there is an absence of unity between Defendants, Movant cannot try the case. Id. It appears that Movant has demonstrated cause for withdrawal.

Accordingly, subject to Movant sufficiently supplementing the record at the hearing and filing a supplemental declaration, this motion will be GRANTED.