

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, August 5, 2021
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. [21-10005](#)-A-13 **IN RE: ARTURO/MARICELA RUBIO**
[RSW-2](#)

MOTION TO MODIFY PLAN
6-22-2021 [\[24\]](#)

MARICELA RUBIO/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. [21-10716](#)-A-13 **IN RE: VINOD SAHNI**
[RSW-1](#)

MOTION TO CONFIRM PLAN
7-1-2021 [\[29\]](#)

VINOD SAHNI/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Set for evidentiary hearing.

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 to confirm the debtor's chapter 13 plan was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). On July 22, 2021, Harbajan Singh, by and through Ashutosh Pawla, ("Creditor"), filed written opposition alleging that the plan was not proposed in good faith as required by 11 U.S.C. § 1325(a)(3). Doc. #40.

Vinod Kumar Sahni ("Debtor") filed the first modified chapter 13 plan ("Plan") on July 1, 2021. Doc. #31. Debtor moved to confirm the Plan and set the confirmation hearing for August 5, 2021 at 9:00 a.m. Doc. #30. The Plan calls for monthly payments of \$2,900 for 60 months. Doc. #31. Creditor is listed in Class 2, which includes all secured claims that are modified by the plan or that have matured or will mature before the plan is completed. Plan ¶ 3.08, Doc. #31. In Class 2(A), Creditor will receive a monthly dividend of \$901 with an interest rate of 4%. Id. The Plan proposes to pay a 100% dividend to unsecured claims. Plan ¶ 3.14, Doc. #31.

Under § 1325(a)(3), a chapter 13 plan may be confirmed only if it "has been proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1325(a)(3). "In considering whether to confirm a Chapter 13 plan over a good faith objection, Ninth Circuit authority requires courts to consider the 'totality of the circumstances,' including all mitigating factors, on a case-by-case basis." Ingram v. Burchard, 482 B.R. 313, 319 (N.D. Cal. 2012). "A bankruptcy court must inquire whether the debtor has misrepresented facts in his plan, unfairly manipulated the [Bankruptcy Code], or otherwise proposed his Chapter 13 plan in an inequitable manner." In re Goeb, 675 F.2d 1386, 1390 (9th Cir. 1982). "Once an objection has been raised, the debtor bears the burden of proving good faith." Ingram v. Burchard, 482 B.R. at 319.

Creditor alleges that Debtor has undisclosed assets. Doc. #40. Creditor claims that Debtor sold real property in India within two years prior to the filing of the bankruptcy case that was not disclosed, and that Debtor has non-disclosed assets, including a valuable collection of taxidermy specimens. Decl. of Ashutosh Pawla, Doc. #41. Debtor has not filed a reply.

Resolving an objection to plan confirmation related to good faith requires the bankruptcy court to establish findings of fact. In re Sisk, 962 F.3d 1133, 1141 (9th Cir. 2020). Accordingly, an evidentiary hearing is needed to resolve this objection to confirmation of the Plan. At the hearing, the parties shall be prepared to propose a schedule for discovery and discuss timing of an evidentiary hearing to resolve this objection to confirmation of the Plan.

3. [20-13524](#)-A-13 **IN RE: KYLE/NATALIE SINGLEY**
[CJK-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
12-8-2020 [\[17\]](#)

BANK OF AMERICA, N.A./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

4. [21-10928](#)-A-13 **IN RE: ALICE CAMERON**
[JCW-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK
NATIONAL ASSOCIATION
5-27-2021 [\[15\]](#)

U.S. BANK NATIONAL ASSOCIATION/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.

NO RULING.

5. [16-13930](#)-A-13 **IN RE: DAVID SMITH**
[PK-1](#)

MOTION TO MODIFY PLAN
6-23-2021 [\[36\]](#)

DAVID SMITH/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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.

OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT CORPORATION
6-9-2021 [\[14\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
RESPONSIVE PLEADING

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). While not required, Timothy Gene Ammerman ("Debtor") filed a written response to the objection. Doc. #21. This matter will proceed as scheduled. The court will issue an order if a further hearing is necessary.

Debtor filed the chapter 13 plan ("Plan") on May 24, 2021. Doc. #3. Toyota Motor Credit Corporation ("Creditor") objects to confirmation of the Plan on the ground that the Plan does not provide for Creditor's secured claim. Doc. #11. Citing 11 U.S.C. § 1325(b)(5), Creditor states that Debtor has not provided for Creditor's claim in any amount. Doc. #14. Creditor filed its proof of claim on June 10, 2021. Claim 3.

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 § 501, is deemed allowed unless a party in interest objects. There has been no objection to Creditor's claim.

Creditor states that the Plan must provide for the full claim amount of \$6,492.54 at the contract rate of 13.10% because Creditor has an allowed secured claim. Doc. #14. Although Creditor cites § 1325(a)(5), that section of the Bankruptcy Code only relates to allowed secured claims provided for by the plan. 11 U.S.C. § 1325(a)(5). "The phrase 'provided for in the plan,' means that a plan 'makes a provision' for, 'deals with,' or even 'refers to' a claim." Shook v. CBIC (In re Shook), 278 B.R. 815, 823 (B.A.P. 9th Cir. 2002) (citations omitted). A chapter 13 plan need not "provide for" a secured claim. Shook, 278 B.R. at 824-25.

The Plan does not include Creditor in Class 4 or any other class, and does not provide for Creditor's allowed secured claim. Doc. #3. Debtor is not seeking to modify Creditor's rights as a holder of a secured claim. Creditor does not assert any default or arrearage. Should Debtor become delinquent, Creditor will be able to petition the court for relief from the automatic stay. See Plan ¶ 3.11(b), Doc. #3.

Debtor responded to Creditor's objection, stating that Creditor's claim can be included in Class 4. This concession is not required by the Bankruptcy Code. Additionally, Class 4 includes secured claims that "mature after the completion

of this plan." Plan ¶ 3.10, Doc. #3. Creditor states that its allowed secured claim will mature during the life of the Plan. Doc. #14. Therefore, Creditor's claim would not be properly classified in Class 4.

Accordingly, the objection will be OVERRULED.

7. [21-10838](#)-A-13 **IN RE: STEPHEN/VALERIE COOKE**
[KMM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WATERFALL
VICTORIA GRANTOR TRUST II, SERIES G
5-18-2021 [\[14\]](#)

WATERFALL VICTORIA GRANTOR TRUST II, SERIES G/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection on July 21, 2021. Doc. #29.

8. [21-11148](#)-A-13 **IN RE: JERRY/MARGARET HARVEY**
[RSW-1](#)

MOTION TO VALUE COLLATERAL OF OCWEN LOAN SERVICING, LLC
6-29-2021 [\[18\]](#)

MARGARET HARVEY/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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.

Jerry Glynn Harvey and Margaret Rose Harvey (together, "Debtors"), the debtors in this chapter 13 case, move the court for an order valuing the secured claim of Ocwen Loan Servicing, LLC ("Ocwen") pursuant to § 1322(c)(2). Doc. #18. The motion, filed on June 29, 2021, asserts that Ocwen holds the second deed of trust on 6700 Cedarcrest Avenue, Bakersfield, California ("Property"). Doc. #18.

However, on June 17, 2021, U.S. Bank National Association, as successor in interest to Bank of America National Association, successor by merger to LaSalle Bank National Association, as Trustee for GSAMP Trust 2006-HE3, Mortgage Pass-Through Certificates, Series 2006-HE3 ("Creditor") and its authorized agent, PHH Mortgage Corporation, filed a proof of secured claim based on a second deed of trust against the Property held by Creditor. Claim 4-1. In subsequent amendments of Creditor's claim filed on June 23, 2021, and

June 25, 2021, Creditor is the named holder of the secured claim based on a second deed of trust against the Property and PHH Mortgage is listed as Creditor's authorized agent. Claim 4-2, 4-3. Based on the filed proof of claim and amendments thereto, it appears that Creditor, not Ocwen, is the holder of the secured claim that Debtors seek to value in the motion.

Because Debtors' motion and supporting papers do not correctly identify Creditor as the holder of the secured claim that Debtors seek to value in the motion, this motion is DENIED.

9. [21-10453](#)-A-13 **IN RE: ROY ABUEG**
[PK-2](#)

MOTION TO VALUE COLLATERAL OF TD BANK, N.A.
6-21-2021 [\[48\]](#)

ROY ABUEG/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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.

Roy Prudente Abueg ("Debtor"), the debtor in this chapter 13 case, moves the court for an order valuing the Debtor's furniture, specifically a table and three chairs ("Property"), which is the collateral of TD Bank N.A. ("Creditor"). Doc. #48; Decl. of Roy Abueg, Doc. #50.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value personal property other than a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the property and the debt was not incurred within the 1-year period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of

such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Debtor asserts the Property was purchased more than one year before the filing of this case and that the loan is a purchase money security interest. Doc. ##50, 51. Debtor asserts a replacement value of the Property of \$383.00 and asks the court for an order valuing the Property at \$383.00. Doc. #50; Doc. #48. Debtor is competent to testify as to the value of the Property. Given the absence of contrary evidence, Debtor's opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at \$383.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

10. [21-10453](#)-A-13 **IN RE: ROY ABUEG**
[PK-3](#)

MOTION TO MODIFY PLAN
6-21-2021 [\[58\]](#)

ROY ABUEG/MV
PATRICK KAVANAGH/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). On July 20, 2021, the chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to confirm the chapter 13 plan. Tr.'s Opp'n, Doc. #67. On July 23, 2021, the debtor filed a written reply. Doc. #69. 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). Therefore, the defaults of the non-responding parties in interest are entered. The court is inclined to grant this motion. This matter will proceed as scheduled.

On June 21, 2021, Roy Prudente Abueg ("Debtor") filed a modified plan and set the confirmation hearing for August 5, 2021. Doc. ##56-64.

Trustee first opposes confirmation of the plan because the proposed monthly dividend provided to Class 1 will not pay the allowed claim over 60 months. Doc. #67. Trustee suggested that Debtor increase the dividend to \$103.39 for months 5 through 60 to fund the plan. By the reply, Debtor agrees to increase

the plan payment and dividend beginning month 5 and will address the increase in the order confirming plan. Doc. #69. Trustee also requested Debtor amend the proof of claim relating to the Class 1 creditor, which Debtor has agreed to do. Doc. #69.

Trustee next opposes confirmation on the grounds that the IRS is improperly classified in Class 4 as a secured creditor although the proof of claim filed by the IRS indicates that it is the holder of an unsecured claim. Doc. #64. Trustee states an intention to treat the IRS claim as a general unsecured claim pursuant to the proof of claim. Doc. #67. Debtor replied, stating that the Debtor is able to pay the IRS claim in Class 4 because the claim is subject to setoff. Doc. #69.

The IRS has a right to setoff under 26 U.S.C. § 6402, but the ability to assert setoff rights in bankruptcy is subject to 11 U.S.C. § 553. United States v. Carey (In re Wade Cook Fin. Corp.), 375 B.R. 580, 593 (B.A.P. 9th Cir. 2007). "Section 553 sets forth three conditions that must be met in order for a right to setoff to be recognized and preserved in bankruptcy: (1) the debtor owes the creditor a prepetition debt; (2) the creditor owes the debtor a prepetition debt; and (3) the debts are mutual." Id. (citations omitted). Trustee's objection argues that Debtor's 2020 tax returns were filed post-petition and therefore any refund owed by the IRS on the tax refund is also post-petition. Doc. #67. Debtor filed the bankruptcy petition on February 23, 2021. Doc. #1. Although Debtor filed the 2020 tax returns post-petition in 2021, the tax refund is attributable entirely to a pre-petition tax period. Carey, 375 B.R. at 594-97; accord 5 COLLIER ON BANKRUPTCY ¶ 553.03[2][b] (Richard Levin & Henry J. Sommer eds., 16th ed.). Therefore, the tax refund owed Debtor is a pre-petition debt, and the IRS claim can be setoff under 11 U.S.C. § 553.

The court is inclined to GRANT this motion, overruling Trustee's objection with respect to the treatment of the IRS and resolve Trustee's remaining objections in the order confirming plan. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

11. [20-12558](#)-A-13 **IN RE: IRMA MARTINEZ**
[PLG-1](#)

MOTION TO MODIFY PLAN
6-9-2021 [\[21\]](#)

IRMA MARTINEZ/MV
L. RODKEY/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 issue a proposed order after the hearing.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to modify the chapter 13 plan. Tr.'s Opp'n, Doc. #27. 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). Therefore, the defaults of the non-responding parties in interest are entered. The court is inclined to grant this motion. This matter will proceed as scheduled.

Irma Herrera Martinez ("Debtor"), the chapter 13 debtor, commenced this bankruptcy case on August 3, 2020. Doc. #1. Debtor's chapter 13 plan was confirmed on October 19, 2020. Doc. #18. On June 9, 2021, Debtor filed and served a modified plan and set the confirmation hearing for August 5, 2021. Doc. ##21-26. Debtor's proposed modified plan seeks to extend the duration of plan payments to 84 months. Doc. #25.

Trustee's objection states that Debtor is ineligible to extend the duration of plan payments to 84 months because Debtor's bankruptcy was filed on August 3, 2021, and therefore violates 11 U.S.C. § 1329. Doc. #27. Debtor's reply clarified the current reading of § 1329. Doc. #29.

Section 1329 of the Bankruptcy Code governs modification of a chapter 13 plan after confirmation. 11 U.S.C. § 1329. The ongoing COVID-19 pandemic has resulted in ongoing changes to § 1329. The current version of 11 U.S.C. § 1329(d) (1), in effect until December 27, 2021, provides that "a plan confirmed prior to the date of the enactment of the COVID-19 Bankruptcy Relief Extension Act of 2021" may be modified to provide for payments over period of 84 months. 11 U.S.C. § 1329(d) (LEXIS through Pub. L. 117-28). The COVID-19 Bankruptcy Relief Extension Act of 2021 was enacted on March 27, 2021. Id. Because Debtor's chapter 13 plan was confirmed prior to March 27, 2021, it may be extended for a period of 84 months under the current version of 11 U.S.C. § 1329(d) (1).

Unless further opposition is presented at the hearing, Trustee's objection will be overruled and this motion will be 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.

12. [21-11487](#)-A-13 **IN RE: JOSE ASCENCIO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-23-2021 [\[14\]](#)

PETER NISSON/ATTY. FOR DBT.
DISMISSED 6/28/21

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on June 28, 2021, Doc. #17. The Order to Show Cause will be dropped as moot. No appearance is necessary.

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE
MICHAEL H. MEYER
6-17-2021 [\[17\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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.

Debtor filed the chapter 13 plan on April 25, 2021 (the "Plan"). Doc. #13. The chapter 13 trustee ("Trustee") filed and served the objection to plan confirmation pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and set for hearing on July 8, 2021. Doc. #17. The court continued the hearing to August 5, 2021 at 9:00 a.m. to allow the debtor to respond. Doc. #23. Jose Ribubuet Necer ("Debtor") filed written opposition on July 21, 2021. Doc. #25. Trustee replied on July 29, 2021. Doc. #29. After considering the objection, response, and reply, the court intends to sustain the objection. The court will issue an order if a further hearing is necessary.

Multiple issues have been raised and resolved by the parties since Trustee filed the objection on June 17, 2021. Trustee's objection centers on feasibility, codified at 11 U.S.C. § 1325(a)(6). See Doc. ##17, 25, 29. Section 1325(a)(6) of the Bankruptcy Code requires that the debtor be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a)(6).

Per Trustee's reply, Debtor has increased the monthly plan payment by \$150, bringing the monthly payment to \$350, or \$21,000 over 60 months. Doc. #29. However, Debtor's Plan proposes a 100% dividend to unsecured creditors and the unsecured claims filed total \$31,410.93. Debtor's Plan will not fund based only on plan payments.

However, Debtor proposes to pay all claims by month 60 after selling residential real property located at 2047 Lupine St., Delano, California (the "Property"). Plan ¶ 7.01, Doc. #13. The Plan provides that Debtor "shall pay off the plan by month 60 from funds received from the sale of" the Property. Id. The Property is currently in probate, and Debtor will not have any control over the sale of the Property. Decl. of Debtor ¶ 1, Doc. #26. Any sale of the Property is contingent upon approval of the probate court. Id. No buyer has been located. Id. Debtor's sister is handling the sale of the Property. Id.

Trustee contends that the Plan is not feasible because the Property is in probate, which Trustee contends has yet to be opened, Debtor will have no control over the sale of the Property, and Debtor has not produced any evidence of sale prospects. Doc. #29.

Although a chapter 13 debtor may sometimes provide for the sale or refinance of the debtor's property to pay a claim, "bare assertions that [the debtor] will sell or refinance . . . at or near the end of their Chapter 13 plans, standing

alone, plainly does not satisfy the feasibility requirement of § 1325(a)(6).” In re Hogue, 78 B.R. 867, 872 (Bankr. S.D. Ohio 1987); see In re Kincaid, 316 B.R. 735, 742 n.11 (Bankr. E.D. Cal. 2004). Whether the future refinance or sale Debtor’s property renders the Plan unfeasible is a question of fact. In re Gavia, 24 B.R. 573, 574 (B.A.P. 9th Cir. 1982).

Here, the Property has not yet passed through probate. Debtor’s interest in the Property, if any, could take years to determine. Debtor has not offered, and is unable to offer, any evidence that a sale of the Property is likely to occur. Further, even if there were an indication that a sale of the Property was likely, the Plan only states that the Plan shall be paid off from sale proceeds “by month 60,” the absolute latest possible time. The bare assertion that the Property will be sold by month 60 of a 60-month plan does not satisfy the feasibility requirement of § 1325(a)(6).

Accordingly, the objection will be SUSTAINED.

1. [21-11332](#)-A-7 **IN RE: TANYA SPRADLIN**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-28-2021 [\[14\]](#)

TD AUTO FINANCE LLC/MV
DEAN FELDMAN/ATTY. FOR DBT.
JENNIFER WANG/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, TD Auto Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2015 Volkswagen Jetta ("Vehicle"). Doc. #14.

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 \$467.03, which includes late fees of \$11.39. Doc. #17. According to the debtor's Statement of Intention, the Vehicle will be surrendered.

While the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7, based on Movant's pleadings, there is equity in the

Vehicle because the Vehicle is valued at \$8,584.00 and the debtor owes \$8,352.37. Doc. #17. Movant has the burden of proof on the issue of the debtor's equity. First Yorkshire Holdings, 470 B.R. at 869; 11 U.S.C. § 362(g). Because Movant has not met its burden of establishing the debtor's lack of equity in the Vehicle as required by § 362(g)(1), relief from stay is denied pursuant to § 362(d)(2).

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

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

2. [21-11135](#)-A-7 **IN RE: CRISTINA MORENO GONZALEZ**
[MDR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-8-2021 [\[16\]](#)

JONATHAN HERNSTEDT-DEAL/MV
VINCENT GORSKI/ATTY. FOR DBT.
MATTHEW RESNIK/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice 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.

Tiffany Jane Peterson and Jonathan Michael Hernstedt-Deal (together, "Movants") seek relief from stay to allow Movants to commence and prosecute personal injury tort and wrongful death claims against Cristina Moreno Gonzalez ("Debtor") solely to the extent of available and collectible insurance coverage and to recover and liquidate any final judgment or settlement to be paid solely from available and collectible insurance coverage. Mot., Doc. #16. Movants expect to commence state court proceedings against Debtor and other potential parties before the Superior Court of California, County of Kern ("State Court Action"). Doc. #16.

After due consideration, this motion is GRANTED for cause shown to permit Movants to recover proceeds from Debtor's insurance company and, if necessary, file and prosecute to conclusion the State Court Action as necessary to determine Debtor's liability to Movants for the purpose of recovering from Debtor's insurance company.

Factual Background

No opposition to this motion has been filed, and the following facts are undisputed. On January 10, 2021, Debtor was involved in an accident with Jonathan Michael Hernstedt-Deal and his thirteen-year-old son. Decl. of Jonathan Michael Hernstedt-Deal ¶ 2, Doc. #18. Mr. Hernstedt-Deal suffered severe injuries, including the loss of his leg. Hernstedt-Deal Decl. ¶ 2, Doc. #18. The accident also resulted in his son's death. Id.

Movants suspect that their claims against Debtor are covered in full or in part by available and collectible insurance coverage. Hernstedt-Deal Decl. ¶ 3, Doc. #18. Movants request relief from the automatic stay to commence and prosecute claims against Debtor solely to the extent of available and collectible insurance coverage. Id.

Cause Exists to Grant Relief from Stay

Movant requests relief from the automatic stay under 11 U.S.C. § 362(d)(1) to prosecute the State Court Action. Doc. #16.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

When a movant seeks relief from the automatic stay to initiate or continue non-bankruptcy court proceedings a bankruptcy court may consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in determining whether to grant relief from the automatic stay" to allow litigation in another forum. Id. The relevant Curtis factors include: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the non-bankruptcy forum has the expertise to hear such cases; (4) whether litigation in another forum would prejudice the interests of other creditors; (5) whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation; (6) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; (7) whether the litigation in the other forum has progressed to the point where the parties are prepared for trial; and (8) the impact of the automatic stay and the "balance of hurt." In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984). Here, the Curtis factors support finding cause to grant relief from stay as requested in the motion.

Granting relief from stay will permit the state court to resolve Movants' personal injury and wrongful death claims against Debtor, which the bankruptcy court would be unable to do. See 11 U.S.C. § 157(b)(5) (requiring personal injury tort and wrongful death claims to be tried in the district court). While Movants have not yet commenced the State Court Action, the claims to be asserted in the State Court Action are routine state law claims that the state court has the expertise to hear. Additionally, Movants request relief from the automatic stay only to the extent of available and collectible insurance

coverage, and there will be minimal interference with the bankruptcy case. It is in the interests of judicial economy and more expeditious and economical to lift the automatic stay to permit the state court to liquidate Movants' claim against Debtor in the State Court Action instead of this court determining that claim. Finally, there may be non-debtor defendants in the State Court Action and those claims would be best resolved by the state court in the State Court Action.

Accordingly, the court finds that cause exists to lift the stay and this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movants to recover proceeds from Debtor's insurance company and, if necessary, file and prosecute to conclusion the State Court Action as necessary to determine Debtor's liability to Movants for the purpose of recovering from Debtor's insurance company. No other relief is awarded.

Movant also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3). However, Movants provided no factual basis or legal analysis to support the request waiver, and so the 14-day stay is not waived.

3. [19-14772](#)-A-7 **IN RE: ELECTRICAL POWER SERVICES, INC.**
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG, ACCOUNTANT(S)
7-2-2021 [\[49\]](#)

RATZLAFF, TAMBERI & WONG/MV
D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Ratzlaff Tamberi & Wong, Accountancy Corporation ("Movant"), accountants for chapter 7 trustee Jeffrey M. Vetter ("Trustee"), requests an allowance of final compensation and reimbursement for expenses for services rendered from February 11, 2020 through June 2, 2021. Doc. #49. Movant provided accounting services valued at \$2,573.50, and requests compensation for that amount. Doc. #49. Movant requests reimbursement for expenses in the amount of \$34.17. Doc. #49.

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

Movant's services included, without limitation: (1) review of bankruptcy petition and prior years income tax returns of the corporation; (2) preparation of the federal and state corporate income tax returns for the period ending December 31, 2019; and (3) preparation of the federal and state corporate income tax returns for the period ending December 31, 2020. Ex. A, Doc. #53. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$2,573.50 and reimbursement for expenses in the amount of \$34.17. Trustee is authorized to make a combined payment of \$2,607.67, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

1. [21-11704](#)-A-11 **IN RE: FILOS CATERING, INC.**

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
7-2-2021 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

2. [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.
RESPONSIVE PLEADING

NO RULING.

3. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-21](#)

CONTINUED AMENDED/MODIFIED PLAN
2-18-2021 [[520](#)]

LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

11:30 AM

1. [21-11045](#)-A-7 **IN RE: KIMBERLY COKER**

PRO SE REAFFIRMATION AGREEMENT WITH HYUNDAI CAPITAL AMERICAN
7-2-2021 [[16](#)]

NO RULING.