UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, August 16, 2023
Department A – Courtroom #11
Fresno, California

Unless otherwise ordered, all hearings before Judge Niemann are simultaneously: (1) **IN PERSON** in Courtroom #11 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

To appear via zoom gov video or zoom gov telephone for law and motion or status conference proceedings, you must comply with the following new guidelines and procedures:

1. Review the Pre-Hearing Dispositions prior to appearing at the hearing.
2. Review the court's Zoom Policies and Procedures for these and additional instructions.
3. Parties appearing through CourtCall are encouraged to review the CourtCall Appearance Information.

Parties in interest and members of the public may connect to ZoomGov, free of charge, using the information provided:

Video web address:
https://www.zoomgov.com/j/1604993815?pwd=NlVRVnJwQnM3ZFVCTGhPS1poTmRTQT09
Meeting ID: 160 499 3815
Password: 012196
Zoom.Gov Telephone: (669) 254-5252 (Toll Free)

Please join at least 10 minutes before the start of your hearing. You are required to give the court 24 hours advance notice on Court Calendar.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screenshots" or other audio or visual copying of a hearing, is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

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.

9:30 AM

1. 22-12016-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
MBR-1

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
1-27-2023 [62]

JAYCO PREMIUM FINANCE OF CALIFORNIA, INC./MV
D. GARDNER/ATTY. FOR DBT.
MARSHALL HOGAN/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to May 29, 2024 at 9:30 a.m.

ORDER: The court will issue an order.

Pursuant to the stipulation during the August 8, 2023 evidentiary hearing, the motion for relief from stay will be continued to May 29, 2024 at 9:30 a.m. Court Audio, Doc. #343.

2. 23-10325-A-11 **IN RE: ROBERT CHAMPAGNE**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
2-23-2023 [1]

PETER SAUER/ATTY. FOR DBT.

NO RULING.

3. 23-10325-A-11 **IN RE: ROBERT CHAMPAGNE**
FW-5

CONTINUED CONFIRMATION HEARING RE: CHAPTER 11 SUBCHAPTER V SMALL BUSINESS PLAN
5-26-2023 [122]

PETER SAUER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Confirm if certain changes are made to the plan.

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.

Robert Thomas Champagne ("Debtor"), the debtor and debtor in possession in this Subchapter V Chapter 11 case, seeks confirmation of his Modified First Amended Subchapter V Plan of Reorganization dated May 24, 2023 (the "Plan"). Doc. #155.

The hearing to confirm the Plan was set by order of the court filed on May 31, 2023 ("Order"). Doc. #125. In the Order, the court ordered transmission of the Plan, Order, ballots, and notice of the confirmation hearing by June 7, 2023; acceptances or rejections of the Plan, and objections to confirmation by July 5, 2023; and responses to objections, tabulation of ballots, and brief by July 19, 2023. The court finds notice and service of the Plan and related documents were proper and the confirmation hearing should proceed. Doc. ##126, 127.

While no written objections to confirmation of the Plan have been filed, Class 1 and Class 2.1 claimants asked Debtor to modify the treatment of their claims. The failure of other creditors, the U.S. Trustee, or any other party in interest to file written opposition by July 5, 2023 may be deemed a waiver of any opposition to confirmation of the Plan. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. The court continued the motion to confirm the Plan at the initial confirmation hearing held on July 26, 2023 to permit Debtor to file a modified plan addressing concerns raised by the Class 1 and Class 2.1 claimants as well as incorporating certain changes the court had to the original plan. Debtor filed the Plan on August 9, 2023. Doc. #155.

11 U.S.C. § 1191 governs plan confirmation in Subchapter V. Here, three classes of impaired claims, consisting of three classes of secured claims, did not return ballots accepting the Plan. Thus, confirmation of the Plan must proceed under 11 U.S.C. § 1191(b). Having reviewed the Plan, the docket in this case, and the evidence in support of confirmation of the Plan, the court is inclined to find that the Plan complies with the requirements for confirmation under Bankruptcy Code § 1191(b) subject to certain changes being made to paragraph 6.02.3 of the Plan. Specifically, "me" should be "be" in the second sentence of that paragraph, and "o" should be "of" in the last sentence of that paragraph.

The court finds that the Plan meets the requirements of 11 U.S.C. § 1190. Specifically, the Plan includes a brief history of Debtor's business operations, a liquidation analysis, and projections with respect to the ability of Debtor to make payments under the proposed Plan as required by § 1190(1). The Plan provides for the submission of all or such portion of Debtor's future earnings or other future income to the supervision and control of the Subchapter V trustee as is necessary for the execution of the Plan as required by § 1190(2). The court finds § 1190(3) does not apply to the Plan.

With respect to § 1129(a)(1), the Plan, with the changes set forth above, complies with the applicable provisions of Chapter 11 and meets the applicable mandatory provisions of 11 U.S.C. § 1123(a). The Plan:

(1) Designates classes of claims other than claims of a kind specified in Bankruptcy Code sections 507(a)(2), 507(a)(3), or 507(a)(8) as required by § 1123(a)(1). Claims are classified in Classes 1, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 3, 4, 5, 6, 7 and 8.

(2) Specifies the classes that are not impaired under the Plan as required by § 1123(a)(2).

(3) Specifies the treatment of any class of claims or class of interest which is impaired under the Plan as required by § 1123(a)(3).

(4) Provides for the same treatment for each claim or interest of a particular class as required by § 1123(a)(4).

(5) Provides adequate means for the implementation and execution of the Plan as required by § 1123(a)(5).

(6) The provisions of § 1123(a)(6) of the Code, which relate to the issuance of securities pursuant to a reorganization plan, are not applicable in this case.

(7) Contains no provisions inconsistent with the interests of creditors and equity security holders and public policy with respect to the manner of selection of any officer, director, or trustee under the Plan and any successor to such officer, director, or trustee as required by § 1123(a)(7).

(8) The provisions of § 1123(a)(8) do not apply in a Subchapter V case. 11 U.S.C. § 1181.

(9) Provides for the assumption of all executory contracts not expressly rejected by Debtor in accordance with Debtor's sound business judgment as required by § 1123(b)(2).

Debtor, as proponent of the Plan, provided adequate disclosure regarding the Plan to all creditors and interest holders in good faith, and complied with the applicable provisions of Chapter 11 as required by § 1129(a)(2).

The Plan has been proposed in good faith and not by any means forbidden by law as required by § 1129(a)(3).

Pursuant to § 1129(a)(4), the Plan provides that payments made or to be made to Debtor's attorneys and the Subchapter V trustee in connection with the case or the Plan are subject to approval of the court.

The Plan provides that Debtor will manage his financial affairs and implement the Plan, which is consistent with interests of creditors and equity security holders and with public policy as required by § 1129(a)(5).

Section 1129(a)(6) is inapplicable and no changes in regulatory rates are provided for in the Plan.

Pursuant to § 1129(a)(7), each holder of a claim or interest in an impaired class has either accepted the Plan or will receive an amount equal to or greater than the amount such holder of a claim or interest would receive in a Chapter 7 case as set forth in the liquidation analysis and based on the motion to value the collateral of the Internal Revenue Service.

Section 1129(a)(8) need not be satisfied if the Subchapter V Plan is confirmed, as here, under § 1191(b).

Pursuant to § 1129(a)(9), the Plan provides for treatment of claims under Bankruptcy Code § 507(a)(8) to be paid within 60 months from the petition date.

Section 1129(a)(10) need not be satisfied if the Subchapter V Plan is confirmed, as here, under § 1191(b). However, the Plan has been accepted by at least one impaired class who are not insiders. Specifically, Classes 2.1 and 7 have accepted the Plan and are not insiders.

Regarding § 1129(a)(11), payments under the Plan are to be made from future net income from Debtor's commercial landscaping business that Debtor has been operating for over 50 years. Am. Plan Art. II, Doc. #155; Decl. of Robert Thomas Champagne, Doc. #139. The court finds, based on the evidence submitted

by Debtor, that the Plan is feasible and confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of Debtor or any successor to Debtor under the Plan.

Section 1129(a)(12) has been satisfied because all fees due under 28 U.S.C. § 1930 have been paid.

Section 1129(a)(13) is not applicable to this case.

Section 1129(a)(14) has been satisfied because Debtor's domestic support obligations are fully provided for in § 6.06 of the Plan.

Sections 1129(a)(15) and (16) are not applicable to this case.

11 U.S.C. § 1191(b) provides in relevant part:

> [I]f all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1191(b). For a plan to be fair and equitable with respect to a class of secured claims that is impaired and has not accepted the Plan, the Plan must meet the requirements of § 1129(b)(2)(A). 11 U.S.C. § 1191(b), (c)(1). Pursuant to § 1191(c)(1), with respect to a class of secured claims, the Plan meets the requirements of § 1129(b)(2)(A).

Section 1129(b)(2)(A) provides that a plan is "fair and equitable" with respect to a class of secured claims if the plan provides:

(1) the secured claimant retains his or her liens securing repayment of the creditor's claim, and

(2) the secured claimant receives the present value of his or her claim on the effective date of the plan.

The court finds that the Plan is fair and equitable as to Class 3 (Vehicle Center), Class 4 (Section 1129(a)(9)(D) Claim of the Internal Revenue Service) and Class 5 (Non-Priority Claim of the Internal Revenue Service). The Plan satisfies 11 U.S.C. § 1129(b)(2)(A) with respect to Classes 3, 4 and 5 by providing that the respective claim remains fully secured and will be paid in full with interest through 60 monthly payments from the Effective Date with respect to Classes 3 and 5 and 52 monthly payments from the Effective Date with respect to Class 4. Plan §§ 6.03, 6.04, and 6.05, Doc. #122.

Accordingly, the court is inclined to confirm the Plan with the changes set forth above included in the order confirming plan.

4. 19-12557-A-12 **IN RE: FRANK/SUSAN FAGUNDES**
WJH-18

MOTION TO MODIFY CHAPTER 12 PLAN
7-19-2023 [215]

SUSAN FAGUNDES/MV
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice of this motion was sent by mail on July 19, 2023, with a hearing date set for August 16, 2023. The notice provided only 14 days' notice of the period to object to the proposed modified plan.

Federal Rule of Bankruptcy Procedure 2002(a)(5) requires 21 days' notice of the time fixed to accept or reject a proposed modification of a plan. See In re Field, 2005 Bankr. LEXIS 2343, at *10-11, 2005 WL 3148287, at *3 (Bankr. D. Idaho Oct. 17, 2005). Here, only 14 days' notice of the time fixed to accept or reject the modified plan was provided. Accordingly, notice does not comply with the Federal Rule of Bankruptcy Procedure 2002.

5. 22-10778-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
5-8-2022 [1]

NOEL KNIGHT/ATTY. FOR DBT.

NO RULING.

6. 22-10778-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
NCK-15

CONTINUED MOTION TO CONFIRM CHAPTER 11 PLAN
5-30-2023 [376]

COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC/MV
NOEL KNIGHT/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Confirm if amended certificate of service (Doc. #398) is filed and if feasibility is shown at the hearing.

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.

Compass Pointe Off Campus Partnership B, LLC ("Debtor"), the chapter 11 debtor and debtor-in-possession in this case, moves the court for confirmation of its Second Amended Plan of Reorganization Dated May 17, 2023 ("Plan"). Doc. #380. The hearing was set pursuant to an order of the court filed on May 24, 2023 ("Disclosure Statement Order"). Doc. #375.

In the Disclosure Statement Order, the court approved the disclosure statement and ordered transmission of the Plan, disclosure statement, notice of the confirmation hearing and Disclosure Statement Order by May 24, 2023. Doc. #375. Any objections to confirmation of the Plan were to be filed and served by June 21, 2023. Id. The court finds that notice and service of the Plan and related documents were proper. See Doc. #383. No objections to confirmation of the Plan have been filed. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition by June 21, 2023 may be deemed a waiver of any opposition to confirmation of the Plan. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered.

The court continued the motion to confirm the Plan at the initial hearing held on June 28, 2023 and July 26, 2023 to permit Debtor to supplement the record in support of showing the feasibility of the Plan and file an amended certificate of service. Although no objection is pending, the court has an independent duty to ensure that chapter 11 plans comply with the requirements of § 1129. In re Las Vegas Monorail Co., 462 B.R. 795, 798 (Bankr. D. Nev. 2011) (quoting 7 COLLIER ON BANKRUPTCY ¶1129.05[1][e] (Allan N. Resnick & Henry J. Sommer eds., 16th ed.) ("The court has a mandatory, independent duty to review plans and ensure they comply with the requirements of section 1129.")). The debtor has the burden of proof by a preponderance of the evidence that the plan complies with the Bankruptcy Code. Acequia, Inc. v. Clinton (In re Acequia, Inc.), 787 F.2d 1352, 1358 (9th Cir. 1986).

As a procedural matter, the certificate of service filed in connection with the supplemental submission by Debtor (Doc. #398) does not include Attachment 6B1 as referenced in Section 6 of the certificate of service form. Based on the certificate of service that was filed, the court cannot determine who was actually served with Debtor's supplemental submission. The court requires that Debtor file an amended certificate of service for with the proper attachment included before the court will confirm the Plan.

As a further procedural matter, the supplemental submission filed by Debtor on July 12, 2023 in support of confirmation does not comply with LBR 9004-2(d), which requires exhibits to be filed as a separate document. Here, the supplemental submission was filed as a single twenty-page document that included the movant's exhibits. Doc. #396.

As a further procedural matter, the exhibits filed by Debtor in support of confirmation to accompany Declaration of David Sowels do not comply with LBR 9004-2(d)(2) and (d)(3), which require that (i) an exhibit document have an index at the start of the document that lists and identifies by exhibit number/letter each exhibit individually and states the page number at which each exhibit is found in the exhibit document, and (ii) the exhibit document pages, including the index page, any separator, cover or divider sheets, shall be consecutively numbered and shall state the exhibit number/letter on the first page of each exhibit. Doc. #409.

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.

Having reviewed the Plan, the docket in this case, and the evidence in support of confirmation of the Plan, the court is inclined to find that the Plan complies with the requirements for confirmation under 11 U.S.C. § 1129(a) subject to Debtor adequately addressing the issue regarding the certificate of service of the supplemental pleadings as well as the court's outstanding issue regarding feasibility that is set forth below.

The Plan designates creditors and interests into three classes. Class One consists of the claim of Dakota Note, LLC that was paid in full on October 20, 2022. Class Two consists of the claim of the post-petition lender, Merced DIP Lender, LLC. Class Three consists of any and all non-priority unsecured claims allowed under 11 U.S.C. § 506. All three classes are unimpaired under the Plan.

With respect to section 1129(a)(1), the Plan complies with the applicable provisions of Chapter 11 and meets the mandatory provisions of 11 U.S.C. § 1123(a). The Plan:

(1) Designates classes of claims other than claims of a kind specified in Bankruptcy Code sections 507(a)(2), 507(a)(3), or 507(a)(8) as required by section 1123(a)(1). Claims are classified as Classes 1, 2 and 3.

(2) Specifies that none of the classes are impaired under the Plan as required by section 1123(a)(2).

(3) Specifies the treatment of any class of claims or class of interest which is impaired under the Plan as required by section 1123(a)(3).

(4) Provides for the same treatment for each claim or interest of a particular class as required by section 1123(a)(4).

(5) Provides adequate means for the implementation and execution of the Plan as required by section 1123(a)(5).

(6) The provisions of section 1123(a)(6) of the Code, which relate to the issuance of securities pursuant to a reorganization plan, are not applicable in this case.

(7) Contains no provision inconsistent with the interests of creditors and equity security holders and public policy with respect to the manner of selection of any officer, director, or trustee under the Plan and any successor to such officer, director, or trustee as required by section 1123(a)(7).

(8) The provisions of section 1123(a)(8) of the Code, which apply to a case in which the debtor is an individual, are not applicable in this case.

(9) Provides for the rejection of all executory contracts not expressly assumed by Debtor in accordance with Debtor's sound business judgment as required by section 1123(b)(2).

Debtor, as proponent of the Plan, provided adequate disclosure regarding the Plan to all creditors and interest holders in good faith, and has complied with the applicable provisions of Chapter 11 as required by section 1129(a)(2).

The Plan has been proposed in good faith and not by any means forbidden by law as required by section 1129(a)(3).

Pursuant to section 1129(a)(4), the Plan provides that payments made or to be made to Debtor's attorneys and other professionals in connection with the case or the Plan are subject to approval of the court.

With respect to section 1129(a)(5), the Plan provides that Debtor will manage its financial affairs and implement the Plan, which is consistent with interests of creditors and with public policy as required by § 1129(a)(5).

Section 1129(a)(6) is inapplicable and no changes in regulatory rates are provided for in the Plan.

There are no impaired classes in the Plan so section 1129(a)(7) is not applicable.

With respect to section 1129(a)(8), all classes are not impaired and are conclusively presumed to have accepted the Plan. See 11 U.S.C. § 1126(e).

Pursuant to section 1129(a)(9), the Plan provides for treatment of claims under Bankruptcy Code section 507(a)(2). There are no other priority unsecured claims.

There are no impaired classes in the Plan so section 1129(a)(10) is not applicable.

Regarding section 1129(a)(11), the court needs additional information before determining that the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of Debtor or any successor to Debtor under the Plan as required by section 1129(a)(11). At the confirmation hearing, Debtor should be prepared to address when the maturity date is for the post-petition loan and whether construction of the apartment complex will be complete before the post-petition loan matures.

Regarding section 1129(a)(12), it appears Debtor is current on all United States Trustee's fees, and the Plan provides for payment of all post-confirmation quarterly fees until the entry of a Final Decree.

Sections 1129(a)(13)-(16) are not applicable in this case.

Because the court finds that confirmation is proper under Bankruptcy Code section 1129(a), it is not necessary to confirm the Plan under Bankruptcy Code section 1129(b).

Accordingly, the court is inclined to confirm the Plan if Debtor adequately amends the certificate of service of the supplemental pleadings and can supplement the record to meet its burden of proof regarding feasibility.

11:00 AM

1. 23-11209-A-7 **IN RE: FRANCISCA MALDONADO**

PRO SE REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
7-11-2023 [15]

NO RULING.

1. 21-11103-A-7 **IN RE: ANDERSON LAND SERVICES, INC.**
DMG-2

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH CALIFORNIA PETROLEUM GROUP, INC.
7-19-2023 [16]

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
D. GARDNER/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 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.

Jeffrey M. Vetter ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Anderson Land Services, Inc. ("Debtor"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving a settlement with California Petroleum Group, Inc. ("CPG") for payment of $36,665.79. Doc. #16.

The only asset of the estate is an account receivable owed to Debtor by CPG in the sum of $73,331.58 as of October 31, 2022. Decl. of Trustee at ¶ 4, Doc. #18. Trustee has entered into a settlement wherein Trustee will receive the sum of $36,665.79 from CPG, which represents half the account owed to Debtor. Tr.'s Decl. at ¶ 5. Trustee is in receipt of the sum of $29,443.86 towards satisfaction of CPG's obligation to Debtor Id. at ¶ 8.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views.

Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Tr.'s Decl., Doc. #18. Although Trustee believes he will ultimately succeed in litigation, the terms of the settlement with CPG obviates the need to continue litigation of the estate's claims. Tr.'s Decl. at ¶ 6. Trustee believes there is no dispute that the full amount is owed, and this has been conceded by CPG. Id. However, the proposed settlement hinges on CPG's ability to pay the account receivable owed to Debtor. Id. As set forth in the proposed workout agreement, all of CPG's assets and revenues are encumbered by a lien that secured a $6.5 million loan, and CPG is operating under a forbearance agreement with its secured lender. Ex. A, Doc. #19. CPG's secured lender has agreed to permit CPG to make the necessary payments to Trustee under the proposed settlement. Id. Trustee believes that the settlement represents the most Trustee can collect from CPG without the expenses of litigation costs or issues in the matter of collection. Tr.'s Decl., Doc. #18. Trustee believes in his business judgment that the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Id. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

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

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

2. 23-11614-A-7 **IN RE: RODRIGO VALENZUELA AND MARTIN VALDOVINOS**
GEG-1

MOTION TO COMPEL ABANDONMENT
7-31-2023 [12]

MARTIN VALDOVINOS/MV
GLEN GATES/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

Rodrigo Lara Valenzuela and Martin Herrera Valdovinos (together, "Debtors"), the chapter 7 debtors in this case, move the court to order the trustee to abandon property of the estate known as sole proprietorship business assets that include equipment and inventory of Imperio Del Glamour (the "Property"). Motion, Doc. #12. Debtors assert that they have no non-exempt equity in the Property and the Property therefore has no value to the bankruptcy estate. Id.

11 U.S.C. § 554(b) permits the court, on request of a party in interest and after notice and a hearing, to order the trustee to abandon property that is burdensome to the estate or of inconsequential value and benefit to the estate. Vu v. Kendall (In re Vu), 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). To grant a motion to abandon property, the bankruptcy court must find either that the property is (1) burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. Id. (citing In re K.C. Machine & Tool Co., 816 F.2d 238, 245 (6th Cir. 1987). However, "an order compelling abandonment [under § 554(b)] is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset. . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." Id. (quoting K.C. Machine & Tool Co., 816 F.2d at 246).

Here, Debtors do not allege that the Property is burdensome to the estate. Mot., Doc. #12. Therefore, Debtors must establish that the Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Debtors' Property is valued at $15,853.00 and is not encumbered by any liens. Schedule D, Doc. #1; Decl. of Rodrigo L. Valenzuela, Doc. #14. Under California Civil Procedure Code § 703.140(b)(5), Debtors claimed a $15,853.00 exemption in the Property. Am. Schedule C, Doc. #16; Valenzuela Decl., Doc. #14. The court finds that Debtors have met their burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate.

Accordingly, pending opposition at the hearing, this motion will be GRANTED. The order shall specifically identify the property abandoned.

3. 23-10228-A-7 **IN RE: MARIVEL ARAIZA**
DAB-2

MOTION TO AVOID LIEN OF FIRST TECHNOLOGY FEDERAL CREDIT UNION
7-12-2023 [39]

MARIVEL ARAIZA/MV
DAVID BOONE/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.

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.

As a further procedural matter, the exhibits filed by the movant in support of the motion do not comply with LBR 9004-2(d)(2) and (d)(3), which require that (i) an exhibit document have an index at the start of the document that lists and identifies by exhibit number/letter each exhibit individually and states the page number at which each exhibit is found in the exhibit document, and (ii) the exhibit document pages, including the index page, any separator, cover or divider sheets, shall be consecutively numbered and shall state the exhibit number/letter on the first page of each exhibit. Doc. ##41-43.

Marivel Araiza ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of First Technology Credit Union ("Creditor") on the residential real property commonly referred to as 5405 West Norwich Ave, Fresno, CA 93722 (the "Property"). Doc. #39; Schedule C, Doc. #1. Debtor also requests that evidence of the judicial lien of Creditor be expunged from the public record. Id.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtor filed the bankruptcy petition on February 7, 2023. Doc. #1. A judgment was entered against Marivel Araiza in the amount of $45,406.39 in favor of Creditor on June 16, 2020. Ex. A, Doc. #41. The abstract judgment was recorded pre-petition in Fresno County on August 21, 2020, as document number 2020-0109196. Ex. A, Doc. #41. The lien attached to Debtor's interest in the Property located in Fresno County. Id. The Property also is encumbered by a lien in favor of New American Funding in the amount $269,867.00. Schedule D, Doc. #1. Debtor claimed an exemption of $300,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at $380,200.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		$45,406.39
Total amount of all other liens on the Property (excluding junior judicial liens)	+	$269,867.00
Amount of Debtor's claim of exemption in the Property	+	$300,000.00
		$569,867.00
Value of Debtor's interest in the Property absent liens	-	$380,200.00
Amount Creditor's lien impairs Debtor's exemption		$189,667.00

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion will be GRANTED if Debtor can show proper service of the motion on Creditor. Further, the court will not rule on Debtor's request to expunge the evidence of the judicial lien of Creditor from the public records because Debtor has not provided any arguments or caselaw to support this request.

4. 23-11131-A-7 **IN RE: JONATHAN/ALYSSA GUTIERREZ**
DMG-1

MOTION TO AVOID LIEN OF SUNNOVA ENERGY CORPORATION
7-17-2023 [17]

ALYSSA GUTIERREZ/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 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.

As a procedural matter, the certificate of service form was not completed correctly. The declarant checked the box indicating that service was made pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 7004. Doc. #21. The declarant also checked the box indicating the declarant included an

Attachment 6A1, which is required if service is effectuated under Rule 7004. However, the attachment with the certificate of service was a Clerk's Matrix of Creditors instead of "a list of the persons served, including their names/capacity to receive service, and address is appended [to motion] and numbered Attachment 6A1." Since the movant intended to effectuate service pursuant to Rule 7004, the declarant should have attached the correct item.

Jonathan Gutierrez and Alyssa Gutierrez (together "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Sunova Energy Corporation ("Creditor") on the residential real property commonly referred to as 9013 Village Oaks Way, Shafter, CA (the "Property"). Doc. #17; Schedule C, Doc. #1; Schedule D, Doc. #1.

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 debtors would be entitled under § 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtors filed the bankruptcy petition on July 7, 2023. Doc. #1. A judgment was entered against Johnathan Gutierrez in the amount of $27,093.47 in favor of Creditor on December 5, 2022. Ex. A, Doc. #20. Debtors estimate Creditor's lien to total $30,000.00 at the time of their bankruptcy filing. Doc.# 17. The abstract judgment was recorded pre-petition in Kern County on February 10, 2023, as document number 223016164. Ex. A, Doc. #20. The lien attached to Debtors' interest in the Property located in Kern County. Doc. #17. The Property also is encumbered by multiple consensual liens: (a) a lien in favor of Loancare in the amount $235,000.00; (b) a lien in favor of Cal HFA in the amount $16,672.00; and (c) a lien in favor of GoodLeap Financing in the amount $38,674.00. Schedule D, Doc. #1. Debtors claimed an exemption of $315,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at $415,00.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		$30,000.00
Total amount of all other liens on the Property (excluding junior judicial liens)	+	$290,346.00
Amount of Debtors' claim of exemption in the Property	+	$315,000.00
		$635,346.00
Value of Debtors' interest in the Property absent liens	-	$415,000.00
Amount Creditor's lien impairs Debtor's exemption		$220,346.00

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

5. 23-11333-A-7 **IN RE: DONNA MATCHETT**
JEB-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-1-2023 [20]

ALBERT'S GRANITE WORKS, INC/MV
JOHN BOUZANE/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice of the hearing on this motion was sent by mail on July 31, 2023 with a hearing date set for August 16, 2023. Doc. #21. Because the notice was sent on less than 28 days' notice, notice is governed by Local Rule of Practice ("LBR") 9014-1(f)(2). Pursuant to LBR 9014-1(f)(2), written opposition is not required, and any opposition may be raised at the hearing. However, the notice of hearing does not state that opposition may be raised at the hearing and does not comply with LBR 9014-1(d)(3)(B)(i).

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.

As a further procedural matter, the certificate of service filed in connection with this motion does not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022.

As a further procedural matter, the supporting documents filed in connection with this motion do not comply with LBR 9004-2(c)(1) and (d)(1), which require the notice, motion, declaration, and memorandum of points and authorities to be filed as separate documents. The motion was filed as a single document that included the movant's notice, declaration, and memorandum of points and authorities. E.g., Doc. #20. Only the motion and memorandum of points and authorities may be combined as a single document since they are six pages or less. LBR 9014-1(d)(4).

The court encourages counsel for the moving party to review the local rules to ensure compliance in future matters or those matters may be also denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at https://www.caeb.uscourts.gov/LocalRules.aspx.

6. 23-11454-A-7 **IN RE: JAMES SILLS**
RWR-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-31-2023 [13]

PACIFIC SERVICE CREDIT UNION/MV
LAYNE HAYDEN/ATTY. FOR DBT.
RUSSELL REYNOLDS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The movant, Pacific Service Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2018 Chevrolet Silverado 1500 Pickup (the "Vehicle"). Doc. #13.

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 debtor is one payment past due in the amount of $765.06. Decl. of Jeff Rodgers, Doc. #18.

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 debtor values the Vehicle at $32,000.00 and the amount owed to Movant is $51,120.02. Rodgers Decl., Doc. #18. Creditor believes that the value of the Vehicle was not less than $41,000.000, which is the value of the Vehicle at the date of purchase of the Vehicle. Id. The Vehicle was purchased only 21 days before the debtor filed this chapter 7 bankruptcy case. Id. The court finds that the debtor does not have equity in the Vehicle using either the debtor's value or Creditor's value of the Vehicle.

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.

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 one post-petition payment and the Vehicle is a depreciating asset.

7. 23-10963-A-7 **IN RE: JESUS GUERRA**
ECJ-1

MOTION FOR RELIEF FROM AUTOMATIC STAY MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
8-2-2023 [35]

MARK ADAMS/MV
HENRY NUNEZ/ATTY. FOR DBT.
SONIA SINGH/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied as moot in part.

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

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

This motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on August 15, 2023. Doc. #46. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

State Court Receiver Mark S. Adams ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(b)(4) or, alternatively, under 11 U.S.C. § 362(d)(1). Doc. #35. Movant was appointed by the Superior Court of the State of California, County of Madera (the "Receivership Court") in the action of City of Madera v. Jesus Lopez, Case No. MCV086188 (the "Receivership Action") over the real property located at 209 S. O Street, Madera, California, APN No. 010-112-014 (the "Property"). Doc. #35. The Property is owned by the chapter 7 debtor in this case, Jesus Lopez ("Debtor"). Doc. #35. Movant requests that this court determine that the automatic stay does not apply to the Receivership Action pursuant to 11 U.S.C. § 362(b)(4) because the Receivership Court appointed Movant after determining that the Property was a public nuisance that posed an imminent and substantial danger to occupants and the public. Doc. #35. Alternatively, Movant seeks relief from the automatic stay to permit the Receivership Action to continue in the Receivership Court. Doc. #35.

The court will first address Movant's request for a determination that the automatic stay does not apply to the Receivership Action pursuant to 11 U.S.C. § 362(b)(4). While Movant asserts that Judge Lastreto determined that the automatic stay did not apply to the Receivership Action pursuant to 11 U.S.C. § 362(b)(4), a review of Judge Lastreto's order shows that Judge Lastreto modified the automatic stay, so he must have determined that the automatic stay

did apply. Ex. 3, Request for Judicial Notice, Doc. #38. Consistent with Judge Lastreto's ruling, this court determines that 11 U.S.C. § 362(b)(4) does not apply to the Receivership Action.

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 prays for 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 (9th Cir. B.A.P. 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) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; (6) whether the litigation in the other forum has progressed to the point where the parties are prepared for trial; and (7) 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.

Here, it appears that the remaining issues left to address in the Receivership Action are in regards to the adjudication of costs for the receivership as well as ensuring the future prevention of the public nuisance conditions on the Property. Both of these issues are best left to the Receivership Court to resolve, the court that appointed Receiver in the first place. Moreover, this is a "no asset" chapter 7 bankruptcy case, so the chapter 7 trustee has limited interest in the Receivership Action. Granting relief from stay will result in the Receivership Court being able to resolve in full all issues in the Receivership Action. Finally, the interests of judicial economy favor granting relief from the automatic stay so that Movant and the Receivership Court can complete the Receivership Action. For these reasons, the court finds that cause exists to lift the stay.

Accordingly, pending opposition at the hearing, this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to proceed in the Receivership Court with the Receivership Action. No other relief is awarded.

8. 20-10366-A-7 **IN RE: JOSE/ROSAMARIA LOPEZ**
NES-2

MOTION TO AVOID LIEN OF MIDLAND FUNDING LLC
7-13-2023 [27]

ROSAMARIA LOPEZ/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Federal Rule of Bankruptcy Procedure ("Rule") 9014(b) requires a motion to avoid a lien under 11 U.S.C. § 522(f) be served "in the manner provided for service of a summons and complaint by Rule 7004." Service of the motion on Midland Funding, LLC ("Creditor") does not satisfy Rule 7004.

Rule 7004(b)(3) provides that service upon an unincorporated association be mailed "to the attention of an officer, managing or general agent, or to any other agent authorized by appointment or law to receive service of process[.]" Fed. R. Bankr. P. 7004(b)(3). The certificate of service filed in connection with this motion does not show that Creditor, which is a limited liability company, was served to the attention of anyone. See Doc. #32. Further, the declarant checked the box indicating that service was made pursuant to Rule 7004. Doc. #32. The declarant also checked the box indicating the declarant included an Attachment 6A1, which is required if service is effectuated under Rule 7004. However, the attachment with the certificate of service was a Clerk's Matrix of Creditors instead of "a list of the persons served, including their names/capacity to receive service, and address is appended [to motion] and numbered Attachment 6A1."

Accordingly, this motion is DENIED WITHOUT PREJUDICE for improper service.

9. 22-11186-A-7 **IN RE: NEXT STAGE ENGINEERING LLP**
FW-2

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR GABRIEL J. WADDELL, TRUSTEES ATTORNEY(S)
7-18-2023 [34]

RICHARD BAUM/ATTY. FOR DBT.
GABRIEL WADDELL/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 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.

Fear Waddell, P.C., ("Movant"), attorney for chapter 7 trustee Peter L. Fear ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from September 21, 2022 through July 6, 2023. Doc. #34. Movant provided legal services valued at $2,233.00 and requests

compensation for that amount. Doc. #34. Movant requests reimbursement for expenses in the amount of $50.63. Doc. #34. This is Movant's first and final fee application.

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

Movant's services included, without limitation: (1) providing counsel to Trustee as to the administration of the chapter 7 case; (2) analyzing potential recoveries and assets; (3) communicating with creditor's counsel regarding the interest of the creditor in contributing towards the pursuit of potential additional assets; and (4) preparing and filing employment and fee applications. Decl. of Gabriel J. Waddell, Doc. #37; Ex. A-C, Doc. #36. 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 $2,233.00 and reimbursement for expenses in the amount of $50.63. Trustee is authorized to make a combined payment of $2,283.63 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.

10. 22-11095-A-7 **IN RE: SEAN/KRISTINA MOSS**
FW-6

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR GABRIEL J. WADDELL, TRUSTEES ATTORNEY(S)
7-18-2023 [112]

SCOTT LYONS/ATTY. FOR DBT.
GABRIEL WADDELL/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 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 moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Fear Waddell, P.C., ("Movant"), attorney for chapter 7 trustee Peter L. Fear ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from August 29, 2022 through July 10, 2023. Doc. #112. Movant provided legal services valued at $20,108.50 and requests compensation for that amount. Doc. #112. Movant requests reimbursement for expenses in the amount of $673.30. Doc. #112. This is Movant's first and final fee application.

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

Movant's services included, without limitation: (1) providing counsel to Trustee as to the administration of the chapter 7 case; (2) preparing motion to approve sale of property to Wenbo Liu; (3) addressing wrongful escrow demands from solar company; (4) preparing cease and desist demand letter to solar company; (5) preparing second motion to approve sale of the property; (6) communicating regularly with Trustee during course of sale motions; and (7) preparing and filing employment and fee applications. Decl. of Gabriel J. Waddell, Doc. #114; Ex. A & B, Doc. #116. 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 $20,108.50 and reimbursement for expenses in the amount of $673.30. Trustee is authorized to make a combined payment of $20,781.80, 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.