

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Tuesday, August 17, 2021  
Place: Department B – Courtroom #13  
Fresno, California

*The court resumed in-person courtroom proceedings in Fresno ONLY on June 28, 2021. Parties may still appear telephonically provided that they comply with the court's telephonic appearance procedures. For more information click [here](#).*

**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. [21-11001](#)-B-11     **IN RE: NAVDIP BADHESHA**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY  
PETITION  
4-21-2021    [\[1\]](#)

MATTHEW RESNIK/ATTY. FOR DBT.

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

DISPOSITION:        Continued to August 31, 2021 at 9:30 a.m.

ORDER:                The court will issue an order.

At the last status conference, the court ordered the debtor-in-possession to file a status report not later than August 10, 2021. Doc. #74. Debtor-in-possession Navdip S. Badhesha ("DIP") filed a status report on August 4, 2021 and DIP complied with that order. Doc. #135

This status conference will be CONTINUED to August 31, 2021 at 9:30 a.m. to be heard with DIP's motions to employ real estate agent, fix a bar date, and for interim compensation.

2. [21-11542](#)-B-11     **IN RE: COMMUNITY REGIONAL ANESTHESIA MEDICAL  
[FW-1](#)                                GROUP, INC.**

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR  
ABSTENTION  
7-16-2021    [\[64\]](#)

RHONDA HARDY-JOEL/MV  
RILEY WALTER/ATTY. FOR DBT.  
GABRIEL WADDELL/ATTY. FOR MV.  
DISMISSED 7/19/21

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

DISPOSITION:        Denied as moot.

ORDER:                The court will issue an order.

On July 19, 2021, debtor-in-possession Community Regional Anesthesia Medical Group, Inc. moved to voluntarily dismiss this case pursuant to 11 U.S.C. § 1112(b). Doc. #52. The court granted this motion on July 19, 2021. Doc. #73. Accordingly, this motion will be DENIED AS MOOT because the case has been dismissed.

3. [20-13855](#)-B-11 **IN RE: MOHOMMAD KHAN**  
[21-1026](#) [MK-6](#)

MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR MOTION FOR  
TURNOVER OF PROPERTY  
6-21-2021 [6]

KHAN V. WILMINGTON TRUST N.A  
MOHAMMAD KHAN/ATTY. FOR MV.  
MAIN CASE DISMISSED 2/24/21

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.

*Pro se* debtor Mohommad Khan ("Plaintiff") moves for a temporary restraining order and recovery of property under Federal Rules of Bankruptcy Procedure ("Rule") 7001(1) and (7). Doc. #6. Plaintiff seeks to enjoin Wilmington Trust, N.A. ("Defendant") from selling personal property at an auction scheduled for June 22, 2021 at 10:00 a.m. in Santa Rosa, California. The motion also seeks to require Defendant to turnover possession of real property commonly known as 1810 Mora Avenue, Calistoga, CA 94515 ("Property").

This motion will be DENIED for the reasons set forth below.

First, this motion is simply the complaint, but recaptioned with the following title:

MOTION FOR TEMPORARY RESTRAINING ORDER FROM AUCTION OF  
BELONGINGS ON 6/22/21 AT 10 AM IN SANTA ROSA AND MOTION  
TURN OVER OF POSESSION OF REAL PROPERTY LOCATED AT 1810  
MORA AVE CALISTOGA CA 94515 AND PERSONAL POSESSIONS REMOVED  
FROM PROPERTY LOACTED AT 1810 MORA CALISTOGA CA 94515.

*Id.* (sic). The temporary restraining order is to enjoin Defendant from conducting an auction on June 22, 2021. The hearing for this motion is August 17, 2021 – 56 days after the sale occurred. The court cannot retroactively enjoin a sale that has already happened. The request for a temporary restraining order is stale because the sale happened the day after this motion was filed.

Second, the motion was filed on the wrong calendar. It should have been set on the adversary proceeding calendar instead of this calendar, which is for chapters 9, 11, and 12 bankruptcy cases.

Third, the certificate of service was attached to notice of hearing in violation of Local Rule of Practice ("LBR") 9004-2(e)(1) and (2), which require proofs of service to be filed separately from the pleadings to which they relate. The certificate of service also does not have a caption page or Docket Control Number in violation of LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), and LBR 9014-1(c), (e)(3).

Fourth, Plaintiff only served Wright Finlay Zac (Defendant's attorney), the United States Trustee ("UST") at three incorrect addresses, and Pacific Gas & Electric ("PGE").<sup>1</sup> This is insufficient service of process.

Defendant is a National Bank. 12 C.F.R. § 5.20(e)(1)(i); 12 U.S.C. §§ 21-216d. It is also an insured depository institution under 11 U.S.C. § 101(35)(A) and 12 U.S.C. § 1813(c)(2) ("insured depository institution" means any bank whose deposits are insured by the FDIC). This can be verified by searching Defendant's FDIC certification, Cert #34069, on the FDIC "BankFind" search engine to prove that Defendant has been FDIC insured since October 2, 1995. See also <http://banks.data.fdic.gov/bankfind-suite/bankfind>. Thus, Defendant must be served in accordance with Rule 7004.

Rule 7004(h) governs service on insured depository institutions and requires service in an adversary proceeding to be made by certified mail addressed to an officer of the institution, unless one of three exceptions specified in Rule 7004(h)(1-3) have been met. Although Defendant has appeared by its attorney in the main bankruptcy case, it has not done so in this adversary proceeding so none of the exceptions have been met. Accordingly, Defendant must be served by certified mail addressed to an officer. This defect alone warrants denial.

Further, Wright Finlay Zac cannot be presumed to be authorized to receive Rule 7004 service in this adversary proceeding without an express or implied agency. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93 (B.A.P. 9th Cir. 2004) ("An implied agency to receive service is not established by representing a client in an earlier action."); *Rubin v. Pringle (In re Focus Media, Inc.)*, 387 F.3d 1077, 1083 (9th Cir. 2004) (finding that a former attorney must have explicit or implicit authority from client to accept service under Rule 7004(b)).

Fifth, Plaintiff did not even serve the complaint. Rule 7004(e) provides that service under Federal Rule of Civil Procedure ("Civil Rule") 4(e) and (h)(1):

shall be by delivery of the summons and complaint within seven days after the summons is issued. If service is by any authorized form of mail, the summons and complaint shall be deposited in the mail within 7 days after the

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<sup>1</sup> UST was served at addresses in Sacramento, San Francisco, and Fresno California, but not at its Fresno division address at 2500 Tulare Street, Suite 1401, Fresno, CA 93721. Doc. #7. The San Francisco and Sacramento addresses also omitted suite numbers. It is unclear why PGE and was served.

summons is issued. If a summons is not delivered or mailed, another summons shall be issued and served.

Civil Rule 4(m) (applicable in adversary proceedings under Rule 7004(a)(1)) allows the court on its own initiative, after notice to the plaintiff, to dismiss an action without prejudice if the complaint has not been served within 90 days.

Sixth, the party asserting jurisdiction has the burden of demonstrating jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Plaintiff conclusively states that the court has jurisdiction of this adversary proceeding under Rules 7001(1), (6), and (7) and that this is a core proceeding. But Plaintiff has failed to provide any other statements or other evidence supporting his contention that there is jurisdiction. See *In re Smith*, 866 F.2d 576, 580 (3d Cir. 1989) ("As a general rule, the dismissal of a bankruptcy case should result in the dismissal of 'related proceedings' because the court's jurisdiction of the latter depends, in the first instance, upon the nexus between the underlying bankruptcy case and the related proceedings."). Plaintiff has failed to meet his burden of demonstrating that this court has jurisdiction over this proceeding.

Plaintiff's underlying bankruptcy case was dismissed with prejudice on February 24, 2021. Case No. 20-13855 ("Bankr.") Doc. #103. Plaintiff was barred from filing any petition in this district for a period of 180 days after entry of the order – until August 23, 2021. *Id.* The court denied Plaintiff's motion to set aside dismissal on July 29, 2021. Bankr. Doc. #149.

Meanwhile, UST filed an adversary proceeding to bar Plaintiff from filing a petition in this district for a period of two years without first obtaining permission from the Chief Bankruptcy Judge of the Eastern District of California. Adv. Proc. No. 20-01068 ("AP") Doc. #1. In the order dismissing Plaintiff's bankruptcy, the court specifically retained jurisdiction over UST's adversary proceeding. Bankr. Doc. #103. The court entered Plaintiff's default on April 1, 2021. AP Doc. #32. Judgment was entered against Plaintiff on July 6, 2021 and Plaintiff was enjoined from filing any petition for relief for a period of two years without first obtaining permission from the Chief Bankruptcy Judge. AP Doc. #71. That order is effective until July 7, 2023. Plaintiff currently has a pending motion to vacate entry of default and the subsequent judgment in UST's adversary proceeding. AP Doc. #75. It is set for hearing on September 29, 2021 at 11:00 a.m. AP Doc. #76.

Plaintiff filed this adversary proceeding on June 21, 2021, which was during the time Plaintiff was barred from filing any petition in this district for 180 days, but before UST's adversary proceeding enjoined him from filing for two years without permission from the Chief Bankruptcy Judge. But the effect is the same: Plaintiff cannot file another bankruptcy petition in this district. Despite that bar, he has filed this adversary proceeding against Defendant.

Dismissal of a bankruptcy case normally results in dismissal of related adversary proceedings unless the court retains jurisdiction.

*Porges v. Gruntal & Co. (In re Porges)*, 44 F.3d 159, 162-63 (2d Cir. 1995). But bankruptcy courts are not automatically divested of jurisdiction over related claims when the underlying bankruptcy case is dismissed and have discretion whether to retain jurisdiction over related claims. *In re Carraher*, 971 F.2d 327, 328 (9th Cir. 1992). Courts look to 11 U.S.C. § 349 to determine whether bankruptcy jurisdiction terminates over related cases when the underlying bankruptcy case is dismissed. *Ibid.* If not governed by § 349, courts may use discretion to retain jurisdiction after considering: (1) judicial economy, (2) convenience; (3) fairness; and (4) comity. *Linkway Inv. Co. v. Olsen (In re Casamont Investors)*, 196 B.R. 517, 524-25 (B.A.P. 9th Cir. 1996); *accord.*, *Carraher*, 971 F.2d at 328; *Smith*, 866 F.2d at 580; *In re Morris* 950 F.2d 1531, 1534 (11th Cir. 1992).

Here, the underlying complaint alleges violations of the automatic stay, requests a temporary restraining order to prevent a sale of personal property, and alleges fraud seeking turnover of property to the estate under 11 U.S.C. § 523 and Rule 7001(6).

Some of these are "core" proceedings under 28 U.S.C. § 157(b)(2)(E) (orders to turn over property of the estate), (H) (proceedings to determine, avoid, or recover fraudulent conveyances), and (O) (other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims). Specifically, turnover of property and recovery of fraudulent conveyances. As noted above, the temporary restraining order cause of action is stale because the sale was scheduled for June 22, 2021. A determination on the stay violation issue also arguably could affect the liquidation of assets of the estate, though in this case it does not.

The cause of action for turnover of property falls within 11 U.S.C. § 349(b)(2). Unless the court orders otherwise for cause, a dismissal vacates any order, judgment, or transfer ordered under 11 U.S.C. § 542. 11 U.S.C. § 349(b)(2). So, the court cannot fashion relief such as turnover of assets at this time. Plaintiff's cause of action for turnover of property to the estate under § 542 fails.

That said, Plaintiff fails to prevail for other reasons. Traditionally, provisional injunctive relief requires the court to weigh four factors:

- Plaintiff's likelihood of success on the merits;
  - Likelihood movant will suffer irreparable injury if the injunction is denied;
  - The balance of hardships between the parties if the injunction is granted or denied; and
  - Whether the injunction will affect the public interest.
- Winter v. NRDC, Inc.*, 555 U.S. 7 (2008).

Burden of proof is on the Plaintiff here. *City & Cty. of S.F. v. United States Citizenship and Immigration Servs.*, 944 F.3d 773, 789 (9th Cir. 2019). Without establishing likelihood of success on the

merits the remaining elements need not be reached. *Fyock v. Sunnyvale*, 779 F.3d 991, 996 (9th Cir. 2015).

The other claim for the stay violation falls under "arising in or related to" jurisdiction under 28 U.S.C. § 1334(b). 11 U.S.C. § 362(k); see also *Burgner v. Ga. Fed. Credit Union (In re Burgner)*, 218 B.R. 413 (Bankr. E.D. Tenn. 1998) (finding that 11 U.S.C. § 349 does not require dismissal of alleged stay violations).

Even though the case is dismissed, 28 U.S.C. § 1334(a) suggests that the bankruptcy case does not need to be open to exercise § 1334(b) jurisdiction. *Menk v. Lapaglia (In re Menk)*, 241 B.R. 896, 904-05 (B.A.P. 9th Cir. 1999) (finding that reopening a case under Rule 4007(b) was not a jurisdictional prerequisite to considering a dischargeability action under 11 U.S.C. § 523(a)).

As noted in the minutes for the hearing where Plaintiff's recent motion to vacate dismissal of the bankruptcy was denied, the automatic stay was not in effect at the time the bankruptcy was filed with respect to Property. Bankr. Doc. #148; see also Bankr. Docs. #80, Ex. 1; #82, Exs. 15, 17. So even though violations of the automatic stay would be something this court could hear post-dismissal, there was no automatic stay to violate. So, as a matter of law, there could not be any stay violations and this cause of action also fails. Plaintiff cannot succeed on the merits.

The same is true for the turnover and request to enjoin the sale. For the reasons stated, those claims also fail.

When adversary proceedings are filed after dismissal, the court must find ancillary jurisdiction if there is no basis for "related to" or "arising in" jurisdiction. See *Hawk Seafoods, Inc. v. Alaska (In re Valdez Fisheries Dev. Ass'n)*, 439 F.3d 545 (9th Cir. 2006) (the bankruptcy court may assert ancillary jurisdiction (1) to permit disposition by a single court of factually interdependent claims, and (2) to vindicate its authority or effectuate its decree) citing *Kokkonen*, 511 U.S. at 379-80; see also *Battle Ground Plaza, LLC v. Ray (In re Ray)*, 624 F.3d 1124, 1136 (9th Cir. 2010) (rejecting "related to" and ancillary jurisdiction because litigation of a breach of contract claim was predicated on evidence that came to light after the case had closed).

There is no indication here that this adversary proceeding will permit this court to dispose of factually interdependent claims by a single court nor a need for this court to effectuate its decrees. No stay violation occurred because of the effectiveness of an order issued in another bankruptcy case under § 362(d)(4).

For the foregoing reasons, this motion will be DENIED.

4. [20-11992](#)-B-11     **IN RE: CHAR PHAR INVESTMENTS, LLC**  
[WLC-13](#)

MOTION FOR COMPENSATION FOR SHERYL A. STRAIN, ACCOUNTANT(S)  
7-15-2021    [\[238\]](#)

SHERYL STRAIN/MV  
WILLIAM COWIN/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.

Sheryl A. Strain ("Applicant"), the certified public accountant of debtor-in-possession Char Phar Investments, LLC ("DIP"), requests interim compensation under 11 U.S.C. §§ 330, 331 in the amount of \$17,178.00. Doc. #238. This amount consists solely of fees for reasonable compensation and no expenses for actual, services rendered from March 6, 2021 through July 7, 2021.

Ravinder S. Tut, DIP's representative, filed a supplemental statement stating that they have reviewed the fee application and have no objections. Doc. #242.

No party in interest timely filed written opposition. This motion will be GRANTED.

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

Applicant's employment as an accountant was authorized pursuant to 11 U.S.C. §§ 327, 330, and 331 on August 17, 2020, effective as to services rendered on or after May 13, 2020.<sup>2</sup> Doc. #103; see also

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<sup>2</sup> Notably, the effective date of employment should be presumed to be June 13, 2020 under LBR 2014-1(b)(1) because the employment application was filed on July 13, 2020. This discrepancy is *de minimis* because Applicant's services did not begin accruing fees until July 1, 2020. Doc. #130, Ex. A.



WLC-3. The order further stated that no compensation was permitted except upon court order under § 330(a) and compensation would be at the "lodestar rate" for accounting services applicable at the time services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). *Id.* Interim compensation under § 331 was permitted if the combined fees and expenses exceeded \$5,000.00. *Id.*

This Applicant's fourth interim fee application. The court previously authorized Applicant to be paid \$26,880.00 in fees and \$0.00 in costs across three previous fee applications:

| App. No.                            | Approved   | Time Period             | Amount             |
|-------------------------------------|------------|-------------------------|--------------------|
| 1                                   | 10/23/2020 | 07/01/2020 - 09/15/2020 | \$11,872.00        |
| 2                                   | 01/25/2021 | 09/30/2020 - 11/15/2020 | \$6,356.00         |
| 3                                   | 06/02/2021 | 12/01/2020 - 03/05/2021 | \$8,652.00         |
| <b>Total Interim Fees Approved:</b> |            |                         | <b>\$26,880.00</b> |

Applicant was authorized to receive: (a) \$11,872.00 on October 23, 2020 (Doc. #143) for services rendered from July 1, 2020<sup>3</sup> through September 15, 2020 (WLC-7); (b) \$6,356.00 on January 25, 2021 (Doc. #167) for services rendered from September 30, 2020 through November 15, 2020 (WLC-8); and (c) \$8,652.00 on June 7, 2021 (Doc. #202) for services rendered December 1, 2020 through March 5, 2021 (WLC-9). The three prior fee applications total \$26,880.00 in fees for accountant services. Payment of these fees is pending approval of the chapter 11 plan.

Applicant indicates that her firm performed \$61.35 billable hours of accounting services at a rate of \$280.00 per hour, resulting in \$17,178.00 for fees for accounting services. Doc. #241, Ex. A. Applicant did not request reimbursement for any expenses. The source of payment for these bills will be the chapter 11 plan, which will be filed upon approval of the disclosure statement set for hearing on August 31, 2021.

As noted above, Ravinder S. Tut, DIP's representative, filed a statement indicating that they reviewed the fee application and have no objections. Doc. #242.

11 U.S.C. § 330(a)(1)(A) and (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

Applicant's services included, without limitation: (1) providing accounting services to DIP; (2) preparing cash collateral budgets, cash flow projections for the plan of reorganization, and a plan projection for before and after the plan was changed; and (3) preparing and submitting monthly operating reports and supporting documents. Doc. #240. The court finds the services reasonable and necessary to the estate.

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<sup>3</sup> The original motion requested fees beginning June 1, 2020. Doc. #128. However, the exhibits indicate that fees for services did not begin accruing until July 1, 2020. Doc. #130, Ex. A.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$17,178.00 in fees on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to 11 U.S.C. § 330.

1:30 PM

1. [20-12505](#)-B-7     **IN RE: KENNETH/LORENA SLAYTON**  
[JES-2](#)

MOTION TO COMPEL  
7-16-2021    [\[35\]](#)

JAMES SALVEN/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION:                    Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") seeks an order compelling Kenneth L. Slayton and Lorena L. Slayton ("Debtors") to turnover within seven days either: (1) Debtor's 2020 Federal and State tax returns ("Tax Returns") with any refunds received; or (2) data necessary to prepare the Tax Returns under 11 U.S.C. § 542(a). Doc. #35. Trustee estimates that the 2020 federal and state tax refunds may have value to the estate over and above any available exemption in the amount of at least \$4,855.00. Docs. #37; #40.

No party in interest timely filed written opposition. This motion will be GRANTED.

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

11 U.S.C. § 541 establishes Tax Returns and refunds as assets of the estate upon commencement of the case. Section 541(a) provides:

- (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the

debtor in property as of the commencement of the case.

- (2) All interest of the debtor and the debtor's spouse in community property as of the commencement of the case that is—
- (A) under the sole, equal, or joint management and control of the debtor; or
  - (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

§ 541(a). Section 542(a) requires Debtors to deliver Tax Returns and refunds to Trustee:

(a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

§ 542(a). If Debtors have not yet filed the 2020 Tax Returns, § 521(a)(4) requires Debtors to deliver data necessary to prepare the returns under 11 U.S.C. § 521:

(a) The debtor shall—

. . . .  
(4) if a trustee is serving in the case or an auditor is serving under section 586(f) of title 28, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title[.]

§ 521(a)(4).

Trustee has demonstrated that the 2020 Tax Returns and any or all refunds exceeding Debtors' claimed exemptions are property of the estate and Trustee has the right to receipt for the benefit of the estate. Docs. #37; ##39-40. Therefore, this motion will be GRANTED.

It will be ordered that Debtors shall comply with Trustee's request for turnover of documents related to their 2020 Tax Returns and refund all or part of any refunds exceeding their claimed exemptions not later than seven calendar days after an order granting this motion is issued and served on Debtors. Failure to comply may result in an order imposing sanctions, including movant's attorney's fees, upon further motion.

2. [20-12515](#)-B-7     **IN RE: LUIS/ALEXANDRA SANCHEZ**  
[JES-2](#)

MOTION TO COMPEL  
7-16-2021    [\[31\]](#)

JAMES SALVEN/MV  
SCOTT LYONS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Denied if federal tax refund sent to Trustee.

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

Chapter 7 trustee James E. Salven ("Trustee") seeks an order compelling Luis Enrique Sanchez and Alexandra Sanchez ("Debtors") to turnover within seven days either: (1) Debtor's 2020 Federal and State tax returns ("Tax Returns") with any refunds received; or (2) data necessary to prepare the Tax Returns under 11 U.S.C. § 542(a). Doc. #31. Trustee estimates that the 2020 federal and state tax refunds may have value to the estate over and above any available exemption in the amount of at least \$4,500.00. Docs. #33; #35.

Debtors timely filed written opposition. Doc. #38. This matter will be called as scheduled. The court may DENY the motion provided that Debtors sent their federal refund to Trustee.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. The failure of the creditors, the U.S. Trustee, or any other party in interest except Debtors 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. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Debtors are entered.

11 U.S.C. § 541 establishes Tax Returns and refunds as assets of the estate upon commencement of the case. Section 541(a) provides:

- (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.
- (2) All interest of the debtor and the debtor's spouse in community property as of the commencement of the case that is—
  - (A) under the sole, equal, or joint management and control of the debtor; or
  - (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the

debtor's spouse, to the extent that such interest is so liable.

§ 541(a). Section 542(a) requires Debtors to deliver Tax Returns and refunds to Trustee:

(a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

§ 542(a). If Debtors have not yet filed the 2020 Tax Returns, § 521(a)(4) requires Debtors to deliver data necessary to prepare the returns under 11 U.S.C. § 521:

(a) The debtor shall—

. . .  
(4) if a trustee is serving in the case or an auditor is serving under section 586(f) of title 28, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title[.]

§ 521(a)(4).

Trustee has demonstrated that the 2020 Tax Returns and any or all refunds exceeding Debtors' claimed exemptions are property of the estate and Trustee has the right to receipt for the benefit of the estate. Docs. #33; ##35-36.

However, Debtors responded. Doc. #38. They say that they filed their 2020 Tax Returns and received their state tax refund in the amount of \$914.00, but they have not yet received their federal refund. Doc. #39. Debtors mailed a certified check for the state refund to Trustee on August 3, 2021. Doc. #40, Ex. A. Debtors anticipate that that they will receive a federal refund estimated to be \$4,118.00. Doc. #39. They were originally waiting to receive both the state and federal refunds before sending a single payment to Trustee, but in light of this motion, they decided to tender the state refund immediately.

This matter will be called as scheduled. The court may DENY the motion provided that Debtors sent their federal refund to Trustee.

3. [21-11119](#)-B-7     **IN RE: MARIA CANDELARIO**  
[UST-1](#)

MOTION TO DISMISS CASE AND/OR MOTION TO APPROVE STIPULATION  
TO DISMISS  
7-16-2021    [\[11\]](#)

TRACY DAVIS/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
JASON BLUMBERG/ATTY. FOR MV.

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

DISPOSITION:     Granted.

ORDER:             The Moving Party shall submit a proposed order after  
hearing.

Tracy Hope Davis, the United States Trustee for Region 17 ("UST") moves for an order (i) approving a stipulation to dismiss this chapter 7 case without entry of discharge ("Stipulation"); and (ii) dismissing this case. Doc. #11.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the chapter 7 trustee, 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 amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Maria Elena Candelario ("Debtor") filed chapter 7 bankruptcy on April 30, 2021. Doc. #1. The § 341(a) meeting of creditors was scheduled for June 25, 2021 and continued to July 9, 2021, and then to July 16, 2021. See docket generally. The deadline to file a motion to dismiss under 11 U.S.C. § 707(b)(3) (bad faith and/or totality of circumstances abuse) is August 24, 2021. UST is investigating this case under § 707(b)(3). However, Debtor, through her bankruptcy counsel Robert S. Williams, stipulated to voluntary dismissal without entry of discharge on July 13, 2021. Doc. #13.

A chapter 7 case may be dismissed only after a notice and hearing and only for "cause." 11 U.S.C. § 707(a) provides three statutorily enumerated grounds establishing cause, but these are not exclusive. *Sherman v. SEC (In re Sherman)*, 491 F.3d 948, 970 (9th Cir. 2007); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 840 (B.A.P. 9th Cir.

2008). Under 11 U.S.C. § 707(b), an individual chapter 7 consumer debtor's case may be dismissed for presumed abuse or where abuse is demonstrated by bad faith or the totality of the circumstances of the debtor's financial condition. 11 U.S.C. § 707(b) (1-3).

Here, UST is prepared to file a motion to dismiss under 11 U.S.C. § 707(b) (3), but Debtor has opted to voluntarily dismiss instead. Doc. #13. No creditors or other parties in interest timely filed written opposition and there does not appear to be any benefit to creditors in keeping the bankruptcy case open.

The motion to approve stipulation to dismiss Debtor's case without entry of discharge will be GRANTED and the case will be dismissed.

4. [20-12729](#)-B-7      **IN RE: CHUCK/NICOLE COZZITORTO**  
[JES-1](#)

MOTION TO COMPEL  
7-16-2021    [\[47\]](#)

JAMES SALVEN/MV  
PETER FEAR/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Denied if federal tax refund sent to Trustee.

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

Chapter 7 trustee James E. Salven ("Trustee") seeks an order compelling Chuck Scott Cozzitorto and Nicole Ann Cozzitorto ("Debtors") to turnover within seven days either: (1) Debtor's 2020 Federal and State tax returns ("Tax Returns") with any refunds received; or (2) data necessary to prepare the Tax Returns under 11 U.S.C. § 542(a). Doc. #47. Trustee estimates that the 2020 federal and state tax refunds may have value to the estate over and above any available exemption in the amount of at least \$14,698.00. Docs. #49; #61.

Debtors timely filed written opposition. Doc. #55. This matter will be called as scheduled. The court may DENY the motion provided that Debtors sent their federal refund to Trustee.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f) (1) and will proceed as scheduled. The failure of the creditors, the U.S. Trustee, or any other party in interest except Debtors 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. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Debtors are entered.



11 U.S.C. § 541 establishes Tax Returns and refunds as assets of the estate upon commencement of the case. Section 541(a) provides:

- (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.
- (2) All interest of the debtor and the debtor's spouse in community property as of the commencement of the case that is—
  - (A) under the sole, equal, or joint management and control of the debtor; or
  - (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

§ 541(a). Section 542(a) requires Debtors to deliver Tax Returns and refunds to Trustee:

(a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

§ 542(a). If Debtors have not yet filed the 2020 Tax Returns, § 521(a)(4) requires Debtors to deliver data necessary to prepare the returns under 11 U.S.C. § 521:

(a) The debtor shall—

- . . .
- (4) if a trustee is serving in the case or an auditor is serving under section 586(f) of title 28, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title[.]

§ 521(a)(4).

Trustee has demonstrated that the 2020 Tax Returns and any or all refunds exceeding Debtors' claimed exemptions are property of the estate and Trustee has the right to receipt for the benefit of the estate. Docs. #49; ##61-62.

However, Debtors responded. Doc. #55. They say that they received an extension to file their 2020 Tax Returns until October 15, 2021. Doc. #56. Debtors provided all of the information necessary to prepare the returns to their CPA, who will prepare the tax returns

within 30 days. After the returns are filed, Debtors will provide a copy of the filed returns to Trustee. Debtors believe that they will be entitled to some amount of the 2020 refund, but they understand that some portion of the refunds will be property of the bankruptcy estate. Debtors will pay that amount to Trustee and will not spend any portion of their refund until the amount payable is determined and paid.

Further, Debtors object to Trustee filing returns on their behalf because their CPA is already preparing the returns and it would be confusing if multiple returns were filed with their names. Doc. #55.

This matter will be called as scheduled. The court may DENY the motion provided that Debtors have sent their federal refund to Trustee.

5. [21-10762](#)-B-7      **IN RE: STEVEN/SANDRA SLUMBERGER**  
[DMG-2](#)

MOTION TO SELL  
7-19-2021    [\[32\]](#)

JAMES SALVEN/MV  
PETER FEAR/ATTY. FOR DBT.  
D. GARDNER/ATTY. FOR MV.

TENTATIVE RULING:      This matter will proceed as scheduled for  
higher and better bids, only.

DISPOSITION:              Granted.

ORDER:                      The Moving Party shall submit a proposed order  
after hearing.

Chapter 7 trustee James E. Salven ("Trustee") seeks authorization to sell the estate's interest in a 2011 Honda Ridgeline RTL Crew Cab pickup truck ("Vehicle") to Steven Norman Slumberger and Sandra Sims Slumberger ("Debtors") for \$10,100.00 under 11 U.S.C. § 363(b), subject to higher and better bids. Doc. #32.

No party in interest timely filed written opposition. This motion will be GRANTED. The hearing will proceed for higher and better bids, only.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915,

917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing 240 *North Brand Partners v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference." *Id.* citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Prod. Holdings v. Old Cold, LLC (In re Old Cold, LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to the Debtors. Vehicle is listed in Schedule A/B as being in "Good condition" with a value of \$12,000.00. Doc. #1. Debtors claimed a \$3,325.00 equity exemption for Vehicle under Cal. Civ. Proc. Code ("C.C.P.") § 704.730. *Id.*, Schedule C. Vehicle is not encumbered by any security interests. *Id.*, Schedule D.

Trustee proposes to sell Vehicle to Debtors for \$10,100.00, which is less than the \$12,000 scheduled value. Doc. #32. Trustee declares that Vehicle was valued at \$12,000 on the petition date. Doc. #34. Nevertheless, in application of his business judgment, Trustee believes that the proposed sale to the Debtors is in the best interest of the estate. *Id.*

The net proceeds to the estate will be \$6,775.00 after subtracting Debtors' exemption under C.C.P. § 704.730:

|                            |                     |
|----------------------------|---------------------|
| Sale price of Vehicle      | \$10,100.00         |
| Debtors' claimed exemption | - \$3,325.00        |
| Net to the estate          | = <b>\$6,775.00</b> |

Trustee considered sale commission and costs of sale and estimates that they would cost approximately \$1,900. *Id.* Debtors proposed the offer of \$6,775 and Trustee accepted subject to court approval and higher or better bids at the hearing. The price of \$10,100 appears to be fair and reasonable. Trustee has presumably conducted due

diligence and concluded the sale is in the best interests of creditors and the estate.

It appears that the sale of Vehicle is in the best interests of creditors and the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith.

No party in interest timely filed written opposition. The motion will be GRANTED, and the matter will proceed for higher and better bids.

The motion does not request, nor will the court authorize, the sale free and clear of any liens or interests.

Any party wishing to overbid must provide a \$500 deposit to the Trustee no later than August 16, 2021 and proof to Trustee's satisfaction that the full purchase price will be tendered no later than close of business, August 18, 2021. Any successful overbid shall have the deposit applied to the successful overbid price. Unsuccessful bidder's deposits shall be returned at the conclusion of the sale motion.

Overbidders must be present at the hearing either in person or telephonically by dialing 1-866-582-6878 through CourtCall, make overbids in \$100 increments, bring sufficient funds to pay the Debtors' \$3,325 vehicle exemption, and acknowledge that no representations or warranties are included with the Vehicle; it will be sold "as is."

6. [21-10467](#)-B-7     **IN RE: AGUSTIN GODOY LOPEZ**  
[UST-2](#)

CONTINUED MOTION FOR REVIEW OF FEES  
7-9-2021    [\[25\]](#)

TRACY DAVIS/MV  
VINCENT QUIGG/ATTY. FOR DBT.  
JORGE GAITAN/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.

Tracy Hope Davis, the United States Trustee for Region 17 ("UST"), asks the court to review the fees of debtor's counsel, Vincent Quigg ("Counsel"), and order that he disgorge the entirety of the \$1,000 fee payment he received. Doc. #25.

This matter was originally scheduled for July 29, 2021. Doc. #26. At the last hearing, the court continued the matter to August 17, 2021. Doc. #33. UST and Counsel were ordered to file and serve additional evidence or any briefing not later than August 6, 2021 for UST and August 13, 2021 for Counsel. *Id.*

Neither party filed any additional evidence or briefing. This matter will proceed as scheduled.

Agustin Godoy Lopez ("Debtor") filed chapter 7 bankruptcy on February 24, 2021. Doc. #1. But on July 9, 2021, the court entered an order on UST's motion (UST-1) to deny Debtor's discharge under § 727(a)(8). Doc. #27. That provision precludes entry of a chapter 7 discharge in a case commenced within eight years from the commencement of a previous case in which the debtor received a discharge.

UST argues that there was no value to counsel's services since the discharge was denied. Doc. #25. UST contends that a simple review of Debtor's prior bankruptcy filings would have prevented expenditure of Debtor's funds and other efforts. Counsel merely needed to wait a few months to file this case.

At the last hearing, the court noted that UST has not provided any evidence supporting this motion. There was no request for judicial notice or other evidence supporting UST's factual contentions. The court continued this matter so that both parties could file additional evidence. Neither party has filed anything since the last hearing.

This matter will proceed as scheduled.

7. [19-13569](#)-B-7     **IN RE: JOHN ESPINOZA**  
[THA-4](#)

MOTION FOR COMPENSATION FOR COLEMAN & HOROWITT, LLP,  
TRUSTEES ATTORNEY(S)  
7-19-2021    [\[129\]](#)

JERRY LOWE/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.

Thomas H. Armstrong of Coleman & Horowitz, LLP (Applicant"), counsel for chapter 7 trustee Peter L. Fear ("Trustee"), requests final compensation of \$30,495.52 under 11 U.S.C. § 330. Doc. #129. This amount consists \$29,825.00 in fees for reasonable compensation and \$670.52 for reimbursement of expenses for actual, services rendered from October 18, 2019 through August 17, 2021.<sup>4</sup>

Trustee declares that he has reviewed the fee application and believes that the fees and expenses are reasonable and necessary for

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<sup>4</sup> Applicant requests fees beginning October 18, 2020, but this appears to be a clerical error. Doc. #129, ¶¶ 4, 8. Applicant's employment was approved on October 31, 2019 and effective October 10, 2019. Doc. #47. The invoices show that services began October 18, 2019. Doc. #133, Ex. A. The court will construe this application as beginning on October 18, 2019.

the administration of the bankruptcy estate. Doc. #132. The estate has sufficient funds to fund this application and Trustee has no objection to payment of the fees and expenses.

No party in interest timely filed written opposition. This motion will be GRANTED.

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

On October 31, 2019, the court approved Applicant's employment as general bankruptcy counsel effective for services rendered on or after October 10, 2019 under 11 U.S.C. §§ 327, 329-331.<sup>5</sup> Doc. #47. No compensation was permitted except upon court order following application pursuant to § 330(a) and compensation was set at the "lodestar rate" applicable at the time services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988).

Applicant's firm provided 85.75 billable hours of legal services totaling **\$29,825.00** as follows:

**FEE SUMMARY**

| <b>Professional</b>           | <b>Rate</b> | <b>Hours</b> | <b>Amount</b>      |
|-------------------------------|-------------|--------------|--------------------|
| Kelsey A. Seib (2019-20)      | \$265.00    | 34.30        | \$9,089.50         |
| Russell W. Reynolds (2020)    | \$350.00    | 5.40         | \$1,890.00         |
| Russell W. Reynolds (2021)    | \$375.00    | 1.00         | \$375.00           |
| Thomas H. Armstrong (2020-21) | \$410.00    | 45.05        | \$18,470.50        |
| <b>Total Hours and Fees</b>   |             | <b>85.75</b> | <b>\$29,825.00</b> |

Docs. #129, ¶ 7; #133, Ex. A. Applicant also incurred costs of **\$670.52**:

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<sup>5</sup> Notably, the presumed 30-day effective date of employment could have been September 23, 2019 under LBR 2014-1(b)(1) because the employment application was filed on October 23, 2019. Doc. #42.

**EXPENSES**

|                            |                   |
|----------------------------|-------------------|
| Photocopies (895 @ \$0.15) | \$134.25          |
| Postage                    | + \$94.27         |
| Filing Fees                | + \$350.00        |
| CourtCall                  | + \$67.50         |
| Certified Copies           | + \$24.50         |
| <b>Total Costs</b>         | <b>= \$670.52</b> |

Doc. #129, ¶ 11. These combined fees and expenses total **\$30,495.52**.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

Applicant's services included, without limitation: (1) assisting the trustee in recovering assets sufficient to pay all timely filed claims and costs of administration expenses in full; (2) reviewing the schedules for conflicts and drafting applications to employ counsel (KAS-1; THA-1); (3) preparing, filing, and prosecuting the related adversary proceeding to recover the debtor's real property at Honda Road in Madera, California and entitled *Fear v. Espinoza et al.*, adv. proc. no. 20-01021; (4) successfully selling the Honda Road property, which rendered net proceeds sufficient to pay all timely filed claims and administrative expenses in full (THA-2); (5) drafting and filing a motion to pay administrative tax expenses (THA-3); and (6) preparing and filing this final fee application (THA-4). Docs. #131; #133, Ex. C. The court finds the services reasonable and necessary and the expenses actual and necessary. As noted above, Trustee reviewed the fee application and consent to payment of the requested fees and expenses. Doc. #132.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$29,825.00 in fees and \$670.52 in expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be permitted in his discretion to pay Applicant \$30,495.52 for services rendered to the estate between October 18, 2019 and August 17, 2021.

8. [21-11478](#)-B-7     **IN RE: VIRGINIA HORTON**  
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-16-2021    [\[15\]](#)

THE BANK OF NEW YORK MELLON/MV  
R. BELL/ATTY. FOR DBT.  
DANE EXNOWSKI/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

The Bank of New York Mellon f/k/a The Bank of New York as Trustee for Nationstar Home Equity Loan Trust 2007-B ("Movant"), as serviced by Nationstar Mortgage LLC d/b/a Mr. Cooper, seeks relief from the automatic stay under 11 U.S.C. § 362 with respect to residential real property commonly known as 1725 Sycamore Drive, Wasco, CA 93280 ("Property"). Doc. #15.

The court GRANTS the motion as to the Debtor and the estate's interest, only.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor, the chapter 7 trustee, or the U.S. Trustee 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. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered.

Debtor filed bankruptcy on June 5, 2021 and is a co-owner of Property. Doc. #1. Movant seeks stay relief with respect to Property. Doc. #15. Debtor listed Property in the schedules with a value of \$234,000.00, noting that "Ex-Husband is on title & loan." Doc. #1, *Schedule A/B*. Notably, Debtor does not live at Property.

Under Cal. Civ. Proc. Code § 703.140(b)(5), Debtor exempted \$30,748.00 in Property's equity. *Id.*, *Schedule C*. Movant is listed with a secured claim of approximately \$196,137.00, though Debtor indicates that the debt is owed by Debtor 1 only. *Id.*, *Schedule D*. The boxes for "[a]t least one of the debtors and another" and "[c]heck if this claim relates to a community debt" were not checked. *Ibid.*

Debtor's ex-husband is revealed as Michael Horton, who currently resides at Property, in *Schedule H*. *Id.*, *Schedule H*. The court notes that Mr. Horton is not included in the master address list. Doc. #5. He also was not served this motion. Doc. #21. Debtor's divorce occurred sometime in the last eight years, but she has not moved in the last three years. Doc. #1, *Schedule H*; *cf.* Form 107. Mr. Horton is not listed as a co-debtor or an unsecured creditor. On Schedules



I and J, Debtor neither receives nor pays domestic support obligations, and there is not expected change of income or expenses in the upcoming year. *Id.*, Schedules I, J. So, it appears that the divorce finalized sometime within the last three to eight years and there are no current support payments. However, no documents from the divorce proceedings are before the court. It is unclear how ownership of Property was affected, if at all, in that proceeding.

Debtor and Mr. Horton executed a promissory note on December 26, 2006 secured by Property. Doc. #18, Exs. A, B. Debtor and Mr. Horton executed a loan modification agreement on November 26, 2013. *Id.*, Ex. C.

Chastity Wilson, an employee of Movant's loan servicer, declares that Movant's claim consists of the following:

|  |                       |
|--|-----------------------|
| Principal                                | \$133,632.37          |
| Accrued interest                         | + \$164.75            |
| Costs                                    | + \$0.00              |
| Advances                                 | + \$0.00              |
| Suspense account or partial balance paid | - \$0.00              |
| Deferred principal                       | + \$62,220.07         |
| <b>Total</b>                             | <b>= \$196,017.19</b> |

Doc. #17. The current monthly payment amount is \$846.29 including impound of \$146.24 for taxes and insurance. The loan is due for the July 1, 2021 payment and an additional \$846.29 became due on August 1, 2021. *Id.* So, Debtor has missed one post-petition payment of \$846.29 and a second payment became due before this hearing.

Ms. Wilson also cites to Debtor's Schedules A/B, which lists Property as having a fair market value of \$234,000.00. *Id.* In light of Movant's secured claim of \$196,017.19, there is \$37,982.81 in equity remaining for Debtor and/or Mr. Horton.

Movant asserts that this equity cushion is only 16.2%, so its interest is inadequately protected. Movant also cites to Debtor's Statement of Intention, which states her intent to surrender Property. Movant argues cause exists to lift the stay because Property is inadequately protected, Debtor intends to surrender Property, and the July 1, 2021 payment is due. The court does find that movant is adequately protected based on admitted values. But cause still exists to modify the stay.

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).

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has missed one payment of \$846.29 and an additional payment of \$846.29 became due before this hearing. Docs. #17; #20. The Trustee has elected not to oppose the

motion. The Debtor's statement of intention is to "surrender" the property. But, if the Debtor's ex-spouse resides there, surrender of the debtor's interest does nothing to affect any interest of the other owner.

Even though Mr. Horton was not served with this motion, the court may still grant relief with respect to Debtor and estate under 11 U.S.C. § 362(d)(1). No automatic stay affects Mr. Horton's interest at this time so no relief can be granted as to any interest he may have.

9. [21-10387](#)-B-7      **IN RE: ROBERT PENA**  
[BTH-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-28-2021    [\[28\]](#)

M&T BANK/MV  
LAYNE HAYDEN/ATTY. FOR DBT.  
NICHOLAS COUCHOT/ATTY. FOR MV.  
DISCHARGED 5/24/21

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 hearing.

The movant, M&T Bank ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2021 Keystone Outback 341RD Trailer ("Vehicle"). Doc. #28.

This motion was filed and served 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.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED IN PART AND DENIED AS MOOT IN PART.

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The debtor's discharge was entered on May 24, 2021. Doc. #16. Therefore, the automatic stay terminated with respect to the debtor on May 24, 2021. This motion will be DENIED AS MOOT IN PART as to the debtor's interest and will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

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

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor is 10 payments past due in the amount of \$4,960.40. Doc. #30, #32.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. *Id.* The Vehicle is valued at \$43,150.00 and debtor owes \$53,304.12. Doc. #30.

Accordingly, the motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest under § 362(c)(2)(C).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the Vehicle is a depreciating asset.