UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, August 19, 2020
Place: Department A – Courtroom #11
Fresno, California

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

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878. A telephone appearance through CourtCall must be arranged 24 hours in advance of the hearing time.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:00 AM

1. 20-11918-A-7 **IN RE: KATHLEEN WRIGHT**
JES-1

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
7-10-2020 [14]

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtor shall attend the meeting of creditors rescheduled for August 25, 2020, at 9:00 a.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtors' discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.

2. 17-12272-A-7 **IN RE: LEONARD/SONYA HUTCHINSON**
JCW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-20-2020 [126]

M&T BANK/MV
DAVID JENKINS/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, M&T Bank as Attorney in Fact for Lakeview Loan Servicing, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to real property located at 41691 Road 96, Dinuba, California ("Property"). Doc. #126.

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 debtors have failed to make at least 52 complete pre- and post-petition payments. The movant has produced evidence that debtors are delinquent by at least $154,659.85 and the entire balance of $405,461.04 is due. Doc. #128, #130.

The court also finds that the debtors do not have any equity in the Property and the Property is not necessary to an effective reorganization because debtors are in chapter 7. The property is valued at $39,000.00 and debtors owe $405,461.04. Doc. #126.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 52 payments, both pre- and post-petition to Movant.

The court notes the Chapter 7 trustee filed a notice of non-opposition to this motion on August 6, 2020. Doc. #132.

3. 10-15491-A-7 **IN RE: JOSEPH/DAWN MEDIATI**
FW-5

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR PETER A. SAUER, TRUSTEES ATTORNEY(S)
7-22-2020 [114]

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

DISPOSITION: Granted.

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

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

In this Chapter 7 case, Fear Waddell, P.C., attorneys for Peter L. Fear, the Chapter 7 trustee of the bankruptcy estate of Joseph J. Mediati and Dawn L. Mediati, have applied for an allowance of final compensation and reimbursement of expenses. Doc. #114. The applicant requests that the court allow compensation in the amount of $8,370.50 and reimbursement of expenses in the amount of $126.20, totaling $8,496.70, for services rendered from January 10, 2019 through July 21, 2020. Id.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Reasonable compensation is determined by considering all relevant factors. See 11 U.S.C. § 330(a)(3).

The services rendered for the relevant time period of this application reflect legal services and costs advanced by counsel that were necessary to the trustee's administration of the debtors' Chapter 7 estate. See Doc. ##117, 118. Applicant was employed as general counsel to provide legal services to the trustee regarding recovery of the estate's interest in a previously undisclosed mass tort litigation. Doc. #118. Applicant worked closely with special counsel regarding numerous interlocking confidentiality causes attendant with mass tort litigation, preparing and obtaining the bankruptcy court's approval of a compromise of the estate's interest in the litigation, resolving lien issues against and proper distribution of the settlement proceeds. Id. The trustee is the principal of the applicant, and the court finds necessary disclosures were made and no duplication of labor or effort accompanied the applicant's employment. The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

This motion is GRANTED. The court allows final compensation in the amount of $8,370.50 and reimbursement of expenses in the amount of $126.20.

10:00 AM

1. 19-11901-A-7 **IN RE: ARMANDO CRUZ**
   19-1095

   CONTINUED STATUS CONFERENCE RE: COMPLAINT
   8-12-2019 [1]

   STRATEGIC FUNDING SOURCE, INC. V. CRUZ
   JARRETT OSBORNE-REVIS/ATTY. FOR PL.

NO RULING.

2. 19-15416-A-7 **IN RE: LISA HAMMOND**
   20-1038

   STATUS CONFERENCE RE: COMPLAINT
   4-27-2020 [1]

   HAMMOND V. CASH NET USA ET AL
   JERRY LOWE/ATTY. FOR PL.

NO RULING.

1:30 PM

1. 20-10010-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
DMG-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-22-2020 [196]

STEPHANIE HUDSON/MV
LEONARD WELSH/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on August 13, 2020. Doc. #226.

2. 20-10010-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
NB-3

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-16-2020 [172]

KEEVMO, LLC/MV
LEONARD WELSH/ATTY. FOR DBT.
RICARDO ARANDA/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to September 16, 2020 at 9:30 a.m.

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

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. For the reasons discussed below, the court is inclined to continue the hearing on this matter to September 16, 2020 at 9:30 a.m.

Secured creditor Keevmo, LLC ("Keevmo") moves this court for relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1) with respect to the 949.63 acres of farmland located in Arvin, California (the "Property"), which is encumbered by a deed of trust in favor of Keevmo securing a promissory note between Keevmo, on the one hand, and Eduardo Zavala Garcia and Amalia Perez Garcia (collectively, the "Debtors"), on the other, entered into on January 19, 2018 (the "Note"). The motion is opposed by the Debtors (Doc. #203), and unsecured creditor Platinum Farm Services, LLC (Doc. #213).

Bankruptcy Code section 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection of an interest in property of such party in interest. "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).

The court has broad discretion under the Bankruptcy Code in granting relief from the automatic stay for cause under 11 U.S.C. § 362(d). See, e.g., Edwards v. Wells Fargo Bank, N.A. (In re Edwards), 454 B.R. 100, 107 (B.A.P. 9th Cir. 2011); Groshong v. Sapp (In re Mila, Inc.), 423 B.R. 537, 542 (9th Cir. 2010); In re Delaney-Morin, 304 B.R. 365, 369-70 (B.A.P 9th Cir. 2003); In re Leisure Corp., 234 B.R. 916, 920 (B.A.P. 9th Cir. 1999); Mataya v. Kissinger (In re Kissinger), 72 F.3d 107, 108-09 (9th Cir. 1995). The party seeking relief must first establish that cause exists for relief under section 362(d)(1). United States of America v. Gould (In re Gould), 401 B.R. 415, 426 (B.A.P. 9th Cir. 2009) (citing Duvar Apt., Inc. v. FDIC (In re Duvar Apt., Inc.), 206 B.R. 196, 200 (B.A.P. 9th Cir. 1996)). Once a *prima facie* case has been established, the burden shifts to the debtor to show that relief from the stay is not warranted. Id.

The Debtors own 1,551.29 acres of farmland and grazing land located in Arvin, California, of which 949.63 acres of farmland is encumbered by a deed of trust in favor of Keevmo. Doc. #204, Garcia Decl. at ¶ 4. In January 2018, Keevmo loaned the Debtors $4,875,000.00 to the Debtors pursuant to the Note, which provided for a first payment due on November 15, 2018 and the balance due by December 1, 2019. Doc. #178, Ex. C. The Note is secured by a deed of trust in favor of Keevmo and recorded in Kern County on January 23, 2018. Id. Keevmo claims the Debtors never made any payments on the loan. Doc. #176, Marmolejo Decl. at ¶ 4. Thereafter, Keevmo initiated non-judicial foreclosure proceedings against the Property, by recording a Notice of Default on February 1, 2019. Doc. #178, Ex. D. A foreclosure sale was scheduled for June 5, 2019, and Keevmo agreed to postpone the sale to June 21, 2019 at the Debtors' request to allow the Debtors time to try to refinance the debt. Doc. #176, Marmolejo Decl. at ¶ 5. Then, on June 20, 2019, the Debtors filed a Chapter 11 bankruptcy, Case No. 19-12653, to stop Keevmo's foreclosure and collection actions by other creditors, which the Debtors eventually requested dismissed on November 7, 2019 to pursue refinancing outside of bankruptcy with GIVIT Global, LLC ("GIVIT"). Doc. #178, Ex. E.; Doc. #204, Garcia Decl. at ¶¶ 5-8. The Debtors state that despite working with GIVIT after dismissal of the bankruptcy case, the Debtors were unable to close on a loan before the rescheduled foreclosure sale was to occur on January 3, 2020. Doc. #204, Garcia Decl. at ¶ 8. The Debtors filed this second Chapter 11 bankruptcy case on January 2, 2020, again to stop Keevmo's foreclosure and collection actions by other creditors. Id.

Keevmo argues that "cause" exists for the court to grant it relief from the automatic stay because the Debtors' filing of the bankruptcy cases was intended to hinder Keevmo's efforts to pursue its security interest in the Property, which have severely prejudiced Keevmo; and the Debtors have failed to make any tangible progress in proposing a feasible plan of reorganization since the filing of this second Chapter 11 case more than six months ago. Doc. #172.

The court is not inclined to find that Keevmo has met its burden to show that cause exists for relief from the automatic stay at this time.

According to Keevmo's proof of claim filed in this case, the Debtors owe Keevmo the sum of $5,939,046.88 secured against the Property that Keevmo values at $14,800,000.00. Claim No. 8-1. The Debtors valued the Property at $15,352,240.00 on Schedules A/B. Doc. #26; Doc. #178, Ex. A. The Debtors' Schedule D discloses a $393,604.87 tax lien against the Property. Doc. #26, Schedule D, at Line 2.3. Using either Keevmo's or the Debtors' valuation leaves Keevmo significantly oversecured by approximately $8,467,348.25 to $9,019,588.25.

The court agrees with the Debtors' position in this case that a delay in allowing Keevmo to foreclose against the Property does not constitute "cause"

for relief from the automatic stay under 11 U.S.C. § 362(d)(1). In United Sav. v. Timbers of Inwood Forest, 484 U.S. 365, 374-75 (1988), the Supreme Court rejected the argument that an undersecured creditor's inability to take immediate possession of his collateral constituted "cause" for conditioning the stay. The Court recognized that section 362(d)(1)'s reference to "interest in property" includes the right of a secured creditor to have the security applied in payment of the debt upon completion of the reorganization. Id. at 370. It does not include a secured party's right to immediate foreclosure. Id. at 371. This is especially true where, as in this case, the creditor is adequately protected by a significant equity cushion. See In re Mellor, 734 F.2d 1396, 1400-01 (9th Cir. 1984). In Mellor, the Ninth Circuit found adequate protection for the creditors' secured interest in the debtor's residence where there was an equity cushion. The Ninth Circuit noted, the equity cushion "is the classic form of protection for a secured debt justifying the restraint of lien enforcement by a bankruptcy court. In fact, it has been held that the existence of an equity cushion, standing alone, can provide adequate protection. A sufficient equity cushion has been found to exist although not a single mortgage payment had been made." Mellor, 734 F.2d at 1400 (citations omitted). Although Keevmo alleges the Debtors have never made any payments on the Note, Keevmo's secured interest in the Property is oversecured equity cushion by an equity cushion of $8-$9 million, which affords more than adequate protection.

Keevmo also contends the Debtors' failure to make any meaningful steps towards proposing a feasible reorganization plan is cause for relief from the automatic stay. Doc. #172. However, as the Debtors point out, since the filing of this Chapter 11 case, the Debtors applied and obtained the court's approval for and received an Economic Injury Disaster Loan for $137,900.00 (Doc. #204, Garcia Decl. ¶ 9a; see also Doc. #171, Order Authorizing Debtors to Borrow Money Secured by Liens Against Personal Property); and the Debtors received an offer from Grimmway Farms to purchase the Portillo Ranch property for $1,100,00.00, and obtained the court's approval of the sale free and clear of liens, which will reduce the secured and administrative claims in this case (Doc. #204, Garcia Decl. ¶ 9b). Moreover, the court has set a deadline of September 15, 2020 for the Debtors to file and serve a Disclosure Statement and Plan of Reorganization. Doc. #171. Therefore, the court believes it is premature to find the Debtors have made no meaningful progress toward a reorganization plan.

Keevmo has filed a reply requesting the court delay a ruling on this motion until after the September 15, 2020 deadline by which the Debtors have to file a Disclosure Statement and Plan of Reorganization. For the reasons discussed above, the court is inclined to continue the hearing on this motion to September 16, 2020 at 9:30 a.m.

3. 20-10010-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
NB-4

MOTION TO DISMISS CASE AND/OR MOTION TO APPOINT TRUSTEE ,
MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7
7-16-2020 [181]

KEEVMO, LLC/MV
LEONARD WELSH/ATTY. FOR DBT.
RICARDO ARANDA/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to September 16, 2020 at 9:30 a.m.

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

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. For the reasons discussed below, the court is inclined to continue the hearing on this matter to September 16, 2020 at 9:30 a.m.

Secured creditor Keevmo, LLC ("Keevmo") moves this court for dismissal of this Chapter 11 case or conversion of this case to Chapter 7 pursuant to 11 U.S.C. § 1112(b), or the appointment of a Chapter 11 trustee pursuant to 11 U.S.C. § 1104(a), whichever is in the best interest of the creditors and the estate. Doc. #186. Secured creditor Stephanie Hudson filed a joinder to Keevmo's motion. Doc. #219. Debtors Eduardo Zavala Garcia and Amalia Perez Garcia (collectively, the "Debtors") oppose Keevmo's motion (Doc. #206), and unsecured creditors Platinum Farm Services, LLC ("Platinum Farm Services") and Nino Global, LLC ("Nino Global") filed a limited opposition to the motion (Doc. #216).

Bankruptcy Code section 1112(b)(1) provides:

> Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

However, Bankruptcy Code section 1112(c) states:

> The court may not convert a case under this chapter to a case under chapter 7 of this title if the debtor is a farmer or a corporation that is not a moneyed, business, or commercial corporation, unless the debtor requests such conversion.

Bankruptcy Code section 101(20) defines a "farmer" as a "person that received more than 80 percent of such person's gross income during the taxable year of such person immediately preceding the taxable year of such person during which the case under this title concerning such person was commenced from a farming operation owned or operated by such person."

Bankruptcy Code section 1104(a) provides:

> At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee—
>
> (a) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause . . . .

As a preliminary matter, the Debtors contend they are "farmers" as defined by the Bankruptcy Code and do not consent to conversion of this case to Chapter 7. Doc. #208, Garcia Decl. ¶ 7. Keevmo concedes its request to convert this case to Chapter 7 is contingent on the Debtors' consent and withdraws the request for conversion given the Debtors' opposition. Doc. #223.

The Debtors own 1,551.29 acres of farmland and grazing land located in Arvin, California, of which 949.63 acres of farmland is encumbered by a deed of trust in favor of Keevmo. Doc. #208, Garcia Decl. at ¶ 3. In January 2018, Keevmo loaned the Debtors $4,875,000.00 to the Debtors pursuant to the Note, which provided for a first payment due on November 15, 2018 and the balance due by December 1, 2019. Doc. #183, Ex. C. The Note is secured by a deed of trust in favor of Keevmo and recorded in Kern County on January 23, 2018. Id. Keevmo claims the Debtors never made any payments on the loan. Doc. #184, Marmolejo Decl. at ¶ 4. Thereafter, Keevmo initiated non-judicial foreclosure proceedings against the Property, by recording a Notice of Default on February 1, 2019. Doc. #183, Ex. D. A foreclosure sale was scheduled for June 5, 2019, and Keevmo agreed to postpone the sale to June 21, 2019 at the Debtors' request to allow the Debtors time to try to refinance the debt. Doc. #184, Marmolejo Decl. at ¶ 5. Then, on June 20, 2019, the Debtors filed a Chapter 11 bankruptcy, Case No. 19-12653, to stop Keevmo's foreclosure and collection actions by other creditors, which the Debtors eventually requested dismissed on November 7, 2019 to pursue refinancing outside of bankruptcy. Doc. #183, Ex. E.; Doc. #185, Aranda Decl. at ¶¶ 8-9. Subsequently, the Debtors were unable to close on a loan before the rescheduled foreclosure sale was to occur on January 3, 2020. Id. at ¶ 10; Doc. #184, Marmolejo Decl. at ¶ 7. The Debtors filed this second Chapter 11 bankruptcy case on January 2, 2020. Doc. #1.

The bankruptcy court has broad discretion to determine what constitutes "cause" adequate for dismissal under 11 U.S.C. § 1112(b). See Sullivan v. Harnisch (In re Sullivan), 522 B.R. 604, 614 (B.A.P. 9th Cir. 2014).; see also Toibb v. Radloff, 501 U.S. 157, 165 (1991) (stating that bankruptcy courts have "substantial discretion" to dismiss a Chapter 11 case); In re Hoyle, 2013 Bankr. LEXIS 420, at *29 (Bankr. Idaho Jan. 17, 2013) ("That the itemized grounds are non-exclusive fulfills the Congressional purpose of giving 'wide discretion to the court to make an appropriate disposition of the case when a party in interest requests,' by allowing the court to 'consider other factors as they arise.' (citations omitted)). If the court determines that "cause" exists, then the court must determine whether conversion or dismissal is in the best interest of the creditors and the estate. Woods & Erickson, LLP v. Leonard (In re AVI, Inc.), 389 B.R. 721, 729 (B.A.P. 9th Cir. 2008). "The movant bears the burden of establishing by a preponderance of the evidence that cause exists." Sullivan, 522 B.R. at 614.

Alternatively, a party in interest requesting the appointment of a trustee under 11 U.S.C. § 1104(a)(1) must prove, by clear and convincing evidence, that

the appointment of a trustee is warranted for "cause" and is in the best interest of creditors. In re Sillerman, 605 B.R. 631, 641 (Bankr. S.D.N.Y. 2019). There is a presumption in Chapter 11 that the debtor is to continue in control and possession of its business. In re Garland Corp., 6 Bankr. 456, 460 (B.A.P. 1st Cir. 1980). Therefore, the appointment of a trustee should be the exception, rather than the rule. In re Sharon Steel Corp., 871 F.2d 1217, 1225 (3rd Cir. 1989). The appointment of a trustee in a Chapter 11 case is an extraordinary remedy. In re Ionosphere Clubs, Inc., 113 Bankr. 164, 167 (Bankr. S.D.N.Y. 1990). Although the burden of proof under section 1104(a) is by clear and convincing evidence, "bankruptcy courts have wide discretion in considering the relevant facts and are not required to conduct a full evidentiary hearing in considering a motion for the appointment of a chapter 11 trustee." Id. (citing In re The 1031 Tax Grp., LLC, 374 B.R. 78, 85 (Bankr. S.D.N.Y. 2007)).

Although both 11 U.S.C. §§ 1104(a)(1) and 1112(b)(4) enumerate types of misconduct that constitute "cause," these examples are not exhaustive. See, e.g., In re Ashley River Consulting, LLC, 2015 Bankr. LEXIS 1008, at *28-29 (Bankr. S.D.N.Y. 2015) ("The list of wrongs constituting 'cause' that warrants the appointment of a trustee is not exhaustive."); Pioneer Liquidating Corp. v. United States Trustee (In re Consolidated Pioneer Mortg. Entities), 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) ("The enumerated causes are not exhaustive, and 'the court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'").

Keevmo argues that "cause" exists for dismissal of this case or appointment of a trustee because the Debtors' alleged delays prevent Keevmo from foreclosing on certain real property to collect on its debt and the lack of meaningful progress toward proposing a feasible plan of reorganization since the filing of this second Chapter 11 case are unreasonable and prejudicial to Keevmo. Doc. #186. However, the court is not inclined to find that Keevmo has met its burden to show that cause exists for dismissal of this Chapter 11 case pursuant to 11 U.S.C. § 1112(b) or the appointment of a Chapter 11 trustee pursuant to 11 U.S.C. § 1104(a) at this time.

Keevmo has not sufficiently alleged how the Debtors' Chapter 11 case is prejudicial to Keevmo when its claim is significantly oversecured by the Property to warrant dismissal, much less the extraordinary remedy of appointing a trustee. According to Keevmo's proof of claim filed in this case, the Debtors owe Keevmo the sum of $5,939,046.88 secured against the Property that Keevmo values at $14,800,000.00. Claim No. 8-1; Doc. #207, Ex. A. The Debtors valued the Property at $15,352,240.00 on Schedules A/B. Doc. #26; Doc. #183, Ex. A. The Debtors' Schedule D discloses a $393,604.87 tax lien against the Property. Doc. #26, Schedule D, at Line 2.3. Using either Keevmo's or the Debtors' valuation leaves Keevmo significantly oversecured by approximately $8,467,348.25 to $9,019,588.25. Keevmo's major contention is that it is being denied the right to foreclose upon the Property immediately, after having tried to exercise its right for over a year. The Debtors, Platinum Farm Services, and Nino Global argue that to dismiss this case (or to grant Keevmo relief from the automatic stay in a companion motion, NB-3 at Doc. #172) to allow Keevmo to foreclose on the Property would result in a "windfall" to Keevmo and prejudice the Debtors and unsecured creditors in this case. Doc. #206, at ¶ 4e; Doc. #216, at ¶ 7. Keevmo responds that it is entitled to receive the full amount of its secured claim and any excess funds from the sale of the Property would be available to other creditors. Doc. #223. Keevmo further contends that a foreclosure sale of the Property would provide a "speedier payment" to creditors. Id. While no party disputes Keevmo is entitled to payment of its secured claim, the court is concerned that Keevmo enjoys a significant equity cushion, and to allow Keevmo to proceed with its foreclosure rights against the Property outside of bankruptcy almost certainly ensures Keevmo's claim is

satisfied but offers no assurance that the foreclosure sale will result in the highest and best offer for the Property so that excess proceeds are maximized for the benefit of the unsecured creditors and the Debtors. Meanwhile, the Debtors state they are in the process of formulating a reorganization plan, which includes the sale of 1,264.25 acres of farmland including the 949.63 acres securing Keevmo's claim, pursuant to which all creditor claims will be paid in full. Doc. #208, Garcia Decl. at ¶ 6a.

The court has set a deadline of September 15, 2020 for the Debtors to file and serve a Disclosure Statement and Plan of Reorganization. See Doc. #171, Order Authorizing Debtors to Borrow Money Secured by Liens Against Personal Property. Platinum Farm Services and Nino Global have asked the court to continue the hearing on this motion to the court's next available hearing date after the deadline set for the Debtors to file the Disclosure Statement and Plan of Reorganization. Doc. #216, at ¶ 13. Keevmo has also asked the court, in the absence of granting this motion, to continue the hearing on this motion until after the September 15, 2020 deadline. Accordingly, the court is inclined to continue the hearing on this motion to September 16, 2020 at 9:30 a.m.

4. 17-13112-A-11 **IN RE: PIONEER NURSERY, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
8-11-2017 [1]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

5. 17-13112-A-11 **IN RE: PIONEER NURSERY, LLC**
FW-58

CHAPTER 11 DISCLOSURE STATEMENT FILED BY DEBTOR PIONEER NURSERY, LLC
6-30-2020 [925]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

6. 19-14052-A-11 **IN RE: BALDOMERO CISNEROS**
LKW-2

CONTINUED MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR ADEQUATE PROTECTION
10-22-2019 [23]

BALDOMERO CISNEROS/MV
LEONARD WELSH/ATTY. FOR DBT.
DISMISSED 7/24/20

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was already entered on July 24, 2020. Doc. #245. The motion will be DENIED AS MOOT.

7. 20-10486-A-11 **IN RE: ELIZABETH/LANRE JOHNSON**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
2-10-2020 [1]

ELIZABETH JOHNSON/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to September 2, 2020 at 9:30 a.m.

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

Debtors Elizabeth Johnson and Lanre Johnson have filed a motion to convert their chapter 11 case to chapter 13 that is set for hearing on September 2, 2020 at 9:30 a.m. Doc. ##63, 64. The court is inclined to continue the chapter 11 status conference to September 2, 2020 at 9:30 a.m., the date and time of the hearing on the motion to convert.

8. 20-10486-A-11 **IN RE: ELIZABETH/LANRE JOHNSON**
UST-1

MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7 , MOTION TO DISMISS CASE
7-9-2020 [47]

TRACY DAVIS/MV
JASON BLUMBERG/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to September 2, 2020 at 9:30 a.m.

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

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). While no opposition to the motion was filed timely, this motion will proceed as scheduled.

The United States Trustee, Tracy Hope Davis (the "UST"), moves the court pursuant to 11 U.S.C. § 1112(b) to dismiss or convert to chapter 7 the chapter 11 bankruptcy case of Elizabeth Johnson and Lanre Johnson (collectively, the "Debtors") because (1) the Debtors have not filed required monthly operating report for May 2020 and the monthly operating reports filed for February, March and April 2020 are incomplete, (2) the Debtors failed to serve a motion to approve their disclosure statement as required by the court, (3) the Debtors have not provided a copy of Mr. Johnson's social security card to the UST, and (4) the Debtors have failed to appear at various 341 meetings of creditors. Doc. #47.

At the time the UST's motion was filed, the Debtors were representing themselves in this chapter 11 case. On August 13, 2020, attorney Chinonye Ugorji substituted in as counsel for the Debtors in this chapter 11 case and the Debtors filed a motion to convert their chapter 11 case to chapter 13. Doc. ##61, 62, 63. That motion is set for hearing on September 2, 2020 at 9:30 a.m. Doc. #64.

Due to the substitution of counsel and the filing of the Debtors' motion to convert this chapter 11 case to chapter 13, the court is inclined to continue the UST's motion to September 2, 2020 at 9:30 a.m., the date and time of the hearing on the Debtors' motion to convert.

3:00 PM

1. 18-10105-A-13 **IN RE: SCOTT MARSH**
JRL-2

MOTION TO MODIFY PLAN
7-14-2020 [76]

SCOTT MARSH/MV
JERRY LOWE/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 1, 2020 at 9:30 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The Chapter 13 trustee (the "Trustee") has filed an objection to the debtor's motion to confirm a modified Chapter 13 plan. Doc. #84. Unless this case is voluntarily converted to Chapter 7, dismissed, or the Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response not later than September 10, 2020. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. The Trustee shall file and serve a reply, if any, by September 17, 2020.

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than September 17, 2020. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in the Trustee's opposition without a further hearing.

2. 18-11307-A-13 **IN RE: GUADALUPE ACOSTA**
SL-1

MOTION TO MODIFY PLAN
7-2-2020 [26]

GUADALUPE ACOSTA/MV
SCOTT LYONS/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be

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

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

3. 20-11908-A-13 **IN RE: BRIAN/STEPHANIE RICH**
PBB-1

OBJECTION TO CLAIM OF DEPARTMENT OF THE TREASURY-INTERNAL REVENUE SERVICE, CLAIM NUMBER 3
6-26-2020 [22]

BRIAN RICH/MV
PETER BUNTING/ATTY. FOR DBT.
WTHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on July 29, 2020. Doc. #33.

4. 20-10009-A-13 **IN RE: SHAWNA FERRUA**
TCS-1

MOTION TO MODIFY PLAN
7-2-2020 [26]

SHAWNA FERRUA/MV
TIMOTHY SPRINGER/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

5. 20-10318-A-13 **IN RE: JOSE GONZALEZ AND ITALIA DE LOZA**
MHM-3

CONTINUED MOTION TO DISMISS CASE
6-23-2020 [62]

MICHAEL MEYER/MV
MARK HANNON/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to October 1, 2020 at 9:30 a.m.

ORDER: The court will issue an order.

The Chapter 13 trustee (the "Trustee") moves to dismiss this case under 11 U.S.C. § 1307(c) based on the debtors' unreasonable delay and failure to confirm a Chapter 13 plan. Doc. #62.

The debtors filed a response on July 9, 2020, opposing dismissal on the grounds that they would be filing an amended plan to be set for hearing on August 19, 2020. Doc. #67. On July 15, 2020, the debtors filed an amended plan (MJH-1, Doc. #71). The Trustee objected to the amended plan (Doc. #76), and the debtors have filed a statement of non-opposition to the Trustee's objection. The court sustains the Trustee's objection and deny confirmation of the first amended plan filed on July 15, 2020 (MJH-1, Doc. #71), at Item #6 below.

The debtors' state they will be filing a motion to confirm a modified plan to be set for hearing on October 1, 2020. The court is inclined to continue the hearing on the Trustee's motion to dismiss to October 1, 2020 at 9:30 a.m. to be heard in conjunction with the debtor's motion to confirm a modified plan.

However, by no later than August 27, 2020, the debtors must file a modified plan filed and have a motion to confirm that plan set for hearing or the Trustee may file a declaration seeking an order dismissing the case with no further hearing.

6. 20-10318-A-13 **IN RE: JOSE GONZALEZ AND ITALIA DE LOZA**
MJH-1

MOTION TO CONFIRM PLAN
7-15-2020 [69]

JOSE GONZALEZ/MV
MARK HANNON/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1).

The motion is DENIED. The Chapter 13 trustee's objection is SUSTAINED. The debtors have filed a statement of non-opposition to the trustee's objection to confirmation of the debtors' first amended plan filed on July 15, 2020 (MJH-1, Doc. #71). The debtors state they will be filing a motion to confirm a modified plan to be set for hearing on October 1, 2020.

7. 20-12119-A-13 **IN RE: JAVIER GARZA**
DWE-1

OBJECTION TO CONFIRMATION OF PLAN BY FREEDOM MORTGAGE CORPORATION
7-31-2020 [33]

FREEDOM MORTGAGE CORPORATION/MV
DANE EXNOWSKI/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

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

Freedom Mortgage Corporation ("Secured Creditor") objects to confirmation of the debtors' Chapter 13 plan pursuant to 11 U.S.C. § 1322(b)(5) on the basis that the plan fails to provide for the curing of the default on Secured Creditor's claim. Doc. #33. Secured Creditor's claim is secured by the debtor's principal residence located at 1531 Salisbury Street, Porterville, CA 93257

(the "Property"). Id. On July 30, 2020, Secured Creditor filed a proof of claim in the total amount of $175,820.94, including pre-petition arrears of $6,070.66. See Claim No. 6-1. The debtor's plan has failed to provide for Secured Creditor's claim. See Doc. #11. Federal Rule of Bankruptcy Procedure 3001(f) provides that the execution and filing of a proof of claim is *prima facie* evidence of the validity and amount of the claim. The debtor has not filed an objection, if any, to Secured Creditor's proof of claim.

The debtors' plan cannot be confirmed because it fails to provide for payment in full of the pre-petition arrears owed to Secured Creditor.

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

8. 20-10627-A-13 **IN RE: JOHN/DEBRA TAWNEY**
JHK-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-21-2020 [40]

CAB WEST, LLC/MV
SUSAN SILVEIRA/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

CAB WEST, LLC ("Creditor") moves this court for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) with respect to the debtors' leased vehicle, a 2017 Ford Explorer (the "Vehicle"). Doc. #40.

Bankruptcy Code section 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). As the party seeking relief, Creditor must first establish that cause exists for relief under § 362(d)(1). United States of America v. Gould (In re Gould), 401 B.R. 415, 426 (9th Cir. BAP 2009) (citing

Duvar Apt., Inc. v. FDIC (In re Duvar Apt., Inc.), 206 B.R. 196, 200 (9th Cir. BAP 1996)).

After review of the included evidence, the court finds that "cause" exists to lift the stay. The debtors filed this Chapter 13 case on February 24, 2020. Doc. #1. The debtors entered into a lease agreement for the lease of the Vehicle on July 5, 2017. Doc. #42, Larson Decl. at ¶¶ 3-4. The lease was assigned to Creditor in the normal course of business. Id. at ¶ 3. All payments on the lease were made, and the lease matured on July 5, 2020. Id. at ¶¶ 5-6. The debtors returned the Vehicle to Creditor on June 2, 2020, and Creditor is currently in possession of the vehicle pending relief from the stay. Id. at ¶ 8. The debtors have filed no opposition to Creditor seeking relief from the automatic stay.

The court finds that the debtors do not have any equity in the Vehicle as it was the subject of a lease, and the Vehicle is not necessary to the reorganization because the lease has matured and the debtors have returned the Vehicle to Creditor.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. § 362(d(1) terminating the automatic stay to permit Creditor to dispose of its collateral pursuant to applicable law and enforce its remedies to repossess and sell the Vehicle. The 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be ordered waived because the lease has matured and the debtors have returned the Vehicle to Creditor. No other relief is awarded.

9. 20-11946-A-13 **IN RE: ENRIQUE CASTELLANOS**
MMJ-1

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE
6-29-2020 [13]

CAPITAL ONE AUTO FINANCE/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
MARJORIE JOHNSON/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

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

Capital One Auto Finance, a division of Capital One, N.A. ("Secured Creditor") objects to confirmation of the debtor's Chapter 13 plan pursuant to 11 U.S.C. § 1322(a)(5)(B) on the basis that the plan fails to pay the full replacement value of Secured Creditor's collateral as determined by 11 U.S.C. § 506(b), and provide for interest. Doc. #13. Secured Creditor's claim is secured by the

debtor's vehicle, a 2017 Dodge Ram 1500 Crew Cab Tradesman Pickup Truck (the "Vehicle"). See Doc. #15, Ex. A-B. Secured Creditor contends the replacement value is $21,318.00. Id. at Ex. C. On June 23, 2020, Secured Creditor filed an amended proof of claim in the total amount of $21,318.00, secured against the value of the Vehicle. See Claim No. 2-2.

Federal Rule of Bankruptcy Procedure 3001(f) provides that the execution and filing of a proof of claim is *prima facie* evidence of the validity and amount of the claim. The debtor has not filed an objection, if any, to Secured Creditor's proof of claim. Section 3.02 of the plan provides that it is the proof of claim, not the plan itself, that determines the amount that will be repaid under the plan. See Doc. #4. The debtor's plan cannot be confirmed because it fails to provide for Secured Creditor's claim. See id.

Accordingly, unless opposition is presented at hearing, the objection will be SUSTAINED.

10. 20-10548-A-13 **IN RE: JEFFREY/EVANGELINE RIGGS**
SL-1

MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
7-31-2020 [23]

JEFFREY RIGGS/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

This motion and notice of the hearing on the motion were filed and served on July 31, 2020, which was 19 days before the scheduled hearing on the motion. Doc. #27. LBR 9014-1(d)(3)(B) requires the notice of hearing to advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition. LBR 9014-1(f)(2)(C) states that motions filed on less than 28 days' notice, but at least 14 days' notice, require the movant to notify the respondent or respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.

Movants' notice provides, "Any opposition shall be filed by the responding parties not less than fourteen (14) days preceding the noticed date of hearing. Without good cause, no party will be heard in opposition to the Motion at oral argument if written opposition to the Motion has not been timely filed. The failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the Motion." Doc. #24. This is incorrect.

11. 20-10654-A-13 **IN RE: PETE AVILA AND PRISCILLA VELOZ**
JDW-1

MOTION TO CONFIRM PLAN
6-29-2020 [36]

PETE AVILA/MV
JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The debtors filed a modified plan on July 27, 2020, for which a motion to confirm is set for hearing on September 17, 2020 at 9:30 a.m. See JDW-3, Doc. 47.

12. 19-11356-A-13 **IN RE: ROBERTO GUZMAN AND VERONICA AVALOS DE GUZMAN**
SL-1

MOTION TO MODIFY PLAN
7-15-2020 [30]

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

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

13. 20-10569-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
DRJ-6

MOTION TO VALUE COLLATERAL OF FARM CREDIT WEST, PCA
7-14-2020 [223]

BHAJAN SINGH/MV
DAVID JENKINS/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on July 26, 2020. Doc. #259.

14. 20-12069-A-13 **IN RE: SCOTT/SARINA DUTEY**
DWE-1

OBJECTION TO CONFIRMATION OF PLAN BY FREEDOM MORTGAGE CORPORATION
8-3-2020 [45]

FREEDOM MORTGAGE CORPORATION/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The debtors filed a modified plan on August 6, 2020, for which a motion to confirm is set for hearing on September 17, 2020 at 9:30 a.m. See TCS-4, Doc. #49.

15. 20-12069-A-13 **IN RE: SCOTT/SARINA DUTEY**
TCS-2

MOTION TO CONFIRM PLAN
7-9-2020 [26]

SCOTT DUTEY/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion is DENIED AS MOOT. The debtors filed a modified plan on August 6, 2020, for which a motion to confirm is set for hearing on September 17, 2020 at 9:30 a.m. See TCS-4, Doc. #49.

16. 18-11292-A-13 **IN RE: ANGEL PEREZ**
TCS-6

MOTION TO MODIFY PLAN
7-15-2020 [117]

ANGEL PEREZ/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped as moot.

ORDER: The court will issue an order.

The debtor has filed and set for hearing a Motion for Confirmation of Fifth Modified Plan (TCS-7) on July 31, 2020. Doc. #132. Therefore, this motion will be DROPPED AS MOOT.

17. 17-10993-A-13 **IN RE: MARTIN/ERMILA AGUILAR**

NOTICE OF DEFAULT AND MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS
6-5-2020 [72]

D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Michael Meyer, the Chapter 13 trustee (the "Trustee") brings this notice of default and motion pursuant to Local Rule of Practice ("LBR") 3015-1(g) to dismiss the case for failure by Martin Fernandez Aguilar and Ermila Ruiz Aguilar (the "Debtors") to make payments pursuant to a confirmed plan. Doc. ##72, 74, 80, 81. For the reasons that follow, the Trustee's request is DENIED.

LBR 3015-1(g) sets out the procedures that may lead to dismissal of a Chapter 13 debtor's case if the debtor fails to make a payment pursuant to a confirmed plan. If the debtor fails to address the Trustee's notice of the default in the manner and within the time prescribed by LBR 3015-1(g)(2)-(3), LBR 3015-1(g)(4) requires that that "the case ***shall*** be dismissed without a hearing on the trustee's application." (Emphasis added.)

In this case, the Debtors' plan confirmed on October 5, 2017 provided for monthly payments of $325.00 for 6 months, then monthly payments of $665.05 for 54 months. Doc. #72. The Debtors filed this case on March 21, 2017 and made timely payments through March 25, 2020. Id. The Debtors defaulted on monthly payments for April 2020 and May 2020, and by June 5, 2020 – when the Trustee filed his notice of default – the Debtors were delinquent for $1,330.10. Id.

Having reviewed the included evidence, the court finds the Debtors' default was due to excusable neglect. The Debtors initially filed a 36-month plan (Doc. #10), which was modified to a 60-month plan and confirmed (DMG-2, Doc. ##56, 67). However, the Debtors had set up payments in the TFS system for a 36-month term prior to modifying the plan to 60 months, and never updated the TPS payments for 60 months. Doc. #76, Gardner Decl. at ¶ 2; Doc. #83, Status Report at ¶ 3. There appears to have been some confusion on the part of the Debtors whether they were under a 36-month or 60-month plan; however it is clear from the record that the Debtors had made every monthly payment diligently for 36 months. Doc. #81, Exs. A-B; Doc. #83, Status Report at ¶¶ 3-8. When 36 months elapsed in or after March 2020, TFS stopped accepting payments from the Debtors, and the Debtors were unaware that they had control over the TFS dashboard and communicated to the wrong email address with TFS about reinstating plan payments. Doc. #76, Gardner Decl. at ¶ 2; Doc. #83, Status Report at ¶¶ 9, 11. On July 21, 2020, the Trustee's office processed a $1,995.00 payment from TFS on behalf of the Debtors, which put the Debtors current through June 2020. Doc. #79, Tr.'s Update at 2:22-23.

While the Debtors failed to address the address the Trustee's notice of the default in the manner and within the time prescribed by LBR 3015-1(g)(2)-(3), the Trustee and the Debtors are in agreement that this case should not be dismissed. Based on the parties' position and the findings above, the court will not sign the order of dismissal.

1. 13-17754-A-13 **IN RE: EDUARDO SOLIS AND ROSA CASTILLO**
19-1140

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-27-2019 [1]

SOLIS ET AL V. MORTGAGE
ELECTRONIC REGISTRATION
GABRIEL WADDELL/ATTY. FOR PL.
DISMISSED 8/5/20

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on August 5, 2020. Doc. #92.

2. 13-17754-A-13 **IN RE: EDUARDO SOLIS AND ROSA CASTILLO**
19-1140 KB-1

CONTINUED MOTION TO SET ASIDE
5-6-2020 [47]

SOLIS ET AL V. MORTGAGE
ELECTRONIC REGISTRATION
KATALINA BAUMANN/ATTY. FOR MV.
DISMISSED 8/5/20

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on August 5, 2020. Doc. #92.

3. 13-17754-A-13 **IN RE: EDUARDO SOLIS AND ROSA CASTILLO**
19-1140 LIW-1

CONTINUED MOTION TO SET ASIDE
5-5-2020 [35]

SOLIS ET AL V. MORTGAGE
ELECTRONIC REGISTRATION
LUKASZ WOZNIAK/ATTY. FOR MV.
DISMISSED 8/5/20

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on August 5, 2020. Doc. #92.

4. 13-17754-A-13 **IN RE: EDUARDO SOLIS AND ROSA CASTILLO**
19-1140 LIW-2

CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
5-5-2020 [33]

SOLIS ET AL V. MORTGAGE
ELECTRONIC REGISTRATION
LUKASZ WOZNIAK/ATTY. FOR MV.
DISMISSED 8/5/20

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This adversary proceeding was dismissed on August 5, 2020. Doc. #92.