

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, September 10, 2020
Place: Department A - 510 19th Street
Bakersfield, California

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

Pursuant to District Court General Order 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.

1. [15-12017](#)-A-13 **IN RE: MICHAEL/TRISA GONZOLAS**
[MHM-3](#)

MOTION TO DISMISS CASE
8-7-2020 [[101](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/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WITHDRAWN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 August 10, 2020. Doc. #105.

2. [15-12017](#)-A-13 **IN RE: MICHAEL/TRISA GONZOLAS**
[MHM-4](#)

MOTION TO DISMISS CASE
8-11-2020 [[107](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/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 August 25, 2020. Doc. #113.

3. [18-12923](#)-A-13 **IN RE: JESUS/ROCHELLE PORTILLO**
[PK-3](#)

MOTION TO MODIFY PLAN
8-3-2020 [[54](#)]

JESUS PORTILLO/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

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 have filed a modified plan.
Doc. #64.

4. [20-11149](#)-A-13 **IN RE: RAYSHAWN LYONS**
[RSW-3](#)

CONTINUED MOTION TO CONFIRM PLAN
6-25-2020 [[39](#)]

RAYSHAWN LYONS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

5. [19-10853](#)-A-13 **IN RE: BEATRIZ AGUILAR**
[RSW-2](#)

MOTION TO VACATE DISMISSAL OF CASE
8-18-2020 [[38](#)]

BEATRIZ AGUILAR/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
DISMISSED 08/17/20

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted, if the Trustee confirms the Debtor's payments.

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 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.

Beatriz Aguilar (the "Debtor") moves the court pursuant to Federal Rule of Civil Procedure ("FRCP") 60(b), made applicable to bankruptcy proceedings by Federal Rule of Bankruptcy Procedure ("FRBP") 9024, to vacate the dismissal and reinstate her Chapter 13 case. Doc. #38.

The Debtor filed this Chapter 13 case on March 9, 2019. Doc. #1. Pursuant to a modified plan confirmed on February 3, 2020, the Debtor was required to make monthly payments of \$519.00. Doc. ##24, 31. On July 2, 2020, the Chapter 13 trustee (the "Trustee") filed a Notice of Default and Intent to Dismiss Case (the "Notice") pursuant to the procedures set forth in LBR 3015-1(g) due to the Debtor's failure to make payments totaling \$1,022.00. Doc. #32. On August 14, 2020, the Trustee filed a declaration stating that the Debtor failed to address the Notice in the manner and within the time prescribed by LBR 3015-1(g)(2)-(3). The court entered an order dismissing the Debtor's case on August 17, 2020. Doc. #36. The Debtor filed this motion the next day, on August 18, 2020. Doc. #38.

Pursuant to FRCP 60(b), made applicable by FRBP 9024, the court may relieve a party from a final judgment or order upon a showing of (1) mistake, inadvertence, surprise, or excusable neglect, (2) newly discovered evidence, (3) fraud, or (4) any other reason justifying relief from operation of the judgment or order. A motion seeking relief under FRCP 60(b) must be made within a reasonable time.

Having reviewed the included evidence, the court is inclined to find the Debtor's default was due to excusable neglect or mistake. The Notice required the Debtor to pay the delinquent amount of \$1,022.00 to be received by the Trustee on or before July 31, 2020. Doc. #32. If the delinquency was not cured by then, the Debtor had to make a payment of \$1,541.00 to be received by the Trustee on or before August 14, 2020. Id. The Debtor testified that she does not read or speak English and believed she complied with the Notice requirements. Doc. #40, Aguilar Decl. ¶ 1. The Debtor states she paid \$1,300.00 by MoneyGram on August 14, 2020. Id. Debtor's counsel represents that MoneyGram payments are instantaneous, but that the Trustee's office does not receive notice of the payments until the next day. Doc. #38.

Although the \$1,300.00 payment that the Debtor testifies she made is less than the amount that had to be received by August 14, 2020, the Debtor's counsel claims the Debtor made a prior \$600.00 payment that the Trustee received on July 22, 2020. Id. The Debtor's declaration does not mention the \$600.00 payment, and there is no evidence of the \$600.00 payment before the court. At the hearing, the court intends to confirm with the Trustee that his office received the \$600.00 payment from the Debtor on or before July 22, 2020, or the Debtor will need to provide supporting evidence of the \$600.00 payment. If the Debtor actually made the payments described in the motion, it would appear to the court that the Debtor complied with the Notice even though the Trustee would not have had knowledge of the payment until the following day, after the Trustee filed the declaration in support of dismissal.

The court also finds the Debtor sought relief under FRCP 60(b) within a reasonable time. LBR 3015-1(g)(4) requires that that "the case shall be dismissed without a hearing on the trustee's application." (Emphasis added.) The Debtor moved expeditiously to vacate the dismissal order by filing this motion just one day after the entry of the order. See Doc. ##37, 38.

Accordingly, subject to supplementing the record above, the court is inclined to GRANT the Debtor's motion to vacate the order dismissing this Chapter 13 case.

6. [20-11354](#)-A-13 **IN RE: SERGIO ANDRADE**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
6-22-2020 [[37](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/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 August 19, 2020. Doc. #88.

7. [20-11354](#)-A-13 **IN RE: SERGIO ANDRADE**
[RSW-2](#)

CONTINUED MOTION TO CONFIRM PLAN
6-26-2020 [[41](#)]

SERGIO ANDRADE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

8. [20-11354](#)-A-13 **IN RE: SERGIO ANDRADE**
[RSW-3](#)

MOTION TO AVOID LIEN OF FRANCISCO JAVIER AVALOS
7-17-2020 [[51](#)]

SERGIO ANDRADE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: If the parties have not resolved this matter by the time
of the hearing, this matter will proceed as a scheduling
conference.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local
Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

Sergio Andrade (the "Debtor"), the debtor in this Chapter 13 case, moves
pursuant to 11 U.S.C. § 522(f) and Federal Rule of Bankruptcy Procedure 4003(d)
to avoid the judicial lien of Francisco Javier Avalos ("Avalos") on the
Debtor's real property commonly known as 10901 Dee Dee Avenue, Bakersfield,
California 93312 (the "Dee Dee Property"). Doc. #51. Avalos filed a timely
opposition, disputing the Debtor's valuation of the Dee Dee Property. Doc. #92.

Bankruptcy Code section 522(f)(1)(A) provides that "the debtor may avoid the
fixing of a lien on an interest of the debtor in property to the extent that
such lien impairs an exemption to which the debtor would have been entitled
. . . if such lien is . . . a judicial lien." To avoid a lien under 11 U.S.C.
§ 522(f)(1), the movant must establish four elements: (1) there must be an
exemption to which the debtor would be entitled under § 522(b); (2) the
property must be listed on the debtor's schedules as exempt; (3) the lien must
impair the exemption; and (4) the lien must be either a judicial lien or a non-
possessory, non-purchase money security interest in personal property listed in
section 522(f)(1)(B). Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386,
390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr.
E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994)).

The Debtor scheduled the value of his interest in the Dee Dee Property as \$375,000.00. Doc. #54, Ex. A. The Property is encumbered by two unavoidable consensual liens, including a first deed of trust in favor of Select Portfolio Servicing, Inc. and a second deed of trust in favor of Real Time Resolutions. Id., Ex. C. According to the proofs of claim filed in this case, Select Portfolio Servicing, Inc. asserts a secured claim of \$278,683.53 (Claim No. 1-1) and Real Time Resolutions asserts a secured claim of \$134,022.77 (Claim No. 7-1). The Debtor has claimed an exemption in the Dee Dee Property under California Code of Civil Procedure § 703.140(b)(5) in the amount of \$1.00. Id., Ex. B.

Avalos is a judgment creditor of the Debtor, having obtained a judgment of \$185,407.43 against the Debtor. Doc. #54, Ex. D. Judgment was entered on June 11, 2018. Id. An abstract of judgment was issued on August 8, 2018, and recorded in Kern County on August 9, 2018 as Document #218103566 (the "Abstract"). Id. Avalos also claims to have obtained a mechanic's lien against the Dee Dee Property on or about August 10, 2018. Doc. #92. On May 27, 2020, Avalos filed a proof of claim reflecting the judgment and post-judgment interest in the amount of \$220,648.33. See Claim No. 4-1. The court notes that Avalos' proof of claim references Exhibits "A" and "B" that purportedly show evidence of perfection of his judgment and mechanic's liens, but no such exhibits are attached to the proof of claim.

In California, a judgment lien on real property is created by recording an abstract of a money judgment with the county recorder. Cal. Civ. Proc. Code § 697.310(a). California Code of Civil Procedure section 697.340 states in relevant part: "Except as provided in Section 704.950: (a) A judgment lien on real property attaches to all interests in real property in the county where the lien is created (whether present or future, vested or contingent, legal or equitable) that are subject to enforcement of the money judgment against the judgment debtor . . . at the time the lien was created[.]" According to Exhibit D filed in support of the Debtor's motion, Avalos recorded the Abstract in Kern County so his judicial lien attached to the Dee Dee Property and another one of the Debtor's real property located at 3401 Beyers Street, Bakersfield, California 93312, which is the subject of a separate motion by the Debtor to avoid Avalos' judicial lien. See Doc. #56.

Assuming the Debtor's valuation, there is no equity in the Dee Dee Property to support Avalos' judicial lien:

Value of the Debtor's interest in the Dee Dee Property		\$375,000.00
1st Deed of Trust (Select Portfolio Servicing)	-	\$278,683.53
2nd Deed of Trust (Real Time Resolutions)	-	\$134,022.77
Amount of the Debtor's claim of exemption in the Dee Dee Property	-	\$1.00
Amount of equity remaining in the Dee Dee Property	=	(\$37,707.30)

However, Avalos disputes the Debtor's valuation of the Dee Dee Property. Doc. #92. Avalos contends a list price for the Dee Dee Property is no less than \$450,000.00, based on a Broker Price Opinion from a California Licensed Realtor who reviewed comparable sales in the neighborhood. Id. The court notes while Avalos' counsel has submitted a declaration stating that Avalos believes the market value of the Dee Dee Property is no less than \$450,000.00, Avalos has not submitted the declaration of his realtor or evidence of the Broker Price Opinion in support of this valuation. See Doc. #93, Gorski Decl. at ¶ 6. It also appears from Avalos' opposition, that Avalos is seeking an appraisal of the Dee Dee Property. Doc. #92.

Avalos also argues the Debtor's opinion about the value of the Dee Dee Property is not rationally based on any relevant perception and fails to meet the requirements of Federal Rule of Evidence ("FRE") 701. Doc. #92. Moreover, Avalos contends opinions about the value of real property require specialized knowledge that fall within the scope of FRE 702, and the Debtor is not qualified as an expert. Id. However, that is not the case. The Debtor may competently testify as a lay witness to the value of his property, but is limited to providing an opinion that is rationally based on his perception, helpful to determining a fact in issue, and not based on scientific, technical, or other specialized knowledge as described in FRE 702. Fed. R. Evid. 701. While an owner is considered competent to testify about the value of his own property, the weight of such testimony is for the finder of fact to determine. See, e.g., In re Darosa, 422 B.R. 173, 175 (Bankr. D. Mass. 2010) (citing cases).

The court recognizes that there is a factual dispute regarding the valuation of the Dee Dee Property. Assuming Avalos' valuation, there appears to be some equity in the Dee Dee Property to support Avalos' judicial lien:

Value of the Debtor's interest in the Dee Dee Property		\$450,000.00
1st Deed of Trust (Select Portfolio Servicing)	-	\$278,683.53
2nd Deed of Trust (Real Time Resolutions)	-	\$134,022.77
Amount of the Debtor's claim of exemption in the Dee Dee Property	-	\$1.00
Amount of equity remaining in the Dee Dee Property	=	\$37,292.70

Avalos further argues that the court must determine the "present" market value of the collateral securing the claim. This inquiry is incorrect. Bankruptcy Code section 522(a) provides that the term "value" in section 522 means the fair market value as of the date of filing of the petition. Although section 522(f)(1)(A) does not specifically refer to "value," it is well settled that the petition date is the operative date to value a debtor's residence and homestead exemption. See BFP v. Resolution Trust Corporation, 511 U.S. 531, 537 (1994) (for purposes of section 522, "value" means fair market value on the petition date); see also In re Chiu, 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001), aff'd, 304 F.3d 905 (9th Cir. 2002) ("[E]xemptions . . . are determined on the date of bankruptcy and without reference to subsequent changes in the character or value of the exempt property[.]"). Thus, for purposes of lien avoidance under section 522(f), the relevant valuation date is the date of the filing of the petition.

Avalos' opposition states that "[t]he parties are continuing discussions as to a resolution of this matter." Doc. #92. If this matter is not resolved by the time of the hearing, this matter will be deemed a contested matter and the hearing will proceed as a scheduling conference. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

MOTION TO AVOID LIEN OF FRANCISCO JAVIER AVALOS
7-17-2020 [[56](#)]

SERGIO ANDRADE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: If the parties have not resolved this matter by the time of the hearing, this matter will proceed as a scheduling conference.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

Sergio Andrade (the "Debtor"), the debtor in this Chapter 13 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rule of Bankruptcy Procedure 4003(d) to partially avoid the judicial lien of Francisco Javier Avalos ("Avalos") on the Debtor's real property commonly known as 3401 Beyers Street, Bakersfield, California 93312 (the "Beyers Property"). Doc. #56. Avalos filed a timely opposition, disputing the Debtor's valuation of the Beyers Property. Doc. #95.

Bankruptcy Code section 522(f)(1)(A) provides that "the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled . . . if such lien is . . . a judicial lien." To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in section 522(f)(1)(B). Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994)).

The Debtor scheduled the value of his interest in the Beyers Property as \$180,000.00. Doc. #59, Ex. A. The Property is encumbered by an unavoidable consensual lien pursuant to a deed of trust in favor of Select Portfolio Servicing, Inc. Id., Ex. C. According to the proof of claim filed in this case, Select Portfolio Servicing, Inc. asserts a secured claim of \$109,024.33 (Claim No. 8-1). The Debtor has claimed an exemption in the Beyers Property under California Code of Civil Procedure § 703.140(b)(5) in the amount of \$20,946.69. Id., Ex. B.

Avalos is a judgment creditor of the Debtor, having obtained a judgment of \$185,407.43 against the Debtor. Doc. #59, Ex. D. Judgment was entered on June 11, 2018. Id. An abstract of judgment was issued on August 8, 2018, and recorded in Kern County on August 9, 2018 as Document #218103566 (the "Abstract"). Id. On May 27, 2020, Avalos filed a proof of claim reflecting the judgment and post-judgment interest in the amount of \$220,648.33. See Claim No. 4-1. The court notes that Avalos' proof of claim references Exhibits "A"

and "B" that purportedly show evidence of perfection of his judgment and mechanic's liens, but no such exhibits are attached to the proof of claim.

In California, a judgment lien on real property is created by recording an abstract of a money judgment with the county recorder. Cal. Civ. Proc. Code § 697.310(a). California Code of Civil Procedure section 697.340 states in relevant part: "Except as provided in Section 704.950: (a) A judgment lien on real property attaches to all interests in real property in the county where the lien is created (whether present or future, vested or contingent, legal or equitable) that are subject to enforcement of the money judgment against the judgment debtor . . . at the time the lien was created[.]" According to Exhibit D filed in support of the Debtor's motion, Avalos recorded the Abstract in Kern County so his judicial lien attached to the Beyers Property and another one of the Debtor's real property located at 10901 Dee Dee Avenue, Bakersfield, California 93312, which is the subject of a separate motion by the Debtor to avoid Avalos' judicial lien. See Doc. #51.

Assuming the Debtor's valuation, there appears to be some equity in the Beyers Property to support Avalos' judicial lien:

Value of the Debtor's interest in the Beyers Property		\$180,000.00
1st Deed of Trust (Select Portfolio Servicing)	-	\$109,024.33
Amount of the Debtor's claim of exemption in the Beyers Property	-	\$20,946.69
Amount of equity remaining in the Beyers Property	=	\$50,028.98

However, Avalos disputes the Debtor's valuation of the Beyers Property. Doc. #95. Avalos contends a list price for the Beyers Property is no less than \$210,000.00, based on a Broker Price Opinion from a California Licensed Realtor who reviewed comparable sales in the neighborhood. Id. The court notes while Avalos' counsel has submitted a declaration stating that Avalos believes the market value of the Beyers Property is no less than \$210,000.00, Avalos has not submitted the declaration of his realtor or evidence of the Broker Price Opinion in support of this valuation. See Doc. #96, Gorski Decl. at ¶ 7. It also appears from Avalos' opposition, that Avalos is seeking an appraisal of the Beyers Property. Doc. #95.

Avalos also argues the Debtor's opinion about the value of the Beyers Property is not rationally based on any relevant perception and fails to meet the requirements of Federal Rule of Evidence ("FRE") 701. Id. Moreover, Avalos contends opinions about the value of real property require specialized knowledge that fall within the scope of FRE 702, and the Debtor is not qualified as an expert. Id. However, that is not the case. The Debtor may competently testify as a lay witness to the value of his property, but is limited to providing an opinion that is rationally based on his perception, helpful to determining a fact in issue, and not based on scientific, technical, or other specialized knowledge as described in FRE 702. Fed. R. Evid. 701. While an owner is considered competent to testify about the value of his own property, the weight of such testimony is for the finder of fact to determine. See, e.g., In re Darosa, 422 B.R. 173, 175 (Bankr. D. Mass. 2010) (citing cases).

The court recognizes that there is a factual dispute regarding the valuation of the Beyers Property. Assuming Avalos' valuation, there would be more equity in the Beyers Property to support Avalos' judicial lien:

Value of the Debtor's interest in the Beyers Property		\$210,000.00
1st Deed of Trust (Select Portfolio Servicing)	-	\$109,024.33
Amount of the Debtor's claim of exemption in the Beyers Property	-	\$20,946.69
Amount of equity remaining in the Beyers Property	=	\$80,028.98

Avalos further argues that the court must determine the "present" market value of the collateral securing the claim. This inquiry is incorrect. Bankruptcy Code section 522(a) provides that the term "value" in section 522 means the fair market value as of the date of filing of the petition. Although section 522(f)(1)(A) does not specifically refer to "value," it is well settled that the petition date is the operative date to value a debtor's residence and homestead exemption. See BFP v. Resolution Trust Corporation, 511 U.S. 531, 537 (1994) (for purposes of section 522, "value" means fair market value on the petition date); see also In re Chiu, 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001), aff'd, 304 F.3d 905 (9th Cir. 2002) ("[E]xemptions . . . are determined on the date of bankruptcy and without reference to subsequent changes in the character or value of the exempt property[.]"). Thus, for purposes of lien avoidance under section 522(f), the relevant valuation date is the date of the filing of the petition.

The court also notes that the Debtor's schedules disclose the Beyers Property "is in escrow to be sold. All net proceeds shall be paid to the judgment lien creditor." See Doc. ##20, 49. A review of the docket shows no motion to sell the Beyers Property has been filed, served, or set for hearing. The Debtor shall be prepared to address the status of this purported sale at the hearing, including details about who is the buyer and what is the agreed upon sale price.

Avalos' opposition states that "[t]he parties are continuing discussions as to a resolution of this matter." Doc. #95. If this matter is not resolved by the time of the hearing, this matter will be deemed a contested matter and the hearing will proceed as a scheduling conference. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

10. [20-12160](#)-A-13 **IN RE: ALLAN/MELODY GILBERT**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY HARLEY-DAVIDSON CREDIT
CORP.
7-27-2020 [\[18\]](#)

HARLEY-DAVIDSON CREDIT
CORP./MV
D. GARDNER/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on September 3, 2020.
Doc. #35.

11. [20-12160](#)-A-13 **IN RE: ALLAN/MELODY GILBERT**
[JHK-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY FORD MOTOR CREDIT
COMPANY LLC
7-29-2020 [[23](#)]

FORD MOTOR CREDIT COMPANY LLC/MV
D. GARDNER/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection on September 1, 2020.
Doc. #33.

12. [18-12678](#)-A-13 **IN RE: MICHAEL PFEIFFER**
[DMG-4](#)

MOTION TO MODIFY PLAN
7-30-2020 [[96](#)]

MICHAEL PFEIFFER/MV
D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

13. [20-10378](#)-A-13 **IN RE: MARY ROMERO**
[MHM-1](#)

MOTION TO DISMISS CASE
7-27-2020 [[27](#)]

MICHAEL MEYER/MV
PHILLIP GILLET/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to October 8, 2020 at 9:00 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

Michael H. Meyer (the "Trustee"), the Chapter 13 trustee in the bankruptcy case of Mary Victoria Romero (the "Debtor") moves the court to dismiss this case for cause under 11 U.S.C. § 1307(c) based on the Debtor's failure to confirm a Chapter 13 plan. Doc. #27. The Debtor timely opposed the Trustee's

motion, citing the fact that the Debtor filed a motion to value the collateral (a 2003 Dodge Ram) of Onemain Financial (PWG-2, Doc. #31), which came for hearing before the court on August 26, 2020, and this court granted in part. See Doc. #37.

Although the Debtor filed a Chapter 13 plan on January 31, 2020 (Doc. #3), a review of the court's docket in this case shows the Debtor has not yet filed a motion to confirm a Chapter 13 plan.

The court is inclined to continue the hearing on this matter to October 8, 2020 at 9:00 a.m. However, unless this case is voluntarily converted to Chapter 7, dismissed, or the Trustee's opposition to confirmation is withdrawn, the Debtor shall file, serve, and set for hearing a motion to confirm a Chapter 13 plan not later than September 24, 2020. If the Debtor elects to withdraw the plan filed on January 31, 2020 and file a modified plan, then a confirmable modified plan shall be filed, served, and set for hearing, not later than September 24, 2020. If the Debtor does not timely file a motion to confirm a plan or modified plan, the court will grant the Trustee's motion to dismiss upon the filing of a declaration by the Trustee that the Debtor failed to comply with the deadline set by the court.

14. [17-12991](#)-A-13 **IN RE: TOMMY/JANET SVARE**
[RSW-2](#)

MOTION TO MODIFY PLAN
8-3-2020 [[40](#)]

TOMMY SVARE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if the Debtors' motion to value collateral of Ditech Financial LLC/NewRez LLC d/b/a Shellpoint Mortgage Servicing is granted in the amount provided for in the plan.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order in conformance with the ruling below.

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

Tommy Ray Svare and Janet Catherine Svare (collectively, the "Debtors"), the debtors in this Chapter 13 case, move the court for an order confirming the second modified Chapter 13 plan filed on August 3, 2020 (RSW-2, Doc. #44). Doc. #40. The Chapter 13 trustee filed a timely opposition to confirmation on the grounds that (1) under 11 U.S.C. § 1325(a)(6), the Debtors will not be able to make all payments under the plan and comply with the plan; and (2) under LBR 3015-1(i), the Debtors failed to file, serve, and set for hearing a motion to value collateral. Doc. #51.

Pursuant to LBR 3015-1(i), "[i]f a proposed plan will reduce or eliminate a secured claim based on the value of its collateral[,] the hearing on the valuation motion "must be concluded before or in conjunction with the

confirmation of the plan." Because the motion to value the collateral of Ditech Financial LLC/NewRez LLC d/b/a Shellpoint Mortgage Servicing ("Creditor") is set for hearing on this calendar, the confirmation hearing also will be heard. If the valuation motion is granted in the value set forth in the Debtors' Chapter 13 plan, the confirmation will be granted.

The Debtors' second modified Chapter 13 plan proposes to modify the secured claim of Creditor under Section 3.08, reducing the secured claim to \$0 based on the value of the collateral, the Debtors' real property located at 14500-55 Las Palmas Drive, Bakersfield, California 93306 (the "Property"). Doc. #44. The Debtors filed amended Schedules A/B, D, I, and J on August 27, 2020. Doc. #56. The amended schedules disclose the Property is encumbered by a first deed of trust in favor of Ditech in the amount of \$162,448.44, and a second deed of trust in favor of Creditor in the amount of \$23,888.22. Id., Sched. D, lines 2.1-2.1. The Debtors value the Property as of the petition date as worth \$152,199.00. Doc. #1, Sched. A/B, line 1.1; see also Doc. #49, Svare Decl. The Debtors filed a motion to value Creditor's collateral on August 10, 2020 (RSW-3, Doc. #46), which the court is inclined to grant.

The Debtors' modified plan proposes to extend payments up to 84 months pursuant to the CARES Act, with monthly payments of \$500.00 beginning August 2020 until the plan is paid in full. Doc. #44. Amended Schedules I and J disclose the Debtors have monthly net income of \$501.00. Doc. #56, Sched. J, at line 22c. It appears to the court that the Debtors will be able to afford all payments under the plan and comply with the plan.

Accordingly, the motion will be GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

15. [17-12991](#)-A-13 **IN RE: TOMMY/JANET SVARE**
[RSW-3](#)

MOTION TO VALUE COLLATERAL OF DITECH FINANCIAL LLC/NEWREZ
LLC
8-10-2020 [\[46\]](#)

TOMMY SVARE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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). Therefore, the defaults of the above-mentioned parties in interest are entered. 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). However, constitutional due process requires that a movant make a *prima facie* showing that they are entitled to the relief sought.

Tommy Ray Svare and Janet Catherine Svare (collectively, the "Debtors"), the debtors in this Chapter 13 case, move the court pursuant to 11 U.S.C. § 1322(c)(2) for an order valuing the Debtors' real property located at 14500-55 Las Palmas Drive, Bakersfield, California 93306 (the "Property"), which is the subject of a deed of trust in favor of Ditech Financial LLC who transferred its claim to NewRez LLC d/b/a Shellpoint Mortgage Servicing ("Creditor"). Doc. #46; see also Claim No. 6 and Doc. #37. However, it appears the Debtors may be seeking a valuation of the Property to "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims," under 11 U.S.C. § 1322(b)(2).

The Debtors' second modified Chapter 13 plan proposes to modify the secured claim of Creditor under Section 3.08, reducing the secured claim to \$0 based on the value of the Property. Doc. #44. The Ninth Circuit has held that if such a lien is determined to be wholly unsecured, a debtor may avoid that lien in a Chapter 13 proceeding without violating the anti-modification provisions of section 1322(b)(2). Zimmer v. PSB Lending Corp. (In re Zimmer), 313 F.3d 1220, 1226-27 (9th Cir. 2002).

The determination of secured status is actually provided for under 11 U.S.C. § 506. Bankruptcy Code section 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." 11 U.S.C. § 506(a)(1). Reading sections 506(a) and 1322(b)(2) together, courts have determined that where there is no value in the debtor's residence to secure any portion of a junior lienholder's claim, then the creditor does not hold a secured claim under section 506(a), and thus the anti-modification provisions of section 1322(b)(2) do not apply. See Zimmer, 313 F.3d at 1224-25. Thus, a determination under section 506(a) that a creditor is wholly unsecured effectively excuses the debtor from treating the creditor's claim as secured under the Chapter 13 plan.

At the hearing, the Debtors should be prepared to clarify for the record under what statute(s) they are seeking relief.

The Debtors filed this Chapter 13 case on August 3, 2017. Doc. #1. On the petition date, the Debtors filed schedules that listed the Property's value as \$152,199.00. Doc. #1, Sched. A/B, line 1.1. The Debtors' original schedules disclosed the Property secured a claim by Ditech in the amount of \$175,530.23. Id., Sched. D, line 2.1. According to the Debtors' amended schedules filed on August 27, 2020, the Property is encumbered by a first deed of trust in favor of Ditech in the amount of \$162,448.44, and a second deed of trust in favor of Creditor in the amount of \$23,888.22. Doc. #56, Sched. D, lines 2.1-2.1; see also Doc. #46, Mot. to Value Collateral, p. 2, lines 1-7.

The Debtors' believe the value of the Property as of the petition date is \$152,199.00 based on "paying attention to the property values in the area" and that "[p]roperties comparable to ours in the neighborhood are selling for about the same price or less." Doc. #49, Svare Decl. The Debtors are competent to testify about the value of their own Property. See, e.g., In re Darosa, 422 B.R. 173, 175 (Bankr. D. Mass. 2010) (citing cases). However, the weight of such testimony is for the finder of fact to determine. See id. at 175 n.1. In the absence of contrary evidence, as in this case, the Debtors' opinion of

the Property's value may be conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

Accordingly, if the Debtors can clarify the record as discussed above, the motion will be GRANTED. Based on the evidence offered in support of the motion, Creditor's junior priority secured claim is found to be wholly unsecured and may be treated as a general unsecured claim in the Debtors' Chapter 13 plan. This ruling is only binding on the named respondent(s) in the moving papers and any successor who takes an interest in the Property after service of the motion. A proposed order shall specifically identify the collateral and the proof of claim to which it relates. The order shall specifically state that the order will be effective upon confirmation of the modified Chapter 13 plan. The Debtors may proceed to obtain relief from Creditor's lien upon completion of the necessary requirements under applicable law.

1. [20-11811](#)-A-7 **IN RE: ARLENE OKIDA-ROSS**
[JMV-2](#)

MOTION TO SELL
8-13-2020 [[12](#)]

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

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 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.

Jeffrey M. Vetter, the Chapter 7 Trustee (the "Trustee") of the bankruptcy estate of Arlene Okida-Ross (the "Debtor"), moves pursuant to 11 U.S.C. § 363(b)(1) for authority to sell the estate's interest in a 2016 Nissan Altima (the "Vehicle") at public auction on October 24, 2020 at 9:00 a.m., 6200 Price Way, Bakersfield, California 93308. Doc. #12.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under section 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. Ala. 2018), citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996) (citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991)). In the context of sales of estate property under section 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, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" Id. at 889-90, citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007) (citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998)).

The Debtor's Schedule A/B lists the Vehicle as property of the estate and values the Vehicle at \$10,547.00. Doc. #12, see also Doc. #1, Sched. A/B, line 3. The Debtor claimed an exemption of \$3,325.00 in the Vehicle under California Code of Civil Procedure § 704.010 on Schedule C. Doc. #12, see also Doc. #1, Sched. C, line 2. The Vehicle is unencumbered. Doc. #12, see also Doc. #1, Sched. D.

The Trustee believes it is in the best interest of the estate to liquidate the Vehicle for the benefit of the creditors. Doc. #14, Tr.'s Decl. at ¶¶ 3, 9. Trustee believes the Vehicle will sell for approximately \$10,000.00. Id. at ¶ 2. Based on his experience, the Trustee believes liquidating the Vehicle through the employment of an auctioneer and sale at public auction will result in the best and highest net recovery for the estate under the circumstances of this case. Id. at ¶¶ 3-4. The Trustee has employed Jerry Gould of Gould Auction & Appraisal Company ("Gould") to advertise, manage, and conduct the auction. Id. at ¶ 5. Pursuant to the court's order authorizing the auctioneer's employment, Gould is to receive a 15% commission on the gross proceeds from the sale of the Vehicle, \$100.00 for reimbursement for pick up and storage of the Vehicle, and may seek court authorization for up to \$150.00 in reimbursement for extraordinary expenses. See Doc. #21. The buyer of the Vehicle will pay Gould a 10% buyer's premium and pay Proxibid an additional 3% fee if the buyer utilizes Proxibid's online service. Id.

It appears that the sale of the Vehicle is in the best interests of the estate, will obtain a fair and reasonable price, is supported by a valid business judgment, and proposed in good faith. Accordingly, the Trustee's motion to sell the Vehicle is GRANTED.

2. [20-11338-A-7](#) **IN RE: JOSHUA/SARA HENRY**
[UST-1](#)

MOTION TO APPROVE STIPULATION TO DISMISS CHAPTER 7 CASE
WITHOUT ENTRY OF DISCHARGE
7-24-2020 [[24](#)]

TRACY DAVIS/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
TREVOR FEHR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtors, the Chapter 7 trustee, 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.

Tracy Hope Davis, the United States Trustee for Region 17 (the "UST"), moves the court for an order approving the stipulation between the UST and Debtors Joshua Wayne Henry and Sara Marie Henry (collectively, the "Debtors"). Doc. ##24, 26. The UST and the Debtors have agreed to stipulate to the dismissal of the Debtors' Chapter 7 case without the entry of a discharge. Doc. #26.

A debtor does not have an absolute right to dismiss a voluntary Chapter 7 case. Bartee v. Ainsworth (In re Bartee), 317 B.R. 362, 365 (B.A.P. 9th Cir. 2004). Under 11 U.S.C. § 707(a), the court may dismiss a Chapter 7 case only after notice and a hearing and only for cause. Id. A debtor must prove by a preponderance of the evidence that "cause" exists to justify dismissal of a Chapter 7 case. In re Leach, 130 B.R. 855, 856 (B.A.P. 9th Cir. 1991). Further, the court should only grant dismissal if there will be no harm to creditors. Bartee, 317 B.R. at 365; Gill v. Hall (In re Hall), 15 B.R. 913, 917 (B.A.P. 9th Cir. 1981) (citing In re Int'l Airport Inn P'ship, 517 F.2d 510, 512 (9th Cir. 1975)). Under 11 U.S.C. § 707(b), the court, on its own motion or on a motion by the United States Trustee, Chapter 7 trustee, or any party in interest, after notice and a hearing, may dismiss a debtor's case for presumed abuse or where abuse is demonstrated by the debtor's bad faith and/or the totality of the circumstances of the debtor's financial situation. 11 U.S.C. § 707(b)(1)-(3). The party seeking dismissal bears the burden of proof by a preponderance of the evidence. See Miller v. Gilliam (In re Miller), 2016 Bankr. LEXIS 3716, at *18-22 (B.A.P. 9th Cir. Oct. 13, 2016).

The motion was fully noticed to all parties in interest, and there is no opposition to the stipulation. Because the stipulation provides for dismissal of the case without an entry of discharge, the court finds that dismissal will not harm the creditors. Accordingly, the UST's motion is GRANTED and the stipulation is approved.

3. 20-11277-A-7 **IN RE: KENNETH/VICKI PORTER**
JHW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-3-2020 [20]

TD AUTO FINANCE LLC/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.
DISCHARGED 8/3/20

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

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

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 motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtors' interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtors' discharge was entered on August 3, 2020. Doc. #19. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, TD Auto Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2015 Volkswagen Jetta ("Vehicle"). Doc. #20.

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 two complete post-petition payments. The movant has produced evidence that debtors are delinquent by at least \$589.14. Doc. #23.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtors are in chapter 7. Movant values the Vehicle at \$10,450.00 and the amount owed to Movant is \$15,423.93. Doc. #20.

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

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

MOTION FOR COMPENSATION FOR M. KATHLEEN KLEIN, ACCOUNTANT(S)
8-19-2020 [[240](#)]

M. KLEIN/MV
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

M. Kathleen Klein ("Movant"), accountant for Eduardo Zavala Garcia and Amalia Perez Garcia (collectively, "DIP"), the debtors and debtors in possession in this Chapter 11 case, requests allowance of interim compensation in the amount of \$10,070.50 and reimbursement of expenses in the amount of \$7.80 for services rendered from January 28, 2020 through August 15, 2020. Doc. #240.

Section 330(a)(1)(A) and (B) of the Bankruptcy Code permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Section 331 provides, in relevant part, "any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title." 11 U.S.C. § 331. Pursuant to the court's order authorizing the employment of an accountant, the court may entertain monthly applications for interim compensation under 11 U.S.C. § 331. See Doc. #57.

Movant's services during the relevant time period included, without limitation, accounting and auditing to prepare DIP's monthly operating reports, and bookkeeping for preparation of income tax returns. Doc. #240. The court finds Movant's services reasonable and necessary and the expenses requested actual and necessary.

Accordingly, unless opposition is presented at the hearing, the motion will be GRANTED on an interim basis. The court allows interim compensation in the amount of \$10,070.50 and reimbursement of expenses in the amount of \$7.80. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance

of compensation and reimbursement of expenses, which shall be filed prior to case closure. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

2. [20-12258](#)-A-11 **IN RE: JARED/SARAH WATTS**

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
7-2-2020 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

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

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

ORDER: The court will issue an order.

The status conference will be continued to September 30, 2020, at 11:00 a.m., to be heard with the debtors' motion to confirm the chapter 11 plan.

3. [20-12258](#)-A-11 **IN RE: JARED/SARAH WATTS**
[LKW-4](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
8-10-2020 [[73](#)]

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 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 Law Offices of Leonard K. Welsh ("Movant"), counsel for Jared Allen Watts and Sarah Danielle Watts (collectively, "DIP"), the debtors and debtors in possession in this Chapter 11, Subchapter V case, requests allowance of interim

compensation in the amount of \$11,422.50 and reimbursement of expenses in the amount of \$113.00 for services rendered from July 2, 2020 through July 31, 2020. Doc. #73.

Section 330(a)(1)(A) and (B) of the Bankruptcy Code permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Section 331 provides, in relevant part, "a debtor's attorney, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title." 11 U.S.C. § 331. Pursuant to the court's order authorizing the employment of counsel, the court may entertain monthly applications for interim compensation under 11 U.S.C. § 331. See Doc. #51.

Movant's services in the relevant time period included, without limitation: (1) advising DIP about the administration of and operation of their business in a Chapter 11 case; (2) preparing DIP's schedules, statements, and other required documents; (3) preparing and providing documents to the United States Trustee and the Chapter 11, Subchapter V trustee, (4) preparing and prosecuting a motion for authorization to use case collateral and provide adequate protection; (5) reaching an agreement with Farm Credit West regarding use of cash collateral and adequate protection; (6) reviewing proofs of claim; (7) preparing DIP's reorganization plan; and (8) preparing and filing a notice of stay in pending state court litigation. Doc. ##73, 76, 77. The court finds Movant's services reasonable and necessary and the expenses requested actual and necessary.

Accordingly, the motion is GRANTED on an interim basis. The court allows interim compensation in the amount of \$11,422.50 and reimbursement of expenses in the amount of \$113.00. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code. Movant is authorized to draw on any retainer held.

4. [20-11367](#)-A-11 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
4-9-2020 [\[1\]](#)

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

5. [20-11367](#)-A-11 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**
[LKW-6](#)

MOTION TO EXTEND TIME TO ASSUME OR REJECT UNEXPIRED OIL AND
GAS LEASES
8-6-2020 [[99](#)]

TEMBLOR PETROLEUM COMPANY, LLC/MV
LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

1. [19-13729](#)-A-7 **IN RE: MICHELLE PAUL**
[19-1130](#)

RESCHEDULED STATUS CONFERENCE COMPLAINT
12-2-2019 [[1](#)]

LOS ANGELES FEDERAL CREDIT UNION V. PAUL
ALANA ANAYA/ATTY. FOR PL.

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

DISPOSITION: Continued to December 3, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the status report filed on September 3, 2020, Doc. #26, the status conference is continued to December 3, 2020 at 11:00 a.m. The parties will file a joint status report not less than 7 days prior to the continued hearing date.

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

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

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

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

DISPOSITION: Continued to November 5, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the status reports filed on August 7, 2020 (Doc. #48) and August 12, 2020 (Doc. #50), the status conference is continued to November 5, 2020 at 11:00 a.m. The parties will file a joint status report not less than 7 days prior to the continued hearing date.

3. [19-13783](#)-A-7 **IN RE: MARK/SUSAN CHAGOYA**
[19-1129](#) [PK-2](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
8-5-2020 [[42](#)]

BROWN V. CHAGOYA ET AL
PATRICK KAVANAGH/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion will be DENIED WITHOUT PREJUDICE. The moving papers were not properly served on plaintiff's counsel at the correct address in Modesto, California.