

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Thursday, September 15, 2022  
Place: Department A – Courtroom #11  
Fresno, California

*Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.*

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

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

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

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

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

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

1. [19-11515](#)-A-13     **IN RE: KARL KENNEL**  
[GR-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-12-2022    [\[101\]](#)

CELTIC BANK CORPORATION/MV  
SCOTT LYONS/ATTY. FOR DBT.  
KATHRYN CATHERWOOD/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

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

Celtic Bank Corporation ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1). Doc. #101. Movant asserts a claim against Karl Elliot Kennel ("Debtor") arising out of a personal guaranty that Debtor gave to Movant for Debtor's company, Precision Tile. Doc. #101. Movant requests relief from the automatic stay to allow Debtor and Movant to enter into a settlement agreement of state court litigation over the personal guaranty, permit Debtor to grant Movant a security interest in two pieces of investment rental real property (together, "Collateral") as part of the settlement, and permit Movant to record the deeds of trust against the Collateral. Doc. #101.

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

On April 15, 2019, Debtor filed this chapter 13 petition and did not schedule Movant or otherwise notify Movant of this bankruptcy case. Doc. #1, 2, 23, 24. On December 4, 2020, Movant filed a motion for relief from stay to enforce Debtor's personal guaranty, including commencing an action in state court and enforcing any judgment. Doc. #44-54. On January 8, 2021, the court granted Movant's first motion for relief from stay in part and permitted Movant to obtain, but not enforce, a judgment against Debtor based on the personal guaranty. Order, Doc. #63. The order also provided that Movant's claim against

Debtor was not discharged in Debtor's bankruptcy case because Debtor did not schedule Movant and Movant did not learn of Debtor's bankruptcy case in time to file a proof of claim. Id.

Movant subsequently sued Debtor in state court and, after various proceedings, Movant and Debtor have reached a settlement agreement. Decl. of Kathryn M.S. Catherwood ¶ 4, Doc. #103; Decl. of Karl Elliot Kennel ¶ 3, Doc. #104. Debtor was represented by counsel in the state court proceedings and has agreed to the terms of the settlement. Kennel Decl. ¶ 4, Doc. #104. Pursuant to the settlement agreement, Debtor has acknowledged a debt to Movant of \$180,960.57 and has agreed to enter into a loan modification that provides for monthly payments of \$825.00 to commence upon the earlier of completion of Debtor's chapter 13 plan payments or December 1, 2024. Ex. B, Doc. #105. In addition, Debtor has agreed to grant Movant an immediate security interest in the Collateral. Id. Debtor supports the relief requested in the motion. Kennel Decl. ¶ 3, Doc. #104.

Based on the evidence before the court, the court finds cause exists to grant relief from the automatic stay to permit Debtor to enter into the settlement agreement with Movant, grant Movant a security interest in the Collateral, and allow Debtor to execute, and Movant to immediately record, deeds of trust against the Collateral.

Movant also seeks waiver of the 14-day stay imposed by Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3). The court finds cause exists to waive the 14-day stay under Rule 4001(a)(3) because Debtor supports the relief sought in the motion and it is appropriate under the circumstances in this case to permit Movant to immediately record a security interest in the Collateral.

2. [17-12224](#)-A-13      **IN RE: ARMANDO CARRANZA**  
[MHM-1](#)

MOTION TO DETERMINE FINAL CURE AND MORTGAGE PAYMENT RULE 3002.1  
8-18-2022    [\[35\]](#)

MICHAEL MEYER/MV  
BENNY BARCO/ATTY. FOR DBT.

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

DISPOSITION:      Granted.

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

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

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

Michael H. Meyer ("Trustee"), the chapter 13 trustee, moves the court for a determination of final cure pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 3002.1 with respect to the claim held by Self-Help Federal Credit Union. Doc. #35. Trustee filed and served a Notice of Final Cure Payment pursuant to Rule 3002.1(f), but Self-Help Federal Credit Union failed to respond. See Doc. ##31, 32.

Rule 3002.1(g) requires that within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with 11 U.S.C. § 1322(b) (5).

If the holder of a claim fails to provide any information as required by Rule 3002.1(g), Rule 3002.1(i) permits the court, after notice and a hearing, to preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless. Rule 3002.1(i) (1).

The court finds that Self-Help Federal Credit Union failed to provide any information as required by Rule 3002.1(g) and will therefore preclude Self-Help Federal Credit Union from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in this case pursuant to Rule 3002.1(i) (1). The court also finds that the debtor has cured the default on the loan with Self-Help Federal Credit Union and that the debtor is current on payments to Self-Help Federal Credit Union through June 30, 2022.

Accordingly, this motion is GRANTED.

3. [22-11124](#)-A-13     **IN RE: ROBERT ZAMORA AND NICOLE SELLERS**  
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE MONEY SOURCE INC.  
7-22-2022    [\[13\]](#)

THE MONEY SOURCE INC./MV  
SCOTT LYONS/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/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 court will issue an order after the hearing.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c) (4) 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.

The debtors filed their chapter 13 plan ("Plan") on July 15, 2022. Doc. #10. The Money Source Inc. ("Creditor") objects to confirmation of the Plan on the grounds that: (1) the Plan does not provide for the curing of the \$52,924.58 default on Creditor's claim; (2) the monthly Plan payments will be insufficient to fund the Plan once the arrears on Creditor's claim are fully provided for; and (3) the debtors will not be able to make the increased monthly plan payments due for months 4 through 60 of the Plan. Doc. ##10, 13. The Plan provides for arrears to Creditor in the amount of \$46,868.00. Doc. #10.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under section 501, is deemed allowed unless a party in interest objects. Creditor filed its proof of claim on August 30, 2022. Claim 11.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #10. The Plan fails to account for the full amount of the arrears as set forth in Creditor's claim. Claim 11; Doc. #10.

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

4. [22-10026](#)-A-13      **IN RE: ARTURO RAMIREZ**  
[KAZ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-9-2022    [\[28\]](#)

WILMINGTON SAVINGS FUND SOCIETY, FSB/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
KRISTIN ZILBERSTEIN/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.

5. [18-11832](#)-A-13      **IN RE: MANUEL/ALICE FLORES**  
[MHM-3](#)

MOTION TO DISMISS CASE  
8-10-2022    [\[61\]](#)

MICHAEL MEYER/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:      Continued to October 20, 2022 at 9:30 a.m.

ORDER:              The court will issue an order.

The trustee's motion to dismiss will be continued to be heard with the debtors' motion to confirm second modified plan filed on September 7, 2022 (Doc. #66) and set for hearing on October 20, 2022 at 9:30 a.m.

6. [22-11043](#)-A-13     **IN RE: JORGE ROACHO**  
[MHM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
7-28-2022     [[14](#)]

DAVID BOONE/ATTY. FOR DBT.

NO RULING.

7. [18-11349](#)-A-13     **IN RE: ALVINA BURTNESS**  
[TCS-2](#)

MOTION TO AVOID LIEN OF NEWPORT CAPITAL RECOVERY GROUP, II L.L.C.  
8-12-2022     [[40](#)]

ALVINA BURTNESS/MV  
NANCY KLEPAC/ATTY. FOR DBT.  
TIMOTHY SPRINGER/ATTY. FOR MV.

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

DISPOSITION:     Denied without prejudice.

ORDER:     The court will issue an order.

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

Rule 7004(b)(3) provides that service upon an unincorporated association be mailed "to the attention of an officer, managing or general agent, or to any other agent authorized by appointment or law to receive service of process[.]" Fed. R. Bankr. P. 7004(b)(3). The certificate of service filed in connection with this motion does not show that Creditor, which is a limited liability company, was served to the attention of anyone. See Doc. #44. Further, the address to which Creditor was served is not the correct address according to the California Secretary of State website. The address used to serve Creditor is for Newport Capital Recovery Group **III**, LLC, not Newport Capital Recovery Group **II**, LLC.

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

8. [22-11251](#)-A-13     **IN RE: KHANTEE SEE**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
8-26-2022    [[14](#)]

STEPHEN LABIAK/ATTY. FOR DBT.

NO RULING.

9. [22-10758](#)-A-13     **IN RE: NELLA MILAM**  
[TCS-1](#)

MOTION TO CONFIRM PLAN  
8-4-2022    [[30](#)]

NELLA MILAM/MV  
TIMOTHY SPRINGER/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 September 1, 2022. Doc. #40.

10. [22-10777](#)-A-13     **IN RE: STEVENS/CONSTANCE RYAN**  
[TCS-2](#)

MOTION TO CONFIRM PLAN  
7-27-2022    [[42](#)]

CONSTANCE RYAN/MV  
TIMOTHY SPRINGER/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 September 1, 2022. Doc. #74.

11. [17-14682](#)-A-13     **IN RE: SCOTT DOYLE**  
[RSW-6](#)

MOTION TO SELL  
8-24-2022    [[122](#)]

SCOTT DOYLE/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 after the hearing.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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.

Scott Andrew Doyle ("Debtor"), the chapter 13 debtor in this case, moves the court for an order authorizing Debtor to sell a 2014 Carson 16' Box Trailer (the "Vehicle") to his employer SCADA Industries ("Buyer") for \$4,700.00. Doc. #122. The Vehicle secures a loan to PRA Receivables ("Creditor"). Decl. of Debtor, Doc. #124. Pursuant to Debtor's confirmed chapter 13 plan, property of Debtor did not revert in Debtor upon confirmation of the plan. Plan ¶ 6.01, Doc. #92.

LBR 3015-1(h)(1)(E) provides in relevant part that "if the debtor wishes to . . . transfer property on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

This motion was properly served and noticed, and opposition can be presented at the hearing. Debtor's confirmed plan pays a 0% dividend to unsecured claims. Plan ¶ 3.14, Doc. #92. The payoff of the Vehicle through the confirmed plan is \$500; but because the plan reduced Debtor's contract interest rate, Creditor is requiring the payoff to be \$4,700.00, which the Buyer is willing to pay. Decl. of Debtor, Doc. #124. Debtor asserts that \$4,700 is a fair market price for the Vehicle because it is more than the trailer is worth without the equipment that Buyer installed on it. Debtor Decl., Doc. #124.

Accordingly, pending opposition being raised at the hearing, this motion will be GRANTED. Debtor will be authorized, but not required, to sell the Vehicle to Buyer in accordance with the motion.



12. [22-10893](#)-A-13     **IN RE: STEPHEN/TIRIAN KLEIN**  
[SAH-1](#)

MOTION TO DETERMINE THE NATURE OF POST-PETITION FEES, EXPENSES,  
AND CHARGES  
8-16-2022    [[31](#)]

TIRIAN KLEIN/MV  
SUSAN HEMB/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

13. [22-10026](#)-A-13     **IN RE: ARTURO RAMIREZ**  
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE  
7-22-2022    [[18](#)]

MICHAEL MEYER/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

14. [22-10026](#)-A-13     **IN RE: ARTURO RAMIREZ**  
[RSW-1](#)

CONTINUED MOTION TO CONFIRM PLAN HEARING  
8-4-2022    [[22](#)]

ARTURO RAMIREZ/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

1. [22-10113](#)-A-7     **IN RE: ANTHONY LOPEZ**  
[22-1013](#)     [KR-2](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT  
8-24-2022     [[20](#)]

THE GOLDEN 1 CREDIT UNION V. LOPEZ  
KAREL ROCHA/ATTY. FOR MV.

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

DISPOSITION:     Denied without prejudice.

ORDER:     The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice of this motion was mailed on August 24, 2022, with a hearing date set for September 15, 2022, which is less than 28 days from the date of mailing. Pursuant to Local Rule of Practice 9014-1(f)(2)(A), motions in an adversary proceeding may not be set for hearing on less than 28 days' notice.

2. [20-13451](#)-A-7     **IN RE: AMANDEEP SINGH**  
[21-1004](#)     [CAE-1](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT  
2-5-2021     [[1](#)]

BMO HARRIS BANK, N.A. V. SINGH  
RAFFI KHATCHADOURIAN/ATTY. FOR PL.  
CONTINUED TO 3/16/2023 PER DOC. #27

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

DISPOSITION:     Continued to March 16, 2023 at 11:00 a.m.

NO ORDER REQUIRED.

On August 30, 2022, the court issued an order continuing the pre-trial conference to March 16, 2023 at 11:00 a.m. Doc. #27.