

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, September 22, 2020
Place: Department B - Courtroom #13
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.

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.

9:30 AM

1. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
3-2-2020 [\[1\]](#)

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Continued to October 20, 2020 at 9:30 a.m.

ORDER: The court will issue an order.

The parties are advised that the Judicial Law Clerk for this Department, Mr. Leatham, has accepted a position with the Wanger Jones Helsley law firm. Mr. Leatham is screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Leatham.

The Chapter 11 Status Conference will be continued to October 20, 2020 at 9:30 a.m. to allow the motion to intervene to be heard by Honorable Jennifer E. Niemann on October 14, 2020.

2. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[FW-6](#)

CONTINUED CHAPTER 11 DISCLOSURE STATEMENT
6-30-2020 [\[184\]](#)

PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 20, 2020 at 9:30 a.m.

ORDER: The court will issue an order.

The parties are advised that the Judicial Law Clerk for this Department, Mr. Leatham, has accepted a position with the Wanger Jones Helsley law firm. Mr. Leatham is screened from considering

this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Leatham.

The hearing on the Chapter 11 Disclosure Statement will be continued to October 20, 2020 at 9:30 a.m. to allow the motion to intervene to be heard by Honorable Jennifer E. Niemann on October 14, 2020.

3. [20-11612](#)-B-11 **IN RE: BENTON ENTERPRISES, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
5-5-2020 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

4. [20-12633](#)-B-11 **IN RE: SIMPLY ESSENTIALS, LLC, A DELAWARE
LIMITED LIABILITY COMPANY**
[WJH-1](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
8-14-2020 [[9](#)]

SIMPLY ESSENTIALS, LLC, A DELAWARE LIMITED LIABILITY
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

The parties are advised that the Judicial Law Clerk for this Department, Mr. Leatham, has accepted a position with the Wanger Jones Helsley law firm. Mr. Leatham is screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Leatham.

5. [20-12633](#)-B-11 **IN RE: SIMPLY ESSENTIALS, LLC, A DELAWARE
LIMITED LIABILITY COMPANY**
[WJH-2](#)

MOTION TO EMPLOY RILEY C. WALTER AS ATTORNEY(S)
8-14-2020 [\[18\]](#)

SIMPLY ESSENTIALS, LLC, A DELAWARE LIMITED LIABILITY
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

The parties are advised that the Judicial Law Clerk for this Department, Mr. Leatham, has accepted a position with the Wanger Jones Helsley law firm. Mr. Leatham is screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Leatham.

6. [20-12633](#)-B-11 **IN RE: SIMPLY ESSENTIALS, LLC, A DELAWARE
LIMITED LIABILITY COMPANY**
[WJH-5](#)

MOTION TO EMPLOY TERRY L. GIBSON AS SPECIAL COUNSEL
8-14-2020 [\[23\]](#)

SIMPLY ESSENTIALS, LLC, A DELAWARE LIMITED LIABILITY
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

The parties are advised that the Judicial Law Clerk for this Department, Mr. Leatham, has accepted a position with the Wanger Jones Helsley law firm. Mr. Leatham is screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Leatham.

7. [20-12633](#)-B-11 **IN RE: SIMPLY ESSENTIALS, LLC, A DELAWARE
LIMITED LIABILITY COMPANY**
[WJH-6](#)

MOTION TO BORROW
8-25-2020 [\[60\]](#)

SIMPLY ESSENTIALS, LLC, A DELAWARE LIMITED LIABILITY
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

The parties are advised that the Judicial Law Clerk for this Department, Mr. Leatham, has accepted a position with the Wanger Jones Helsley law firm. Mr. Leatham is screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Leatham.

8. [20-12633](#)-B-11 **IN RE: SIMPLY ESSENTIALS, LLC, A DELAWARE
LIMITED LIABILITY COMPANY**
[WJH-7](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
8-19-2020 [\[38\]](#)

SIMPLY ESSENTIALS, LLC, A DELAWARE LIMITED LIABILITY
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

The parties are advised that the Judicial Law Clerk for this Department, Mr. Leatham, has accepted a position with the Wanger Jones Helsley law firm. Mr. Leatham is screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Leatham.

9. [20-12642](#)-B-11 **IN RE: 3MB, LLC**
[LKW-2](#)

MOTION TO EMPLOY CBIZ MHM, LLC AS ACCOUNTANT(S)
8-26-2020 [\[19\]](#)

3MB, LLC/MV
LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

This motion is GRANTED. Pursuant to 11 U.S.C. § 327(a), the debtor-in-possession ("DIP") may employ, with the court's approval one or more professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

11 U.S.C. § 1107 gives the DIP all the rights and powers of a trustee and shall perform all the functions and duties, certain exceptions notwithstanding inapplicable here.

DIP wishes to employ CBIZ MHM, LLC ("Accountants") as its accountants and the accountants for its Chapter 11 estate during the pendency of its chapter 11 case.

Secured Creditor US Bank, N.A. filed non-opposition to the employment, but does "not consent to any use of its cash collateral" to pay the fees of any professionals debtor may employ. Doc. #26. Debtor shall respond to U.S. Bank's non-opposition at the hearing.

After review of the evidence, and unless any opposition is given at the hearing, the court finds that Accountant does not represent nor hold an adverse interest to the debtor or to the estate with respect to the matter on which Accountant is to be employed.

The court also finds that Accountant does not represent nor hold an adverse interest to the debtor or to the estate.

Trustee is authorized to employ Accountant for the purposes stated above and, in the motion and the payment, if any, to which

Accountant is entitled to shall be in accordance with the fees and costs outlined in the motion.

10. [20-12496](#)-B-11 **IN RE: NORTHGRAND ESTATES, LLC**
[MRT-3](#)

MOTION BY MICHAEL R. TOTARO TO WITHDRAW AS ATTORNEY
8-20-2020 [\[48\]](#)

MICHAEL TOTARO/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

11. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[GL-1](#)

CONTINUED MOTION TO CONTINUE HEARING RE: MOTION FOR LEAVE TO
FILE AMENDED PROOF OF CLAIM 197
9-2-2020 [\[2270\]](#)

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
GRANT LIEN/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

ORDER: The court will issue the order.

Since matter #12 below is a scheduling conference ordered by Chief Judge Sargis, the request to continue the hearing on the motion to amend the claim is now moot.

12. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[GL-1](#)

SCHEDULING CONFERENCE RE: MOTION FOR LEAVE TO FILE AMENDED
PROOF OF CLAIM 197
8-25-2020 [[2258](#)]

DEPARTMENT OF HEALTH CARE SERVICES/MV
RILEY WALTER/ATTY. FOR DBT.
GRANT LIEN/ATTY. FOR MV.

NO RULING.

The parties shall be prepared to discuss future scheduling of this contested motion. Discovery scheduling shall also be considered at this hearing.

13. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-18](#)

CONTINUED OBJECTION TO CLAIM OF TULARE HOSPITALIST GROUP, CLAIM
NUMBER 231
1-8-2020 [[1784](#)]

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

The parties are advised that the Judicial Law Clerk for this Department, Mr. Leatham, has accepted a position with the Wanger Jones Helsley law firm. Mr. Leatham is screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Leatham.

Debtor objects to allowance of the claim because the Debtor's books and records are not consistent with the claim amount.

Claimant opposes raising several issues including: 1) The claim itself sets forth the amount claimed. 2) The Debtor's own records produced in unrelated preference litigation support the basis for the claim asserted. 3) The Debtor kept all relevant books and records related to the claim and historically made payments to claimant based on those records. 4) Only recently Debtor has said that relevant books and records would not be produced, and claimant has begun formal discovery.

The debtor filed a reply and included evidentiary objections and a second declaration of Ms. Ormonde. Debtor concedes the claim should be allowed for \$90,600.

Debtor argues the opposition to the objection is procedurally deficient and confuses the record; it is and does. Also, the debtor claims the opposition contains evidence supporting claims for OB-GYN services and this claimant was only retained for on-call gastroenterological services. Debtor further contends the claim is duplicative of a separate claim filed by Dr. Kang and that claimant has remedies for filing a claim based on the preference settlement.

The reply declaration of Ms. Ormonde is far more complete than the initial objection and is inappropriate in a reply context. Claimant should have the opportunity to meet the evidence. Through this ruling, the court is going to accommodate that requirement.

This matter will be called as a scheduling conference since it is a contested matter. The parties shall be prepared to discuss future scheduling.

The court has reviewed the objections to Sandra Ormonde's declaration (doc. #2282) and rules as follows: Objections for lack of foundation and hearsay are sustained. All others are overruled.

The court has reviewed the objections to claimant's declarations and makes these rulings.

Gupta - 1. Relevance-sustained; Hearsay-sustained; original writing-overruled. 2. Relevance-sustained; lack of foundation-overruled; relevance (financial issues)-overruled. 3. Overruled. 4. Overruled. 5. Overruled. 6. Overruled. 7. Overruled. 8. Sustained. 9. Overruled.

Kumar - 1. Overruled. 2. Relevance and hearsay - overruled; foundation - sustained. 3. Overruled. 4. Foundation-overruled; relevance - sustained. 5. Overruled. 6. Hearsay - overruled; foundation - sustained except as to hospital procedures within declarant's knowledge. 7. Relevance and hearsay - overruled; foundation - sustained. 8. Sustained. 9. Hearsay and foundation - overruled; foundation - sustained. 10. Overruled.

Feher - 1. Overruled. 2. Hearsay - overruled; relevance and opinion - sustained. 3. Overruled. 4. Overruled. 5. Hearsay and relevance - overruled; opinion - sustained. 6. Sustained. 7. Foundation - overruled; hearsay - sustained. 8. Sustained. 9. Sustained.

14. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-19](#)

CONTINUED OBJECTION TO CLAIM OF GUPTA-KUMAR MEDICAL PRACTICE,
CLAIM NUMBER 232
1-8-2020 [\[1789\]](#)

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

The parties are advised that the Judicial Law Clerk for this Department, Mr. Leatham, has accepted a position with the Wanger Jones Helsley law firm. Mr. Leatham is screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Leatham.

Debtor objects to allowance of the claim because the Debtor's books and records are not consistent with the claim amount and the claim may be duplicative of claim #231 (matter #13 above).

Claimant opposes raising several issues including: 1) The claim itself sets forth the amount claimed. 2) The Debtor's own records produced in unrelated preference litigation support the basis for the claim asserted. 3) The Debtor kept all relevant books and records related to the claim and historically made payments to claimant based on those records. 4) Only recently Debtor has said that relevant books and records would not be produced, and claimant has begun formal discovery.

The debtor filed a reply and included evidentiary objections and a second declaration of Ms. Ormonde. Debtor concedes the claim should be allowed for \$44,724.

Debtor argues the opposition to the objection is procedurally deficient and confuses the record; it is and does. Debtor also argues first, this claimant's claim duplicates at least a portion of claim 231 (#13 above). Second, debtor contends that according to the debtor's records, as more fully explained in Ms. Ormonde's second declaration, only \$44,724 is due this claimant for on-call OB-GYN services. Third, debtor asserts claimant has already had ample time for discovery.

The reply declaration of Ms. Ormonde is far more complete than the initial objection and is inappropriate in a reply context. Claimant should have the opportunity to meet the evidence. Through this ruling, the court is going to accommodate that requirement.

This matter will be called as a scheduling conference since it is a contested matter. The parties shall be prepared to discuss future scheduling.

The court has reviewed the objections to Sandra Ormonde's declaration (doc. #2282) and rules as follows: objections for lack of foundation and hearsay are sustained. All others are overruled.

The court has reviewed the objections to claimant's declarations and makes these rulings.

Gupta - 1. Relevance - sustained; Hearsay - sustained; original writing - overruled. 2. Relevance - sustained; lack of foundation - overruled; relevance (financial issues) - overruled. 3. Overruled. 4. Overruled. 5. Overruled. 6. Overruled. 7. Overruled. 8. Sustained. 9. Overruled.

Kumar - 1. Overruled. 2. Relevance and hearsay - overruled; foundation - sustained. 3. Overruled. 4. Foundation - overruled; relevance - sustained. 5. Overruled. 6. Hearsay - overruled; foundation - sustained except as to hospital procedures within declarant's knowledge. 7. Relevance and hearsay - overruled; foundation - sustained. 8. Sustained. 9. Hearsay and foundation - overruled; foundation - sustained. 10. Overruled.

Feher - 1. Overruled. 2. Hearsay - overruled; relevance and opinion - sustained. 3. Overruled. 4. Overruled. 5. Hearsay and relevance - overruled; opinion - sustained. 6. Sustained. 7. Foundation - overruled; hearsay - sustained. 8. Sustained. 9. Sustained.

15. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-25](#)

CONTINUED OBJECTION TO CLAIM OF INPATIENT HOSPITAL GROUP, INC.,
CLAIM NUMBER 230
1-10-2020 [\[1834\]](#)

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

The parties are advised that the Judicial Law Clerk for this Department, Mr. Leatham, has accepted a position with the Wanger Jones Helsley law firm. Mr. Leatham is screened from considering this and any other matters involving that firm until he is no longer employed by the court. The parties are urged to consult with their clients and determine whether they will ask the court to recuse from this matter notwithstanding the screen process involving Mr. Leatham.

Debtor objects to allowance of the claim because the Debtor's books and records are not consistent with the claim amount.

Claimant opposes raising several issues including: 1) The claim itself sets forth the amount claimed. 2) The Debtor's own records produced in unrelated preference litigation support the basis for the claim asserted. 3) The Debtor kept all relevant books and

records related to the claim and historically made payments to claimant based on those records. 4) Only recently Debtor has said that relevant books and records would not be produced, and claimant has begun formal discovery.

Debtor's reply included a second declaration from Ms. Ormonde stating no monies were due according to the debtor's records. The debtor also submitted objections to the declarations and included a request for judicial notice referencing Articles of Incorporation and Dissolution documents signed by Dr. Kumar and filed with the California Secretary of State. The documents represent under penalty of perjury that claimant did not conduct business between September 20, 2017 and August 1, 2018.

Debtor argues the opposition to the objection is procedurally deficient and confuses the record; it is and does. Debtor contends that the documents filed with the Secretary of State show no services were provided by claimant from September 20, 2017 until the debtor closed the hospital. This casts doubt on Dr. Kumar's credibility, contends debtor, because in the declarations Dr. Kumar states that services were rendered by and through claimant. There is a lack of evidence from claimant, debtor argues, establishing any services provided by claimant. Debtor also asserts the claim is duplicative of a claim filed by Dr. Kang and debtor's records show no sums are due claimant.

The reply declaration of Ms. Ormonde is far more complete than the initial objection and is inappropriate in a reply context. Claimant should have the opportunity to meet the evidence. Through this ruling, the court is going to accommodate that requirement.

This matter will be called as a scheduling conference since it is a contested matter. The parties shall be prepared to discuss future scheduling.

The court has reviewed claimant's objections to Sandra Ormonde's declaration (doc. #2282) and rules as follows: objections for lack of foundation and hearsay are sustained. All others are overruled.

The court has reviewed the objections to claimant's declarations and makes these rulings.

Gupta - 1. Relevance-sustained; Hearsay-sustained; original writing-overruled. 2. Relevance-sustained; lack of foundation-overruled; relevance (financial issues)-overruled. 3. Overruled. 4. Overruled. 5. Overruled. 6. Overruled. 7. Overruled. 8. Sustained. 9. Overruled.

Kumar - 1. Overruled. 2. Relevance and hearsay-overruled; foundation-sustained. 3. Overruled. 4. Foundation-overruled; relevance-sustained. 5. Overruled. 6. Hearsay-overruled; foundation-sustained except as to hospital procedures within declarant's knowledge. 7. Relevance and hearsay-overruled; foundation-sustained. 8. Sustained. 9. Hearsay and foundation-overruled; foundation-sustained. 10. Overruled.

Feher - 1 Overruled. 2. Hearsay-overruled; relevance and opinion-sustained. 3. Overruled. 4. Overruled. 5. Hearsay and relevance-overruled; opinion-sustained. 6. Sustained. 7. Foundation-overruled; hearsay-sustained. 8. Sustained. 9. Sustained.

11:00 AM

1. [20-12422](#)-B-7 **IN RE: JOSE/CYNTHIA CASANOVA**

PRO SE REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA INC.
8-28-2020 [[11](#)]

NO RULING.

1:30 PM

1. [20-12517](#)-B-7 **IN RE: MARIA MAGANA**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE OR OTHER FEE
7-30-2020 [\[2\]](#)

SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

Debtor's request for waiver of the chapter 7 filing fee was set for hearing because debtor's income exceeds the guidelines for a fee waiver, but debtor's Schedule I states that debtor's employment is temporary. Doc. #7.

The chapter 7 trustee filed opposition alleging the same. Doc. #10.

Debtor must appear at the hearing and explain the employment and income situation. If debtor fails to appear, the application for a fee waiver will be denied.

2. [19-10529](#)-B-7 **IN RE: BRENT/CHRISTINA KUTZBACH**
[JES-5](#)

MOTION FOR COMPENSATION FOR JAMES EDWARD SALVEN, CHAPTER 7
TRUSTEE
8-12-2020 [\[121\]](#)

JAMES SALVEN/MV
PETER BUNTING/ATTY. FOR DBT.
PETER FEAR/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 prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. 11 U.S.C. §§ 326 and 330 allow reasonable compensation to the chapter 7 trustee for the trustee's services. 11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses.

Chapter 7 Trustee James Salven ("Trustee") requests fees of \$11,100.00 and costs of \$428.12 for a total of \$11,528.12 as statutory compensation and actual and necessary expenses. Doc. #121. Trustee is voluntarily reducing the statutory commission from \$25,038.67 to \$11,100.00 so that the commission does not exceed the monies received by the unsecured creditors. Id.

During this case, Trustee conducted the meeting of creditors, employed counsel, sold estate property, compromised controversies, sold residential real property, reviewed and reconciled financial records, and prepared the final report.

The court finds Trustee's services were actual and necessary to the estate, and the fees are reasonable. The motion is GRANTED and Trustee is awarded the requested fees and costs.

3. [20-12729](#)-B-7 **IN RE: CHUCK/NICOLE COZZITORTO**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
9-2-2020 [\[11\]](#)

AMERICAN HONDA FINANCE CORPORATION/MV
PETER FEAR/ATTY. FOR DBT.
VINCENT FROUNJIAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The movant, American Honda Finance Corp. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2016 Honda Pioneer 700-4 ("Vehicle").

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. Here, the movant has shown that there is a small equity cushion in the subject Vehicle.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors are 2 payments past due in the amount of \$546.96 plus late fees of \$27.34. Doc. #11.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) 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. Adequate protection is unnecessary because of the relief granted herein.

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 payments and the Vehicle is a depreciating asset.

4. [20-12433](#)-B-7 **IN RE: MEGAN ACHIN**
[GB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-7-2020 [\[14\]](#)

BRIDGECREST CREDIT COMPANY, LLC/MV
R. BELL/ATTY. FOR DBT.
ANGIE MARTH/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, Bridgecrest Credit Company, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2016 Nissan Versa Note ("Vehicle"). Doc. #14.

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 the debtor has failed to make at least 2 pre-petition and 1 post-petition payment. The movant has produced evidence that debtor is delinquent at least \$620.43. Doc. #16, 18.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. The Vehicle is valued at \$6,925.00 and debtor owes \$13,481.99. Id.

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 debtor has failed to make at least 2 pre-petition payments and 1 post-petition payment to Movant and the Vehicle is a depreciating asset.

5. [20-10435](#)-B-7 **IN RE: MARCUS LACEY AND JACQUELINE KOOP**
[JES-1](#)

MOTION TO SELL
8-14-2020 [\[17\]](#)

JAMES SALVEN/MV
PETER BUNTING/ATTY. FOR DBT.

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

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

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, No. 16-00327-GS, 2018 WL 6584772, at *2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 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 § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 2018 WL 6584772, at *4, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference." Id., citing In re Psychometric 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 chapter 7 trustee ("Trustee") asks this court for authorization to sell back to the debtors the estate's interest in a 2005 Saturn Vue ("Vehicle"), subject to higher and better bids at the hearing, for \$1,500.00. There has been no opposition to this motion.

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

6. [20-12037](#)-B-7 **IN RE: GURDIAL SINGH**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
8-19-2020 [\[25\]](#)

AMERICAN HONDA FINANCE CORPORATION/MV
MARK HANNON/ATTY. FOR DBT.
VINCENT FROUNJIAN/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, American Honda Finance Corp. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2017 Honda Accord ("Vehicle"). Doc. #25.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least 2 post-petition payments. The movant has produced evidence that debtor is delinquent at least \$1,023.84 plus late fees of \$40.60. Doc. #27, 29.

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. The Debtor values the Vehicle at \$8,500.00 and debtor owes \$9,204.53. Id.

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. Adequate protection is unnecessary in light of the relief granted herein.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 2 post-petition payments to Movant and the Vehicle is a depreciating asset.

7. [20-11841](#)-B-7 **IN RE: MELISSA GAMBOA**
[KEH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-13-2020 [\[15\]](#)

BALBOA THRIFT AND LOAN/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
KEITH HERRON/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

First, LBR 9004-2(c)(1) requires that motions, notices, inter alia, to be filed as separate documents. Here, the motion and notice were combined into one document and not filed separately. Doc. #15.

Second, LBR 4001-1(a)(3) requires the movant to file and serve as a separate document completed Form EDC 3-468 (Relief from Stay Summary Sheet) with all motions for relief from the automatic stay. Here, the movant did not file a Relief from Stay Summary Sheet as required.

Third, the notice of hearing is void of any of the necessary language as outlined in LBR 9014-1(d) (3) (B).

The court urges movant to review the LBR before filing another motion.

8. [17-11346](#)-B-7 **IN RE: DANIEL CANCHOLA**
[OKZ-1](#)

OBJECTION TO CLAIM OF CAL LEDUC ET AL., CLAIM NUMBER 2
8-11-2020 [\[87\]](#)

INFINITY SELECT INSURANCE COMPANY/MV
JERRY LOWE/ATTY. FOR DBT.
ORI KATZ/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. Movant filed an amended objection (OKZ-3) set for hearing on October 7, 2020. Doc. #98, OKZ-3.

9. [20-11657](#)-B-7 **IN RE: MARICEL/CHRISTOPHER LOCKE**

AMENDED MOTION TO QUASH
9-1-2020 [\[60\]](#)

MARICEL LOCKE/MV
MARICEL LOCKE/ATTY. FOR MV.

NO RULING.

This motion has numerous procedural inadequacies.

There is no proper notice of hearing. Without a proper notice of hearing, the responding parties who may have an interest in the litigation are denied due process of law. See Local Rule of Practice ("LBR") 9014-1(d) (3) (B), (f).

There is no Docket Control Number ("DCN"). See LBR 9004-2(a) (6), (b) (5), (b) (6), (e) and LBR 9014-1(c), (e) (3). The court must be able to track the numerous matters which typically make up a bankruptcy case. DCNs aid the court in the matter and ensure timely and accurate orders.

The chapter 7 trustee was not served. Bank of the West, Fresno Unified School District, Amway Corporation, and AIG were not served properly. At a minimum, if a bank is served, an officer of the bank must be addressed; if a corporation is served, an officer of agent

to receive service of process must be addressed. See Federal Rule of Bankruptcy Procedure 7004.

This motion should have been filed in the adversary proceeding and set for hearing at a date and time this department holds hearings in adversary proceedings. The hearing should not have been scheduled on a general Chapter 7 law and motion calendar.

The attached subpoenas appear to be incomplete. The subpoenas to Awmay Corp, AIG Insurance, Marciel Locke, and Christopher Locke indicate that the documents to be inspected are listed on an attachment, but the attachment with the purported listed documents is not included. The court cannot rule on the motion to quash without knowing what evidence the responding party is seeking to obtain.

It is unclear what the evidence (doc. #61) purports to show or explain.

Apart from the procedural issues with the motion, the motion provides no concrete argument, statute, or case law to support the prayer for relief.

It is obvious that Mr. Zavala, attorney of record for creditor and plaintiff in adversary proceeding 20-1049, is requesting records via subpoena. The breadth of allowable discovery, even if the evidence would be inadmissible at trial, is very broad. The requested evidence need only be relevant. No exceptions to this rule have been alleged by movants here, and without more of a record, the court is unable to find that any exceptions are present.

That said, the court will inquire whether the Fed. R. Civ. P. 26(f) (made applicable to bankruptcy adversary proceedings by Fed. R. Bankr. P. 7026) conference occurred before Mr. Zavala began the discovery process. Fed. R. Civ. P. 26(d)(1) precludes discovery before the Rule 26(f) conference unless the parties stipulated, or the court ordered otherwise. Nothing in the record reflects that either occurred or that a Rule 26(f) conference occurred. See also LBR 7026-1 (requirement for written report of conference filed before scheduling conference waived when a party is not represented but not excusing the conference requirement).

The court may consider appropriate remedial orders after the parties have been heard on this issue.

10. [20-10059](#)-B-7 **IN RE: HEATHER/STEPHEN CLAY**
[JES-3](#)

MOTION TO EMPLOY JEFFREY S. BAIRD AS AUCTIONEER, AUTHORIZING
SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF
AUCTIONEER FEES AND EXPENSES
8-21-2020 [\[38\]](#)

JAMES SALVEN/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.

This motion is GRANTED. 11 U.S.C. § 328(a) permits employment of "professional persons" on "reasonable terms and conditions" including "contingent fee basis."

Trustee is authorized to employ Baird Auctions & Appraisals ("Auctioneer") as auctioneer to sell property of the estate consisting of a 2005 Trailbay trailer at a public auction, which is set for October 6, 2020 at Baird Auctions & Appraisals located at 1328 N. Sierra Vista, Suite B in Fresno, California.

The trustee proposes to compensate Auctioneer on a percentage collected basis. The percentage is 15% of the gross proceeds from the sale. Doc. #38. Trustee is also authorized to reimburse Auctioneer up to \$400.00 for expenses.

The court finds the proposed arrangement reasonable in this instance. If the arrangement proves improvident, the court may allow different compensation under 11 U.S.C. § 328(a).

Trustee is authorized to employ and pay Auctioneer for his services as outlined above, and the proposed sale at auction of the 2005 Trailbay Trailer is approved.

11. [20-11862](#)-B-7 **IN RE: RACHEL DANIELS**
[SL-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
8-14-2020 [\[18\]](#)

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 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.

This motion is GRANTED. 11 U.S.C. § 706(a) allows a debtor in chapter 7 to convert to chapter 13 "at any time," unless the case was previously converted to chapter 7 from another chapter."

However, the Supreme Court in Marrama v. Citizens Bank, 549 U.S. 365, 371-72 (2007), held that a debtor does not have an absolute right to convert to chapter 13 under § 706(a), but also must be eligible to a debtor under chapter 13. The Supreme Court held that "[i]n practical effect, a ruling that an individual's Chapter 13 case should be dismissed or converted to Chapter 7 because of prepetition bad-faith conduct, including fraudulent acts committed in an earlier Chapter 7 proceeding, is tantamount to a ruling that the individual does not qualify as a debtor under Chapter 13." Therefore, the court must find that the debtor is eligible to be a debtor under chapter 13 in conformance with 11 U.S.C. § 1307(c).

The court finds that this case has not been previously converted to chapter 7 from another chapter, and that the debtor is eligible to

be a debtor under chapter 13 in conformance with 11 U.S.C. § 1307(c). There is no opposition to the motion.

Therefore, this case shall be converted to chapter 13.

12. [17-11365](#)-B-7 **IN RE: MARIO GUERRA**
[OKZ-2](#)

OBJECTION TO CLAIM OF CAL LEDUC ET AL., CLAIM NUMBER 2
8-11-2020 [\[98\]](#)

INFINITY SELECT INSURANCE COMPANY/MV
JERRY LOWE/ATTY. FOR DBT.
ORI KATZ/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. Movant filed an amended objection (OKZ-3) set for hearing on October 7, 2020. Doc. #98, OKZ-3.

13. [20-12368](#)-B-7 **IN RE: MONICA RESENDEZ**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
7-16-2020 [\[5\]](#)

MONICA RESENDEZ/MV

NO RULING.

Debtor's request for waiver of the chapter 7 filing fee was set for hearing because debtor's application states income that is substantially less than the schedules filed in the case. Doc. #7.

Debtor must appear at the hearing and explain the discrepancy between the application and schedules. If debtor fails to appear, the application for a fee waiver will be denied.

14. [15-11070](#)-B-7 **IN RE: SHAWN KNIGHT**
[FW-4](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
WITH MULTI-DISTRICT LITIGATION AND/OR MOTION TO PAY
8-19-2020 [\[64\]](#)

PETER FEAR/MV
PETER FEAR/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.

This motion is GRANTED. It appears from the moving papers that the chapter 7 trustee ("Trustee") has considered the standards of In re Woodson, 839 F.2d 610, 620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. the probability of success in the litigation;
- b. the difficulties, if any, to be encountered in the matter of collection;
- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of the trustee's business judgment. The order should be limited to the claims compromised as described in the motion.

Trustee requests approval of a settlement agreement between the estate and a pharmaceutical company, in a multi-district pharmaceutical litigation. The claims were precipitated by the

ingestion of a medication by debtor, from which he developed medical issues.

The settlement was reached pursuant to a settlement determination process involving a point system, reviewed by the court presiding over the litigation. When the claim was discovered and it was likely debtor would be awarded damages, the case was re-opened, Trustee was re-appointed, and counsel ("FPW") was hired. Doc. #64.

Under the terms of the compromise, FPW is entitled to a contingency fee of 40%, an MDL fee of \$6,688.62 from the attorney and MDL costs of \$2,717.25 are deducted, and additionally expenses owed to FPW and a small lien owed to Medicare, and debtor's exemption of \$15,000.00. This leaves \$44,805.10 to the estate.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is far from assured as there are numerous causation and damages issues that would have to be proved; collection will be very easy as the defendants are large corporations which gross billions of dollars annually and the settlement funds are being held by a third-party administrator; the litigation is incredibly complex and moving forward would decrease the net to the estate due to the legal fees; and the creditors will greatly benefit from the net to the estate, that would otherwise not exist; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted. Trustee may pay FPW \$35,115.24 in fees and \$139.73 in costs, and pay the MDL fees of \$6,688.62 and \$2,717.25, along with the Medicare lien of \$43.71.

15. [19-14170](#)-B-7 **IN RE: JOHNNY GONZALES**
[KAS-6](#)

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
6-26-2020 [[105](#)]

PETER FEAR/MV
KELSEY SEIB/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

16. [20-12381](#)-B-7 **IN RE: VANESSA PEREZ**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
7-16-2020 [[4](#)]

SCOTT LYONS/ATTY. FOR DBT.

NO RULING.

Debtor's request for waiver of the chapter 7 filing fee was set for hearing because debtor's Schedule I shows no income but debtor paid counsel for the filing and states she has other sources of income covering expenses.

Debtor must appear at the hearing and explain the discrepancy to the court. If debtor fails to appear, the application for a fee waiver will be denied.

17. [20-11987](#)-B-7 **IN RE: RICHARD RODRIGUEZ**
[JMV-1](#)

CONTINUED HEARING RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING AND MOTION TO EXTEND THE DEADLINES FOR FILING OBJECTIONS TO DISCHARGE AND MOTIONS TO DISMISS
8-7-2020 [[18](#)]

JEFFREY VETTER/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

This motion is GRANTED. Debtor did not appear at the continued meeting of creditors on September 11, 2020.

18. [20-12492](#)-B-7 **IN RE: CYNTHIA CORONADO**
[EMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-25-2020 [\[11\]](#)

BROKER SOLUTIONS, INC./MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
ERIN MCCARTNEY/ATTY. FOR MV.
RESPONSIVE PLEADING

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). The court notes that the Debtor filed non-opposition on August 28, 2020. Doc. #17. Therefore, the defaults of the creditors, the U.S. Trustee, the Ch. 7 Trustee, or any other party 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 court notes that the Movant failed to provide the Relief from Stay Summary Sheet as required by LBR 4001-1(a)(3), but considering the debtor's non-opposition, the court will rule on the matter.

The movant, Broker Solutions, Inc. dba New American Funding ("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 5587 West Holland Avenue, Fresno, California 93722 ("Property"). Doc. #11.

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 the debtor has failed to make at least one or more payments, with another monthly payment due on September 1, 2020. The movant has produced evidence that debtor is delinquent and the entire balance (including late fees) of \$230,695.76 is due. Doc. #14.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) 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 request of the Moving Party, at its option, to provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement as allowed by state law will be denied. The court is granting stay relief to movant to exercise its rights and remedies under applicable bankruptcy law. No more, no less.

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 indicated in her Statement of Intention to surrender the property.