



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, September 27, 2023
Department A – Courtroom #11
Fresno, California**

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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. [21-11814](#)-A-11 **IN RE: MARK FORREST**

ORDER TO SHOW CAUSE
9-13-2023 [[515](#)]

LEONARD WELSH/ATTY. FOR DBT.
\$188.00 FILING FEE PAID 9/18/23

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fee due has been paid. The order to show cause is vacated. No appearance is required.

2. [21-11814](#)-A-11 **IN RE: MARK FORREST**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
7-22-2021 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

3. [22-12016](#)-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
[DMG-11](#)

CONTINUED MOTION TO BORROW
8-23-2023 [[351](#)]

FUTURE VALUE CONSTRUCTION, INC./MV
D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Continued to October 5, 2023 at 10:30 a.m.

NO ORDER REQUIRED.

On September 22, 2023, the court issued an order continuing the hearing on the motion to borrow to October 5, 2023 at 10:30 a.m. Doc. #370.

4. [23-11623](#)-A-11 **IN RE: MATEO ENTERPRISE, INC. DBA EL MILAGRO MARKET**
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
7-28-2023 [\[1\]](#)

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Continued to October 18, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

This chapter 11 status conference will be continued to October 18, 2023 at 9:30 a.m. to be heard in connection with the debtor's motion to confirm chapter 11 plan. Doc. ##63-68, 70, 77, 85-86.

5. [23-11623](#)-A-11 **IN RE: MATEO ENTERPRISE, INC. DBA EL MILAGRO MARKET**
[LKW-3](#)

CONTINUED MOTION TO VALUE COLLATERAL
8-2-2023 [\[30\]](#)

MATEO ENTERPRISE, INC. DBA EL MILAGRO MARKET/MV
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). On August 15, 2023, the debtor and the secured creditor filed a stipulation to continue the hearing to September 27, 2023 to allow the secured creditor additional time to inspect and appraise the personal property to assess the merits of the motion to prepare any substantive opposition to the motion. Doc. #50. The hearing on the motion was continued to September 27, 2023, the secured creditor's deadline to file and serve any written opposition to the motion was extended to September 13, 2023, and the debtor's deadline to file and serve any reply in support of the motion was extended to September 20, 2023. Order, Doc. #53. No written opposition has been filed by the secured creditor. 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.

Mateo Enterprise, Inc. dba El Milagro Market ("Debtor"), the debtor in this chapter 11 case, moves the court for an order valuing Debtor's money on deposit, money held by Salvador Carrera, inventory, office furniture, equipment, machinery, and office fixtures used in Debtor's business (collectively, the "Property") at \$249,375.29. Doc. #30; Decl. of Salvador Carrera, Doc. #33. The Property is subject to liens and encumbrances held by eleven creditors securing the repayment of \$2,735,626.59. Schedule D, Doc. #1; Carrera Decl., Doc. #33. The liens and encumbrances against Debtor's Property were perfected by the filing of UCC Financing Statements in the California Secretary of State's Office. Schedule D, Doc. #1; see Ex. C, Doc. #34; Carrera Decl., Doc. #33. The first priority lien against the Property is held by Newtek Small Business Finance, LLC. ("Creditor") and secures repayment of \$443,666.00, which is \$194,290.71 more than the value of the Property. Carrera Decl., Doc. #33.

By the motion, Debtor requests that the court determine the value of the Property to be \$249,375.29 for purposes of Debtor's chapter 11 case. Carrera Decl., Doc. #33, Doc. #30. Debtor further requests that the amount of Creditor's claim secured by the Property is \$249,375.29 and any claim of Creditor in excess of \$249,375.29 is a general unsecured claim for purposes of Debtor's chapter 11 case. Id. Finally, Debtor requests that all claims secured by liens and encumbrances against the Property that are junior and subordinate to Creditor's lien are determined to be general unsecured claims for purposes of Debtor's chapter 11 case. Id. Debtor asserts nothing in the motion will affect Creditor's Deed of Trust against Mr. Carrera's real property. Carrera Decl., Doc. #33.

11 U.S.C. § 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." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2). Federal Rule of Bankruptcy Procedure 3012 "provides that the bankruptcy court may determine the value of a secured claim, upon motion of a party in interest, and after a hearing on notice to the holder of the secured claim." In re Shook, 278 B.R. 815, 823 (B.A.P. 9th Cir. 2002).

Debtor asserts the value of the Property is \$249,375.29. Carrera Decl., Doc. #33. Debtor is competent to testify as to the value of the Property. Id. Given the absence of contrary evidence, Debtor's opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. The court determines that the value of the Property is \$249,375.29 for purposes of Debtor's chapter 11 case. The court further determines that the amount of Creditor's claim secured by the Property is \$249,375.29 and any claim of Creditor in excess of \$249,375.29 is a general unsecured claim for purposes of Debtor's chapter 11 case. Finally, the court determines that all claims secured by liens and encumbrances against the Property that are junior and subordinate to Creditor's lien are determined to be general unsecured claims for purposes of Debtor's chapter 11 case. Nothing

in the motion affects Creditor's Deed of Trust against Mr. Carrera's real property. The proposed order shall specifically identify the collateral that is being valued by the motion.

6. [23-11623](#)-A-11 **IN RE: MATEO ENTERPRISE, INC. DBA EL MILAGRO MARKET**
[LKW-7](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
8-29-2023 [\[71\]](#)

MATEO ENTERPRISE, INC. DBA EL MILAGRO MARKET/MV
LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on September 21, 2023. Doc. #112.

7. [23-11623](#)-A-11 **IN RE: MATEO ENTERPRISE, INC. DBA EL MILAGRO MARKET**
[LKW-8](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
9-6-2023 [\[92\]](#)

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 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.

The Law Offices of Leonard K. Welsh ("Movant"), counsel for the Mateo Enterprise, Inc. dba El Milagro Market ("DIP"), requests allowance of interim compensation in the amount of \$21,885.00 and reimbursement for expenses in the amount of \$373.02 for services rendered from July 28, 2023 through August 31, 2023. Doc. #92. This is Movant's first fee application in this case.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a professional person. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #69. In determining the amount of reasonable compensation to be awarded to counsel, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing general case administration; (2) preparing for and attending meeting of creditors; (3) preparing and filing motion for order authorizing assumption of unexpired real property lease; (4) preparing and filing motion for order authorizing DIP to reject executory contract; (5) preparing and prosecuting motion for order authorizing DIP to use cash collateral and provide adequate protection; (6) prosecuting motion to value property for purposes of determining amount of secured claim; (7) preparing and filing DIP's plan of reorganization; and (8) preparing and filing fee and employment applications. Decl. of Leonard K. Welsh, Doc. #94; Ex. B, Doc. #95. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$21,885.00 and reimbursement of expenses in the amount of \$373.02. 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. Movant may draw on any retainer held. 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.

8. [20-10945-A-12](#) **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[WLJ-4](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-12-2023 [[324](#)]

KEWAL SINGH/MV
LEONARD WELSH/ATTY. FOR DBT.
LENDEN WEBB/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 court denies this motion without prejudice for the failure of the moving party to comply properly with applicable Federal Rules of Bankruptcy Procedure ("Rule") and Local Rules of Practice ("LBR").

Rules 4001(a)(1) and 9014(b) require service of a motion for relief from the automatic stay to be made pursuant to Rule 7004. LBR 9014-1(e)(1) requires that all pleadings filed in support of a motion be served on or before the date that the motion and related pleadings are filed with the court, and LBR 9014-1(e)(2) requires that a certificate of such service be filed with the court

concurrently with, or not more than three (3) days after, the filing of such pleadings with the court. Here, the notice of motion and related pleadings were filed with the court on September 12, 2023. Doc. ##324-327. There was no certificate of service filed with the court by September 15, 2023 showing that the notice of motion and related pleadings filed on September 12, 2023 were served on interested parties on or before the date those documents were filed with the court.

While the notice of motion and related documents were filed as exhibits to an application for an order shortening time, see Doc. ##321, 322, the court finds that the inclusion of the notice of motion and related pleadings as an exhibit to an application for an order shortening time did not provide parties in interest with the requisite notice for a motion for relief from stay as required by Rules 4001(a)(1), 9014(b) and 7004 and LBR 9014-1(f)(2).

As a procedural matter, the notice of motion and motion does not comply with LBR 9014-1(d)(4), which requires the notice of the hearing on the motion and the motion to be filed as separate documents. Here, the notice of motion and the motion were filed as a single document. E.g., Doc. #324.

The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

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

9. [19-12557](#)-A-12 **IN RE: FRANK/SUSAN FAGUNDES**
[WJH-19](#)

MOTION TO MODIFY CHAPTER 12 PLAN
8-15-2023 [\[220\]](#)

SUSAN FAGUNDES/MV
RILEY WALTER/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.

Frank G. Fagundes and Susan A. Fagundes (together, "Debtors"), the chapter 12 debtors in this case, filed and served this motion to modify their Chapter 12 plan pursuant to 11 U.S.C. § 1229. Doc. #220.

Section 1229 of the Bankruptcy Code governs modification of a plan after confirmation. Debtors' Second Amended Chapter 12 Plan (the "Plan") was confirmed by an order entered on May 8, 2020. Order, Doc. #157. Debtors request modification to allow Debtors to pay the Plan off early in full, before the maturity date, and obtain a discharge, without reduction in the amount creditors will receive. Doc. #220. Debtors make this request in part because Debtor's expenses are now greater than their monthly income and Debtors' children help with Debtors' monthly expenses, Mr. Fagundes is retired from being a dairyman and receives a minimal amount of social security, and Mrs. Fagundes will retire at the end of 2023 and her income will drop further. Decl. of Susan Fagundes, Doc. #222.

Since confirmation of the Plan, Debtors have filed their 2019, 2020, 2021 and 2022 state and federal tax returns, and notice was given pursuant to 11 U.S.C. § 1232 as to the 2019 and 2020 returns. Fagundes Decl., Doc. #222. The Plan calls for 60 monthly payments of \$200.00, for total payments of \$12,000.00. Order, Doc. #157. As of the date of this motion, Debtors' remaining balance under the Plan was about \$3,200.00, with the last payment due in 16 months. Fagundes Decl., Doc. #222. Under the proposed modification, Debtors' son will pay the estimated \$3,200.00 (less any amounts already paid prior to approval of this motion) owed under the Plan in a lump sum payment. Id. In other words, the remaining amount for the full \$12,000.00 due under the Plan will be paid in a lump sum payment instead of over the remaining Plan term. The court finds that no creditor will receive less than called for by the confirmed Plan.

Accordingly, this motion is GRANTED.

10. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[WLG-4](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-11-2023 [[589](#)]

JASWINDER KAUR/MV
LEONARD WELSH/ATTY. FOR DBT.
LENDEN WEBB/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 court denies this motion without prejudice for the failure of the moving party to comply properly with applicable Federal Rules of Bankruptcy Procedure ("Rule") and Local Rules of Practice ("LBR").

Rules 4001(a)(1) and 9014(b) require service of a motion for relief from the automatic stay to be made pursuant to Rule 7004. LBR 9014-1(e)(1) requires that all pleadings filed in support of a motion be served on or before the date that the motion and related pleadings are filed with the court, and LBR 9014-1(e)(2) requires that a certificate of such service be filed with the court concurrently with, or not more than three (3) days after, the filing of such

pleadings with the court. Here, the notice of motion and related pleadings were filed with the court on September 12, 2023. Doc. ##589-592. There was no certificate of service filed with the court by September 15, 2023 showing that the notice of motion and related pleadings filed on September 12, 2023 were served on interested parties on or before the date those documents were filed with the court.

While the notice of motion and related documents were filed as an exhibit to an application for an order shortening time, see Doc. ##584, 586, the court finds that the inclusion of the notice of motion and related pleadings as an exhibit to an application for an order shortening time did not provide parties in interest with the requisite notice for a motion for relief from stay as required by Rules 4001(a)(1), 9014(b) and 7004 and LBR 9014-1(f)(2).

As a procedural matter, the notice of motion and motion does not comply with LBR 9014-1(d)(4), which requires the notice of the hearing on the motion and the motion to be filed as separate documents. Here, the notice of motion and the motion were filed as a single document. E.g., Doc. #589.

The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

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

11. [23-10571](#)-A-11 **IN RE: NABIEKIM ENTERPRISES, INC.**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
3-24-2023 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

12. [23-10571](#)-A-11 **IN RE: NABIEKIM ENTERPRISES, INC.**
[FW-2](#)

FURTHER HEARING RE: MOTION TO USE CASH COLLATERAL
3-24-2023 [[6](#)]

NABIEKIM ENTERPRISES, INC./MV
PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted on a further interim basis through December 31, 2023.

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 set for hearing pursuant to an interim order authorizing use of cash collateral ("Interim Order"). Doc. #82. The motion was heard initially on March 29, 2023, and again on April 12, 2023, and again on June 28, 2023, and was granted on an interim basis each time. See Doc. ##22, 46, 82. A further hearing on use of cash collateral was set for September 27, 2023. Interim Order, Doc. #82. The Interim Order provided that the debtor may file and serve any supplemental documents, which may include a revised budget, on or before September 13, 2023. Id. On September 13, 2023, the debtor filed a supplemental document and revised budget. Doc. ##113, 114. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper. The court will issue an order if a further hearing is necessary.

Nabiekim Enterprises, Inc. ("Debtor" or "DIP") moves the court for an order authorizing Debtor to use the cash collateral of Small Business Administration ("SBA") on a monthly basis subject to a revised budget. Ex. D, Doc. #113. Debtor asserts SBA holds a duly perfected security interest in nearly all of Debtor's cash collateral, including funds in Debtor's bank accounts at Wells Fargo. Motion, Doc. #6. Based on Debtor's list of 20 largest creditors, SBA is owed \$312,300.00 and its collateral, as of the petition date, was \$53,414.46. Doc. #1. Based on Debtor's schedules, SBA is owed \$312,300.00 and its collateral, as of the petition date, was \$49,657.38. Schedule D, Doc. #34. While there are other entities that may assert a security interest in Debtor's cash collateral, all other entities hold a junior security interest to the undersecured SBA and are, thus, unsecured.

Pursuant to 11 U.S.C. § 363, a debtor in possession can use property of the estate that is cash collateral by obtaining either the consent of each entity that has an interest in such cash collateral or court authorization after notice and a hearing. 11 U.S.C. § 363(c)(2). "The primary concern of the court in determining whether cash collateral may be used is whether the secured creditors are adequately protected." In re Plaza Family P'ship, 95 B.R. 166 (E.D. Cal. 1989) (citing 11 U.S.C. § 363(e)). Pursuant to 11 U.S.C. § 363(o), DIP carries the burden of proof on the issue of adequate protection.

Here, DIP seeks court authorization to use cash collateral to pay income and costs incurred by DIP in the normal course of its business for October 1, 2023 through December 31, 2023. Doc. #114; Ex. D, Doc. #113. As adequate protection for DIP's use of SBA's cash collateral, to the extent cash collateral is actually used, DIP will grant SBA a replacement lien against DIP's post-petition sales and other income as well as granting a replacement lien to any other creditor with a valid security interest in DIP's cash collateral that was served with notice of the motion. Decl. of Kaye Kim, Doc. ##8, 24.

Consistent with the Interim Order, DIP filed and served a supplemental statement in support of further use of cash collateral. Doc. ##114, 115. By the supplemental statement, DIP explains that the amount of cash collateral needed for October through December 2023 is identical the budget submitted for the previous three-month period of July to September 2023. Supp. Stmt., Doc. #114.

Accordingly, pending any opposition at the hearing, the motion will be GRANTED on a further interim basis through December 31, 2023, consistent with the budget attached as Exhibit D to Doc. #113. At the hearing, counsel for DIP should be prepared to set a new hearing date for the further use of cash collateral and date to file and serve supplemental pleadings in case Debtor's chapter 11 plan is not confirmed by December 31, 2023.

13. [23-10571](#)-A-11 **IN RE: NABIEKIM ENTERPRISES, INC.**
[FW-5](#)

CONTINUED CONFIRMATION HEARING RE: CHAPTER 11 SMALL BUSINESS PLAN
6-22-2023 [[67](#)]

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Continued to November 15, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

On September 14, 2023, the court issued an order continuing the plan confirmation hearing to November 15, 2023 at 9:30 a.m. Doc. #117.

1. [23-11209](#)-A-7 **IN RE: FRANCISCA MALDONADO**

PRO SE REAFFIRMATION AGREEMENT WITH LAKEVIEW LOAN SERVICING, LLC
9-1-2023 [\[39\]](#)

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

This matter was automatically set for a hearing because the debtor is not represented by an attorney in this bankruptcy case. However, this reaffirmation agreement appears to relate to a consumer debt secured by real property. Pursuant to 11 U.S.C. § 524(c)(6)(B), the court is not required to hold a hearing and approve this agreement.

2. [23-11838](#)-A-7 **IN RE: CANDICE WILLIAMS**

PRO SE REAFFIRMATION AGREEMENT WITH FLAGSHIP CREDIT ACCEPTANCE
8-31-2023 [\[15\]](#)

NO RULING.

3. [23-11471](#)-A-7 **IN RE: HEIDI CARRILLO**

PRO SE REAFFIRMATION AGREEMENT WITH WELLS FARGO BANK, N.A.
8-30-2023 [\[14\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

The debtor's counsel will inform the debtor that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. The debtor was represented by counsel when she entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. In re Minardi, 399 B.R. 841, 846 (Bankr. N.D. Okla. 2009). The reaffirmation agreement, in the absence of a declaration by the debtor's counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. The debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by her attorney.

1. [21-12810](#)-A-7 **IN RE: RENEWABLE LEGACY LLC**
[FW-9](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL FOR
PETER A. SAUER, TRUSTEES ATTORNEY(S)
8-24-2023 [\[105\]](#)

JUSTIN HARRIS/ATTY. FOR DBT.
PETER SAUER/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 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 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.

Fear Waddell, P.C. ("Movant"), attorney for chapter 7 trustee Peter L. Fear ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from December 29, 2021 through November 18, 2022. Doc. #105. Movant previously filed an interim application for fees and expenses for this time period, which was granted by order dated December 22, 2022. Order, Doc. #104. The amounts approved by that order on an interim basis were \$44,375.00 in fees and \$990.16 in expenses. Id.

Applicant is seeking to have the fees and expenses previously approved on an interim basis approved on a final basis. Doc. #105. At the time of the interim fee application, there was a possibility that further funds would be returned to the bankruptcy estate. Id. However, that did not happen, the bankruptcy estate is administratively insolvent, and there are not enough funds for Movant to be paid in full. Id. Trustee has agreed to waive his commission and costs in this case, and Movant has agreed to subordinate its fees and costs to other administrative creditors. Id.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

As previously determined by this court, the court finds the compensation and reimbursement sought to be awarded on a final basis are reasonable, actual, and necessary. Civil Minutes, Doc. #103.

Accordingly, the court allows final compensation in the amount of \$44,375.00 and reimbursement for expenses in the amount of \$990.16. Trustee is authorized to make a combined payment of \$45,365.16, representing final compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

2. [22-10733](#)-A-7 **IN RE: TODD/TRISH TRANSMEIER**
[RSB-1](#)

MOTION TO COMPEL ABANDONMENT
9-6-2023 [\[41\]](#)

TRISH TRANSMEIER/MV
R. BELL/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

Todd Nicholas Transmeier and Trish Deann Transmeier (together, "Debtors"), the chapter 7 debtors in this case, move the court to order the chapter 7 trustee, Jeffrey M. Vetter, to abandon property of the estate known as the single-family residence located at 2502 March Ave., Bakersfield, CA 93313 (the "Property"). Mot., Doc. #41. Debtors assert that they have no non-exempt equity in the Property and the Property therefore has no value to the bankruptcy estate. Id.

11 U.S.C. § 554(b) permits the court, on request of a party in interest and after notice and a hearing, to order the trustee to abandon property that is burdensome to the estate or of inconsequential value and benefit to the estate. Vu v. Kendall (In re Vu), 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). To grant a motion to abandon property, the bankruptcy court must find either that the property is (1) burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. Id. (citing In re K.C. Machine & Tool Co., 816 F.2d 238, 245 (6th Cir. 1987)). However, "an order compelling abandonment [under § 554(b)] is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset. . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." Id. (quoting K.C. Machine & Tool Co., 816 F.2d at 246).

Here, Debtors do not allege that the Property is burdensome to the estate. Mot., Doc. #41. Therefore, Debtors must establish that the Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Debtors' Property is valued at \$347,000.00 and is encumbered by a mortgage totaling \$207,435.00. Schedule D, Doc. #1; Decl. of Todd Nicholas Transmeier, Doc. #43. In their original Schedule C, Debtors claimed a \$300,000.00 exemption in the Property pursuant to California Civil Procedure Code § 704.730. Schedule C, Doc. #1; Transmeier Decl., Doc. #43. However, on June 29, 2023, Debtors filed an amended Schedule C in which Debtors do not claim a \$300,000.00 exemption in the Property. Am. Schedule C, Doc. #38. Therefore, there is non-exempt equity in the Property for the benefit of the estate, and the court finds that Debtors have not met their burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate.

Accordingly, this motion is DENIED.

3. [08-16938](#)-A-7 **IN RE: PAUL KLIMEK AND CHARLENE MARCUM**

TRUSTEE'S FINAL REPORT (TFR)
8-16-2023 [\[145\]](#)

GARY FRALEY/ATTY. FOR DBT.
PETER SAUER/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 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 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.

Peter L. Fear ("Trustee"), the chapter 7 trustee, requests allowance of final compensation and reimbursement for expenses for services rendered as trustee in this case. Doc. #147. Trustee provided trustee services valued at \$12,197.02, and requests compensation for that amount. Doc. #145. Trustee requests reimbursement for expenses in the amount of \$63.88. Doc. #145. Since being appointed to this case on November 2, 2021, Trustee has objected to the debtors' amended claim of exemptions, employed general counsel, negotiated a settlement with the debtors, received funds from settlement with the debtors, and prepared final filings. Ex. A, Doc. #145.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a chapter 7 trustee. 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded a chapter 7 trustee, the court shall treat such compensation as a commission, based on § 326 of the Bankruptcy Code. 11 U.S.C. § 330(a)(7). Here, Trustee demonstrates reasonable compensation in accordance with the statutory framework of 11 U.S.C. § 326. Doc. #145. Further, the court finds Trustee's services and requested expenses were actual and necessary to the administration of this estate.

This motion is GRANTED. The court allows statutory compensation in the amount of \$12,197.02 and reimbursement for expenses in the amount of \$63.88.

4. [23-11740](#)-A-7 **IN RE: JOSEPHINE SMALLWOOD**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-28-2023 [\[13\]](#)

EXETER FINANCE LLC/MV
T. O'TOOLE/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Exeter Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2019 Volkswagen Jetta (the "Vehicle"). Doc. #13.

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 any 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 nine complete pre-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$6,032.92, which includes late fees and NSF fees. Decl. of Nancy Wafer, Doc. #17.

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 the debtor is in chapter 7. The Vehicle is valued at \$18,525.00 and the debtor owes \$24,701.63. Wafer Decl., Doc. #17.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit 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 debtor did not list the Vehicle on her Statement of Intention. Doc. #1.

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

5. [23-11543](#)-A-7 **IN RE: FREDY HERNANDEZ**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-17-2023 [\[13\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV
ROSALINA NUNEZ/ATTY. FOR DBT.
KIRSTEN MARTINEZ/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 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Toyota Motor Credit Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2021 Toyota Tacoma 4X (the "Vehicle"). Doc. #13.

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 any 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 four complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$3,779.21. Decl. of Debra Knight, Doc. #16. The moving papers also show the collateral is a depreciating asset and there is lack of insurance on the Vehicle. Knight Decl., Doc. #16. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

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 the debtor is in chapter 7. The Vehicle is valued at \$39,800.00 and the debtor owes \$55,310.34. Knight Decl., Doc. #16.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit 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 the debtor has failed to make at least four pre- and post-petition payments to Movant, the Vehicle is a depreciating asset, and there is a lack of insurance on the Vehicle.

6. [23-11251](#)-A-7 **IN RE: JACKIE MCLAUGHLIN**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-22-2023 [\[16\]](#)

WELLS FARGO BANK, N.A./MV
NEIL SCHWARTZ/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
DISCHARGED 9/20/23

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 at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant 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 debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on September 20, 2023. Doc. #23. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Wells Fargo Bank, N.A., dba Wells Fargo Auto ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2016 Ford Fusion (the "Vehicle"). Doc. #16.

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 any 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 four complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$1,144.52. Decl. of Donna Sallee, Doc. #19. The moving papers also show the collateral is a depreciating asset and there is lack of insurance on the Vehicle. Sallee Decl., Doc. #19.

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 the debtor is in chapter 7. Movant values the Vehicle at \$12,300.00 and the amount owed to Movant is \$13,164.60. Sallee Decl., Doc. #19.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit 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 the debtor has failed to make at least four pre- and post-petition payments to Movant, the Vehicle is a depreciating asset, and there is a lack of insurance on the Vehicle.

MOTION TO AMEND
9-8-2023 [\[77\]](#)

JAMES SALVEN/MV
ADRIAN WILLIAMS/ATTY. FOR DBT.
PETER FEAR/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 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.

On April 6, 2023, James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Herbert C. Anderson and Therese A. Anderson, filed a motion for an order pursuant to Federal Rule of Bankruptcy Procedure 9019 ("Prior Motion") approving the compromise of all claims and disputes arising out of the participation of debtor Herbert C. Anderson ("Debtor") in a multi-district litigation against the manufacturer of the alleged toxic product to which Debtor had been exposed (the "MDL"). Doc. #62. Trustee also requested authorization of compensation for Hensley Law Group, Andrus Wagstaff, and Balaban Law (jointly "Special Counsel") in the MDL pursuant to 11 U.S.C. § 328 as required by the order employing Special Counsel. Id. The court granted the Prior Motion by order filed on May 30, 2023 ("Order"). Doc. #70.

Since entry of the Order, Trustee received both a check and a settlement statement from Special Counsel showing that, after all deductions (except the split with Debtor) were paid, the total amount left for distribution to the estate was \$57,867.30, some \$7,555.78 more than anticipated. Decl. of Peter A. Sauer, Doc. #79. Counsel for Trustee investigated the matter and found that the lien resolution servicer used by Special Counsel was able to secure an additional reduction in the liens down to \$30,223.13 from \$37,778.91 after the Prior Motion was originally filed. Sauer Decl., Doc. #79. The difference between the original lien amounts prayed for in the Prior Motion and those on which the net proceeds payment was made is \$7,555.78, the exact amount of the funds held by Trustee in excess of the distribution authorized in the Order. Id. Disbursing funds per the Order would mean Trustee would have \$7,555.78 more than the court authorized Trustee to disburse in the Order. Id.

By this motion, Trustee requests the court revise the Order by changing paragraph (d)(iii) to read: "Liens to Medicare and Kaiser Foundation Health Plan, Inc. totaling \$30,233.13." Sauer Decl., Doc. #77. Revising the Order to reduce the lien raises the estate's total from \$25,155.06 to \$28,933.65, with an equal amount belonging to Debtor. Id. Trustee believes that the revision of the Order will not prejudice the estate or Debtor. Id. Further, Trustee desires

that the court revise the Order for administrative clarity so that the records of this court and the disposition of funds by Trustee are uniform. Id.

Trustee contends the court has authority to amend the Order pursuant to Federal Rule of Civil Procedure ("Rule") 60(b)(1), which provides: "On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect." Counsel for Trustee states that it appears the lien resolution servicer inadvertently failed to tell Special Counsel that the lien resolution servicer was still negotiating the liens in this matter, and that inadvertence permits revision of the Order under subsection (b)(1). Sauer Decl., Doc. #79.

The court finds that good cause exists pursuant to Rule 60(b)(1) to authorize the requested revision of the Order by changing paragraph (d)(iii) to read: "Liens to Medicare and Kaiser Foundation Health Plan, Inc. totaling \$30,233.13", and the motion will be GRANTED.

8. [21-10757](#)-A-7 **IN RE: JOSE/ANGELICA TORRES**
[DMG-2](#)

MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS FOR VIOLATION OF THE
DISCHARGE INJUNCTION
8-29-2023 [\[33\]](#)

ANGELICA TORRES/MV
D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on September 20, 2023. Doc. #42.

9. [23-11777](#)-A-7 **IN RE: SHANNON/STEPHEN PALLAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-29-2023 [\[13\]](#)

CHINONYE UGORJI/ATTY. FOR DBT.
\$338.00 FILING FEE PAID 9/2/23

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due have been paid. The case shall remain pending.

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-18-2023 [\[18\]](#)

FREEDOM MORTGAGE CORPORATION/MV
KEVIN TANG/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.
DISCHARGED 03/06/2023

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 at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant 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 March 6, 2023. Doc. #16. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Freedom Mortgage Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property located at 2411 Juniper Court, Tulare, CA 93274 (the "Property"). Doc. #18.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least three complete post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$5,556.48. Decl. of Damien Ranto, Doc. #20.

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

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

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

11. [22-11992](#)-A-7 **IN RE: DOMINGO/PAOLA HERNANDEZ**
[TTA-1](#)

MOTION TO COMPEL ABANDONMENT
8-19-2023 [\[25\]](#)

PAOLA HERNANDEZ/MV
KEVIN TANG/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 creditors, the 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 a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the certificate of service filed in connection with this motion does not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

Domingo Hernandez and Paola Pena Hernandez (together, "Debtors"), the chapter 7 debtors in this case, move the court to order the chapter 7 trustee, Irma Edmonds, to abandon property of the estate known as the single-family residence located at 2411 Juniper Court, Tulare, CA 93274 (the "Property"). Doc. #25. Debtors assert that they have no non-exempt equity in the Property and the Property therefore has no value to the bankruptcy estate. Decl. of Domingo Hernandez and Paola Pena Hernandez, Doc. #27. No opposition has been filed in response to this motion.

11 U.S.C. § 554(b) permits the court, on request of a party in interest and after notice and a hearing, to order the trustee to abandon property that is burdensome to the estate or of inconsequential value and benefit to the estate. Vu v. Kendall (In re Vu), 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). To grant a motion to abandon property, the bankruptcy court must find either that the property is (1) burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. Id. (citing In re K.C. Machine & Tool Co., 816 F.2d 238, 245 (6th Cir. 1987)). However, "an order compelling abandonment [under § 554(b)] is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset. . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." Id. (quoting K.C. Machine & Tool Co., 816 F.2d at 246).

Here, Debtors do not allege that the Property is burdensome to the estate. Mot., Doc. #27. Therefore, Debtors must establish that the Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. As of the petition date, Debtors' Property was valued at \$394,00.00 and was encumbered by a mortgage held by Freedom Mortgage Corporation ("FMC") totaling \$244,643.00. Schedule D, Doc. #1. Debtors claimed a \$149,357.00 exemption in the Property under California Civil Procedure Code § 704.730. Schedule C, Doc. #1.

By the motion, Debtors assert a market value for the Property of \$426,700.00 but deduct an estimated 8% costs of a hypothetical sale leaving the value of their interest in the Property at \$392,564.00 for purposes of this motion. Hernandez Decl., Doc. #27; see Ex. A, Doc. #28. The court finds that the deduction of an 8% cost of the sale from the fair market value of the property is appropriate in this instance because the bankruptcy estate will have to pay costs of sale before realizing any value from the Property that will benefit the estate. Debtors further assert that the current balance of the mortgage held by FMC against the Property is \$241,577.40. Hernandez Decl., Doc. #27; see Ex. B, Doc. #28.

Debtors also assert in their declaration in support of the motion that Debtors claimed a \$150,986.60 exemption in the Property under California Civil Procedure Code § 704.730. Hernandez Decl., Doc. #27; see Ex. A, Doc. #28. However, the Schedule C filed as Exhibit A to the motion ("New Schedule C") was not filed with the court. If the New Schedule C had been filed with the court, under Federal Rule of Bankruptcy Procedure 4003(b)(1), the chapter 7 trustee, creditors and other parties in interest would have had 30 days after the New Schedule C was filed to object to the new exemption amount. Because the New Schedule C has not been filed with the court, the court will rely on the exemption amount of \$149,357.00 as set forth in Debtors' filed Schedule C to analyze this motion. Schedule C, Doc. #1.

Based on the current fair market value of the Property less an 8% cost of the sale of the Property, the current mortgage amount owed to FMC, and the Debtors' filed claim of a \$149,357.00 exemption in the Property under California Civil Procedure Code § 704.730, the court finds that there would be only \$1,629.06 left for distribution if the Property were not abandoned. Based on the above and the lack of written opposition to the motion, the court finds that Debtors have met their burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate.

Accordingly, this motion is GRANTED. The order shall specifically identify the property abandoned.