

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, October 6, 2021
Place: Department A – 510 19th Street
Bakersfield, California

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

Pursuant to District Court General Order 631, courthouses for the Eastern District of California were reopened to the public effective June 14, 2021.

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. 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, 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. [21-10716](#)-A-13 **IN RE: VINOD SAHNI**
[RSW-1](#)

STATUS CONFERENCE RE: MOTION TO CONFIRM PLAN
7-1-2021 [\[29\]](#)

VINOD SAHNI/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 9, 2021, at 9:00 a.m.

ORDER: The court will issue an amended scheduling order.

Based on the joint status conference statement (Doc. #52), the status conference will be continued to December 9, 2021, at 9:00 a.m. The close of discovery will be extended to December 9, 2021. The parties shall file either joint or unilateral status report(s) not later than December 2, 2021. The court will issue an amended scheduling order.

2. [21-11929](#)-A-13 **IN RE: MICHELLE VALENCIA**
[ELP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK TRUST NATIONAL
ASSOCIATION
8-25-2021 [\[32\]](#)

U.S. BANK TRUST NATIONAL ASSOCIATION/MV
ERICA LOFTIS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled unless the motion to dismiss (calendar matter #3) is granted, in which case this matter will be denied as moot.

DISPOSITION: Sustained if matter heard.

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

Michelle Valencia ("Debtor"), the chapter 13 debtor, filed the chapter 13 plan on August 12, 2021 (the "Plan"). Doc. #18. U.S. Bank Trust National Association as Trustee of the Chalet Series IV Trust, its successors and/or assignees ("Creditor) objects to confirmation of the Plan on the grounds that the Plan does not provide for the curing of the default on Creditor's claim and Debtor's schedules show Debtor would be unable to afford Plan payments were Debtor to amend the Plan to provide for payment in full of Creditor's claim. Doc. #32.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under section 501, is deemed allowed unless a party in interest objects. Creditor filed its proof of claim on September 14, 2021. Claim 1. Creditor's proof of claim states the amount necessary to cure any default as of the petition date is \$32,851.81. No objection to the claim has been filed.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #18. The Plan asserts arrears of \$10,000 owed to Creditor. Doc. #18. The Plan understates the arrears owed on Creditor's claim. Claim 1; Doc. #18.

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

3. [21-11929](#)-A-13 **IN RE: MICHELLE VALENCIA**
[MHM-1](#)

MOTION TO DISMISS CASE
8-17-2021 [\[24\]](#)

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

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 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.

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because debtor has failed to complete Credit Counseling Certificate timely (11 U.S.C. § 109(h)). Debtor did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors and 11 U.S.C. § 109(h) for failure to complete Credit Counseling Certificate timely.

According to the debtor's schedules, the debtor's only significant scheduled asset is a parcel of real property that the debtor has claimed as fully exempt. Doc. #16. The court finds that dismissal, rather than conversion, is in the best interests of creditors and the estate.

Accordingly, this motion will be GRANTED. The case will be dismissed.

4. [21-11330](#)-A-13 **IN RE: TIMOTHY AMMERMAN**
[PK-1](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
9-8-2021 [[31](#)]

PATRICK KAVANAGH/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 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.

Patrick Kavanagh ("Movant"), counsel for Timothy Gene Ammerman ("Debtor"), the debtor in this chapter 13 case, requests allowance of interim compensation in the amount of \$4,890.00 for services rendered from March 31, 2021 through August 24, 2021. Doc. #31. Debtor's confirmed plan provides for \$5,955.00 in

attorney's fees. Plan, Doc. ##3, 27. No prior fee applications have been granted.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, 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). Here, Movant demonstrates services rendered relating to: (1) pre-petition consultation and fact gathering; (2) case administration; (3) original plan, hearings, and objections; and (4) claims administration. Doc. #34. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on an interim basis.

This motion is GRANTED. The court allows interim compensation in the amount of \$4,890.00 to be paid in a manner consistent with the terms of the confirmed plan.

5. [21-11148](#)-A-13 **IN RE: JERRY/MARGARET HARVEY**
[RSW-2](#)

MOTION TO VALUE COLLATERAL OF U.S. BANK NATIONAL ASSOCIATION
8-13-2021 [\[28\]](#)

MARGARET HARVEY/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to December 9, 2021 at 9:00 a.m.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). U.S. Bank National Association, as Successor in Interest to Bank of America National Association, Successor by Merger to Lasalle Bank National Association, as Trustee for GSAMP Trust 2006-HE3, Mortgage Pass-Through Certificates, Series 2006-HE3, by and through its authorized loan servicing agent PHH Mortgage Corporation ("Creditor"), timely filed written opposition on September 22, 2021. Doc. #33. The failure of 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 non-responding parties in interest are entered.

Jerry Glynn Harvey and Margaret Rose Harvey (together, "Debtors"), the debtors in this chapter 13 case, move the court for an order valuing the collateral of Creditor's secured claim. Doc. #28. Debtors seek to value their primary residence, located at 6700 Cedarcrest Ave., Bakersfield, CA (the "Property"), which is the only collateral for Creditor's claim. Doc. #28. Citing 11 U.S.C.

§ 1322(c)(2), Debtors contend that they may value and bifurcate Creditor's allowed Claim pursuant to 11 U.S.C. § 506(a) since the second deed of trust held by Creditor has matured.

Any modification under § 1322(c)(2) must comply with § 1325(a)(5). 11 U.S.C. § 1322(c)(2). "Looking at the 'plain language' of 11 U.S.C. § 1325(a)(5), as made applicable by 11 U.S.C. § 1322(c)(2), it allows for the debtor to provide for the claim of a creditor secured only by the debtor's primary residence by paying that creditor the value of the secured claim, as determined pursuant to 11 U.S.C. § 506(a), and not any amount in excess of the [sic] 11 U.S.C. § 506(a) as part of the allowed secured claim." In re Collier-Abbott, 616 B.R. 117, 121 (Bankr. E.D. Cal. 2020) (Sargis, J.).

"An allowed claim of a creditor . . . is a secured 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 secured claim." 11 U.S.C. § 506(a).

Debtors value the Property at \$285,000. Decl. of Margaret Harvey, Doc. #30. Creditor opposes this valuation and asserts that there may be significantly more equity in the Property than alleged by Debtor. Doc. #33. Creditor requests the hearing on this motion be continued for at least 60 days to allow Creditor to further investigate the value of the Property, and if necessary, to obtain a verified full interior appraisal of the Property. Doc. #33.

The court is inclined to continue the hearing on this motion to December 9, 2021 at 9:00 a.m. to allow Creditor to investigate the value of the Property.

6. [19-13251](#)-A-13 **IN RE: OSCAR/MELISSA GARZA**
[RSW-3](#)

CONTINUED MOTION TO INCUR DEBT
8-12-2021 [\[98\]](#)

MELISSA GARZA/MV
WILLIAM OLCOTT/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.

Oscar Edward Garza and Melissa Richer Garza (together, "Debtors"), the chapter 13 debtors in this case, filed and served this motion to incur new debt pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and set for hearing on September 9, 2021 at 9:00 a.m. Doc. #98. The court continued this matter to October 6, 2021 so that Debtors could supplement the record and file amended Schedules I and J demonstrating that Debtors could afford the new debt, a car payment of \$589 for a 2019 Kia Sorento. Doc. #106.

On September 21, 2021, Debtors filed a supplemental declaration explaining why the vehicle was required. Doc. #109. The vehicle was needed because the Debtors' previous vehicle stopped working and would cost too much to fix. Doc. #109. Debtors needed the vehicle for doctor appointments and other

errands. Doc. #109. Also on September 21, 2021, Debtors filed amended Schedules I and J demonstrating an ability to pay future plan payments, projected living expenses, and the new debt. Doc. #110.

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

Accordingly, this motion is GRANTED.

7. [17-14163](#)-A-13 **IN RE: JOHN/RITA CORSON**
[PK-3](#)

CONTINUED MOTION TO MODIFY PLAN
7-20-2021 [[69](#)]

RITA CORSON/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 9, 2021, at 9:00 a.m.

ORDER: The court will issue an order.

Pursuant to the chapter 13 trustee's reply (Doc. #91), the hearing on the motion to modify the plan will be continued to December 9, 2021, at 9:00 a.m.

The parties shall file either joint or unilateral status report(s) not later than December 2, 2021.

8. [21-11666](#)-A-13 **IN RE: LOUIS/TIFFANY RODRIGUEZ**
[PK-2](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
9-15-2021 [[31](#)]

PATRICK KAVANAGH/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.

Patrick Kavanagh ("Movant"), counsel for Louis Rene Rodriguez and Tiffany Lannette Rodriguez (together, "Debtors"), the debtors in this chapter 13 case, requests allowance of interim compensation in the amount of \$5,500.00 for services rendered from March 25, 2021 through August 30, 2021. Doc. #31. Debtors' confirmed plan provides for \$6,500.00 in attorney's fees. Plan, Doc. ##8, 27. No prior fee applications have been granted.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, 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). Here, Movant demonstrates services rendered relating to: (1) pre-petition consultation and fact gathering; (2) case administration and filing; (3) valuing collateral; and (4) original plan and hearings. Doc. #33. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on an interim basis.

This motion is GRANTED. The court allows interim compensation in the amount of \$5,500.00. In light of a pre-petition retainer of \$2,000.00, the court approves \$3,500.00 to be paid in a manner consistent with the terms of the confirmed plan.

9. [20-12668](#)-A-13 **IN RE: MICHAEL/ALICIA AGUIRRE**
[RSW-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
8-19-2021 [\[44\]](#)

ALICIA AGUIRRE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Michael Vincent Aguirre and Alicia Garcia Aguirre (together, "Debtors"), the chapter 13 debtors, move the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise and settlement of a defective product claim. Doc. #44.

Joint Debtor Alicia Aguirre had a medical procedure in 2012, which caused ongoing health problems and required additional surgery. Decl. of Alicia Aguirre, Doc. #46. Alicia Aguirre agreed to join a lawsuit in 2015 or 2016 and hired an attorney. Id. At the time Debtors filed their bankruptcy petition, Debtors had not heard from their attorney for a long time and so did not list it as a possible asset in the bankruptcy. Id. Debtors recently received a settlement offer of \$57,500, before deducting attorneys' fees and costs. Id. Debtors will receive approximately \$40,000. Id. Debtors have not accepted the settlement nor received any funds, and Debtors are awaiting bankruptcy court approval. Id. Debtors filed amended Schedules A/B and C to exempt the settlement amount in full. Id.; Am. Schedules A/B & C, Doc. #42.

On a motion by the chapter 13 debtor 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. Martin v. Kane (In re A & C Props.), 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. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Debtors have considered the standards of A & C Properties and Woodson. Doc. #44. The settlement was negotiated in good faith and represents the best result that can be achieved under the facts of this case. The settlement arises from a multi-district litigation, and any attempt at recovery outside of the multi-district litigation would significantly increase expenses to Debtors while reducing the likelihood of success. Further litigation will not increase benefits to Debtors, the bankruptcy estate, or any party in interest. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, the motion is GRANTED. Debtors are authorized, but not required, to execute any and all documents necessary to satisfy the terms of the proposed settlement agreement.

10. [21-11788](#)-A-13 **IN RE: JAVIER/DANIELLE DE OCHOA**
[EAT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN
SERVICING, LLC.
8-31-2021 [\[15\]](#)

LAKEVIEW LOAN SERVICING, LLC./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CASSANDRA RICHEY/ATTY. FOR MV.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The objection was resolved by stipulation filed on September 28, 2021.
Doc. #23.

11. [21-10890](#)-A-13 **IN RE: JOSE NECER**
[RSW-1](#)

MOTION TO CONFIRM PLAN
8-31-2021 [\[35\]](#)

JOSE NECER/MV
ROBERT WILLIAMS/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(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.

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

1. [18-11949](#)-A-7 **IN RE: MOGUL ENERGY PARTNERS I, LLC**
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF, TAMBERI & WONG, ACCOUNTANT(S)
9-3-2021 [\[193\]](#)

RATZLAFF, TAMBERI & WONG/MV
D. GARDNER/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 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). Therefore, the defaults of the above-mentioned parties in interest are entered. Due to a discrepancy in the compensation and reimbursement calculations, this matter will proceed as scheduled so the moving party can clarify the amount requested.

Ratzlaff Tamberi & Wong, Accountancy Corporation ("Movant"), accountant for chapter 7 trustee Jeffrey M. Vetter ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from September 20, 2019 through August 18, 2021. Doc. #193.

The motion and supporting documents demonstrate that Movant provided accounting services valued at \$3,780.00, and requests compensation for that amount. Doc. #193; Ex. A, Doc. 197. Movant requests reimbursement for expenses in the amount of \$14.79. Doc. #193; Ex. A, Doc. #197. However, the total amount requested by Movant in the motion, a combined payment of \$3,884.79, is not the sum of \$3,780.00 and \$14.79. Doc. #193; Ex. A, Doc. #197. The sum of \$3,780.00 and \$14.79 only totals \$3,794.79, which is the amount that the court is inclined to award to Movant based on the evidence filed with the motion. This matter will proceed as scheduled so Movant can clarify the amount sought for compensation and reimbursement.

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).

Movant's services included, without limitation: (1) reviewing the bankruptcy petition and other documents related to tax matters of the estate; (2) reviewing prior tax returns and preparing partnership income tax returns including underlying workpapers; and (3) preparing information related to settlement agreement and bankruptcy case filings. Ex. A, Doc. #197. The court

finds the compensation and reimbursement sought are reasonable, actual, and necessary.

Pending confirmation that Movant is only requesting \$3,794.79 in total fees and expenses, this motion will be GRANTED on a final basis. Movant shall submit a proposed order with the correct amounts as determined on the record at the hearing. 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. [21-11950](#)-A-7 **IN RE: JOSE/MAGGALI ROMAN**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-20-2021 [\[12\]](#)

TD AUTO FINANCE LLC/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
JENNIFER WANG/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 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 movant, TD Auto Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2019 Cadillac Escalade ("Vehicle"). Doc. #12.

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).

The debtors are not delinquent in payments on the Vehicle as of the date the motion was filed, so cause does not exist to grant relief from stay under 11 U.S.C. § 362(d)(1). According to the debtors' Statement of Intention and the declaration filed in support of the motion, the debtors intend to surrender the Vehicle. Doc. #1; Doc. #15.

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

The court finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. Id. The Vehicle is valued at \$57,550.00 and the debtors owe \$64,967.01. Doc. #15.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(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 Vehicle is a depreciating asset.

10:30 AM

1. [21-11704](#)-A-11 **IN RE: FILOS CATERING, INC.**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY
PETITION
7-2-2021 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.
DISMISSED 9/10/21

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

This bankruptcy case was dismissed on September 10, 2021. Doc. #47.

1. [21-10026](#)-A-7 **IN RE: MARTHA FERNANDEZ**
[21-1020](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-5-2021 [\[1\]](#)

FERNANDEZ V. U.S. DEPARTMENT OF EDUCATION

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

DISPOSITION: Continued to November 3, 2021, at 2:00 p.m.

ORDER: The court will issue an order.

On September 21, 2021, the defendant filed a motion to dismiss this complaint and set the hearing on that motion for November 3, 2021. Doc. ##25, 26.

The status conference will be continued to November 3, 2021, at 2:00 p.m. to coincide with the hearing on the motion to dismiss. Plaintiff may appear telephonically at the hearing on the motion to dismiss and this continued status conference because both matters are scheduled to be heard on the calendar for the Fresno courthouse.

11:30 AM

1. [21-11834](#)-A-7 **IN RE: IRENE PADILLA**

PRO SE REAFFIRMATION AGREEMENT WITH VALLEY STRONG CREDIT UNION
8-25-2021 [[15](#)]

NO RULING.