UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, October 7, 2020
Place: Department B – 510 19th Street
Bakersfield, California

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

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:00 AM

1. 15-12904-B-13 **IN RE: MARY HYDE**
MHM-2

CONTINUED MOTION TO DISMISS CASE
7-15-2020 [26]

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

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This motion will be DENIED AS MOOT. The debtor will be granted a hardship discharge in matter #2, below. RSW-1. Therefore, this motion to dismiss will be DENIED AS MOOT.

2. 15-12904-B-13 **IN RE: MARY HYDE**
RSW-1

MOTION FOR HARDSHIP DISCHARGE
9-4-2020 [34]

MARY HYDE/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 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d

592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion will be GRANTED. The debtor filed this motion for a hardship discharge pursuant to 11 U.S.C. § 1328(b). Doc. #38.

The debtor filed her chapter 13 plan on July 24, 2015 (Doc. #1) and the plan was confirmed on October 6, 2015 (Doc. #23). After completing fifty-six of the sixty required plan payments and with $2,436.00 remaining to finish the plan, the debtor now seeks a hardship discharge due to changes to her employment circumstances since filing. Doc. #36. The chapter 13 trustee did not oppose.

11 U.S.C. § 1328(b) provides that at any time after confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if –

> (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
> (2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
> (3) modification of the plan under section 1329 of this title is not practicable.

11 U.S.C. § 1328(b).

The debtor bears the burden of proving each element required under § 1328(b). In re Grice, 319 B.R. 141, 143 (Bankr. E.D. Mich. 2004); In re Cummins, 266 B.R. 852, 855 (Bankr. N.D. Iowa 2001); Bandilli v. Boyajian (In re Bandilli), 231 B.R. 836, 839 (B.A.P. 1st Cir. 1999). "The three-prong requirements of § 1328(b) are in the conjunctive, requiring compliance with each subsection thereof." In re Dark, 87 B.R. 497, 499 (Bankr. N.D. Ohio 1988).

As one court stated, "in essence, a hardship discharge is the equivalent of a chapter 7 discharge. The benefit that the Debtor now seeks is a chapter 7 discharge, and not the special discharge of § 1328(a)." In re Grice, 319 B.R. at 145. "That the Debtor tried to pay them more in her chapter 13, but failed because of her illness, should not bar her from receiving the same discharge that she would have been entitled under a chapter 7." Id.

"The first subsection of 1328(b) requires that the circumstances leading to the debtor's failure to make payments be beyond the

debtor's control. In re Cummins, 266 B.R. at 855 citing In re Schleppi, 103 B.R. 901, 903 (Bankr. S.D. Ohio 1989).

The debtor contends that she is unable to make her final plan payments due to circumstances for which she should not justly be held accountable. Doc. #34. The debtor is 72 years old and currently unemployed. Doc. #36. Prior to COVID-19, she had been working temporary jobs through agencies. While she was between assignments, she was in the process of interviewing with two different companies, which were both canceled because of the COVID-19 pandemic. Id.

At the time of filing bankruptcy, the debtor's monthly income was $3,339.22 and her expenses totaled $2,744.00 per month. Doc. #1, Schedule I at ¶ 12; id., Schedule J at ¶ 22. Now, the debtor's only income is social security and a pension, from which she currently receives $1,320.00 and $63.00, respectively, for a total of $1,383.00. Doc. #38, Schedule I at ¶ 12. The debtor has also lowered her expenses down to $1,833.00 per month, but she is still incurring a monthly deficit of $450.00. Id., Schedule J at ¶ 22. The debtor's monthly plan payment was originally $596.00 and covered a sixty-month period. Doc. #5. Fifty-six payments of $596.00 per month indicate that the debtor has paid approximately $33,376.00 of the $35,760.00 originally owed on her chapter 13 plan. The debtor states that based on her present income and expenses, she is unable to afford the final plan payments to the chapter 13 trustee.

With the COVID-19 outbreak and shelter-in-place guidelines in place, the economy has recently experienced a downturn. Many have lost jobs or had work hours reduced. The debtor is no exception. Here, the debtor has continuously gained income and maintained plan payments throughout the duration of the plan until recently, where her monthly income dropped nearly $2,000.00, from $3,339.22 to $1,383.00. Docs. #1, #38. The debtor futilely attempted to lower her expenses, from $2,744.00 to $1,833.00, but she is unable to make plan payments because she is still incurring a $450.00 loss per month. Id. The circumstances leading to the debtor's failure to make payments is no fault of her own. According to her declaration, the debtor was in the second round of interviews with two prospective employers at the time the shelter-in-place orders were put into place. Doc. #36. Therefore, the first prong of § 1328(b) is satisfied.

"The second subsection of 1328(b) requires that unsecured creditors actually receive no less than they would have received in a Chapter 7 liquidation." In re Cummins, 266 B.R. at 856.

The debtor contends that based upon what she has already paid into the plan, the unsecured creditors have received at least what they would have received if the debtor had filed chapter 7 bankruptcy. Doc. #34. According to the chapter 13 plan, there appears to be only one Class 5 unsecured claim entitled to priority, which is in favor of the Internal Revenue Service for taxes and certain other debts. Doc. #5 at ¶ 2.13. There do not appear to be any Class 6 designated unsecured claims. Id. at ¶ 2.14. All other unsecured claims not listed as Class 5 or 6 claims are listed in Class 7. These totaled $17,940.68 and were to receive not less than a 0% dividend. Id. at ¶

2.15. The unsecured creditors have received at least what they would have received if the debtor had filed chapter 7 bankruptcy.

Lastly, § 1328(b) requires that modification under § 1329 be impracticable. The debtor contends that modification of the plan is not possible because the final plan payment was due in July 2020. Doc. #34. Based on the debtor's current income and expenses, along with her monthly deficit of $450.00, modifying the plan would be ineffectual. Even a relatively low plan payment would not help her pay off the remaining $2,436.00 she owes to finish the plan, as she has no disposable income to contribute to any plan payment, however small.

Pursuant to 11 U.S.C. § 1328(b), this court is authorized to grant the debtor a discharge even though she has not completed the plan payments because her failure to complete the payments is due to circumstances for which she should not justly be held accountable; the value of property distributed under the plan to unsecured creditors is not less than the amount that would have been paid if the debtor had been liquidated under chapter 7; and modification of the plan under § 1329 is not practical. Therefore, this motion will be GRANTED.

3. 20-11914-B-13 **IN RE: ROSA GODOY**
RSW-2

MOTION TO VALUE COLLATERAL OF CHASE MORTGAGE
8-27-2020 [25]

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

prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion will be GRANTED.

The debtor filed this motion to value the collateral of Chase Mortgage ("Creditor"), which is a parcel of real property located at 215 Jefferson Street, Taft, California 93268 ("Property"). Doc. #25. The Property is encumbered by two deeds of trust. The first deed of trust is in favor of Bayview Financial Loan in the amount of $108,861.76, which was recorded on November 15, 2006. Id. The second deed of trust is in favor of Chase Mortgage in the amount of $12,908.09 and was recorded on April 9, 2007. Id.

The debtor filed a declaration stating her opinion that the house was worth no more than $93,495.00 on the date she filed bankruptcy. Doc. #27. Creditor did not oppose.

The debtor is competent to testify as to the value of the Property. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

Based on the evidence offered in support of the motion, the Creditor's junior priority mortgage claim is found to be wholly unsecured and may be treated as a general unsecured claim in the chapter 13 plan. The debtor may proceed to obtain relief from this lien upon completion of the necessary requirements under applicable law. If the chapter 13 plan has not been confirmed, then the order shall specifically state that it is not effective until confirmation of the plan.

This ruling is only binding on the named respondent in the moving papers and any successor who takes an interest in the property after service of the motion.

4. 20-12215-B-13 **IN RE: JONATHAN/CHRISTINA CURTIS**
KMM-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT CORPORATION
7-16-2020 [14]

TOYOTA MOTOR CREDIT CORPORATION/MV
RAJ WADHWANI/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection will be OVERRULED AS MOOT. By prior order of the court (Doc. #21), the debtors had until either September 23, 2020 to file and serve a written response to Creditor Toyota Motor Credit Corporation's objection to confirmation, or until September 30, 2020 to file, serve, and set for hearing a confirmable modified plan or the objection would be sustained on the grounds therein. The debtors have elected to file and serve a modified plan (Doc. 29) in lieu a response, which is set for hearing on December 2, 2020. Therefore, this objection will be OVERRULED AS MOOT.

5. 20-12425-B-13 **IN RE: STEVE GONZALES**
MHM-1

MOTION TO DISMISS CASE
9-4-2020 [27]

MICHAEL MEYER/MV

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

DISPOSITION: Granted.

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

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors. Doc #27. Debtor did not oppose.

The record shows that there has been unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtor failed to appear at the scheduled 341 meeting of creditors and failed to provide the trustee with all of the documentation required. Accordingly, the motion will be GRANTED, and the case dismissed.

6. 20-12425-B-13 **IN RE: STEVE GONZALES**
MWP-1

OBJECTION TO CONFIRMATION OF PLAN BY THE RAMA FUND, LLC
8-28-2020 [20]

THE RAMA FUND, LLC/MV
MARTIN PHILLIPS/ATTY. FOR MV.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

Creditor The Rama Fund, LLC, ("Creditor") has filed this objection on the grounds that (1) the plan was filed in bad faith because the debtor received his interest in the subject property on the same date this bankruptcy case was filed, (2) the plan fails to address the fact that the claim has matured over one year ago, so Creditor's claim is erroneously listed in Class 1 instead of Class 2, and (3) the plan is not feasible.

This case will be dismissed in matter #5, above. MHM-1. Therefore, the objection will be OVERRULED AS MOOT.

7. 20-12425-B-13 **IN RE: STEVE GONZALES**
MWP-2

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
9-9-2020 [33]

THE RAMA FUND, LLC/MV
MARTIN PHILLIPS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

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

The movant, The Rama Fund, LLC ("Movant"),seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(4) concerning real property located at 44645 11th Street East, Lancaster, CA 93535 ("Property").

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).

With respect to the request under § 362(d)(1), this motion will be DENIED AS MOOT. This case will be dismissed in matter #5, above. MHM-1. The automatic stay is no longer in effect by operation of law and therefore relief cannot be granted.

An order entered under § 362(d)(4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order.

To obtain relief under § 362(d)(4), Movant must show and the court must affirmatively find the following three elements: (1) the debtor's bankruptcy filing must have been part of a scheme; (2) the object of the scheme must have been to delay, hinder, or defraud creditors, and (3) the scheme must have involved either the transfer of some interest in the real property without the secured creditor's consent or court approval, or multiple bankruptcy filings affecting the property. First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.), 470 B.R. 864, 870 (B.A.P. 9th Cir. 2012).

A scheme is an intentional construct - it does not happen by misadventure or negligence. In re Duncan & Forbes Dev., Inc., 368 B.R. 27, 32 (Bankr. C.D. Cal. 2007). A § 362(d)(4)(A) scheme is an "intentional artful plot or plan to delay, hinder or defraud creditors." Id. It is not common to have direct evidence of an artful plot or plan to deceive others - the court must infer the existence and contents of a scheme from circumstantial evidence. Id. Movant must present evidence sufficient for the trier of fact to infer the existence and content of the scheme. Id.

On or about July 23, 2018, Richard L. Nelson, a single man, executed a promissory note in the amount of $188,500.00, which was made payable to Athas Capital Group, Inc. Doc. #36, Ex. 1, 3. The promissory note was assigned to Movant and is secured by a deed of trust encumbering the Property. Id.

The principal balance is $188,500.00 and accrued interest through the date of filing in the sum of $36,380.50. Doc. #33. With foreclosure fees, prior attorney fees, and other expenses, the total balance due on the loan was $231,060.87 through the date of filing. Id. The first foreclosure sale was scheduled for March 11, 2020 and the most recent was scheduled for September 29, 2020, but all have been continuously postponed due to COVID-19, statewide anti-foreclosure protections, and now the automatic stay of this bankruptcy. Id.

The court takes judicial notice of the fact that Mr. Nelson had two previous bankruptcy filings. The first case was filed on October 24, 2018 and dismissed on February 7, 2019 for failure to produce his 2017 tax returns, Class 1 Checklist with most recent mortgage statement, an Authorization to Release Information form and six months of pay stubs, and his failure to file his chapter 13 plan on

the correct form. See In re Nelson, Case No. 18-14326, Doc. #49. The second case was filed on February 13, 2019 and dismissed on April 5, 2019 for failure to show cause for not paying a $31.00 filing fee for an amended verification and master address list. See In re Nelson, Case No. 19-10489, Docs. #19, #25. None of Mr. Nelson's previous filings made any substantial progress and no plans were ever confirmed.

On July 20, 2020, an unauthorized grant deed was executed by Mr. Nelson purporting to transfer "the full value of the interest or property conveyed" or "50% ownership" in an interest in the Property to the debtor as a "bona fide gift" for no consideration. Doc. #36, Ex. 5. Later that same day on July 20, 2020, the debtor filed his petition for relief. Doc. #1. Movant alleges that it learned of the unrecorded grant deed purporting to transfer ownership from Mr. Nelson to the debtor after he listed the Property in his schedules. Doc. #33.

According to the petition, the debtor does not reside in the Property. Doc. #1. The debtor listed the Property as having a value of $300,000.00 and listed Athas Capital, the original lender, as having a claim of $22,000.00 secured by the Property. Doc. #12, Schedule D.

However, there is not enough evidence in the record to find that debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of all or part ownership of the subject real property without the consent of the secured creditor or court approval.

While the court does note it is suspicious that the debtor was transferred the Property through an unrecorded grant deed on the same date as filing his bankruptcy petition, this alone is not enough. There is not enough evidence in the record to find an intentional artful plot or plan to hinder, delay, or defraud Movant.

Relief under 11 U.S.C. § 362(d)(4) has serious implications. In re First Yorkshire Holdings, Inc., 470 B.R. at 871. In requesting § 362(d)(4) relief, the creditor seeks prospective protection against not only the debtor, but also every non-debtor, co-owner, and subsequent owner of the property, hindering all from obtaining the benefits of the automatic stay in future bankruptcy filings for two years. Id. This court cannot grant § 362(d)(4) relief without more evidence on this *pro se* debtor's first bankruptcy filing.

The above are findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, as incorporated by Federal Rule of Bankruptcy Procedure 7052.

Accordingly, the motion will be DENIED WITHOUT PREJUDICE as to 11 U.S.C. § 362(d)(4) because there is insufficient evidence at this time to conclude that the debtor engaged in a scheme to defraud, hinder, or delay creditors.

8. 20-11229-B-13 **IN RE: THERON/BARBARA REDFEARN**
MHM-2

MOTION TO DISMISS CASE
8-24-2020 [49]

MICHAEL MEYER/MV
MICHAEL REID/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing the case has already been entered on September 30, 2020. Doc. #74. Therefore, the motion will be DENIED AS MOOT.

9. 19-10588-B-13 **IN RE: RUBEN/MARIA GARCIA**
PK-2

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
9-9-2020 [35]

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

The motion will be GRANTED. Debtors' counsel, Patrick Kavanagh of The Law Office of Patrick Kavanagh ("Movant"), requests fees of

$4,230.00 and costs of $394.60 for a total of $4,624.60 for services rendered from February 18, 2019 through September 1, 2020. Doc. #35. The debtors have consented to this fee application. Id.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Deaccelerate a foreclosure sale to allow the debtors to keep their home; (2) Preparation, filing, and refiling of a chapter 13 bankruptcy petition and plan; and, (3) Preparing and filing two § 522(f) motions to avoid a lien. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $4,230.00 in fees and $394.60 in costs.

10. 20-12688-B-13 **IN RE: MARY HELEN BARRO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-17-2020 [25]

PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fee now due was paid on September 24, 2020. Therefore, the Order to Show Cause will be vacated.

The order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

10:00 AM

1. 20-12113-B-7 **IN RE: RUSSELL/APRIL MOORE**
JHW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-8-2020 [14]

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

The 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 2018 Mitsubishi Outlander ("Vehicle"). Doc. #14.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors have failed to make at least

two post-petition payments. The movant has produced evidence that debtors are delinquent at least $1,126.46. Doc. #16, 20.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtors are in chapter 7. Doc. #14. The Vehicle is valued at $18,450.00 and debtors owe $27,751.18. Doc. #16, 17.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the Declaration of Gwynnae Thomas (Doc. #16), debtors contacted Movant on or about August 25, 2020 to state their intent to surrender the Vehicle.

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

2. 16-14128-B-7 **IN RE: DANIELA HAVLICEK**
RTW-2

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG, ACCOUNTANCY CORPORATION, ACCOUNTANT(S)
9-4-2020 [84]

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

The motion will be GRANTED. The chapter 7 trustee's certified public accountancy firm, Ratzlaff Tamberi & Wong ("Movant"), requests fees of $1,134.00 and costs of $16.00 for a total of $1,150.00 for services rendered from June 30, 2020 through August 18, 2020. Doc. #86. The chapter 7 trustee filed a statement of non-objection to this fee application. Doc. #87.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Review of petition and trustee accounting for information relating to tax matters of the estate; (2) Preparation of the final federal and state income tax returns for the period ending July 31, 2020; and (3) Preparation of this fee application. Doc. #88. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $1,134.00 in fees and $16.00 in costs.

3. 17-11346-B-7 **IN RE: DANIEL CANCHOLA**
OKZ-3

AMENDED OBJECTION TO CLAIM OF CAL LEDUC ET AL, CLAIM NUMBER 2
8-24-2020 [98]

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

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

DISPOSITION: Sustained.

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

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a

prima facie showing that they are entitled to the relief sought, which the movant has done here.

This objection will be SUSTAINED.

The court notes that the notice (Doc. #99) did not contain the language required under Local Rules of Practice ("LBR") 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing. Future violations of the LBR will result in the objection or motion being overruled or denied without prejudice.

Creditor Infinity Select Insurance ("Infinity") filed this objection to the claim of Cal LeDuc, Tori Abby, Miley Abby, Mandy Jobe, Lukas LeDuc, and Jay LeDuc (collectively "LeDuc Claimants") on the grounds that the underlying lawsuit upon which the claim was based was settled and dismissed with prejudice before judgment was entered, resulting in no liability to the bankruptcy estate. Doc. #98.

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under section 501, is deemed allowed, unless a party in interest objects.

Federal Rule of Bankruptcy Procedure 3001(f) states 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. If a party objects to a proof of claim, the burden of proof is on the objecting party. Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000).

The debtor was involved in a wrongful death action filed December 11, 2014 in Fresno County Superior Court, Case No. 13CECG03811 MWS. Claim #2-1; Doc. #101. The lawsuit alleged claims for wrongful death, personal injuries, and punitive damages. Id. The litigation arose following a fatal auto collision involving a vehicle operated by the debtor and owned by his employer and co-defendant Mario Guerra. Id. The wrongful death action was brought by heirs of the decedent and individual plaintiffs who sustained injuries from the collision. Id.

The debtor filed bankruptcy on April 11, 2017. Doc. #1. As result of the bankruptcy, the wrongful death litigation was stayed. The LeDuc Claimants subsequently filed a proof of claim against the estate, which was contingent upon the entry of judgment in favor of the LeDuc Claimants in the wrongful death litigation.

Infinity was the debtor's insurance carrier and insured the vehicle the debtor was driving at the time of the collision. Infinity is a party in interest under § 502(a) as an unsecured creditor of the estate. Infinity has submitted evidence showing that a settlement was reached in the wrongful death lawsuit wherein the LeDuc Claimants agreed to dismiss the action with prejudice on April 27, 2018. A dismissal was entered with prejudice and dismissed the

"[e]ntire action of all parties and all causes of action." Doc. #103. The settlement stipulated that no further actions may be filed against debtor and the debtor is not subject to liability in connection with the underlying events and conduct in the wrongful death litigations.

Therefore, Claim #2-1 filed by Cal LeDuc and the LeDuc Claimants will be disallowed in its entirety.

4. 18-15055-B-7 **IN RE: DIXIE ESPINOSA**
RWR-5

MOTION FOR COMPENSATION BY THE LAW OFFICE OF COLEMAN & HOROWITT, LLP FOR KELSEY A. SEIB, CHAPTER 7 TRUSTEE(S)
9-3-2020 [109]

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

DISPOSITION: Granted.

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

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

The motion will be GRANTED. The chapter 7 trustee's general counsel, Kelsey Seib of Coleman & Horowitt, LLP, requests fees of $21,731.50 and costs of $766.40 for a total of $22,497.90 for services rendered from March 7, 2019 through September 1, 2020. Doc. #113. The chapter 7 trustee filed a statement of non-opposition to this fee application. Doc. #111.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Case administration, including engaging with the trustee regarding settlement offers and status of the case; (2) Identification and valuation of assets; (3) Conducting the sale of vacant land; and,

(4) Preparation and filing of employment and fee applications. Doc. #112. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $21,731.50 in fees and $766.40 in costs.

5. 17-11365-B-7 **IN RE: MARIO GUERRA**
OKZ-4

AMENDED OBJECTION TO CLAIM OF CAL LEDUC ET AL., CLAIM NUMBER 2
8-24-2020 [109]

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

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

DISPOSITION: Sustained.

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

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This objection will be SUSTAINED.

The court notes that the notice (Doc. #110) did not contain the language required under Local Rules of Practice ("LBR") 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing. Future violations of the LBR will result in the objection or motion being overruled or denied without prejudice.

Creditor Infinity Select Insurance ("Infinity") filed this objection to the claim of Cal LeDuc, Tori Abby, Miley Abby, Mandy Jobe, Lukas LeDuc, and Jay LeDuc (collectively "LeDuc Claimants") on the grounds that the underlying lawsuit upon which the claim was based was settled and dismissed with prejudice before judgment was entered, resulting in no liability to the bankruptcy estate. Doc. #109.

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under section 501, is deemed allowed, unless a party in interest objects.

Federal Rule of Bankruptcy Procedure 3001(f) states 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. If a party objects to a proof of claim, the burden of proof is on the objecting party. Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000).

The debtor was involved in a wrongful death action filed December 11, 2014 in Fresno County Superior Court, Case No. 13CECG03811 MWS. Claim #2-1; Doc. #112. The lawsuit alleged claims for wrongful death, personal injuries, and punitive damages. Id. The litigation arose following a fatal auto collision involving a vehicle operated by the debtor's employee and co-defendant, Daniel Canchola, and owned by the debtor. Id. The wrongful death action was brought by heirs of the decedent and individual plaintiffs who sustained injuries from the collision. Id.

The debtor filed bankruptcy on April 12, 2017. Doc. #1. As result of the bankruptcy, the wrongful death litigation was stayed. The LeDuc Claimants subsequently filed a proof of claim against the estate, which was contingent upon the entry of judgment in favor of the LeDuc Claimants in the wrongful death litigation.

Infinity was the debtor's insurance carrier and insured the vehicle involved at the time of the collision. Infinity is a party in interest under § 502(a) as an unsecured creditor of the estate. Infinity has submitted evidence showing that a settlement was reached in the wrongful death lawsuit wherein the LeDuc Claimants agreed to dismiss the action with prejudice on April 27, 2018. A dismissal was entered with prejudice and dismissed the "[e]ntire action of all parties and all causes of action." Doc. #114. The settlement stipulated that no further actions may be filed against debtor and the debtor is not subject to liability in connection with the underlying events and conduct in the wrongful death litigations.

Therefore, Claim #2-1 filed by Cal LeDuc and the LeDuc Claimants will be disallowed in its entirety.

6. 19-10973-B-7 **IN RE: CVC ENVIRONMENTAL, INC.**
TGF-5

MOTION FOR COMPENSATION FOR VINCENT A. GORSKI, TRUSTEES ATTORNEY(S)
9-8-2020 [64]

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

The motion will be GRANTED. Trustee's general counsel, Vincent Gorski of the Gorski Firm, requests fees of $4,181.50 and costs of $30.00 for a total of $4,211.50 for services rendered from May 5, 2019 through September 8, 2020. Doc. #64. The chapter 7 trustee filed a statement of non-opposition. Doc. #67.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Providing legal advice to the trustee concerning the administration of the case; (2) Evaluating various assets of the debtor and analyzing potential cost of sale and payment of liens; (3) Liquidating the personal property assets of the debtor through a public auction; (4) Negotiating with a secured creditor's attorney to determine appropriate handling of vehicles encumbered by liens and eventually arranging them to be sold at auction; and, (5) Preparation and filing of this fee application. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded $4,181.50 in fees and $30.00 in costs.

7. 18-10475-B-7 **IN RE: GREGORY/DEBORAH SMITH**
LNH-3

OBJECTION TO CLAIM OF STATE COMP INS FUND, CLAIM NUMBER 2
8-24-2020 [73]

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

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

DISPOSITION: Sustained.

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

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This objection will be SUSTAINED.

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under section 501, is deemed allowed, unless a party in interest objects.

Federal Rule of Bankruptcy Procedure 3001(f) states 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. If a party objects to a proof of claim, the burden of proof is on the objecting party. Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000).

Here, the movant has established that the claim is not personally guaranteed by the debtors and is instead against the debtors' former corporation, so the debtors are not responsible for the debt. Prior to filing, debtor Gregory Howard Smith previously used two business names during the past eight years: Greg Smith Custom Harvesting, which closed on August 31, 2017; and Cal Ag Trucking, Inc., which

closed in 2016. Doc. #76, Ex. A, Ex. B. Creditor State Comp Ins Fund filed Claim #2-1 on March 29, 2018 in the amount of $24,191.47, which indicates that the debt is owed by Cal Ag Trucking, Inc. Claim #2-1; Doc. #76, Ex. C. Cal Ag Trucking is a business formerly operated by the debtor and no evidence has been provided to indicate that the debtors are personally liable for this debt.

Therefore, Claim #2-1 filed by State Comp Ins Fund will be disallowed in its entirety.

8. 18-10475-B-7 **IN RE: GREGORY/DEBORAH SMITH**
LNH-4

OBJECTION TO CLAIM OF IPFS CORPORATION, CLAIM NUMBER 4
8-24-2020 [78]

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

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

DISPOSITION: Sustained.

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

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This objection will be SUSTAINED.

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under section 501, is deemed allowed, unless a party in interest objects.

Federal Rule of Bankruptcy Procedure 3001(f) states 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. If a party objects to a proof of claim, the burden of proof

is on the objecting party. Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000).

Here, the movant has established that the claim is not personally guaranteed by the debtors and is instead against the debtors' former corporation, so the debtors are not responsible for the debt. Prior to filing, debtor Gregory Howard Smith previously used two business names during the past eight years: Greg Smith Custom Harvesting, which closed on August 31, 2017; and Cal Ag Trucking, Inc., which closed in 2016. Doc. #81, Ex. A, Ex. B. Creditor IPFS Corporation filed Claim #4-1 on April 18, 2018 in the amount of $9,882.74, which indicates that the debt is owed by Cal Ag Trucking, Inc. Claim #4-1; Doc. #81, Ex. C. Cal Ag Trucking is a business formerly operated by the debtor and no evidence has been provided to indicate that the debtors are personally liable for this debt.

Therefore, Claim #4-1 filed by IPFS Corporation will be disallowed in its entirety.

9. 18-10475-B-7 **IN RE: GREGORY/DEBORAH SMITH**
LNH-5

OBJECTION TO CLAIM OF LUCKYS EXPRESS, CLAIM NUMBER 7
8-24-2020 [83]

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

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

DISPOSITION: Sustained.

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

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This objection will be SUSTAINED.

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under section 501, is deemed allowed, unless a party in interest objects.

Federal Rule of Bankruptcy Procedure 3001(f) states 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. If a party objects to a proof of claim, the burden of proof is on the objecting party. Lundell v. Anchor Constr. Specialists, Inc., 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000).

Here, the movant has established that the claim is not personally guaranteed by the debtors and is instead against the debtors' former corporation, so the debtors are not responsible for the debt. Prior to filing, debtor Gregory Howard Smith previously used two business names during the past eight years: Greg Smith Custom Harvesting, which closed on August 31, 2017; and Cal Ag Trucking, Inc., which closed in 2016. Doc. #86, Ex. A, Ex. B. Creditor Luckys Express filed Claim #7-1 on June 1, 2018 in the amount of $9,890.51, which indicates that the debt is owed by Cal Ag Trucking, Inc. Claim #7-1; Doc. #86, Ex. C. Cal Ag Trucking is a business formerly operated by the debtor and no evidence has been provided to indicate that the debtors are personally liable for this debt.

Therefore, Claim #7-1 filed by Luckys Express will be disallowed in its entirety.

10. 20-10776-B-7 **IN RE: DEON DUFFEY AND MARIA MARES**
JHW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-18-2020 [26]

TD AUTO FINANCE LLC/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

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

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

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved

without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The 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 2017 Chevrolet Impala ("Vehicle"). Doc. #26.

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The debtors' discharge was entered on July 21, 2020. Doc. #19. Therefore, the automatic stay terminated with respect to the debtors on July 21, 2020. Therefore, this motion is DENIED AS MOOT IN PART as to the debtors' interest.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors contacted Movant on August 10, 2020 and advised Movant of their intent to surrender the Vehicle. Doc. #29, 32.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtors are in chapter 7. Id. The Vehicle is valued at $16,475.00 and debtors owe $23,362.67. Doc. #29, 30, 32.

Accordingly, the motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtors' interest under § 362(c)(2)(C). The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the Vehicle is a depreciating asset.

11. 20-11886-B-7 **IN RE: RAMIRO/SONIA BRAVO**
UST-1

MOTION TO APPROVE STIPULATION TO DISMISS CHAPTER 7 CASE WITHOUT ENTRY OF DISCHARGE
9-2-2020 [15]

TRACY DAVIS/MV
JOSEPH PEARL/ATTY. FOR DBT.
TREVOR FEHR/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

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

The United States Trustee ("UST") filed this motion moving the court to approve Stipulation to Dismiss Chapter 7 Case Without Entry of Discharge. The UST is prepared to file motions under 11 U.S.C. § 707(b)(2) and (b)(3), but the debtors have stipulated to dismissal without entry of discharge.

The debtors filed bankruptcy on May 31, 2020. Doc. #1. The § 341 Meeting of Creditors was held and concluded on July 24, 2020. No creditors objected to this motion and there does not appear to be any benefit to creditors in keeping the bankruptcy case open.

This motion to approve the stipulation to dismiss the debtors' chapter 7 case without entry of discharge will be GRANTED.

12. 20-11290-B-7 **IN RE: ARTURO/GUADALUPE CISNEROS**
PK-2

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
9-8-2020 [29]

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

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

A judgment was entered against the debtor in favor of Capital One Bank (USA), N.A. in the sum of $6,057.89 on December 12, 2019. Doc. #29. The abstract of judgment was recorded with Kern County on January 7, 2020. Doc. #33, Ex. D. That lien attached to the debtor's interest in a residential real property in Bakersfield, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A).

The subject real property had an approximate value of $300,000.00 as of the petition date. Doc. #48. The unavoidable liens totaled $203,173.00 on that same date, consisting of a first deed of trust

in favor Bank of America in the amount of $203,173.00. Doc. #1, Schedule D at ¶ 2.1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of $96,827.00. Doc. #1, Schedule C at ¶ 2.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

13. 20-12690-B-7 **IN RE: STEPHANIE STEWART**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
8-27-2020 [15]

NICHOLAS WAJDA/ATTY. FOR DBT.
$335.00 FILING FEE PAID 8/28/20.
RESPONSIVE PLEADING.

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fee of $335.00 was paid in full on August 28, 2020. Therefore, the Order to Show Cause will be vacated.

10:30 AM

1. 20-12642-B-11 **IN RE: 3MB, LLC**

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
8-11-2020 [1]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

2. 20-12642-B-11 **IN RE: 3MB, LLC**
AG-1

MOTION TO DISMISS CASE
9-9-2020 [32]

U.S. BANK NATIONAL ASSOCIATION/MV
LEONARD WELSH/ATTY. FOR DBT.
AMIR GAMLIEL/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: The hearing will proceed as scheduled.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

Creditor U.S. Bank National ("U.S. Bank") asks this court to dismiss this case under 11 U.S.C. § 1112 (b) for "cause" because the debtor, it contends, (1) has suffered continuing loss and diminution and lacks any reasonable likelihood of rehabilitation; (2) will be unable to confirm a chapter 11 plan; and (3) did not file this case in "good faith." Doc. #32.

The debtor, 3MB, LLC ("3MB"), timely responded, stating (1) the purpose of chapter 11 will be frustrated if this case is dismissed; (2) "cause" does not exist; (3) "unusual circumstances" prevent dismissal; and (4) this case was not filed in bad faith. Doc. #43.

U.S. Bank replied to the debtor's response reaffirming its position that the case should be dismissed because (1) the debtor cannot afford the costs of chapter 11; (2) Robert Newman's (a former insider) claim is *de minimis* and invalid; and (3) the debtor has no valid reorganization purpose. Doc. #66.

This motion will be DENIED WITHOUT PREJUDICE.

First, the court notes that the notice of hearing on this motion (Doc. #33) did not contain the language required under Local Rules of Practice("LBR") 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing. Future violation of the LBR will result in the motion being denied without prejudice.

Background

In October 2006, 3MB received a $6.5 million loan from Prudential Mortgage Capital Company, LLC ("Prudential"), which was secured by a deed of trust encumbering a shopping center located in Bakersfield, California. Doc. #35. In April 2007, 3MB received an additional loan (also secured by the center) with a principal of $3.05 million which was consolidated with the first, in favor of Prudential, in the combined sum of $9.45 million. Id.

In June 2007, the loan was assigned to LaSalle Bank National Association as trustee for the benefit of Bear Stearns Commercial Mortgage Securities. Id. In 2011, Bank of America, N.A., became the successor by merger to LaSalle, who in turn assigned it to U.S. Bank in 2017. Id.

On May 5, 2017, the loan matured. 3MB defaulted. Id. On June 15, 2018 U.S. Bank commenced non-judicial foreclosure and a trustee's sale was scheduled for November 21, 2018. Id. On November 6, 2018, U.S. Bank filed a lawsuit against 3MB seeking the appointment of a receiver, an accounting, specific performance of the deed of trust's rents-and-profits clause and injunctive relief. Id.

First bankruptcy

On November 19, 2018, 3MB filed its' first chapter 11. Id. During this first bankruptcy, 3MB and U.S. Bank agreed to the use of cash collateral provided that the debtor would continue to pay monthly interest payments at the contractual, non-default rate. Id. After the end of the exclusivity period, U.S. Bank filed a Disclosure Statement and Plan of Liquidation, which proposed to employ a manager to take over day-to-day operations of the shopping center until it could be sold. Id. 3MB submitted its own Disclosure Statement and Plan of Reorganization, proposing to keep the current management in place and pay back the loan over time.

3MB objected to U.S. Bank's claim for default interest. Id. This court overruled 3MB's objection, finding that the default interest provision was enforceable. See In re 3MB, LLC, 609 B.R. 841. (Bankr. E.D. Cal. 2019).

On September 6, 2019, this court approved a Joint Disclosure Statement for both U.S. Bank's and 3MB's plans. Doc. #35. The parties entered into a settlement agreement on December 19, 2019, which provided:

(1) 3MB would file a motion to dismiss the bankruptcy.

(2) U.S. Bank would accept a reduced payoff amount of $8.5 million before January 31, 2020.

(3) 3MB could extend the deadline to pay the reduced amount to March 31, 2020 by making a $100,000.00 extension payment.

(4) 3MB would continue to make monthly non-default interest payments of $47,800.00 pending payment of the payoff amount.

(5) in the event the payoff amount is not paid, 3MB agrees to not delay, oppose, enjoin, or otherwise disrupt the holding of any foreclosure sale pursuant to the deed of trust, and stipulate to appointment of a receivership, stipulate to entry of judgment against all guarantors for amounts due and owing under the loan documents. Id.; see also In re 3MB, LLC, Case No. 18-14663, Doc. #272.

3MB moved for dismissal. The motion was granted. The dismissal order was entered on January 10, 2020. In re 3MB, LLC, Case No. 18-14663, Doc. #329.

Second bankruptcy

Following dismissal, 3MB extended the deadline to pay the reduced payoff amount by making the $100,000 extension payment. Doc. #35. 3MB made the non-default interest payments in January and February 2020. Id.

U.S. Bank contends that 3MB did not make monthly interest payments in March or thereafter and that there were several months of failed negotiations regarding forbearance. Doc. #32. U.S. Bank intended to hold a foreclosure sale on August 12, 2020, but on August 11, 2020, 3MB filed this second chapter 11. Doc. #35.

U.S. Bank contends that cause exists to dismiss the bankruptcy under 11 U.S.C. § 1112(b). Section 1112(b) provides that a court shall convert or dismiss a chapter 11 case "for cause" upon the request of a party in interest. 11 U.S.C. § 1112(b)(1); In re TCR of Denver, LLC, 338 B.R. 494, 498 (Bankr. D. Colo. 2006). U.S. Bank contends that "cause" exists because: (1) 3MB has suffered continuing loss and diminution and lacks any reasonable likelihood of rehabilitation; (2) 3MB will be unable to confirm a chapter 11 plan; and (3) 3MB filed its petition in bad faith.

Continuing loss and diminution

U.S. Bank argues that there is continuing loss and diminution of 3MB's estate and an absence of any chance of rehabilitation under 11 U.S.C. § 1112(b)(4)(A).

Courts have found that if the debtor lacks sufficient income, there may be good cause for conversion or dismissal. In re Johnston, 149 B.R. 158, 162 (B.A.P. 9th Cir. 1992). U.S. Bank contends that 3MB has seen a deterioration in its cash flows and has continued to accrue significant costs since dismissal of the first bankruptcy. Future cash flows are uncertain because multiple tenants, including members of 3MB, have stopped paying rent during the COVID-19 pandemic. U.S. Bank suggests that even if cash flows resumed to pre-COVID-19 levels, 3MB would still be unable to sustain its business and generate the levels needed to pay its debt service, professionals, and property taxes owed during its first bankruptcy.

U.S. Bank also contends that the value of the property and its collateral continue to decline in value considering the reduction in rental revenue since the valuation conducted in the first bankruptcy.

U.S. Bank argues that the 3MB's liabilities are continuing to increase. Doc. #32. 3MB has accrued expenses associated with administering the bankruptcy estate, as well as accrued liabilities on account of additional real estate taxes owed to the Kern County Treasurer-Tax Collector ("KCTTC"). U.S. Bank's claim has continued to grow due to missed payments since March 2020.

In response, 3MB contends that "cause" does not exist because it has options available, including completing an agreement with a third-party investor, which will bring into the estate between $6 to $6.5 million, or selling "pads" for $4 million or more. Doc. #43.

Additionally, 3MB argues that "unusual circumstances" exist that have prevented it from repaying the debt owed to U.S. Bank and the KCTTC after the dismissal of its first chapter 11 case – the onset of the COVID-19 pandemic and damages done to the debtor's business by the coronavirus. Id.

3MB has had difficulty in repaying the debt to U.S. Bank and its other creditors. Id. Since March 2020, those difficulties have been caused in large part by COVID-19. COVID-19 has:

(1) Caused a number of 3MB's tenants to default in their obligations owed to it;
(2) Caused 3MB's income received from the operation of the shopping center to decline; and
(3) Prevented a third-party investor from Canada from completing a transaction with 3MB under which the debtor would have a received a $6.0-$6.5 million-dollar cash infusion.

Id.

3MB claims some of its tenants have reopened their businesses after having been shut down by COVID-19 orders and those tenants have begun to repay the rent owed to it. Id. 3MB assures the court that the third-party investor remains interested in completing a transaction where 3MB will receive a cash infusion of between $6.0 and $6.5 million. Alternatively, 3MB may sell a portion of its shopping center for $4.0 million or more. Either option would give it a reasonable likelihood that a Plan will be confirmed within a reasonable time.

3MB recognizes that this is its second chapter 11 case and it must move quickly, but believes that dismissal of its case in less than two months after filing for relief would contravene the purpose of chapter 11 and destroy its interests held by its members and creditors other than U.S. Bank. 3MB requests that the court set a bar date of November 11, 2020 to file a Disclosure Statement and Plan of Reorganization, ninety days from the petition date. Coincidentally, 90 days after the order for relief triggers termination of the automatic stay unless the debtor either filed a plan of reorganization that has a reasonable possibility of being

confirmed within a reasonable time or starts making interest payments at the non-default rate. See, 11 U.S.C. § 362 (d) (3).

Courts have wide discretion in determining (1) if "cause" exists for the granting of relief under 11 U.S.C. § 1112(b) and (2) how to adjudicate the case. In re Products International Company, 395 B.R. 101, 107 (Bankr. D. AZ 2008); In re New Rochelle Telephone Corporation, 397 B.R. 633 (Bankr. E.D.N.Y. 2008). In exercising its discretion, the court should provide a distressed business with "breathing space" in which the business can return to a viable state if there is a "potentially viable business in place worthy of protection and rehabilitation." In re Winshall Settlor's Trust, 75 8 F. 2d 1136, 1137 (6th Cir. 1985).

11 U.S.C. § 1112(b)(2) provides that the court shall not dismiss or convert a chapter 11 case if the court identifies "unusual circumstances" that establish that dismissal or conversion is not in the best interest of creditors and the estate and the party opposing dismissal demonstrates that:

a. There is a reasonable likelihood that a Plan will be confirmed within a reasonable time;
b. The cause for dismissal or conversion is for other than continuing loss or diminution to the estate and there is a reasonable likelihood of rehabilitation, and
c. There is a reasonable justification for the act or omission of the debtor constituting cause and the act or omission will be cured within a reasonable time.

See 7 Collier on Bankruptcy, Section 1112.05[2] at Page 1112-43 (16th ed. 2018). In re Landmark Atlantic Hess Farm, LLC, 448 B.R. 707 (Bankr. D. M.D. 2011).

The court takes judicial notice under Fed. R. Evid. 201 that, as of this writing, Kern County has a "Purple" "WIDESPREAD" determination, which is the highest possible designation issued by the State of California for COVID-19 infections per capita, causing many non-essential indoor business operations to be closed. See covid19.ca.gov/safer-economy (Oct. 1, 2020).

In this case, the court agrees that now "unusual circumstances" do exist. Since March 2020, the United States has endured an unprecedented pandemic that has wreaked havoc on small businesses and the economy. 3MB dismissed its first bankruptcy case just before this pandemic began in January 2020 and could not have foreseen the impending economic shutdown.

Additionally, there is no proof of continuing loss or diminution of the estate. This bankruptcy case was filed less than two months ago. There are currently no monthly operating reports to demonstrate that the estate, which was only just created on August 11, 2020, has suffered continuing loss and diminution. Doc. #1. That said, even though debtor's accountant has only recently been appointed, it is disturbing that an operating report for the partial month of August is not yet filed.

At the same time, U.S. Bank has offered numerous ways 3MB may be losing money (accruing administrative costs and taxes, debt service defaults, etc.). There is no evidence of this, only speculation.

A determination under § 1112(b) rests within the sound discretion of the court. In re Red Door Lounge, Inc., 559 BR 728, 734 (Bankr. D. Mont. 2016) citing Pioneer Liquidating Corp. v. United States Trustee (In re Consolidated Pioneer Mortgage Entities), 264 F. 3d 803, 806-07 (9th Cir. 2001). The initial burden of proof is on the moving party – here, U.S. Bank. In re Red Door Lounge, 559 BR 734 citing In re BTS, Inc., 247 BR 301, 303 (Bankr. N.D. Okla. 2000)

U.S. Bank asks this court to consider the first bankruptcy estate in making this determination, but that estate ceased to exist when the first case was dismissed. But even if relevant, in the first case 3MB paid interest payments to U.S. Bank during the case. Also, both the bank and debtor filed a plan and a disclosure statement was approved. Both parties *agreed* to the dismissal of the first case. To be sure, the debtor did not prevail on its claim objection concerning default interest, but that does mean the first case was unsuccessfully prosecuted. It was dismissed by agreement.

U.S. Bank's representative's (Mr. Furay) declaration (Doc. 35) reports that the debtors paid the $100,000.00 extension payment and monthly interest payments of nearly $48,000 until March 12, 2020 when the pandemic was becoming a major issue. But there is little evidence of debtor's current financial condition.

That said, there are rough waters ahead. The current COVID-19 environment is not "retail-friendly." The debtor's own Accounts Payable and Account Receivable aging reports (Exhibits to Amir Gamliel's declaration (Doc. 34)) show over $334,000 of accounts payable against $187,000 of accounts receivable. Both show that mostly the outstanding accounts are traced back to early 2020 consistent with COVID-19 restrictions. They add up to potential cash flow problems.

Rehabilitation for purposes of § 1112 (b) (4) (A) is not just technical plan confirmation requirements but whether the debtor's business prospects justify continuance of the reorganization effort. In re Wallace, 2010 Bankr. LEXIS 261 (Bankr. D. Id. Jan. 26, 2010) citations and quotations omitted. Rehabilitation is a more demanding standard than reorganization. In re Creekside Senior Apartments L.P., 489 BR 51, 61 (B.A.P. 6th Cir. 2013).

There is no evidence of a lack of *prospect* of rehabilitation. The thin evidence now shows a very difficult road to rehabilitation. The debtor's proposals-which now are also speculative-offer two possible ways to rehabilitate: cash infusion from an investor or sale of portions of the center. Neither scenario involves complete liquidation of the center and now at this stage of the case are reasonable possibilities. Cf. In re 3 Ram, Inc., 343 BR 113, 117 (Bankr. E.D. Penn. 2006), cited by U.S. Bank, suggests this provision of § 1112 (b) may be inapplicable to a business with passive involvement in the underlying business.

These circumstances support a finding that dismissal or conversion now is not in the best interests of creditors and the estate. The primary beneficiary of dismissal would be U.S. Bank. Dismissal would terminate the stay and U.S. Bank. can foreclose. The estate does not benefit from dismissal, it becomes non-existent. There are creditors in this case. They are primarily insiders but there are also creditors with other claims (utilities, Mr. Newman, perhaps others). U.S. Bank may need to pay ongoing expenses for a short while pending foreclosure. But claims against this debtor will very likely not be paid. The substantial insiders' claims, if allowed, are still claims. The insiders are creditors.

Conversion does not benefit the estate or the creditors at this moment. A chapter 7 trustee may attempt to sell the center but at some moment, the "carrying costs" even if temporarily supplied by the bank would make liquidation unwieldy. It is unlikely any creditor with an unsecured claim would receive a dividend if the value of the center is closer to the bank's estimate, rather than the debtor's.

There is also the claim of KCTTC. It will need to be paid by either this debtor, U.S. Bank, if they end up owning the center or a third party. But a quick plan confirmation may result in a quicker payment to this claimant. Retiring or substantially reducing this obligation benefits U.S. Bank.

3MB has proposed a bar date of November 11, 2020 by which it would file its plan. This would be a reasonable timeframe and would allow 3MB to file and serve its Disclosure Statement and Plan within ninety days from the petition date. Obviously, the debtor is short on time. This bar date accommodates that reality.

Though the cases cited by U.S. Bank do involve converted or dismissed Chapter 11 cases in the early stage, the facts are distinguishable. In re Johnston, 149 BR 158, 162 (B.A.P. 9th Cir. 1992) [lack of insurance on rolling stock, failure to file common carrier certificate resulting in revocation of license four months into case]; In re Citi-Toledo Partners, 170 BR 602, 606 (Bankr. N.D. Ohio 1994) [involuntary case where principal indicted for allegedly fraudulent activity; abandonment of construction project 2-3 months into case]; In Re Schriock Constr., 167 BR 569, 576 [overwhelming negative votes on debtor's plan and losses post-petition masked by undisclosed shareholder loans].

For these reasons, the court does not find cause exists now to convert or dismiss. Alternatively, if cause existed on this ground, there is a reasonable possibility a plan will be confirmed within a reasonable time.

Inability to confirm a chapter 11 plan

U.S. Bank also argues that the case should be dismissed because the debtor cannot effectuate substantial consummation of a plan of reorganization pursuant to 11 U.S.C. § 1112(b)(4)(M). The inability to effectuate a plan arises when a debtor "lacks the capacity to

formulate a plan or to carry one out." In re Preferred Door Co., 990 F.2d 547, 549 (10th Cir. 1993). Dismissal is appropriate when "a feasible plan is not possible." In re 3 Ram Inc., 343 B.R. 113, 117 (Bankr. E.D. Pa. 2006) citing § 1112(b). "If [a] chapter 11 [debtor] cannot achieve . . . reorganization within the statutory requirements of the Bankruptcy Code, then there is no point in expending estate assets on administrative expenses . . . ." Id. at 118.

U.S. Bank lists four reasons why a feasible plan is not possible:

(1) Inability to pay administrative and priority expenses;
(2) Inability to pay adequate protection;
(3) Plan not feasible; and
(4) No impaired consenting classes.

Administrative and priority expenses

Under § 1129(a)(9), a chapter 11 plan must provide for payment of all administrative and priority creditors in full. U.S. Bank argues that 3MB's bankruptcy petition discloses that it has $55,836.06 in cash and cash equivalents. Doc. #32. U.S. Bank claims that the debtor has no means of securing additional funds to pay the costs associated with a chapter 11 bankruptcy, let alone fund payments required by a chapter 11 plan.

Prior to dismissing the first bankruptcy, 3MB reported in its monthly operating reports a significant accounts payable balance owed to its bankruptcy counsel for post-petition services rendered. U.S. Bank claims, meanwhile, 3MB accumulated an even greater accounts payable balance for failure to pay real estate taxes owed to the KCTTC, which had grown to $163,148.68 as of the petition date. U.S. Bank argues that there is no evidence that the debtor will be pay able to pay its outstanding tax claim and other administrative claims incurred during the second bankruptcy. Id.

First, § 1129 (a) (9) gives administrative claimants the option of agreeing to a different treatment other than payment in full at confirmation. Can it now be determined by a preponderance of the evidence that administrative claimants will not agree to a different treatment? No. Two claimants, debtor's professionals, may very well agree to different treatments. The same may not be said of KCTTC but it is unknown this early in the case.

Second, unlike 3MB's first case, there do not appear to be issues concerning liquidation of U.S. Bank's claim. This suggests that this case, if prosecuted, will be successful or not based on confirmability of a proposed plan, not satellite litigation.

Third, unlike In re 3 Ram, Inc., the first 3MB case was dismissed by agreement not for non-compliance with the requirements of chapter 11.

Adequate protection

The court may only authorize the debtor to use cash collateral if the secured creditors holding an interest in the collateral consent or are adequately protected. 11 U.S.C. § 363(c)(2). U.S. Bank has filed a Notice of Non-Consent to Use of Cash Collateral. Doc. #10.

Any use of U.S. Bank's cash collateral would require adequate protection payments, which the debtor, U.S. Bank suggests, cannot afford. Doc. #32. U.S. Bank states that the debtor has not made any payments to it since March 2020. (Doc. 35) U.S. Bank claims that the debtor must be able to adequately protect it from the continued accrual of real estate taxes and has so far made no offer of adequate protection. (Doc. 32).

First, according to the transcript of the § 341 meeting of creditors submitted by U.S. Bank as part of its reply, an offer has been made when debtor submitted a proposed budget.

Second, again at this stage, U.S. Bank states the value of the shopping center is between $9.2 and $9.3 million based on an appraisal that is over one year old. (Doc. 35) The debtor claims the center is worth about $12 million. Though at the creditor's meeting Mr. Bell suggested "the sum of the parts (of the center) is greater than the whole." No appraisal supports the debtor's evaluation at this stage.

U.S. Bank has not yet filed a claim. Assuming it is owed about $8.9 million based on the earlier claim, there is some-albeit vanishing-equity. There has been accrual of interest of about 300,000 if U.S. Bank's figures are correct. This suggests the debtor needs to make adequate protection payments beginning very quickly. This does not mean the case should be dismissed at this stage.

Feasibility

11 U.S.C. § 1129(a)(11) requires that a bankruptcy court find that a plan is feasible as a condition precedent to confirmation. Specifically, the court must determine:

> [c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

11 U.S.C. § 1129(a)(11). This feasibility standard requires that a plan have a reasonable chance of success. To satisfy the feasibility standard, the debtor must show (1) it will have enough cash on the effective date of a plan to pay all claims entitled to be paid on that date; and (2) no further financial reorganization of the debtor will be needed.

U.S. Bank contends the debtor will not have cash to fund administrative and priority expenses, which would be due on the effective date of the plan. Doc. #32. Additionally, U.S. Bank alleges that 3MB lacks the ability to fund any payments that would be required under a plan of reorganization. Id. 3MB previously admitted that it would be unable to fund any plan that contemplated paying U.S. Bank default interest. In re 3MB, LLC, 609 B.R. 841, 845 (Bankr. E.D. Cal. 2019). U.S. Bank alleges that there have been no material improvements to the business indicating that the debtor is now able to pay default interest and that with COVID-19 closures, there has been a negative impact on 3MB's tenants, and thus its cash flow and the value of its property has decreased. Doc. #32. Meanwhile, the U.S. Bank's claim and KCTTC's claim have continued to

grow larger than in the first bankruptcy, so any plan is less feasible than it would have been in the first bankruptcy.

A bankruptcy court has the duty to protect creditors against "visionary schemes." In the Matter of Pizza of Hawaii, Inc., 761 F. 2d 1374, 1382 (9th Cir. 1985). Though a reorganization's success need not be guaranteed, the court cannot confirm a plan unless it has at least a reasonable chance of success. Danny Thomas Props. II Ltd. P'ship v. Beal Bank SBB (In re Danny Thomas Props. II Ltd. P'ship), 241 F. 3d 959, 963 (8th Cir. 2001) ["drop dead" provision in plan to be considered by the court when evaluating potential success of plan]; In re Indian Nat'l Finals Rodeo, 435 BR 387, 402 (Bankr. D. Mont. 2011).

There is no plan to evaluate now. There is this debtor's history of making payments during the pendency of a case. Also, it is undisputed that since 2017 when the debt was due U.S. Bank, the debtor has been unable to fund a re-finance or "buy out" the bank. To be sure, the debtor is running out of time. None of this means a cash infusion or shopping pad sale is "visionary." But commitments need to be made and sales pursued now-not when circumstances improve. The debtor does not have the luxury of a lengthy abeyance of U.S. Bank's remedies.

Impaired consenting class

11 U.S.C. § 1129(a)(10) is an alternate to § 1129(a)(8), which requires each class of claims to accept the plan or be unimpaired by the plan. To the extent that there is an impaired class of claims, at least one impaired class of claims must accept the plan, "without including any acceptance of the plan by any insider." 11 U.S.C. § 1129(a)(10). U.S. Bank believes that once insiders and litigants whose recoveries are paid out of insurance proceeds are removed, it will be the only creditor remaining to vote, other than $1,800.00 claim from a prior equity holder. U.S. Bank claims that the debtor will be unable to identify at least one impaired class of non-insider claims that will accept the plan.

Even if it could find an impaired consenting class, the debtor could not satisfy the "cramdown" requirements of 11 U.S.C. § 1129(b), which requires the treatment of U.S. Bank's claim be "fair and equitable." Doc. #32. 3MB has no other significant debt service so any plan proposed by the debtor will have to include an attempt to restructure its loan obligations to U.S. Bank. U.S. Bank does not believe the debtor has the financial capacity that would be required under a cramdown plan and cannot satisfy § 1129(b).

Since there is no plan to review now, one reasonably speculates the debtor may get the consent of an impaired non-insider class. KCTTC may consent to a payment of past due property taxes. That scenario is just as likely as U.S. Bank's forecast.

3MB asserts that it can and will submit a feasible and confirmable plan and requests that the court set a bar date of November 11, 2020 by which it must file and serve its Plan and Disclosure Statement. Doc. #43. This court agrees that 3MB should be given an opportunity to submit a confirmable plan. It is difficult to know with certainty

whether said plan accounts for administrative and priority expenses, provides for adequate protection, is feasible, and will be accepted by impaired classes. Absent reviewing said plan, this court can only speculate as to its possible contents and whether it could be feasible. As a result, this court will allow 3MB to submit its plan by November 11, 2020.

For the foregoing reasons, the court does not find "cause" exists to convert or dismiss under 11 U.S.C. § 1112 (b) (4) (M). If "cause" does exist there is a reasonable justification, at this stage for the omission-the case is only two months' old. The resolution of this motion with an order requiring the debtor to file and serve a Plan and Disclosure Statement by the middle of next month cures the omission-if it is an omission. The court has already found unusual circumstances and dismissal is not in the best interests of creditors and the estate.

Bad faith

U.S. Bank contends this case was filed in bad faith because (i) it is a single asset real estate case; (ii) 3MB lacks unsecured creditors, with only one $1,800 general unsecured claim, while the other unsecured claims are related to two undocumented loans owed to insiders; (iii) 3MB has no employees or ongoing operations, so there is no business to reorganize; (iv) 3MB has significant outstanding accounts receivable from months of unpaid rent from debtor's tenants and no access to cash collateral or means of securing additional funding; and (v) absent the chapter 11 filing, U.S. Bank would be able to resolve this dispute promptly through state court foreclosure proceedings. Doc. #32.

U.S. Bank argues that because the debtor filed on the eve of receivership and foreclosure shows that it improperly filed chapter 11 to avoid and delay adverse actions taken by it. In re Huerta, 137 B.R. 356, 370 (Bankr. C.D. Cal. 1992) ("[F]iling solely for the purpose of stopping or delaying a foreclosure, without the ability or intention to reorganize, is an abuse and therefore is not the proper basis for the filing of a bankruptcy proceeding, i.e., the filing lacks good faith.")

The Ninth Circuit has recognized dismissals for "bad faith" or lack of good faith in a chapter 11 filing. In re Marsch, 36 F.3d 825, 828 (9th Cir. 1994) ("Although section 1112(b) does not explicitly require that cases be filed in 'good faith,' courts have overwhelmingly held that a lack of good faith in filing a Chapter 11 petition establishes cause for dismissal.").

"When determining whether a debtor has filed a bankruptcy case in bad faith, courts in the 9th Circuit examine the totality of the circumstances surrounding the filing and apply a number of facts that may support a lack of good faith, including whether (i) the debtor has only one asset, (ii) the debtor has an ongoing business to reorganize, (iii) there are any unsecured creditors, (iv) the debtor has cash flow to sustain a plan of reorganization, and (v) if the case is essentially a two party dispute capable of prompt

adjudication in state court." In re St. Paul Self Storage Ltd. P'ship, 185 B.R. 580, 582-83 (B.A.P. 9th Cir. 1995).

Courts have broadly considered whether a filing "seek[s] to achieve objectives outside the ultimate scope of bankruptcy laws." Marsch, 36 F.3d at 829; In re Prometheus Health Imaging, Inc., 705 F. App'x. 626, 627 (9th Cir. 2017) ("[C]ourts may consider any factors which evidence an intent to abuse the judicial process and the purposes of reorganization provisions, to make the bad faith determination.") (internal quotations omitted); In re Moore, 583 B.R. 507, 512 (C.D. Cal. 2018), aff'd sub nom., Moore v. U.S. Trustee for Region 16, 749 Fed. App'x. 621 (9th Cir. 2019) ("A bankruptcy case is filed in bad faith if it was brought for tactical reasons unrelated to reorganization.") (internal quotations omitted).

3MB claims that the petition was not filed in bad faith. It acknowledges that the court can dismiss its chapter 11 case if it determines the case was filed in "bad faith". In re Marsch, 36 F.3d 825 at 828. "Bad faith" has been found to exist where a chapter 11 case was filed "solely for the purpose of stopping or delaying a foreclosure, without the ability or intention to reorganize." In re Huerta, 137 B.R. 356 at 370. 3MB admits that it filed its case to stop U.S. Bank's foreclosure against the shopping center and protect the interest of all parties, including Robert Newman and its members. 3MB claims its case was not filed without "the ability or intention to reorganize." To the contrary, the debtor filed its chapter 11 case with the commitment to:

(1) Complete a transaction with a third-party investor under which between $6.0 and $6.5 million dollars will be infused into the estate;
(2) Sell part of U.S. Bank's collateral for $4.0 million or more;
(3) File a Disclosure Statement and Plan of Reorganization within a short period of time; and
(4) Provide for payment in full on all allowed claims through the plan.

In response, U.S. Bank reaffirmed its belief that the filing was in bad faith because 3MB has no valid reorganizational purpose. To be a valid reorganizational purpose, there must be "some relation" between the filing and the "reorganization-related purposes that [chapter 11] was designed to serve." In re Coastal Cable T.V., Inc., 702 F.2d 762, 764 (1st Cir. 1983). If a chapter 11 does not have a rehabilitative purpose, then the "statutory provisions designed to accomplish the reorganizational objectives become destructive of the legitimate rights and interests of creditors." In re Timbers of Inwood Forest Assocs., Ltd., 800 F.2d 363, 373 (5th Cir. 1987).

The court has already found the existence of unusual circumstances and dismissal or conversion now is not in the best interests of creditors and the estate.

While the timing of the second filing did come on the eve of a foreclosure sale, 3MB has stated that it will file and serve a Disclosure Statement and Plan of Reorganization by November 11, 2020. Doc. #44. If 3MB successfully submits a confirmable plan, the filing will have served a reorganizational purpose and therefore

this court is unable to find bad faith. U.S. Bank does not isolate "the two-party dispute" which suggests bad faith. The debtor has not yet stated there is any dispute with U.S. Bank's claim-just the timing of the foreclosure.

These facts, among others, distinguish this case from those cited by U.S. Bank. Marsch v. Marsch (In re Marsch), 36 F.3d 825 (9th Cir. 1994) [debtor files chapter 11 before state court enters judgment avoiding an appeal bond though debtor had assets to satisfy the judgment]; In re Huerta, 137 BR 356 (Bankr. C.D. Cal. 1992)[Successive chapter 13 filings and debtor presents no evidence of good faith supporting the second filing or proposed plan]; In re Premier Golf Props. L.P., 564 BR 710 (Bankr. S.D. Cal. 2016)[Chapter 11 converted to chapter 7 but court did not find that debtor's dispute with the lender was a "two-party dispute" justifying conversion-other unrelated "causes" under § 1112 (b)]

At this early stage, the court does not find bad faith. The debtor appears willing to quickly proceed through the reorganization process. The debtor may not be successful, but the court will not dismiss or convert the case at this time. The "test is whether a debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy, efficient reorganization on a feasible basis." Marsch, 36 F. 3d at 828 citing In re Arnold, 806 F. 2d 937, 939 (9th Cir. 1986).

Present circumstances suggest this result. Though it is not lost on the court that the debtor and U.S. Bank agreed to a resolution outside of bankruptcy. The debtor breached that agreement. The pandemic will permit an attempt to reorganize but the debtor is on a "very short leash" and facing headwinds.

This motion will be DENIED WITHOUT PREJUDICE. The court will set the bar date of November 11, 2020 by which 3MB shall file and serve its Disclosure Statement and Plan of Reorganization.