UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, October 14, 2021
Place: Department B – Courtroom #13
Fresno, California

The court resumed in-person courtroom proceedings in Fresno ONLY on June 28, 2021. Parties may still appear telephonically provided that they comply with the court's telephonic appearance procedures. For more information click here.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. 21-11001-B-11 **IN RE: NAVDIP BADHESHA**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
4-21-2021 [1]

MATTHEW RESNIK/ATTY. FOR DBT.

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

DISPOSITION: Continued to December 2, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

Debtor-in-possession Navdip S. Badhesha ("DIP") filed a status report on October 7, 2021. Doc. #172. Kelly P. Stevens ("Appraiser") was approved as real estate appraiser for the estate on September 3, 2021. Doc. #165. Appraiser has viewed DIP's real property and is preparing his valuation report, which is expected to be provided to DIP by October 15, 2021. Doc. #174.

After receipt of the appraisal, DIP intends to file a motion to value his real property and set it for hearing on December 2, 2021. Doc. #173. With that motion, DIP will also request the court to set a plan filing deadline scheduled for that same date. Cash collateral is permitted through November 30, 2021, so DIP will either notice a motion for further use of cash collateral on December 2, 2021 or will seek approval of a stipulation for use of cash collateral on that same date. *Id.*

Accordingly, this status conference will be CONTINUED to December 2, 2021 at 9:30 a.m. to be heard in connection with the motion to value real property and the motion to either approve use of cash collateral, or to approve stipulation for use of cash collateral.

2. 20-10809-B-11 **IN RE: STEPHEN SLOAN**

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

PETER FEAR/ATTY. FOR DBT.

NO RULING.

3. 20-10809-B-11 **IN RE: STEPHEN SLOAN**
FW-12

CHAPTER 11 DISCLOSURE STATEMENT FILED BY DEBTOR STEPHEN WILLIAM SLOAN
8-31-2021 [406]

PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Approved subject to noted modifications.

ORDER: Proponent shall prepare the order.

Debtor-in-possession Stephen Sloan ("Debtor" or "Sloan") asks for approval of his Disclosure Statement (Doc. #406) for Sloan's amended plan of organization. The United States Trustee for Region 17 ("UST") objected to approval and Sloan replied. Docs. #406; #428.

UST raises three objections:

1. The Disclosure Statement ("DS") does not contain the amount of the expected dividend to be received by unsecured creditors.
2. The DS does not contain sufficient information on the valuation of Merced Falls Ranch, LLC ("MFR").
3. The DS does not contain adequate information on the value of certain real properties Sloan placed in trust for the benefit of his children pre-petition. Doc. #406.

Sloan partially concedes the third objection and will insert a value estimate for the trust properties. Doc. #428.

11 U.S.C. § 1125(b) requires a court approved DS as containing "adequate information" before solicitation of acceptances of the proposed plan may begin. The issue is what is "adequate information?"

Generally, a "hypothetical reasonable investor" needs to be able to make an "informed judgment" about the plan based on the DS for the DS to contain "adequate information." § 1125(a)(1). But the extent of information required by the court must be tempered by consideration of case complexity, the benefit to creditors of the additional information, and the cost of providing the information.

Id. The ability of the "investor" to obtain information from sources other than the DS as similar claim or interest holders "generally have" is also relevant. § 1125(a)(2)(C). But a DS may be approved without a valuation or appraisal of the debtor's assets. § 1125(b).

This is a liquidating plan. There are timelines for the liquidation of the assets. In addition to the liquidation of assets, primary secured creditor, Sandton, has been given authority to pursue alleged improper transfers of some of the assets Sloan allegedly transferred to trusts pre-petition.

The two remaining objections have some merit but should be relatively simple to resolve.

First, the expected distribution to unsecured creditors is very important. Sloan argues that the critical issue is whether the creditors will fare better under the plan than in a Chapter 7 liquidation. True enough, but a hypothetical reasonable investor would need to know at least a range of expected return. Though there is a timeline when the amount of the remaining Sandton claim will be known, that is not the same as a simple statement of the range of expected dividend for creditors in Class 3.

A declarative statement in the liquidation analysis of the range of potential unsecured creditor distribution based upon the range of liquidated values should suffice. The DS contains several references to the contingency of the repayment of Sandton from the liquidation of MFR and its impact on ultimate unsecured creditor distribution. So, detailed additional discussion of that issue is unnecessary.

Second, the description of assets and liabilities of MFR should be augmented. The problem here is the significant range of values placed on Sloan's interest in MFR. Sloan has, at various times, stated the value as $10 million, $90 million, and $25 million. There may be other estimates.

Sloan has also stated there was no debt against MFR and now discusses "net proceeds" from its sale based on "covenants" between Sandton and Sloan. Sloan has stated that debt owed Sandton is $27 million but Sandton did foreclose on other collateral.

An appraisal is not necessary nor required under § 1125. The Debtor has stated that he estimates the value of MFR is now $10 million or maybe more than the amount of Sandton's remaining claim. It is understandable the debtor may not know precise values. But what is the basis for the current $10 million to $27 million estimate?

A statement of what Sloan believes the value of MFR is (subject to MFR creditors' claims) and Sloan's basis for the estimate should clarify the value asserted. MFR is apparently a lynchpin in liquidating and reducing Sandton's claim and therefore clarifying Class 3 distribution.

With the above additions, the Disclosure Statement is APPROVED.

4. 20-10809-B-11 **IN RE: STEPHEN SLOAN**
WJH-6

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR AND/OR MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGEABILITY OF A DEBT
8-31-2021 [408]

SANDTON CREDIT SOLUTIONS
MASTER FUND IV, LP/MV
PETER FEAR/ATTY. FOR DBT.
KURT VOTE/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.

Creditor Sandton Credit Solutions Master Fund IV, LP ("Creditor") moves to extend the discharge deadline pursuant to Federal Rules of Bankruptcy Procedure ("Rule") 4004(b) and 4007(c) to extend the deadline to object to the discharge of Debtor Stephen William Sloan ("Debtor") from August 31, 2021 to February 28, 2022. Doc. #408.

No party in interest timely filed written opposition. This motion will be GRANTED.

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 amounts of damages). *Televideo Sys., 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.

As a procedural matter, the notice of hearing filed with this motion does not comply with the local rules. LBR 9014-1(d)(3)(B)(i) requires the notice to include the names and addresses of persons who must be served with any opposition. Here, the original and amended notices state that opposition "shall be in writing and served and filed with the Court" but omits where and to whom it should be served. Docs. #409; #417. Names and addresses of the Debtor, its attorney, the UST, and any other parties in interest required to be served the opposition must be specified. Counsel is

advised to review the local rules to ensure procedural compliance in subsequent motions. Future violations of the local rules may result in the matter being denied without prejudice.

Debtor filed chapter 11 bankruptcy on March 2, 2020. Doc. #1. The meeting of creditors was initially set for April 1, 2020 but was continued to May 13, 2020 due to COVID-19 and the court's emergency orders. Doc. #10. General Order 20-02 extended the deadlines by sixty days to July 13, 2020, to commence an objection to Debtor's discharge under 11 U.S.C. § 727 and to object to the dischargeability of certain debts under 11 U.S.C. § 523.

On March 16, 2020, Creditor filed a motion for relief from the automatic stay under 11 U.S.C. § 362(d)(2) with respect to certain real property pledged as collateral. This court scheduled an evidentiary hearing for September 17 and 18, 2020, but it was dropped from calendar.

Creditor and Debtor have stipulated three times to extend the deadlines to object to discharge or dischargeability of certain debts under 11 U.S.C. §§ 727 and 523 to: (1) October 1, 2020; (2) November 30, 2020; and (3) August 31, 2021. Docs. #192; #287; #312.

Recently, on November 30, 2020, Creditor and Debtor again stipulated to extend the objection deadlines under §§ 727 and 523 to February 28, 2022. Docs. #408; #411, Ex. A. Creditor and Debtor seek approval of this stipulation and an extension of time to object under Rule 4004(b).

Rule 4004(b)(1) allows the court for cause to extend the time to object to discharge on motion of any party in interest and after a noticed hearing. The motion shall be filed before the time has expired unless the conditions specified in Rule 4004(b)(2) are met.

Rule 4007(c) requires a complaint to determine the dischargeability of a debt under § 523(c) to be filed no later than 60 days after the first date set for the § 341(a) meeting of creditors. The court may extend the time fixed on request of any party in interest, after hearing on notice, and filed before the time has expired. Here, Creditor timely filed the motion on August 31, 2021, the last day of the current deadline.

Courts have analyzed "cause" for the purposes of requesting an extension of time to object to a debtor's discharge. These factors include:

(1) Whether the moving party had sufficient notice of the deadline and information to file an objection;
(2) The complexity of the case;
(3) Whether the moving party has exercised diligence; and
(4) Whether the debtor has been uncooperative or acted in bad faith.

In re Bomarito, 448 B.R. 242, 249 (Bankr. E.D. Cal. 2011), citing *In re Nowinski*, 291 B.R. 302 (Bankr. S.D. N.Y. 2004).

Creditor contends here that cause exists to extend the deadline as to Creditor. Since the previous extension, Creditor obtained stay relief effective April 1, 2021. Since that time, Creditor has foreclosed on the property securing its claim and filed an amended proof of claim reflecting its unsecured claim. Doc. #410.

Steven K. Vote, Creditor's attorney, declares that the procedural posture of this case remains unclear. *Id.* The court intends to approve Debtor's disclosure statement in matter #3 above. FW-12. There is no need to litigate any potential objection if the plan proposes a plan that would pay the claim entirely or the case were to be dismissed. An extension of time will provide Creditor with sufficient time to complete its evaluation of whether an adversary proceeding for non-dischargeability may be necessary depending on the outcome of the hearing to confirm the plan.

No party in interest timely filed written opposition to this motion.

This motion will be GRANTED. Cause exists based on the stipulation and the status of this case, including pending plan confirmation and approval of the disclosure statement in matter #3 above. The deadlines to object to Debtor's discharge or the dischargeability of certain debts pursuant to §§ 727 and 523 is extended to February 28, 2022. The extension granted under this motion is for Creditor, only. The moving party shall prepare the order.

5. 21-12134-B-11 **IN RE: WALTER C. SMITH COMPANY, INC.**
WJH-3

MOTION TO EMPLOY RILEY C. WALTER AS ATTORNEY(S)
9-16-2021 [49]

WALTER C. SMITH COMPANY,
INC./MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Debtor-in-possession Walter C. Smith Company, Inc. withdrew this employment application to employ Riley C. Walter of Wanger Jones Helsley as its bankruptcy counsel on October 6, 2021. Doc. #100. Accordingly, this motion will be dropped from calendar.

6. 21-12134-B-11 **IN RE: WALTER C. SMITH COMPANY, INC.**
WJH-4

MOTION TO EMPLOY HAL BOLEN AS SPECIAL COUNSEL
9-16-2021 [54]

WALTER C. SMITH COMPANY,
INC./MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

Debtor Walter C. Smith Company, Inc. ("Debtor") asks the court to approve the Debtor's retention of Bolen Fransen Cutts LLP ("Special Counsel") as special counsel for matters relating to redemption of stock for the chapter 11 subchapter V estate. Doc. #54.

The application is supported by Attorney Hal Bolen's declaration and a verified statement of connections, indicating that Special Counsel has represented Debtor since November 2019 as general counsel and worked with its proposed bankruptcy counsel, but otherwise has no connections with creditors, other parties in interest, accountants, and the U.S. Trustee ("UST"). Docs. #56; #57, Ex. A. It appears the application and all related pleadings were properly served on subchapter V trustee David M. Sousa ("Trustee"), all creditors, and the UST as required by Fed. R. Bankr. P. ("Rule") 2014(a). Doc. #58.

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, Trustee, the UST, 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). The defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

11 U.S.C. § 1184 gives the subchapter V debtor all rights, except the right to compensation under § 330, and powers of a trustee serving under this chapter, including operating the business of the debtor, and requires it to perform all functions and duties of a trustee, except those specified in § 1106(a)(2), (3), or (4).

Under 11 U.S.C. § 327(e), an attorney that has represented the debtor can be employed by the estate for a specified special purpose other than to conduct the case, with the court's approval if it is in the best interest of the estate, the proposed attorney does not hold or represent an interest adverse to the estate with respect to the matter on which such attorney is to be employed.

LBR 2014-1(a) provides that an application for an order approval employment pursuant to Rule 2014(a) shall be presumed to relate back to the later of 30 days before the filing of the application or the order for relief. The order approving employment shall state the

effective date on or after which the employment is authorized and effective for services rendered.

As evidence, Attorney Bolen incorporates the motion and the Statement of Connections and verifies its information as correct. Doc. #56. Except as disclosed, Attorney Bolen declares no knowledge of any connections with the Debtor, its creditors, or any other party in interest, its respective attorneys and accountants, the court, the UST, or any person employed in the UST's office. *Id.*

Proposed special counsel must not represent or hold any interest adverse to the debtor or the estate with respect to the matter on which such attorney is employed. § 327(e). Special Counsel here was owed $43,295.40 as of the petition date, according to Attorney Bolen's verified statement of connections. Further, this sum will purportedly be included in Special Counsel's first interim fee application. This is problematic.

First, it is not specified whether the alleged unpaid fees are unrelated to the matter on which Attorney Bolen is to be employed as special counsel. The application specifies representation will be for "matters relating to redemption of stock." Doc. #54. Attorney Bolen's firm represented Debtor in corporate law and transactions. *Id.* That would presumably include stock redemptions and related matters.

Second, the application is not limiting. Though the redemption issues are specified, the application is clear that may not be the only area in which proposed special counsel may be employed. The other areas may include areas in which compensation is still owed the firm.

Third, the amount purportedly owed proposed counsel's firm far exceeds the $10,000 "no look" threshold for subchapter V debtors under § 1195.

Fourth, the statement that the unpaid fees will be included in the first interim fee application suggests proposed special counsel is not waiving the fee claim.

There is a question, then, whether proposed special counsel is a "disinterested person" under § 101(14). Also, there is a question whether proposed counsel holds an adverse interest which may be disqualifying. "Adverse interest" includes possession or assertion of an economic interest lessening the value of the estate. *Dye v. Brown (In re AFI Holding, Inc.)*, 355 B.R. 139, 148-49 (B.A.P. 9th Cir., 2006). Pursuit of a prepetition claim for over $43,000.00 is assertion of an economic interest lessening the estate's value. Asserting that claim as part of the first interim fee application is more concerning. See, *Sundance Self Storage El Dorado, L.P.*, 482 B.R. 613, 627 (B. Ct. E.D. Cal. 2012) (Holding counsel with a pre-petition claim for unpaid fees is a "creditor" and not disinterested and elevating that claim to administrative expense status is adverse to the estate.)

The Verified Statement of Connections discloses that Special Counsel represented Debtor as of November 2019 as general counsel, and has advised Debtor on numerous business, transactional, and litigation matters affecting Debtor's operations. Doc. #57, Ex. A. Special Counsel reviewed a list of creditors and has no connections with any of the creditors on both related and totally unrelated matters. Further, Special Counsel has not obtained through any previous representation the confidential information of a creditor that could be used in a way adverse to that creditor.

Special Counsel discloses that it has worked with and against Wanger Jones Helsley ("WJH"), Debtor's proposed bankruptcy counsel, whose application for employment in matter #6 above was withdrawn on October 7, 2021. WJH-3. Other than WJH, Special Counsel has no known connections with any other parties in interest, their respective attorneys, and accountants, or the UST, or any person employed by the UST's office as required by Rule 2014. Doc. #57, Ex. A.

Debtor's motion states that it is necessary and essential to employ Special Counsel because of the non-bankruptcy transaction services it will require through this bankruptcy, including matters related to redemption of stock. Doc. #54. Debtor selected Special Counsel because of the firm's experience and knowledge in the field of corporate law and transactions, and Debtor believes Special Counsel is well qualified to provide representation in this case. Debtor claims that Special Counsel holds no interest adverse to the Debtor and is a disinterested person within the meaning of 11 U.S.C. § 327.

The court agrees proposed counsel is exceedingly competent to handle corporate matters. But the statutory requirements for employment by the Debtor in a bankruptcy case must be observed.

Debtor seeks authority to pay Special Counsel for services rendered from the assets of the estate on an hourly basis at the respective hourly rates of Special Counsel's professionals, subject to court approval. Debtor further requests the court to entertain monthly applications for interim compensation pursuant to 11 U.S.C. § 331 if the combined fees and expenses sought exceed $5,000.00. *Id.*

No party in interest timely filed written opposition. But the court needs more clarification of connections given the substantial claim proposed counsel's firm is owed. Without that, the court will DENY the application.

7. 21-12134-B-11 **IN RE: WALTER C. SMITH COMPANY, INC.**
WJH-5

MOTION TO EMPLOY HOWARD SAGASER AS SPECIAL COUNSEL
9-16-2021 [59]

WALTER C. SMITH COMPANY,
INC./MV
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Debtor Walter C. Smith Company, Inc. ("Debtor") asks the court to approve the Debtor's retention of Sagaser, Watkins & Wieland PC ("Special Counsel") as special counsel for matters relating to ongoing pension plan litigation for the chapter 11 subchapter V estate. Doc. #59.

The application is supported by Attorney Howard Sagaser's declaration and a verified statement of connections, indicating that Special Counsel has represented Debtor since August 2018 and worked with its proposed bankruptcy counsel, but otherwise has no connections with creditors, other parties in interest, accountants, and the U.S. Trustee ("UST"). Docs. #61; #62, Ex. A. It appears the application and all related pleadings were properly served on subchapter V trustee David M. Sousa ("Trustee"), all creditors, and the UST as required by Fed. R. Bankr. P. ("Rule") 2014(a). Doc. #63.

No party in interest timely filed written opposition. This motion will be GRANTED.

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, Trustee, the UST, 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 amounts of damages). *Televideo Sys., 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.

11 U.S.C. § 1184 gives the subchapter V debtor all rights, except the right to compensation under § 330, and powers of a trustee

serving under this chapter, including operating the business of the debtor, and requires it to perform all functions and duties of a trustee, except those specified in § 1106(a)(2), (3), or (4).

Under 11 U.S.C. § 327(e), an attorney that has represented the debtor can be employed by the estate for a specified special purpose other than to conduct the case, with the court's approval if it is in the best interest of the estate, the proposed attorney does not hold or represent an interest adverse to the estate with respect to the matter on which such attorney is to be employed.

LBR 2014-1(a) provides that an application for an order approval employment pursuant to Rule 2014(a) shall be presumed to relate back to the later of 30 days before the filing of the application or the order for relief. The order approving employment shall state the effective date on or after which the employment is authorized and effective for services rendered.

As evidence, Attorney Sagaser incorporates the motion and the Statement of Connections and verifies its information as correct. Doc. #61. Attorney Sagaser declares no knowledge of any connections with the Debtor, its creditors, or any other party in interest, its respective attorneys and accountants, the court, the UST, or any person employed in the UST's office. *Id.*

The Verified Statement of Connections discloses that Special Counsel represented Debtor as of August 2018, and has advised Debtor on numerous business, transactional, and litigation matters affecting Debtor's operations. Doc. #62, Ex. A. Special Counsel reviewed a list of creditors and has no connections with any of the creditors on both related and totally unrelated matters. Further, Special Counsel has not obtained through any previous representation the confidential information of a creditor that could be used in a way adverse to that creditor.

Special Counsel discloses that it has worked with and against Wanger Jones Helsley ("WJH"), Debtor's proposed bankruptcy counsel, whose application for employment in matter #6 above was withdrawn on October 7, 2021. WJH-3. Other than WJH, Special Counsel has no known connections with any other parties in interest, their respective attorneys, and accountants, or the UST, or any person employed by the UST's office as required by Rule 2014. Doc. #62, Ex. A. Special Counsel was not owed any money by the Debtor on the petition date.

Debtor's motion states that it is necessary and essential to employ Special Counsel because of the non-bankruptcy transaction services it will require through this bankruptcy, including matters relating to ongoing pension plan litigation involving Operating Engineers' Health and Welfare Trust Fund for Northern California. Doc. #59. Debtor selected Special Counsel because of the firm's experience and knowledge in the field of civil and pension trust litigation, and Debtor believes Special Counsel is well qualified to provide representation in this case. Debtor claims that Special Counsel holds no interest adverse to the Debtor and is a disinterested person within the meaning of 11 U.S.C. § 327.

Debtor seeks authority to pay Special Counsel for services rendered from the assets of the estate on an hourly basis at the respective hourly rates of Special Counsel's professionals, subject to court approval. Debtor further requests the court to entertain monthly applications for interim compensation pursuant to 11 U.S.C. § 331 if the combined fees and expenses sought exceed $5,000.00. *Id.*

No party in interest timely filed written opposition. The court finds that Special Counsel does not hold or represent an adverse interest to the estate and is disinterested.

This motion will be GRANTED, and the application will be APPROVED. Applicant is retained effective September 2, 2021.

8. 21-12134-B-11 **IN RE: WALTER C. SMITH COMPANY, INC.**
WJH-6

MOTION TO EMPLOY BRADLEY A. SILVA AS SPECIAL COUNSEL
9-16-2021 [64]

WALTER C. SMITH COMPANY,
INC./MV
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Debtor Walter C. Smith Company, Inc. ("Debtor") asks the court to approve the Debtor's retention of Bradley A. Silva ("Special Counsel") as special counsel for matters relating to a collections action pending in superior court for the chapter 11 subchapter V estate. Doc. #64.

The application is supported by Attorney Bradley A. Silva's declaration and a verified statement of connections, indicating that Special Counsel has represented Debtor since 1984, but otherwise has no connections with creditors, other parties in interest, accountants, and the U.S. Trustee ("UST"). Docs. #66; #67, Ex. A. It appears the application and all related pleadings were properly served on subchapter V trustee David M. Sousa ("Trustee"), all creditors, and the UST as required by Fed. R. Bankr. P. ("Rule") 2014(a). Doc. #68.

No party in interest timely filed written opposition. This motion will be GRANTED.

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, Trustee, the UST, 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 amounts of damages). *Televideo Sys., 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.

11 U.S.C. § 1184 gives the subchapter V debtor all rights, except the right to compensation under § 330, and powers of a trustee serving under this chapter, including operating the business of the debtor, and requires it to perform all functions and duties of a trustee, except those specified in § 1106(a)(2), (3), or (4).

Under 11 U.S.C. § 327(e), an attorney that has represented the debtor can be employed by the estate for a specified special purpose other than to conduct the case, with the court's approval if it is in the best interest of the estate, the proposed attorney does not hold or represent an interest adverse to the estate with respect to the matter on which such attorney is to be employed.

LBR 2014-1(a) provides that an application for an order approval employment pursuant to Rule 2014(a) shall be presumed to relate back to the later of 30 days before the filing of the application or the order for relief. The order approving employment shall state the effective date on or after which the employment is authorized and effective for services rendered.

As evidence, Attorney Silva incorporates the motion and the Statement of Connections and verifies its information as correct. Doc. #66. Attorney Silva declares no knowledge of any connections with the Debtor, its creditors, or any other party in interest, its respective attorneys and accountants, the court, the UST, or any person employed in the UST's office. *Id.*

The Verified Statement of Connections discloses that Special Counsel represented Debtor as of 1984, and has advised Debtor on numerous business, transactional, and litigation matters affecting Debtor's operations. Doc. #67, Ex. A. Special Counsel reviewed a list of creditors and has no connections with any of the creditors on both related and totally unrelated matters. Further, Special Counsel has not obtained through any previous representation the confidential information of a creditor that could be used in a way adverse to that creditor.

Special Counsel discloses that it has worked with and against Wanger Jones Helsley ("WJH"), Debtor's proposed bankruptcy counsel, whose application for employment in matter #6 above was withdrawn on October 7, 2021. WJH-3. Other than WJH, Special Counsel has no known connections with any other parties in interest, their respective attorneys, and accountants, or the UST, or any person employed by

the UST's office as required by Rule 2014. Doc. #67, Ex. A. Special Counsel was not owed any money by the Debtor on the petition date.

Debtor's motion states that it is necessary and essential to employ Special Counsel because of the non-bankruptcy transaction services it will require through this bankruptcy, including matters relating to a collections action pending in superior court on behalf of the Debtor. Doc. #64. Debtor selected Special Counsel because of the firm's experience and knowledge in the field of civil litigation, and Debtor believes Special Counsel is well qualified to provide representation in this case. Debtor claims that Special Counsel holds no interest adverse to the Debtor and is a disinterested person within the meaning of 11 U.S.C. § 327.

Debtor seeks authority to pay Special Counsel for services rendered from the assets of the estate on an hourly basis at the respective hourly rates of Special Counsel's professionals, subject to court approval. Debtor further requests the court to entertain monthly applications for interim compensation pursuant to 11 U.S.C. § 331 if the combined fees and expenses sought exceed $5,000.00. *Id.*

No party in interest timely filed written opposition. The court finds that Special Counsel does not hold or represent an adverse interest to the estate and is disinterested.

This motion will be GRANTED, and the application will be APPROVED. Applicant is retained effective September 2, 2021.

9. 18-11651-B-11 **IN RE: GREGORY TE VELDE**

ORDER TO SHOW CAUSE - FAILURE TO TENDER FEE FOR FILING TRANSFER OF CLAIM
9-28-2021 [3309]

MICHAEL COLLINS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings and conclusions.

ORDER: The court will issue an order.

This matter will proceed as scheduled. A transfer of claim (Doc. #3302) was filed by Transferee MSIP Partners, LLC. transferring claim #24, filed on July 2, 2018 in the amount of $154,098.31, from Transferor J. Ford Elsaesser, Bankruptcy Trustee. A fee of $26.00 is required at the time of filing of the transfer of claim. The fee was not paid. A notice of payment due was served on MSIP Partners, LLC. on September 22, 2021. Doc. #3308.

If the filing fee of $26.00 is not paid prior to the hearing, the transfer of claim (Doc. #3302) may be stricken, and sanctions

imposed on the filer and/or their counsel on the grounds stated in the OSC.

11:00 AM

1. 21-11557-B-7 **IN RE: DON WATANABE**

PRO SE REAFFIRMATION AGREEMENT WITH HARLEY-DAVIDSON CREDIT CORP
9-28-2021 [17]

NO RULING.

1:30 PM

1. 21-10709-B-7 **IN RE: AMB RANCH MANAGEMENT, INC.**
THA-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-16-2021 [42]

TCF NATIONAL BANK/MV
JAMES MILLER/ATTY. FOR DBT.
THOMAS ARMSTRONG/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.

TCF National Bank ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2018 Harlo HP500 Forklift Serial Number 103980 ("Vehicle"). Doc. #42.

No party in interest timely filed written opposition. This motion will be GRANTED IN PART and DENIED AS MOOT IN PART.

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 amounts of damages). *Televideo Sys., 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.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor is in default under the Promissory Note and Security Agreement executed on December 9, 2019. The payment has been delinquent since March 29, 2021. The movant has produced evidence that debtor is delinquent at least $42,731.92. Docs. #42; #44.

The court declines finding that Debtor does not have any equity in the Vehicle. Although this is a chapter 7 case and the Vehicle is not necessary for an effective reorganization, the moving papers indicate that Debtor has approximately $2,268.08 in equity. Doc. #44. Relief under § 362(d)(2) is moot because there is "cause" to grant the motion under § 362(d)(1).

Accordingly, the motion will be GRANTED IN PART pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim and DENIED AS MOOT IN PART as to 11 U.S.C. § 362(d)(2). No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 7 payments to Movant and the Vehicle is a depreciating asset.

2. 20-12023-B-7 **IN RE: GABRIELA COVARRUBIAS**
JES-2

MOTION TO COMPEL
9-13-2021 [44]

JAMES SALVEN/MV
T. O'TOOLE/ATTY. FOR DBT.
ROBERT HAWKINS/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part.

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

Chapter 7 trustee James E. Salven ("Trustee") seeks an order compelling Gabriela Covarrubias ("Debtor") under 11 U.S.C. § 542(a) to turn over within seven days either (1) Debtor's 2020 Federal and State tax returns ("Tax Returns") with any refunds received; or (2) data necessary to prepare the Tax Returns. Doc. #44. Trustee estimates that the 2020 federal and state tax refunds may have value to the estate over and above any available exemption of at least $4,500. Doc. #46.

Debtor timely filed limited opposition to the motion. Doc. #55. This matter will be called as scheduled.

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 failure of the creditors, the U.S. Trustee, or any other party in interest except Debtor to file written opposition at least 14 days prior to the hearing under LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties except Debtor are entered.

11 U.S.C. § 541 establishes Tax Returns and refunds as assets of the estate upon commencement of the case. Section 541(a) provides that the estate is comprised of the following property, wherever located and by whomever held, including but not limited to:

> (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.
> (2) All interest of the debtor and the debtor's spouse in community property as of the commencement of the case that is—
> (A) under the sole, equal, or joint management and control of the debtor; or
> (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

11 U.S.C. § 541(a). Section 542(a) requires Debtor to deliver Tax Returns and refunds to Trustee:

> (a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

§ 542(a). If Debtor has not yet filed the 2020 Tax Returns, Debtor is required to deliver data necessary to prepare the returns under § 521:

> (a) The debtor shall—
> . . .
> (4) if a trustee is serving in the case or an auditor is serving under section 586(f) of title 28, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate,

> whether or not immunity is granted under section 344 of this title[.]

11 U.S.C. § 521(a)(4).

Trustee has demonstrated that the 2020 Tax Returns and any or all refunds exceeding Debtor's claimed exemptions are property of the estate and Trustee has the right to receipt for the benefit of the estate. Docs. #44; #46.

However, Debtor responded, claiming that she received her discharge on September 14, 2020, one year ago. Doc. #55. She initially had only a small amount of equity she was able to protect with her "wildcard" exemption. Doc. #56. Trustee filed a proceeding against Debtor's ex-boyfriend and obtained a $15,000 settlement from the boyfriend. Since filing the case, the value of her home increased requiring her to change her exemptions to Cal. Code Civ. Proc. § 704, which changed the exemption on her 2021 tax refund to be partially non-exempt.

Debtor received a $5,879 federal refund and a $155 state refund. Doc. #57, Ex. A. Since the bankruptcy was filed on June 15, 2020, Debtor argues that Trustee is only entitled to the pre-petition part of the tax refund, which is calculated as follows:

$$\frac{6.5}{12} = .5417\% \times \$6{,}031 = \$3{,}266.99$$

Doc. #55. Debtor's position is that Trustee is only entitled to $3,266.99 of the 2020 tax return.

Since Debtor is supporting a grandchild and a parent, and she has a house payment, Debtor is unable to pay Trustee at this time. Doc. #56. Debtor was not warned by Trustee that he intended to claim her return, so it was spent on necessary living expenses. She received her discharge over one year ago on September 14, 2020 and is "shocked" by the demand. *Id.*

Based on this unexpected demand and the absence of funds to pay Trustee's demand, Debtor asks the court to order the $3,266.99 to be paid to Trustee from the 2021 tax refund no later than April 30, 2022.

This matter will proceed as scheduled. The court is inclined to GRANT IN PART this motion and require Debtor to pay $3,266.99 to Trustee from the 2021 tax refund no later than April 30, 2022.

3. 20-12729-B-7 **IN RE: CHUCK/NICOLE COZZITORTO**
FW-1

FURTHER SCHEDULING CONFERENCE RE: MOTION TO AVOID LIEN OF SAN JOAQUIN VALLEY HAY GROWERS ASSOCIATION AND/OR MOTION TO AVOID LIEN OF QUALITY MILK SERVICE INC.
5-5-2021 [35]

NICOLE COZZITORTO/MV
PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

4. 19-13569-B-7 **IN RE: JOHN ESPINOZA**
PFT-3

OBJECTION TO CLAIM OF JON P. MAROOT, CLAIM NUMBER 6
8-26-2021 [145]

PETER FEAR/MV
JERRY LOWE/ATTY. FOR DBT.
THOMAS ARMSTRONG/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

Chapter 7 trustee Peter L. Fear ("Trustee") objects to Proof of Claim No. 6 filed by Jon P. Maroot ("Claimant") on June 15, 2021 in the amount of $42,042.08 and prays to disallow it in its entirety. Doc. #145.

Claimant timely filed written opposition. Doc. #150. Claimant contends that he did not have notice or actual knowledge of the bankruptcy to timely file a proof of claim, so Claim No. 6 should be allowed as an unsecured claim. *Id.*

This matter will proceed as scheduled. The court is inclined to OVERRULE the objection.

This objection was filed on 44 days' notice pursuant to Local Rule of Practice ("LBR") 3007-1(b)(1) and will be called as scheduled. The failure of the debtor, creditors, the U.S. Trustee, or any other party in interest except Claimant to file written opposition may be deemed a waiver of opposition to the objection. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Claimant are entered.

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 ("Rule") 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).

John Espinoza ("Debtor") filed bankruptcy on August 21, 2019. The claims bar date to file a proof of claim in this case was January 27, 2020. Doc. #45.

Claimant filed Proof of Claim No. 6 on June 15, 2021 in the amount of $42,042.08, not including interest, from defective repair and preparation while painting Claimants 1966 El Camino. Claim #6-1. The supplement to the proof of claim states that Claimant contacted Debtor in April 2018 to restore his El Camino, which took two years. Upon picking up the vehicle on May 8, 2020, there were visible imperfections in the paint job, including dirt and other debris on the car that were painted over, delaminated clear coat over the flames, too many base coats, and inadequate repairs. *Id.*, Attach. #1. Claimant paid another professional $26,000 to strip the car, do the body repairs correctly, and properly prime, prepare, and paint the car.

Jason Haskin, previously the global technical advisor for House of Kolor, reviewed the car and determined there was (1) poor preparation when the original substrate and metal were sanded, (2) improper application of the primer in preparation for painting, and (3) a general lack of knowledge of how to prepare and paint a vehicle. Doc. #152. Haskin suggested that the vehicle should be stripped and repainted. Claimant agreed and hired Haskin to perform the work.

Claimant subsequently filed Fresno County Superior Court case no. 21CECG01138 on April 22, 2021, seeking to recover the money he paid to Debtor, the cost of supplies, and the cost to strip and repaint the vehicle. *Id.* Claimant was informed after the suit by Debtor's attorney that he had filed chapter 7 bankruptcy, which was the first time he was informed about the bankruptcy. *Id.*

Trustee seeks disallowance of this claim because it was filed after the claims bar date. Doc. #145. However, Trustee's declaration notes that Trustee has been informed that Claimant believes the claim should be treated as a timely-filed claim. Doc. #147.

Claimant's reply echoes the contentions made in his supplement to his proof of claim. Doc. #150. Claimant declares that Debtor negligently began the process of painting the vehicle in the 16 months before he filed chapter 7 bankruptcy. Doc. #151. This included body work to fix defects, stripping paint, and preparing the surfaces pre-petition. Debtor applied the paint post-petition, which was defective because of the pre-petition negligent

preparation. *Id.* Claimant paid Debtor the cost to paint the vehicle post-petition. Claimant purchased $2,640.36 in pre-petition supplies, $2,076.72 in post-petition supplies, for a total of $4,717.08. Claimant paid Debtor $3,775 pre-petition and $7,500 post-petition, totaling $11,325 for his services. These amounts, combined with the $26,000 to strip and repaint the vehicle, result in the $42,042.08 total amount of his claim. Claimant claims that he had no knowledge of the filing of this bankruptcy until April 22, 2021. *Id.*

11 U.S.C. § 727(a) specifies the priority of distribution from a chapter 7 estate. Tardily filed claims under § 726(a)(2)(C) are paid after unsecured claims are paid in fully unless the creditor holding such tardy claim did not have notice or actual knowledge of the case in time for timely filing a proof of claim under § 501, and a proof of claim is filed in time to permit payment of the claim.

Here, Claimant is not listed on the master address list or its first four amendments. Docs. #4; #31; #73; #84. Claimant's attorney is included in the fifth amendment to the master address list filed May 24, 2021. Doc. #107. However, Claimant did not receive the notice to file a proof of claim and notice of the bar date that was sent out on October 30, 2019. Doc. #46. Claimant satisfies the requirements to have his proof of claim treated as a timely filed unsecured claim under § 501(a). § 726(a)(2)(A).

Rule 3002(c) states that a proof of claim is timely filed if it is filed not later than 70 days after the order for relief under chapter 7, but enumerated exceptions apply. On motion by a creditor before or after expiration of the time to file a proof of claim, Rule 3002(c)(6) allows the court to extend the time by not more than 60 days from the date of the order granting the motion. The motion may be granted if the court finds the notice was insufficient under the circumstances to give the creditor a reasonable time to file a proof of claim because the debtor failed to timely file a list of creditors' names and addresses required by Rule 1007(a). Rule 3002 (c)(6)(A).

Though Debtor filed master address lists, those lists did not include Claimant. So, Debtor failed to timely file a master address list including Claimant and the notice of the proof of claim deadline was insufficient under the circumstances to give Claimant a reasonable time to file a proof of claim. However, Claimant must file a motion for leave to file a proof of claim pursuant to Rule 3002(c)(6) to have his claim deemed allowed.

This matter will be called as scheduled. The court is inclined to OVERRULE the objection.

5. 21-11775-B-7 **IN RE: THOMAS HERNANDEZ**
UST-1

MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B)
9-30-2021 [15]

TRACY DAVIS/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
JORGE GAITAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Tracy Hope Davis, the United States Trustee for Region 17 ("UST") moves for an order approving a stipulation to dismiss this chapter 7 case without entry of discharge. Doc. #15.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

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

Thomas Ruben Hernandez filed chapter 7 bankruptcy on July 16, 2021. Doc. #1. The § 341(a) meeting of creditors was held and concluded on September 10, 2021. *See* docket generally. UST filed a statement of presumed abuse pursuant to 11 U.S.C. § 704(b)(1)(A) on September 21, 2021. Doc. #12. The deadline to file a motion to dismiss under 11 U.S.C. §§ 707(a) and (b)(3) for abuse is November 9, 2021. UST is prepared to file a motion to dismiss the case for abuse pursuant to §§ 707(b)(1), (2), and (3) (bad faith and/or totality of the circumstances abuse). However, Debtor, through his bankruptcy counsel Neil E. Schwartz, stipulated to voluntary dismissal without entry of discharge on September 16, 2021. Doc. #17, Ex. A.

A chapter 7 case may be dismissed only after notice and a hearing and only for "cause." 11 U.S.C. § 707(a) provides three statutorily enumerated grounds establishing cause, but these are not exclusive. *Sherman v. SEC (In re Sherman)*, 491 F.3d 948, 970 (9th Cir. 2007); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 840 (B.A.P. 9th Cir. 2008). Under 11 U.S.C. § 707(b), an individual chapter 7 consumer debtor's case may be dismissed for presumed abuse or where abuse is demonstrated by bad faith or the totality of the circumstances of the debtor's financial condition. *See* 11 U.S.C. §§ 707(b)(1), (2), and 3).

Here, UST is prepared to file a motion to dismiss under 11 U.S.C. § 707(b)(1), (2) and (3), but Debtor has opted to voluntarily dismiss instead. Doc. #17, Ex. A. No creditors or other parties in interest were required to file written opposition, but there does not appear to be any benefit to creditors in keeping the bankruptcy case open.

In the absence of opposition at the hearing, the court is inclined to GRANT this motion. The stipulation to dismiss Debtor's case without entry of discharge will be approved and the case will be dismissed.

6. 20-12276-B-7 **IN RE: FRANCISCO PEREZ AND ROSA ORNELAS**
THA-2

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH CHICAGO TITLE COMPANY AND JAVIER JACOBO
9-14-2021 [28]

JAMES SALVEN/MV
BENNY BARCO/ATTY. FOR DBT.
THOMAS ARMSTRONG/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.

Chapter 7 trustee James E. Salven ("Trustee") requests an order approving a settlement agreement between the estate and Francisco Ornelas Perez and Rosa Maria Ornelas ("Debtors"), Chicago Title Company ("CTC"), and Javier Jacobo ("Jacobo") pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #28.

No party in interest timely filed written opposition. This motion will be GRANTED.

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 amounts of damages). *Televideo Sys., 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.

Debtors filed chapter 7 bankruptcy on July 6, 2020. Doc. #1. Debtors' discharge was entered on October 13, 2020. Doc. #14. In the schedules, Debtors listed an interest in commercial real property located at 1600 E. Belmont Ave., Fresno, CA 93701 ("Property") valued at $216,749.00 on the petition date, which is where they run their restaurant business.[1] Doc. #1, *Sched. A/B*, at ¶ 1.2. Property is encumbered by a deed of trust in favor of Jacobo in the approximate amount of $185,000.00. *Id.*, *Sched. D*. The remaining equity in Property is not exempted. CTC is listed as an unsecured creditor with a claim of $0.00 for "Notice only." *Id.*, *Sched. E/F*. Property is listed in the Statement of Intention, Form 108, wherein they state an intention to surrender Property to Jacobo. *Id.*, Form 108.

After the meeting of creditors, Trustee took steps to secure Property for sale, which included making sure that it was insured and by changing the locks. Doc. #32. Trustee sought to employ a real estate broker to market and sell Property, which was granted on October 22, 2020. Doc. #19. The broker marketed the Property without success due to its location and the COVID-19 pandemic — because all restaurants were closed to in-person dining.

As Broker showing the Property to various parties, the locks kept being changed for unknown reasons. Doc. #32. Each time the locks were changed, Trustee had Property re-keyed.

In July 2021, Trustee received an offer of $220,000.00 for Property. In connection with the sale, Trustee obtained a preliminary title report from Fidelity National Title Company. The report revealed that the secured creditor, "The 2012 Javier Jacobo Trust dated December 6, 2012" (the "Trust") had filed a notice of default on February 10, 2020, and recorded a notice of trustee's sale on June 16, 2020, which were both before the July 6, 2020 petition date and not disclosed in the Statement of Financial Affairs.

A Trustee's Sale under the deed of trust in favor of the Trust occurred on November 17, 2020 and was recorded November 18, 2020. This clouded title and impaired the estate's ability to market and sell Property and explained why the locks kept being changed. Trustee's prospective buyer subsequently withdrew the offer to purchase Property. *Id.*

After reviewing the schedules, Trustee determined that the Trust was scheduled as a secured creditor because Jacobo, the trustee of the Trust, was listed on Schedule D and received notice of the bankruptcy case. Docs. ##1-3. Further, the Trust never obtained stay relief to foreclose on Property under § 362(d). *See* docket generally. Trustee employed counsel on August 4, 2021 to pursue the estate's remedies with regard to violation of the automatic stay and foreclosure of Property. Doc. #23.

The parties met and conferred on August 12, 2021. Docs. #30; #32. On behalf of the Trust, Jacobo and his friend, Mr. Ahanjanian attended

the meeting, as well as CTC's in-house litigation counsel, Melissa Popkin, Esq. and Gina Arico-Smith, Esq. *Id.* Trustee and retained counsel were present on behalf of the estate. The parties agreed to compromise and resolve the issues.

Under the terms of the agreement:

1. CTC and Jacobo will pay Trustee $12,500.00 within 30 days of execution of the Agreement and within 15 days of providing Fidelity with a fully executed W-9 form for Trustee. In exchange, Trustee will seek approval of a motion to compromise controversy, which shall include a request to annul the automatic stay effective November 16, 2020.

2. The settlement draft shall be made payable to "James E. Salven, Chapter 7 Bankruptcy Trustee."

3. The Trustee shall hold the settlement draft in his possession until there is an order from the bankruptcy court granting the request to annul the automatic stay as to Property effective November 16, 2020. If the request is denied, the settlement draft will be immediately returned to CTC and Jacobo.

4. Mutual release of all claims, debts, defenses, liabilities, costs, attorney's fees, actions, suits, demands, contracts, expenses, damages, and other causes of action. This includes an acknowledgement waiving Cal. Civ. Code § 1542, and other specified terms. *See* Doc. #31, Ex. A.

The settlement was signed by Trustee, Jacobo and counsel for Trustee on September 7, 2021, and counsel for CTC on September 9 and 10, 2021. Trustee states that the Trustee has taken steps to reinstate past due real property taxes, which approximated $13,000, and to repair the Property so that it may either be sold or used. Doc. #32. The parties agreed that if CTC were to rescind the trustee's deed upon sale, then re-notice the sale, it would appear as an unnecessary cloud on title that would make it more difficult to sale. *Id.*

Trustee states that CTC's counsel will prepare the settlement agreement, which will dispense with the need for litigation and the costs associated with it. *Id.*

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

The court concludes that the *Woodson* factors balance in favor of approving the compromise. That is,

(1) Trustee believes that the estate would prevail on the automatic stay violation issue. Doc. #32. But he states that rescinding the sale after nearly one year, addressing the delinquent real property taxes that are now paid, determining credits for Property improvements, maintenance, and upkeep, and then re-marketing Property would be in no party's best interest. All parties agree that litigation would be costly, time consuming, complex, and delay payment to creditors, so compromise is in the best interests of all involved.

(2) The difficulties encountered in collection also weigh in favor of approving compromise. CTC will provide the $12,500 to the estate. Trustee has submitted the appropriate W-9 tax form to CTC, and the estate will receive a settlement check shortly.

(3) Litigation here would be very complex. Putting each party back to their respective starting points would be time-consuming, expensive, and non-productive because the Property was sold nearly one-year ago, property taxes have been made, and improvements have been added.

(4) Settlement is in the paramount interests of creditors because it provides funds to the estate to be distributed while minimizing litigation expenses that would reduce the net to creditors.

The settlement appears to be fair, equitable, and a reasonable exercise of Trustee's business judgment.

No party in interest timely filed written opposition. The court concludes the compromise to be in the best interests of the creditors and the estate. Further, the law favors compromise and not litigation for its own sake. This motion will be GRANTED.

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[1] Debtors also own real property located at 821 N. Thorne Ave., Fresno, CA 93728, which is their residence. Doc. #1, *Sched. A/B*, at ¶ 1.1. That property is not implicated by this motion.

7. 17-11379-B-7 **IN RE: STEPHEN/KATIE GONZALEZ**
FW-2

MOTION TO APPROVE STIPULATION COMPROMISING CLAIMS
9-13-2021 [40]

PETER FEAR/MV
PETER SAUER/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Chapter 7 trustee Peter L. Fear ("Trustee") requests an order approving a settlement agreement between the estate and Stephen Anthony Robert Gonzalez and Katie Kylene Gonzalez ("Debtors") pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #40.

No party in interest timely filed written opposition. This motion will be GRANTED.

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 amounts of damages). *Televideo Sys., 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.

Debtors filed chapter 7 bankruptcy on April 13, 2017. Doc. #1. Trudi Manfredo was appointed as Trustee on the same date. Doc. #2. Then-trustee filed a notice of no distribution. Doc. #16. The trustee moved to sell real property, which was granted. Doc. #35. Debtors received a discharge on July 31, 2017. Doc. #18. The case was closed on August 4, 2017. Doc. #20.

The U.S. Trustee discovered that Debtors failed to schedule an interest in a products liability claim ("PL Claim"), which was property of the estate. Doc. #22. The case was reopened on June 14, 2021. Doc. #24. Trustee was appointed as successor trustee on June 17, 2021.

Trustee states that the net proceeds of PL Claim are approximately $41,500.00, but the exact amount is unknown. Doc. #42. Debtors want to claim an exemption in the proceeds of the PL Claim, but it was not originally scheduled in the petition, so it remains property of the estate until abandoned by Trustee. To avoid the time and costs of litigation, Trustee and Debtors stipulated to set the parameters on the Debtors' claimed exemption.

Under the terms of the stipulation:

(1) The PL Claim is and shall be property of the estate.

(2) The net proceeds of the PL Claim are defined by the gross amounts paid to resolve the PL Claim, less attorney's fees, costs, and payment of any liens on the recover.

(3) Debtor and Trustee agree that Debtor may claim an exemption in the PL Claim in the amount of net proceeds minus $15,000, unless the net proceeds are greater than $30,000, then Debtor may exempt one-half of the net proceeds. Other than this exemption, Debtor is not entitled to any exemption in the PL Claim.

(4) Debtor and Trustee understand that they are relying on this agreement to resolve the issue of whether the proceeds are subject to exemption, and if so, how much.

(5) Conditioned upon bankruptcy court approval and no schedule amendment is required. Doc. #43, Ex. A.

The settlement was signed by Debtors on August 12, 2021 and Trustee on September 9, 2021. *Id.*

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

The court concludes that the *Woodson* factors balance in favor of approving the compromise. That is,

(1) Trustee believes that the estate would prevail in litigation. Doc. #42. However, he acknowledges that a portion of the proceeds would likely be exemptible, and regardless of the outcome, it is questionable whether the costs to litigate would exceed the net value of the proceeds.
(2) Collection is not likely to be an issue. The proceeds are being held by a third-party settlement administrator. *Id.*

(3) The litigation is not very complex. The facts are largely undisputed, the only consideration will be the effect of the law and equitable considerations weighed by the court. However, the parties believe that the resolution reached in the stipulation fairly addresses the concerns of both parties and obviates the need for litigation.

(4) Trustee believes that the settlement is in the best interests of the estate because the administrative expenses and filed claims will likely be paid in full. Litigation, meanwhile, would increase litigation expenses and reduce the net amount to creditors.

The settlement appears to be fair, equitable, and a reasonable exercise of Trustee's business judgment.

No party in interest timely filed written opposition. The court concludes the compromise to be in the best interests of the creditors and the estate. Further, the law favors compromise and not litigation for its own sake. This motion will be GRANTED.

8. 21-11892-B-7 **IN RE: FRELIN GONZALEZ**
KMM-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-9-2021 [13]

TOYOTA MOTOR CREDIT
CORPORATION/MV
SYDELL CONNOR/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2014 Toyota Tacoma ("Vehicle"). Doc. #13.

No party in interest timely filed written opposition. This motion will be GRANTED.

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 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 amounts 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.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least five payments. The movant has produced evidence that debtor is delinquent at least $2,148.56. Docs. #13; #15.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. *Id.* The Vehicle is valued at $10,500.00 and debtor owes $16,908.26. Doc. #15, #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.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least five payments to Movant and Movant has been in possession of the Vehicle since June 23, 2021. No other relief is awarded.

9. 21-11794-B-7 **IN RE: CARINA MENDEZ**
PVR-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-16-2021 [17]

SCHOOLSFIRST FEDERAL CREDIT UNION/MV
SCOTT LYONS/ATTY. FOR DBT.
PAUL REZA/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.

SchoolsFirst Federal Credit Union ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2018 Ford Explorer ("Vehicle"). Doc. #17.

No party in interest timely filed written opposition. This motion will be GRANTED as to the Debtor and the estate's interest, only.

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 debtor, the chapter 7 trustee, or the U.S. Trustee 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. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered.

Debtor filed bankruptcy on July 21, 2021. Debtor listed the Vehicle in Schedule D with a value of $24,550.00, noting that the secured debt held by SchoolsFirst FCU was owed by "one of the debtors and another." Schedule H indicates that Debtor is a co-owner of the Vehicle with Mr. Jose R. Hurtado. Debtor's Statement of Financial Affairs indicates that she is married, but Form 122A-1 states they are living separately or are legally separated. Debtor's Statement of Intention filed with the petition stated that the Vehicle would be surrendered. Doc. #1. Debtor later amended her Statement of Intention on September 22, 2021 and indicated that the Vehicle would be retained, and the payments made by Mr. Jose R. Hurtado. Doc. #23

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has missed one payment of $619.30. Docs. #18; #20.

Even though Mr. Hurtado was not served with this motion, the court may still grant relief with respect to Debtor and estate under 11 U.S.C. § 362(d)(1). No automatic stay affects Mr. Hurtado's interest at this time so no relief can be granted as to any interest he may have.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.