

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, October 20, 2020
Place: Department B - Courtroom #13
Fresno, California

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [20-10800](#)-B-11 **IN RE: 4-S RANCH PARTNERS, LLC**

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

RENO FERNANDEZ/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling
conference.

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

This status conference will be called as scheduled and will proceed
as a scheduling conference. The parties shall be prepared to discuss
future dates and deadlines.

2. [20-10800](#)-B-11 **IN RE: 4-S RANCH PARTNERS, LLC**
[MF-3](#)

SCHEDULING CONFERENCE RE: AMENDED/MODIFIED PLAN
7-13-2020 [[132](#)]

RENO FERNANDEZ/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling
conference.

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

This scheduling conference will proceed as scheduled. The parties
shall be prepared to discuss future dates and deadlines.

3. [20-10800](#)-B-11 **IN RE: 4-S RANCH PARTNERS, LLC**
[MF-7](#)

CONTINUED MOTION TO EXTEND EXCLUSIVITY PERIOD FOR FILING A
CHAPTER 11 PLAN AND MOTION/APPLICATION TO EXTEND EXCLUSIVITY
PERIOD TO OBTAIN ACCEPTANCE OF CHAPTER 11 PLAN FILED BY
DEBTOR 4-S RANCH PARTNERS, LLC
8-27-2020 [\[174\]](#)

4-S RANCH PARTNERS, LLC/MV
RENO FERNANDEZ/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling
conference.

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

This matter will be called as scheduled and will proceed as a
scheduling conference. The parties shall be prepared to discuss
future dates and deadlines.

4. [20-10800](#)-B-11 **IN RE: 4-S RANCH PARTNERS, LLC**
[MF-9](#)

CONTINUED CHAPTER 11 DISCLOSURE STATEMENT FILED BY DEBTOR
4-S RANCH PARTNERS, LLC
8-28-2020 [\[182\]](#)

RENO FERNANDEZ/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling
conference.

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

This matter will be called as scheduled and will proceed as a
scheduling conference. The parties shall be prepared to discuss
future dates and deadlines.

5. [20-10800](#)-B-11 **IN RE: 4-S RANCH PARTNERS, LLC**
[WJH-1](#)

CONTINUED SCHEDULING CONFERENCE RE: MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-16-2020 [[21](#)]

SANDTON CREDIT SOLUTIONS
MASTER FUND IV, LP/MV
RENO FERNANDEZ/ATTY. FOR DBT.
KURT VOTE/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling
conference.

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

This scheduling conference will proceed as scheduled. The parties
shall be prepared to discuss future dates and deadlines.

6. [20-11606](#)-B-11 **IN RE: MICHAEL PENA**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
5-4-2020 [[1](#)]

JUSTIN HARRIS/ATTY. FOR DBT.

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

DISPOSITION: Continued to November 17, 2020 at 9:30 a.m.

ORDER: The court will issue an order.

Per the court's previous order (Doc. #49), the debtor had until
October 16, 2020 to file a chapter 11 plan and disclosure statement.
The debtor filed a status conference statement requesting a brief
extension through October 30, 2020 to file the plan and disclosure
statement because the debtor's counsel became ill due to a recurring
health condition. Doc. #55. Counsel did not return to work until
October 14, 2020 and is still not fully recovered. Accordingly, this
status conference will be continued to November 17, 2020 at
9:30 a.m. The debtor shall file a plan and disclosure statement no
later than October 30, 2020. If the plan and disclosure statement
are filed by October 30, then this status conference will be
continued to the hearing date of the motion to approve the
disclosure statement.

7. [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.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling
conference.

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

This status conference will be called as scheduled and will proceed
as a scheduling conference. The parties shall be prepared to discuss
future dates and deadlines.

8. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[FW-6](#)

CHAPTER 11 DISCLOSURE STATEMENT FILED BY DEBTOR STEPHEN
WILLIAM SLOAN
8-28-2020 [[222](#)]

PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling
conference.

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

This matter will be called as scheduled and will proceed as a
scheduling conference. The parties shall be prepared to discuss
future dates and deadlines.

9. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[FW-6](#)

CONTINUED CHAPTER 11 DISCLOSURE STATEMENT FILED BY DEBTOR
STEPHEN WILLIAM SLOAN
6-30-2020 [[184](#)]

PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling
conference.

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

This matter will be called as scheduled and will proceed as a
scheduling conference. The parties shall be prepared to discuss
future dates and deadlines.

10. [19-10423](#)-B-12 **IN RE: KULWINDER SINGH AND BINDER KAUR**
[MHM-1](#)

MOTION TO DISMISS CASE
9-15-2020 [[249](#)]

MICHAEL MEYER/MV
DAVID JOHNSTON/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to October 30, 2020.

ORDER: The court will issue an order.

An evidentiary hearing is set to begin on October 30, 2020 at 9:30
a.m., regarding a Motion to Modify Chapter 12 Plan (FW-5). See
Doc. #254. Accordingly, this matter will be continued to
October 30, 2020 at 9:30 a.m. to be heard in connection with this
evidentiary hearing. It may be further continued thereafter.

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

MOTION TO EMPLOY NATHAN M. HODGES AS SPECIAL COUNSEL
9-24-2020 [\[54\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

This motion is GRANTED. Pursuant to 11 U.S.C. § 327(e), the debtor-in-possession ("DIP") may employ, with the court's approval and for a specified special purpose, an attorney that has represented the debtor if it is in the best interest of the estate and if the attorney does not represent nor hold an adverse interest to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

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

DIP wishes to employ Nathan M. Hodges ("Counsel") as special counsel to assist in completing settlement agreements, obtaining approval from creditors, and representing the DIP in two eminent domain lawsuits. Doc. #54.

No party in interest filed opposition to the employment, but Secured Creditor U.S. Bank, N.A., filed a notice of non-consent to the use cash collateral, stating it "does not consent to any use of its cash collateral," which includes payment of fees for professionals. Doc. #10.

After review of the evidence, and unless any opposition is presented at the hearing, the court finds that Counsel does not represent nor hold an adverse interest to the debtor or to the estate with respect to the matter on which Counsel is to be employed. Counsel was not a prepetition creditor and has agreed to waive any claim against the chapter 11 estate as a condition of his employment as special counsel. Doc. #57.

The court also finds that Counsel does not represent nor hold an adverse interest to the DIP or to the estate with respect to the matter on which Counsel is to be employed.

DIP will be authorized to employ Counsel for the purposes stated above and in the motion; the effective date of employment shall be August 25, 2020, which is 30 days before this motion was filed. No compensation is permitted except upon court order following Application pursuant to 11 U.S.C. § 330(a). Compensation shall be at the "lodestar rate" applicable at the time that services are rendered in accordance with the Ninth Circuit decision in *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Monthly applications for interim compensation pursuant to 11 U.S.C. § 331 will be entertained if the combined fees and expenses sought exceed \$5,000.00.

12. [20-12642](#)-B-11 **IN RE: 3MB, LLC**
[LKW-4](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CITY OF BAKERSFIELD
9-24-2020 [\[47\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

This motion will be GRANTED. It appears from the moving papers that the debtor-in-possession ("DIP") has considered the standards of *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1987) and *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986):

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

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

The DIP requests approval of a settlement agreement between the estate and the City of Bakersfield ("City") for two consolidated eminent domain lawsuits filed by the City on January 18, 2018. Doc. #49. The lawsuits allege that the City is authorized to acquire property by eminent domain and construct improvements on the properties to be condemned. *Id.*

The settlement was reached pursuant a stipulation and order for entry of final judgment and final order of condemnation issued by the Kern County Superior Court. *Id.*

Under the terms of the compromise, the real property to be condemned by and conveyed to the City will be limited; the City will make payments of \$3,000.00 to Creditor U.S. Bank, N.A., and \$32,000.00 to the DIP; and the parties will execute a general release, which will be "a bar to each and every claim, demand, and cause of action existing between the City and the Defendants." *Id.*; Doc. #50.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is far from assured as the City has vigorously sought to enforce its right to condemn, acquire, and improve multiple parcels of real property owned by the DIP; the litigation is incredibly complex and cannot be concluded without a costly and time-consuming trial; and the creditors will benefit because this stipulation settles the dispute between the City and the estate without the risk, cost, and delay associated with trial and provides for immediate payment to the DIP and its largest secured creditor, U.S. Bank; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.* Accordingly, the matter will be called to provide an opportunity for further opposition. If no further opposition is presented at the hearing, then the motion will be GRANTED.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

13. [20-11992](#)-B-11 **IN RE: CHAR PHAR INVESTMENTS, LLC**
[WLC-6](#)

CONTINUED MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
7-27-2020 [[64](#)]

CHAR PHAR INVESTMENTS, LLC/MV
WILLIAM COWIN/ATTY. FOR DBT.

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

DISPOSITION: Continued to December 3, 2020 at 10:45 a.m.

NO ORDER REQUIRED.

This motion was originally set for hearing on September 1, 2020. Doc. #64. On September 1, this court issued an order continuing the hearing to October 20, 2020. See Doc. #119. Pursuant to the parties' stipulation (Doc. #135), on October 13, 2020, this court issued an order continuing the matter to December 3, 2020 at 10:45 a.m. See Doc. #137. Any opposition to the motion shall be filed and served not later than November 19, 2020.

14. [20-11992](#)-B-11 **IN RE: CHAR PHAR INVESTMENTS, LLC**
[WLC-7](#)

MOTION FOR COMPENSATION FOR SHERYL A. STRAIN, ACCOUNTANT(S)
9-18-2020 [[128](#)]

SHERYL STRAIN/MV
WILLIAM COWIN/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 11 debtor-in-possession's ("DIP") Accountant, Sheryl A. Strain, requests interim compensation of \$11,872.00 for services rendered from June 1, 2020 through September 15, 2020. Doc. #128. The DIP filed a statement of non-objection to the fee application. Doc. #132.

This court previously approved applicant's employment to review and analyze financial records, prepare accounting reports, and perform upper level accounting work for the DIP pursuant to 11 U.S.C. §§ 327(a) and 1107. Doc. #82, #103. The order specified that the employment term shall cover all fees incurred after May 13, 2020 and monthly applications for interim compensation under 11 U.S.C. § 331 are permitted if the combined fees and expenses exceed \$5,000.00. *Id.*

11 U.S.C. § 331 allows any professional person employed under § 327 to apply to the court not more than once every 120 days for such compensation for services rendered before the date of such application as provided under § 330.

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." The movant's services included, without limitation: (1) Preparation of cash collateral budgets; (2) Review of financial statements, tax returns, and the initial monthly operating report; and (3) Preparation and filing of the first application for payment of interim fees. Doc. #131. The court finds the services reasonable and necessary.

Movant shall be awarded \$11,872.00 in fees and \$0.00 in costs.

15. [20-12496](#)-B-11 **IN RE: NORTHGRAND ESTATES, LLC**
[MRT-4](#)

MOTION BY MICHAEL R. TOTARO TO WITHDRAW AS ATTORNEY
9-21-2020 [\[62\]](#)

NORTHGRAND ESTATES, LLC/MV
MICHAEL TOTARO/ATTY. FOR DBT.
DISMISSED 9/29/20

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.

First, this motion would have been denied for failure to comply with the Local Rules of Practice ("LBR").

LBR 9004-2(c)(1) requires that motions, notices, *inter alia*, to be filed as separate documents. Here, the motion and notice were combined into one document and not filed separately. See Doc. #62.

LBR 9014-1(e)(2) requires that a proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than 3 days after they are filed. No proof of service was filed with this motion. The movant states in his declaration that he "warned" the debtor that he "would be filing this motion. [The movant] sent [the debtor] text messages to his cell . . . [and] sent emails to his private email . . . and to the email for the Debtor." Doc. #63. The movant also states he "tried to call [the debtor] multiple times, but he rarely answers the phone but instead texts back that he will call [the movant] 'later' and never does." *Id.* The movant also lists the most recent mailing address for the debtor and states his intent to send copies of the motion to both email addresses and both mailing addresses. *Id.*

Although it appears an attempt was made, the movant's declaration (Doc. #63) is insufficient to constitute proof of service because it does not comply with the general requirements of LBR 9004-1 or 9004-2, nor does it comply with the specific proof of service form and motion requirements of LBR 9004-2(e) and 9014-1(e).

Typically, this motion would be denied for the above procedural errors. However, on September 29, 2020, an order dismissing this case was entered. Doc. #70. Therefore, this motion will be DENIED AS MOOT because the case has been dismissed.

16. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-4](#)

CONTINUED OBJECTION TO CLAIM OF DEPARTMENT OF HEALTH CARE
SERVICES, CLAIM NUMBER 197
7-1-2019 [[1512](#)]

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

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

DISPOSITION: Continued to January 26, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

The California Department of Health Care Services filed a motion for an order granting them leave to amend their proof of claim. See GL-1. This matter was continued to January 26, 2021 at 9:30 a.m. Doc. #2320. Accordingly, this objection will also be continued to January 26, 2021.

11:00 AM

1. [20-12717](#)-B-7 IN RE: LAURA ROJAS

PRO SE REAFFIRMATION AGREEMENT WITH ALLY BANK
9-22-2020 [[11](#)]

NO RULING.

1:30 PM

1. [12-19709](#)-B-7 **IN RE: TIPAPORN BOERGER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-25-2020 [[88](#)]

PHILLIP GILLET/ATTY. FOR DBT.
FEES PAID 9/25/20

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.

The record shows that a partial payment of the certification and photocopy fees were paid in the amount of \$23.00 on September 25, 2020. There is a remaining balance of \$4.00.

2. [20-13210](#)-B-7 **IN RE: KEVIN SANDOVAL**
[HRH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-6-2020 [[13](#)]

MANUFACTURERS BANK/MV
RAFFI KHATCHADOURIAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied in part.

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

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

The movant, Manufacturers Bank ("Movant"), seeks relief from the automatic stay for cause because Movant is not adequately protected and the debtor does not have an equity in such property under 11 U.S.C. § 362(d)(1) & (d)(2). Doc. #13. Movant alleges that the debtor is a "surprise tenant" who filed his chapter 7 petition in bad faith as an "obvious delay tactic" on the eve of an unlawful

detainer hearing. *Id.* at ¶ 15. Movant requests waiver of the fourteen-day stay provided by Federal Rule of Bankruptcy Procedure ("FRBP") 4001(a)(3) due to the bad-faith filing and the lack of maintenance to the Property. *Id.* Movant provided a photograph of a broken exterior window. Doc. #18, Ex. 5 at 6. Movant also requests termination of the automatic stay with *in rem* provisions such that the order is binding and effective in any bankruptcy commenced by or against any debtor who claims interest in the real property for a period of 180 days, so that no further stay shall arise if other co-tenants file for chapter 7 relief. *Id.*

Movant acquired a parcel of residential real property located at 7327 ½ Tampa Avenue, Reseda, CA 91335 ("Property") through a foreclosure sale on February 20, 2020. Doc. #17. A Trustee's Deed Upon Sale was issued to Movant and recorded in Los Angeles County on February 25, 2020. Doc. #18, Ex. 1 at 6-9. A Notice to Quit and Notice to Renters to quit and surrender possession were served on the tenants of the Property, including the debtor (collectively "Tenants"), on February 26, 2020. *Id.*, Ex. 1 at 11-15. The movant filed a Complaint for Unlawful Detainer in Los Angeles Superior Court on March 5, 2020 and named Tenants as defendants. *Id.*, Ex. 1 at 1-4. Tenants individually filed identical Answers to the Complaint on June 25, 2020, each of which "generally den[ied] each statement of the complaint." *Id.*, Ex. 2 at ¶ 2a. Each Tenant also claimed "[o]ther affirmative defenses[,] " stating that they "[f]eel that [their] state and federal rights have been violated" and requested reasonable attorney fees. *Id.*, Ex. 2 at ¶¶ 3k, 5c. Tenants did not participate further in the action and did not attend any of the hearings. Doc. #17. Trial was originally scheduled for November 19, 2020, but after Movant filed a Motion for Judgment on the Pleadings, the Court advanced the trial date to October 6, 2020. Doc. #18, Ex. 3-6.

On October 1, 2020, the debtor filed a *pro se* chapter 7 petition, which listed a different property in Fresno, California as his residence, but listed the Property in Reseda as his mailing address. Doc. #1 at ¶ 5. The debtor also indicated that he has lived in this district longer than in any other district for the last 180 days before filing his petition. *Id.* at ¶ 6. The debtor's schedules, which were filed after Movant's motion, make no mention of the Property. Doc. #22. According to Schedule A/B, the debtor owns a 10% interest as a tenant in common in three properties unrelated to this motion, located in Los Angeles, Nevada City, and San Jose. *Id.*, Schedule A/B at ¶¶ 1.1-1.3. No equity has been exempted in any of these properties. *Id.*, Schedule C. The debtor has no secured creditors. *Id.*, Schedule D. Movant is listed as an unsecured creditor with a claim of \$690.00, but it pertains to "Credit" issued by Movant and appears to be unrelated to the Property or this dispute. *Id.*, Schedule E/F at ¶ 4.3. The debtor has no executory contracts or unexpired leases and no co-debtors. *Id.*, Schedule G at ¶ 1; Schedule H at ¶ 1. The debtor lists no income but has expenses of \$2,925.00 per month. *Id.*, Schedule I at ¶ 12; Schedule J at 23c. Notably, those expenses include \$1,750.00 in rental expenses per month, which is questionable considering that the debtor has no secured creditors or unexpired leases. *Id.*, Schedule J at ¶ 4. The first Meeting of Creditors is scheduled for November 9, 2020.

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

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

Here, Movant contends that "cause" exists because Movant lacks adequate protection, as the debtor is not paying rent and the Property is not being maintained. Doc. #16. Included with the original complaint, Movant attached a photograph of a broken window as evidence that the Tenants are not maintaining the Property and that it is not properly secured against potential vandalism, trespass, or other damage. Doc. #18, Ex. 5 at 6.

Additionally, the debtor does not have an equity interest in the Property and this is a chapter 7 case, so there is no reorganization for which it could be necessary. As discussed above, the debtor does not list any interest in the property on Schedule A/B and does not have any unexpired leases or executory contracts in Schedule G. Doc. #22.

However, when a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court must consider the "Curtis factors" in making its decision. *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). The relevant factors in this case include:

- (1) whether the relief will result in a partial or complete resolution of the issues;
- (2) the lack of any connection with or interference with the bankruptcy case;
- (3) whether the foreign proceeding involves the debtor as a fiduciary;
- (4) whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- (5) whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- (6) whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- (7) whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
- (8) whether the judgment claim arising from the foreign action is subject to equitable subordination under section 510(c);
- (9) whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under section 522(f);
- (10) the interests of judicial economy and the expeditious and economical determination of litigation for the parties;

(11) whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
(12) the impact of the stay on the parties and the "balance of hurt."

Id.

Relief from the stay may result in complete resolution of the issues and the matter in the state courts is unrelated to this bankruptcy. The debtor has no ownership interest in the Property-he did not list it in his schedules-and therefore it is not property of the estate, so the interests of other creditors will not be prejudiced. The state court action is an unlawful detainer action, and not a matter the bankruptcy court hears. The debtor also has not filed any opposition nor submitted any evidence that it has an interest in the Property. The debtor has not met its burden of proof under 11 U.S.C. § 362(g).

This motion will be GRANTED IN PART. The automatic stay will be modified so that Movant may proceed with the unlawful detainer action in California civil court. The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has not been paying any rent nor adequately maintaining the Property.

The request for *in rem* relief binding and effective in any bankruptcy case commenced by any debtor who claims an interest in the Property for a period of 180 days will be DENIED. This court cannot grant *in rem* relief because Movant is not a secured creditor under § 362(d)(4) or a lessor under § 362(b)(22) and (b)(23). Movant should file an adversary proceeding if it desires additional relief. See Fed. R. Bankr. P. 7001 (7).

3. [20-12516](#)-B-7 **IN RE: JEFFREY/NOEMI LAWS**
[SL-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
9-17-2020 [[20](#)]

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

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

The court finds that this case has not been previously converted to chapter 7 from another chapter, and that the debtor is eligible to be a debtor under chapter 13 in conformance with 11 U.S.C. § 1307(c). Further, the Office of the United States Trustee ("UST") filed a statement of no presumed abuse under 11 U.S.C. § 707(b)(2). Doc. #24. While the UST did note that a presumption of abuse had arisen based on documents initially submitted, after further review the UST determined that there was no presumption of abuse. *Id.* Therefore, this case shall be converted to chapter 13.

4. [19-12631](#)-B-7 **IN RE: JOEL SALAZAR**
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR PETER A. SAUER, TRUSTEES ATTORNEY(S)
9-17-2020 [\[51\]](#)

MARIO LANGONE/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 general counsel, Fear Waddell, P.C., requests fees of \$3,345.50 and costs of \$180.85 for a total of \$3,526.35 for services rendered from March 19, 2020 through September 15, 2020. Doc. #51. The chapter 7 trustee filed a statement of non-objection to the fee application. Doc. #54.

This court previously approved applicant's employment under 11 U.S.C. § 327. Doc. #26. The order specified that compensation may be requested under 11 U.S.C. § 330(a) and will be at the "lodestar rate" applicable at the time that services are rendered in accordance with the Ninth Circuit decision in *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Additionally, the employment term shall cover all fees for services rendered on and after March 1, 2020. Doc. #26.

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." The movant's services included, without limitation: (1) Analyzing the case file and strategizing future legal actions; (2) Preparation and prosecution of a motion authorizing sale of real estate; (3) Preparation of a stipulation to resolve a dispute involving reinvestments of proceeds of the real estate sale; and (4) Preparation and filing of this fee application. Doc. #55 at Ex. A. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$3,345.50 in fees and \$180.85 in costs.

5. [19-15044](#)-B-7 **IN RE: GIOVANNI/KATHERINE BUTERA**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-4-2020 [\[28\]](#)

JPMORGAN CHASE BANK,N.A./MV
MARIO LANGONE/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.
DISCHARGED 4/14/20

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, JPMorgan Chase Bank, N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2014 Ford Explorer CPO ("Vehicle"). Doc. #28.

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 April 14, 2020. Doc. #17. Therefore, the automatic stay terminated with respect to the debtors on April 14, 2020. This motion will be DENIED AS MOOT IN PART as to the debtors' interest and will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

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 one pre-petition payment and 10 post-petition payments. The movant has produced evidence that debtors are delinquent at least \$4,442.03. Doc. #30, #33.

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 \$15,850.00 and debtors owe \$16,937.00. Doc. #30, #32, #33.

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). No other relief is awarded. Adequate protection is unnecessary in light of the relief granted herein.

6. [19-12754](#)-B-7 **IN RE: SUPER TRUCK LINES INC.**
[JES-1](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, CHAPTER 7
TRUSTEE(S)
9-18-2020 [[317](#)]

JAMES SALVEN/MV
THOMAS HOGAN/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. Chapter 7 Trustee James Salven ("Trustee") requests fees of \$10,149.35 and costs of \$1,357.09 for a total of \$11,506.44 as statutory compensation and actual and necessary expenses. Doc. #317.

11 U.S.C. § 326 permits the court to allow reasonable compensation to the chapter 7 trustee under § 330 for the trustee's services. Section 326(a) states:

In a case under chapter 7 or 11, other than a case under subchapter V of chapter 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including all holders of secured claims.

11 U.S.C. § 326(a).

11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses. 11 U.S.C. § 330(a)(1)(A) & (B).

Here, Trustee has requested:

- (1) \$1,250.00 (25%) of the first \$5,000.00;
- (2) \$4,500.00 (10%) of the next \$45,000.00; and,
- (3) \$4,399.35 (5%) of the next \$87,987.00.

Doc. #320, Ex. A. These percentages comply with the percentage restrictions imposed by § 326(a) and total \$10,149.35. These fees were incurred by Trustee during the course of this case, in which Trustee conducted the meeting of creditors, sold residential real property, reviewed and reconciled financial records, and prepared the final report. *Id.*

The court finds Trustee's services were actual and necessary to the estate, and the fees are reasonable and consistent with § 326(a). The motion will be GRANTED and Trustee will be awarded the requested fees and costs.

7. [20-12754](#)-B-7 **IN RE: JUAN PADILLA**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-16-2020 [\[9\]](#)

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

The movant, Santander Consumer USA Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2015 Chrysler 300 ("Vehicle"). Doc. #9.

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 three complete pre-petition payments and one post-petition payment. The movant has produced evidence that debtors are delinquent at least \$4,901.05. Doc. #12, #14.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. The Vehicle is valued at \$16,875.00 and debtor owes \$23,499.46. Doc. #12.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Vehicle was recovered by the Movant pre-petition on July 26, 2020.

8. [20-12756](#)-B-7 **IN RE: DANIEL GUTIERRIZ AND NICOLE BALDERAS**
[DJP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-6-2020 [\[18\]](#)

EDUCATIONAL EMPLOYEES CREDIT
UNION/MV
LAYNE HAYDEN/ATTY. FOR DBT.
DON POOL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The movant, Educational Employees Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2012 Subaru Impreza WRX Sedan 4D ("Vehicle").

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor is at least 1 payment past due in the amount of \$299.64, plus late fees of \$14.24, and Collateral Protection Insurance of \$175.00. Doc. #20, #23.

Debtors value the Vehicle at \$15,000.00 and the amount owed to Movant is \$13,644.21. *Id.*

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

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

9. [20-10357](#)-B-7 **IN RE: STEPHEN MEZA**
[FW-2](#)

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION FOR
COMPENSATION FOR BERKSHIRE HATHAWAY HOME SERVICES CALIFORNIA
REALTY, BROKER(S)
9-29-2020 [[64](#)]

PETER FEAR/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted subject to higher and better bids.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 2002(a)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

This motion will be GRANTED.

The chapter 7 trustee, Peter Fear ("Trustee"), wants to sell a parcel of residential real property commonly known as 648 Auburn Street, Tulare, CA 93274 (Property") for \$202,000.00 to Carlos Desantiago and Sylvia Duran ("Buyers") and subject to higher and better bids. Doc. #64. The property is being sold "as is, where is" with no warranties made by Trustee. Doc. #67, Ex. B.

Under 11 U.S.C. § 363(f), Trustee may sell property of the estate outside the ordinary course of business, after notice and a hearing, free and clear of "any interest in such property of an entity other than the estate" if "such interest is in bona fide dispute." 11

U.S.C. § 363(f)(4). "Under this standard, a court need not determine the probable outcome of the dispute, but merely whether one exists." *In re Octagon Roofing*, 123 B.R. 583 (Bankr. N.D. Ill. 1991) (*citing In re Busick*, 831 F.2d 745, 750 (7th Cir. 1987)). "The parties must provide some factual grounds to show some objective basis for the dispute." *In re Kellogg-Taxe*, No. 2:12-BK-51208-RN, 2014 WL 1016045, *6 (Bankr. C.D. Cal. Mar. 17, 2014) (*citing In re Gaylord Grain L.C.C.*, 306 B.R. 614, 627 (B.A.P. 8th Cir. 2004)).

On November 11, 2015, the debtor placed the Property in the 2015 Stephen L. Meza Separate Property Trust ("Meza Trust"). Doc. #67, Ex. C. On May 3, 2018, the Property was transferred from the Meza Trust to the debtor's daughters, Elizabeth Meza and Nicoletta Meza, as a gift. *Id.* at Ex. D. Before this bankruptcy was filed, the debtor's daughters recorded a deed that transferred the property to the debtor because they learned that a bankruptcy trustee could avoid the previous gift transfer. *Id.* at Ex. E.

Trustee disputes any interest claimed by the Meza Trust, Elizabeth Meza, or Nicoletta Meza, and wishes to sell the Property free and clear of these interests because they are in bona fide dispute under 11 U.S.C. § 364(f)(4). Trustee has provided factual grounds to show an objective basis for a bona fide dispute about these interests, and therefore may sell the property free and clear of the interests of the Meza Trust and Elizabeth and Nicoletta Meza under § 363(f)(4).

Additionally, Trustee seeks authorization to pay the real estate broker a six percent (6%) commission on the final sale price for reasonable compensation for actual, necessary services, which will be split equally with the buyer's broker at three percent (3%) each. Doc. #66. This court previously authorized the employment of Berkshire Hathaway HomeServices California Realty Broker ("Broker") on July 24, 2020 pursuant to 11 U.S.C. § 327. Doc. #52. Compensation status for the broker commission is vague. The application (PFT-1) mentions § 328 once and the order on the application (Doc. 52) does reference § 328. But there are also references to other provisions dealing with compensation. For purposes of this motion, the court will allow the commission to be paid as prayed. The court finds the compensation reasonable. If there is an objection to the compensation, the court will consider the merits.

To protect the estate and Buyers, Trustee requests waiver of the fourteen-day stay of Federal Rule of Bankruptcy ("FRBP") 6004(h), which will be denied. Trustee presents no factual basis to waive the stay provided by law.

Any party wishing to overbid must deposit with Trustee's counsel certified monies in the amount of \$6,000.00 prior to the time of the hearing. Unsuccessful bidders' deposits will be returned at the end of the hearing. The successful bidder's deposit will be applied toward the purchase price. Overbidders must provide written proof in the form of a letter of credit, or some other written pre-qualification for any financing that may be required to complete the purchase of the Property to cover the purchase amount and that they can close the sale within fifteen (15) days of the delivery of a

certified copy of the court's order approving this motion and can execute a purchase agreement for the property. Overbidders must be present at the hearing, make overbids in the amount of \$2,000.00, be aware that their deposit will be forfeited if they do not timely close the sale, and acknowledge that no warranties or representations are included with the property; it is sold "as-is."

The motion contains an allegation that neither the debtor nor his daughters intended to have an equitable interest in the property. Doc. 64 at ¶ 13. Trustee's declaration (Doc. 64) recounts the debtor's testimony at the meeting of creditors confirming the transfers but there is no evidence of intent.

This motion will be GRANTED. Because the interests of the Meza Trust, Elizabeth Meza, and Nicoletta Meza are in bona fide dispute, Trustee may sell the Property located at 648 Auburn Street, Tulare, CA 93274 to Buyers for \$202,000.00 subject to higher and better bids, and free and clear of the interests of the Meza Trust, Elizabeth Meza, and Nicoletta Meza, if any. Those interests, the homestead exemption, real property taxes, costs of sale, and the Broker's fee are transferred to the proceeds. The court makes no finding about the validity of the interests of the Meza Trust or Elizabeth or Nicoletta Meza, if any.

10. [20-11858](#)-B-7 **IN RE: VIRGINIA REYES**
[EML-3](#)

MOTION TO REDEEM
9-5-2020 [\[40\]](#)

VIRGINIA REYES/MV
EVAN LIVINGSTONE/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 seeking to redeem and value tangible personal property pursuant to 11 U.S.C. § 722. Doc. #40.

11 U.S.C. § 722 states:

An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien in full at the time of redemption.

11 U.S.C. § 722.

Here, the debtor seeks to redeem a 2002 Toyota Camry ("Vehicle") under § 722 because it is tangible personal property intended for personal, family, or household use. The Vehicle is subject to a lien securing Creditor OneMain Financial Group, LLC, in the amount of \$9,669.97. Doc. #40. The debtor listed the Vehicle in Amended Schedule A/B with a value of \$901.08 and exempted it for its full value in Schedule C under C.C.P. § 704.730. Doc. #37, Schedules A/B & C. The debtor originally scheduled the Vehicle at \$1,500.00 but stated that "the check engine light came on, and [the debtor] realized that [the] tires were very worn." Doc. #1, #42.

11 U.S.C. § 506 states that an allowed secured claim "is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property." 11 U.S.C. § 506(a)(1). Section 506 further states that "such value shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sales or marketing" and defines replacement value to mean "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time the value is determined." 11 U.S.C. § 506(a)(2).

The debtor provides her opinion that the Vehicle is worth \$901.08. Doc. #42. She states that the vehicle is damaged because the transmission does not shift properly, the headliner is falling down, the Vehicle is missing interior trim, there are minor dents and paint damage, the air conditioner does not work, the tires are worn and need replacing, and the check engine light indicates there is a leak in the evaporative emission system. *Id.* The debtor also states that she used Edmunds.com, a car valuation website, and subtracted the cost of repairs from its valuation. The debtor believes it would cost \$329.92 to purchase and install the least expensive replacement tires and estimates it would cost an additional \$300 to fix the

evaporative emission system leak, which lowers the value from \$1,531 to \$901.08. *Id.*

However, the debtor has not established herself as an expert and cannot rely upon Edmunds in determining the replacement value of the Vehicle. See Federal Rules of Evidence 701, 702, and 703.

The debtor may not testify as an expert, but she may testify as the owner with her opinion as to the value of the property. Given the absence of any contrary evidence, the debtor's opinion of the value may be conclusive. *Enewally v. Washington Mutual Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Creditor did not oppose, so its secured claim shall be fixed at \$901.08.

This motion will be GRANTED. The debtor may redeem the Vehicle from Creditor for its secured value of \$901.08 because it is tangible personal property intended for personal, family, or household use and has been exempted for its full value. Debtor shall cause Creditor to be paid the full amount of the allowed secured claim at the time of redemption.

The proposed order shall specifically identify the Vehicle, and if applicable, the proof of claim to which it relates.

11. [19-13569](#)-B-7 **IN RE: JOHN ESPINOZA**
[JRL-5](#)

MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE
INJUNCTION
9-14-2020 [\[75\]](#)

JOHN ESPINOZA/MV
JERRY LOWE/ATTY. FOR DBT.

TENTATIVE RULING: The 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 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.

Respondent Donald Jones' default is entered.

Debtor filed this motion for sanctions against Creditor Donald Jones ("Creditor") for violation of the discharge injunction. This motion will be DENIED WITHOUT PREJUDICE.

A discharge in a bankruptcy case "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any [prepetition]

debt as a personal liability of the debtor." 11 U.S.C. § 524(a)(2). Civil contempt is the appropriate remedy for the violation of this discharge injunction. *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 507 (9th Cir. 2002). Under Section 105(a) of the Bankruptcy Code, 11 U.S.C., and Rule 9020 of the Federal Rules of Bankruptcy Procedure, bankruptcy courts have authority over civil contempt proceedings and to impose sanctions for civil contempt. *In re Rainbow Magazine, Inc.*, 77 F.3d 278, 284-285 (9th Cir. 1996). In a civil contempt proceeding for alleged violations of the discharge injunction, a debtor has the burden of proving by clear and convincing evidence that a creditor knowingly and willfully violated the discharge injunction. *In re Kabiling*, 551 B.R. 440, 444 (B.A.P. 9th Cir. 2016) (citing *ZiLOG, Inc. v. Corning (In re ZiLOG, Inc.)*, 450 F.3d 996, 1007 (9th Cir. 2006)). "The offending creditor acts knowingly and willfully if (1) it knew the discharge injunction was applicable and (2) it intended the actions which violated the injunction." *Id.*

With respect to the first element, a creditor cannot be held in contempt for violating the discharge injunction unless the creditor had actual knowledge of the injunction. *In re Kabiling*, 551 B.R. at 445 (citing *In re ZiLOG, Inc.*, 450 F.3d at 1008).

With respect to the second element, courts apply the same analysis regarding violations of the discharge injunction as they do with violations of the automatic stay. *Id.* "The focus is on whether the creditor's conduct violated the injunction and whether that conduct was intentional; it does not require a specific intent to violate the injunction." *Id.* (citing *In re Dyer*, 322 F.3d 1178, 1191 (9th Cir. 2006)).

If a bankruptcy court finds that a party has willfully violated the discharge injunction, the court may award actual damages, punitive damages and attorney's fees to the debtor. *Nash v. Clark Cty. Dist. Atty's. Office (In re Nash)*, 464 B.R. 874, 880 (B.A.P. 9th Cir. 2012) (citing *Espinosa v. United Student Aid Funds*, 553 F.3d 1193, 1205 n.7 (9th Cir. 2008)).

"A court may hold a creditor in civil contempt for violating a discharge order where there is not a 'fair ground of doubt' as to whether the creditor's conduct might be lawful under the discharge order." *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1804 (2019).

Here, Debtor filed his chapter 7 petition on August 21, 2019. Doc. #1. Debtor contends that on September 25, 2019, Creditor filed a claim in Fresno County Superior Court alleging a breach of contract. Doc. #75. Creditor was not included in the original master address list (Doc. #4) or the first amended master address list (Doc. #31), so Creditor would not have been a recipient of the Bankruptcy Noticing Center's ("BNC") dispersal of the order of discharge on December 31, 2019. Doc. #66.

Sometime in mid-November 2019, Debtor alleges that Creditor came into his place of business and threatened him with violence, saying that someone would be sent to Debtor's shop to "smoke" him if he did not pay. Doc. #77. Later that same month, Debtor claims to have

received a text from Creditor stating that if he did not pay Creditor, "[things] were going to get ugly." *Id.* Debtor's attorney claims to have spoken with Creditor by phone on or about November 11, 2019, informed Creditor about the bankruptcy, requested he dismiss the small claims lawsuit, and demanded he cease further contact with Debtor. Doc. #78. Debtor's attorney filed a declaration stating, under penalty of perjury, that Creditor "used profanity to explain he didn't care about the bankruptcy; he would continue with the small claims case." *Id.* at ¶ 6. Debtor's attorney sent a notice of bankruptcy filing to Creditor on November 13, 2019. *Id.*

The first small claims lawsuit was dismissed on December 19, 2019. On January 8, 2020, after Debtor had received his discharge, Creditor filed a second case in Fresno County Superior Court. Doc. #77. As discussed above, Creditor did not receive the order of discharge from the BNC because he was not listed on the first amended master address list. Doc. #66. However, on January 29, 2020, Debtor sent written notice to Creditor demanding he cease and desist from attempting to collect a discharged debt and that he dismiss the second small claims case. As of the date of filing this motion, Debtor claims that the case has not been dismissed.

In the absence of additional evidence, the court finds that there is a 'fair ground of doubt' as to whether Creditor's conduct might be lawful under the discharge order. Creditor was not on the amended master address list (Doc. #33) on December 31, 2019, when Debtor received his discharge and was therefore not sent the BNC's notice of an order of discharge (Doc. #66). Although Debtor claims to have sent a notice of bankruptcy filing to Creditor on November 13, 2019 and a notice of the discharge on January 29, 2020, there is no evidence in the record that would allow the court to make this finding. Further, the exhibit submitted by Debtor (Doc. #79) is a case cover sheet that contains no information about Creditor, so the court is unable to verify if the notices allegedly sent by Debtor even went to Creditor's correct mailing address. The court cannot rely solely on Debtor's and Debtor's attorney's declarations on the out of court statements made by Creditor to prove the truth of the matter asserted and make the finding that Creditor had actual knowledge of the discharge injunction and willfully violated it despite that knowledge.

As to the first element, the court finds that there is insufficient evidence to determine whether the Creditor had actual knowledge of the discharge injunction because Creditor was not properly served the notice of discharge. Doc. #66.

The second element is therefore moot.

This motion will be DENIED WITHOUT PREJUDICE.