UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, November 3, 2021
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

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. 20-12258-A-11 **IN RE: JARED/SARAH WATTS**
RWR-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-6-2021 [245]

TCF NATIONAL BANK/MV
LEONARD WELSH/ATTY. FOR DBT.
RUSSELL REYNOLDS/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on November 1, 2021. Doc. #268.

10:30 AM

1. 21-12218-A-7 **IN RE: SCOTT COOPER**
VVF-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-12-2021 [16]

AMERICAN HONDA FINANCE CORPORATION/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
VINCENT FROUNJIAN/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, American Honda Finance Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2019 Honda CRF 450L ("Vehicle"). Doc. #16.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor is two payments past due in the amount of $424.62 plus late fees of $10.62. Doc. #18.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. The Vehicle is valued at $5,940.00 and the amount owed to Movant is $7,956.92. Doc. #16.

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

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

2. 21-10848-A-7 **IN RE: DONALD RUSSELL**
AP-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-21-2021 [31]

THE BANK OF NEW YORK MELLON/MV
DAVID JENKINS/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.
DISCHARGED 7/19/2021; MOTION WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on October 11, 2021. Doc. #51.

3. 21-11653-A-7 **IN RE: JOE GALARIO**
CLB-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-30-2021 [20]

THE BANK OF NEW YORK MELLON/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
CHAD BUTLER/ATTY. FOR MV.
DISCHARGED 10/14/21

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

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on October 14, 2021. Doc. #28. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, The Bank of New York Mellon as Trustee for CWABS Inc. Asset-Backed Certificates, Series 2006-11 ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a piece of real property located at 5203 W. Monte Vista Ave., in Visalia, CA 93277 ("Property"). Doc. #20.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has been in default since July 1, 2020. Doc. #22.

The court also finds that the debtor does not have any equity in the Property and the Property is not necessary to an effective reorganization because the debtor is in chapter 7. The debtor has valued the Property at $350,000.00. Doc. #1. The amount owed to Movant is $452,727.10. Doc. #16.

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

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

4. 17-12070-A-7 **IN RE: THOMAS RICE**
FW-2

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH THOMAS SCOTT RICE
9-30-2021 [20]

PETER FEAR/MV
PETER BUNTING/ATTY. FOR DBT.
GABRIEL WADDELL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Peter Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Thomas Scott Rice ("Debtor"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019 approving the compromise of all claims and disputes against Debtor related to Debtor's interest in the Terrance and Carol Rice Grantor Trust ("Trust"). Doc. #20.

At the time Debtor filed his bankruptcy case, Debtor disclosed that he was the trustee and 50% beneficiary of the Trust. Decl. of Tr., Doc. #22. Trustee believes that Debtor may be entitled to receive in excess of $1,000,000 when the final grantor dies and Trust assets are distributed. Doc. #22. Nothing can be paid from the Trust until the final grantor dies. Doc. #22. In Debtor's bankruptcy, all filed unsecured claims total $48,467.35. Doc. #22. Trustee and Debtor have reached a settlement. Doc. #22. Debtor will pay $48,000 to the bankruptcy estate, and Trustee has received the payment. Doc. #22. In return, Trustee will release any and all claims against Debtor's interest in the Trust. Doc. #22.

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

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #22. Although Trustee believes he would ultimately be able to recover Debtor's interest in the Trust, since that recovery can only be made upon death of the final grantor, it may be decades before any distribution to creditors of the estate. Doc. #22. The settlement provides for a significant payment to unsecured creditors on a timely basis. Doc. #22. Waiting for the death of the final grantor would result in a marginally higher distribution. Doc. #22. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. 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).

No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id.

Accordingly, the motion is GRANTED, and the settlement between Trustee and Debtor is approved.

5. 21-11874-A-7 **IN RE: MICHAEL MCCLURE**
MAZ-1

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
9-20-2021 [17]

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Michael S. McClure ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 706(a) to convert this chapter 7 case to a case under chapter 13. Doc. #17.

11 U.S.C. § 706(a) authorizes a debtor to convert a case under chapter 7 to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. 11 U.S.C. § 706(a). Any waiver of the right to convert a case under this subsection is unenforceable. Id.

Debtor filed a voluntary petition under chapter 7 on July 29, 2021. Doc. #1. This case has not been converted under 11 U.S.C. §§ 1112, 1208, or 1307. Decl. of Mark Zimmerman, Doc. #19. Debtor qualifies as a debtor under chapter 13. Id. There is no opposition to Debtor's motion.

Accordingly, this motion is GRANTED.

6. 21-11877-A-7 **IN RE: RAYMOND MADRID**
MAZ-1

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
9-28-2021 [17]

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Raymond M. Madrid ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 706(a) to convert this chapter 7 case to a case under chapter 13. Doc. #17.

11 U.S.C. § 706(a) authorizes a debtor to convert a case under chapter 7 to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. 11 U.S.C. § 706(a). Any waiver of the right to convert a case under this subsection is unenforceable. Id.

Debtor filed a voluntary petition under chapter 7 on July 29, 2021. Doc. #1. This case has not been converted under 11 U.S.C. §§ 1112, 1208, or 1307. Decl. of Mark Zimmerman, Doc. #19. Debtor qualifies as a debtor under chapter 13. Id. There is no opposition to Debtor's motion.

Accordingly, this motion is GRANTED.

7. 21-11686-A-7 **IN RE: EVA RODRIGUEZ**
MMJ-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-29-2021 [16]

CAPITAL ONE AUTO FINANCE/MV
VINCENT GORSKI/ATTY. FOR DBT.
MARJORIE JOHNSON/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The court encourages counsel for the moving party to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

The movant, Capital One Auto Finance, a division of Capital One, N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2017 Hyundai Santa Fe SE Sport Utility 4D ("Vehicle"). Doc. #16.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least nine complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least $6,053.60. Doc. #18.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. The Vehicle is valued at $17,201.00 and the debtor owes $26,421.46. Id.

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

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

11:00 AM

1. 21-11700-A-7 **IN RE: RAMONA FRUTOS**

PRO SE REAFFIRMATION AGREEMENT WITH TIAA, FSB
10-6-2021 [16]

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

1:30 PM

1. 21-10001-A-13 **IN RE: ENRIQUE CASTELLANOS**
NES-2

MOTION TO MODIFY PLAN
9-24-2021 [41]

ENRIQUE CASTELLANOS/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

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

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The chapter 13 trustee ("Trustee") filed an objection to the debtor's motion to modify the chapter 13 plan. Tr.'s Opp'n, Doc. #49. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtor shall file and serve a written response no later than November 18, 2021. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. Trustee shall file and serve a reply, if any, by November 29, 2021

If the debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than November 29, 2021. If the debtor does not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

2. 17-12220-A-13 **IN RE: KRISTOPHER FRANZEN AND VIRGINIA**
NES-4 **GONZALEZ-FRANZEN**

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS ATTORNEY(S)
9-28-2021 [66]

NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran,

46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The court encourages counsel for the moving party to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

Neil E. Schwartz ("Movant"), counsel for Kristopher John Franzen and Virginia Gonzalez-Franzen (together, "Debtors"), the debtors in this chapter 13 case, requests allowance of final compensation in the amount of $5,125.00 and reimbursement for expenses in the amount of $45.00 for services rendered from November 4, 2019 through September 27, 2021. Doc. #66. Debtors' confirmed plan provides for $12,000.00 in attorney's fees. Plan, Doc. ##54, 65. One prior fee application has been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 in the amount of $6,232.50 and reimbursement for expenses totaling $419.00. Order, Doc. #38.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) amendments to Debtors' schedules; (2) amended plan motions and confirmations; and (3) preparation for discharge and case closing. Doc. #66. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court finds all fees and expenses of Movant previously allowed on an interim basis are reasonable and necessary. The court allows on a final basis all fees and expenses previously allowed to Movant on an interim bases, in addition to compensation requested by this motion in the amount of $5,125.00 and reimbursement for expenses in the amount of $45.00 to be paid in a manner consistent with the terms of the confirmed plan.

3. 21-11552-A-13 **IN RE: SABINO GIULIANO**
MHM-1

MOTION TO TRANSFER VENUE
9-30-2021 [34]

MICHAEL MEYER/MV
PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). On October 11, 2021, the debtor filed written non-opposition. Doc. #40. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Michael H. Meyer ("Trustee"), the chapter 13 standing trustee, moves to transfer the bankruptcy case of Sabino Giuliano ("Debtor") from the Fresno Division to the Sacramento Division of the United States Bankruptcy Court, Eastern District of California. Doc. #34. Debtor does not oppose the motion. Doc. #40.

Section 1408 of Title 28 generally states that a bankruptcy case may be commenced in the district "in which the domicile, residence, principal place of business . . . or principal assets" of the debtor are located. 28 U.S.C. § 1408(1). Federal Rule of Bankruptcy Procedure 1014(b) allows the court to dismiss or transfer a bankruptcy case filed in an improper district. Intra-District case assignments are governed by LBR 1002-1, which requires petitions from Sacramento County to be assigned to the Sacramento Division. LBR 1002-1(c). Debtor's case is currently assigned to the Fresno Division. Based on new information determined during Debtor's case, a transfer from the Fresno Division to the Sacramento Division is appropriate.

Although Debtor lives in Sacramento County, Debtor's initial Schedule A/B, filed June 16, 2021, listed real property valued at $362,000 located in Fresno County. Decl. of Kelsey A. Seib, Doc. #36; Schedule A/B, Doc. #1. Thus, Debtor's bankruptcy case was filed in the appropriate division. However, on August 24, 2021, Debtor informed Trustee that he does not have, and never had, an ownership interest in the Fresno County property, despite Debtor's previous belief contrariwise. Seib Decl., Doc. #36. Debtor filed an amended Schedule A/B on August 30, 2021 that removed the ownership interest in the Fresno County

property from the list of assets. Am. Schedule A/B, Doc. #22. Debtor's amended Schedule A/B lists an oral life estate (presumably) in the Fresno County property valued at $0. Doc. #22.

Because Debtor no longer has significant scheduled assets in Fresno County, no scheduled real property in Fresno County, Debtor currently resides in Sacramento County, and Debtor does not oppose a transfer of his bankruptcy case to the Sacramento Division, Debtor's case will be transferred.

Accordingly, Trustee's motion is GRANTED.

4. 21-11552-A-13 **IN RE: SABINO GIULIANO**
PGM-1

CONTINUED MOTION TO CONFIRM PLAN
8-30-2021 [17]

SABINO GIULIANO/MV
PETER MACALUSO/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

ORDER: The court will issue an order.

Pursuant to item #3 above, the underlying bankruptcy case will be transferred to the Sacramento Division and will be assigned to a new bankruptcy judge. Therefore, the motion to confirm the plan is dropped from calendar and will need to be re-noticed for hearing before the new bankruptcy judge.

5. 21-11552-A-13 **IN RE: SABINO GIULIANO**
PGM-2

CONTINUED MOTION TO VALUE COLLATERAL OF FRANCHISE TAX BOARD
9-2-2021 [26]

SABINO GIULIANO/MV
PETER MACALUSO/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

ORDER: The court will issue an order.

Pursuant to item #3 above, the underlying bankruptcy case will be transferred to the Sacramento Division and will be assigned to a new bankruptcy judge. Therefore, the motion to value collateral is dropped from calendar and will need to be re-noticed for hearing before the new bankruptcy judge.

6. 20-13857-A-13 **IN RE: KENNETH HOOVER**
PBB-2

MOTION TO MODIFY PLAN
9-23-2021 [38]

KENNETH HOOVER/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

7. 16-14288-A-13 **IN RE: RYAN/NIKOLE EKIZIAN**
FW-5

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
FOR GABRIEL J. WADDELL, DEBTORS ATTORNEY(S)
9-30-2021 [96]

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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

Fear Waddell P.C. ("Movant"), counsel for Ryan Adam Ekizian and Nikole Lynn Ekizian (together, "Debtors"), the debtors in this chapter 13 case, requests allowance of final compensation in the amount of $9,403.50 and reimbursement for expenses in the amount of $691.79 for services rendered from July 1, 2017 through September 21, 2021. Doc. #96. Debtors' confirmed plan provides for $11,950.00 in attorney's fees paid through the plan. Plan, Doc. ##74, 95. One prior fee application has been granted, allowing interim compensation to Movant pursuant to 11 U.S.C. § 331 in the amount of $3,374.00 and reimbursement for expenses totaling $338.12. Order, Doc. #46.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) amendments to Debtors' schedules; (2) amended plan motions and confirmations; and (3) preparation for discharge and case closing. Doc. ##96, 99. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court finds all fees and expenses of Movant previously allowed on an interim basis are reasonable and necessary. The court allows on a final basis all fees and expenses previously allowed to Movant on an interim bases, in addition to compensation requested by this motion in the amount of $9,403.50 and reimbursement for expenses in the amount of $691.79 to be paid in a manner consistent with the terms of the confirmed plan and order filed May 13, 2021. Doc. #95.

8. 20-10691-A-13 **IN RE: JENNIFER SCHULTZ**
FW-4

MOTION TO MODIFY PLAN
9-10-2021 [78]

JENNIFER SCHULTZ/MV
GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of creditors, the

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

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

2:00 PM

1. 20-11908-A-13 **IN RE: BRIAN/STEPHANIE RICH**
21-1003

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-1-2021 [1]

RICH ET AL V. ASPEN PROPERTIES GROUP, LLC AS TRUSTEE OF AG3
PETER BUNTING/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

On September 7, 2021, judgment was entered against the defendant in the case. Doc. # 27. This adversary proceeding was closed on September 30, 2021. Therefore, the status conference will be dropped as moot.

2. 21-10026-A-7 **IN RE: MARTHA FERNANDEZ**
21-1020

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-5-2021 [1]

FERNANDEZ V. U.S. DEPARTMENT OF EDUCATION

NO RULING.

3. 21-10026-A-7 **IN RE: MARTHA FERNANDEZ**
21-1020 USA-1

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
9-21-2021 [25]

FERNANDEZ V. U.S. DEPARTMENT OF EDUCATION
JEFFREY LODGE/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

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

Martha Cornejo Fernandez ("Plaintiff") is a chapter 7 debtor pro se and the plaintiff in this adversary proceeding. On May 5, 2021, Plaintiff initiated this adversary proceeding, naming Sallie Mae Education Credit Management Corporation as the defendant in the adversary proceeding cover sheet but alleging the United States Department of Education to be the holder of student loans Plaintiff seeks to discharge. Compl., Doc. #1; Cover Sheet, Doc. #2. By the complaint ("Complaint"), Plaintiff seeks to discharge $251,843.89 of student loan debt presumably under 11 U.S.C. § 523(a)(8), though no statutory citation is provided. Doc. #1.

On September 21, 2021, the United States Department of Education ("Defendant") moved to dismiss the Complaint for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(6), made applicable to this proceeding by Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 7012(b). Doc. #25. Defendant also draws the conclusion that Plaintiff seeks relief under 11 U.S.C. § 523(a)(8). Doc. #25.

Having considered the Complaint in its entirety, the governing standard, and taking into account Plaintiff's pro se status, the court is inclined to DENY Defendant's motion to dismiss. Defendant's answer shall be filed in the time required by Bankruptcy Rule 7012(a).

Rule 12(b)(6) Motion to Dismiss

"A motion under Rule 12(b)(6) tests the formal sufficiency of the statement of the claim for relief." Greenstein v. Wells Fargo Bank, N.A. (In re Greenstein), 576 B.R. 139, 171 (Bankr. C.D. Cal. 2017). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)); Rule 8(a). "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Iqbal, 556 U.S. at 679.

"[A] pro se litigant is not excused from knowing the most basic pleading requirements." Am. Ass'n of Naturopathic Physicians v. Hayhurst, 227 F.3d 1104, 1107-08 (9th Cir. 2000). "[I]n applying the foregoing standards [for ruling on 12(b)(6) motions] enunciated by the Supreme Court, a federal court must construe a pro se complaint liberally, and hold it to less stringent standards than pleadings drafted by lawyers." Greenstein, 576 B.R. at 171 (citing Hebbe v. Pliler, 611 F.3d 1202, 1205 (9th Cir. 2010)).

Judicial Notice

Although Defendant does not explicitly ask this court to take judicial notice, the motion to dismiss contains references to the court's authority to judicially notice matters of public record. Defendant does not specifically identify the documents for which judicial notice is sought, though it seems likely that Defendant wants this court to take judicial notice of Plaintiff's bankruptcy schedules. Doc. #25.

The court will not take judicial notice of Plaintiff's bankruptcy schedules or other filings at this time. A court may not take judicial notice of a fact that is subject to reasonable dispute. Lee v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001). While it may certainly be undisputed that Plaintiff filed bankruptcy schedules, Plaintiff, through the Complaint, alleges that an undue hardship exists justifying the discharge of her student loan debt. Defendant disagrees and attempts to reference Plaintiff's bankruptcy schedules to demonstrate that Plaintiff has not met her burden of establishing undue

hardship. However, at this stage, the court is only tasked with determining whether Plaintiff states a plausible claim for relief in the Complaint. "Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." Branch v. Tunnell, 14 F.3d 449, 453 (9th Cir. 1994) (citations omitted). Whether Plaintiff's financial circumstances constitute an undue hardship based on Plaintiff's bankruptcy schedules is beyond the scope of a Rule 12(b)(6) motion, and Plaintiff's bankruptcy schedules cannot be properly noticed by this court at this time to establish that no undue hardship exists, as Defendant requests. See Brunner v. New York State Higher Educ. Servs. Corp., 831 F.2d 395, 396 (2d Cir. 1987).

Sufficiency of Claim for Relief

The Complaint alleges that Plaintiff has $251,843.89 in student loans owed to Defendant that were incurred to pay expenses at two California universities. Compl. ¶¶ 2-3. According to the Complaint, Plaintiff cannot maintain a minimal living standard. Plaintiff's employment status has been "on and off" since 2019 due to medical conditions. Id. at ¶ 4. Plaintiff alleges that, to the extent Plaintiff secures or maintains employment, it would provide only a modest income and would not last long due to Plaintiff's medical condition. Id. Plaintiff alleges she has five "mental/medical ongoing diagnosis" that mostly began in the year 2018. Id. at ¶ 5. Plaintiff struggled to maintain employment during this time due to a constant need for medical care. Id. Plaintiff alleges that her poor health limits prospective long-term employment, and Plaintiff alleges that a "severe episode" is "imminent" and will cause Plaintiff to "be unable to attend her employment" and Plaintiff will resultingly "face a financial hardship and will not be available [to] maintain a minimal standard of living." Id. at ¶ 8. Plaintiff states that the student loan debt is currently in good standing. Id. at ¶ 9. Plaintiff further alleges that she has made a good faith effort to repay the student loans, evidenced by her "exhaustive effort to secure employment over the last three years" with an employer that will accommodate her medical conditions. Id.

Student loan obligations are presumed to be nondischargeable absent a showing by the debtor of undue hardship. 11 U.S.C. § 523(a)(8); Rifino v. United States (In re Rifino), 245 F.3d 1083, 1087 (9th Cir. 2001). The Ninth Circuit adopted the three-part Brunner test to determine whether excepting student loans from discharge will create an undue hardship on the debtor. Rifino, 245 F.3d at 1087. To obtain a discharge of a student loan obligation, the debtor must prove:

> (1) that the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living for herself and her dependents if forced to repay the loans;
>
> (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and
>
> (3) that the debtor has made good faith efforts to repay the loans.

Id.; Brunner, 831 F.2d at 396 (setting forth the widely-adopted "Brunner test"). Under the Brunner test, "the burden of proving undue hardship is on the debtor," and the debtor must satisfy each of the three requirements. Rifino, 245 F.3d at 1087-88. "[T]he circumstances causing a chapter 7 debtor's financial hardship must arise prior to the entry of the discharge. If the circumstances causing a debtor's hardship arise after the entry of a discharge, those circumstances cannot form the basis of a determination that repayment of

a student loan will be an undue hardship." Zygarewicz v. Educ. Credit Mgmt. Corp. (In re Zygarewicz), 423 B.R. 909, 912 (Bankr. E.D. Cal. 2010).

Liberally construing the allegations of the Complaint in favor of the pro se Plaintiff, this court finds that Plaintiff sets forth a plausible claim for discharge of student loan debt under 11 U.S.C. § 523(a)(8). The Complaint specifically states that Plaintiff seeks to discharge her student loans. Plaintiff alleges that her medical conditions prevent her from working to maintain a minimal living standard. Plaintiff alleges that her medical conditions are lifelong, which this court takes to mean that they will persist for a significant portion of the repayment period. Plaintiff alleges that she has made good faith efforts to repay the loans by making exhaustive efforts to secure employment.

The court acknowledges that the burden of proving undue hardship as to all elements is on the debtor, and it was Congress's intent "to make the discharge of student loans more difficult than that of other nonexcepted debt." Brunner, 831 F.2d at 396. Still, by the Complaint, Plaintiff is clearly seeking to discharge student loan debt, Plaintiff generally alleged each of the required elements with supporting facts, and, liberally construed, states a plausible claim for relief. Defendant's argument for dismissal repeatedly suggests that Plaintiff has not provided facts demonstrating that each element of the Brunner test is met, but Plaintiff need not prove her case through her Complaint. See Hebbe v. Pliler, 611 F.3d 1202, 1205 (9th Cir. 2010) (reasoning that because Iqbal and Twombly "did not alter courts' treatment of *pro se* filings, [federal courts] continue to construe *pro se* filings liberally") (emphasis in original).

Accordingly, Defendant's motion to dismiss is DENIED. Defendant's answer shall be filed in the time required by Bankruptcy Rule 7012(a).

4. 21-11034-A-7 **IN RE: ESPERANZA GONZALEZ**
21-1031

CONTINUED STATUS CONFERENCE RE: COMPLAINT STATUS CONFERENCE
7-26-2021 [1]

ABLP PROPERTIES VISALIA, LLC V. GONZALEZ
DON POOL/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to April 27, 2022, at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status conference statement filed on October 27, 2021, (Doc. #15), the status conference will be continued to April 27, 2022, at 11:00 a.m.

The parties shall file either joint or unilateral status report(s) not later than April 20, 2022.

5. 21-10679-A-13 **IN RE: SYLVIA NICOLE**
21-1015

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
7-8-2021 [203]

NICOLE V. T2M INVESTMENTS, LLC
RESPONSIVE PLEADING

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

DISPOSITION: Continued to November 18, 2021, at 11:00 a.m.

ORDER: The court will issue an order.

The status conference will be continued to November 18, 2021, at 11:00 a.m. to be heard in conjunction with the status conference on the cross-complaint set for the same date.

6. 21-10679-A-13 **IN RE: SYLVIA NICOLE**
21-1015

ORDER TO SHOW CAUSE
10-1-2021 [269]

NICOLE V. T2M INVESTMENTS, LLC

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The plaintiff failed to appear at a status conference in this adversary proceeding on September 30, 2021. On October 1, 2021, the court issued an order to show cause regarding dismissal of this adversary proceeding for the plaintiff's failure to prosecute ("OSC"). Doc. #269. On October 25, 2021, the plaintiff filed a response to the OSC stating that she had set up a telephonic CourtCall appearance for the September 30 hearing "but the clerk cancelled the schedule by mistake." Doc. #273.

Based on the plaintiff's response, the court finds that the plaintiff has adequately explained her failure to appear at the September 30 status conference. Therefore, the OSC will be vacated.