

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, November 12, 2020
Place: Department A - Courtroom #11
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.

1. [18-13911](#)-A-13 **IN RE: STEFANIE JACOBSON**
[NES-1](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS ATTORNEY(S)
10-8-2020 [[34](#)]

NEIL SCHWARTZ/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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). 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.

Neil E. Schwartz ("Movant"), counsel for Stefanie Louise Jacobson ("Debtor"), the debtor in this Chapter 13 case, requests allowance of interim compensation totaling \$2,971.00. Ex. A, Doc. #36. Movant provided legal services and expenses valued at \$4,971.00 from June 10, 2018 through September 28, 2020, but requests only \$2,971.00 in light of a pre-petition retainer. Doc. ##34, 36.

The court notices a discrepancy in the amount of compensation requested. In Exhibit A in support of Movant's application for compensation, Movant asks the court "to allow total attorney fees and costs of \$4,971.00. In light of the pre-petition retainer, [Movant] request[s] \$2,971.00, be payable through the plan." Ex. A, Doc. #36. However, in the application at section 2.b.2 indicates that there is no retainer held in trust. Doc. #34. The court will call this matter so Movant can resolve this discrepancy at the hearing.

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) pre-petition consultation and fact gathering; (2) case administration; (3) original plan, hearings, and objections; and (4) motions to dismiss. Doc. #34. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on an interim basis.

Upon Movant clarifying the amount sought, this motion is GRANTED with the interim compensation and reimbursement amount allowed to be paid in a manner consistent with the terms of the confirmed plan.

2. [19-14128](#)-A-13 **IN RE: LARNELL/JONI AUSTIN**
[SLL-3](#)

MOTION FOR APPROVAL FOR DEBTORS' AUTO INSURANCE COMPANY TO PAY FOR
TOTAL LOSS SETTLEMENT OF 2014 CHEVROLET CAMARO
10-12-2020 [\[35\]](#)

LARNELL AUSTIN/MV
STEPHEN LABIAK/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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). 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.

"The application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefore. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability." LBR 9014-1(d)(3)(A). This motion is not supported by any legal authority and does not cite to any statute, rule, case, or common law doctrine. Rather than deny this motion without prejudice, the court will hear the matter and allow the moving party to clarify the record and confirm the legal grounds upon which relief is sought.

Larnell Austin and Joni Austin (together, "Debtors"), the chapter 13 debtors, request the court authorize disbursement of insurance proceeds to Langley Federal Credit Union ("Creditor"). Debtors' Mot., Doc. #35. Debtors filed their voluntary Chapter 13 case on September 30, 2019, and the court confirmed Debtors' Chapter 13 plan (the "Plan") on December 16, 2019. Doc. ##1, 23. The Plan lists Creditor's secured claim in Class 2 and provides for monthly payments of \$328.00. Plan, Doc. #4. On September 7, 2020, Debtors' 2014 Chevrolet Camaro, which secured Creditor's claim, was destroyed in a collision. Ex. Doc. #38. Debtors' insurance company provided Debtors with a total loss settlement of \$16,311.44. Ex., Doc. #38; Decl. of Joni Austin, Doc. #37. Debtors now seek to use the insurance proceeds to pay off the balance of Creditor's claim. Doc. #35.

The court is inclined to grant this motion upon Debtors clarifying the legal grounds upon which they seek the relief requested. Creditor shall receive from the insurance proceeds the balance due it as a secured creditor under the Plan, with the remainder of the insurance proceeds being disbursed to the Debtors.

3. [20-12928](#)-A-13 **IN RE: JESUS NAVARRO AND ESPERANZA SALINAS**
DE NAVARRO
[BDB-1](#)

MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE, INC.
10-9-2020 [[15](#)]

JESUS NAVARRO/MV
BENNY BARCO/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 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.

Jesus Araujo Navarro and Esperanza Salinas De Navarro (collectively, "Debtors"), the debtors in this Chapter 13 case, move the court for an order valuing the Debtors' vehicle, a 2015 Toyota Corolla ("Vehicle"), which is the collateral of Capital One Auto Finance, Inc. ("Creditor"). Doc. #15.

11 U.S.C. § 1325(a)(*) (the hanging paragraph) permits the debtor to value a motor vehicle acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the vehicle and the debt was not incurred within the 910-day period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age

and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Debtors assert a replacement value of the Vehicle of \$8,658.00 and ask the court for an order valuing the Vehicle at \$8,658.00. Doc. #15; Doc. #17. Jesus Araujo Navarro, co-debtor, is competent to testify as to the value of the Vehicle. Debtors assert the Vehicle was purchased in September 2017, more than 910 days before the filing of this case. Doc. #17. Given the absence of contrary evidence, Debtors' opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at \$8,658.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the Chapter 13 plan.

4. [20-12357](#)-A-13 **IN RE: RAED/AIFFAT OTHMAN**
[MHM-1](#)

MOTION TO DISMISS CASE
10-6-2020 [[15](#)]

MICHAEL MEYER/MV
JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue the order.

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

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

Here, the chapter 13 trustee asks the court to dismiss this case for unreasonable delay by the debtors that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) and because the debtors have failed to make all payments due under the plan (11 U.S.C. § 1307(c)(4)). The debtors are delinquent in the amount of \$2,260.00. Doc. #17. Before this hearing, another payment in that same amount will also come due. Id.

The chapter 13 trustee also asks the court to dismiss the case for cause based on the debtors' failure to cooperate with the trustee as required by 11 U.S.C. §521(a)(3)(4). The debtors have failed to provide requested and required documentation. Debtors did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtors that is prejudicial to creditors and 11 U.S.C. § 1307(c)(4) for failing to timely make payments due under the plan.

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

5. [20-11271](#)-A-13 **IN RE: DONALD GOINGS**
[MJA-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF ARNOLD LAW GROUP, APC
FOR MICHAEL J. ARNOLD, DEBTOR'S ATTORNEY(S)
9-28-2020 [[16](#)]

MICHAEL ARNOLD/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Arnold Law Group, APC ("Movant"), counsel for Donald Gene Goings ("Debtor"), the debtor in this Chapter 13 case, requests allowance of interim compensation in the amount of \$4,641.60 and reimbursement for expenses in the amount of \$322.50 for services rendered February 14, 2020 through September 16, 2020. Doc. #16.

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) pre-petition consultation and fact gathering; (2) case administration; (3) original plan and hearings; and (4) claims administration. Doc. #19. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on an interim basis.

This motion is GRANTED. The court allows interim compensation in the amount of \$4,641.60 and reimbursement for expenses in the amount of \$322.50, less any retainer held, to be paid in a manner consistent with the terms of the confirmed plan. Movant is authorized to draw on any retainer held.

6. [20-13380](#)-A-13 **IN RE: ROBERT ESPINOZA**
[SL-1](#)

MOTION TO EXTEND AUTOMATIC STAY
10-28-2020 [\[8\]](#)

ROBERT ESPINOZA/MV
SCOTT LYONS/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 court will issue an order.

This motion was filed and served on at least 14 days' notice prior to the hearing date 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.

Debtor Robert Espinoza ("Debtor") moves the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B).

Debtor had a Chapter 13 case pending within the preceding one-year period that was dismissed, Case No. 20-10331 (Bankr. E.D. Cal.) (the "Prior Case"). The Prior Case was filed on January 30, 2020 and dismissed on August 17, 2020. Decl. of Robert Espinoza, Doc. #10. Under 11 U.S.C. § 362(c)(3)(A), if a debtor had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the current case. Debtor filed this case on October 23, 2020. Petition, Doc. #1. The automatic stay will terminate in the present case on November 22, 2020.

Section 362(c)(3)(B) allows the court to extend the stay "to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the

later case is in good faith as to the creditors to be stayed[.]” 11 U.S.C. § 362(c)(3)(B).

Section 362(c)(3)(C)(i) creates a presumption that the case was not filed in good faith if (1) the debtor filed more than one prior case in the preceding year; (2) the debtor failed to file or amend the petition or other documents without substantial excuse, provide adequate protection as ordered by the court, or perform the terms of a confirmed plan; or (3) the debtor has not had a substantial change in his or her financial or personal affairs since the dismissal, or there is no other reason to believe that the current case will result in a discharge or fully performed plan. 11 U.S.C. § 362(c)(3)(C)(i).

The presumption of bad faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C). Under the clear and convincing standard, the evidence presented by the movant must “place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are ‘highly probable.’” Factual contentions are highly probable if the evidence offered in support of them instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition.” Emmert v. Taggart (In re Taggart), 584 B.R. 275, 288 n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (vacated and remanded on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019)).

In this case, the presumption of bad faith arises. Debtor failed to perform the terms of a confirmed plan in the Prior Case. A review of the court’s docket in the Prior Case disclosed a Chapter 13 plan was confirmed on April 15, 2020, the Chapter 13 trustee (“Trustee”) filed a Notice of Default and Intent to Dismiss Case (the “Notice”) on July 2, 2020, and the court dismissed the Prior Case upon Trustee’s declaration that Debtor failed to address the Notice in the time and manner prescribed by LBR 3015-1(g). See Case No. 20-10331, Doc. #19, 21, 23. Debtor acknowledges that the Prior Case was dismissed for failure to timely pay plan payments. Decl. of Robert Espinoza, Doc. #10.

In support of this motion to extend the automatic stay, Debtor declares that the plan payments in the Prior Case were not received by Trustee due to clerical errors made by MoneyGram employees. Decl., Doc. #10. Debtor states that his monthly income has increased, he has the income ability to maintain plan payments, and he is confident that a Chapter 13 plan will be confirmed in this case. Decl., Doc. #10. Further, Debtor’s plan payments are lower than the payments called for in the Prior Case. Decl., Doc. #10. Debtor filed a proposed plan on October 23, 2020. Doc. #2. Debtor’s Schedules I and J filed in this case list monthly income of \$2,115.72 and expenses of \$1,540.00, resulting in monthly net income of \$575.72 of which Debtor proposes to apply \$555.00 to plan payments in this case. Schedules I and J, Doc. #1; Decl., Doc. #10.

The court is inclined to find that the errors preventing successful plan payments in the Prior Case rebut the presumption of bad faith that arose from the failure to perform the terms of a confirmed plan in the Prior Case and Debtor’s petition commencing this case was filed in good faith. Moreover, the court recognizes that Debtor’s increased monthly income and decreased tax payments represent a substantial change in financial affairs since the dismissal of the Prior Case.

Accordingly, the court is inclined to GRANT the motion and extend the automatic stay for all purposes only as to those parties identified in Debtor’s motion (Doc. #8), unless terminated by further order of the court. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is necessary.

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-8-2020 [[28](#)]

VW CREDIT LEASING, LTD./MV
JEFFREY ROWE/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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 movant, VW Credit Leasing, Ltd. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2017 Volkswagen Passat ("Vehicle"). Doc. #28.

As an initial matter, LBR 9014-2(c)(1) requires "[m]otions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings" to be filed as separate documents. See also LBR 9014-1(d)(4). The court is not inclined to deny this motion, but urges counsel to review the local rules in order to be compliant in future matters.

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 the debtors have failed to make at least nine complete post-petition payments and the Vehicle is uninsured. Movant has produced evidence that debtors are delinquent by at least \$4,375.71. Doc. #28.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to gain immediate possession of the Vehicle pursuant to applicable law. 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 nine post-petition payments to Movant in accordance with the lease agreement.

1. [19-11901](#)-A-7 **IN RE: ARMANDO CRUZ**
[19-1095](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-12-2019 [[1](#)]

STRATEGIC FUNDING SOURCE, INC. V. CRUZ
JARRETT OSBORNE-REVIS/ATTY. FOR PL.

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

DISPOSITION: Continued to December 10, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

The hearing on the status conference is continued to be held at the same time as the hearings on defendant's motion to set aside the entry of default and plaintiff's motion for terminating sanctions.

2. [19-11901](#)-A-7 **IN RE: ARMANDO CRUZ**
[19-1095](#) [SL-1](#)

CONTINUED MOTION TO SET ASIDE
9-24-2020 [[96](#)]

STRATEGIC FUNDING SOURCE, INC. V. CRUZ
SCOTT LYONS/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to December 10, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

On November 2, 2020, Plaintiff Strategic Funding Source, Inc. d/b/a Kapitus ("Plaintiff") filed an ex parte application for continuance pursuant to Local Rule of Practice ("LBR") 9014-1(j) and Federal Rule of Bankruptcy Procedure 9014. Pl.'s Mot., Doc. #121. Counsel for Plaintiff unsuccessfully sought a stipulation from counsel for Defendant Armando Cervantes Cruz, the moving party for this motion, to continue the hearing on this motion to December 10, 2020. Decl. of Jarrett S. Osborne-Revis, Doc. #123. Plaintiff requests a continuance of this motion to December 10, 2020 at 11:00 a.m. so that the court may hear this motion contemporaneously with Plaintiff's motion for terminating sanctions calendared for December 10, 2020. Doc. #121. Plaintiff states that both motions require the consideration of the same relevant factual and procedural background. No response or opposition to Plaintiff's request for continuance has been filed.

The court finds good cause to grant the ex parte application to continue the hearing on this motion. Accordingly, the hearing on this motion is continued to December 10, 2020 at 11:00 a.m.

3. [18-14207](#)-A-7 **IN RE: ELMER/KATHLEEN FALK**
[20-1057](#)

STATUS CONFERENCE RE: COMPLAINT
9-14-2020 [[1](#)]

SALVEN V. MOORE ET AL
PETER SAUER/ATTY. FOR PL.

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

DISPOSITION: Continued to December 17, 2020 at 11:00 a.m.

ORDER: The court will issue an order.

The parties have stipulated to extend the time to file an answer or otherwise respond to the complaint until November 13, 2020. Doc. #9. Therefore, the status conference is continued to December 17, 2020, at 11:00 a.m.

1. [19-13804](#)-A-7 **IN RE: AURELIO/GUADALUPE TORRES**
[JES-2](#)

MOTION TO COMPEL
10-14-2020 [[40](#)]

JAMES SALVEN/MV
DAVID JENKINS/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 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.

James Salven ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Aurelio Torres and Guadalupe Torres (collectively, "Debtors"), moves the court to compel Debtors to turn over their 2019 federal tax refund. Doc. #42.

11 U.S.C. § 541(a)(1) defines property of the estate as "all legal or equitable interests of the debtor in property as of the commencement of the case." In the Ninth Circuit, "the right to receive a tax refund constitutes an interest in property[.]" Nichols v. Birdsell, 491 F.3d 987, 990 (9th Cir. 2007). 11 U.S.C. § 542(a) requires Debtors to turn over property of the estate, or its value, then in Debtors' possession, custody or control during the case. "[Section] 542(a) does not require the debtor to have current possession of the property which is subject to turnover. If a debtor demonstrates that he is not in possession of the property of the estate or its value at the time of the turnover action, the trustee is entitled to recovery of a money judgment for the value of the property of the estate." Newman v. Schwartzer (In re Newman), 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013) (citations and punctuation omitted). In this case, Debtors' right to a 2019 federal tax refund is property of the estate.

Accordingly, this motion is GRANTED. Debtors are ordered to turn over their 2019 federal tax refund within 10 days of the court order. Failure to do so may result in sanctions pursuant to 11 U.S.C. § 105(a).

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-14-2020 [\[15\]](#)

SANTANDER CONSUMER USA INC./MV
MARK ZIMMERMAN/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.
NON-OPPOSITION

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.

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 2016 Chevrolet Impala ("Vehicle"). Doc. #15.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least sixteen complete pre-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$10,037.93. 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. Id. The Vehicle is valued at \$15,025.00 and debtor owes \$23,502.64. Doc. #15.

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

According to the debtor's Non-Opposition filed October 19, 2020, the Vehicle will be surrendered. Doc. #22

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

3. [19-15155](#)-A-7 **IN RE: ADRIAN/PATRICIA GARCIA**
[EPE-2](#)

MOTION TO AVOID LIEN OF BENEFICIAL STATE BANK
9-22-2020 [[60](#)]

ADRIAN GARCIA/MV
ERIC ESCAMILLA/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.

Adrian Garcia and Patricia Ramirez Garcia (collectively, "Debtors"), the debtors in this Chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Beneficial State Bank ("Creditor") on their residential real property commonly referred to as 804 F Street, Reedley, California 93654 (the "Property"). Doc. #60; Am. Schedule C, Doc. #54.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under section 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in section 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91

(B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

A judgment was entered against Adrian Garcia in the amount of \$14,579.15 in favor of Creditor on April 25, 2019. Ex. 2, Doc. #63. The abstract of judgment was recorded with Fresno County on May 23, 2019. Ex. 2, Doc. #63. That lien attached to Debtors' interest in the Property located in Fresno County. Doc. #60. The current amount owed on Creditor's judicial lien is approximately \$14,579.15. Ex. 2, Doc. #63; Doc. #60. The Property also is encumbered by a mortgage held by Caliber Home Loans for \$278,806.00. Ex. 4, Doc. #63. Debtors claimed a homestead exemption of \$100,000.00 in the Property under California Code of Civil Procedure § 704.730. Am. Schedule C, Doc. #54. Debtors valued their interest in the Property as of the petition date at \$376,000.00. Ex.3, Doc. #63.

Amount of Beneficial State Bank's Judicial Lien		\$14,579.15
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$278,706.00
Amount of Debtors' claim of exemption in the Property	+	\$100,000.00
Value of Debtors' interest in the Property	-	\$376,000.00
Extent of impairment of Debtors' exemption in the Property	=	\$17,285.15

After application of the arithmetical formula required by section 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

4. [20-12661](#)-A-7 **IN RE: LUIS AGUILAR AND LUZ MARAVILLA**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-13-2020 [\[18\]](#)

GLOBAL LENDING SERVICES LLC/MV
MARK HANNON/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

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

The movant, Global Lending Services LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2016 Chevrolet Cruze ("Vehicle"). Doc. #18.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least three complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$2,097.74. Doc. #20.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. Id. The Vehicle is valued at \$11,575.00 and the debtors owe \$11,841.81. Doc. #18.

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. According to the debtors' Statement of Intention, the Vehicle will be surrendered.

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

5. [20-12468](#)-A-7 **IN RE: RONALD/DEBORAH YOUNG**
[JES-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-9-2020 [\[12\]](#)

JAMES SALVEN/MV
RICHARD WHEELER/ATTY. FOR DBT.
RESPONSIVE PLEADING
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the objection on October 30, 2020.
Doc. #27.

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-22-2020 [\[11\]](#)

THE GOLDEN 1 CREDIT UNION/MV
T. O'TOOLE/ATTY. FOR DBT.
MICHAEL MYERS/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, The Golden 1 Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2018 Nissan Altima ("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).

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has not made any payments since March 19, 2020. Doc. #13.

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. Movant values the Vehicle at \$13,817.00 and the amount owed to Movant is \$30,565.76. Doc. #13.

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 one post-petition payment and the Vehicle is a depreciating asset.