

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Friday, November 13, 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. [17-10427](#)-A-12 **IN RE: LUIS/ANGELA OLIVEIRA**
[MWP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-16-2020 [[236](#)]

HARRY KAYE/MV
RILEY WALTER/ATTY. FOR DBT.
MARTIN PHILLIPS/ATTY. FOR MV.
DISCHARGED 11/5/20

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 movants, Harry Kaye, Trustee of the First American Mortgage Company Retirement Trust, Adam Rodriguez, Trustee of the Adam Rodriguez Living Trust Dated January 9, 2007, June Francisco Symonds, Trustee of the June Francisco Symonds Trust Dated October 19, 1991, Allan Locke and Patricia Locke, and William J Creagh (collectively, "Movants"), seek relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property farm land commonly known as 25469 and 25471 West Hearst Road, Gustine, California 95322 (the "Property"). Doc. #326.

A Chapter 12 plan was confirmed in this case on July 31, 2017 (the "Plan"). Doc. #183. The Plan classified Movant's claim in Class 3.1, and stated that "[e]ach Class 3 claimant shall retain its liens or security interests securing its claim." Plan, Doc. #109. Additionally, the Plan states that "[t]he automatic stay shall be lifted upon entry of the Debtor's discharge unless otherwise ordered. . . . Unless otherwise provided, all property of the estate shall vest in the Debtor upon entry of the Debtor's discharge." Doc. #109. On November 5, 2020, the court entered the debtors' discharge. Doc. #246.

To the extent that any portion of the Property remains subject to the automatic stay, 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 the maturity payment required under the Plan. Doc. #239.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) 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.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtors have failed to make the maturity payment required under the Plan.

2. [14-14241](#)-A-11 **IN RE: ARTHUR FONTAINE**
[DMG-22](#)

MOTION FOR ENTRY OF DISCHARGE
10-14-2020 [[284](#)]

ARTHUR FONTAINE/MV
D. GARDNER/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.

Arthur B. Fontaine ("Debtor"), the Chapter 11 debtor in this case, moves this court for an order entering a Chapter 11 discharge. Mot., Doc. #284.

11 U.S.C. § 1141(d)(5) provides that the confirmation of a plan for an individual in Chapter 11 does not automatically discharge them of their debts. Rather, the court must hold a properly noticed hearing and find "that there is no reasonable cause to believe that (i) section 522(q)(1) may be applicable to the debtor; and (ii) there is pending any proceeding in which the debtor may

be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B); and if the requirements of subparagraph (A) and (B) are met." Bankruptcy Code section 1141(d)(5)(A) requires all plan payments to be met.

Debtor completed all plan payments. Decl. of Arthur Fontaine, Doc. #286. The court finds no reasonable cause to believe that § 522(q)(1) may be applicable to Debtor. The court also finds no reasonable cause to believe that there is pending any proceeding in which Debtor may be found guilty of a felony of the kind described in § 522(q)(1)(A) or liable for a debt of the kind described in § 522(q)(1)(B).

The court finds that Debtor made all payments under the Chapter 11 plan and notes that no opposition has been filed. Pursuant to § 1141(d)(5)(A), Debtor's discharge shall be entered.

Accordingly, this motion is GRANTED.

3. [20-12258](#)-A-11 **IN RE: JARED/SARAH WATTS**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
7-2-2020 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING

4. [20-12258](#)-A-11 **IN RE: JARED/SARAH WATTS**
[LKW-10](#)

MOTION FOR COMPENSATION FOR ALBERT & ASSOCIATES, LLP, ACCOUNTANT(S)
10-20-2020 [[167](#)]

ALBERT & ASSOCIATES, LLP/MV
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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.

Albert & Associates, LLP ("Movant"), accountant for debtors and debtors in possession Jared Allen Watts and Sarah Danielle Watts ("DIP"), requests an allowance of final compensation and reimbursement for expenses for services

rendered July 2, 2020 through September 30, 2020. Doc. #167. Movant provided accounting services valued at \$7,511.43, and requests compensation for that amount. Doc. #169. Movant requests reimbursement for expenses in the amount of \$24.50. Doc. #169.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). According to the order authorizing employment of accountant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Ex. A, Doc. #171. In determining the amount of reasonable compensation to be awarded to a professional person, 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).

Movant's services included, without limitation: (1) providing general tax and accounting services for DIP; and (2) preparing DIP's monthly operating reports. Decl. of Christian E. Albert, Doc. #169. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$7,511.43 and reimbursement for expenses in the amount of \$24.50. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consisted with the priorities of the Bankruptcy Code.

5. [20-12258](#)-A-11 **IN RE: JARED/SARAH WATTS**
[LKW-8](#)

MOTION TO CONFIRM CHAPTER 11 PLAN
9-29-2020 [[139](#)]

JARED WATTS/MV
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Confirm if feasibility shown and the plan is modified so all projected disposable income is applied to make payments under the plan.

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.

Jared Allen Watts and Sarah Danielle Watts (together, "Debtors"), the Subchapter V Chapter 11 debtors in this case, move the court for confirmation of their First Modified Plan of Reorganization dated September 29, 2020 (the "Plan"). Doc. ##139-44, 177-89, 180-82. The Plan does not meet the requirements of 11 U.S.C. § 1129(8) because ten classes of impaired claims did not return ballots accepting the Plan. Debtors' Mem., Doc. #177. No objections to confirmation of the Plan have been filed.

Having reviewed the Plan, the docket in this case, and the evidence in support of confirmation of the Plan, the court is inclined to find that the Plan complies with the requirements for confirmation under Bankruptcy Code § 1191(b) subject to Debtors adequately addressing the court's outstanding issues regarding feasibility and payment of all projected disposable income towards the Plan that are set forth below.

The court finds that the Plan meets the requirements of 11 U.S.C. § 1190. Specifically, the Plan includes a brief history of the business operations of Debtors, a liquidation analysis, and projections with respect to the ability of Debtors to make payments under the proposed Plan of reorganization as required by § 1190(1). The Plan also provides for the submission of all or such portion of Debtors' future earnings or other future income to the supervision and control of the Subchapter V Trustee as is necessary for the execution of the Plan as required by § 1190(2). The court finds § 1190(3) does not apply to the Plan.

11 U.S.C. § 1191 governs plan confirmation in Subchapter V. Here, ten classes of impaired claims, consisting of nine classes of secured claims and one class of priority claims, did not return ballots accepting the Plan. Thus, confirmation of the Plan must proceed under 11 U.S.C. § 1191(b). That section provides in relevant part:

[I]f all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1191(b). For a plan to be fair and equitable with respect to a class of secured claims that is impaired and has not accepted the Plan, the Plan must meet the requirements of § 1129(b)(2)(A). 11 U.S.C. § 1191(b), (c)(1). For a plan to be fair and equitable with respect to a class of unsecured creditors that is impaired and that has not accepted the Plan, the Plan must meet the requirements of § 1191(c)(2) and § 1191(c)(3). 11 U.S.C. § 1191(b), (c)(2)-(3).

With respect to § 1129(a)(1), the Plan complies with the applicable provisions of Chapter 11 and meets the applicable mandatory provisions of 11 U.S.C. § 1123(a). The Plan:

- (1) Designates classes of claims other than claims of a kind specified in Bankruptcy Code sections 507(a)(2), 507(a)(3), or 507(a)(8) as required by § 1123(a)(1). Claims are classified in Class One through Class Twenty-Four.
- (2) Specifies the classes that are not impaired under the Plan as required by § 1123(a)(2).
- (3) Specifies the treatment of any class of claims or class of interest which is impaired under the Plan as required by § 1123(a)(3).
- (4) Provides for the same treatment for each claim or interest of a particular class as required by § 1123(a)(4).
- (5) Provides adequate means for the implementation and execution of the Plan as required by § 1123(a)(5).

- (6) The provisions of § 1123(a)(6) of the Code, which relate to the issuance of securities pursuant to a reorganization plan, are not applicable in this case.
- (7) Contains no provisions inconsistent with the interests of creditors and equity security holders and public policy with respect to the manner of selection of any officer, director, or trustee under the Plan and any successor to such officer, director, or trustee as required by § 1123(a)(7).
- (8) The provisions of § 1123(a)(8) does not apply in a Subchapter V case. 11 U.S.C. § 1181
- (9) Provides for the assumption of all executory contracts not expressly rejected by Debtors in accordance with Debtors' sound business judgment as required by § 1123(b)(2).

Debtors, as proponents of the Plan, provided adequate disclosure regarding the Plan to all creditors and interest holders in good faith, and complied with the applicable provisions of Chapter 11 as required by § 1129(a)(2).

The Plan has been proposed in good faith and not by any means forbidden by law as required by § 1129(a)(3).

Pursuant to § 1129(a)(4), the Plan provides that payments made or to be made to Debtors' attorneys and other professionals in connection with the case or the Plan are subject to approval of the court.

The Plan provides that Debtors will manage their financial affairs and implement the Plan, which is consistent with interests of creditors and equity security holders and with public policy as required by § 1129(a)(5).

Section 1129(a)(6) is inapplicable and no changes in regulatory rates are provided for in the Plan.

Pursuant to § 1129(a)(7), each holder of a claim or interest in an impaired class has either accepted the Plan or will receive an amount equal to or greater than the amount such holder of a claim or interest would receive in a Chapter 7 case.

Section 1129(a)(8) need not be satisfied if the subchapter V Plan is confirmed, as here, under § 1191(b).

Pursuant to § 1129(a)(9), the Plan provides for treatment of claims under Bankruptcy Code § 507(a)(8).

Section 1129(a)(10) need not be satisfied if the subchapter V Plan is confirmed, as here, under § 1191(b). However, the Plan has been accepted by at least one impaired class who are not insiders. Specifically, Classes Five, Six, Seven, Ten, Eleven, Twelve, Thirteen, Fourteen, Eighteen, Twenty, and Twenty-Two have accepted the Plan and are not insiders.

Regarding § 1129(a)(11), the court needs additional information before determining that the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of Debtors or any successor to Debtors under the Plan. At the confirmation hearing, Debtors should be prepared to address the following outstanding issues that the court has with respect to feasibility:

- (1) Debtors' income and expenses projections, Exhibit B to the Plan ("Plan Projections") (Doc. #142), show monthly losses in December, January, February, and April. The court calculates that Debtors need at least \$13,500 in their bank account as of the effective date of the Plan to cover the initial Plan Projection monthly deficits. While the September 2020 monthly operating report (Doc. #166) shows a cash balance of \$102,146.36 as of September 30, 2020, Debtors had a loss of \$33,928.00 that month. The October 2020 monthly operating report is not yet due; however, the Plan Projections show a deficit for October also. Debtors should be prepared to make an offer of proof as to their cash balance as of November 13, 2020, the projected cash balance as of the effective date of the Plan, and whether Debtors project having sufficient cash balances to cover the initial Plan Projection monthly deficits.
- (2) Similarly, Debtors should confirm the amount of outstanding Chapter 11 administrative expenses of November 13, 2020, and the projected amount as of the effective date. Debtors also should be prepared to make an offer of proof that Debtors will have sufficient cash on hand as of the effective date to pay administrative expense claims in full as required by Plan.
- (3) The monthly payments on Class Five claims appears to be insufficient to retire that debt in full by July 1, 2023, as provided in the Plan. Thus, it appears that there will be a balloon payment owed on Class Five as of July 1, 2023. That amount is not included in the Plan Projections. At the confirmation hearing, Debtors should be prepared to inform the court what is the projected amount of the Class Five balloon payment and how that balloon payment will be paid.
- (4) Because the Plan is being confirmed under § 1191(b), the Subchapter V Trustee will make payments due under the Plan pursuant to § 1194(b). The Plan Projections do not include any fees for the Subchapter V Trustee unless such fees are included in the \$1,500 monthly expense for attorney and professional fees. Debtors should confirm whether this is the case or, if not, explain what additional monthly amount is anticipated for Subchapter V Trustee fees.

Sections 1129(a)(13)-(15) are not applicable to this case.

Pursuant to § 1129(a)(16), all transfers of property contemplated under the Plan have been or will be made in compliance with applicable non-bankruptcy law.

Pursuant to § 1191(c)(1), with respect to a class of secured claims, the Plan meets the requirements of § 1129(b)(2)(A).

Because Class One, which consists of priority claims, are unsecured claims, the Plan must comply with §§ 1191(c)(2) and (c)(3). Section 1191(c)(2) requires that all projected disposable income received in the three to five years of the plan be applied to make payments under the plan. Here, the Plan Projections show \$23,744.04 in annual profits that are not being used to make payments under the Plan. Accordingly, unless those projected annual profits are used to make payments under the Plan, the Plan does not comply with § 1191(c)(2).

With respect to § 1191(c)(3)(A), the court will consider the Debtors' responses to the issues raised with respect to § 1129(a)(11) to determine whether Debtors will be able to make all payments under the Plan.

With respect to § 1191(c)(3)(B), section 9.01 of the Plan provides (a) that property of the estate includes all property acquired by Debtors post-petition and post-confirmation until Debtors' case is closed, dismissed or converted, and (b) "Debtors' assets shall remain property of the estate if Debtors' case is converted to Chapter 7 at any time after confirmation of the [Plan] and before the court enters a Final Decree." The court finds that these two provisions satisfy § 1191(c)(3)(B).

The court is inclined to confirm the Plan if Debtors can show feasibility and the plan is modified so all projected disposable income is applied to make payments under the plan.

6. [20-13293-A-11](#) **IN RE: PATRICK JAMES, INC.**
[MB-1](#)

FURTHER HEARING RE: MOTION TO USE CASH COLLATERAL
10-13-2020 [7]

PATRICK JAMES, INC./MV
HAGOP BEDOYAN/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 pursuant to an interim order authorizing use of cash collateral, granting adequate protection and debtor-in-possession financing ("Interim Order"). Doc. #43. Pursuant to the Interim Order, written opposition to the relief requested by Patrick James, Inc. ("Debtor" or "DIP") in this motion was to be filed on or before November 2, 2020. Interim Order, ¶29. The failure of the creditors, the U.S. Trustee, or any other party in interest to file written opposition on or before November 2, 2020, 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.

DIP moves the court for an order authorizing Debtor to use the cash collateral of UMB Bank, N.A. ("UMB") through March 31, 2021, as well as obtain up to \$1 million in debtor-in-possession financing from UMB (the "Motion") through March 31, 2021. Doc. #7 (MB-1). Debtor asserts UMB holds a duly perfected security interest in nearly all of Debtor's assets. Id., p.8. Pursuant to the supplement to the Motion filed on October 19, 2020, UMB holds a combined pre-petition claim in the amount of \$2,052,718.48. Doc. #53. DIP asserts that UMB's

claim is secured by cash collateral valued at \$3,760,973.00 as of the petition date. Doc. #7.

The Motion was heard initially on October 15, 2020, and was granted on an interim basis by the Interim Order. Doc. #54. A final hearing was set for November 13, 2020. Id. On October 19, 2020, notice of the Interim Order and the final hearing was sent to the 20 largest non-insider general unsecured creditors, secured creditors, the Office of the United States Trustee, the Subchapter V Trustee, and entities requesting special notice as required by paragraph 22 of the Interim Order. Doc. #55. No written opposition to the Motion has been filed with the court.

Pursuant to 11 U.S.C. § 363, a debtor in possession can use property of the estate that is cash collateral by obtaining either the consent of each entity that has an interest in such cash collateral or court authorization after notice and a hearing. 11 U.S.C. § 363(c)(2). "The primary concern of the court in determining whether cash collateral may be used is whether the secured creditors are adequately protected." In re Plaza Family P'ship, 95 B.R. 166 (E.D. Cal. 1989) (citing 11 U.S.C. § 363(e)). Pursuant to 11 U.S.C. § 363(o), DIP carries the burden of proof on the issue of adequate protection.

Here, DIP seeks court authorization to use of UMB's cash collateral. The court finds DIP has met its burden of showing that UMB is adequately protected for DIP's use of its cash collateral both through the significant equity cushion protecting UMB as well as the replacement liens provided in the proposed cash collateral order. As of the petition date, UMB held cash collateral valued at \$3,760,973.00 to secure a pre-petition claim in the amount of \$2,052,718.48. Moreover, DIP needs to use UMB's cash collateral to continue its post-petition operations. Declaration of Patrick M. Mon Pere filed in support of the Motion (Doc. #10) ("Mon Pere Decl."), ¶19.

In addition to use of cash collateral, DIP also needs post-petition financing. Mon Pere Decl., ¶20. A debtor in possession can obtain secured financing post-petition under 11 U.S.C. § 364 with court authorization. Pursuant to 11 U.S.C. § 364(d)(1),

The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt by a senior or equal lien on property of the estate that is subject to a lien only if -

- (A) The trustee is unable to obtain such credit otherwise;
and
- (B) There is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

Here, DIP has shown that it is unable to obtain credit other than through UMB. Mon Pere Decl., ¶20. The court finds that the interests of UMB in the collateral that is to secure the post-petition financing are adequately protected by the equity cushion, as the value of UMB's collateral as of the petition date is \$3,760,973.00, and UMB holds a pre-petition claim in the amount of \$2,052,718.48 and the post-petition financing is up to \$1 million, with the combined debt not to exceed \$3 million. Mon Pere Decl., ¶¶12-13.

Local Rule 4001-1(c)(3) requires DIP to provide substantial justification in order for certain provisions to be approved as part of an order authorizing use of cash collateral and/or debtor-in-possession financing. Here, the proposed

final order granting the Motion includes some of these provisions. The court will approve those provisions based on the following:

- (1) Local Rule 4001-1(c)(3)(B) requires substantial justification before the court will permit "[p]rovisions or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection, or amount of the secured party's lien or debt." While the proposed final order at paragraphs D.4 and D.5 contain stipulations by Debtor with respect to the validity, perfection, or amount of UMB's lien and debt, paragraph 5 of the proposed final order gives parties in interest with standing (other than Debtor) the right to file and serve an objection to the amount of UMB's pre-petition claim and liens within 90 days from the date that the final order is entered. UMB declares it would not provide the debtor-in-possession financing without these provisions. Doc. #47. The court finds the ability for other parties to review and object to the validity, perfection, or amount of UMB's lien and debt contained in paragraphs D.4 and D.5 of the proposed final order provides substantial justification for permitting these provisions to be included in the final order.
- (2) Local Rule 4001-1(c)(3)(C) requires substantial justification before the court will permit "[p]rovisions or findings of fact that bind the estate or all parties in interest with respect to the relative priorities of the secured party's lien and liens held by persons who are not parties to the stipulation." While the proposed final order at paragraph D.5 contains stipulations by Debtor with respect to the priority of UMB's lien, paragraph 5 of the proposed final order gives parties in interest with standing (other than Debtor) the right to file and serve an objection to UMB's liens within 90 days from the date that the final order is entered. UMB declares it would not provide the debtor-in-possession financing without this provision. Doc. #47. The court finds the ability for other parties to review and object to the priority of UMB's lien contained in paragraph D.5 of the proposed final order provides substantial justification for permitting this provision to be included in the final order.
- (3) Local Rule 4001-1(c)(3)(D) requires substantial justification before the court will permit "[w]aivers of 11 U.S.C. § 506(c), unless the waiver is effective only during the period in which the debtor is authorized to use cash collateral or borrow funds." While the proposed final order at paragraph 6 waives all rights of Debtor under 11 U.S.C. § 506(c), the waivers in paragraph 6 do not apply or bind a Chapter 11 trustee or a Chapter 7 trustee. Paragraph 10(a)(v) of the final order also limits the rights of the estate limits rights under 11 U.S.C. § 506(c) with respect to the debtor-in-possession loan to the carveout of up to \$100,000. UMB declares it would not provide the debtor-in-possession financing without these provisions. Doc. #47. The court finds the limitation that the waivers in paragraph 6 do not apply or bind a Chapter 11 trustee or a Chapter 7 trustee as well as the up to \$100,000 carveout from the debtor-in-possession loan provide substantial justification for permitting these provisions to be included in the final order.
- (4) Local Rule 4001-1(c)(3)(F) requires substantial justification before the court will permit "[r]eleases of liability for the creditor's alleged pre-petition torts or breaches of contract." While the proposed final order at paragraphs 6 and 7 contain releases by

Debtor with respect to pre-petition claims against UMB, paragraph 5 of the proposed final order gives parties in interest with standing (other than Debtor) the right to file and serve a challenge to such releases within 90 days from the date that the final order is entered. Moreover, the releases in paragraph 6 (and by extension in paragraph 7) do not apply or bind a Chapter 11 trustee or a Chapter 7 trustee. UMB declares it would not provide the debtor-in-possession financing without this provision. Doc. #47. The court finds the ability for other parties to review and object to the proposed releases as well as the limitation that such releases do not bind a Chapter 11 trustee or a Chapter 7 trustee provide substantial justification for permitting the releases contained in paragraphs 6 and 7 of the proposed final order.

- (5) Local Rule 4001-1(c)(3)(G) requires substantial justification before the court will permit "[w]aivers of avoidance actions arising under the Bankruptcy Code." While the proposed final order at paragraphs D.6 and 6 contain provisions that waive avoidance actions with respect to UMB, paragraph 5 of the proposed final order gives parties in interest with standing (other than Debtor) the right to file and serve an objection to UMB's liens within 90 days from the date that the final order is entered. Moreover, the waiver in paragraph 6 does not apply or bind a Chapter 11 trustee or a Chapter 7 trustee. UMB declares it would not provide the debtor-in-possession financing without this provision. Doc. #47. The court finds the ability for other parties to review and object to UMB's lien contained in paragraph D.6 of the proposed final order provides substantial justification for permitting this provision to be included in the final order.
- (6) Local Rule 4001-1(c)(3)(H) requires substantial justification before the court will permit "[a]utomatic relief from the automatic stay upon default, conversion to chapter 7, or appointment of a trustee."

Accordingly, the Motion is GRANTED. DIP shall submit a proposed final order consistent with the proposed order attached to the Debtor-in-Possession Loan and Security Agreement between UMB and DIP. Doc. #9.

7. [20-13293](#)-A-11 **IN RE: PATRICK JAMES, INC.**
[MB-2](#)

FINAL HEARING RE: MOTION FOR ORDER AUTHORIZING CONTINUED USE OF
EXISTING CASH MANAGEMENT SYSTEM AND OPERATIONAL BANK ACCOUNTS;
BUSINESS FORMS; AND TO EXCUSE COMPLIANCE WITH SECTION 345(B)
10-13-2020 [[13](#)]

PATRICK JAMES, INC./MV
HAGOP BEDOYAN/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 pursuant to an interim order the authorizing the debtor's continued use of its existing cash management system and operational bank accounts as well as its pre-petition business forms ("Interim Order"). Doc. #44. Pursuant to the Interim Order, written opposition to the relief requested by Patrick James, Inc. ("Debtor" or "DIP") in this motion was to be filed on or before November 2, 2020. Interim Order at ¶13. The failure of the creditors, the U.S. Trustee, or any other party in interest to file written opposition on or before November 2, 2020, 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.

DIP moves the court for an order authorizing the continued use of Debtor's existing cash management system and operational bank accounts and business forms as well as to excuse compliance with 11 U.S.C. § 345(b) (the "Motion"). Doc. #13 (MB-2). Since filing the Motion, DIP no longer seeks to excuse compliance with 11 U.S.C. § 345(b). Doc. #56.

The Motion was heard initially on October 15, 2020, and was granted on an interim basis by the Interim Order. Doc. #44. A final hearing was set for November 13, 2020. Id. On October 19, 2020, notice of the Interim Order and the final hearing was sent to the 20 largest non-insider general unsecured creditors, secured creditors, the Office of the United States Trustee, the Subchapter V Trustee, and entities requesting special notice. Doc. #58. No written opposition to the Motion has been filed with the court.

Guideline 3 of the United States Trustee Chapter 11 Operating and Reporting Guidelines for Debtors in Possession (Revised February 2020) for Region 17 ("Guideline 3") and Local Rule 2015-2(a) require a debtor in possession to close all bank, deposit and investment accounts and open new bank accounts, including separate accounts for tax payments.

Pre-petition, DIP had numerous established payment arrangements between Debtor, Debtor's credit card processing companies, Debtor's secured lender UMB Bank, N.A., and Debtor's customers and vendors. Declaration of Patrick M. Mon Pere filed in support of the Motion (Doc. #16), ¶¶6-9. DIP requests waiver of the requirements under Guideline 3 and Local Rule 2015-2(a) because changing the large number of established payment arrangements "would be overly burdensome and would interfere with, rather than assist, the administration of Debtor's bankruptcy case." Id., ¶10. To minimize administrative expense and delay, DIP also requests authority to continue to use its pre-petition correspondence and business forms without reference to Debtor's status as a debtor-in-possession. Id., ¶19.

The court finds good cause exists under 11 U.S.C. § 105 to waive the requirements of Guideline 3 and Local Rule 2015-2(a) to the extent requested in the Motion.

Accordingly, the Motion is GRANTED.

8. [20-13293](#)-A-11 **IN RE: PATRICK JAMES, INC.**
[MB-3](#)

FINAL HEARING RE: MOTION FOR ORDER PROHIBITING UTILITIES FROM
ALTERING, REFUSING, OR DISCONTINUING SERVICE, AND DETERMINING
ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES
10-13-2020 [[19](#)]

PATRICK JAMES, INC./MV
HAGOP BEDOYAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

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

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

This motion was set for hearing pursuant to an interim order prohibiting utilities from altering, refusing or discontinuing service and setting procedures for determining adequate assurance of payment for future utility services ("Interim Order"). Doc. #45. Pursuant to paragraph 2 of the Interim Order, within two business days of the entry of the Interim Order, the Interim Order was to be served on each utility company listed on Exhibit A to the Interim Order as well as "all persons requesting special notice herein, on the 20 largest unsecured creditors as identified in the Debtor's petition, on the Office of the United States Trustee for the Eastern District of California, on the Standing Subchapter V Trustee, and counsel for the secured creditors[.]" Interim Order at 2:14-17. There is no proof of service showing that the Interim Order was served on (a) all persons requesting special notice in this case, (b) the Debtor's 20 largest unsecured creditors, (c) the Office of the United States Trustee, (d) the Subchapter V Trustee, or (e) counsel for Debtor's secured creditors (collectively, "Unserved Parties").

The court is inclined to continue the final hearing on this motion to December 9, 2020 at 9:30 a.m., to permit notice to be provided as required by the Interim Order. The court is further inclined to: (a) require Debtor to serve notice of the continued hearing on all Unserved Parties by November 16, 2020, (b) extend the deadline to December 1, 2020 for Unserved Parties to file opposition to the motion, and (c) permit Debtor to file a response to any objections filed by Unserved Parties by December 4, 2020.

9. [20-13293](#)-A-11 **IN RE: PATRICK JAMES, INC.**
[MB-4](#)

FINAL HEARING RE: MOTION FOR ORDER AUTHORIZING DEBTOR TO MAINTAIN
AND ADMINISTER PREPETITION CUSTOMER PROGRAMS, PROMOTIONS AND PRACTICES;
PAY AND HONOR RELATED PREPETITION OBLIGATIONS, AND GRANTING RELATED RELIEF
10-13-2020 [[25](#)]

PATRICK JAMES, INC./MV
HAGOP BEDOYAN/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 pursuant to an interim order authorizing the debtor to maintain and administer pre-petition customer programs, promotions and practices as well as pay and honor related pre-petition obligations ("Interim Order"). Doc. #46. Pursuant to the Interim Order, written opposition to the relief requested by Patrick James, Inc. ("Debtor" or "DIP") in this motion was to be filed on or before November 2, 2020. Interim Order at ¶13. The failure of the creditors, the U.S. Trustee, or any other party in interest to file written opposition on or before November 2, 2020, 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.

DIP moves the court for an order authorizing Debtor to maintain and administer pre-petition customer programs, promotions and practices as well as pay and honor related pre-petition obligations (the "Motion"). Doc. #25 (MB-4).

The Motion was heard initially on October 15, 2020, and was granted on an interim basis by the Interim Order. Doc. #46. A final hearing set for November 13, 2020. Id. On October 19, 2020, notice of the Interim Order and the final hearing was sent to the 20 largest non-insider general unsecured creditors, secured creditors, the Office of the United States Trustee, the Subchapter V Trustee, and entities requesting special notice. Doc. #64. No written opposition to the Motion has been filed with the court.

Pre-petition, Debtor administered several programs to attract new customers and reward and provide incentives to existing customers (collectively, the "Customer Programs"). Declaration of Patrick M. Mon Pere filed in support of the Motion (Doc. #16), ¶11. The Customer Programs include (a) return and exchange programs, (b) store value card and store credit programs, (c) sales promotions, and (d) customer rewards programs. Id. DIP seeks to maintain the Customer Programs in a manner consistent with pre-petition practices to preserve customer loyalty, goodwill and market share. Id., ¶12.

Based on the evidence before the court, the court finds good cause exists under 11 U.S.C. § 105 to maintain the Customer Programs in a manner consistent with pre-petition practices.

Accordingly, the Motion is GRANTED.

11:00 AM

1. [20-13220](#)-A-7 **IN RE: JACQUELINE MELENDEZ**

PRO SE REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
10-23-2020 [[18](#)]

NO RULING.