UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, November 15, 2023
Department A – Courtroom #11
Fresno, California

Unless otherwise ordered, all hearings before Judge Niemann are simultaneously: (1) **IN PERSON** in Courtroom #11 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

To appear via zoom gov video or zoom gov telephone for law and motion or status conference proceedings, you must comply with the following new guidelines and procedures:

1. Review the Pre-Hearing Dispositions prior to appearing at the hearing.
2. Review the court's Zoom Policies and Procedures for these and additional instructions.
3. Parties appearing through CourtCall are encouraged to review the CourtCall Appearance Information.

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Please join at least 10 minutes before the start of your hearing. You are required to give the court 24 hours advance notice on Court Calendar.

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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. 22-12016-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
11-28-2022 [1]

D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Continued to December 13, 2023, at 9:30 a.m.

ORDER: The court will issue an order.

The status conference will be continued to December 13, 2023 at 9:30 a.m., to be heard in conjunction with the hearing regarding the disclosure statement.

2. 22-12016-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
DMG-12

AMENDED CHAPTER 11 DISCLOSURE STATEMENT
9-29-2023 [379]

D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Continued to December 13, 2023, at 9:30 a.m.

NO ORDER REQUIRED.

On November 1, 2023, the court issued an order continuing the hearing on the chapter 11 disclosure statement to December 13, 2023, at 9:30 a.m. Doc. #394.

3. 23-10325-A-11 **IN RE: ROBERT CHAMPAGNE**
RPM-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-29-2023 [168]

SANTANDER CONSUMER USA, INC./MV
PETER SAUER/ATTY. FOR DBT.
RANDALL MROCZYNSKI/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The motion for relief from the automatic stay was resolved by stipulation and order filed on October 12, 2023. Doc. #179. No appearance is necessary.

4. 20-12258-A-11 **IN RE: JARED/SARAH WATTS**
RWR-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-27-2023 [404]

THE HUNTINGTON NATIONAL BANK/MV
LEONARD WELSH/ATTY. FOR DBT.
RUSSELL REYNOLDS/ATTY. FOR MV.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on November 14, 2023. Doc. #410.

5. 23-10571-A-11 **IN RE: NABIEKIM ENTERPRISES, INC.**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
3-24-2023 [1]

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Continued to December 13, 2023, at 9:30 a.m.

ORDER: The court will issue an order.

The status conference will be continued to December 13, 2023 at 9:30 a.m., to be heard in conjunction with the continued cash collateral hearing.

6. 23-10571-A-11 **IN RE: NABIEKIM ENTERPRISES, INC.**
FW-5

CONTINUED CONFIRMATION HEARING RE: CHAPTER 11 SMALL BUSINESS SUBCHAPTER V PLAN
6-22-2023 [67]

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Continued to January 31, 2024, at 9:30 a.m.

NO ORDER REQUIRED.

On November 8, 2023, the court issued an order continuing the plan confirmation hearing to January 31, 2024, at 9:30 a.m. Doc. #163.

1. 23-11543-A-7 **IN RE: FREDY HERNANDEZ**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
10-17-2023 [29]

ROSALINA NUNEZ/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

The debtor's counsel will inform debtor that no appearance is necessary.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship that has not been rebutted in the reaffirmation agreement. Although the debtor's attorney executed the agreement, no evidence has been presented to the court to indicate how the debtor can afford to make the payment. The debtor has not provided the court with an amended Schedule J. Therefore, the reaffirmation agreement with Toyota Motor Credit Corporation will be DENIED.

2. 23-11776-A-7 **IN RE: MARK/BRITTANY ALVARA**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION
10-18-2023 [14]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

The debtors' counsel will inform the debtors that no appearance is necessary.

The debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), "'if the debtor is represented by counsel, the agreement **must** be accompanied by an affidavit of the debtor's attorney' attesting to the referenced items before the agreement will have legal effect." In re Minardi, 399 B.R. 841, 846 (Bankr. N.D. Okla. 2009) (citation omitted)(emphasis in original). In this case, the debtors' attorney did not sign the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable. Minardi, 399 B.R. at 847 ("If a debtor was represented during the course of negotiating a reaffirmation agreement, but debtor's counsel is unable or unwilling to make the required certifications, then the agreement does not satisfy § 524(c)(3) and is unenforceable.").

3. 23-11805-A-7 **IN RE: JONATHAN REESE**

CONTINUED PRO SE REAFFIRMATION AGREEMENT WITH U.S. BANK NATIONAL ASSOCIATION
9-29-2023 [20]

NO RULING.

1:30 PM

1. 23-11808-A-7 **IN RE: JULISSA CARRILLO**
KGR-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-2-2023 [16]

THE GOLDEN 1 CREDIT UNION/MV
BENNY BARCO/ATTY. FOR DBT.
KAREL ROCHA/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 on at least 14 days' notice 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 2021 Highland Ridge Open Range Trailer (the "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 a payment since September 2021. Decl. of Karl Williams, Doc. #18. The loan has since been charged off in the amount of $75,666.64, plus attorney fees and costs of $688.00. Williams Decl., 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 $60,000.00 and the amount owed to Movant is $76,354.64. Williams Decl., 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 debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make a payment since September 2021 and the Vehicle will be surrendered.

2. 20-11218-A-7 **IN RE: KRISTINE ALLISON**
ICE-1

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH KRISTINE M. ALLISON
10-10-2023 [19]

IRMA EDMONDS/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
IRMA EDMONDS/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.

As a procedural matter, the certificate of service form was not completed correctly. The declarant checked the box indicating that service was made pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 7004. Doc. #23. The declarant also checked the box indicating the declarant included an Attachment 6A1, which is required if service is effectuated under Rule 7004. However, the attachment with the certificate of service was a Clerk's Matrix of Creditors instead of "a list of the persons served, including their names/capacity to receive service, and address is appended [to motion] and numbered Attachment 6A1." Because it appears that the movant properly served the motion pursuant to Rule 7005, the declarant should have checked the appropriate boxes in section 6B and attached the Clerk's Matrix of Creditors as Attachment 6B2.

Irma Edmonds ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Kristine M. Allison ("Debtor"), moves the court for an order pursuant to

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Rule 9019, approving the compromise of all claims and disputes with Norman Allison ("Allison"), a relative of Debtor.[1] Doc. #19.

Among the assets of the estate is a claim against Allison for the avoidance and recovery of preferential and/or fraudulent transfers of $6,000.00 made by Debtor to Allison in the year preceding the bankruptcy filing. Doc. #21, Tr.'s Decl. at ¶ 3. Debtor and Trustee have agreed to settle the claim of the avoidable transfers to Allison with a payment of $5,500.00 to the estate. Id. at ¶ 4. Trustee is in receipt of the $5,500.00. Id. at ¶ 5. Additionally, Trustee contends that although Debtor failed to pay the full $6,000.00 preference payment to Trustee, pursuing litigation for the recovery of $500.00 would not be in the best interest of the estate or the parties. Id. at ¶ 6.

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. #19. Although Trustee believes she will ultimately succeed in litigation, the terms of the settlement with Debtor obviates the need to litigate the estate's claims. Id.; Doc. #21, Tr.'s Decl. at ¶ 6. The litigation would be a mix of law and facts. Doc. #19. However, Trustee does not believe Allison has any defenses to the estate's claims. Id. The settlement provides the estate with nearly as much money as what Trustee sought to recover from Allison and places that amount back in the estate, without the expenses of litigation costs or issues in the matter of collection. Id. Trustee believes in her business judgment that the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Id. 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 Rule 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.

[1] The motion names the relative as Donald Allison; however, the settlement agreement filed in support of the motion names the relative as Norman Allison. Compare Motion, Doc. #21 with Settlement Agreement, Ex. A, Doc. #22. Because the amount of the preference payment and the settlement amount listed in both the motion and the settlement agreement are the same, the court assumes that this is the same settlement and the settlement is for the preferential payments to Norman Allison, not to Donald Allison.

3. 23-11823-A-7 **IN RE: PABLO/ANGELINA GONZALEZ**
KGR-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-29-2023 [15]

THE GOLDEN 1 CREDIT UNION/MV
MICHAEL REID/ATTY. FOR DBT.
KAREL ROCHA/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 on at least 14 days' notice 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 2017 Ford Expedition (the "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 debtors do 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 debtors are three post-petition payments past due in the amount of $1,477.23, plus attorney fees and costs of $688.00. Decl. of Sofia Ali, Doc. #18.

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. Movant values the Vehicle at $18,244.00 and the amount owed to Movant is $23,772.53. Ali Decl., 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. Doc. #1.

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

4. 20-12236-A-7 **IN RE: IVAN MARQUEZ**
ICE-1

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH IVAN FRANCISCO MARQUEZ
10-10-2023 [19]

IRMA EDMONDS/MV
MARK HANNON/ATTY. FOR DBT.
IRMA EDMONDS/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.

As a procedural matter, the certificate of service form was not completed correctly. The declarant checked the box indicating that service was made pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 7004. Doc. #23. The declarant also checked the box indicating the declarant included an Attachment 6A1, which is required if service is effectuated under Rule 7004. However, the attachment with the certificate of service was a Clerk's Matrix of Creditors instead of "a list of the persons served, including their names/capacity to receive service, and address is appended [to motion] and numbered Attachment 6A1." Because it appears that the movant properly served the motion pursuant to Rule 7005, the declarant should have checked the appropriate boxes in section 6B and attached the Clerk's Matrix of Creditors as Attachment 6B2.

Irma Edmonds ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Ivan Francisco Marquez ("Debtor"), moves the court for an order pursuant to Rule 9019, approving the compromise of all claims and disputes with Carlos Perez ("Perez"), the nephew of Debtor. Doc. #19.

Among the assets of the estate is a claim against Perez for the avoidance and recovery of preferential and/or fraudulent transfers of $2,500.00 made by

Debtor to Perez in the year preceding the bankruptcy filing. Doc. #21, Tr.'s Decl. at ¶ 3. Debtor and Trustee have agreed to settle the claim of the avoidable transfers to Perez with a payment of $2,500.00 to the estate. Id. at ¶ 4. Trustee is in receipt of the $2,500.00. Id. at ¶ 5.

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. #19. Although Trustee believes she will ultimately succeed in litigation, the terms of the settlement with Debtor obviates the need to litigate the estate's claims. Doc. #19; Doc. #21, Tr.'s Decl. at ¶ 6. The litigation would be a mix of law and facts. Doc. #19. However, Trustee does not believe Perez has any defenses to the estate's claims. Id. The settlement provides the estate with as much money as what Trustee sought to recover from Perez and places that amount back in the estate, without the expenses of litigation costs or issues in the matter of collection. Id. Trustee believes in her business judgment that the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Id. 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 Rule 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. 23-12237-A-7 **IN RE: MICHAEL OLEA AND BEATRIX HARVEY-OLEA**
VC-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-20-2023 [13]

ALLIANT CREDIT UNION/MV
NICHOLAS WAJDA/ATTY. FOR DBT.
MICHAEL VANLOCHEM/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice of the hearing on this motion was sent by mail on October 20, 2023 with a hearing date set for November 15, 2023. Because the notice was sent on less than 28 days' notice, notice is governed by Local Rule of Practice ("LBR") 9014-1(f)(2). Pursuant to LBR 9014-1(f)(2), written opposition is not required, and any opposition may be raised at the hearing. However, the notice of hearing filed with the motion stated that opposition must be filed and served no later than fourteen days before the hearing and that failure to file written response may result in the court granting the motion prior to the hearing. The notice of hearing does not comply with LBR 9014-1(f)(2).

As a procedural matter, the certificate of service filed in connection with this motion does not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022.

As a further procedural matter, the exhibit document does not include an exhibit index as required by LBR 9004-2(d)(2).

The court encourages counsel 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 rules can be accessed on the court's website at https://www.caeb.uscourts.gov/LocalRules.aspx.

6. 15-12838-A-7 **IN RE: KULDIP SINGH AND AMARJIT KAUR**
AKD-1

MOTION TO AVOID LIEN OF COMMERCIAL TRADE, INC.
10-4-2023 [52]

AMARJIT KAUR/MV
ANDEEP GREWAL/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE for improper notice.

Service of this motion does not comply with the Federal Rules of Bankruptcy Procedure ("Rule"). Rule 9014(b) requires a motion to avoid a lien under 11 U.S.C. § 522(f) be served "in the manner provided for service of a summons and complaint by Rule 7004." Service of the motion on Commercial Trade, Inc. ("Creditor") does not satisfy Rule 7004.

Rule 7004(b)(3) provides that service upon a domestic corporation be mailed "to the attention of an officer, managing or general agent, or to any other agent authorized by appointment or law to receive service of process[.]" Fed. R. Bankr. P. 7004(b)(3). The original certificate of service filed in connection with this motion does not show that Creditor, which is a corporation, was served to the attention of anyone. See Doc. #52. To the extent that the moving party attempted to correct this issue by serving the notice of hearing on Creditor's counsel that filed the abstract of judgment, such service also does not satisfy Rule 7004, as there is no indication that Creditor's counsel has appeared on behalf of Creditor in this bankruptcy case. In any event, a review of the California State Bar's website shows that the suite letter included in

the address of Creditor's counsel to which the motion was served is not the current suite for attorney Sandra Kuhn McCormack. This motion was served on attorney McCormack at Suite C. According to the California State Bar website, the current address for attorney Sandra Kuhn McCormack is: Law Offices of Sandra Kuhn McCormack, 5330 Office Center Ct Ste #A42, Bakersfield CA 93309. The state bar number for attorney McCormack is the same state bar number as that listed on the abstract of judgment, so it appears to be the same attorney. The court can take judicial notice of attorney records posted on the website of the California State Bar. Fed. R. Evid. 201(b)(2).

In addition, the motion papers do not comply with this court's Local Rules of Practice ("LBR") in numerous respects, based in large part because counsel for the debtors used forms from the United States Bankruptcy Court for the Central District of California.

First, this court requires that a notice of hearing, motion, declaration, exhibits and proof of service all be filed as separate documents. See LBR 9004-2(c)(1); 9004-2(d); 9004-2(e). Here, the motion and proof of service were filed as a single 7-page document, and the notice of hearing and proof of service were filed as a single 2-page document. Doc. ##52, 53. Also, the exhibits were attached to the declaration. Doc. #54. LBR 9004-2(d) requires exhibits to be filed as a separate document along with an exhibit index.

Second, the notice of hearing filed in connection with this motion (Doc. #53) does not comply with LBR 9014-1(d)(3)(B)(i)-(iii). LBR 9014-1(d)(3)(B)(i) requires the notice to advise potential respondents whether written opposition is required and, if written opposition is required, the deadline for filing written opposition and the names and addresses of the persons who must be served with any opposition. LBR 9014-1(d)(3)(B)(ii) further provides "[i]f written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition." LBR 9014-1(d)(3)(B)(iii) requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Here, the notice of hearing does not provide any of the information required by LBR 9014-1(d)(3)(B)(i)-(iii).

Third, the certificates of service filed in connection with this motion do not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022.

The court encourages counsel 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 rules can be accessed on the court's website at https://www.caeb.uscourts.gov/LocalRules.aspx.

7. 22-10945-A-7 **IN RE: ELIZABETH GUZMAN**
ICE-1

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ELIZABETH MARIE GUZMAN
10-10-2023 [22]

IRMA EDMONDS/MV
JERRY LOWE/ATTY. FOR DBT.
IRMA EDMONDS/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.

Irma Edmonds ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Elizabeth Marie Guzman ("Debtor"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019, approving the compromise with Debtor of all claims and disputes against Martin Guzman and Elida Guzman (collectively, the "Guzmans"), the parents of Debtor. Doc. #22.

As a procedural matter, the certificate of service form was not completed correctly. The declarant checked the box indicating that service was made pursuant to Rule 7004. Doc. #26. The declarant also checked the box indicating the declarant included an Attachment 6A1, which is required if service is effectuated under Rule 7004. However, the attachment with the certificate of service was a Clerk's Matrix of Creditors instead of "a list of the persons served, including their names/capacity to receive service, and address is appended [to motion] and numbered Attachment 6A1." Because it appears that the movant properly served the motion pursuant to Rule 7005, the declarant should have checked the appropriate boxes in section 6B and attached the Clerk's Matrix of Creditors as Attachment 6B2.

Among the assets of the estate is a claim against the Guzmans for the avoidance and recovery of preferential and/or fraudulent transfers of $2,000.00 made by Debtor to the Guzmans in the year preceding the bankruptcy filing. Doc. #24, Tr.'s Decl. at ¶ 3. Debtor and Trustee have agreed to settle the claim of the avoidable transfers to the Guzmans with a payment of $1,750.00 to the estate. Id. at ¶ 4. Trustee is in receipt of the $1,750.00. Id. at ¶ 5. Additionally, Trustee contends that although Debtor failed to pay the full $2,000.00

preference payment, pursuing litigation for the recovery of $250.00 would not be in the best interest of the estate or the parties. Id. at ¶ 6.

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 she will ultimately succeed in litigation, the terms of the settlement with Debtor obviates the need to litigate the estate's claims. Id.; Doc. #24, Tr.'s Decl. at ¶ 6. The litigation would be a mix of law and facts. Doc. #22. However, Trustee does not believe the Guzmans have any defenses to the estate's claims. Id. The settlement provides the estate with almost as much money as what Trustee sought to recover from the Guzmans and places that amount back in the estate, without the expenses of litigation costs or issues in the matter of collection. Id. Trustee believes in her business judgment that the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Id. 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 Rule 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.

8. 23-11848-A-7 **IN RE: MARTIN DELGADO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-20-2023 [23]

$32.00 FILING FEE PAID 10/27/23

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fees now due have been paid.

9. 23-11949-A-7 **IN RE: WANDA WINNETT**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-24-2023 [21]

GRISELDA TORRES/ATTY. FOR DBT.
$32.00 FILING FEE PAID 10/27/23

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fees now due have been paid.

10. 23-11258-A-7 **IN RE: HIPOLITO ROCHA**
CAS-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-11-2023 [21]

BMW BANK OF NORTH AMERICA/MV
R. BELL/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.
DISCHARGED 10/10/2023
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on November 13, 2023. Doc. #32.

11. 23-11969-A-7 **IN RE: YER MOUA**
SKI-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-5-2023 [17]

CREDIT ACCEPTANCE
CORPORATION/MV
SHERYL ITH/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 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, Credit Acceptance Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2013 Toyota Tundra (the "Vehicle"). Doc. #17.

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 debtor is delinquent in the amount of $8,491.43. Decl. of Danielle Washington, Doc. #20. The last payment received from the debtor was on June 9, 2023 and was applied to the payment due February 28, 2022. Washington Decl., Doc. #20. In addition, Movant does not have proof the Vehicle is currently insured. Id.

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. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make payments to Movant, Movant does not have proof the Vehicle is currently insured, and the Vehicle will be surrendered.

12. 23-11471-A-7 **IN RE: HEIDI CARRILLO**
TCS-1

MOTION TO AVOID LIEN OF RESIDENTIAL REAL ESTATE
10-4-2023 [33]

HEIDI CARRILLO/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on October 6, 2023. Doc. #37.

13. 22-11298-A-7 **IN RE: PRECILIANO GUERRERO GARCIA**
ICE-1

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH PRECILIANO GUERRERO GARCIA
10-10-2023 [21]

IRMA EDMONDS/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
IRMA EDMONDS/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 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 moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Irma Edmonds ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Preciliano Guerrero Garcia ("Debtor"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019 approving the compromise of all claims and disputes with Priscilla Vanezuela ("Vanezuela"), the daughter of Debtor. Doc. #21.

As a procedural matter, the certificate of service form was not completed correctly. The declarant checked the box indicating that service was made pursuant to Rule 7004. Doc. #25. The declarant also checked the box indicating the declarant included an Attachment 6A1, which is required if service is effectuated under Rule 7004. However, the attachment with the certificate of service was a Clerk's Matrix of Creditors instead of "a list of the persons served, including their names/capacity to receive service, and address is appended [to motion] and numbered Attachment 6A1." Because it appears that the movant properly served the motion pursuant to Rule 7005, the declarant should have checked the appropriate boxes in section 6B and attached the Clerk's Matrix of Creditors as Attachment 6B2.

Among the assets of the estate is a claim against Vanezuela for the avoidance and recovery of preferential and/or fraudulent transfers of $20,000.00 made by Debtor to Vanezuela in the year preceding the bankruptcy filing. Doc. #23, Tr.'s Decl. at ¶ 3. Vanezuela and Trustee have agreed to settle the claim of the avoidable transfers to Vanezuela with a payment of $10,000.00 to the estate. Id. at ¶ 4; Ex. A, Doc. #24. Trustee is in receipt of the $10,000.00. Doc. #23, Tr.'s Decl. at ¶ 5. Additionally, Trustee states that although Vanezuela has failed to pay the full $20,000.00 preference payment, pursuing litigation for recovery of $10,000.00 would not be in the best interest of the estate or the parties. Id. at ¶ 6.

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. #21. Although Trustee believes she will ultimately succeed in litigation, the terms of the settlement with Vanezuela obviates the need to litigate the estate's claims. Id.; Doc. #23, Tr.'s Decl. at ¶ 4. The litigation would be a mix of law and facts. Doc. #21. However, Trustee does not believe Vanezuela has any defenses to the estate's claims. Id. The settlement provides the estate with money for the alleged preference payment without the expenses of litigation costs or issues in the matter of collection. Id. Trustee believes in her business judgment that the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Id. 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 Rule 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 Vanezuela is approved.