

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, November 30, 2022
Place: Department A – Courtroom #11
Fresno, California

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[CAE-1](#)

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

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

2. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-44](#)

CONFIRMATION HEARING RE: CHAPTER 11 PLAN
10-27-2022 [[1235](#)]

LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

3. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-48](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
11-8-2022 [[1250](#)]

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 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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.

As an informational matter, the movant filed two mandatory certificates of service forms (EDC Form 7-005, Rev. 10/22) with respect to service of the motion that counsel was required to use starting on November 1, 2022 pursuant to General Order 22-03. Doc. ##1255, 1256. However, the movant could have shown all service of the motion on one certificate of service form. The movant served

notice of the hearing on all creditors and served the notice and motion papers on a smaller list. Instead of filing a separate certificate of service with respect to the notice of hearing on all creditors, the movant could have, in addition to indicating service of all pleadings on Debtor(s), Trustee, U.S. Trustee, and Persons who have filed a Request for Notice, checked the "All creditors and parties in interest (Notice of Hearing Only)" in section 5 of Doc. #1256 and attached the list of creditors receiving notice as Attachment 6B2. The mandatory certificate of service form is designed so that all pleadings served can be listed and, if the "All creditors and parties in interest (Notice of Hearing Only)" or "Only creditors that have filed claims (Notice of Hearing Only)" boxes are checked, then that indicates that those creditors and parties in interest were served with only a copy of the notice of hearing and were not served with the other pleadings.

As a procedural matter, the movant checked the box indicating that service was made pursuant to both Federal Rule of Bankruptcy Procedure ("Rule") 7004 and 7005. When the movant served all creditors with notice of the hearing only, that service was made pursuant to Rule 7005, and the boxes in section 6A did not need to be checked. If service was being made pursuant to Rule 7004, then the appropriate boxes in section 6A would have needed to be checked and the appropriate attachment attached to the certificate of service form. In this case, neither certificate of service filed with the motion (Doc. ##1255, 1256) included an Attachment 6A1, which is required if service is effectuated under Rule 7004. If the movant intended to effectuate service pursuant to Rule 7004, the movant should have included an Attachment 6A1.

The Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtors and debtors in possession Eduardo Zavala Garcia and Amalia Perez Garcia (collectively, "DIP"), requests allowance of interim compensation in the amount of \$11,092.50 and reimbursement for expenses in the amount of \$739.01 for services rendered from October 1, 2022 through October 31, 2022. Doc. #1250. According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #33. This is Movant's nineteenth fee application in this case. The court has previously approved a total of \$214,276.09 in interim fees and expenses, of which \$177,402.20 have been paid to Movant. Doc. #1250. DIP consents to the amount requested in Movant's application. Decl. of Eduardo Zavala Garcia, Doc. #1252.

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). In determining the amount of reasonable compensation to be awarded to counsel, 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 case administration; (2) preparing an ex parte application to hold a hearing to approve DIP's third amended disclosure statement on shortened time; (3) preparing DIP's third and fourth amended plans of reorganization and related disclosure statements; (4) preparing motion for order amending orders authorizing DIP to borrow money secured by real property; (5) preparing DIP's ninth status conference statement; and (6) preparing and filing fee and employment applications. Decl. of Leonard K. Welsh, Doc. #1253; Ex. B, Doc. #1254. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$11,092.50 and reimbursement of expenses in the amount of \$739.01. 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. Movant may draw on any retainer held. 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 consistent with the priorities of the Bankruptcy Code.

4. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
10-24-2022 [\[261\]](#)

JAMES SALVEN/MV
LEONARD WELSH/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.

James E. Salven, CPA ("Movant"), accountant for the debtors in this chapter 12 case, requests an allowance of interim compensation in the amount of \$19,950.00 and reimbursement for expenses in the amount of \$272.80 for services rendered from February 24, 2021 through September 30, 2022. Doc. #261. This is Movant's second fee application in this case. The court has previously approved a total of \$19,887.85 in interim fees and expenses, which has been paid to Movant in full through the plan. Decl. of James E. Salven, Doc. #263. Employment was authorized by this court on July 10, 2020 to perform accounting services on behalf of the estate. Doc. #82. The debtors consent to the amount requested in Movant's application. Doc. #264.

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). 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) analyzing data and preparing monthly operating reports; (2) completing and transmitting reports; and (3) consulting with the debtors' counsel and the debtors. Exs. A & B, Doc. #265. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$19,950.00 and reimbursement for expenses in the amount of \$272.80. 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. Movant may draw on any retainer held. Movant is authorized to withdraw any amount held in trust with the remainder to be paid pursuant to the confirmed chapter 12 plan.

5. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
10-26-2022 [\[508\]](#)

JAMES SALVEN/MV
LEONARD WELSH/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.

James E. Salven, CPA ("Movant"), accountant for the debtors in this chapter 12 case, requests an allowance of interim compensation in the amount of \$31,650.00 and reimbursement for expenses in the amount of \$369.47 for services rendered from February 24, 2021 through September 30, 2022. Doc. #508. This is Movant's second fee application in this case. The court has previously approved a total of \$29,102.15 in interim fees and expenses, of which \$18,200.00 has been paid to Movant through the plan. Doc. #510. Employment was authorized by this court on July 10, 2020 to perform accounting services on behalf of the estate. Doc. #221. The debtors consent to the amount requested in Movant's application. Doc. #512.

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). 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) analyzing data and preparing monthly operating reports; (2) completing and transmitting reports; (3) calculating and reviewing tax implications; (4) reviewing and commenting on proposed agriculture lease; and (5) consulting with the debtors' counsel and the debtors. Doc. #511. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$31,650.00 and reimbursement for expenses in the amount of \$369.47. 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. Movant may draw on any retainer held. Movant is authorized to withdraw any amount held in trust with the remainder to be paid pursuant to the confirmed chapter 12 plan.

6. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[LKW-7](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LEONARD K. WELSH FOR
LEONARD K. WELSH, DEBTORS ATTORNEY(S)
11-9-2022 [\[518\]](#)

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 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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 an amended certificate of service is filed before the hearing. 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.

As a procedural matter, the movant failed to include the date on which service was accomplished in section 4 of the certificate of service form and the declarant did not sign the certificate of service. Doc. #523. The court will hear the matter if an amended certificate of service addressing these two deficiencies is filed before the hearing.

The Law Offices of Leonard K. Welsh ("Movant"), successor counsel for Bhajan Singh and Balvinder Kaur (collectively, "Debtors"), the debtors in this chapter 12 case, requests allowance of interim compensation in the amount of \$3,552.50 and reimbursement for expenses in the amount of \$167.65 for services rendered from September 1, 2022 through October 31, 2022. Doc. #520. According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #449. Movant requests that the fees and expenses to be paid by Debtors from wages earned by Debtors and income generated from the operation of their business. Doc. #518; Decl. of Bhajan Singh, Doc. #521; Decl. of Leonard K. Welsh, Doc. #520.

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 12 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 12 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). 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).

Movant's services included, without limitation: (1) communicating with the chapter 12 trustee and creditors; (2) conducting legal research regarding the use, sale, or lease of property of the estate in a chapter 12 case; (3) preparing motion for order authorizing Debtors to enter into agriculture lease; (4) advising Debtors regarding an adversary proceeding; and (5) general case administration. Ex. B, Doc. #522. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$3,552.50 and reimbursement for expenses in the amount of \$167.65 to be paid in a manner consistent with the terms of the confirmed plan. 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. Movant may draw on any trust account held.

7. [22-10778](#)-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
5-8-2022 [\[1\]](#)

NOEL KNIGHT/ATTY. FOR DBT.

NO RULING.

8. [22-10778](#)-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
[FW-1](#)

CONTINUED RE: MOTION FOR RELIEF FROM AUTOMATIC STAY
7-13-2022 [\[58\]](#)

DAKOTA NOTE, LLC/MV
NOEL KNIGHT/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.
RESPONSIVE PLEADING
WITHDRAWN 11/21/22

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on November 21, 2022. Doc. #266.

11:00 AM

1. [22-11261](#)-A-7 **IN RE: ASHLEE ARMSTRONG**

PRO SE REAFFIRMATION AGREEMENT WITH ONEMAIN FINANCIAL GROUP, LLC
11-4-2022 [[24](#)]

NO RULING.

1. [22-11613](#)-A-7 **IN RE: BALVINDER SINGH AND SATWANT KAUR**
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-20-2022 [\[12\]](#)

NATIONSTAR MORTGAGE LLC/MV
GURJIT SRAI/ATTY. FOR DBT.
CASSANDRA RICHEY/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 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, Nationstar Mortgage LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to real property located at 3449 West Wrenwood Avenue, Fresno, CA ("Property"). Doc. #12.

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 have failed to make at least 32 complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$59,099.64 and the entire balance of \$283,815.96 is due. Decl. of Mary Gracia, Doc. #14.

The court also finds that the debtors do not have any equity in the Property and the Property is not necessary to an effective reorganization because the debtors are in chapter 7. The property is valued at \$250,000.00 and the debtors

owe \$283,815.96. Gracia Decl., Doc. #14. According to the debtors' Statement of Intention, the Property will be surrendered. Doc. #1.

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

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

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 32 payments, both pre- and post-petition to Movant, have no equity in the Property, and intend to surrender the Property.

2. [03-19034](#)-A-7 **IN RE: MANUEL/ISABEL PARAMO**
[FW-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT AND/OR MOTION FOR COMPENSATION FOR TOBI MILLROOD, SPECIAL COUNSEL(S)
11-2-2022 [33]

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

As an informational matter, the movant filed two mandatory certificates of service forms (EDC Form 7-005, Rev. 10/22) with respect to service of the motion that counsel was required to use starting on November 1, 2022 pursuant to General Order 22-03. Doc. ##37, 38. However, the movant could have shown all service of the motion on one certificate of service form. The movant served notice of the hearing on all creditors and served the notice and motion papers on a smaller list. Instead of filing a separate certificate of service with respect to the notice of hearing on all creditors, the movant could have, in

addition to indicating service of all pleadings on Debtor(s), Trustee, U.S. Trustee, and Persons who have filed a Request for Notice, checked the "All creditors and parties in interest (Notice of Hearing Only)" in section 5 of Doc. #37 and attached the list of creditors receiving notice as Attachment 6B2. The mandatory certificate of service form is designed so that all pleadings served can be listed and, if the "All creditors and parties in interest (Notice of Hearing Only)" or "Only creditors that have filed claims (Notice of Hearing Only)" boxes are checked, then that indicates that those creditors and parties in interest were served with only a copy of the notice of hearing and were not served with the other pleadings.

Peter L. Fear ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Manuel E. Paramo and Isabel E. Paramo, moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019 approving the compromise of all claims and disputes arising out of the participation of debtor Isabel E. Paramo ("Debtor") in a multi-district litigation against the manufacturer of a defective device which was implanted into Debtor over 20 years ago (the "MDL"). Doc. #33. Debtor retained Kline & Specter, P.C. to pursue a product liability claim against the manufacturer of the allegedly defective product ("Liability Claim"). Doc. #33. The court authorized the employment of Special Counsel on July 14, 2022. Order, Doc. #32. Trustee also requests authorization of final compensation for Special Counsel pursuant to 11 U.S.C. § 328 as required by the Order. Doc. #33; Order, Doc. #32.

Settlement Agreement

Among the assets of the estate is a claim against a device manufacturer for injuries to Debtor, which is now settled in the MDL against the manufacturer. Decl. of Tobi Millrood, Doc. #36. As part of the MDL settlement agreement, a fund was created by the court overseeing the MDL. Millrood Decl., Doc. #36. Special Counsel submitted Debtor's claim to the claim administrator who determined that Debtor was entitled to a gross award of \$100,000.00. Millrood Decl., Doc. #36. Deducted from the gross award are MDL fees and costs, which include a 5% "common benefit assessment" ordered by the court, a 2% reduction in attorney's fees, a nominal reimbursement to Medicare (\$6.04), along with fees to Archer System for lien resolution and assisting Special Counsel with the bankruptcy case. Millrood Decl., Doc. #36. The court has previously authorized the employment of Special Counsel pursuant to a contingency fee agreement. See Order, Doc. #32. The projected amount to the bankruptcy estate is \$53,097.21. Doc. #33.

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 Properties), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. 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. #33. Special Counsel represents that the resolution of claims in the MDL is complicated, time consuming, and may be prohibitively expensive if pursued individually. Millrood Decl., Doc. #36. The settlement will result in a cash payment to the estate that should be sufficient to pay any creditor who files a claim in this bankruptcy case at

least a dividend, if not be paid in full. Doc. #33. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, Trustee's request to authorize the compromise is GRANTED, and the settlement is approved.

Final Compensation

Trustee requests an allowance of final compensation and reimbursement for expenses payable to Special Counsel for services rendered in connection with the MDL. Decl. of Peter L. Fear, Doc. #35. Trustee was authorized to employ Special Counsel on a contingency basis whereby Special Counsel would receive 40% plus fees and cost incurred. Order, Doc. #32. The total fees to be awarded Special Counsel are \$40,771.75. Doc. #33.

The trustee may, with the court's approval, employ a professional person on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. 11 U.S.C. § 328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

Here, the court previously authorized the employment of Special Counsel expressly under 11 U.S.C. §§ 327(e) and 328. Order, Doc. #32. The Order authorized Trustee to pay Special Counsel pursuant to the contingency fee agreement only after the settlement agreement was approved by this court pursuant to Federal Rule of Bankruptcy Procedure 9019. Order, Doc. #32. Upon the granting of this motion, the settlement agreement is approved.

Trustee is authorized to pay Special Counsel in a manner consistent with Trustee's motion and the court's Order Granting Trustee's Motion for Order Authorizing Retroactive Employment of Special Counsel to the Estate Pursuant to 11 U.S.C. § 328(a), Doc. #32.

Accordingly, Trustee's motion is GRANTED. The settlement is approved, Trustee is authorized to enter into, execute, and deliver any releases and other documents as may be required to effectuate the settlement, payment to Special Counsel is authorized, and Trustee is authorized to pay the MDL deductions as required by the settlement.

3. [22-11859](#)-A-7 **IN RE: MARGARET KRUG**
[MJA-1](#)

MOTION TO DISMISS DUPLICATE CASE
11-4-2022 [[1](#) [0](#)]

MARGARET KRUG/MV
MICHAEL ARNOLD/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 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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.

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. 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>.

Margaret A. Krug ("Debtor"), moves to dismiss this duplicative Chapter 7 case on the grounds that Debtor's chapter 7 bankruptcy petition previously filed on March 23, 2022, commencing Case No. 22-10462-B-7 ("First Case"), was inadvertently filed for a second time on October 31, 2022, commencing the instant case, Case No. 22-11859-A-7 ("Second Case"). Doc. #10.

A debtor does not have an absolute right to dismiss a voluntary Chapter 7 case. Bartee v. Ainsworth (In re Bartee), 317 B.R. 362, 366 (B.A.P. 9th Cir. 2004). Section 707 of the Bankruptcy Code governs dismissal of a chapter 7 case, whereby the court "may dismiss a case under this chapter only after notice and a hearing and only for cause." 11 U.S.C. § 707(a); In re Kaur, 510 B.R. 281, 285 (Bankr. E.D. Cal. 2014). Regarding cause, a voluntary Chapter 7 debtor is entitled to dismissal so long as such dismissal will cause no legal prejudice to interested parties. Kaur, 510 B.R. at 286 (citations omitted).

The court finds that dismissing the Second Case will cause no legal prejudice to interested parties because Debtor is active in the First Case. A review of the docket in that case shows that Debtor appeared at the 341 Meeting in the First Case. Case No. 22-10462-B-7, Trustee's Report dated 4/20/2022. The court finds that cause exists to dismiss the Second Case.

Accordingly, this motion is GRANTED.

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-6-2022 [\[16\]](#)

AUTONATION CHRYSLER DODGE JEEP RAM VALENCIA/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
ELIZABETH KOLAR/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 the failure of the motion papers to comply with numerous Local Rules of Practice ("LBR").

First, the motion and supporting papers do not comply with LBR 9014-1(c). "In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6). Neither the motion nor the supporting pleadings include a Docket Control Number.

Second, the motion and supporting papers do not comply with LBR 9004-2(c)(1), which requires that "[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 shall be filed as separate documents." This motion was filed as a single 36-page document that included the movant's motion, declaration, exhibits and proof of service. Doc. #16. The motion also does not comply with LBR 9004-2(d), which requires exhibits to be filed as a separate document together with an exhibit index.

Third, the Notice of Hearing filed in connection with this motion does not comply with three subsections of LBR 9014-1(d)(3)(B). The Notice of Hearing does not comply with LBR 9014-1(d)(3)(B)(i), which requires that the notice include the names and addresses of persons who must be served with any opposition. The Notice of Hearing also does not comply with LBR 9014-1(d)(3)(B)(ii), which requires the notice advise potential respondents that the failure to timely file written opposition may result in the motion being resolved without oral arguments and the striking of untimely written opposition, if written opposition is required. Finally, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(iii), which 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.

Fourth, the Notice of Hearing does not comply with LBR 9014-1(e)(3), which requires that the proof of service for all pleadings and documents filed in support or opposition to a motion shall be filed as a separate document and

bear the relevant Docket Control Number. The proof of service filed in connection with the Notice of Hearing did not include a Docket Control Number and was filed as a single document that included the movant's Notice of Hearing. Doc. #19.

Finally, a relief from stay summary sheet, Form EDC 3-468, was not filed with the motion as required by LBR 4001-1(a)(3).

The court encourages counsel for the moving party to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

5. [22-11475](#)-A-7 **IN RE: CATALINA MONTEZ**
[ICE-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT
SEC. 341(A) MEETING OF CREDITORS
10-26-2022 [\[16\]](#)

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtor shall attend the meeting of creditors rescheduled for November 30, 2022 at 1:30 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtors' discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.

6. [22-11095](#)-A-7 **IN RE: SEAN/KRISTINA MOSS**
[DWE-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
7-28-2022 [\[15\]](#)

FREEDOM MORTGAGE CORPORATION/MV
SCOTT LYONS/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.
DISCHARGED 10/25/22, RESPONSIVE PLEADING

NO RULING.