UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, December 3, 2020
Place: Department A – 510 19th Street
Bakersfield, 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.

9:00 AM

1. 20-13104-A-13 **IN RE: MARIA/RICARDO CUEVAS**
EAT-1

OBJECTION TO CONFIRMATION OF PLAN BY LOANCARE, LLC
11-1-2020 [19]

LOANCARE, LLC/MV
LEROY AUSTIN/ATTY. FOR DBT.
CASSANDRA RICHEY/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. 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 debtors filed their Chapter 13 plan ("Plan") on September 25, 2020. Doc. #2. Loancare LLC ("Creditor") objects to confirmation of the Plan on the grounds that the proposed Plan payment is insufficient to maintain ongoing mortgage payments to Creditor and to pay pre-petition arrears. Doc. #19.

Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under § 501, is deemed allowed unless a party in interest objects. Creditor filed its proof of claim on November 24, 2020. Claim 7.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #2. The debtors' plan fails to account for Creditor's claimed arrears. Claim 7-1; Doc. #2. Additionally, the Plan calls for the Chapter 13 trustee to maintain all post-petition monthly payments to Creditor, and requires that "each monthly plan payment must be sufficient to pay in full . . . post-petition monthly payments due on Class 1 claims." Plan, § 5.02, Doc. #2. Section 2.01 defines monthly plan payments as monthly payments of $675. Doc. #2. Creditors proof of claim establishes a monthly payment due to Creditor of $1,921.00. Claim 7.

The court notes that the debtors filed a first amended plan on November 30, 2020 (Doc. #28), which supersedes the Plan.

Accordingly, pending any opposition at hearing, the objection will be SUSTAINED.

2. 18-13343-A-13 **IN RE: EUGENE/ANDREA WILLIAMS**
LKW-8

MOTION FOR ORDER SUSPENDING PLAN PAYMENTS
11-10-2020 [92]

EUGENE WILLIAMS/MV
LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

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. The court will issue an order if a further hearing is necessary.

The court confirmed the third modified Chapter 13 plan of Eugene Robert Williams and Andrea Joi Williams (together, "Debtors") on March 2, 2019. Doc. #61. Debtors now move this court for an order suspending their Chapter 13 plan payments. Mot., Doc. #92. Debtors' request is based on a determination dated April 5, 2020, by the Social Security Administration ("SSA") that Debtors received overpayments from the SSA totaling $32,636.00 and a portion of Debtors' monthly SSA payments will be "held back" commencing in November 2020 until the overpayment is satisfied. Doc. #94. The monthly payments from the SSA make up over half of Debtors' monthly income. Id. Debtors plan to appeal the SSA's determination and request an order from the court suspending their Chapter 13 payments until the dispute is resolved and Debtors' monthly SSA payments are reinstated. Id. Debtors' motion was not filed with a proposed modified plan and was not noticed and set for hearing in the manner prescribed by the Local Rules of Practice ("LBR") for modification of a Chapter 13 plan after plan confirmation.

While not required, the Chapter 13 trustee ("Trustee") filed a written opposition to Debtors' motion contending that (1) Debtors' motion, as a motion to modify a Chapter 13 plan, failed to conform with LBR 3015-1 and (2) Debtors are not entitled to an indefinite suspension of plan payments. Tr.'s Opp'n, Doc. #98. Debtors replied, arguing that a request to suspend plan payments is not a plan modification subject to the requirements of LBR 3015-1 and Debtors' are entitled to a suspension of plan payments pending the resolution of Debtors' dispute with the SSA. Doc. #100. After considering the pleadings filed and for the reasons set forth below, the court is inclined to deny Debtors' motion.

11 U.S.C. § 1329(a) permits the modification of a Chapter 13 plan at the request of the debtor "any time after confirmation of the plan but before the completion of payments under such plan." Chapter 13 plan modification may be permitted to increase or reduce the amount of payments on claims of a particular class provided for by the plan or to extend or reduce the time for plan payments. 11 U.S.C. § 1329(a)(1), (2).

LBR 3015-1 sets out additional rules and requirements for modifying Chapter 13 plans, including the procedures to modify plans after confirmation and the

procedures related to plan payment defaults. LBR 3015-1(d), (g). “If the debtor . . . modifies the chapter 13 plan after confirmation pursuant to 11 U.S.C. § 1329, the plan proponent shall file and serve the modified chapter 13 plan together with a motion to confirm it.” LBR 3015-1(d)(2). LBR 3015-1(d)(3), however, establishes a different procedure for the court to approve “nonmaterial modifications”. “To be regarded as nonmaterial, the modification must not delay or reduce the dividend payable on account of any claim or otherwise modify the claim of any creditor absent the affected creditor’s written consent.” LBR 3015-1(d)(3).

Debtors’ request for relief stated in their motion to suspend all plan payments until the dispute with the SSA is resolved. Debtors’ plan payments are used to pay administrative expenses and secured claims, including post-petition mortgage payments on Debtors’ residence. Doc. ##1, 44. The requested suspension of all plan payments for an unspecified amount of time is not a “nonmaterial modification” because the suspension of payments delays the monthly dividend payable on account of administrative expenses and secured claims without the written consent of the affected creditors. Accordingly, the language of LBR 3015-1(d) supports Trustee’s assertion that a motion to suspend plan payments is a request to modify the Chapter 13 plan.

The language governing dismissal of a chapter 13 case due to plan payment defaults in LBR 3015-1(g) further supports the court’s determination that a motion to suspend plan payments is a request to modify a plan. Upon defaulting on plan payments and notification by the trustee, the debtor may file a modified plan and a motion to confirm the modified plan. LBR 3015-1(g)(3). “If the debtor’s financial condition has materially changed, amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.” LBR 3015-1(g)(3).

In arguing that a motion to suspend plan payments is not a motion to modify, Debtors cite to In re Kapp, 315 B.R. 87 (Bankr. W.D. Mo. 2004). However, Kapp is distinguishable from the facts of this case and the LBR. In Kapp, the court explained that the scenario in which a motion to suspend payments typically comes before the bankruptcy court in the Western District of Missouri. Kapp, 315 B.R. at 90. “[A] motion to suspend payments occurs after debtors are already delinquent. In this case, as in many cases, the Chapter 13 trustee filed a motion to dismiss for a default in plan payments, then debtors filed a motion to suspend the payments that made up the default.” Id. The scenario described by the court in Kapp addresses the same situation contemplated by LBR 3015-1(g). Indeed, the court in Kapp referenced their own Local Rule 3093-1, which specifically addresses plan payment suspension. Id. Rather than have the debtor file an amended plan and schedules, the court in Kapp permitted the debtor to move for an order temporarily suspending the debtors’ plan payments that were already in default. Id. That is not the case here.

Based on the foregoing, the court holds Debtors’ request to suspend plan payments is a request to modify the plan. Accordingly, the requirements of LBR 3015-1(d) must be met, and Debtors’ motion is DENIED.

3. 20-11354-A-13 **IN RE: SERGIO ANDRADE**
RSW-2

CONTINUED MOTION TO CONFIRM PLAN
6-26-2020 [41]

SERGIO ANDRADE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

4. 20-11354-A-13 **IN RE: SERGIO ANDRADE**
RSW-4

CONTINUED MOTION TO AVOID LIEN OF FRANCISCO JAVIER AVALOS
7-17-2020 [56]

SERGIO ANDRADE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

5. 20-12867-A-13 **IN RE: ULF JENSEN AND BARBARA KIRKEGAARD-JENSEN**
MHM-1

CONTINUED MOTION TO DISMISS CASE
10-8-2020 [21]

MICHAEL MEYER/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

6. 20-10486-A-13 **IN RE: ELIZABETH/LANRE JOHNSON**
MHM-1

MOTION TO DISMISS CASE
11-5-2020 [94]

MICHAEL MEYER/MV
CHINONYE UGORJI/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

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

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

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors; failure to provide Credit Counseling Certificates; failure to file and set a plan for hearing with notice to creditors; and failure to provide Official Form 122C-1, Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period. Doc #94.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for "cause". "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors; failure to provide Credit Counseling Certificates; failure to file and set a plan for hearing with notice to creditors; and failure to provide Official Form 122C-1.

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

7. 18-11292-A-13 **IN RE: ANGEL PEREZ**
MHM-2

STATUS CONFERENCE RE: CHAPTER 13 TRUSTEE'S FORBEARANCE RE: AMENDED/MODIFIED PLAN
11-20-2020 [152]

TIMOTHY SPRINGER/ATTY. FOR DBT.

NO RULING.

10:00 AM

1. 10-16001-A-7 **IN RE: RANDY/VONDA PARKER**
LNH-3

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH RANDY LAWRENCE PARKER AND VONDA LAREE PARKER AND/OR MOTION FOR COMPENSATION FOR PARKER WAICHMAN LLP, SPECIAL COUNSEL(S)
11-5-2020 [38]

RANDELL PARKER/MV
JAMES YORO/ATTY. FOR DBT.
LISA HOLDER/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.

Motion to Approve Settlement Agreement

Randell Parker ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Randy Lawrence Parker and Vonda Laree Parker (collectively, "Debtors"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the settlement of claims held by Debtors and the estate against a medical device manufacturer ("Manufacturer"). Doc. #38.

Among the assets of the estate is a products liability claim against Manufacturer. Tr.'s Mem., Doc. #40. Debtors and the Trustee have agreed to settle the products liability claim for a gross settlement of $45,912.38 resulting in a net payment of $23,702.46 to the estate. Tr.'s Decl., Doc. #41.

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. #40. Although Manufacturer's identity is undisclosed due to the terms of the settlement agreement, Trustee asserts that, absent settlement, Manufacturer is highly motivated and well-funded to fully litigate, and potentially appeal, the merits of Debtors' claim. Tr.'s Decl., Doc. #41. Products liability litigation is highly dependent on expert testimony and the results of a trial are difficult to predict. Doc. #41. The settlement places a substantial amount of money in the estate, without the expenses of litigation costs or issues in the matter of collection. Id. Trustee believes in his 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 Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion is GRANTED, and the settlement is approved.

Application for Compensation

On October 15, 2020, the court entered an order authorizing Trustee to employ Parker Waichman LLP, Neblett Beard & Arsenault, and The Drakulich Law Firm (collectively, "Litigation Counsel"). Order, Doc. #33. Pursuant to 11 U.S.C. § 328(a), the court authorized a 40% contingency fee and reimbursement for expenses subject to the court's final approval upon application under § 330. Doc. #33. Presently, Trustee requests an allowance of final compensation and reimbursement for expenses for services rendered by Litigation Counsel. Doc. #38.

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).

Litigation Counsel's services included, without limitation, securing a gross settlement amount for Debtors and the estate of $45,912.38. Doc. #41. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation and reimbursement for expenses consistent with the Disbursement Summary marked Exhibit A, Doc. #42 and the Order authorizing employment and compensation dated October 15, 2020 at Doc. #33. The 14-day stay of enforcement under Fed. R. Bankr. P. 7062 is waived.

2. 17-10106-A-7 **IN RE: RANDEEP SINGH**
DJP-3

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH STEVEN ZABARSKY
11-4-2020 [142]

PETER FEAR/MV
PATRICK GREENWELL/ATTY. FOR DBT.
DON POOL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Peter L. Fear ("Trustee"), the successor Chapter 7 trustee of the bankruptcy estate of Randeep Singh ("Debtor"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of the claims and disputes between Debtor and the estate and Steven Zabarsky ("Zabarsky") arising out of a commercial lease agreement between Debtor and Zabarsky. Doc. #144.

Among the assets of the estate is a claim against Zabarsky filed in Fresno County Superior Court as case no. 18CECG04342. Tr.'s Decl., Doc. #144. Debtor and the Trustee have agreed to settle the claim against Zabarsky for a payment of $15,000.00 to the estate. Id. Payment is to be made by Zabarsky first in a $6,000 payment within ten days of the court granting this motion and then monthly payments of $1,500 for six months beginning thirty days after the due date of the first payment. Doc. #144.

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. #144. Trustee asserts that the likelihood of success in the litigation is uncertain, but the terms of the settlement obviate the need to continue litigation of the estate's claims. Doc. #144. Trustee believes that the cost to the estate of pursuing the claims is equal to the estate's proposed recovery. Doc. #144. The settlement provides the estate with more than half the amount originally sought to be recovered from litigation and places that amount back in the estate, without additional costs of litigation or issues in the matter of collection. Id. Trustee believes in his 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 Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion is GRANTED, and the settlement between Trustee and Zabarsky is approved.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

3. 19-14310-A-7 **IN RE: TRACY FLAHERTY**
UST-1

CONTINUED MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B)
7-2-2020 [85]

TRACY DAVIS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
TREVOR FEHR/ATTY. FOR MV.
RESPONSIVE PLEADING

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 Will submit a proposed order after the hearing.

Tracy Hope Davis, the United States Trustee ("UST"), filed, served and set this motion for hearing with at least 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Doc. ##85-90. On October 8, 2020, the court entered an order (the "Order") permitting the debtor to file additional papers no later than November 5, 2020, and permitting UST to file additional reply papers no later than November 12, 2020. Doc. #105. The court continued the hearing on the motion to dismiss to December 3, 2020 at 10:00 a.m. Doc. #105.

Both the debtor and UST timely filed additional papers, and this matter will proceed as scheduled. However, the debtor filed further papers on November 21,

2020, well after the November 5 deadline stated in the Order and without leave of this court. Because Debtor's untimely additional papers do not alter this court's decision, the court will not exclude them.

UST moves the court to dismiss the Chapter 7 bankruptcy case of Tracy Susanne Flaherty ("Debtor") for abuse under 11 U.S.C. § 707(b)(1), (2), and (3)(B). UST's Mem., Doc. #89. UST demonstrates, and Debtor agrees, that the presumption of abuse under § 707(b)(2) applies to the facts of Debtor's case. Doc. #89; Debtor's Resp., Doc. #110. Since the filing of UST's motion, Debtor filed amended Schedules I and J, as well as means test forms 122A-1 and 122A-2. Doc. ##107, 108. Determining abuse under § 707(b)(2) requires the application of a strict statutory formula. Because the court finds that the presumption of abuse arises and is not rebutted, UST's motion to dismiss will be granted under § 707(b)(2).

The court "may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts . . . if it finds that the granting of relief would be an abuse of the provisions of" Chapter 7. 11 U.S.C. § 707(b)(1). The court may find abuse if the presumption of abuse arises pursuant to § 707(b)(2) or, under § 707(b)(3)(B), if the totality of the circumstances of the debtor's financial situation demonstrates abuse. 11 U.S.C. § 707(b)(3); In re Katz, 451 B.R. 512, 515 (Bankr. C.D. Cal. 2011).

The provisions of § 707(b)(2) create a formulaic test to determine whether Debtor's chapter 7 bankruptcy case is presumed abusive. Whether the presumption of abuse arises and the case should be dismissed depends on the means test calculation. Reed v. Anderson (In re Reed), 422 B.R. 214, 221 (C.D. Cal. 2009). The means test is a mechanical computation that demonstrates either the presumption of abuse or not, and the court has minimal discretion. See Katz, 451 B.R. at 519. Section 707(b)(2)(A) establishes a presumption of abuse "if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of [] 25% of the debtor's nonpriority unsecured claims in the case, or $8,175, whichever is greater, or [] $13,650." 11 U.S.C. § 707(b)(2)(A)(i). Based on this calculation, if a debtor's monthly disposable income exceeds $227.50 per month (or $13,650 over a period of 60 months), "a presumption of abuse arises and the debtor's case can be dismissed under § 707(b)(2)." Reed, 422 B.R. at 221.

Section 101(10A)(A), as applied to this case, defines current monthly income ("CMI") as "the average monthly income from all sources that the debtor receives . . . without regard to whether such income is taxable income, derived during the 6-month period ending on [] the last day of the calendar month immediately preceding the date of commencement of the case . . . ." 11 U.S.C. § 101(10A)(A)(i).

Debtor's CMI listed on Form 122A-1 filed November 5, 2020 is $12,434.42. Doc. #108. Debtor's monthly disposable income after the statutory deductions is $2,693.86, which multiplied by 60 totals $161,631.60. Because Debtor's monthly disposable income, multiplied by 60 months, is greater than $13,650 the presumption of abuse arises.

The presumption of abuse under § 707(b)(2) "may only be rebutted by demonstrating special circumstances . . . to the extent such special circumstances that [sic] justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative." 11 U.S.C. § 707(b)(2)(B)(i). The debtor must demonstrate special circumstances by "itemiz[ing] each additional expense or adjustment of income and [providing] documentation for such expense or adjustment to income [and] a detailed

explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable." 11 U.S.C. § 707(b)(2)(B)(ii). The debtor must also "attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required." 11 U.S.C. § 707(b)(2)(B)(iii).

Part 4 of Official Form 122A-2, the Chapter 7 Means Test Calculation form, provides a space for the debtor to indicate whether special circumstances justify additional expenses or adjustments to CMI for which there is no reasonable alternative. Debtor listed "business expenses" of $208.33 and "reduced income from new employment with reduced income taxes calculated" of $3,177.23 in the space provided for special circumstances. Doc. #108. However, Debtor's responsive papers repeatedly state that the change in income and expenses are not "special circumstances." See Debtor's Resp., ¶6, Doc. #110. Because the Bankruptcy Code requires a showing of special circumstances to rebut the presumption of abuse, the court will treat Debtor's change in income and expenses as allegations of special circumstances.

Debtor argues that her reduced monthly income, caused by a change in employment, justifies adjusting her CMI to an amount less than the statutory six-month average. Debtor's Resp., Doc. #110; Form 122A-2, Doc. #108. Debtor argues that her monthly income for purposes of the means test should be reduced to equal her current actual income. Attached to Debtor's Response filed on November 5, 2020 is a pay statement that appears to reflect Debtor's current income (the "Pay Stub"). Doc. #110. The Pay Stub shows that Debtor's gross pay was $4,835.01 during the period starting September 27, 2020 and ending October 10, 2020. Doc. #110. As demonstrated in UST's Reply, Doc. #113, by annualizing the Pay Stub, Debtor's current gross monthly income is $10,475.85. Debtor claims that this new monthly income rebuts the presumption of abuse.

As UST acknowledges in its reply, reducing Debtor's CMI from $12,434.42 to $10,475.85 does not account for the $3,177.23 reduction in income asserted by Debtor as a special circumstance on Form 122A-2. Based on the evidence presented to the court by Debtor, it is unclear to the court how Debtor's income is reduced by $3,177.23 as shown on Form 122A-2. Because the Bankruptcy Code requires itemized documentation and detailed explanations supporting adjustments to income to rebut the presumption of abuse, Debtor has not met her burden of providing sufficient itemized documentation and detailed explanations for this court to find that Debtor's current actual income should be reduced by $3,177.23 for purposes of the means test calculation.

Instead, the court will use the information from the Pay Stub to make adjustments to Debtor's income. Extrapolating from the Pay Stub, Debtor's current gross monthly income is $10,475.85. As to the expense deductions listed by Debtor on her means test calculation form, the court will use all expenses listed by Debtor for the purpose of illustrating the statutory formula of § 707(b) is still not rebutted based on Debtor's current income as demonstrated by the Pay Stub. The court does not make any findings or determinations regarding the necessity or reasonableness of any expenses asserted by Debtor. Further, for the purpose of demonstrating the presumption of abuse, the court will not add Debtor's income from other sources to Debtor's annualized gross monthly income.

Taking Debtor's annualized monthly income of $10,475.85 and deducting all of Debtor's Form 122A-2 deductions totaling $9,740.56, Debtor would have monthly disposable income of $735.29, totaling $44,117.40 over the course of 60 months. This is greater than the statutory maximum disposable income of $227.50 per month ($13,650 over 60 months), and the presumption of abuse persists.

Therefore, reducing Debtor's income for purposes of the means test to $10,475.85 does not rebut the presumption of abuse under § 707(b).

However, Debtor also asserts as a special circumstance a business expense of $208.33. Doc. #108. Without providing any itemized documentation or detailed explanation for this special circumstance as required by the Bankruptcy Code, the court cannot determine the business expense to be a special circumstance. However, the court notes that even if Debtor were to add the monthly business expense of $208.33 to her expenses, the presumption of abuse under § 707(b)(2) still would not be rebutted. That is, Debtor's annualized monthly income of $10,475.85, less all of Debtor's deductions totaling $9,740.56, less an additional business expense of $208.33, would still result in Debtor retaining a monthly disposable income of $526.96 ($31,617.60 over 60 months).

11 U.S.C. § 707(b)(2)(B)(iv) dictates that "the presumption of abuse may only be rebutted if the [special circumstances] cause the product of the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than the lesser of [] 25 percent of the debtor's nonpriority unsecured claims, or $8,175, whichever is greater; or $13,650." The special circumstances alleged by Debtor are insufficient to rebut the presumption of abuse.

Because this case can be dismissed for abuse under § 707(b)(2), the court will not consider dismissal under § 707(b)(3)'s totality of the circumstances analysis.

The presumption of abuse under § 707(b)(2) arises in this case. Because Debtor has not rebutted the presumption of abuse as required by Bankruptcy Code § 707(b)(2)(B), UST's motion to dismiss for abuse under § 707(b)(2) is granted. The court will consider delaying dismissal of Debtor's case for 30 days if Debtor wants to convert her case instead of having her case dismissed.

4. 20-13333-A-7 **IN RE: DAVE/JULIA MARIN**
VVF-1

MOTION FOR RELIEF FROM AUTOMATIC STAY, AND/OR
MOTION/APPLICATION FOR ADEQUATE PROTECTION
10-29-2020 [11]

AMERICAN HONDA FINANCE
CORPORATION/MV
R. BELL/ATTY. FOR DBT.
VINCENT FROUNJIAN/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

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

The movant, American Honda Finance Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2017 Honda Accord ("Vehicle"). Doc. #11.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least two complete pre-petition payments. Movant has produced evidence that the debtors are delinquent by at least $884.38. Doc. #13.

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 debtors are in chapter 7. Id. The Vehicle is valued at $12,125.00 and debtors owe $17,833.09. Doc. #11.

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

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

5. 20-13451-A-7 **IN RE: AMANDEEP SINGH**
HRH-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-12-2020 [14]

BMO HARRIS BANK N.A./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RAFFI KHATCHADOURIAN/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 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.

The movant, BMO Harris Bank N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to four separate vehicles: (1) a 2016 Utility Refrigerated Van, VIN 1UYVS2530GU443512 ("2016 Utility"); (2) a 2014 Freightliner Cascadia, VIN 3AKJGLD58ESFP5928 ("2014 Freightliner"); (3) a 2018 Vanguard 53' Reefer trailer, VIN 527SR5326JL012719 ("2018 Vanguard"); and (4) a 2020 Volvo VNL64T 860, VIN 4V4NC9EJ5LN237873 ("2020 Volvo"). Doc. #14.

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

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

2016 Utility

Movant entered into a loan agreement with the debtor to finance the debtor's purchase of the 2016 Utility. Decl. of Judith Hatch, Doc. #18. After review of the included evidence, the court finds that "cause" exists to lift the stay as to the 2016 Utility because the debtor has failed to make post-petition payments and is in arrears in the amount of $3,910.55. Doc. #18. The debtor has also failed to provide proof of insurance listing Movant as an additional insured or loss payee. Doc. #18. Movant further argues that the debtor will be unable to enter into a reaffirmation agreement based on the debtor's scheduled income. Doc. #18. The court finds cause to grant relief from the stay as to the 2016 Utility.

2014 Freightliner and 2018 Vanguard

Movant entered into a loan agreement and guaranty with the debtor to finance the debtor's purchase of the 2014 Freightliner, VIN 3AKJGLD58ESFP5928, and 2018 Vanguard, VIN 527SR5326JL012719. Decl. of Judith Hatch, Doc. #18. After review of the included evidence, the court finds that "cause" exists to lift the stay as to the 2014 Freightliner and the 2018 Vanguard because the debtor has failed to make post-petition payments on the loan agreement and the loan agreement is in arrears in the amount of $42,828.22. Doc. #18. The 2014 Freightliner and 2018 Vanguard are not necessary to an effective reorganization because the debtor is in chapter 7. The debtor scheduled the value of both vehicles at $0. Schedule A/B, Doc. #1. According to the debtor's Statement of Intention, the debtor intends to surrender both vehicles. Doc. #1.

2020 Volvo

Movant entered into a loan agreement and guaranty with the debtor to finance the debtor's purchase of the 2020 Volvo, VIN 4V4NC9EJ5LN237873. Decl. of Judith Hatch, Doc. #18. After review of the included evidence, the court finds that "cause" exists to lift the stay as to the 2020 Volvo because the debtor has failed to make post-petition payments on the loan agreement and the loan agreement is in arrears in the amount of $17,250.30. Doc. #18. The 2020 Volvo is not necessary to an effective reorganization because the debtor is in chapter 7. The debtor values the 2020 Volvo at $130,000 and scheduled the claim on the vehicle as at least equal to that amount. Schedule D, Doc. #1.

Conclusion

Accordingly, the court will GRANT the motion pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of the 2016 Utility, 2014 Freightliner, 2018 Vanguard and 2020 Volvo pursuant to applicable law and to use the proceeds from the dispositions to satisfy Movant's claims. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at post-petition payments to Movant and the vehicles are depreciating assets.

6. 20-13382-A-7 **IN RE: KENNETH/YURI JACKSON**
VVF-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-12-2020 [11]

HONDA LEASE TRUST/MV
JERRY LOWE/ATTY. FOR DBT.
VINCENT FROUNJIAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at

the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The movant, Honda Lease Trust ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and 362(d)(2) with respect to a 2017 Honda Civic ("Vehicle"). Doc. #11.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least three complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least $1,023.30. Doc. #13.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. Id. The debtors' possession of the Vehicle stems from a lease agreement with Movant that matures on December 2, 2020, according to which the debtors do not own the Vehicle. Doc. #14.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to gain immediate possession of the Vehicle pursuant to applicable law. No other relief is awarded. According to the debtors' Statement of Intention, the lease will not be assumed.

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 pre- and post-petition payments to Movant in accordance with the lease agreement.

11:00 AM

1. 19-13729-A-7 **IN RE: MICHELLE PAUL**
19-1130

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-2-2019 [1]

LOS ANGELES FEDERAL CREDIT UNION V. PAUL
ALANA ANAYA/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to March 4, 2021 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the status report filed on November 30, 2020, Doc. #30, the status conference is continued to March 4, 2021 at 11:00 a.m. The parties will file a joint status report not less than 7 days prior to the continued hearing date.

11:30 AM

1. 20-13124-A-7 **IN RE: OLIVIA ORTEGA SANDOVAL**

PRO SE REAFFIRMATION AGREEMENT WITH CREDIT ACCEPTANCE CORPORATION
11-13-2020 [11]

OSCAR SWINTON/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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 which has not been rebutted in the reaffirmation agreement. In this case, the debtor's attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

2. 20-12740-A-7 **IN RE: DAVID/MARILYN SULLIVAN**

PRO SE REAFFIRMATION AGREEMENT WITH NBT BANK, NATIONAL ASSOCIATION
10-26-2020 [38]

PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the reaffirmation agreement on December 2, 2020. Doc. #49.