

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, December 3, 2020
Place: Department B - Courtroom #13
Fresno, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [16-10014](#)-B-13 **IN RE: BRENT SCHAIBLE**
[MHM-1](#)

CONTINUED CHAPTER 13 TRUSTEE'S FORBEARANCE STATUS CONFERENCE
10-19-2020 [[60](#)]

DAVID JENKINS/ATTY. FOR DBT.

NO RULING.

2. [20-12516](#)-B-13 **IN RE: JEFFREY/NOEMI LAWS**
[JES-1](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, CHAPTER 7
TRUSTEE(S)
10-30-2020 [[34](#)]

JAMES SALVEN/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the 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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion will be GRANTED. The former chapter 7 trustee, James Salven ("Trustee"), requests fees of \$1,150.00 and costs of \$152.05 for a total of \$1,302.05 as statutory compensation and actual and necessary expenses. Doc. #34.

Jeffrey Richard Laws and Noemi Laws ("Debtors") filed chapter 7 bankruptcy on July 30, 2020. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee on September 3, 2020. Doc. #5. This case was voluntarily converted on October 22, 2020, Trustee was removed from the case, and a chapter 13 trustee was appointed. See Doc. #28, #30. Trustee now requests his claim be permitted as an administrative expense in the chapter 13 plan.

11 U.S.C. § 326 permits the court to allow reasonable compensation to the chapter 7 trustee under § 330 for the trustee's services. Section 326(a) states:

In a case under chapter 7 or 11, other than a case under subchapter V of chapter 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including all holders of secured claims.

11 U.S.C. § 326(a).

11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses. 11 U.S.C. § 330(a)(1)(A) & (B).

Trustee states that his services resulted in disclosure of a preferential payment to Debtors' (Ms. Laws') brother and an attempt to claim an exemption under California Code of Civil Procedure ("C.C.P.") § 704.070 to which they were not entitled. Doc. #34 at 3. These disclosures lead to the conversion to chapter 13. *Ibid*.

Trustee estimates the value of the non-disclosed payments and the exemption total approximately \$10,000, which should now be paid to creditors. *Ibid*.

Trustee states that Debtors' Schedule E/F indicated approximately \$135,000 in claims will benefit from payment, which would provide for an estimated maximum allowable compensation under § 326(a) to be approximately \$1,750.00. *Ibid*. The court notes that the maximum allowable compensation under § 326(a) appears to be much higher,

around \$10,000¹, if total disbursement to creditors were to be exactly \$135,000. However, Trustee has requested \$1,302.50.00, which is:

- (a) \$1,250.00 (25%) of the first \$5,000.00; and
- (b) \$52.50 (0.12%²) of the next \$45,000.00.

Ibid. These percentage comply with the percentage restrictions imposed by § 326(a) and total \$1,302.05. Trustee's services included but were not limited to: (1) Preparation and appearance at the meeting of creditors; (2) Review and reconciliation of the petition with financial records; (3) Discovery of preferential payments and improper exemptions. *Ibid.*

The court finds Trustee's services were actual and necessary to the estate, and the fees are reasonable and consistent with § 326(a). The motion will be GRANTED, and Trustee will be awarded the requested fees and costs.

3. [20-13217](#)-B-13 **IN RE: LARRY/DOLORES SYRA**
[SW-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY ALLY BANK
10-27-2020 [[19](#)]

ALLY BANK/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
ADAM BARASCH/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 in conformance with the ruling below.

Creditor Ally Bank ("Creditor") objects to the debtors', Dolores G. Syra and Larry N. Syra, Jr. ("Debtors"), plan confirmation pursuant to LBR 3015-1(c)(4). However, the notice of hearing did not contain the language required under LBR 9014-1(d)(3)(B)(iii). Doc. #20. LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the

¹ If exactly \$135,000.00 were disbursed to creditors, under § 326(a) Trustee would be entitled to receive exactly \$10,000.00:

$$\begin{array}{r} \$1,250.00 \text{ (25\% of the first \$5,000.00;} \\ \$4,500.00 \text{ (10\% of the next \$45,000.00; and} \\ + \$4,250.00 \text{ (5\% of the next } [\text{\$85,000.00}] \text{ (\$950,000.00 ceiling)} \\ = \$10,000.00 \end{array}$$

² The precise percentage is 0.11 $\overline{6}$ and represents the percentage requested of the next \$45,000.00. Trustee is limited to 10% in this tier.

matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

Typically, this procedural defect would result in the objection being overruled without prejudice or continued to allow Creditor to file and serve an amended conforming notice. But on November 27, 2020, Debtors filed a response stating that they do not oppose Creditor's valuation. Doc. #24.

Creditor objects on the basis that the plan fails to pay the full replacement value of Creditor's collateral under §1325(a)(5)(B)(ii). Creditor has a perfected security interest in Debtors' 2014 Audi A4 ("Vehicle"). Doc. #19; claim no. 1. Creditor believes its claim should be valued \$13,775.00 instead of the value listed in Class 2(B) of the plan, \$7,062.00. Doc. #19; cf. #3 at ¶ 3.08.

Sections 1.04 and 3.08(c) of the plan require separately served and filed motions to value collateral for claims classified in Class 2. Doc. #3. Creditor's claim is in Class 2(B). On November 27, 2020, Debtors filed a motion to value collateral seeking to value Vehicle at \$13,775, which is currently set for hearing on January 13, 2021. See MAZ-1.

As noted above, Debtors' response indicates that they do not oppose increasing the value of Vehicle to \$13,775.00 in Class 2(B) for Creditor. Doc. #24. Debtors state they will increase their plan payment to \$2,563.00 for months 1-60, beginning with the November 2020 payment. *Id.* Additionally, Debtors will increase Creditor's monthly dividend in the plan to \$275.50. *Id.*

Accordingly, this objection will be SUSTAINED.

4. [20-12884](#)-B-13 **IN RE: CELIA TORRES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-9-2020 [[16](#)]

MARK HANNON/ATTY. FOR DBT.
\$77.00 INSTALLMENT PAID 11/10/2020

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the installment fees now due were paid on November 10, 2020. Therefore, the Order to Show Cause will be vacated.

The order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received

by the due date, the case will be dismissed without further notice or hearing.

5. [20-12486](#)-B-13 **IN RE: DOUGLAS/HEATHERLY MICHAEL**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-14-2020 [\[31\]](#)

VW CREDIT INC./MV
GABRIEL WADDELL/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue the order.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, LBR 9004-2(a)(6), (b)(5), (b)(6), & (e) and LBR 9014-1(c) & (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

An Objection to Confirmation of Plan. was previously filed on August 24, 2020 (Doc. #14) and overruled on September 23, 2020. Doc. #27. The DCN for that motion was APN-1. This motion also has a DCN of APN-1 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

Second, LBR 9004-2(c)(1) requires that motions, notices, *inter alia*, to be filed as separate documents. Here, the *Relief From Stay Summary Sheet*, Form EDC 3-468, declaration, motion, and notice were combined into one document and not filed separately. Doc. #31.

For the foregoing reasons, this motion will be DENIED WITHOUT PREJUDICE.

6. [20-12288](#)-B-13 **IN RE: FRANCISCO/MELISSA RAMIREZ**
[SAH-6](#)

MOTION TO CONFIRM PLAN
10-21-2020 [\[68\]](#)

FRANCISCO RAMIREZ/MV
SUSAN HEMB/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 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of the 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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

7. [20-12691](#)-B-13 **IN RE: SAMUEL/ANA LOPEZ**
[AVN-1](#)

MOTION TO CONFIRM PLAN
10-14-2020 [\[31\]](#)

SAMUEL LOPEZ/MV
ANH NGUYEN/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 failure to comply with the Local Rules of Practice ("LBR").

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

8. [20-12884](#)-B-13 **IN RE: CELIA TORRES**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY MICHAEL H. MEYER AND/OR
OBJECTION TO PROFESSIONAL FEES OF MARK J. HANNON
11-19-2020 [\[22\]](#)

MICHAEL MEYER/MV
MARK HANNON/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Sustained.

ORDER: The court will issue an order.

This objection was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4). The debtor filed a non-opposition.

Celia Torres ("Debtor") filed for chapter 13 bankruptcy on September 4, 2020. Doc. #1. The chapter 13 trustee ("Trustee") objected to confirmation of the debtor's plan on grounds that the plan fails to comply with 11 U.S.C. § 1325(a)(1) because the plan payment will not adequately provide for class 1 and 2 arrears. Doc. #22. Trustee also objects to the attorney fees of Debtor's counsel, Mr. Mark Hannon. *Id.* Though no written opposition was required, Debtor filed a statement of non-opposition and states that she will file an amended plan. Doc. #26.

Trustee contends that the plan is inadequately funded for its 60-month length. The plan currently provides for monthly payments of \$3,330.00. Doc. #3 at ¶ 2.01. Ever Green Home Mtg ("Ever Green") is listed as a class 1 creditor to be paid \$13,554.00 in pre-petition arrears. *Id.* at ¶ 3.07. On November 10, 2020, Ever Green filed a proof of claim in the amount of \$20,661.20. See claim no. 5. Additionally, Payday Loan is listed as a class 2 creditor to be paid \$10,084.76 under the plan. Doc. #3 at 3.08. On September 22, 2020, Payday Loan filed a proof of claim in the amount of \$11,521.21. See claim no. 2.

Trustee contends that the Ever Green monthly dividend payment must increase from \$225.90 to \$344.35 to cure its arrearage by completion of the plan. Additionally, due to Payday Loan's proof of claim, its class 2 dividend must increase from \$194.97 to \$222.74 per month to fund the plan for 60 months. Trustee argues that the plan payment must increase in total from \$3,330.00 per month to \$3,587.54 per month, effective month 1 to fund the plan in 60 months. See Doc. #3, #22.

Trustee also objects to the no-look attorney fee provided in the plan under LBR 2016-1(c) and seeks that the attorney fees be determined in accordance with 11 U.S.C. §§ 329 & 330, and Fed. R. Bankr. P. 2002, 2016, & 2017. The plan provides that Debtor's attorney, Mr. Hannon, was paid \$2,000.00 prior to filing the case and will be paid additional fees of \$2,000.00 through the plan under 2016-1(c). Doc. #3 at 2.05. The meeting of creditors was held October 6, 2020 and attorney Mark O'Toole appeared on behalf of Debtor. Debtor testified as follows:

Q. And did you review your petition, schedules, statements and other related documents with an attorney?

A. Yes.

Q. And which attorney did you review your documents with?

A. Gail -- Gail -- I can't remember her last name. Gail Latino or something it's called.

Q. Okay. And that was the attorney you met with?

A. Basically I met with -- yes, actually I sure did.

Q. Okay. Then did you meet with any other attorneys from the Law Office of Latino Law?

A. No.

Doc. #24, Ex. A, 5 at ¶¶ 3-14. LBR 2016-1(c)(1) allows for a "no-look" fee of \$4,000 in nonbusiness cases. "When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority." LBR 2016-1(a). If a party objects to the no-look fee, the court is obliged to consider the factors listed in § 330 and the burden to demonstrate such factors is on the debtor's counsel. *Sikes v. Crager*, 691 F.3d 671, 676-77 (5th Cir. 2012). Trustee contends that attorneys must earn their no-look fee by completing their duties set forth in the *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys*, Form EDC 3-096. Based on Debtor's testimony at the hearing, Trustee believes there is grounds to review Mr. Hannon's compensation under 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017.

As noted above, Debtor filed non-opposition stating that she will file an amended plan. Doc. #26. The court finds that the plan as currently proposed fails to comply with § 1325(a) and therefore cannot be confirmed. Debtor must file and serve a separate plan and set a confirmation hearing. Accordingly, this objection will be SUSTAINED.

The court is not ruling on the validity of the "no-look" attorney fee now. Since the objection is sustained, and the debtor filed a non-opposition, there is no current controversy.

10:00 AM

1. [20-13206](#)-B-7 **IN RE: ROSA CAMPOS CORREA**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-30-2020 [\[10\]](#)

TOYOTA MOTOR CREDIT
CORPORATION/MV
JUAN ONOFRE/ATTY. FOR DBT.
AUSTIN NAGEL/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 the 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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Toyota Motor Credit Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) with respect to a 2015 Toyota Prius ("Vehicle"). Doc. #10.

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 debtor has failed to make at least two pre-petition payments and at least one post-petition payment. The movant has produced evidence that debtor is delinquent at least \$846.44. Doc. #13, #14. The Vehicle is valued at \$13,325.00 and debtor owes \$10,042.56. Doc. #12, #13, #14.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Debtor has also failed to provide to the movant proof of insurance.

The request for attorney's fees will be denied. Though debtor is over-secured under 11 U.S.C. § 506(b), movant must separately file and set for hearing a motion for compensation in compliance with the LBR and Federal Rules of Bankruptcy Procedure. If movant does, then the court will consider that motion on its merits at the appropriate time.

2. [20-13210](#)-B-7 **IN RE: KEVIN SANDOVAL**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
10-1-2020 [\[5\]](#)

KEVIN SANDOVAL/MV

NO RULING.

Debtor's request for waiver of the chapter 7 filing fee was set for hearing because debtor's schedules show no income from any sources and expenses of \$2,925.00 per month. Doc. #22, Schedule J at ¶¶ 22-23.

Debtor must appear at the hearing and explain how he maintains expenses of \$2,925.00 with \$0.00 in monthly income. If Debtor fails to appear, the application for a fee waiver will be denied.

3. [20-13210](#)-B-7 **IN RE: KEVIN SANDOVAL**
[GB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY , AND/OR MOTION FOR
RELIEF FROM CO-DEBTOR STAY
10-29-2020 [\[43\]](#)

DEUTSCHE BANK NATIONAL TRUST
COMPANY/MV
ERICA LOFTIS/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 will submit a proposed order after hearing.

This motion was filed and served on 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

The movant, Franklin Credit Management Corporation as servicer for Deutsche Bank National Trust Company, as certificate trustee on behalf of Bosco Credit II Trust Series 2010-1 ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1), (d)(2), and (d)(4) concerning real property located at 4037 Loganberry Drive, San Jose, CA 95121 ("San Jose Property"). Doc. #43.

Pro se debtor Kevin Sandoval ("Debtor") did not timely file written opposition and this court intends to enter his default. Debtor is also required to appear for a motion for waiver of the chapter 7 filing fee in matter #2 above but did not appear at another matter on October 20, 2020 or the meeting of creditors on November 9, 2020. Doc. #34, #53. The chapter 7 trustee filed a motion to dismiss for failure to appear at the meeting of creditors, which is set to be heard on December 15, 2020. Doc. #54.

Two notices sent by the Clerk of Court and mailed to Debtor's alleged mailing address from his petition at 7327 1/2 Tampa Avenue in Reseda, California ("Reseda Property") were returned as not deliverable to the Court on October 16 and 26, 2020. Doc. #27, #42; see also #1 at ¶ 5. Based on Movant's certificate of service, Movant properly served Debtor at his listed mailing address at Reseda Property. Doc. #49. However, this court suspects that those motion documents mailed to Debtor via United States first class mail will also be returned as not deliverable. This court takes notice that non-filing third parties and *de facto* co-debtors, Daisy Gutierrez and Eligio Gutierrez, were both properly and separately served at San Jose Property. *Id.*

This court previously granted in part a motion from Manufacturers Bank and modified the automatic stay so that it could proceed with an unlawful detainer action for the Reseda Property. Doc. #35 at ¶ 1; see also HRH-1. The request for *in rem* relief binding and effective in any bankruptcy case by any debtor who claims an interest in that property for a period of 180 days was denied. Doc. #35. at ¶ 2. As mentioned above, Debtor did not appear at the hearing and the *in rem* relief requested was denied only because Manufacturers Bank is not a secured creditor with respect to Debtor, as Debtor has not claimed any ownership interest in the Reseda Property. Doc. #34.

Here, Movant seeks relief from the automatic stay under 11 U.S.C. § 362(d) and alleges under § 362(d)(4) that Debtor filed the petition as part of a scheme to delay, hinder, and defraud creditors that involved the transfer of all or part ownership of San Jose Property without the consent of Movant or court approval. Doc. #45. San Jose Property is encumbered by a deed of trust loan in favor of Movant. Doc. #46.

A Tale of Two Borrowers

On September 9, 2005, third parties Eligio Gutierrez and Daisy Gutierrez (collectively "Borrowers") executed a promissory note with balloon payment in favor of Lime Financial Services, Ltd. ("LFS"). Doc. #47, Ex. 3. Under the promissory note, Borrowers promised to pay \$167,000.00 at 9.5% interest with monthly payments of \$1,404.23 beginning November 1, 2005 until October 1, 2020, at which time Borrowers promised to pay any amounts owed under the note in full. *Ibid.* This note was secured by a deed of trust executed that same date, recorded in Santa Clara County on September 15, 2005, and encumbering San Jose Property in favor of Mortgage Electronic Registration Systems, Inc. ("MERS"), solely as nominee for LFS. *Id.*, Ex. 1. MERS assigned the deed of trust with all interest, liens, and rights to Movant on April 18, 2013. *Id.*, Ex. 2.

On February 16, 2017, Borrower Daisy Gutierrez filed her first chapter 13 bankruptcy petition, case no. 17-50378, in the Northern District of California. *Id.*, Ex. 4, 22-24³. This case was dismissed on March 7, 2017 for "[f]ailure to [f]ile [i]nformation[.]" *Id.*, 22. Notably, Ms. Gutierrez was represented by counsel, Nikhil Bhatnagar of the Law Offices of Nikhil Bhatnagar, which is located in San Jose, California. *Ibid.*

On June 16, 2017, Borrower Daisy Gutierrez filed her second chapter 13 bankruptcy, case no. 17-51467 in the Northern District, which was dismissed on July 31, 2017 again for "[f]ailure to [f]ile [i]nformation[.]" *Id.*, 25-27. Ms. Gutierrez was again represented by Mr. Bhatnagar. *Id.*, 25.

On September 15, 2017, Borrower Daisy Gutierrez filed her third chapter 13 bankruptcy in the Northern District, which was "[d]ismissed for [o]ther [r]eason" on June 6, 2018. *Id.*, 28-32. Interestingly, Ms. Gutierrez attempted to confirm a plan and impose the automatic stay, which likely did not go into effect because this was Ms. Gutierrez's third filing in one year. *Id.*, 31-32 at ¶¶ 2, 7. The proposed chapter 13 plan was met with multiple objections, which prevented it from being confirmed. *Id.*, 30 at ¶¶ 22, 23, 26. On

³ The court notes that Movant's exhibit document pages, Doc. #47, are not consecutively numbered. See LBR 9004-2(d)(3). The exhibit document does contain an exhibit index that identifies by exhibit number each exhibit individually and states the page number at which it is found in compliance with LBR 9004-2(d)(2). Exhibit #4 contains docket entries for previously filed bankruptcy cases in the Northern District of California. This exhibit is cited frequently in this ruling but does not have consecutively numbered pages.

For the purposes of this ruling, page numbers for Exhibit #4 are counted in ascending order from pages 21 to 48 (starting at the Exhibit #4 header on page 21) and based on the exhibit index's purported, yet missing, page numbers. To locate the PDF document page number, add 2 to each citation (e.g., the Exhibit #4 header appears on PDF page 23).

Movant is advised to review the LBR before filing another motion. Future violations will result in denial without prejudice without considering the merits of the motion.

April 13, the chapter 13 trustee filed a motion to dismiss pre-confirmation for "cause" pursuant to 11 U.S.C. § 1307(c). *Id.*, 29 at ¶ 33. Ms. Gutierrez's default was entered on June 4, 2018, and the order dismissing the case was entered on June 6, 2018. *Ibid.* at ¶¶ 35, 36. Additionally, Ms. Gutierrez was represented by a different attorney, Garry D. Barbadillo of the Law Office of Garry Barbadillo, which is located in Milpitas, California. *Id.*, 28.

Two days after Ms. Gutierrez filed her third bankruptcy, on September 18, 2017, the string of repeated filings continued, this time with Borrower Eligio Gutierrez filing his first chapter 13 bankruptcy petition, case no. 17-52273, in the Northern District of California. *Id.*, 33. This court is inclined to wonder, perhaps, whether this case was filed after it became apparent that Ms. Gutierrez could not benefit from the automatic stay in her third bankruptcy case due to her repeated filings. Mr. Barbadillo, counsel for Ms. Gutierrez in her third filing, represented Mr. Gutierrez in this case. *Ibid.* The case was dismissed on October 3, 2017 for "[f]ailure to [f]ile [i]nformation[.]" *Ibid.*

On February 5, 2019, Ms. Gutierrez filed her fourth chapter 13 bankruptcy, case no. 19-50238, in the Northern District, this time represented by and testing the legal prowess of Brett L. Evans of Evans Law Offices located in San Jose, California. *Id.*, 35. It appears Ms. Gutierrez made a genuine attempt to comply with the Bankruptcy Code in her fourth case, as she and Mr. Evans successfully imposed the automatic stay, convinced multiple creditors and the chapter 13 trustee to withdraw objections to plan confirmation, convinced the trustee to withdraw a motion to dismiss, and confirmed a plan on January 6, 2020. *Id.*, 36-37 at ¶¶ 65-68, 70, 72; 40 at ¶¶ 35, 37. However, on August 5, 2020, the case was dismissed for failure to make plan payments. *Id.*, 35.

Last but not least, Mr. Gutierrez filed his second chapter 13 bankruptcy also on February 5, 2019 and in the Northern District, case no. 19-50239. *Id.*, 44-48. Mr. Gutierrez was also represented by Mr. Evans, though it does not appear that any effort was made to impose the automatic stay or confirm a chapter 13 plan. *Ibid.* The case was dismissed on May 31, 2019 for "[o]ther [r]eason[.]" though Movant alleges that it was for failure to prosecute the case. *Ibid.*; Doc. #45.

After a total of six repeated filings—two for Mr. Gutierrez and four for Ms. Gutierrez—the Borrowers ceased repeatedly filing individual chapter 13 petitions themselves and began to involve other individuals. On June 1, 2020, Borrowers and Debtor executed a deed of trust⁴ professing to grant San Jose Property to "Eligio

⁴ Curiously, this transfer occurred during Ms. Gutierrez's fourth bankruptcy, roughly two months before the case was dismissed. It is questionable whether this transfer was even valid considering that San Jose Property would have been property of Ms. Gutierrez's bankruptcy estate at the time of the purported transfer. Transferring a portion to Debtor may have been a violation of the automatic stay that Mr. Evans worked so diligently to impose. But this issue is not before the court today, so we will assume that no such violation warranting annulment occurred.

Gutierrez, a married man as his sole and separate property; Daisy Gutierrez, a married woman as her sole and separate property and Kevin Sandoval, an unmarried man, all as Tenants in Common[.]” *Id.*, Ex. 5. This deed of trust was recorded in Santa Clara County on October 20, 2020. *Ibid.* Movant states in its memorandum that it did not consent to this transfer. Doc. #45. The deed of trust does not specify the percentage of ownership transferred, but as discussed below, Debtor’s schedules imply he received a 10% ownership interest. Movant also notes that the deed of trust was not recorded until after Debtor’s bankruptcy case was filed. *Id.*

Debtor’s Bankruptcy Case

Little is known about Debtor Kevin Sandoval, perhaps because he has failed to appear at previous hearings or the meeting of creditors. As discussed in this court’s last ruling (Doc. #34), Debtor filed a *pro se* chapter 7 petition on October 1, 2020 and listed an unrelated property in Fresno, California (“Fresno Property”) as his residence. However, Debtor listed Reseda Property as his mailing address, which is unusual considering, generally, most people tend to receive mail at their place of residence. Doc. #1 at ¶ 5. Debtor also indicated that he has lived in this district longer than in any other district, perhaps at Fresno Property, for the last 180 days before filing his petition. *Id.* at ¶ 6. Debtor’s schedules make no mention of any ownership interest in the Reseda Property, where he claims to be receiving mail, or the Fresno Property, where he claims to be living. Doc. #22.

Schedule A/B indicates that Debtor allegedly owns a 10% interest as a tenant in common in three properties: San Jose Property, the subject of this motion, and two other properties unrelated to this motion and located in Los Angeles⁵ and Nevada City.⁶ No equity has been exempted in any of these properties and Debtor purports to have no secured creditors. *Id.*, Schedules C, D.

Debtor lists five unsecured creditors, which appear to have nonpriority claims derived from credit card debt ranging from \$690 to \$2,470 and totaling \$7,350.00. *Id.*, Schedule E/F at ¶¶ 4.1-4.5, 6j. Debtor has no executory contracts or unexpired leases and allegedly no co-debtors, even though Movant’s evidence suggests that Debtor does in fact have co-debtors, Borrowers, by virtue of the deed of trust in favor of Movant. *Id.*, Schedules G at ¶ 1, H at ¶ 1; *cf.* Doc. #47, Ex. 5.

Debtor also alleges that he has no income but claims expenses of \$2,925.00 per month. Doc. #22, Schedules I at ¶ 12, J at ¶¶ 22-23. As noted in our October 20, 2020 ruling, those expenses include \$1,750.00 in rental expenses per month, which is questionable

⁵ Debtor claims to own a \$61,210.00 equity interest in 602 San Benito St., Los Angeles, CA 90033 as a tenant in common, which is valued at \$612,100.00. Doc. #22, Schedule A/B at ¶ 1.1.

⁶ Debtor claims to own a \$38,820.00 equity interest in 16748 Hardy Way, Nevada City, CA 95959 as a tenant in common, which is valued at \$388,200.00. *Id.* at ¶ 1.2.

considering Debtor has no secured creditors or unexpired leases. *Id.*, Schedule J at ¶ 4; see also Doc. #34.

Debtor also has a pending application for waiver of the chapter 7 filing fee in matter #2 above and is required to appear at the hearing, or the application for a fee waiver will be denied. See Doc. #5. As noted above, Debtor did not attend the first § 341 meeting of creditors that was scheduled for November 9, 2020 and the chapter 7 trustee is moving to dismiss the case without further order, set for hearing on December 15, 2020, if Debtor does not appear at the continued hearing on January 4, 2021. See Doc. #53, #54.

11 U.S.C. §§ 362(d)(1) & (2)

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 Debtor has failed to make any payments for the San Jose Property. Movant has produced evidence that San Jose is delinquent at least \$367,144.62, which consists of an unpaid principal balance of \$160,465.91, \$200,365.35 in accrued interest, and \$6,313.36 in fees. Doc. #47 at ¶ 11; #48. Additionally, the court finds that the debtor does not have an equity in the property and the property is not necessary to an effective reorganization, as this is a chapter 7 case. Doc. #48.

§ 362(d)(4)

Movant also requests relief under § 362(d)(4). An order entered under § 362(d)(4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order.

To obtain relief under § 362(d)(4), Movant must show and the court must affirmatively find the following three elements: (1) Debtor's bankruptcy filing must have been part of a scheme; (2) the object of the scheme must have been to delay, hinder, or defraud creditors, and (3) the scheme must have involved either the transfer of some interest in the real property without the secured creditor's consent or court approval, or multiple bankruptcy filings affecting the property. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (B.A.P. 9th Cir. 2012).

A scheme is an intentional construct - it does not happen by misadventure or negligence. *In re Duncan & Forbes Dev., Inc.*, 368

B.R. 27, 32 (Bankr. C.D. Cal. 2007). A § 362(d)(4)(A) scheme is an "intentional artful plot or plan to delay, hinder or defraud creditors." *Id.* It is not common to have direct evidence of an artful plot or plan to deceive others - the court must infer the existence and contents of a scheme from circumstantial evidence. *Id.* Movant must present evidence sufficient for the trier of fact to infer the existence and content of the scheme. *Id.*

After review of the included evidence, the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of all or part ownership of the subject real property without the consent of the secured creditor or court approval.

The automatic stay is intended to provide "breathing space" for honest debtors who accumulate liabilities and debts in excess of their income. The stay "pauses" creditor proceedings so that debtors can reevaluate what went wrong and pursue a debt-free future using the provisions of Title 11. But the stay is just that—a pause. It does not last forever. Nor was the stay intended to be triggered and re-triggered again, and again, and again in perpetuity. The Bankruptcy Code anticipates situations where the automatic stay is abused by less-than-honest debtors to avoid the consequences of shunning creditors forever. One such provision is § 362(d)(4).

After years of repeated filings and avoiding foreclosure, Borrowers reached a point where they could no longer obtain stay relief without litigating to impose or extend the automatic stay. Borrowers needed to find a solution.

Enter Debtor Kevin Sandoval. Two months before Borrower's final case was dismissed, Borrowers and Debtor executed an unauthorized grant deed professing to transfer an interest in San Jose Property to Debtor. Two months later, Debtor filed for bankruptcy with a "skeletal" petition.

Debtor made little effort to prosecute his chapter 7 bankruptcy case, having submitted seemingly inaccurate, incomplete, and contradictory schedules. Doc. #22. Debtor has not appeared at any hearings or the meeting of creditors, and his case will very likely be dismissed in January 2021 if he continues to "ghost" the court and the chapter 7 trustee.

But Debtor's "objective" is likely already complete. That is, Debtor has already successfully prevented foreclosure and delayed, hindered, and defrauded Movant and other creditors. By stepping in as a part-owner with Borrowers through an unauthorized grant deed, Debtor helped Borrowers file a seventh bankruptcy because they no longer could trigger the automatic stay. After intermittent stays starting in February 2017, Borrowers successfully misused the code to obtain stay relief for over two and a half years. With another scheduled foreclosure on the horizon, and little hope of obtaining stay relief themselves, Borrowers appear to have recruited Debtor to file this case on their behalf.

While this tactic does work—at least for a little while—it will not be fruitful forever. Borrowers did earn some additional time to continue living at San Jose Property rent-free, but Borrowers cannot escape foreclosure completely. This court will grant § 362(d)(4) relief binding and effective in any bankruptcy case under Title 11 of the United States Code purporting to affect San Jose Property for a period no later than two years after entry of this order.

The court finds that Debtor filed bankruptcy as part of a scheme with Borrowers and the object of the scheme was to delay, hinder, or defraud Movant and possibly other creditors. This scheme involved the unauthorized transfer of San Jose Property and at least seven bankruptcy filings affecting San Jose Property.

Conclusion

This motion will be GRANTED under 11 U.S.C. §§ 362(d)(1), (d)(2), and (d)(4).

The Court having rendered findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, as incorporated by Federal Rule of Bankruptcy Procedure ("FRBP") 7052:

IT WILL BE ORDERED, pursuant to 11 U.S.C. § 362(d)(1), "cause" exists to lift the automatic stay because Debtor has failed to make any payments for the San Jose Property and the mortgage securing it is delinquent at least \$367,144.62. Under § 362(d)(2), Debtor does not have an equity interest in San Jose Property, and it is not necessary to an effective reorganization because this is a chapter 7 case.

IT WILL BE FURTHER ORDERED, pursuant to 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor and multiple bankruptcy filing affecting such real property. The order shall be binding in any other case under Title 11 of the United States Code purporting to affect the real property described in the motion not later than two years after the date of entry of the order.

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

The request for attorney's fees will be denied because Movant has not shown that they are over-secured under 11 U.S.C. § 506(b). Even if Movant were over-secured, it would have to separately file and set for hearing a motion for compensation in compliance with the LBR and FRBP 7054, 9014(c).

The 14-day stay of FRBP 4001(a)(3) will be ordered waived due to the fact that a sale date is scheduled in the next 14 days.

4. [19-12013](#)-B-7 **IN RE: JUDITH GOODMAN**
[RWR-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF COLEMAN &
HOROWITT, LLP FOR RUSSELL W. REYNOLDS, TRUSTEES ATTORNEY(S)
10-20-2020 [\[47\]](#)

DAVID JENKINS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the 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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The motion will be GRANTED.

The chapter 7 trustee's ("Trustee") general counsel, Russel W. Reynolds of the Law Office of Coleman & Horowitt, LLP ("Movant"), requests fees of \$5,444.00 and costs of \$227.42 for a total of \$5,671.42 for services rendered from May 24, 2019 through October 20, 2020. Doc. #47. Trustee filed a declaration stating that he has no objection to the approval and payment of Movant's fees. Doc. #49.

Trustee filed a motion to employ Movant on May 23, 2019. Doc. #9; see also RWR-1. This court granted the motion on June 3, 2019 pursuant to 11 U.S.C. §§ 327 and 329-331. Doc. #19. The order stated that no compensation is permitted except upon court order following an application under 11 U.S.C. §§ 330(a) and 331 for services rendered after May 14, 2019. *Id.* Compensation was to be at the "lodestar rate" applicable at the time services are rendered in accordance with the Ninth Circuit decision in *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). *Id.* at ¶ 2.

Movant states that his firm has spent 9.5 billable hours at \$330 per hour (\$3,135.00), 5.2 billable hours at \$260 per hour (\$1,352.00),

and 5.8 billable hours at \$165 per hour (\$957.00), for a total of \$5,444.00. Doc. #50 at ¶ 6. Further, Movant states he incurred expenses of \$227.42, and is therefore requesting a total of \$5,671.42. *Ibid*.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) employment of an auctioneer and sale of real property (RWR-2); (2) analysis of the estate's interest in real property; (3) preparation and filing of employment and fee applications. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$5,444.00 in fees and \$227.42 in costs.

5. [19-12927](#)-B-7 **IN RE: CEDAR MILL FARMS, LLC**
[DK-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-30-2020 [[113](#)]

JADJ LAND HOLDINGS, LLC/MV
DEAN KIRBY/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 5, 2020. (Doc. #127).
Therefore, the matter will be dropped from calendar.

6. [19-12927](#)-B-7 **IN RE: CEDAR MILL FARMS, LLC**
[DK-4](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-5-2020 [[120](#)]

JADJ LAND HOLDINGS, LLC/MV
DEAN KIRBY/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 the 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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, JADJ Land Holdings, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) with respect to two parcels of real property totaling 176.10 acres located at 25270 ("25270") and 25400 ("25400") State Hwy 88, Pioneer, CA 95666 (collectively "Property"). Doc. #120. Property consists of two smaller parcels: 25270 is 23.49 acres and 25400 is 152.62 acres.

Movant previously filed another motion for stay relief on August 28, 2020, which was denied September 29, 2020 for procedural reasons. See DK-1. Another version was also filed and set for hearing December 3, 2020 in matter #5 above but was withdrawn on November 5, 2020. DK-3. In response to the first motion that was denied, the chapter 7 trustee, James Salven ("Trustee"), filed a notice of non-opposition stating that he did not oppose stay relief for Movant. Doc. #97. Trustee did not file opposition for this motion.

This motion will be GRANTED.

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.

On February 1, 2017, the debtor, Cedar Mill Farms, LLC ("Debtor"), executed a promissory note in favor of Movant with a principal of \$1,000,000 with an original maturity date of February 1, 2019. Doc. #123, Ex. 1. The promissory note was secured by a deed of trust with assignment of rents encumbering Property, which was recorded in Amador County on February 10, 2017. *Id.*, Ex. 3. The parties amended the promissory note and deed of trust on January 16, 2019 to extend the maturity date to February 1, 2021. *Id.*, Ex. 2. The modified deed

of trust was filed in Amador County on February 12, 2019. *Id.*, Ex. 4.

Debtor filed bankruptcy on July 8, 2019. Doc. #1. The case was originally assigned to the Honorable Fredrick E. Clement and was reassigned to the Honorable René Lastreto II on June 30, 2020. See docket generally. On the date of the petition, Debtor was in default by having missing four monthly installments due June 1 and July 1, and Movant has not received any payments since. Doc. #120 at ¶ 7.

Debtor listed Property in Schedule A/B with a value of \$3,600,000.00. Doc. #18, Schedule A/B at ¶ 55.1. Movant is listed in Schedule D and filed a proof of claim on November 18, 2019 in the amount of \$1,024,896.83. *Id.*, Schedule D at ¶ 2.1; claim no. 13-1.

On August 8, 2019, Trustee filed a motion to employ Coldwell Banker Gonella Realty ("Broker") as broker to sell Property, which was granted on August 16, 2019. See JES-1. Movant states that it is not aware of any junior liens securing Property but notes that Creditor Mr. Lucky Gold ("MLG") filed a motion seeking leave to proceed with a Superior Court action to liquidate a \$580,000 claim against non-bankruptcy third party defendants. KAS-1; see also Doc. #38. MLG also claimed to have a non-voidable writ of attachment encumbering Property. *Id.* This motion was granted on November 13, 2019 and the automatic stay was modified so that the state court lawsuit could proceed. Doc. #76.

On October 30, 2019, Judge Clement authorized Trustee to use estate funds to pay Property's insurance proceeds in the amount of \$3,344.00 per month. See RH-2. On March 26, 2020, Trustee filed a series of motions affecting Property and seeking to:

(1) enter into a temporary lease of a construction easement with Pacific Gas & Electric Company ("PG&E") for a ten-month period with an option to renew for an additional six months at a rate of \$2,000 per month;

(2) use rent to reimburse the bankruptcy estate for \$3,344.00 in insurance premiums previously advanced, and reimburse the Trustee personally for \$5,631.10 in insurance premiums previously advanced; and

(3) authorize Trustee to use rents to continue making payment of insurance premiums at a rate of \$3,344.00 per month.

See RH-3, RH-4. On June 4, 2020, Judge Clement granted the motion and Movant signed off on the order. See Doc. #88.

As noted above, Broker was authorized to sell Property on August 16, 2019. Doc. #22. Property has been on the market since then and Trustee has been unsuccessful in finding a buyer. As of February 5, 2020, Property's listing price has been reduced to \$1,699,000.00, yet no prospective buyers have come forward. See Doc. #123 Ex. 5.

Tina Lovato, Movant's servicing agent, filed a declaration stating that the current balance of the loan is \$1,220,936.37 as of November 1, 2020, which consists of \$1,000,000.00 in principal, \$196,147.48 in interest, \$10,200.00 in late fees, and \$14,588.89 in default interest. Doc. #122 at ¶ 7. Interest continues to accrue at the non-default rate of \$10,000.00 per month and the deed of trust also provides for attorney fees incurred by Movant in relation to this bankruptcy case. *Ibid.*; see also Doc. #120 at ¶ 8.

Ms. Lovato claims that Trustee recently discovered that "important water rights to water utility service may be jeopardized by failure to pay water fees said to total \$1,666.66 per month and having a balance of \$21,681.71 as of August 18, 2020." *Id.* at ¶ 9. Ms. Lovato also states that she investigated the status of real property taxes and discovered that these taxes have been in default since the debtor failed to pay both installments for tax year 2017-18, and all subsequent years. *Id.* at ¶ 10. During this bankruptcy case, the first two installments for the two parcels totaling \$12,767.17 were not paid. *Ibid.* The total delinquent taxes for 25270 are presently \$12,767.17 and 25400 are presently \$87,245.59. *Ibid.*; see also Doc. #123, Ex. 6 & 7. Ms. Root states the unpaid balance will increase again on December 10, 2020 when the first installment for tax year 2020-21 is due. Doc. #122 at ¶ 10.

On this basis, Movant claims that it now lacks adequate protection. Doc. #120 at ¶ 16. Based on its advertised listing price in February 2020, Movant's equity cushion is illustrated as follows:

Listing Price		\$1,699,000.00
Costs of sale (est. 7%)	-	\$118,930.00
Real Property Taxes	-	\$99,363.76
Movant's Loan (excl. attorney fees)	-	\$1,220,936.37
Equity Cushion (15.3%)	=	\$259,769.87

Id. at ¶ 16. Movant contends that this estimate is the "absolute maximum" considering that the listing price continues to fall and has produced no offers since February, and the real estate market is destabilizing because of COVID-19. As property taxes, insurance premiums, and utility bills continue to accrue, Movant believes its equity cushion is shrinking by approximately 1% per year. *Id.* at ¶ 17.

Movant has not yet commenced foreclosure, but if it receives relief from the automatic stay it intends to begin foreclosure proceedings, which it anticipates will take about four months. Doc. #122 at ¶ 11.

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has failed to make at least four pre-petition and thirteen post-petition payments. Doc. #124. Movant has produced evidence that debtor is delinquent at least \$1,220,936.37. *Id.*, Doc. #122. Also significant is the Trustee is not opposing this motion requesting additional time to administer the property. The record shows the Trustee has tried to market the property but has not been successful.

Plus, the estate has incurred water fees which it has no immediate ability to pay. The Trustee has had a significant amount of time to market the property and the efforts have not been successful.

Accordingly, this motion will be GRANTED pursuant to 11 U.S.C. §§ 362(d)(1) to permit Movant to proceed with its non-judicial foreclosure.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtor has failed to make at least thirteen post-petition payments to Movant. Further, the Trustee has not opposed this motion.

7. [20-13143](#)-B-7 **IN RE: SERGIO/CORALYNN AGUILAR**
[SDN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-22-2020 [\[15\]](#)

KINGS FEDERAL CREDIT UNION/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
SHERYL NOEL/ATTY. FOR MV.
RESPONSIVE PLEADING

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). Debtors filed non-opposition on October 26, 2020. Doc. #22. The failure of the 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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Kings Federal Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2015 Lincoln MKS ("Vehicle"). Doc. #15.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors have failed to make one pre-petition payment and at least one post-petition payment. The movant has produced evidence that debtors are delinquent at least \$978.36. Doc. #15, #19.

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 \$14,316.00 and debtor owes \$28,519.06. Doc. #17, #19.

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

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

8. [20-13049](#)-B-7 **IN RE: STEPHEN BRYANT**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-29-2020 [[17](#)]

AMERICREDIT FINANCIAL
SERVICES, INC./MV
DAVID JENKINS/ATTY. FOR DBT.
JENNIFER WANG/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 the

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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Americredit Financial Services, Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2019 Chevrolet Colorado ("Vehicle"). Doc. #17, #21.

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 debtor has failed to make at least .88 post-petition payments. The movant has produced evidence that debtor is delinquent at least \$595.44. Doc. #17, #23.

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 debtor is in chapter 7. *Id.* The Vehicle is valued at \$22,800.00 and debtor owes \$27,797.65. Doc. #17, #20.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least .88 post-petition payments to Movant and the Vehicle is a depreciating asset.

9. [20-12851](#)-B-7 **IN RE: DANIEL GARCIA MARTINEZ**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-15-2020 [\[11\]](#)

NISSAN MOTOR ACCEPTANCE
CORPORATION/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9004-2(c)(1) requires that motions, notices, inter alia, to be filed as separate documents. Here, the motion, notice, declaration of Aimee Cobb, and Movant's Information Sheet were not filed separately. Doc. #11.

10. [20-13356](#)-B-7 **IN RE: ARTURO SUAREZ AND SYLVIA LIVELLI DE**
SUAREZ
[EPE-1](#)

MOTION TO COMPEL ABANDONMENT
10-21-2020 [\[7\]](#)

ARTURO SUAREZ/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the 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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The debtors, Arturo Amando Suarez and Sylvia Patricia Livelli De Suarez ("Debtors"), asks this court to compel the chapter 7 trustee to abandon the estate's interest in Debtors' sole proprietorship, "Arturo Suarez Trucking," Mr. Suarez's truck driving business. Doc. #7. The assets ("Business Assets") include the following:

Asset	Value	Lien	Exemption amount	C.C.P. §	Net Value
Goodwill	\$500.00	\$0.00	\$500.00	703.140(b)(5)	\$0.00
2009 Freightliner Semi-Tractor	\$18,000.00	\$0.00	\$18,000.00	703.140(b)(5) 703.140(b)(6)	\$0.00

Doc. #9 at ¶ 6. The Business Assets consist of good will and the truck Debtor uses for his sole proprietorship business, which has a total value of \$18,500.00. *Id.* All Business Assets have been exempted for their full value under California Code of Civil Procedure ("C.C.P.") §§ 703.140(b)(5) & (b)(6). Doc. #1, Schedule C at ¶ 2. Mr. Suarez filed a declaration stating that he has operated his business for approximately 6 years. Doc. #9 at ¶ 4. Debtor further contends that he has no employees and performs all of the duties required to provide transportation services required, which could not be sold by the trustee. *Id.* at ¶ 5.

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). *In re Galloway*, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at *16-17 (B.A.P. 9th Cir. 2014).

The court finds that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately

scheduled and exempted in their entirety. See Doc. #1, Schedules A/B at ¶¶ 19, 40; C at ¶ 2. Therefore, this motion will be GRANTED.

The order shall include a specific list of the property abandoned.

11. [20-13068](#)-B-7 **IN RE: JOSE BARRERA AND ANA MARTINEZ**
[RWR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-27-2020 [\[15\]](#)

NUMERICA CREDIT UNION/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
RUSSELL REYNOLDS/ATTY. FOR MV.
RESPONSIVE PLEADING

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). Debtors filed non-opposition on November 11, 2020. Doc. #24. The failure of the 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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Numerica Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2016 Jeep Grand Cherokee ("Vehicle"). Doc. #15.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors have failed to make three pre-petition payments and at least one post-petition payment. The movant has produced evidence that debtors are delinquent at least \$1,890.80. Doc. #17, #18, #20.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtors are in chapter 7. *Id.* The Vehicle is valued at \$17,241.00 and debtor owes \$19,249.30. Doc. # 17, #20.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. Debtor surrendered the vehicle on September 18, 2020.

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

12. [20-12973](#)-B-7 **IN RE: NORA BARILLAS**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-20-2020 [\[14\]](#)

TOYOTA MOTOR CREDIT
CORPORATION/MV
T. O'TOOLE/ATTY. FOR DBT.
AUSTIN NAGEL/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 the 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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Toyota Motor Credit Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2017 Toyota Prius ("Vehicle"). 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.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make two pre-petition payments and at least one post-petition payments. The movant has produced evidence that debtor is delinquent at least \$1,501.08. Doc. #16, #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 debtor is in chapter 7. *Id.* The Vehicle is valued at \$17,538.00 and debtor owes \$24,140.50. Doc. #16.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make two pre-petition payments and at least one post-petition payments to Movant and Debtor has failed to provide valid, written proof of insurance for the Vehicle.

13. [18-13678](#)-B-7 **IN RE: VERSA MARKETING, INC.**
[SSA-3](#)

MOTION FOR COMPENSATION FOR STEVEN A ALTMAN, TRUSTEES
ATTORNEY(S)
10-28-2020 [\[578\]](#)

RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the 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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The motion will be GRANTED.

The chapter 7 trustee's ("Trustee") counsel, Steven A. Altman of the Law Offices of Steven Altman, PC ("Movant"), requests fees of \$14,430.00 and costs of \$336.20 for a total of \$14,766.20 for services rendered from October 17, 2019 through November 17, 2020. Doc. #578. Trustee filed a declaration stating that she believes Movant's fees are fair, reasonable, and necessary to the estate. Doc. #580 at ¶ 5. Further, Trustee states that the bankruptcy estate is holding funds in the principal amount of \$63,113.46. *Ibid*.

Debtor filed a chapter 11 petition on September 7, 2018. Doc. #1. This case was converted to chapter 7 on September 13, 2019, Trustee Irma Edmonds was appointed as interim trustee on that same date, and Ms. Edmonds became permanent trustee at the first meeting of creditors on October 15, 2019. See Doc. #492-93.

Trustee filed a motion to employ Movant on November 15, 2019. Doc. #540; see also SSA-1. This court granted the motion on December 5, 2019 pursuant to 11 U.S.C. § 328. Doc. #547. The order stated that no compensation is permitted except upon court order following

an application under 11 U.S.C. § 330(a) for services rendered after October 17, 2019. *Id.* Compensation was to be at the "lodestar rate" applicable at the time services are rendered in accordance with the Ninth Circuit decision in *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). *Id.* at ¶ 3. The order also stated that no compensation for the performance of Trustee's services would be permitted. *Id.* at ¶ 6 citing *In re McKenna*, 93 B.R. 238 (Bankr. E.D. Cal. 1988).

Movant indicates that he has spent 48.10 billable hours at a rate of \$300 per hour and is requesting \$14,430.00 as fees for services rendered. Doc. #582, Ex. 1. Further, Movant incurred expenses of \$336.20, and is therefore seeking a total of \$14,766.20.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) reviewing case file and filing the first fee application, which was granted; (2) reviewing Debtor's schedules and statement of affairs for conflicts and legal issues, and determining the principal tasks assigned as counsel for Trustee; (3) reviewing Debtor's assets, communicating with Debtor's counsel, principal, and creditors concerning assets and liabilities of the estate; (4) assisting Trustee in companion litigation filed by Debtor in the adversary proceeding entitled *Versa Marketing Inc. v. West Liberty Foods, LLC*, adv. no. 19-01032, in which Movant participated in hearings, discussed outstanding litigation, claims, and defenses with special counsel Meine and defense counsel Olsen; (5) assisting with a purchase agreement, motion, and supporting documents for sale and assignment of estate claims in Versa adversary proceedings, including reviewing objection to sale and assignments by West Liberty Foods, extending research concerning out of state claims, value to estate, appearing on argument for approval of the agreement, and preparing and distributing the court order approving the sale and assignment of litigation for \$60,000 on behalf of the estate (SSA-2); (6) reviewing a relief from stay motion for adversary litigation with Debtor/West Liberty, and working with the special counsel and administrator concerning arbitration of claims and counter claims; (7) reviewing status of account receivable claims owed to estate and writing collecting letters, as well as considering the cost and benefit of pursuing out of state claims with Trustee; and (8) preparation and filing of this fee application. Doc. #581 at ¶ 4. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$14,430.00 in fees and \$336.20 in costs.

14. [20-13206](#)-B-7 **IN RE: ROSA CAMPOS CORREA**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-18-2020 [\[16\]](#)

TOYOTA MOTOR CREDIT
CORPORATION/MV
JUAN ONOFRE/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, the moving papers do not include an appropriate Docket Control Number as required by LBR 9014-1(c). The movant has previously used Docket Control Number APN-1 in this case at #1 on the 10:00 a.m. calendar above, which the court intends to grant.

Secondly, this motion was filed on 14 days' notice, but the language in the notice does not comply with LBR 9014-1(f)(2) noticing requirements.

The court also notes that a third motion using the same DCN was filed on November 18, 2020 as Docket Number 20. No supporting documents were filed with this motion. The motion filed on the docket as Document Number 20 will be DENIED AS MOOT.

The court urges movant to review the LBR before filing another motion.

10:45 AM

1. [20-11606](#)-B-11 **IN RE: MICHAEL PENA**
[HLF-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF JUSTIN D.
HARRIS DEBTORS ATTORNEY(S)
11-5-2020 [[66](#)]

JUSTIN HARRIS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the 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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The motion will be GRANTED.

Michael Pena's ("Debtor") counsel, Justin D. Harris of the Harris Law Firm, PC ("Movant"), requests fees of \$19,871.50 and costs of \$735.20 for a total of \$20,606.70 for services rendered from May 11, 2020 through November 5, 2020. Doc. #66. Debtor filed a document stating that he received and reviewed Movant's fee application and he has no objection. Doc. #69.

Debtor filed a chapter 11 petition on May 4, 2020. Doc. #1. Debtor filed a motion to employ Movant on May 6, 2020. Doc. #5; *see also* HLF-1. This court granted the motion on May 26, 2020 pursuant to 11 U.S.C. §§ 327, 329-331. Doc. #16. The order stated that no compensation is permitted except upon court order following an application under 11 U.S.C. § 330(a) for services rendered after April 6, 2020. *Id.* at ¶ 1. Compensation was to be at the "lodestar rate" applicable at the time services are rendered in accordance with the Ninth Circuit decision in *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). *Ibid.* The order further stated that monthly

applications for interim compensation under 11 U.S.C. § 331 would be entertained. *Ibid.*

Movant states that his firm has spent 37.7 billable hours at \$420 per hour (\$15,834.00), 4.5 hours at \$150 per hour (\$675.00), and 26.9 hours at \$125 per hour (\$3,362.50), for a total of \$19,871.50. Doc. #66 at 3. Further, Movant states he incurred expenses of \$735.20, and is therefore requesting a total of \$20,606.70. *Ibid.* Movant states that the source of compensation for the requested fees will be the estate of the Debtor. *Id.* at ¶ 3.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) complying with document requests from the United States Trustee's Office ("UST"); (2) preparation for the initial debtor interview and meeting of creditors and appearance at those hearings; (3) preparation and filing of monthly operating reports for which Debtor is current; (4) resolving Debtor's family law issues related to child support, appearances at multiple hearings, and related motion practice; (5) reviewing claims for adequate protection with creditor Ford Motor Credit; (6) preparing and filing the plan and disclosure statement, which was filed on October 30, 2020 and is set for hearing on December 15, 2020 (HLF-2); and (7) preparation and filing of employment and fee applications. Doc. #68, Ex. A. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$19,871.50 in fees and \$735.20 in costs.

2. [18-13677](#)-B-9 **IN RE: COALINGA REGIONAL MEDICAL CENTER, A
CALIFORNIA LOCAL HEALTH CARE DISTRICT
[WJH-18](#)**

OBJECTION TO CLAIM OF DEPARTMENT OF HEALTH CARE SERVICES,
CLAIM NUMBER 61
10-19-2020 [[657](#)]

COALINGA REGIONAL MEDICAL
CENTER, A CALIFORNIA LOCAL
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Continued to January 12, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

Pursuant to the parties' stipulation, the court issued an order continuing the hearing on this matter to January 12, 2021 at 9:30 a.m. Doc. #663. Any opposition to the objection is due at least 14 days prior to the continued hearing date, December 29, 2020, and any reply is due at least 5 days before the hearing, January 7, 2021.

3. [20-11992](#)-B-11 **IN RE: CHAR PHAR INVESTMENTS, LLC**
[WLC-6](#)

CONTINUED MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
7-27-2020 [[64](#)]

CHAR PHAR INVESTMENTS, LLC/MV
WILLIAM COWIN/ATTY. FOR DBT.

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

DISPOSITION: Continued to January 12, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

Pursuant to the parties' stipulation, the court issued an order continuing the hearing on this matter to January 12, 2021 at 9:30 a.m. Doc. #150. Per the stipulation, any opposition to the motion is due at least 14 days before the continued hearing date, December 29, 2020.

11:30 AM

1. [20-12410](#)-B-7 **IN RE: MICA-AILEEN KIZZIAR**
[20-1058](#)

STATUS CONFERENCE RE: COMPLAINT
9-24-2020 [[1](#)]

KIZZIAR V. WRIGHT
TIMOTHY SPRINGER/ATTY. FOR PL.

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

DISPOSITION: Dismissed with prejudice.

ORDER: The court will issue an order.

Plaintiff filed a notice of settlement and request for dismissal of the adversary proceeding pursuant to Fed. R. Civ. P. 41 and Fed. R. Bankr. P. 7041 on November 5, 2020. Doc. #3. Accordingly, this adversary proceeding will be DISMISSED WITH PREJUDICE.