

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, December 9, 2021
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 631, courthouses for the Eastern District of California were reopened to the public effective June 14, 2021.

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. 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, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

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

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

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

1. [21-10001](#)-A-13 **IN RE: ENRIQUE CASTELLANOS**
[NES-2](#)

CONTINUED MOTION TO MODIFY PLAN
9-24-2021 [[41](#)]

ENRIQUE CASTELLANOS/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor Enrique Castellanos Jr. ("Debtor") filed and served this motion to confirm the first modified chapter 13 plan pursuant to Local Rule of Practice ("LBR") 3015-1(d)(2) and set for hearing on November 3, 2021. Doc. ##41-47. The chapter 13 trustee ("Trustee") filed an opposition to Debtor's motion. Doc. #49. The court continued this matter to December 9, 2021 and ordered Debtor to file and serve a written response to Trustee's objection by November 18, 2021; or if Debtor elected to withdraw this plan, then Debtor had to file, serve, and set for hearing a confirmable modified plan by November 29, 2021. Doc. #52.

Having reviewed the docket in this case, the court finds Debtor has not voluntarily converted this case to chapter 7 or dismissed this case, and Trustee's objection has not been withdrawn. Further, Debtor has not filed and served any written response to Trustee's objection. Debtor has not filed, served, and set for hearing a confirmable modified plan by the time set by the court.

Accordingly, Debtor's motion to confirm the first modified chapter 13 plan is DENIED on the grounds set forth in Trustee's opposition.

2. [21-10716](#)-A-13 **IN RE: VINOD SAHNI**
[RSW-1](#)

STATUS CONFERENCE RE: MOTION TO CONFIRM PLAN
7-1-2021 [[29](#)]

VINOD SAHNI/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

MOTION TO VALUE COLLATERAL OF LES SCHWAB TIRE CENTERS OF CENTRAL CA, INC.
11-11-2021 [\[96\]](#)

ROCHELLE PORTILLO/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Jesus Reynaldo Portillo and Rochelle Desiree Portillo (together, "Debtors"), the debtors in this chapter 13 case, move the court for an order valuing the collateral of Les Schwab Tire Centers of Central CA Inc. ("Creditor") at zero. Doc. #96; Decl. of Jesus Portillo Jr., Doc. #98. Creditor performed service work on Debtors' vehicles and asserts a claim partially secured by wheels and brakes installed on the vehicles. Claim 4.

Section 506(a)(1) of the Bankruptcy Code limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." 11 U.S.C. § 506(a). "[A] claim is secured only to the extent of the value of the property on which the lien is fixed." United States v. Ron Pair Enters., 489 U.S. 235, 239 (1989). At the time this motion was filed, Creditor had an allowed claim secured by tires and brakes installed on vehicles of the Debtors in 2017. Claim 4-1. However, on December 6, 2021, Creditor filed an amended proof of claim indicating the debt owed to Creditor is wholly unsecured. Claim 4-2. Additionally, the vehicles were subject to senior liens. A 2008 Toyota Tacoma, valued as of the petition date at \$12,837, is subject to a lien in favor of OneMain Financial totaling \$20,729. Ex. B. Doc. #99. A 2007 Toyota Camry, valued as of the petition date at \$3,000, is subject to a lien in favor of OneMain Financial totaling \$4,009. Id. Joint debtor Jesus Portillo testifies that Creditor's collateral was attached to these two vehicles. Portillo Decl., Doc. #98. Given the absence of contrary evidence, Debtors' opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). Creditor's amended proof of claim, filed on December 6, 2021, asserts a wholly unsecured claim. Claim 4-2.

This motion is GRANTED. Creditor's secured claim will be fixed at \$0. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of Debtors' third modified chapter 13 plan.

4. [18-12923](#)-A-13 **IN RE: JESUS/ROCHELLE PORTILLO**
[PK-7](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
11-11-2021 [[101](#)]

PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

Patrick Kavanagh ("Movant"), counsel for Jesus Reynaldo Portillo and Rochelle Desiree Portillo (together, "Debtors"), the debtors in this chapter 13 case, requests interim allowance of compensation totaling \$8,490 and reimbursement for expenses totaling \$405.65 for a total amount of \$8,895.65 for services rendered from June 25, 2018 through November 4, 2021. Doc. #101. Debtors' proposed third modified plan provides for \$7,386 in attorney's fees paid through the plan. Plan, Doc. #89. No prior fee applications have been submitted. In light of a pre-petition retainer, Movant is requesting payment of \$7,781.65 through the plan. Ex. A, Doc. #103. Movant states that Debtors will be able to make plan payments, and Debtors have no objection to Movant's fee application. Doc. #101.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1),

(4) (B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a) (4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a) (3). Here, Movant demonstrates services rendered relating to: (1) pre-petition consultation and fact gathering; (2) case administration; (3) original and modified plans, hearings, and objections; and (4) claims administration. Exs., Doc. #103. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows interim compensation and reimbursement for expenses in the amount of \$8,895.65. In light of a pre-petition retainer of \$1,114, the court approves \$7,781.65 to be paid in a manner consistent with the terms of the confirmed plan.

5. [21-12224](#)-A-13 **IN RE: LACEY FREEMAN**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDIT SUISSE FIRST BOSTON MORTGAGE
ACCEPTANCE CORP.
10-1-2021 [\[12\]](#)

CREDIT SUISSE FIRST BOSTON MORTGAGE ACCEPTANCE CORP./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
ORDER, DOC. #18

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The objection was resolved by stipulation and order entered on October 22, 2021. Doc. #18.

6. [21-12240](#)-A-13 **IN RE: BONNIAFAY DESHAZO**
[MHM-1](#)

MOTION TO DISMISS CASE
10-28-2021 [\[17\]](#)

MICHAEL MEYER/MV

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 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 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 for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)). The debtor failed to appear at the scheduled 341 meeting of creditors and failed to provide the trustee with all of the documentation required by 11 U.S.C. § 521(a)(3) and (4). Debtor did not oppose the motion.

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). Based on Debtor's schedules, it appears that all property of the estate is exempt, so conversion is not in the best interests of creditors and the estate. Doc. #1.

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

7. [21-11148](#)-A-13 **IN RE: JERRY/MARGARET HARVEY**
[RSW-2](#)

CONTINUED MOTION TO VALUE COLLATERAL OF U.S. BANK NATIONAL ASSOCIATION
8-13-2021 [\[28\]](#)

MARGARET HARVEY/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The motion was resolved by stipulation and order entered on December 6, 2021.
Doc. #40.

8. [20-11149](#)-A-13 **IN RE: RAYSHAWN LYONS**
[RSW-4](#)

MOTION TO MODIFY PLAN
10-12-2021 [\[104\]](#)

RAYSHAWN LYONS/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). 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.

This motion is 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.

9. [20-11553](#)-A-13 **IN RE: DENNIS MARROQUIN**
[PK-3](#)

MOTION FOR WRIT OF ASSISTANCE/EXECUTION AGAINST CLAIM OF NEW CENTURY
BAIL BONDS
10-20-2021 [\[39\]](#)

PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

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

Dennis Demetrio Marroquin ("Debtor"), the chapter 13 debtor, moves the court for an order to enforce a prior order granting attorney fees against creditor New Century Bail Bonds ("NCBB"). Doc. #39. NCBB filed a proof of claim on July 9, 2020, filing an amendment on July 15, 2020. Claim 3. On January 11, 2021, the court entered an order reducing NCBB's allowed claim and granting attorney fees in favor of Debtor against NCBB in the amount of \$2,000. Doc. #36; Decl. of Patrick Kavanagh, Doc. #41. Attorney fees were made payable to the Patrick Kavanagh attorney client trust account. Doc. #36. Patrick Kavanagh, Debtor's bankruptcy counsel, attempted to contact NCBB several times to collect payment, to which NCBB responded that the award of attorney fees, in NCBB's opinion, was a money judgment enforceable through normal levy procedure. Kavanagh Decl., Doc. #41.

Currently, NCBB is receiving monthly payments from the chapter 13 trustee in accordance with Debtor's confirmed chapter 13 plan. Doc. ##2, 16, 41. The principal owing on the award of attorney fees remains \$2,000. Doc. #41. Debtor seeks an order authorizing the chapter 13 trustee to pay the \$2,000 attorney fee award from plan payments payable to NCBB on account of NCBB's allowed claim. Doc. #39.

Debtor cites to Federal Rule of Civil Procedure ("Civil Rule") 69 and 70. Civil Rule 70, made applicable to adversary proceedings and contested matters by Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 7070, does not apply to money judgments. Flinn v. Rains (In re Rains), 338 B.R. 99, 102 (Bankr. E.D. Cal. 2006). The court will therefore consider the motion under the authority of Civil Rule 69.

Bankruptcy Rule 9014(c) applies Civil Rule 69 to contested matters. Civil Rule 69 provides that the procedure on execution of a money judgment, "and in proceedings supplementary to and in aid of judgment or execution[,] must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies." Civil Rule 69(a)(1); Romano v. LaVecchia (In re Romano), BAP Nos. NV-08-1139, NV-08-1140, NV-08-1142, 2008 Bankr. LEXIS 4729, 2008 WL 8462950, at *6 (B.A.P. 9th Cir. Oct. 24, 2008) (Civil Rule 69 "sets forth the procedure for enforcing a money judgment entered by a federal court.").

Debtor does not argue that a federal statute governs the procedure in this case, the court is not aware of any governing federal statute, and there is no opposition. Therefore, the court determines that California law governs the procedure for enforcing the relief requested by Debtor.

California Code of Civil Procedure ("C.C.P.") § 708.510 permits the assignment of "all or part of a right to payment" to a judgment creditor upon noticed motion. C.C.P. § 708.510(a). Although subsection (a) states that "the court may order the judgment debtor to assign to the judgment creditor", an assignment order itself "is a valid and effective order" that transfers ownership. C.C.P. § 708.510(a); see Specialty Labs. Inc. v. Advanced Biomedical, Inc. (In re Advanced Biomedical, Inc.), 547 B.R. 337, (Bankr. C.D. Cal. 2016) (discussing assignment of accounts receivable), aff'd, No. CC-16-1100,

2016 Bankr. LEXIS 4245, *1 (B.A.P. 9th Cir. Dec. 2, 2016); Mentor Cap., Inc. v. Bhang Chocolate Co., No. 14-cv-03630, 2017 WL 3335767, 2017 U.S. Dist. LEXIS 123702, at *6 (N.D. Cal. Aug. 4, 2017) (describing the court's direct assignment under C.C.P. § 708.510 of property rights up to the amount owed under a money judgment as the preferred, more direct option).

This court has jurisdiction pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (C), and (K). Therefore, this court has jurisdiction to enter an assignment order assigning to Debtor the right to receive payments due or to become due to NCBB from the chapter 13 trustee. See Weingarten Realty Invs. v. Chiang, 212 Cal. App. 4th 163, 167 (2012); FirstMerit Bank, N.A. v. Reese, 242 Cal. App. 4th 408, 414 (2015). Debtor has produced uncontested evidence establishing the amount owing is \$2,000, the principal amount. Doc. #41. NCBB's principal claim allowed is \$8,987.85, of which NCBB has been paid \$6,326.39 excluding interest. Doc. #41; Doc. #36. Debtor has been unable to resolve the payment of attorney fees with NCBB, and NCBB directed Debtor to attempt to collect on the money judgment through applicable state law procedures. Doc. #41.

Accordingly, this motion is GRANTED. NCBB's right to receive plan payments on its allowed claim from the chapter 13 trustee is assigned to Debtor until Debtor has been paid \$2,000. The amounts assigned to Debtor are to be paid to the Patrick Kavanagh attorney client trust account.

10. [21-12061](#)-A-13 **IN RE: EUGENE TOLOMEI**
[MHM-1](#)

MOTION TO DISMISS CASE
11-9-2021 [\[26\]](#)

MICHAEL MEYER/MV
MICHAEL REID/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on November 30, 2021. Doc. #38.

11. [17-14163](#)-A-13 **IN RE: JOHN/RITA CORSON**
[PK-3](#)

CONTINUED MOTION TO MODIFY PLAN
7-20-2021 [\[69\]](#)

RITA CORSON/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

12. [21-11969](#)-A-13 **IN RE: MAE MAGSBY**
[MHM-1](#)

MOTION TO DISMISS CASE
11-2-2021 [\[18\]](#)

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

13. [21-12175](#)-A-13 **IN RE: SHANNON SIMPSON**
[AP-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL ASSOCIATION
10-18-2021 [\[16\]](#)

U.S. BANK NATIONAL ASSOCIATION/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
WENDY LOCKE/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.

Shannon Elaine Simpson ("Debtor") filed her chapter 13 plan ("Plan") on September 11, 2021. Doc. #3. U.S. Bank National Association, as Trustee, successor in interest to Bank of America, National Association, as Trustee, successor by merger to LaSalle Bank N.A., as Trustee for Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2006-RM5 ("Creditor") objects to confirmation of the Plan on the grounds that: (1) the Plan does not provide for the curing of the \$60,320.65 arrearage on Creditor's claim; and (2) the monthly Plan payments will be insufficient to fund the Plan once the arrears on Creditor's claim and the post-petition monthly payment are fully provided for. Doc. #16.

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 September 30, 2021. Claim 8.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #3. The Plan asserts only \$52,836 in arrears owed to Creditor and provides a post-petition monthly payment of only \$1,477. Doc. #3. The Plan calls for monthly plan payments of \$3,155 for 60 months. Doc. #3. The Plan fails to account for Creditor's claim. Claim 8; Doc. #3.

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

14. [21-12175](#)-A-13 **IN RE: SHANNON SIMPSON**
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER
10-21-2021 [\[19\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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.

Shannon Elaine Simpson ("Debtor") filed her chapter 13 plan ("Plan") on September 11, 2021. Doc. #3. The chapter 13 trustee ("Trustee") objects to confirmation of the Plan on the ground that Debtor will not be able to make all payments under the Plan and comply with the Plan. Doc. #19; 11 U.S.C. § 1325(a)(6).

Section 1325(a)(6) of the Bankruptcy Code requires that the debtor be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a)(6). Trustee contends that the Plan as proposed will take over 97 months to fund, and that Debtor will need to increase the Plan payment to \$3,847.84 for the Plan to fund in the proposed 60-month period. Further, Debtor's Schedules I and J reveal a monthly net income of \$3,159.57, demonstrating Debtor's inability to pay the increased Plan payment of \$3,847.84. Schedules I & J, Doc. #1. It appears that Debtor will be unable to make all payments under the Plan.

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

15. [17-12991](#)-A-13 **IN RE: TOMMY/JANET SVARE**
[RSW-4](#)

MOTION TO MODIFY PLAN
10-27-2021 [[66](#)]

JANET SVARE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 3, 2022 at 9:00 a.m.

ORDER: The court will issue an order.

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The chapter 13 trustee ("Trustee") filed an objection to the debtors' motion to modify the chapter 13 plan. Tr.'s Opp'n, Doc. #76. Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, the debtors shall file and serve a written response no later than December 23, 2021. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtors' position. Trustee shall file and serve a reply, if any, by January 6, 2022.

If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than January 6, 2022. If the debtors do not timely file a modified plan or a written response, this motion will be denied on the grounds stated in Trustee's opposition without a further hearing.

16. [21-12296](#)-A-13 **IN RE: ISTVAN/MARGIT MAJOROS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-3-2021 [[25](#)]

PHILLIP GILLET/ATTY. FOR DBT.
\$313.00 FINAL INSTALLMENT PAYMENT 11/16/21

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 have been paid. The case shall remain pending.

17. [21-12296](#)-A-13 **IN RE: ISTVAN/MARGIT MAJOROS**
[EAT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY NEW RESIDENTIAL MORTGAGE
LOAN TRUST 2018-1
11-9-2021 [\[30\]](#)

NEW RESIDENTIAL MORTGAGE LOAN TRUST 2018-1/MV
PHILLIP GILLET/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 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.

Istvan Majoros and Margit Majoros (together, "Debtors") filed their first modified chapter 13 plan ("Plan") on October 25, 2021. Doc. #23. New Residential Mortgage Loan Trust 2018-1 ("Creditor") objects to confirmation of the Plan on the ground that Debtors will not be able to make all payments under the Plan and comply with the Plan. Doc. #30; 11 U.S.C. § 1325(a)(6).

Section 1325(a)(6) of the Bankruptcy Code requires that the debtor be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a)(6). Creditor contends that Debtors have insufficient income to pay the proposed Plan payments. Debtors' Schedules I and J reveal a monthly net income of \$2,515.05. Schedules I & J, Doc. #18. The Plan proposes monthly payments of \$2,794. Plan, Doc. #23. The court notes that Creditor's allowed claim asserts an arrearage of \$51,283.54, though the Plan lists the arrearage at \$52,301.27. Claim 6. However, even after reducing the arrearage owed Creditor, it appears that Debtors have insufficient monthly net income to make all payments under the Plan.

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

18. [21-11969](#)-A-13 **IN RE: MAE MAGSBY**
[RSW-1](#)

MOTION TO VALUE COLLATERAL OF WILMINGTON SAVINGS FUND SOCIETY
11-24-2021 [[22](#)]

MAE MAGSBY/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

1. [21-12301](#)-A-7 **IN RE: MARK/ALICIA GARAY**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-22-2021 [\[21\]](#)

EXETER FINANCE LLC/MV
PATRICK KAVANAGH/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 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, Exeter Finance LLC f/k/a Exeter Finance Corp. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2017 Mazda 3 ("Vehicle"). Doc. #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 debtors do not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least twenty complete pre-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$14,482.75, late fees of \$103.90 and recovery fees of \$395.00 Doc. #24.

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. The Vehicle is valued at \$16,300.00 and the debtors owe \$28,677.56. Doc. ##24, 25.

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 vehicle was voluntarily surrendered on October 1, 2021 and is being held pending relief from stay. Doc. #24.

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 twenty pre-petition payments to Movant, the Vehicle is a depreciating asset and the debtors have already voluntarily surrendered the Vehicle to Movant.

2. [21-10530](#)-A-7 **IN RE: CHRISTOPHER METAS**
[DMG-2](#)

MOTION FOR COMPENSATION FOR D. MAX GARDNER, TRUSTEES ATTORNEY(S)
11-11-2021 [\[41\]](#)

LEONARD WELSH/ATTY. FOR DBT.
D. GARDNER/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.

D. Max Gardner, Attorney at Law ("Movant"), attorney for chapter 7 trustee Jeffrey M. Vetter ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from March 10, 2021 through November 10, 2021. Doc. #41. Movant provided legal services valued at \$2,077.00, and requests compensation for that amount. Doc. #41. Movant requests reimbursement for expenses in the amount of \$46.35. Doc. #41. This is Movant's first and final fee application.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing counsel to Trustee as to the administration of the chapter 7 case; (2) providing legal advice with respect to the disposition of the principal asset in this case; (3) communicating with Trustee and creditors; and (4) investigating potential assets and actionable conduct. Decl. of D. Max Gardner, Doc. #46; Ex. A,

Doc. #44. 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 in the amount of \$2,077.00 and reimbursement for expenses in the amount of \$46.35. Trustee is authorized to make a combined payment of \$2,123.35, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

3. [16-11458](#)-A-7 **IN RE: WILLIAM/PHYLLIS STANE**
[DMG-3](#)

MOTION TO APPROVE COMPROMISE OF CLAIMS TO ESTATE PROPERTY
11-2-2021 [\[58\]](#)

JEFFREY VETTER/MV
VINCENT GORSKI/ATTY. FOR DBT.
D. GARDNER/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.

Jeffrey Vetter ("Trustee"), the chapter 7 trustee of the bankruptcy estate of William Jerry Stane and Phyllis Ann Stane (together, "Debtors"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019 approving the compromise of all claims and disputes related to the class action lawsuit against Wal-Mart Stores Inc. in which joint debtor William Jerry Stane ("Stane") was a member of the plaintiff class. Doc. ##58, 60.

Debtors filed a voluntary petition under chapter 7 of the Bankruptcy Code on April 26, 2016. Among the assets of the estate is a judgment entered against Wal-Mart Stores Inc. in favor of a plaintiff class in which Stane was a member. Decl. of Trustee, Doc. #60. Stane is entitled to a portion of the judgment awarded. Id. Each individual share of the judgment award is based on a class member's payroll records covering a period of 11 years and consists of 60% wages and 40% interest on wages. Id. The 11-year period ended October 31, 2015,

and the award for an individual whose bankruptcy proceeding occurred prior to October 31, 2015 may include wages, and interest thereon, that were earned after a bankruptcy discharge. Id. Additionally, the award has been accruing interest. Id. The estimated amount to be awarded Stane is \$96,000. Id. The class action administrator requires a court order authorizing disbursement. Id. Trustee is unable to determine the exact breakdown of Stane's award, so Trustee and Stane have agreed to a 25/75 split of the estimated \$96,000 award. Id. The estate will receive the sum of approximately \$24,000 and Stane will receive approximately \$72,000. Id. The legal basis for the proposed division is consistent with California Civil Procedure Code § 704.070 by which 75% of a debtor's unpaid wages are exempt. Id.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #58. The judgment awarded Stane is the result of a class action lawsuit of which Stane was a plaintiff member and will compensate Stane for unpaid wages. The proposed settlement allows for Trustee to recover approximately \$24,000. Tr.'s Decl., Doc. #60. Trustee believes in his business judgment that the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Doc. #60. 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. Stane is authorized, but not required, to execute any and all documents necessary to effectuate the terms of the proposed settlement agreement and obtain the disbursement of the judgment award from the class action administrator.

MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B)
10-26-2021 [\[18\]](#)

TRACY DAVIS/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
JORGE GAITAN/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 the debtor, creditors, 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.

Tracy Hope Davis, the United States Trustee for Region 17 ("UST"), moves the court to dismiss the chapter 7 bankruptcy case of Bonnie Lynn Shields ("Debtor") for abuse under 11 U.S.C. § 707(b)(2) (presumptive abuse) and § 707(b)(3)(B) (totality of the circumstances abuse). Doc. #18. Debtor did not oppose UST's motion.

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 calculated the CMI listed on Form 122A-1, filed June 30, 2021, to be \$6,648.06. Doc. #1. Debtor calculates monthly allowed deductions to be \$6,704.13, which would result in a monthly disposable income negative balance of \$56.07. Form 122A-2, Doc. #1. Under Debtor's calculations, the presumption of abuse does not arise.

However, UST disputes Debtor's calculations. The uncontested declaration testimony of Teresa B. Field ("Auditor"), bankruptcy auditor for the Office of the United States Trustee, demonstrates that Debtor's monthly disposable income is \$739.09, as opposed to the monthly deficit of \$56.07 asserted in Debtor's Form 122A-2. Decl. of Teresa B. Field, Doc. #21. Auditor received and reviewed documentation related to Debtor's financial affairs provided to UST by Debtor's counsel at UST's request, including bank statements, pay statements, and tax returns. Auditor Decl. ¶ 3, Doc. #21. Auditor concludes that Debtor's CMI is \$7,522.06, based on Auditor's calculation of Debtor's income from two jobs over a period of six months. Id. ¶ 5.

Using the documentation provided by Debtor's counsel, Auditor also prepared an independent calculation of Debtor's monthly allowed deductions and expenses resulting in the following adjustments to Debtor's Form 122A-2:

Line 16: Increased tax liability from \$1,052.93 to \$1,920.14;

Line 18: Decreased life insurance from \$201.97 to \$78.00;

Line 25: Increased health insurance from \$174.44 to \$221.33;

Line 29: Decreased contribution for family members from \$300.00 to \$0;

Line 34: Decreased a car payment from \$960.36 to \$648.81; and

Line 36: Decreased chapter 13 monthly administrative expenses from \$157.00 to \$57.34.

Id. ¶ 7. Auditor's adjustments resulted Debtor's monthly allowed deductions increasing from \$6,704.13 to \$6,782.98. Id. ¶ 8. Despite the increase in Debtor's monthly allowed deductions, the commensurate increase in Debtor's CMI results in monthly disposable income of \$739.09 (\$44,345 over 60 months) and the presumption of abuse arises. Id.

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).

Here, Debtor has not demonstrated any special circumstances and has not rebutted the presumption of abuse. Debtor did not contest UST's motion to dismiss.

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.

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.

10:30 AM

1. [21-12348](#)-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
10-5-2021 [[1](#)]

IGNACIO LAZO/ATTY. FOR DBT.

NO RULING.

1. [21-10425](#)-A-7 **IN RE: WAMIDH AL KAJAJI**
[21-1028](#)

MOTION FOR SUMMARY JUDGMENT
10-20-2021 [[21](#)]

SMAHA LAW GROUP, APC V. KAJAJI ET AL
KRISTEN FRITZ/ATTY. FOR MV.
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 after the hearing.

Smaha Law Group APC ("Plaintiff") moves for summary judgment ("Motion") on both counts of this adversary proceeding. The debtor-defendant opposes the Motion. Doc. #26. The chapter 7 trustee-defendant does not oppose the relief requested in the Motion. Doc. #27. The hearing will proceed as scheduled.

As a procedural matter, the motion and related pleadings as filed do not comply with this court's Local Rule of Practice ("LBR"). First, LBR 9004-2(c)(1) requires notices and motions to be filed as separate documents. Here, Plaintiff combined the motion with the notice of hearing. Second, LBR 9014-1(d)(3)(B) requires that the notice of hearing include (a) whether and when written opposition is required, (b) if written opposition is required, the names and addresses of persons who must be served with any such opposition, (c) if written opposition is required, the consequence of failing to file timely written opposition, and (d) an advisement to respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. LBR 9014-1(d)(3)(B)(i)-(iii). The notice in this matter did not comply with these requirements. The court urges counsel for the moving party to review the local rules in order to be compliant in future matters. The court's Local Rules of Practice can be accessed on the court's website at <http://www.caeb.uscourts.gov/LocalRules.aspx>. While the court could deny the Motion without prejudice for failure to comply with the court's Local Rules of Practice, because the Motion fails to provide adequate legal support and both defendants have responded to the Motion, the court will address the merits of the Motion.

By the Motion, Plaintiff seeks imposition of a constructive trust over property Plaintiff asserts debtor-defendant Wamidh Al Kafaji ("Defendant") paid to himself as a beneficiary of a trust and/or will instead of paying to the creditors of the decedent, of which Plaintiff is one. For the reasons set forth below, the Motion will be denied because Plaintiff has not established all elements necessary for imposition of a constructive trust.

//

Facts

It is undisputed that Kamela Rahman ("Rahman") executed a last will and testament in April 2015 naming Defendant executor. Ex. 2, Doc. #23. There is no evidence before the court that the will is valid under California law, and the court has not been asked to make that determination. There is no evidence that the will has been through probate pursuant to California law. Also, in April 2015, a document purporting to establish the Kamela Rahman Trust dated April 15, 2018 ("Trust") was executed by Rahman, identifying Defendant as successor trustee in the event Rahman should cease to act as trustee. Ex. 3, Doc. #23. There is no evidence that a valid trust was created, although Plaintiff alleges (and Defendant does not dispute) that title to certain real property, 9883 Grandview Drive, La Mesa, California 91941 ("Grandview"), was held by the Trust.

Some years later, on or about February 12, 2019, Plaintiff mailed a letter to Kamila [sic] Rahman at 7758 Via Capria, La Jolla, CA 92037 asserting a debt owed by Rahman to Plaintiff of \$27,979.40 that needed to be paid. Ex. 10, Doc. #23. Defendant contends that letter was never received and was mailed to Defendant's ex-sister-in-law. Doc. #26.

On May 13, 2019, Defendant responded to an email from Plaintiff attempting to establish the validity of the debt owed by Rahman. Ex. 11, Doc. #23. In the email, Defendant asserted that Rahman never agreed to pay the debt and that Plaintiff should try to collect from "the right party." Id.

Rahman passed away on July 14, 2019. Ex. 1, Doc. #23.

After Rahman's death, Defendant sold Grandview, the home where Rahman and Defendant resided at the time of Rahman's death. Ex. 7, Doc. #23. The settlement statement for that sale identifies the seller as "[Defendant], Trustee of The Kamela Rahman Trust UTD 04-18-15." Ex. 5, Doc. #23. Escrow on the sale of Grandview closed on October 2, 2019. Id. Grandview was sold for a purchase price of \$840,000, with a balance owed to Defendant of \$100,834.43. Id. Defendant placed the proceeds in his personal bank accounts. Ex. 7, Doc. #23.

On December 19, 2019, Plaintiff filed a state court action against Rahman, alleging breach of contract, open book account, account stated, and quantum meruit. Ex. 12, Doc. #23. Plaintiff sought damages of \$27,979.40 based on unpaid legal fees. Id.

On February 18, 2020, Defendant purchased a residence located at 615 Beardsley Avenue, Bakersfield, California 93308 ("Beardsley") for a purchase price of \$86,319.11. Ex. 7, Doc. #23; Doc. #26. Defendant purchased Beardsley entirely with money received from the sale of Grandview. Exs. 7, 8, Doc. #23. Defendant also used some uncertain amount of money on improvements to Beardsley. Id.

On November 4, 2020, Plaintiffs obtained a default judgment against the estate of Rahman and Defendant, as trustee of the Trust, in the state court action. Ex. 13, Doc. #23. The judgment awarded Plaintiff \$27,979.40 in damages and \$8,876.76 in prejudgment interest. Id.

On January 15, 2021, Defendant was served with an order to appear for examination in the state court action. Ex. 14, Doc. #23. After receiving the order to appear, Defendant filed for bankruptcy under chapter 7 of the Bankruptcy Code on February 19, 2021. This adversary proceeding was commenced on July 2, 2021. Doc. #1.

Summary Judgment Standard

Federal Rule of Civil Procedure ("Rule") 56 governs summary judgment and is made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7056. Under Rule 56, the moving party is entitled to summary judgment only where, drawing all reasonable inferences supported by the evidence in favor of the nonmoving party, no genuine dispute of material fact exists, and the moving party is entitled to judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Rule 56(a). The party moving for summary judgment has the burden of establishing both that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law. Rule 56(a).

Legal Analysis

"A constructive trust is an involuntary equitable trust created by operation of law as a remedy to compel the transfer of property from the person wrongfully holding it to the rightful owner. [Citations omitted.] The essence of the theory of constructive trust is to prevent unjust enrichment and to prevent a person from taking advantage of his or her own wrongdoing." Communist Party v. 522 Valencia, Inc., 35 Cal. App. 4th 980, 990 (1995) (citations omitted).

In California, constructive trusts are statutorily defined in California Civil Code §§ 2223 and 2224. "Under these statutes and the case law applying them, a constructive trust may only be imposed where the following three conditions are satisfied: (1) the existence of a *res* (property or some interest in property); (2) the *right* of a complaining party to that *res*; and (3) some *wrongful* acquisition or detention of the *res* by another party who is not entitled to it. Communist Party, 35 Cal. App. 4th at 990 (emphasis in original).

As to element two, "[b]efore a court can impose a constructive trust on the basis of a defendant's wrongful acquisition or retention of property under [Civil Code §§] 2223 or 2224, there must be some other party rightfully entitled to the property." Communist Party, 35 Cal. App. 4th at 991. The party seeking a constructive trust must provide evidence that it is "rightfully entitled to ownership, control or possession of th[e] property." Communist Party, 35 Cal. Appt. 4th at 992.

"The party seeking a constructive trust remedy has the burden of showing by clear and convincing evidence that it is entitled to the relief sought." Bank of Alex Brown v. Goldberg (In re Goldberg), 158 B.R. 188, 194 (Bankr. E.D. Cal. 1993) (citing Cameron v. Crocker-Citizens Nat'l Bank, 19 Cal. App. 3d 940, 943-44 (1971)).

Here, in the Motion and related papers, Plaintiff has not set forth the legal basis for its proposition that Plaintiff is rightfully entitled to ownership, control or possession of the assets of the Trust. In Plaintiff's memorandum of points and authorities in support of its Motion, Plaintiff asserts that Debtor only has an equitable interest, and not a legal interest, in the assets of the Trust and under Rahman's will. However, Plaintiff provides no legal authority in support of that assertion.

Further, just as Plaintiff's conclusory statements that Defendant does not hold a legal interest in the assets of the Trust does not satisfy Plaintiff's burden at summary judgment, the mere assertion that Plaintiff is entitled to that property also does not satisfy the burden at summary judgment. Plaintiff has not clearly established the legal framework that would justify the imposition of a constructive trust in favor of Plaintiff and has not clearly demonstrated how the undisputed facts entitle Plaintiff to judgment as a matter of law.

Plaintiff relies heavily on testimony from the meetings of creditors. However, read in a light favorable to the nonmoving party, the evidence submitted by Plaintiff does not clearly establish each of the elements of a constructive trust. The court also notes that Plaintiff's complaint seeks a determination that Defendant holds the entire value of Beardsley in constructive trust for all lawful creditors of the Trust, including Plaintiff, and Plaintiff has not offered any evidence or legal argument regarding additional creditors of the Trust.

Accordingly, Plaintiff has not met its burden warranting summary judgment as to the first claim for relief asserted in the adversary proceeding. Because Plaintiff has not shown that it is entitled to a constructive trust as a matter of law, the court will not rule on the impact of that finding on Defendant's assertion of a homestead exemption in Beardsley.

2. [21-10026](#)-A-7 **IN RE: MARTHA FERNANDEZ**
[21-1020](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-5-2021 [\[1\]](#)

FERNANDEZ V. U.S. DEPARTMENT OF EDUCATION
MARTHA FERNANDEZ/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

3. [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

NO RULING.

1. [21-12465](#)-A-7 **IN RE: MARIO ORTIZ**

PRO SE REAFFIRMATION AGREEMENT WITH ACAR LEASING LTD
11-4-2021 [\[15\]](#)

OSCAR SWINTON/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

The debtor counsel will inform the debtor that no appearance is necessary.

The debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), "'if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney' attesting to the referenced items before the agreement will have legal effect." In re Minardi, 399 B.R. 841, 846 (Bankr. N.D. Okla. 2009). 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. [21-12185](#)-A-7 **IN RE: CHRISTINE CLENDENEN**

PRO SE REAFFIRMATION AGREEMENT WITH FORD MOTOR CREDIT COMPANY LLC
11-15-2021 [\[27\]](#)

NO RULING.