

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Wednesday, December 9, 2020  
Place: Department A - Courtroom #11  
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.**

1. [17-13112](#)-A-11     **IN RE: PIONEER NURSERY, LLC**  
[FW-60](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.  
FOR PETER L. FEAR, DEBTORS ATTORNEY(S)  
11-10-2020    [[987](#)]

PETER FEAR/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.

Fear Waddell, P.C. ("Movant"), attorney for debtor and debtor in possession Pioneer Nursery, LLC ("DIP"), requests an allowance of final compensation and reimbursement for expenses for services rendered May 1, 2020 through September 1, 2020. Doc. #987. Movant provided legal services valued at \$85,902.00, and requests compensation for that amount. Doc. #169. Movant requests reimbursement for expenses in the amount of \$5,090.67. Doc. #169.

Section 330(a)(1) 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 11 case. 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 general case administration; (2) settlement approval; and (3) services related to an adversary proceeding. Ex. A, Doc. #990. The court finds the compensation of \$85,902.00 and reimbursement for expenses of \$5,090.67 for the period May 1, 2020 through September 1, 2020 sought are reasonable, actual, and necessary and should be allowed on a final basis.

Movant also requests the court conduct a final review pursuant to 11 U.S.C. § 330 of all fees and expenses previously allowed pursuant to 11 U.S.C. § 331

on an interim basis. Specifically, Movant seeks final allowance of the following compensation and reimbursement for expenses previously awarded to Movant:

Date of Hearing	Fees Allowed	Costs Allowed	Payment Date
December 20, 2017	\$50,109.50	\$2,456.54	January 17, 2018
February 20, 2018	\$36,976.00	\$1,599.74	February 27, 2018 & March 7, 2018
August 1, 2018	\$55,137.50	\$1,875.75	August 16, 2018
January 23, 2019	\$56,860.00	\$675.56	February 7, 2019
August 28, 2019	\$38,518.00	\$825.19	September 11, 2019
January 8, 2020	\$34,759.00	\$740.50	January 19, 2020
July 15, 2020	\$59,112.00	\$615.05	August 12, 2020

The court approves all fees and expenses of Movant previously allowed on an interim basis are approved on a final basis.

This motion is GRANTED. The court allows on a final basis compensation in the amount of \$85,902.00 and reimbursement for expenses in the amount of \$5,090.67. The court also allows on a final basis all fees and expenses previously allowed to Movant on an interim basis, as set forth in the above chart.

2. [17-13112](#)-A-11      **IN RE: PIONEER NURSERY, LLC**  
[MB-7](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF MCCORMICK, BARSTOW, SHEPPARD,  
WAYTE & CARRUTH, LLP CREDITOR COMM. ATY(S)  
10-30-2020    [\[981\]](#)

PETER FEAR/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.

McCormick, Barstow, Sheppard, Wayte & Carruth, LLP ("Movant"), attorneys for Official Committee of Unsecured Creditors ("Committee") requests an allowance of final compensation and reimbursement for expenses for services rendered May 1, 2020 through October 19, 2020. Doc. #981. Movant provided legal services

valued at \$16,275.00, and requests compensation for that amount. Doc. #981. Movant requests reimbursement for expenses in the amount of \$327.20. Doc. #981.

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 general case administration; (2) settlement approval; and (3) hearings and approval of the debtor's plan. Decl. of Hagop T. Bedoyan, Doc. #983. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

Movant also requests the court conduct a final review pursuant to 11 U.S.C. § 330 of all fees and expenses previously allowed pursuant to 11 U.S.C. § 331 on an interim basis. Specifically, Movant seeks final allowance of Fees and expenses previously awarded in two interim applications in the aggregate amount of \$35,396. The court approves all fees and expenses of Movant previously allowed on an interim basis are approved on a final basis.

This motion is GRANTED. The court allows on a final basis compensation in the amount of \$16,275.00 and reimbursement for expenses in the amount of \$327.20. The court also allows on a final basis all fees and expenses previously allowed to Movant on an interim basis, in the aggregate amount of \$35,396.00.

3. [20-11367](#)-A-11      **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION  
4-9-2020    [\[1\]](#)

LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Continue to January 7, 2021 at 10:30 a.m.

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

The court is inclined to continue this status conference to January 7, 2021 at 10:30 a.m. to be heard in conjunction with the hearing to approve the debtor's disclosure statement dated November 24, 2020. Doc. #222.

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)  
11-17-2020    [[211](#)]

LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

This motion was filed and served on at least 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.

Temblor Petroleum Company, LLC ("DIP"), the debtor and debtor in possession in this Chapter 11 case, moves the court for an order authorizing DIP's members to pay legal fees incurred by DIP's attorney Law Offices of Leonard K. Welsh ("Legal Counsel"). Doc. #211. For the reasons set forth below, the court is inclined to grant this motion.

Bankruptcy courts in the Ninth Circuit have adopted a five-part test to serve as a guideline where counsel for the debtor is to be funded by debtor's insiders. In re Lotus Props, LP, 200 B.R. 388, 392-95 (Bankr. C.D. Cal. 1996) (analyzing In re Kelton, 109 B.R. 641 (Bankr. D. Vt. 1989)). The test includes the following elements: (1) the arrangement must be fully disclosed to the debtor and the third party payor-insider; (2) the debtor must expressly consent to the arrangement; (3) the third party payor-insider must retain independent legal counsel and must understand that the debtor's attorney's duty of undivided loyalty is owed exclusively to the debtor as client; (4) the factual and legal relationship between the third party payor-insider, the debtor, their respective attorneys, and their contractual arrangement concerning fees must be fully disclosed to the court at the outset of the debtor's bankruptcy representation; and (5) the debtor's attorney must demonstrate and represent to the court's satisfaction the absence of facts that would otherwise create non-disinterestedness, actual conflict, or impermissible potential conflict of interest. Lotus Props., 200 B.R. at 393 (citing Kelton, 109 B.R. at 658).

In his declaration filed with the court at Doc. #214, Philip F. Bell states that he and Will McGrath are DIP's managing members. Doc. #214. Mr. Bell states the arrangement for DIP's members to pay outstanding fees and costs owed by DIP to Legal Counsel has been fully disclosed to Mr. Bell and Mr. McGrath, that both Mr. Bell and Mr. McGrath consulted independent legal counsel, and that they both understand that Legal Counsel owes a duty of undivided loyalty exclusively to DIP. Doc. #214. DIP does not object to the court authorizing DIP's members pay Legal Counsel. Decl. of Philip F. Bell in Support of Fifth Application, Doc. #180. Legal Counsel demonstrated and represents to the court that no facts exists that would create non-disinterestedness, actual conflict, or impermissible potential conflict of interest. Decl. of Leonard K. Welsh,

Doc. #213. Because a request to authorize payment of Legal Counsel by DIP's members was made to this court prior to the transfer of any payment, Movant has satisfied the disclosure requirement.

This motion is GRANTED. The court finds that the elements of the Lotus Properties test are satisfied. DIP's members are authorized to pay legal fees generated by Legal Counsel in the course of this Chapter 11 case. This court approved Legal Counsel's Fifth Application for fees and expenses on November 10, 2020, and DIP's members are authorized to pay any amount outstanding from that Order. See Doc. #203. Pursuant to 11 U.S.C. §§ 328, 329, and 330, any further compensation to Legal Counsel to be paid by DIP's members must be reviewed and approved by the Court.

5. [20-13293](#)-A-11 **IN RE: PATRICK JAMES, INC.**

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION  
10-9-2020 [[1](#)]

HAGOP BEDOYAN/ATTY. FOR DBT.

NO RULING.

6. [20-13293](#)-A-11 **IN RE: PATRICK JAMES, INC.**  
[MB-5](#)

MOTION FOR ORDER LIMITING NOTICE OF CERTAIN MOTIONS  
11-4-2020 [[75](#)]

PATRICK JAMES, INC./MV  
HAGOP BEDOYAN/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.

Patrick James, Inc. ("DIP"), the debtor and debtor in possession in this Chapter 11, subchapter V case, moves the court pursuant to Federal Rules of

Bankruptcy Procedure ("FRBP") 2002 and 9007 and 11 U.S.C. § 105(a) for an order permitting DIP to limit notice of certain motions. Specifically, DIP requests an order limiting notice of all future proceedings except those specified in FRBP 2002(a)(1), (4), (5), (7) and FRBP 2002(b).

FRBP 9007 provides that the court "shall designate, if not otherwise specified herein, the time within which, the entities to whom, and the form and manner in which the notice shall be given." Section 105 of the Bankruptcy Code permits the court to issue any order "that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

DIP has over two hundred creditors. Decl. of Patrick M. Mon Pere, Doc. #77. Should the court grant DIP's motion, DIP proposes to include on the limited service list: (1) the United States Trustee; (2) the Subchapter V Trustee; (3) DIP; (4) attorneys for DIP; (5) DIP's prepetition secured creditors; (6) attorneys for DIP's pre-petition secured creditors; (7) creditors holding the twenty largest unsecured claims; (8) parties affected by a particular motion; (9) those persons who have formally appeared and requested service; and (10) the Internal Revenue Service, corresponding state agencies, and other governmental agencies.

The court finds that good cause exists pursuant to FRBP 2002 and 9007 and 11 U.S.C. § 105(a) to limit notice as requested in the motion.

This motion is GRANTED. The order limiting notice shall be in conformance with the terms set forth in DIP's motion.

7. [12-12998](#)-A-11      **IN RE: FARSHAD TAFTI**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION  
4-2-2012    [[1](#)]

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION:      Dropped from calendar.

NO ORDER REQUIRED.

The court has granted the debtor's motion for a final decree. See matter number 8 below.



MOTION FOR FINAL DECREE  
11-11-2020    [[427](#)]

PETER FEAR/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.

As a procedural matter, the notice of hearing filed in connection to this motion does not comply with LBR 9014-1(d)(3)(B). The court urges counsel review the local rules to ensure compliance in future matters.

"After an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on a motion of a party in interest, shall enter a final decree closing the case." Fed. R. Bankr. P. 3022.

Neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure define "full administration" of a chapter 11 case, but the Advisory Committee Not to the 1991 amendments to Rule 3022 outline several factors the court should consider when making that determination. They include: whether the confirmation order is final; whether property proposed to be transferred under the plan has been transferred; whether the debtor or successor to the debtor under the plan has assumed the business and management of the property dealt with under the plan; whether the payments under the plan have commenced; and whether all motions, contested matters, and adversary proceedings have been resolved.

The court finds that the order confirming the plan has become final, that the debtor has assumed the business and management of the property dealt with under the plan, that payments under the plan have been made, and that all property required to be transferred under the plan has been transferred. Decl. of Farshad Tafti, Doc. #429. All motions, contested matters, and adversary proceedings have been resolved. Doc. #429. Therefore, a final decree shall be entered closing this case pursuant to Fed. R. Bankr. P. 3022, and the chapter 11 plan, and the order entering the debtor's discharge (Doc. #419).



11:00 AM

1. [20-12909](#)-A-7      **IN RE: VICTOR TAFOLLA AND ANGELINA CORDOVA ALATORRE**

PRO SE REAFFIRMATION AGREEMENT WITH SNAP-ON CREDIT  
11-11-2020    [[19](#)]

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION:      Dropped.

ORDER:              The court will issue an order.

Debtors' counsel will inform debtor that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009). The reaffirmation agreement, in the absence of a declaration by debtor(s)' counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. The debtors shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

2. [20-12985](#)-A-7      **IN RE: JAVIER MENDOZA**

REAFFIRMATION AGREEMENT WITH ONEMAIN FINANCIAL GROUP, LLC  
11-10-2020    [[15](#)]

T. O'TOOLE/ATTY. FOR DBT.

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

DISPOSITION:      Denied.

ORDER:              The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Although the debtor's attorney executed the agreement, no evidence has been presented to the court to indicate how the debtor can afford to make the payment. Therefore, the reaffirmation agreement with OneMain Financial Group, LLC will be DENIED.

3. [20-12586](#)-A-7      **IN RE: RIGOBERTO/ANGELINA MACIEL**

REAFFIRMATION AGREEMENT WITH BALBOA THRIFT AND LOAN ASSOCIATION  
11-10-2020    [\[16\]](#)

MARK HANNON/ATTY. FOR DBT.

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

DISPOSITION:      Denied.

ORDER:              The court will issue an order.

Debtors' counsel will inform debtor that no appearance is necessary.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Although the debtors' attorney executed the agreement, no evidence has been presented to the court to indicate how the debtors can afford to make the payment. The debtors claim fewer expenses but have not provided the court with an amended Schedule J. Therefore, the reaffirmation agreement with Balboa Thrift and Loan Association will be DENIED.

1. [20-11200](#)-A-7     **IN RE: MANPREET/RAMANDEEP BRAR**  
[NES-2](#)

MOTION TO AVOID LIEN OF LEAF CAPITAL FUNDING, LLC  
11-5-2020    [[40](#)]

MANPREET BRAR/MV  
NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION:        Denied.

ORDER:                The court will issue an order.

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 not done here.

Manpreet Singh Brar and Ramandeep Kaur Brar (collectively, "Debtors"), the debtors in this Chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Leaf Capital Funding, LLC ("Creditor") on their residential real property commonly referred to as 5022 Villa Bella Lane, Bakersfield, CA 93311(the "Property"). Doc. #40; Am. Schedule C, Doc. #37.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under section 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in section 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

A judgment was entered against Manpreet Brar in the amount of \$24,226.51 in favor of Creditor on November 15, 2019. Ex. A, Doc. #48. The abstract of judgment was recorded in Fresno County on May 20, 2019. Ex. D, Doc. #43. The lien attached to Debtors' interest in the Property located in Kern County. Doc. #43. The Property also is encumbered by a lien in favor of PennyMac in the amount of \$259,026.73. Am. Schedule D, Doc. #37. Debtors claim an exemption of \$100,000.00 in the Property under California Code of Civil Procedure § 704.730.

Am. Schedule C, Doc. #37. Debtors assert a market value for the Property as of the petition date at \$383,656.00. Am Schedule A/B, Doc. #37.

Applying the statutory formula:

Amount of Leaf Capital Funding, LLC's judicial lien		\$24,226.51
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$259,026.73
Amount of Debtors' claim of exemption in the Property	+	\$100,000.00
	sum	\$383,253.24
Value of Debtors' interest in the Property absent liens	-	\$383,656.00
Extent of impairment of Debtors' exemption	=	(\$402.76)

Application of the arithmetical formula required by § 522(f)(2)(A) shows Creditor's judicial lien does not impair Debtors' exemption in the Property.

Accordingly, this motion is DENIED without prejudice.

2. [19-14305](#)-A-7     **IN RE: PHETMANY HIMPWAYVANH**  
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG, ACCOUNTANT(S)  
11-9-2020    [[47](#)]

RATZLAFF, TAMBERI & WONG/MV  
MICHAEL ARNOLD/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.

Ratzlaff Tamberi & Wong, an Accountancy Corporation ("Movant"), accountant for Chapter 7 trustee James E. Salven ("Trustee"), requests an allowance of final compensation and reimbursement for expenses for services rendered June 30, 2020 through October 29, 2020. Doc. #47. Movant provided accounting services valued at \$968.00, and requests compensation for that amount. Doc. #51. Movant requests reimbursement for expenses in the amount of \$10.00. Doc. #51.

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) preparing and reviewing tax documents; and (2) assisting with the disposition of estate property and financial activity. Ex. A, Doc. #51. 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 \$968.00 and reimbursement for expenses in the amount of \$10.00. Trustee is authorized to make a combined payment of \$978.00, 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. [20-12806](#)-A-7     **IN RE: ROBERTO CHAVEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
11-5-2020    [[23](#)]

MARK ZIMMERMAN/ATTY. FOR DBT.  
\$31.00 FEE PAID

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 filing fees now due have been paid.

4. [19-12511](#)-A-7     **IN RE: FAULKNER TRUCKING, INC.**  
[THA-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT  
WITH KLX, LLC  
10-29-2020    [[107](#)]

PETER FEAR/MV  
RILEY WALTER/ATTY. FOR DBT.  
KELSEY SEIB/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

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

Peter L. Fear ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Faulkner Trucking, Inc. ("Debtor"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of all claims and disputes with KLX, LLC ("KLX"). Doc. #107.

Among the assets of the estate is a claim against KLX for the recovery of certain pre- and post-petition transfers of Debtor's equipment to KLX in the amount of \$120,000. Tr.'s Decl., Doc. #109. KLX has asserted various affirmative defenses to Trustee's claims. Trustee has agreed to settle the claim against KLX. Id. at ¶ 6. The bankruptcy estate has conducted significant discovery regarding the alleged transfers of estate assets. Id. at ¶ 7. The settlement provides that KLX will provide the sum of \$52,500.00 to the bankruptcy estate and in exchange Trustee will release to KLX two certificates of title vesting title of two trailers to KLX. Doc. 109 at ¶ 8. Trustee is in receipt of the \$52,500.00. Id. at ¶ 10.

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

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #34. Although Trustee believes he will ultimately succeed in litigation, the terms of the settlement with KLX obviates the need to continue litigation of the estate's claims. Doc. #109, Tr.'s Decl. at ¶ 11. Further, attorney fees and costs at this time are minimal and would increase significantly with continued litigation. Id. at ¶ 12. The settlement places the amount settled back in the estate, without the expenses of litigation costs or issues in the matter of collection. Id. at ¶ 14. Trustee believes in his business judgment that the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Id. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business

judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion to approve the compromise is GRANTED, and the settlement between Trustee and KLX is approved.

This ruling is not authorizing the payment of any fees or costs associated with the litigation. Dismissal of the adversary proceeding must comply with Federal Rule of Bankruptcy Procedure 7041.

5. [20-13112](#)-A-7     **IN RE: JOHNNY/CHRISTINA VALENZUELA**  
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-18-2020    [\[19\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV  
NEIL SCHWARTZ/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 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, Toyota Motor Credit Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and 362(d)(2) with respect to a 2018 Lexus IS 300 ("Vehicle"). Doc. #19.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least four complete pre-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$2,597.30. Doc. #21. According to the debtors' Statement of Intention, the Vehicle will be surrendered. Doc. #1.



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

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 debtors' possession of the Vehicle stems from a lease agreement with Movant that matures on September 16, 2022, according to which the debtors do not own the Vehicle. Doc. #22.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and 362(d)(2) to permit Movant to gain immediate possession of the Vehicle pursuant to applicable law. No other relief is awarded.

6. [20-13112](#)-A-7     **IN RE: JOHNNY/CHRISTINA VALENZUELA**  
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-23-2020    [\[10\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV  
NEIL SCHWARTZ/ATTY. FOR DBT.  
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION:     Denied as moot.

ORDER:             The court will issue an order.

The court deems this filing to be duplicative of the relief requested in matter number five on this calendar. Doc. #19. Accordingly, the motion will be DENIED AS MOOT.

7. [20-13114](#)-A-7     **IN RE: MANUEL/JASMIN RIVERA**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
10-22-2020    [\[14\]](#)

AMERICREDIT FINANCIAL SERVICES, INC./MV  
TIMOTHY SPRINGER/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, Americredit Financial Services, Inc. DBA GM Financial ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2017 Chevrolet Cruze ("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 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 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 \$11,485.00 and the debtors owe \$14,896.65. Doc. #17. According to the debtors' Statement of Intention, the Vehicle will be surrendered.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtors have indicated an intent to surrender the Vehicle and the Vehicle is a depreciating asset.

[RAC-12](#)

OBJECTION TO CLAIM OF M & R TRANSPORT, CLAIM NUMBER 15-1  
10-27-2020    [[328](#)]

DAVID SOUSA/MV  
JACOB EATON/ATTY. FOR DBT.  
JOHN WASTE/ATTY. FOR MV.  
NON-OPPOSITION

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

DISPOSITION:      Sustained.

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

This objection was set for hearing on 44 days' notice pursuant to Local Rule of Practice ("LBR") 3007-1(b)(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 3007-1(b)(1)(A) may be deemed a waiver of any opposition to the sustaining of the objection. 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.

David M. Sousa ("Trustee"), the Chapter 7 trustee in this bankruptcy case, objects to claim no. 15 (the "Claim") filed by M&R Transport (the "Claimant") on the grounds that the Claim is a duplicate of proof of claim 35, also filed by Claimant, which was deemed withdrawn and disallowed pursuant to a stipulation between Claimant and Trustee. Tr.'s Obj., Doc. #328; Stipulation, Doc. #311. On November 25, 2020, Claimant filed a non-opposition to Trustee's motion and to the disallowance of the Claim. Doc. #333.

Accordingly, Trustee's objection is SUSTAINED.

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-6-2020    [[15](#)]

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

The movant, Santander Consumer USA, Inc. dba Chrysler Capital ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2013 Dodge Avenger ("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).

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least four complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$938.90. Doc. #18.

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

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

MOTION TO COMPEL  
10-23-2020    [\[14\]](#)

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

James Salven ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Gilberto Flores Mata ("Debtor"), moves the court to compel Debtor to turn over Debtor's 2019 federal tax returns and any refund received. Doc. #14.

11 U.S.C. § 541(a)(1) defines property of the estate as "all legal or equitable interests of the debtor in property as of the commencement of the case." In the Ninth Circuit, "the right to receive a tax refund constitutes an interest in property[.]" Nichols v. Birdsell, 491 F.3d 987, 990 (9th Cir. 2007).

11 U.S.C. § 542(a) requires Debtor to turn over property of the estate, or its value, then in Debtor's possession, custody or control during the case. "§ 542(a) does not require the debtor to have current possession of the property which is subject to turnover. If a debtor demonstrates that he is not in possession of the property of the estate or its value at the time of the turnover action, the trustee is entitled to recovery of a money judgment for the value of the property of the estate." Newman v. Schwartzer (In re Newman), 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013) (citations and punctuation omitted).

Accordingly, this motion is GRANTED. Debtor shall turn over the 2019 federal tax returns and any refund received within 10 days of the court order. Alternatively, Debtor shall provide Trustee with the information necessary for Trustee to cause the returns to be filed. Failure to do so may result in sanctions pursuant to 11 U.S.C. § 105(a).

MOTION TO SELL  
10-30-2020    [\[13\]](#)

PETER FEAR/MV  
LAYNE HAYDEN/ATTY. FOR DBT.  
PETER FEAR/ATTY. FOR MV.

TENTATIVE RULING:      This matter will proceed as scheduled for higher and better offers.

DISPOSITION:              Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled for higher and better offers. 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). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Peter L. Fear ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Zhanna Glukhoy ("Debtor"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the bankruptcy estate's interest in proceeds from YouTube, Instagram, and Etsy accounts run by Debtor (the "Property") to Debtor for the purchase price of \$5,000.00, subject to higher and better bids at the hearing. Doc. #13.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Doc. ##13, 15. Trustee's

proposed sale to Debtor is made in consideration of the full and fair market value of the Property as a going concern and the uncertainty in the Property's future financial performance. Doc. #15. Debtor offered to buy the Property for the net purchase price of \$5,000.00, subject to overbid at the hearing. Doc. #15. The court recognizes that no commission will need to be paid because the sale is to Debtor.

It appears that the sale of the estate's interest in the Property is in the best interests of the estate, the Property will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith.

Accordingly, subject to overbid offers made at the hearing, the court is inclined to GRANT Trustee's motion and authorize the sale of the estate's interest in the Property to Debtor on the terms set forth in the motion.

12. [19-13762](#)-A-7     **IN RE: MAGDALENA MATA**  
[JES-1](#)

MOTION TO COMPEL  
10-23-2020    [[17](#)]

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

James Salven ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Magdalena Mata ("Debtor"), moves the court to compel Debtor to turn over Debtor's 2019 federal and state tax refunds. Doc. #17.

11 U.S.C. § 541(a)(1) defines property of the estate as "all legal or equitable interests of the debtor in property as of the commencement of the case." In the Ninth Circuit, "the right to receive a tax refund constitutes an interest in property[.]" Nichols v. Birdsell, 491 F.3d 987, 990 (9th Cir. 2007).



11 U.S.C. § 542(a) requires Debtor to turn over property of the estate, or its value, then in Debtor's possession, custody or control during the case. "§ 542(a) does not require the debtor to have current possession of the property which is subject to turnover. If a debtor demonstrates that he is not in possession of the property of the estate or its value at the time of the turnover action, the trustee is entitled to recovery of a money judgment for the value of the property of the estate." Newman v. Schwartz (In re Newman), 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013) (citations and punctuation omitted).

Accordingly, this motion is GRANTED. Debtor shall turn over the 2019 federal and state tax refunds within 10 days of the court order. Failure to do so may result in sanctions pursuant to 11 U.S.C. § 105(a).

13. [20-13067](#)-A-7     **IN RE: JOSE FLORES PATINO AND ELVIRA FLORES**  
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY, AND/OR MOTION FOR  
ADEQUATE PROTECTION  
11-23-2020    [[27](#)]

MECHANICS BANK/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
VINCENT FROUNJIAN/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The movant, Mechanics Bank ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2017 GMC Light Duty Yukon XL 1500 Utility 4D SLT ("Vehicle"). Doc. #27

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 three complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$2,198.58. Doc. #29.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. Movant values the Vehicle at \$31,300.00 and the amount owed to Movant is \$32,457.15. Doc. #27.

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

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

14. [20-12974](#)-A-7     **IN RE: JUVENAL RAMIREZ**  
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-24-2020    [\[15\]](#)

HONDA LEASE TRUST/MV  
T. O'TOOLE/ATTY. FOR DBT.  
VINCENT FROUNJIAN/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The movant, Honda Lease Trust ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2018 Honda Civic ("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 any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least two complete post-

petition payments. Movant has produced evidence that debtor is delinquent by at least \$501.72. Doc. #18.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. The debtor's possession of the Vehicle stems from a lease agreement with Movant that matures on February 17, 2021, according to which the debtor does not own the Vehicle. Doc. #19.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit Movant to gain immediate possession of the Vehicle pursuant to applicable law. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least two post-petition payments to Movant in accordance with the lease agreement.

15. [20-12379](#)-A-7     **IN RE: MICHAEL/KARRI TANDY**  
[PFT-1](#)

MOTION TO SELL  
10-30-2020    [[20](#)]

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

TENTATIVE RULING:            This matter will proceed as scheduled for higher and better offers.

DISPOSITION:                Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled for higher and better offers. 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). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Peter L. Fear ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Michael G. Tandy and Karri L. Tandy (together, "Debtors"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the bankruptcy estate's interest in a 2017 Kia Sorento (the "Vehicle") to Debtors for the purchase price of \$6,000.00, subject to higher and better bids at the hearing. Doc. #20.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Doc. ##20, 22. Trustee's proposed sale to Debtors is made in consideration of the full and fair market value of the Vehicle and the costs associated with storing and selling the Vehicle at auction. Doc. #22. Debtors offered to buy the Vehicle for the net purchase price of \$6,000.00, subject to overbid at the hearing. Doc. #22. The court recognizes that no commission will need to be paid because the sale is to Debtors.

It appears that the sale of the estate's interest in the Vehicle is in the best interests of the estate, the Vehicle will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith.

Accordingly, subject to overbid offers made at the hearing, the court is inclined to GRANT Trustee's motion and authorize the sale of the estate's interest in the Vehicle to Debtors on the terms set forth in the motion.

16. [20-10387-A-7](#) **IN RE: ANGELA MAGANA RODRIGUEZ**  
[JES-3](#)

MOTION TO COMPEL  
10-28-2020 [[24](#)]

JAMES SALVEN/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.

James Salven ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Angela Teresa Magana Rodriguez ("Debtor"), moves the court to compel Debtor to turn over Debtor's 2019 federal and state tax returns and any refunds received. Doc. #24.

11 U.S.C. § 541(a)(1) defines property of the estate as "all legal or equitable interests of the debtor in property as of the commencement of the case." In the Ninth Circuit, "the right to receive a tax refund constitutes an interest in property[.]" Nichols v. Birdsell, 491 F.3d 987, 990 (9th Cir. 2007).

11 U.S.C. § 542(a) requires Debtor to turn over property of the estate, or its value, then in Debtor's possession, custody or control during the case. "§ 542(a) does not require the debtor to have current possession of the property which is subject to turnover. If a debtor demonstrates that he is not in possession of the property of the estate or its value at the time of the turnover action, the trustee is entitled to recovery of a money judgment for the value of the property of the estate." Newman v. Schwartzer (In re Newman), 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013) (citations and punctuation omitted).

Accordingly, this motion is GRANTED. Debtor shall turn over the 2019 federal and state tax returns and any refund received within 10 days of the court order. Alternatively, Debtor shall provide Trustee with the information necessary for Trustee to cause the returns to be filed. Failure to do so may result in sanctions pursuant to 11 U.S.C. § 105(a).

17. [20-13288](#)-A-7      **IN RE: ANA JARAMILLO**  
[TMO-1](#)

MOTION TO DISMISS DUPLICATE CASE  
10-29-2020    [\[11\]](#)

ANA JARAMILLO/MV  
T. O'TOOLE/ATTY. FOR DBT.  
T. O'TOOLE/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.

Ana Maria Jaramillo ("Debtor") moves to dismiss this duplicative Chapter 7 case on the grounds that Debtor's counsel inadvertently filed two voluntary, duplicative Chapter 7 bankruptcy petitions commencing Case No. 20-13096-B-7 and this instant case, Case No. 20-13288-A-7. Doc. #11.

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

The court finds that dismissing Debtor's case no. 20-13288-A-7 will cause no legal prejudice to interested parties because Debtor is active in her voluntary Chapter 7 case no. 20-13096-B-7. A review of the docket in that case shows that case was filed September 25, 2020, and Debtor appeared at the 341 Meeting in that case. Case No. 20-13096-B-7, Doc. #1-16. The court finds cause exists to dismiss Debtor's voluntary Chapter 7 case no. 20-13288-A-7.

Accordingly, this motion is GRANTED.

18. [17-12389](#)-A-7      **IN RE: DON ROSE OIL CO., INC.**  
[LAK-5](#)

CONTINUED MOTION FOR ADMINISTRATIVE EXPENSES  
10-15-2020    [[1127](#)]

SALLYPORT COMMERCIAL FINANCE, LLC/MV  
RILEY WALTER/ATTY. FOR DBT.  
SCOTT SIEGEL/ATTY. FOR MV.  
CONTINUED TO 12/16/2020 ORDER DOC #1148

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

DISPOSITION:      Continued to December 16, 2020, at 1:30 p.m.

NO ORDER REQUIRED.

The parties have stipulated to continue the hearing on the motion for administrative expenses to December 16, 2020, at 1:30 p.m. The court has already issued an order on November 17, 2020. Doc. #1148.