

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, December 16, 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. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[DJP-2](#)

MOTION BY DON J. POOL TO WITHDRAW AS ATTORNEY
11-18-2020 [[370](#)]

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Continued to January 6, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

On December 14, 2020, the court issued an order continuing the hearing on the motion to withdraw as counsel to January 6, 2021 at 9:30 a.m. Doc. #392.

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

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
8-11-2017 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Dropped from calendar if the motion for final decree is granted.

NO ORDER REQUIRED.

The court will drop this matter from calendar if the motion for final decree, matter number 4 below, is granted.

MOTION FOR COMPENSATION FOR M. KATHLEEN KLEIN, ACCOUNTANT(S)
11-13-2020 [\[994\]](#)

M. KATHLEEN KLEIN/MV
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.

M. Kathleen Klein, Certified Public Accountant ("Movant"), accountant for the debtor and debtor in possession Pioneer Nursery, LLC ("DIP") requests an allowance of final compensation and reimbursement for expenses for services rendered June 17, 2019 through October 19, 2020. Doc. #994. Movant provided accounting services valued at \$6,234.50, and requests compensation for that amount. Doc. #994. Movant requests reimbursement for expenses in the amount of \$217.10. Doc. #994.

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) accounting and auditing services; (2) resolving tax issues; and (3) preparing reports and applications. Ex. A, Doc. #998. 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 \$13,544.03. 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 \$6,234.50 and reimbursement for expenses in the amount of \$217.10. 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 \$13,544.03.

4. [17-13112](#)-A-11 **IN RE: PIONEER NURSERY, LLC**
[FW-62](#)

MOTION FOR FINAL DECREE AND ORDER CLOSING CASE
11-18-2020 [[1003](#)]

PETER FEAR/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 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). Therefore, the defaults of the above-mentioned parties in interest are entered. Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought.

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

Debtor and debtor in possession Pioneer Nursery, LLC ("Debtor") moves the court for entry of a final decree closing Debtor's chapter 11 bankruptcy case. Doc. #1003. The court is inclined to grant this motion upon the granting of the Motion for Compensation by the Law Office of Wilkins Drolshagen & Czesinski, LLP, which is set for hearing on this calendar as matter number 5 below.

"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 note 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 Brian Blackwell has assumed the business and management of the property dealt with under the liquidating plan, that payments under the plan have commenced, and that all property required to be transferred under the plan has been transferred. Decl. of Brian Blackwell, Doc. #1005. Upon the resolution of all motions, contested matters, and adversary proceedings, this motion will be GRANTED. A final decree shall be entered closing this case pursuant to Fed. R. Bankr. P. 3022 and the chapter 11 plan.

5. [17-13112](#)-A-11 **IN RE: PIONEER NURSERY, LLC**
[FW-63](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILKINS DROLSHAGEN &
CZESHINSKI, LLP FOR JAMES H. WILKINS, SPECIAL COUNSEL(S)
11-18-2020 [[1007](#)]

PETER FEAR/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.

Wilkins Drolshagen & Czeshinski, LLP ("Movant"), special counsel for debtor and debtor in possession Pioneer Nursery, LLC ("DIP"), 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	Doc. #
January 10, 2018	\$4,270.00	\$0	422
June 27, 2018	\$4,025.00	\$0	542
January 20, 2019	\$11,795.00	\$42.15	660
November 12, 2019	\$7,490.00	\$0	772
March 11, 2020	\$13,265.00	\$20.10	850
July 22, 2020	\$4,130.00	\$20.10	947
Total	\$44,975.00	\$82.35	

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).

This motion is GRANTED. The court finds all fees and expenses of Movant previously allowed on an interim basis are reasonable and necessary. The court allows on a final basis all fees and expenses previously allowed to Movant on an interim basis, as set forth in the above chart.

6. [14-13417](#)-A-12 **IN RE: DIMAS/ROSA COELHO**
[TCS-15](#)

MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS FOR
VIOLATION OF THE DISCHARGE INJUNCTION
10-5-2020 [[204](#)]

DIMAS COELHO/MV
NANCY KLEPAC/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied in part.

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

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

Dimas Coelho ("Debtor"), co-debtor in this Chapter 12 bankruptcy case, moves the court to find Wells Fargo Bank, N.A. d/b/a Wells Fargo Dealer Services ("Creditor") in contempt and to award actual damages, punitive damages, and attorney's fees against Creditor for Creditor's pursuit of a claim discharged in Debtor's Chapter 12 case. Doc. #204.

The court is inclined to deny this motion on the grounds that Creditor's proof of claim, Claim 5 in Debtor's Chapter 13 case, which gives rise to this motion, was withdrawn on October 26, 2020.

The bankruptcy court has civil contempt powers pursuant to 11 U.S.C. § 105(a). Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1196 (9th Cir. 2003) ("Civil contempt authority allows a court to remedy a violation of a specific order (including 'automatic' orders, such as the automatic stay or discharge injunction)."). Under § 105(a) of the Bankruptcy Code, "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. 11 U.S.C. § 105(a). A bankruptcy

discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor[.]" 11 U.S.C. § 524(a)(2). Together, sections 524(a)(2) and 105(a) authorize the court to impose civil contempt sanctions for violation of the discharge order. When a party acts in violation of a debtor's discharge, the court may award the debtor "compensatory damages, attorneys fees, and [coerce] the offending creditor's compliance with the discharge injunction." See Walls v. Wells Fargo Bank, 276 F.3d 502, 507 (9th Cir. 2002). Relatively mild, non-compensatory fines against the offending creditor may be necessary in some circumstances. Dyer, 322 F.3d at 1193-94.

To establish a violation of 11 U.S.C. § 524, the debtor must prove that the creditor willfully violated the discharge injunction. In the Ninth Circuit, courts have applied a two-part test to determine whether a party's violation was willful: (1) did the alleged offending party know that the discharge injunction applied; and (2) did such party intend the actions that violated the discharge injunction? See, e.g., Nash v. Clark Cty. Dist. Attorney's Office (In re Nash), 464 B.R. 874, 880 (B.A.P. 9th Cir. 2012) (citing Espinosa v. United States Student Aid Funds, Inc., 553 F.3d 1193, 1205 n.7 (9th Cir. 2008) aff'd, 559 U.S. 260 (2010)); Zilog, Inc. v. Corning (In re Zilog, Inc.), 450 F.3d 996, 1007 (9th Cir. 2006). The party seeking sanctions for contempt has the burden of proving, by clear and convincing evidence, that the offending party violated the order and sanctions are justified. Zilog, 450 F.3d at 1007. Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.' Factual contentions are highly probable if the evidence offered in support of them instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition." Emmert v. Taggart (In re Taggart), 584 B.R. 275, 288 n.11 (B.A.P. 9th Cir. 2016) (citations omitted) (vacated and remanded on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019)). Debtor has not met this burden.

Debtor's Chapter 12 case was filed on July 6, 2014, and the chapter 12 plan ("Plan") was confirmed March 13, 2015. Doc. #129. Creditor held a Class 3 claim secured by a 2010 Chevrolet Malibu (the "Vehicle"). Plan, Doc. #87; Claim 1. Class 3 of the Plan included all secured claims satisfied by the surrender of collateral. Plan, Doc. #87. The court granted Creditor's motion for relief from stay pertaining to the Vehicle. Doc. #128. On April 29, 2015, Creditor amended its proof of claim establishing an unsecured claim of \$6,600.12 resulting from a deficiency after the sale of the Vehicle. Claim 1-2. A discharge under 11 U.S.C. § 1228(a) was granted to Debtor in the Chapter 12 case on March 6, 2018. Doc. #151. The Certificate of Notice of the discharge shows that Creditor was sent notice of the discharge. Doc. #152.

On August 31, 2018, Debtor filed a Chapter 13 case, case no. 2018-13595-B-13F. In November 8, 2018, Creditor filed a proof of claim in Debtor's Chapter 13 case that asserted an unsecured claim identifying Debtor and the debt by the same account number as used in Debtor's Chapter 12 case (the "Claim"). Claim 5, case no. 2018-13595-B-13F. Over two years later, on October 5, 2020, Debtor successfully moved this court to reopen his Chapter 12 case and filed this motion for contempt and damages. Doc. ##202-208. A review of the docket in Debtor's Chapter 13 case shows that Creditor withdrew its Claim in Debtor's Chapter 13 case on October 26, 2020. No. 2018-13595-B-13F, Claim 5-1.

No opposition was filed in response to this motion. Based upon a review of the docket in this case and evidence submitted by Debtor, the court finds that Creditor knew of the discharge injunction. Further, Creditor intended to file

its Claim in Debtor's Chapter 13, and so the actions which violated the injunction were intentional. Therefore, awarding Debtor actual damages equal to the amount wrongfully distributed to Creditor is appropriate.

However, Creditor upheld its affirmative duty to remedy the violation by withdrawing the Claim shortly after Debtor filed this motion. Although the Claim violated the discharge injunction by filing the Claim in Debtor's Chapter 13 case on November 8, 2018, Debtor took no action to correct the error until October 5, 2020. Further, Debtor offers no evidence to show that: (1) Creditor failed to implement any effective procedures to ensure an effort will be made to avoid filing claims on discharged debts; (2) Creditor failed to implement any system to properly identify bankruptcy accounts notwithstanding the fact that it knows the present system has no discernable impact on whether or not it continues collection activities; or (3) Debtor was, in fact, "severely agitated, annoyed, traumatized, emotionally damaged and . . . otherwise unduly inconvenienced." Debtor's Mot. ¶¶ 24-26, Doc. #204. Debtor likewise has offered no evidence justifying Debtor's request of \$30,000 in attorneys' fees.

Accordingly, this motion is GRANTED in part and Creditor shall return \$85.46 to the Chapter 13 trustee for case No. 2018-13595-B-13F to be administered in that case. Debtor's requests for punitive damages and attorney's fees are DENIED.

7. [20-12577](#)-A-11 **IN RE: MARIA LUNA MANZO**
[HLF-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HARRIS LAW FIRM, PC
FOR JUSTIN D. HARRIS, DEBTORS ATTORNEY(S)
11-25-2020 [\[82\]](#)

JUSTIN HARRIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party 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. Though not required, Blackridge Corporation ("Creditor") filed a limited opposition. Doc. #89. Unless additional opposition is presented at the hearing, the court intends to enter the defaults of the non-responding parties and grant the motion. The court will consider any additional 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.

Harris Law Firm, PC ("Movant"), attorney for the debtors, requests an allowance of interim compensation and reimbursement for expenses for services rendered August 7, 2020 through November 24, 2020. Doc. #82. Movant provided legal services valued at \$24,435.00, and requests compensation for that amount. Doc. #82. Movant requests reimbursement for expenses in the amount of \$644.15. Doc. #82.

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). According to the order authorizing employment of general counsel, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #32. 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) complying with the document request from the United States Trustee's Office; (2) preparing for and appearing at the initial debtor interview; (3) appearing at the debtor's 341 meeting; (4) preparing the debtor's schedules and extension request for same; (5) preparing monthly operating reports; (6) preparing the application to employ Movant and this first interim fee application; (7) filing the debtor's motion to extend the automatic stay and related briefings and attending the hearings; (8) appearing at hearings before the labor commissioner; (9) addressing the adversary proceeding filed by Mr. Ahmed; and (10) negotiating, formulating, and preparing a subchapter V plan filed on November 10, 2020. Doc. #84. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

Creditor opposes Movant's fee application to the extent any payment to Movant will result in surcharging Creditor's collateral or otherwise using Creditor's cash collateral, or other collateral of Creditor, to pay Movant. This court has not authorized the use of cash collateral or any surcharge, and any compensation or reimbursement awarded Movant therefore must not be paid with any of Creditor's collateral.

This motion is GRANTED. The court allows interim compensation in the amount of \$24,435.00 and reimbursement for expenses in the amount of \$644.15. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds that are not Creditor's collateral without Creditor's consent, and only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

8. [20-13293](#)-A-11 **IN RE: PATRICK JAMES, INC.**
[MB-9](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
11-13-2020 [\[99\]](#)

PATRICK JAMES, INC./MV
HAGOP BEDOYAN/ATTY. FOR DBT.

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

DISPOSITION: Granted in part, Continued in part.

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.

By the motion filed November 13, 2020, Patrick James, Inc. ("DIP"), the debtor and debtor in possession in this chapter 11 subchapter V case, asked the court for authorization to reject five nonresidential real property leases. Doc. #99. On December 11, 2020, DIP moved for a continuance of this motion (Doc. #133) with respect to two properties, the Sacramento Property and the Reno Property, respectively:

DASM Pavilions Center P.O. Box 6157 Hicksville, NY 11802-6157	536 Pavilions Lane Sacramento, CA	Term Expires 1/31/2021
G&I Reno Operating LLC P.O. Box 775951 Chicago, IL 60677-5951	13935 S. Virginia St. Ste. 300 Reno, NV 89511	Term Expires 1/31/2021

Landlords for both the Sacramento and Reno Properties consent to the continuance. Pursuant to DIP's ex parte request, the court continued the hearing on this motion with respect to the Reno and Sacramento Properties listed above to January 6, 2020 at 9:30 a.m. Doc. #142.

DIP still seeks to proceed with the motion as to the following nonresidential real property leases (collectively, the "Leases") defined as follows:

Lessor	Location	Term of Lease
CEP Town & Country Investors 303 Sacramento St. 3d Floor San Francisco, CA 94111	Town & Country Village 855 El Camino Real, #40 Palo, Alto CA	Term Expires 4/30/2023 Lease surrendered 9/27/2020
DS Properties 18 LP P.O. Box 6157 Hicksville, NY 11802-6157	9000 Ming Ave., Ste K-10 Bakersfield, CA	Term Expires 1/31/2024 Proposed Surrender date 12/31/2020
Red Hilton Village, LLC c/o Red Development P.O. Box 93024 Las Vegas, NV 89193-3024	6137 N. Scottsdale Rd., #B110 Scottsdale, AZ	Term Expires 6/30/2022 Proposed Surrender 11/20/2020

11 U.S.C. § 365(a) states that "subject to the court's approval, [the debtor in possession] may . . . reject any executory contract . . . or unexpired lease of the debtor."

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." Agarwal v. Pomona Valley Med. Grp., Inc. (In re Pomona Valley Med. Grp., Inc.), 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted). The bankruptcy court should approve the rejection of an executory contract under § 365(a) unless the debtor in possession's conclusion is based on bad faith, whim, or caprice. Id.

Here, DIP states that rejection of the Leases is essential to DIP's successful reorganization. Decl. of Patrick M. Mon Pere, Doc. #101. The three Leases are unprofitable and rejecting the Leases will enable DIP to focus on reorganizing and establishing a profitable business model. Decl., Doc. #101. The court finds that DIP's decision to reject is based on sound business judgment.

DIP is authorized to reject the Leases, as defined here, in conformance with DIP's motion. Doc. #99; Doc. #142. Any claim based on the rejection of the Leases shall be filed on or before March 23, 2021, provided notice of the order rejecting the Leases is served on the other parties to the rejected Leases on or before December 23, 2020.

1. [20-12900](#)-A-7 **IN RE: SEAN/JOANNA FRANCO**
[JES-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
11-11-2020 [\[20\]](#)

JAMES SALVEN/MV
JERRY LOWE/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled in part.

ORDER: The minutes of the hearing will be the court's findings
and conclusions. The court will issue an 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). The debtors filed timely opposition (Doc. #28) and this matter will proceed as scheduled.

James E. Salven ("Trustee"), the Chapter 7 trustee in the bankruptcy case of Sean Anthony Franco and Joanna Salas Franco (together, "Debtors"), objects to Debtors' claim of a \$1,800.00 exemption in the following firearms: a Smith and Wesson CS 45 caliber, serial no. BDJ5422 ("CS .45"); a Smith and Wesson 45667SW 45 caliber, serial no. FSD0199 ("SW .45"); a CMMG AR-15 .223 rifle, serial no. SA29687 ("Rifle"); and a Mossberg 12 gauge shotgun, serial no. T887157 ("Shotgun") (collectively, the "Firearms"). Tr.'s Obj., Doc. #20; see Am. Schedule C, Doc. #18. Debtors claims an exemption in the Firearms under California Code of Civil Procedure ("C.C.P.") § 703.140(b)(3).

"[T]he debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under California Code of Civil Procedure § 703.140(b)[] and the extent to which the exemption applies." In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); see Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016) (concluding "that where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation."); In re Guevarra, No. 18-25306-B-7, 2020 Bankr. LEXIS 1455, at *6 (Bankr. E.D. Cal. June 1, 2020).

California Code of Civil Procedure § 703.140(b)(3) permits a bankruptcy debtor to exempt

[t]he debtor's interest, not to exceed six hundred dollars (\$600) in value in any particular item, in household furnishing, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

C.C.P. § 703.140(b)(3).

Trustee first objects to Debtors' claim of exemption on the grounds that several of the Firearms may have value greater than \$650. Doc. #20. Debtors

responded by filing sales receipts showing that Debtors paid \$299.99 for the Shotgun, \$310.00 for the SW .45, and \$896.76 for the Rifle. Ex. A, Doc. #30. The Rifle was purchased in 2011 and Debtors assert that its value is currently less than \$650 due to its condition and status under current California law. Decl. of Sean Anthony Franco, Doc. #29. Debtors were unable to locate a receipt for the CS .45. Co-debtor Sean Franco is competent to testify as to the value of the Firearms. 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).

C.C.P. § 703.140(b)(3) creates a maximum value of exempt property under that subsection of \$600. Both Trustee and Debtors, however, seem to base their papers on a maximum exemption value of \$650. Based on the evidence offered by Debtors, the court finds that the Shotgun and the SW .45 each have a value less than \$600. However, Trustee does not allege that the Rifle has a value greater than \$600, and Debtors do not respond that the Rifle has a value less than \$600. Similarly, Trustee has not alleged that the value of the CS .45 is greater than \$600. Therefore, a factual issue remains as to the value of both the Rifle and the CS .45.

Trustee next objects to Debtors' exemption on the grounds that the Firearms are not household goods contemplated by C.C.P. § 703.140(b)(3). There is no *per se* rule prohibiting the exemption of firearms as household property. In re Dunnaway, 466 B.R. 515, 524 (Bankr. E.D. Cal. 2012), abrogated as to burden of proof by In re Pashenee, 531 B.R. 834 (Bankr. E.D. Cal. 2015). "There is no reason why firearms of moderate value, owned and used for hunting, protection, or general recreational purposes cannot exist in the same category as golf clubs, camera equipment, and an exercise bike." Id. (citing In re Lucas, 77 B.R. 242, 245-46 (B.A.P. 9th Cir. 1987)).

Whether firearms are household goods under the California exemption statute is a fact specific inquiry. Dunnaway, 466 B.R. at 524. Courts may look to the debtor's personal use and purpose for keeping the firearms, the potential recreational value of the firearms, the reasonable necessity of the firearms, and the local community standards. See id. Co-debtor Sean Anthony Franco states in his declaration that the Firearms are used "for protection, and general recreational purposes." Decl., Doc. #29. He also states that he plans to hunt with the Firearms in the future. Doc. #29. The court finds that the Debtors' ownership of the Firearms is reasonable and that the Firearms contribute to Debtors' recreation and protection. Therefore, Debtors' Firearms are household goods under C.C.P. § 703.140(b)(3).

Accordingly, Trustee's objection is overruled as to Debtors' claimed exemption in the Shotgun and the SW .45. However, a factual dispute exists as to the value of the Rifle and the CS .45. The court will treat the hearing as a status conference with respect to the factual dispute over the value of the Rifle and the CS .45.

MOTION TO COMPEL
11-18-2020 [\[24\]](#)

JAMES SALVEN/MV
JERRY LOWE/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.

James Salven ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Sean Anthony Franco and Joanna Salas Franco (collectively, "Debtors"), moves the court to compel Debtors to turn over (1) a 2010 Toyota Tundra, (2) a 2007 Honda Pilot, (3) a 2009 Toyota Rav4, (4) a 2003 Toyota Corolla, and (5) a 2000 Utility Trailer (collectively, the "Assets"). Doc. #24. Trustee believes the Assets have equity over and above any encumbrance or exemption claimed by Debtors. Doc. #24.

11 U.S.C. § 542(a) requires Debtors to turn over property of the estate, or its value, then in Debtors' possession, custody or control during the case. "[Section] 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).

Trustee is of the opinion that the liquidation of the Assets will net the estate approximately \$15,350.00. Tr.'s Decl., Doc. #26. Debtors have not responded to a request to turn over the Assets. Doc. #26.

Accordingly, this motion is GRANTED. Debtors are ordered to turn over the Assets to the Trustee within 10 days of the court order. Failure to do so may result in sanctions pursuant to 11 U.S.C. § 105(a).

MOTION TO COMPEL
11-18-2020 [\[29\]](#)

JAMES SALVEN/MV
HENRY NUNEZ/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.

James Salven ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Jesus Buzo Rodriguez and Maria Guadalupe Rodriguez Baeza (collectively, "Debtors"), moves the court to compel Debtors to turn over (1) a 2006 Audi, (2) a 1999 Volkswagen Jetta, and (3) a 1998 Honda (collectively, the "Assets"). Doc. #29. Trustee believes the Assets have equity over and above any encumbrance or exemption claimed by Debtors. Doc. #29.

11 U.S.C. § 542(a) requires Debtors to turn over property of the estate, or its value, then in Debtors' possession, custody or control during the case. "[Section] 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).

Trustee is of the opinion that the liquidation of the Assets will net the estate approximately \$4,000.00. Tr.'s Decl., Doc. #31. Debtors have not responded to a request to turn over the Assets. Doc. #31.

Accordingly, this motion is GRANTED. Debtors are ordered to turn over the Assets to the Trustee within 10 days of the court order. Failure to do so may result in sanctions pursuant to 11 U.S.C. § 105(a).

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-12-2020 [\[15\]](#)

LAKEVIEW LOAN SERVICING, LLC/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
ERIN MCCARTNEY/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, Lakeview Loan Servicing, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to real property located at 9103 Rancho Viejo Drive, Bakersfield, California ("Property"). 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 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 11 complete pre- and post-petition payments. Movant has produced evidence that debtors are delinquent by at least \$26,816.95 and the entire balance of \$397,216.77 is due. 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 order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtors have failed to make at least 11 payments, both pre- and post-petition, to Movant.

5. [20-12519](#)-A-7 **IN RE: ISIDRO RAMOS**
[JES-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
11-11-2020 [\[20\]](#)

JAMES SALVEN/MV
JERRY LOWE/ATTY. FOR DBT.

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 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 E. Salven ("Trustee"), the Chapter 7 trustee in the bankruptcy case of Isidro Ramos ("Debtor"), objects to Debtor's claim of a \$1,025.00 exemption in firearms: one rifle, one shotgun, and one handgun (together, the "Firearms"). Tr.'s Obj., Doc. #20; see Am. Schedule C, Doc. #14. Debtor claims the exemption under California Code of Civil Procedure ("C.C.P.") § 704.020. Am. Schedule C, Doc. #14. Debtor has not responded.

Although Trustee is the objecting party, "the burden is on the debtor to prove that he is entitled to the exemption claimed in the Property . . . and not on the trustee to prove that the exemption should be disallowed." In re Guevarra, No. 18-25306-B-7, 2020 Bankr. LEXIS 1455, at *7 (Bankr. E.D. Cal. June 1, 2020). "[T]he debtor, as the exemption claimant, bears the burden of proof which requires [him] to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under California Code of Civil Procedure [§ 704.020] and the extent to which the exemption applies." In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); see Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016) (concluding "that where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation."); see also Bd. of Trs.

v. Castillo, No. 1:15-mc-00037-EPG, 2015 U.S. Dist. LEXIS 165816, at *6-7 (E.D. Cal. Dec. 10, 2015) (applying the burden of proof set out in C.C.P. § 703.580 to the defendant's claim of exemption under C.C.P. § 704.020).

Trustee objects to Debtor's exemption on the grounds that Debtor has not shown that the Property is "ordinarily and reasonably necessary" as required by C.C.P. § 704.020(b). Debtor has not responded.

Accordingly, Trustee's objection is SUSTAINED.

6. [20-12845](#)-A-7 **IN RE: YOLANDA FAUBEL**
[UST-1](#)

MOTION TO APPROVE STIPULATION TO DISMISS CHAPTER 7 CASE
WITHOUT ENTRY OF DISCHARGE
12-2-2020 [[18](#)]

TRACY DAVIS/MV
JORGE GAITAN/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.

Tracy Hope Davis, the United States Trustee for Region 17 (the "UST"), moves the court for an order approving the stipulation between the UST and Debtor Yolanda Faubel ("Debtor"). Doc. ##18, 17. The UST and the Debtor have agreed to stipulate to the dismissal of the Debtors' Chapter 7 case without the entry of a discharge. Doc. #17.

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 motion was fully noticed to all parties in interest, and there is no opposition to the stipulation. Because the stipulation provides for dismissal of the case without an entry of discharge, the court finds that dismissal will not harm the creditors. Accordingly, the UST's motion is GRANTED and the stipulation is approved.

7. [20-13464](#)-A-7 **IN RE: MICHAEL ALVES**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-12-2020 [\[13\]](#)

EXETER FINANCE LLC/MV
MARIO LANGONE/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 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, Exeter Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2016 Infiniti QX50 ("Vehicle"). Doc. #13.

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 four complete pre-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$2,780.04. Doc. #15.

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. Id. The Vehicle is valued at \$17,700.00 and the debtor owes \$28,752.92. Doc. #13.

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 debtor has failed to make at least four pre-petition payments to Movant and the Vehicle is a depreciating asset.

8. [11-13377](#)-A-7 **IN RE: MICHAEL/JOAN LEWIS**
[LNH-3](#)

MOTION FOR COMPENSATION FOR LISA NOXON HOLDER, TRUSTEES ATTORNEY(S)
11-18-2020 [\[43\]](#)

CURTIS FLOYD/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.

Lisa Nixon Holder, PC ("Movant"), general counsel for the Chapter 7 trustee Jeffrey M. Vetter ("Trustee"), requests an allowance of final compensation and reimbursement for expenses for services rendered December 28, 2018 through September 18, 2020. Doc. #43. Movant provided legal services valued at \$3,156.50, and requests compensation for that amount. Doc. #43. Movant requests reimbursement for expenses in the amount of \$100.45. Doc. #43.

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) fee and employment applications; (2) asset analysis and recovery; and (3) drafting and filing a Rule 9019 motion. Doc. #47. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED. The court allows final compensation in the amount of \$3,156.50 and reimbursement for expenses in the amount of \$100.45. Trustee is authorized to make a combined payment of \$3,256.95, 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.

9. [17-12389](#)-A-7 **IN RE: DON ROSE OIL CO., INC.**
[BBR-9](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BELDEN BLAINE RAYTIS, LLP
FOR T. SCOTT BELDEN, TRUSTEES ATTORNEY(S)
11-19-2020 [[1166](#)]

RILEY WALTER/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.

Belden Blaine Raytis, LLP ("Movant"), special counsel for Chapter 7 trustee James E. Salven ("Trustee") and Trudi Manfredo, requests an allowance of final compensation and reimbursement for expenses for services rendered April 2, 2018 through November 19, 2020. Doc. #1166. Movant provided legal services valued at \$79,695.50, and requests compensation for that amount. Doc. #1166. Movant requests reimbursement for expenses in the amount of \$2,706.93. Doc. #1166.

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 initial response to an appeal that was dismissed by stipulation; (2) reviewing the complaint, and preparing and filing answers and counterclaims in an adversary proceeding with Kodiak Mining & Minerals II, LLC, Hellenic Petroleum, LLC, and Don Rose; (3) reviewing motions to dismiss adversary proceeding and researching claims against the Trustee and other defendants; (4) preparing and coordinating written discovery and depositions in that adversary proceeding; and (5) general representation of the trustee in the adversary proceeding. Doc. #1168. 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 \$79,695.50 and reimbursement for expenses in the amount of \$2,706.93. Trustee is authorized to make a combined payment of \$82,402.43, representing compensation and reimbursement, to Movant. Movant may also request additional compensation and reimbursement not to exceed \$1,500.00 from Trustee for services rendered as required to finalize transfer of the estate's interest in claims to Sallyport Commercial Finance.

10. [17-12389](#)-A-7 **IN RE: DON ROSE OIL CO., INC.**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES SALVEN, ACCOUNTANT(S)
11-18-2020 [\[1154\]](#)

JAMES SALVEN/MV
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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.

James E. Salven ("Movant"), accountant for Chapter 7 trustee James E. Salven ("Trustee"), requests an allowance of final compensation and reimbursement for expenses for services rendered June 20, 2018 through October 9, 2020. Doc. #1154. Movant provided accounting services valued at \$18,650.00, and requests compensation for that amount. Doc. #1154. Movant requests reimbursement for expenses in the amount of \$598.20. Doc. #1154.

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) preference analysis; and (2) preparing 2017 through 2020 tax returns for the estate. Ex. A, Doc. #1157. 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 \$18,650.00 and reimbursement for expenses in the amount of \$598.20.

11. [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.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was continued from the initial hearing for additional briefing and will proceed as scheduled. The court will issue an order if a further hearing is necessary.

After some amendment and supplementation to the original moving papers, Sallyport Commercial Finance, LLC ("Movant"), a creditor and post-petition lender to Don Rose Oil Co., Inc ("Debtor"), now moves the court for an order authorizing Movant's Chapter 11 administrative expense claim of \$1,979,669.14 pursuant to 11 U.S.C. §§ 503(b)(1)(A) and 507(a)(2). Movant's Supp. Br., Doc. #1173. The remaining objection of Kodiak Mining and Minerals II LLC ("Respondent") centers on whether the expenses requested by Movant substantially benefitted the Debtor's estate. Resp't Resp., Doc. #1176.

On or about June 19, 2017, an involuntary Chapter 7 bankruptcy case was filed against Debtor. Debtor filed this case under Chapter 11 on June 22, 2017. On July 14, 2017, the court granted Debtor's motion to authorize certain financing (the "Factoring Financing Motion") and authorized a continuation of certain financing agreements between Movant and Debtor ("July 14 Order"). July 14 Order, Doc. #99; Factoring Financing Motion, Doc. #9. The July 14 Order provided that Movant would have a priority administrative expense claim should the collateral prove insufficient to fully reimburse Movant for Debtor's obligations during the Chapter 11 case. Doc. #99. The court continued to authorize Movant's financing facilities while the case was in Chapter 11. E.g., Doc. #584. The court ordered this case converted to Chapter 7, pursuant to 11 U.S.C. § 1112(b), effective March 28, 2018. Doc. ##779, 804. On August 13, 2020, the court set October 15, 2020, as the last date for any claimant to file a Chapter 11 administrative expense claim against the estate. Doc. #1105. Claimant filed this motion on October 15, 2020. Doc. #1127.

11 U.S.C. § 503(b)(1)(A)(i) states that, after notice and a hearing, administrative expenses shall be allowed for "the actual, necessary costs and expenses of preserving the estate including [] wages, salaries, and commissions for services rendered after the commencement of the case[.]" To be deemed an administrative expense, the claim must have arisen from a transaction with the debtor in possession (or other person qualified as a trustee under 11 U.S.C. § 322) and directly and substantially benefitted the estate. Boeing N. Am., Inc. v. Ybarra (In re Ybarra), 424 F.3d 1018, 1025 (9th Cir. 2005) (citing Abercrombie v. Hayden Corp. (In re Abercrombie), 139 F.3d 755, 756 (9th Cir. 1998)). While "the burden of proving an administrative expense claim is on the claimant," the court's own first-hand observance of the services provided may be a sufficient basis on which to find a substantial benefit to the estate. Microsoft Corp. v. DAK Indus. (In re DAK Indus.), 66 F.3d 1091, 1094 (9th Cir. 1995); In re United States Lines, Inc., 103 B.R. 427, 430 (Bankr. S.D.N.Y. 1989). The bankruptcy court has broad discretion whether to grant such a claim, and only "the actual, necessary costs and expenses of preserving the estate" shall be approved. Id.

As noted above, the dispute between Movant and Respondent turns on whether Movant's asserted Chapter 11 administrative expense claim directly and substantially benefitted the estate. Respondent contends that Movant's administrative expense claim did not directly and substantially benefit the estate because Debtor's reorganization under Chapter 11 ultimately failed and the case was converted to Chapter 7. The court is not persuaded.

"Section 503's principal purpose is to induce entities to do business with a debtor after bankruptcy by insuring that those entities receive payment for services rendered." DAK Indus., 66 F.3d at 1097. "The purpose of administrative expense priority is to 'include the larger objective . . . of operating the debtor's business with a view to rehabilitating it.'" In re JS Mktg. & Commc'ns, Inc., No. 05-65426-7, 2008 Bankr. LEXIS 218, at *11 (Bankr. D. Mont. Jan. 24, 2008) (quoting In re Megafoods Stores, Inc., 163 F.3d 1063, 1071-72 (9th Cir. 1998)). Refusing to permit administrative expense claims because the debtor, and the creditor providing post-petition lending, ultimately fail to rehabilitate the debtor's business would frustrate the purpose of § 503.

Movant provided factoring and financing services to Debtor so that Debtor could fund the actual and necessary expenses of Debtor's ongoing operations. Decl. of Emma Hart ¶ 6, Doc. #1129. Exhibit A to the July 14 Order shows that Movant would provide regular advances to Debtor which Debtor would use to fund operations. Ex. A, Doc. #99. Though not submitted in connection with this motion, in a declaration filed June 23, 2017, in support of the Factoring Financing Motion, John Castellucci, the CEO of Debtor, explained that "[a] business in this field that cannot deliver its products quickly will lose customers and eventually shut down due to the hyper-competitive nature of this market." Decl. of John Castellucci ¶ 4, Doc. #11. Mr. Castellucci further stated that Debtor's ability to receive financing from Movant was "the single most important and immediate need of the Debtor." Castellucci Decl. ¶ 9, Doc. #11. In granting the Factoring Financing Motion and permitting Movant a priority administrative claim should Movant's collateral be insufficient to fully reimburse Movant for all of Debtor's post-petition obligations resulting from approval of the Factoring Financing Motion, this court necessarily determined that Movant's financing services would substantially benefit the estate. July 14 Order, Doc. #99.

As to Respondent's contention that attorneys' fees should not be included in Movant's administrative expense claim, the Ninth Circuit has indicated that attorneys' fees are allowed as an administrative expense if, as here, the fees

arise out of a postpetition transaction. Abercrombie, 139 F.3d at 758; cf. In re Sec. Aviation, Inc., 374 B.R. 720 (Bankr. D. Alaska 2007).

In accordance with the July 14 Order and in consideration of the evidence Movant filed in support of this motion and contained in the record, the motion will be GRANTED authorizing Movant's Chapter 11 administrative expense claim of \$1,979,669.14, subject to allocation of priority with the consent of the Chapter 7 trustee or further court order.

12. [17-12389](#)-A-7 **IN RE: DON ROSE OIL CO., INC.**
[RP-1](#)

MOTION FOR COMPENSATION FOR RANDELL PARKER, CHAPTER 7 TRUSTEE(S)
11-18-2020 [\[1149\]](#)

RANDELL PARKER/MV
RILEY WALTER/ATTY. FOR DBT.
DANIEL EGAN/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 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.

Randell Parker ("Trustee"), the Chapter 7 trustee in this bankruptcy case, requests an allowance of final compensation and reimbursement for expenses for services rendered November 30, 2018 through November 12, 2020. Doc. #1149. Trustee provided services valued at \$35,863.44, and requests compensation for that amount. Doc. #1149. Trustee requests reimbursement for expenses in the amount of \$515.60. Doc. #1149. Since being appointed to this case on November 29, 2018, Trustee administered the estate, employed counsel and accountants, disposed of estate property, reviewed and reconciled financial records, and prepared final filings. Exs., Doc. #1152.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a Chapter 7 trustee. 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded a Chapter 7 trustee, the court shall treat such compensation as a commission, based on § 326 of the Bankruptcy Code. 11 U.S.C. § 330(a)(7). Here, Trustee demonstrates

reasonable compensation in accordance with the statutory framework of § 326. Ex. D, Doc. #1152. Further, the court finds Trustee's services and requested expenses were actual and necessary to the administration of this estate.

This motion is GRANTED. The court allows statutory compensation in the amount of \$35,863.44 and reimbursement for expenses in the amount of \$515.60.

13. [17-12389](#)-A-7 **IN RE: DON ROSE OIL CO., INC.**
[WF-32](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILKE FLEURY LLP
FOR DANIEL L. EGAN, TRUSTEES ATTORNEY(S)
11-18-2020 [[1160](#)]

RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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.

Wilke Fleury LLP ("Movant"), counsel for Chapter 7 trustee Trudi Manfredo ("Original Trustee") and Randell Parker ("Successor Trustee"), requests an allowance of final compensation and reimbursement for expenses for services rendered April 1, 2018 through November 6, 2020. Doc. #1160. Movant provided legal services valued at \$339,931.00 and incurred costs of \$14,507.12. Doc. #1160. After applying a \$30,000.00 discount, Movant requests compensation and reimbursement for expenses in the total amount of \$324,438.12. Doc. #1160.

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) negotiated and secured court approval of a sale of interests in DRO Barite, LLC to debtor's prepetition lender, Sallyport Commercial Finance, LLC ("Sallyport"); (2) subpoenaed and analyzed bank records and consulted with Sallyport; (3) sent

demand letters and commenced sixteen adversary proceedings; (4) engaged in discovery and ultimately settled all adversary proceedings before trial; (5) negotiated and obtained approval of a stipulation for the use of cash collateral and turnover of encumbered funds; (6) obtained authority to store, and later abandon, business records and other assets; and (7) assisted Original Trustee in evaluation competing secured claims. Exs. C and D, Doc. #1163. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation and reimbursement for expenses in the total amount of \$324,438.12.

14. [20-12953](#)-A-7 **IN RE: JOSHUA SMITH**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
10-20-2020 [[12](#)]

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

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

The debtor shall attend the meeting of creditors rescheduled for January 4, 2021 at 3:00 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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