

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Tuesday, December 22, 2020  
Place: Department B - Courtroom #13  
Fresno, California

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

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

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

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

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

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

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

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

11:00 AM

1. [20-13432](#)-B-7      **IN RE: LUISITO CERIN**

PRO SE REAFFIRMATION AGREEMENT WITH PATELCO CREDIT UNION  
12-1-2020    [[11](#)]

CYNTHIA GRANDE/ATTY. FOR DBT.

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

DISPOSITION:      Dropped.

ORDER:              The court will issue an order.

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

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), "if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney' attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Okla. 2009) (emphasis in original). 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 debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

2. [20-13062](#)-B-7      **IN RE: VALENTIN VELAZCO AND ESTELA PLASCENCIA**

REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION  
11-30-2020    [[16](#)]

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.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. In this case, the debtors' attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

3. [20-12973](#)-B-7     **IN RE: NORA BARILLAS**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION  
11-30-2020    [[22](#)]

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, the attorney could not affirm that, (a) the agreement was not a hardship and, (b) the debtor would be able to make the payments.

4. [20-13175](#)-B-7     **IN RE: JUDITH LOPEZ**

PRO SE REAFFIRMATION AGREEMENT WITH AMERICAN HONDA FINANCE  
CORP.  
12-2-2020    [[14](#)]

NO RULING.

1:30 PM

1. [20-12505](#)-B-7     **IN RE: KENNETH/LORENA SLAYTON**  
[JES-1](#)

MOTION TO EMPLOY BAIRD AUCTION AND APPRAISALS AS AUCTIONEER,  
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND  
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES  
11-23-2020    [[25](#)]

JAMES SALVEN/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION:        Granted.

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

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

This motion will be GRANTED.

Chapter 7 Trustee James Salven ("Trustee") asks the court to employ Baird Auctions & Appraisals ("Auctioneer") as auctioneer to sell property of the estate consisting of a 2006 Outback Trailer ("Property") at a public auction, which is set for January 5, 2021 at Baird Auctions & Appraisals, 1328 N. Sierra Vista, Suite B, Fresno, California. Doc. #25. Trustee requests to pay 15% of gross proceeds from the sale as compensation under 11 U.S.C. §§ 327(a) and 328, along with \$400.00 for anticipated expenses. Doc. #27. Trustee and Auctioneer both filed declarations stating that Auctioneer is a disinterested person as defined in § 101(14) and does not hold interests adverse to the estate as required by § 327(a). *Id.*; Doc. #28.

11 U.S.C. § 327 provides:

(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

11 U.S.C. § 327(a). 11 U.S.C. § 328(a) permits employment of "a professional person under section 327" on "any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." Section 328(a) further "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.'" *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002).

Trustee will be authorized to employ Auctioneer to sell Property at a public auction. Trustee proposes to compensate Auctioneer on a percentage collected basis, 15% of the gross proceeds from the sale. Doc. #27. Trustee will also be authorized to reimburse Auctioneer up to \$400.00 for expenses.

The court finds the proposed arrangement reasonable in this instance. If the arrangement proves improvident, the court may allow different compensation under § 328(a).

Sale by auction under these circumstances should maximize potential recovery for the estate. Therefore, it is an appropriate exercise of Trustee's business judgment.

This motion will be GRANTED. Trustee will be authorized to employ and pay Auctioneer for his services as outlined above, and the proposed sale at auction of the Property will be approved.

2. [20-13712](#)-B-7     **IN RE: KAWALJEET KAUR**  
[JWC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-4-2020    [\[6\]](#)

BMO HARRIS BANK N.A./MV  
MICHAEL REID/ATTY. FOR DBT.  
JENNIFER CRASTZ/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

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

This motion was filed and served 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.

BMO Harris Bank, N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) & (d)(2) with respect to a 2020 Kenworth Model T680 Tractor and 2020 Utility Refrigerated Van with a 2019 Thermo King, Model S-600 refrigeration unit (collectively "Property"). Though not required, Kawaljeet Kaur ("Debtor") did not file written opposition.

On May 6, 2019, Movant financed Debtor's purchase of Property pursuant to a loan and security agreement. Doc. #10, Ex. 1. Debtor defaulted under the agreement and missed the payments for October and November 2020. Doc. #9, ¶ 6. Prior to the bankruptcy, Debtor allegedly requested Movant to recover the Property from a repair shop purporting to hold a lien for towing and storing Property, but that lien exceeded the statutory limits for such liens under California law. *Id.*, ¶ 10. Movant was able to successfully recover possession of Property pre-petition from the repair shop. *Ibid.*

Debtor filed bankruptcy on November 24, 2020. Doc. #1. At the time of filing, Debtor was delinquent under the agreement in the amount of \$200,571.01. Doc. #9, ¶ 7. Property is not listed in Debtor's Schedule A/B, but Creditor is listed as an unsecured creditor in Schedule E/F. Doc. #1, Schedules A/B; E/F, ¶¶ 4.2, 4.3. In Schedule E/F, Debtor indicates that Property is in poor condition because it "was involved in an accident and is in need of substantial repairs." *Id.*, ¶ 4.2. Creditor estimates that the Kenworth Model T680 Tractor is worth \$59,362 and the Utility Van is worth \$40,654, but these values assume Property is repaired after receipt of insurance proceeds. Doc. #9, ¶ 11.

Additionally, Movant believes that Debtor's insurance company recently issued a two-party check for repairs to Movant and Debtor, which requires both parties to endorse it. *Id.*, ¶ 12. The check was sent to Debtor, who is required to endorse and deliver it to Movant under the terms of their agreement. *Ibid.* Movant indicates that it has not yet received an endorsed check from Debtor. *Ibid.*

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has failed to make at least one pre-petition payment and one post-petition payment, each in the amount of \$4,836.04. Doc. #8. Movant has produced evidence that debtor is delinquent at least \$9,672.08 and owes at least \$200,571.01. Doc. #8; #9, ¶ 7.

The court also finds that Debtor does not have any equity in the Property and the Property is not necessary to an effective reorganization because this is a chapter 7 case. Movant has valued Property collectively at \$100,016.00. Doc. #9, ¶ 11. The amount owed to Movant is \$200,571.01. *Id.*, ¶ 7. Also, Debtor has seemingly surrendered the Property to Movant. *Id.*, ¶ 10.

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.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtor surrendered Property to Movant and it is personal property subject to depreciation.

3. [20-13639](#)-B-7     **IN RE: IRENE MORENO**  
[NSC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-1-2020    [[12](#)]

THE GOLDEN 1 CREDIT UNION/MV  
ERIC ESCAMILLA/ATTY. FOR DBT.  
NICHOLAS COUCHOT/ATTY. FOR MV.

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

DISPOSITION:        Denied without prejudice.

ORDER:                The court will issue an order.

The motion will be DENIED WITHOUT PREJUDICE. The moving papers were not properly served on the U.S. Trustee at the correct address in Fresno, California.

4. [17-13947](#)-B-7     **IN RE: EDWIN CATUIRA**  
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI AND WONG,  
ACCOUNTANT(S)  
11-20-2020    [\[54\]](#)

RATZLAFF TAMBERI & WONG/MV  
LAYNE HAYDEN/ATTY. FOR DBT.

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

DISPOSITION:        Denied without prejudice.

ORDER:                The court will issue an order.

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

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

Here, the notice of hearing did inform respondents to check the Court's website after 4:00 p.m. the day before the hearing, but the cited website was "[www.us.courts.gov](http://www.us.courts.gov)[" This is not the correct URL for the Court's website and does not lead anywhere. Respondents will not be able to locate pre-hearing dispositions at this location.

5. [20-13057](#)-B-7     **IN RE: JOHN/MARIA DENIZ**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-19-2020    [\[16\]](#)

TD AUTO FINANCE LLC/MV  
T. O'TOOLE/ATTY. FOR DBT.  
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION:        Granted.

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



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

TD Auto Finance, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) & (d)(2) with respect to a 2015 Ford Fusion ("Vehicle"). Doc. #16; #18. John Manuel Deniz and Maria Deniz ("Debtors") did not timely file written opposition.

On August 13, 2018, Mr. Deniz entered into an agreement to finance the purchase of Vehicle. Doc. #21, Ex. A. This contract was ultimately assigned to Movant. *Id.*; Doc. #19, ¶ 3.

Debtors filed their chapter 7 petition on September 24, 2020. Doc. #1. Vehicle is listed in Schedule A/B with a value of \$10,395.00. *Id.*, Schedule A/B, ¶ 3.2. Debtors did not exempt Vehicle. *Id.*, Schedule C. Movant is listed as a secured Creditor in Schedule D. *Id.*, Schedule D, ¶ 2.2. In Form 108, Debtors' *Statement of Intention*, they indicate intent to surrender Vehicle to Movant. *Id.*, Form 108, ¶ 1.

As of November 17, 2020, Debtors owe Movant \$12,467.22. Doc. #19, ¶ 5. Debtors are current on their contractual payment, having made a payment on October 26, 2020 that applied to the October 27, 2020 as a full payment and November 27, 2020 as a partial payment. *Ibid.* An additional \$279.04 became due on November 27, 2020, with an additional \$289.68 due on the 27th of every month thereafter. *Ibid.*

Additionally, Movant contends the value of the Vehicle is \$12,075.00. Doc. #20, ¶ 2. This valuation was obtained using the National Automobile Dealers Association ("NADA") Guides. *Ibid.* Movant has not established itself as an expert under the Federal Rules of Evidence ("FRE") and therefore cannot rely on NADA Guides in determining the replacement value of the Vehicle. See FRE 701, 702, 703. As noted above, however, Debtors' schedules list Vehicle's value to be \$10,395.00 (less than Movant claims) and they did not file a response opposing Creditor's valuation. Doc. #1, Schedule A/B, ¶ 3.2.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there

is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

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

After review of the included evidence, the court finds that "cause" does not exist under § 362(d)(1) because Debtors are current on their monthly payments to Movant. However, Debtors' do not have any equity in the Vehicle and it is not necessary for an effective reorganization because this is a chapter 7 case. Movant has valued the Vehicle at \$12,075.00 and Debtors valued Vehicle at \$10,395.00. Doc. #1; #20. Under either valuation, the amount owed to Movant is \$12,467.22, which exceeds the values of Vehicle asserted by the parties. Doc. #19, ¶ 5.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(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.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Vehicle is a depreciating asset.

6. [18-12561](#)-B-7      **IN RE: CARLOS SOLIS AND BEATRIZ ALVAREZ**  
[LNH-3](#)

MOTION FOR COMPENSATION FOR LISA HOLDER, TRUSTEES  
ATTORNEY(S)  
11-18-2020    [\[42\]](#)

OSCAR SWINTON/ATTY. FOR DBT.

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

DISPOSITION:      Granted.

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

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

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

The motion will be GRANTED.

Lisa Noxon Holder, P.C. ("Movant"), general counsel for chapter 7 trustee Jeffrey Vetter ("Trustee") requests fees of \$9,204.00 and costs of \$167.11—totaling \$9,371.11—for services rendered from October 28, 2018 through September 16, 2020. Doc. #42. Trustee filed a declaration stating that he reviewed the fee application and believes the services rendered were necessary and beneficial to the estate. Doc. #45.

Carlos Solis and Beatriz Alvarez ("Debtors") filed bankruptcy on June 26, 2018. Doc. #1. Trustee filed a motion to employ Movant as general counsel on November 27, 2018. Doc. #26; *see also* LNH-1. This court granted the employment application on December 5, 2018 pursuant to 11 U.S.C. §§ 327, 329–331. Doc. #29. The order further stated that no compensation would be permitted except upon court order following application under 11 U.S.C. §§ 330(a), 331. *Id.* Employment authorization was effective October 28, 2018. *Id.*

Here, Movant's fee application begins timekeeping on October 28, 2018. Doc. #44. Movant indicates that her firm incurred 31.6 billable hours at a rate of \$295.00 per hour and requests a total of \$9,204.00 for services rendered. Doc. #42, ¶ 8. As noted in the billing statement exhibit, 0.4 hours were not billed for an amended notice of hearing for a Rule 9019 motion. Doc. #46, Ex. A, at 3. Thus, 31.2 hours were billed, resulting in the \$9,204.00 requested. Movant also requests reimbursement of the following fees and expenses:

Expense Category	Expense
Copies Employment Motion	\$10.40
Postage Employment Motion	\$4.00
Copies Adversary Complaint	\$10.40
Postage Adversary Complaint	\$4.00
Copies Status Report	\$0.80
Postage Status Report	\$1.00
Copies 9019 Motion	\$75.60
Postage 9019 Motion	\$29.26
Copies Final Fee Application	\$20.00
Postage Final Fee Application	\$11.65
<b>Total Costs</b>	<b>\$167.11</b>

Doc. #46, Ex. A, at 3. Movant states that photocopies cost \$0.20 per page for motions and adversary proceeding related documents, including envelopes and labels. Doc. #44, ¶ 12. Postage is reflected in the costs incurred for expenses paid to third parties. *Id.* As noted above, Trustee filed a declaration stating that he reviewed

the fee application and believes that all services undertaken were necessary and beneficial to the estate. Doc. #45. Moreover, Trustee has filed the final report. See Doc. #53; #55.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) analyzing and taking actions necessary to recover two parcels of real property owned by Debtors before the petition date; (2) employing professionals and preparing fee applications (LNH-1, LNH-3); (3) conducting research related to avoiding transfers and timing requirements; (4) preparing and filing a motion under Rule 9019 (LNH-2), which resulted in \$18,500.00 in proceeds to the estate; (5) and preparing and filing an adversary proceeding, case no. 19-01086, which resulted in negotiation of a settlement agreement. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Accordingly, this motion will be GRANTED. Movant will be awarded \$9,204.00 in fees and \$167.11 in expenses.

7. [20-12389](#)-B-7     **IN RE: IRENE LEYVA**  
[UST-2](#)

MOTION TO DISMISS CASE  
11-16-2020    [[30](#)]

TRACY DAVIS/MV  
JASON BLUMBERG/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

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

Tracy Hope Davis, the United States Trustee for Region 17 ("UST") filed this motion to dismiss the case under 11 U.S.C. § 707(a) for failing to comply with the credit counseling requirement of 11 U.S.C. § 109(h)(1). Doc. #30. Irene Levya ("Debtor") did not timely file opposition.

Debtor filed bankruptcy on July 17, 2020. Doc. #1. In Form 101, the *Voluntary Petition for Individuals Filing Bankruptcy*, Debtor checked the following box:

I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion. Within 14 days after you file this bankruptcy petition, you MUST file a copy of the certificate and payment plan, if any.

*Id.*, at 6, ¶ 15. UST contends that no such certificate was filed. Doc. #30; see Docket generally. The meeting of creditors was first set for August 20, 2020, and was continued to October 8, 2020, November 5, 2020, and November 17, 2020. On November 10, 2020, this court denied a different motion to dismiss for noticing defects. Doc. #28.

A chapter 7 case may be dismissed only after a notice and hearing and only for "cause," including three enumerated causes 11 U.S.C. § 707(a) states, in relevant part:

- (a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including—
- (1) unreasonable delay by the debtor that is prejudicial to creditors;
  - (2) nonpayment of any fees or charges required under chapter 123 of title 28; and
  - (3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a), but only on a motion by the United States trustee.

11 U.S.C. § 707(a). These statutorily enumerated grounds are not exclusive. *Sherman v. SEC (In re Sherman)*, 491 F.3d 948, 970 (9th Cir. 2007); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 840 (B.A.P. 9th Cir. 2008).

11 U.S.C. § 109(h)(1) provides:

Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section other than paragraph (4) of this subsection, an individual may not be a debtor under this title unless such individual has, during the 180-day period ending on the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an

individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

See also Fed. R. Bankr. P. 1007(b)(3). The credit counseling requirement is clear and unambiguous. *In re Cleaver*, 333 B.R. 430, 433 (Bankr. S.D. Ohio 2005) (denying debtors' deficient certification of exigent circumstances and dismissing the case because the "statute is unequivocal and allows for no other excuse or exception"); *In re Dixon*, 338 B.R. 383, 386 (B.A.P. 8th Cir. 2006) ("It is the clear expectation of the statute that all individual debtors receive such a briefing *prior* to filing") (emphasis in original); *In re Racette*, 343 B.R. 200, 202 (Bankr. E.D. Wis. 2006) ("The [credit counseling] briefing must be given within 180 days *before* the bankruptcy filing") (emphasis in original).

Debtor indicates she received a credit counseling briefing within 180 days before filing but did not receive a certificate of completion. As such, Debtor was required to file her certificate within 14 days of filing but has not complied with this requirement. Cause exists to dismiss this case. *In re Alvarado*, 496 B.R. 200, 210 (N.D. Cal. 2013).

Accordingly, this motion will be GRANTED, and the case will be dismissed.