

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, March 4, 2021
Place: Department A - 510 19th Street
Bakersfield, California

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

Pursuant to District Court General Order 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. [20-10301](#)-A-13 **IN RE: HELIBERTO ELIZONDO**
[MHM-4](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 13 TRUSTEE'S NOTICE
OF FORBEARANCE
1-26-2021 [[84](#)]

GARY SAUNDERS/ATTY. FOR DBT.

NO RULING.

2. [20-13524](#)-A-13 **IN RE: KYLE/NATALIE SINGLEY**
[CJK-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
12-8-2020 [[17](#)]

BANK OF AMERICA, N.A./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

3. [16-13343](#)-A-13 **IN RE: AIDE/JAMES BLANCO**
[PK-14](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
1-26-2021 [[226](#)]

PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. Additionally, the motion does not comply with LBR 9004-2(d), which requires exhibits to be filed as a separate document. This motion was filed as a single twelve-page document that included the movant's exhibits. Doc. #226. The court encourages counsel review the local rules to ensure compliance in future matters, or those matters may be denied without prejudice for failure to comply with the local rules.

Patrick Kavanagh ("Movant"), counsel for Chapter 7 debtors Aide Blanco and James John Blanco, requests an allowance of final compensation and reimbursement for expenses for services rendered April 9, 2018 through case closing. Doc. #226. Movant provided legal services valued at \$3,390.00, but requests compensation only for the reduced amount of \$2,170.00. Doc. #226. Movant does not request reimbursement for expenses. Doc. #226.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) a motion to sell real property, motion to shorten time, and a motion to substitute buyer; (2) case administration; and (3) plan modification. Doc. #226. The court finds that the compensation sought is reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court allows final compensation in the amount of \$2,170.00 to be paid in a manner consistent with the terms of the confirmed plan.

4. [19-13053](#)-A-13 **IN RE: BLANCA MARTINEZ**
[FW-3](#)

CONTINUED MOTION TO MODIFY PLAN
12-7-2020 [[49](#)]

BLANCA MARTINEZ/MV
GABRIEL WADDELL/ATTY. FOR DBT.
OPPOSITION WITHDRAWN

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2) and set for hearing on January 28, 2021 at 9:30 a.m. The Chapter 13 trustee timely opposed this motion, and the hearing on this motion was continued to March 4, 2021 at

9:00 a.m. Order, Doc. #60. On February 4, 2021, the Chapter 13 trustee withdrew his opposition in consideration of terms agreeable to the debtor and put forth in a joint stipulation and proposed order filed February 4, 2021. Doc. ##62, 63. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall be consistent with the proposed order marked Exhibit A, Doc. #63.

5. [20-10301](#)-A-13 **IN RE: HELIBERTO ELIZONDO**
[GS-4](#)

CONTINUED NOTICE OF DEFAULT AND MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
1-6-2021 [[76](#)]

GARY SAUNDERS/ATTY. FOR DBT.

NO RULING.

1. [20-13800-A-7](#) **IN RE: FRANK AGUILERA AND ROSARIO ORNELAS**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-14-2021 [13]

FORD MOTOR CREDIT COMPANY LLC/MV
D. GARDNER/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Ford Motor Credit Company LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2018 Ford Focus ("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 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 two complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$966.22, including recovery fees in the amount of \$249.00. Doc. #16. According to the debtors' Statement of Intention, the Vehicle will be surrendered. Doc. #1. On December 28, 2020, the Vehicle was voluntarily surrendered to Movant and is being held pending relief from the automatic stay. Doc. #16.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. Id. The Vehicle is valued at \$10,275.00 and the debtors owe \$15,347.16. Doc. #13,17.

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

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

2. [18-14546](#)-A-7 **IN RE: LANE ANDERSON**
[LNH-4](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JOHN FRANK RODGERS
2-4-2021 [\[81\]](#)

PETER FEAR/MV
SCOTT LYONS/ATTY. FOR DBT.
LISA HOLDER/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.

Peter L. Fear ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Lane Arnold Anderson ("Debtor"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of Trustee's avoidable transfer claim against John Frank Rodgers, Trustee of the John Frank Rodgers Trust u/d/t dated June 17, 2011 and John Frank Rodgers individually (together, "Rodgers"). Doc. #81.

Among the assets of the estate is a claim against Rodgers for the avoidance and recovery of a preferential and/or fraudulent transfer of 31.11 acres of agricultural land made by the Anderson Trust to Rodgers in the year preceding the bankruptcy filing. Doc. #81; Tr.'s Decl., Doc. #83. Rodgers and the Trustee

have agreed to settle the claim of the avoidable transfer with a payment of \$60,000.00 to the estate. Doc. #81. Trustee is in receipt of \$10,000.00 and payment of the remaining \$50,000.00 is due within thirty days after the settlement is approved by the bankruptcy court. Ex. A, Doc. #84.

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

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #81. Trustee believes the cost to ultimately succeed in litigation would potentially exceed the amount received in settlement, based in part on a reassessment of the value of the transferred property based on evidence received after the adversary complaint was filed. Decl., Doc. #83. The terms of the settlement with Rodgers obviates the need to continue litigation of the estate's claims. Doc. #83. Trustee commenced an adversary proceeding against Rodgers to pursue the avoidable transfer based on a valuation provided by Trustee's broker. Decl., Doc. #83. Trustee has reason to believe his broker's valuation is high based on Rodgers' assertions regarding the health and age of the citrus trees on the property and uncertain water rights affecting the property. Decl., Doc. #83. The settlement provides the estate with a fair sum and prevents the continued costs of pursuing the adversary proceeding, which would be extensive. Decl., Doc. #83. Trustee believes in his business judgment that the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Doc. #81. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion is GRANTED, and the settlement between Trustee and Rodgers filed as Ex. A, Doc. #84, is approved

Time is of the essence in this settlement and the 14-day stay of the order provided by Bankruptcy Rule 8007 is waived. This ruling is not authorizing the payment of any fees or costs associated with the settled litigation.

3. [21-10246](#)-A-7 **IN RE: DAISY AGUILERA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-16-2021 [[13](#)]

NEIL SCHWARTZ/ATTY. FOR DBT.
\$338.00 FILING FEE PAID 2/16/21

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fee was paid in full on February 16, 2021.

4. [20-13451](#)-A-7 **IN RE: AMANDEEP SINGH**
[CH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-29-2021 [[30](#)]

VFS US LLC/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
BRADFORD HUGHES/ATTY. FOR MV.
DISCHARGED 2/24/21

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The motion was resolved by stipulation and order entered on February 3, 2021.
Doc. #41.

5. [21-10251](#)-A-7 **IN RE: MOHAMMED BEHL**
[SW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-17-2021 [[23](#)]

WILMINGTON TRUST, NATIONAL ASSOCIATION/MV
ANDREW STILL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The movant, Wilmington Trust, National Association as Trustee of MFRA Trust 2016-1, a Delaware Statutory Trust ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property located at 2533 N. Parish Place, Burbank, California 91504 (the "Property"). Doc. #23. Movant requests relief from the automatic stay to pursue an unlawful detainer action in state court and to proceed under applicable non-bankruptcy law to enforce Movant's remedies to gain possession of the Property. Doc. #23.

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

Movant claims an undivided ownership interest in the Property pursuant to a Trustee's Deed Upon Sale executed after obtaining the Property at a trustee's sale held on April 8, 2020. Decl. of Matthew D. Dameron ¶ 3, Doc. #25. Movant initiated an unlawful detainer action in Superior Court of California, County of Los Angeles ("State Court") to enforce its interests in the Property against the previous owner and others who claim an interest in the Property. Dameron Decl. ¶ 5, Doc. #25. On November 17, 2020, Mohammed Behl ("Debtor") filed a Prejudgment Claim of Right to Possession to be added to Movant's unlawful detainer action based on an oral or written rental agreement with the former owner who lost the property to foreclosure. Ex. 4, Doc. #27.

Debtor's bankruptcy petition was filed in this court on February 1, 2021. Doc. #1. Although Debtor's voluntary petition lists the Property as Debtor's mailing address, the Property is not listed as Debtor's residence nor has Debtor asserted any interest, possessory or otherwise, in the Property. Petition, Doc. #1; Schedule A/B, Doc. #16. Further, Debtor's Schedule G lists no executory contracts or unexpired leases. Schedule G, Doc. #34.

Movant sought to sever the issues in State Court between Debtor and the non-Debtor defendants; however, the State Court denied the request and indicated its preference to decide issues presented to the State Court against all parties at the same time. Decl. of Morgan T. Petrelli ¶ 3, Doc. #26. A continued hearing in State Court is set for March 16, 2021. Id.

The court finds cause exists to lift the stay to permit Movant to continue in the State Court unlawful detainer action and enforce any resulting judgment based in part on Debtor's lack of a scheduled interest in the Property and the inability of Movant to sever Debtor from the issues in the State Court unlawful detainer action.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to proceed under applicable nonbankruptcy law to continue to prosecute the unlawful detainer action against Debtor, and to enforce any resulting judgment for unlawful detainer, including all necessary steps to obtain possession of the Property from Debtor.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived to permit the State Court proceeding to continue.

MOTION FOR COMPENSATION FOR JEFFREY M. VETTER, CHAPTER 7 TRUSTEE(S)
2-2-2021 [[154](#)]

JEFFREY VETTER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

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

Jeffrey M. Vetter ("Trustee"), the Chapter 7 trustee in this bankruptcy case, requests an allowance of final compensation and reimbursement for expenses for services rendered April 26, 2019 through January 7, 2021. Doc. #154. Movant requests compensation in the amount of \$12,209.67. Doc. #154. Movant requests reimbursement for expenses in the amount of \$116.55. Doc. #154. Since being appointed to this case on April 26, 2019, Trustee administered the estate, disposed of estate property, reviewed and reconciled financial records, and prepared final filings. Ex., Doc. #157.

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. A, Doc. #157. 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 \$12,209.67 and reimbursement for expenses in the amount of \$116.55.

7. [21-10176](#)-A-7 **IN RE: MARK BROWN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-11-2021 [[11](#)]

BARRY BOROWITZ/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings and conclusions.

ORDER: The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

8. [20-13783](#)-A-7 **IN RE: PEDRO PEREZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-10-2021 [[24](#)]

JOSEPH PEARL/ATTY. FOR DBT.
FEE PAID \$188.00 2/18/21

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fees were paid in full on February 18, 2021.

9. [21-10325](#)-A-7 **IN RE: CHRISTOPHER/HYE YOO**
[PK-1](#)

MOTION TO COMPEL ABANDONMENT
2-18-2021 [[11](#)]

HYE YOO/MV
PATRICK KAVANAGH/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. While not required, on March 1, 2021, the chapter 7 trustee filed a written statement that he has no opposition to the motion. Doc. #19. 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.

Christopher Sik Yoo and Hye Ran Yoo (together, "Debtors"), the chapter 7 debtors in this case, move the court to compel the chapter 7 trustee to abandon the estate's interest in Debtors' personal property consisting of a laundry and dry cleaning business located at 1009 34th Street, Bakersfield, CA 93301. Doc. #11. The assets include a press machine, washer, dryer, dry cleaning equipment, computerized cash register, and a conveyer (the "Property"). Decl. of Christopher Yoo, Doc. #13. Debtors assert that they have no non-exempt equity in the Property and the Property therefore has no value to the bankruptcy estate. Doc. #11.

11 U.S.C. § 554(b) permits the court, on request of a party in interest and after notice and a hearing, to order the trustee to abandon property that is burdensome to the estate or of inconsequential value and benefit to the estate. Vu v. Kendall (In re Vu), 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). To grant a motion to abandon property, the bankruptcy court must find either that the property is (1) burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. Id. (citing In re K.C. Machine & Tool Co., 816 F.2d 238, 245 (6th Cir. 1987)). However, "an order compelling abandonment [under § 554(b)] is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset. . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." Id. (quoting K.C. Machine & Tool Co., 816 F.2d at 246).

Here, Debtors do not allege that the Property is burdensome to the estate. Mot., Doc. #11. Therefore, Debtors must establish that the Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Debtors' Property is valued at \$5,000.00 and is unencumbered. Schedule D, Doc. #1. Under California Civil Procedure Code § 703.140(b)(6), Debtors claimed a \$5,000.00 exemption in the Property. Schedule C, Doc. #1; Decl., Doc. #13. The court finds that Debtors have met their burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate. Moreover, the chapter 7 trustee has no opposition to the motion. Doc. #19.

Accordingly, this motion is GRANTED. The order shall specifically identify the property abandoned.

1. [21-10308](#)-A-11 **IN RE: THOMAS ANTON & ASSOCIATES, A LAW CORPORATION**
[ZM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-17-2021 [22]

ELAINE CLIFFORD/MV
LEONARD WELSH/ATTY. FOR DBT.
JACOB EATON/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 hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. While not required, on March 2, 2021, the debtor filed a written statement that the debtor will not oppose the motion, but requests that the court not waive the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3). Doc. #41. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant relief from stay as requested, including waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3). 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.

Movants Elaine Clifford and Daniel Clifford, Trustees of the S&E Clifford Family Trust Dated April 20, 2013, Angela Orozco, an individual, Jamie Urner, Trustee of the Marilyn King Harbin Trust, Christina King Canaday, an individual, Elizabeth Orozco, an individual, and Thomas M. Stanton and Beverly J. Stanton, Trustees of the Stanton Family Trust Dated September 27, 1996 (collectively, "Movants") seek relief from the automatic stay under 11 U.S.C. § 362(d)(1) to (i) allow Movants and the Kern County Sheriff's Office to take all acts necessary to remove debtor, Thomas Anton & Associates, a law corporation ("Debtor"), from real property located at 1600 G Street and/or 1728 16th Street in Bakersfield, California (Kern County APN 004-032-08-2) (the "Premises"), and (ii) allow Movants to file a motion for attorney's fees and obtain an order thereon in an unlawful detainer action litigation pending in Superior Court of California, County of Kern, as Case No. BCV-20-102259-TSC (the "State Court Action"). Motion, Doc. #22; Memo. P&A, Doc. #24.

Movants are the owners in fee as tenants-in-common of the Premises. Decl. of Daniel T. Clifford ¶ 5, Doc. #25. Movants also are the successors-in-interest to the original landlord under a lease with Debtor dated March 1, 2003, as amended by a letter dated September 27, 2013 (collectively, the "Lease"), by which the Premises were leased to Debtor and Thomas J. Anton, Esq. (collectively, "Defendants"). Clifford Decl. ¶ 6, Doc. #25; Ex. A, Doc. #28. The Lease was a lease of nonresidential real property. Clifford Decl. ¶ 7, Doc. #25. The final option to extend the Lease expired by its terms on February 28, 2020, and there were no modifications to the Lease extending the expiration date beyond February 28, 2020. Clifford Decl. ¶ 8, Doc. #25; Ex. A,

Doc. #28. Debtor has paid no rent for the Premises since November 2019. Clifford Decl. ¶ 17, Doc. #25.

Movants initiated the State Court Action on September 28, 2020, to enforce their interests in the Premises against Defendants. Clifford Decl. ¶ 10, Doc. #25; Decl. of Nicholas J. Street, ¶ 3, Doc. #26. At a hearing on Movants' motion for summary judgment in the State Court Action held pre-petition on December 2, 2020, Movants and Defendants agreed that: (i) judgment would be entered in favor of Movants providing that (a) the Lease is terminated, (b) Movants shall take possession of the Premises, and (c) Defendants would pay past due rent in the amount of \$70,529.50, daily rent in the amount of \$255.54 from and after September 1, 2020, interest, costs and attorneys' fees in an amount to be determined by the state court upon the filing of a fee motion; (ii) Movants would forbear from enforcing the judgment before noon on February 1, 2021 by not (a) recording an abstract of judgment in Kern County, (b) filing a notice of judgment lien with the California Secretary of State, or (c) serving a writ of possession; and (iii) Defendants agreed that they would stipulate to relief from stay if a bankruptcy case was filed within the next 65 days. Clifford Decl. ¶¶ 10-12, Doc. #25; Street Decl. ¶¶ 3-4, Doc. #26; Ex. B, Doc. #28. Defendants have paid no portion of the judgment. Clifford Decl. ¶ 17, Doc. #25.

A written settlement agreement consistent with the terms stated on the record at the December 2, 2020 hearing was entered into on December 15, 2020, and the state court also entered a judgment on December 15, 2020 that was consistent with the settlement. Clifford Decl. ¶ 13, Doc. #25; Street Decl. ¶ 5, Doc. #26; Exs. C and D, Doc. #28. Defendants did not relinquish the Premises as of noon February 1, 2021, and the state court issued a writ of possession for the Premises on February 1, 2021. Street Decl. ¶ 6, Doc. #26. The Kern County Sheriff scheduled an eviction for February 10, 2021. Street Decl. ¶ 6, Doc. #26. Debtor filed its voluntary chapter 11 bankruptcy case on February 9, 2021. Doc. #1. Under California Rules of Court, the fee motion authorized by the judgment must have been filed by February 19, 2021. Street Decl. ¶ 8, Doc. #26. Mr. Anton and Movants have agreed to extend the time to file that motion by 60 days, the maximum amount permitted under the California Rules of court. Street Decl. ¶ 8, Doc. #26.

As an initial matter, it appears that there is no automatic stay in place precluding Movants from regaining possession of the Premises under 11 U.S.C. § 362(b)(10). Bankruptcy Code section 362(b)(10) provides, in relevant part, that the filing of a bankruptcy petition does not automatically stay "any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property[.]" 11 U.S.C. § 362(b)(10). Here, the Lease was a lease of nonresidential real property, and the final option to extend the Lease expired by its terms on February 28, 2020. Clifford Decl. ¶¶ 7-8, Doc. #25; Ex. A, Doc. #28. There were no modifications to the Lease extending the expiration date beyond February 28, 2020. Clifford Decl. ¶ 8, Doc. #25; Ex. A, Doc. #28. Accordingly, there is no automatic stay preventing Movants from obtaining possession of the Premises under 11 U.S.C. § 362(b)(10).

Assuming *arguendo* that the automatic stay does prohibit Movants from obtaining possession of the Premises, 11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause. "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). The court finds multiple grounds support a determination that "cause" exists to lift the stay to allow Movants and the Kern County Sheriff's Office to take all

acts necessary to remove Debtor from the Premises. First, the Lease is not property of Debtor's estate. "Property of the estate does not include . . . any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated terms of such lease before the commencement of the case under this title[.]" 11 U.S.C. § 541(b)(2). As noted earlier, the Lease was a lease of nonresidential real property that terminated by its stated terms on February 28, 2020. Clifford Decl. ¶¶ 7-8, Doc. #25; Ex. A, Doc. #28. Second, the Lease cannot be assumed by Debtor under 11 U.S.C. § 365(c)(3), which provides in relevant part that an unexpired lease cannot be assumed if "such lease is of nonresidential real property and has been terminated under applicable nonbankruptcy law prior to the order for relief." 11 U.S.C. § 365(c)(3). Here, the judgment filed in the State Court Action pre-petition on December 15, 2020 provides that the Lease is terminated. Ex. D, Doc. #28. Third, Debtor has not paid any rent for the Premises since November 2019 and had paid no portion of the judgment as of the date this motion was filed. Clifford Decl. ¶ 17, Doc. #25. Finally, Debtor consented to stipulate to relief from the automatic stay as part of its agreement with Movants by which Movants agreed, among other things, to permit Debtor an additional 60 days to vacate the Premises. Clifford Decl. ¶¶ 11-12, Doc. #25; Ex. B, Doc. #28. Debtor has remained in possession of the Premises for more than another 30 days after the date by which Debtor agreed to relinquish the Premises. Clifford Decl. ¶¶ 14, 16, 18, Doc. #25. Movants cannot re-let the Premises to a third party while Debtor remains in possession of the Premises. Clifford Decl. ¶ 18, Doc. #25.

Accordingly, to the extent there is an automatic stay in place, the motion is granted under 11 U.S.C. § 362(d)(1) to allow Movants and the Kern County Sheriff's Office to take all acts necessary to remove Debtor from the Premises.

When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court may consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in determining whether to grant relief from the automatic stay" to allow litigation in another forum. Id. The Curtis factors include: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the non-bankruptcy forum has the expertise to hear such cases; (4) whether litigation in another forum would prejudice the interests of other creditors; and (5) the interest of judicial economy and the expeditious and economical determination of litigation for the parties. In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984).

Here, granting relief from stay to permit Movants to file a fee motion in the State Court Action against both Defendants will result in a complete resolution of the issues. Moreover, the state court has been hearing the unlawful detainer action and has expertise in determining fee motions related to such proceedings. Determining the fee motion will finalize liquidation of Movants' claim against Debtor, and the court knows of no prejudice to the interests of other creditors that would arise from permitting the state court to hear and determine the fee motion. Finally, granting relief from stay would support judicial economy by permitting the state court to complete the pre-petition litigation and would result in the expeditious and economical determination of litigation for Movants and Defendants. For these reasons, the court finds that cause exists to lift the automatic stay to allow Movants to file a motion for attorney's fees and obtain an order thereon in the State Court Action.

Federal Rule of Bankruptcy Procedure ("Rule) 4001(a)(3) provides for a 14-day stay of an order granting a motion made in accordance with Rule 4001(a)(1),

unless the court orders otherwise. Fed. R. Bankr. P. 4001(a)(3). The purpose of Rule 4001(a)(3) "is to permit a short period of time for the debtor or other party opposing relief to seek a stay pending an appeal of the order." 9 COLLIER ON BANKRUPTCY ¶ 4001.05 (Richard Levin & Henry J. Sommer eds., 16th ed. 2021); accord Federal Rule of Bankruptcy Procedure 4001, Committee Notes on Rules - 1999 Amendment ("Paragraph (a)(3) is added to provide sufficient time for a party to request a stay pending appeal of an order granting relief from an automatic stay before the order is enforced or implemented.").

Here, Debtor does not oppose the motion for relief from stay and does not indicate that it will appeal the granting of the motion. Nevertheless, Debtor opposes waiver of the 14-day stay and wants to retain possession of the Premises for another 14 days notwithstanding the fact that: (a) the automatic stay likely does not prevent Movants from obtaining possession of the Premises; (b) the Lease terminated over a year ago; (c) Movants already agreed to forbear from enforcing turnover of the Premises for 60 days based on Debtor's agreement to relinquish the Premises by noon on February 1, 2021; (d) Debtor did not relinquish the Premises as Debtor agreed; (e) Debtor is still in possession of the Premises; and (f) Debtor acknowledges that cause exists to lift the automatic stay.

Based on the purpose of Rule 4001(a)(3), the court is inclined to deny Debtor's request that the 14-day stay of Rule 4001(a)(3) not be waived unless Movants consent to the 14-day stay not being waived.

11:00 AM

1. [19-13729](#)-A-7 **IN RE: MICHELLE PAUL**
[19-1130](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-2-2019 [[1](#)]

LOS ANGELES FEDERAL CREDIT UNION V. PAUL
ALANA ANAYA/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to June 3, 2021 at 11:00 a.m.

ORDER: The court will issue an order.

Pursuant to the status report filed on March 2, 2021, Doc. #34, the status conference is continued to June 3, 2021 at 11:00 a.m. The parties will file a joint status report not less than 7 days prior to the continued hearing date.

11:30 AM

1. [20-13644](#)-A-7 **IN RE: MIGUEL DIAZ AND OLGA GARCIA**

PRO SE REAFFIRMATION AGREEMENT WITH VALLEY STRONG CREDIT UNION
1-29-2021 [[17](#)]

VINCENT QUIGG/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

The court is not approving or denying approval of the reaffirmation agreement. The debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if a 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). The reaffirmation agreement, in the absence of a declaration by debtor(s)' counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. The debtors shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.