

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, April 21, 2021
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, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

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

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

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

1. [21-10510](#)-A-7 **IN RE: KRYSTAL KELLOGG**

PRO SE REAFFIRMATION AGREEMENT WITH WESTAMERICA BANK
3-24-2021 [\[13\]](#)

ERIC ESCAMILLA/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 she 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). 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. [21-10454](#)-A-7 **IN RE: JACQUELYN GREEN**

PRO SE REAFFIRMATION AGREEMENT WITH TUCOEMAS FEDERAL CREDIT UNION
3-31-2021 [\[17\]](#)

NO RULING.

3. [21-10157](#)-A-7 **IN RE: ROSEMARY GARCIA**

PRO SE REAFFIRMATION AGREEMENT WITH AMERICREDIT FINANCIAL
SERVICES, INC. DBA GM FINANCIAL
3-18-2021 [\[15\]](#)

NO RULING.

4. [21-10392](#)-A-7 **IN RE: JOHNATHAN PETTEY**

PRO SE REAFFIRMATION AGREEMENT WITH FORD MOTOR CREDIT COMPANY LLC
3-22-2021 [\[26\]](#)

NO RULING.

1. [21-10007](#)-A-7 **IN RE: ANIKA RODRIGUEZ**
[JES-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
3-3-2021 [\[22\]](#)

JAMES SALVEN/MV

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled without prejudice.

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 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). Therefore, the defaults of the above-mentioned parties in interest are entered. However, constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

James E. Salven ("Trustee"), the chapter 7 trustee in the bankruptcy case of Anika Monique Rodriguez ("Debtor"), objects to Debtor's claim of an \$8,906.00 exemption in Debtor's 2019 Federal Tax Refund. Doc. #22. Debtor claims the exemption under Florida Statute § 222.25(3), which permits the exemption of a "debtor's interest in a refund or credit received or to be received . . . pursuant to § 32 of the Internal Revenue Code of 1986, as amended." Fla. Stat. Ann. § 222.25(3). Section 32 of the Internal Revenue Code relates to the earned income credit permitted to a taxpayer. Trustee contends that Debtor's claimed exemption exceeds the amount allowed by Florida Statute § 222.25(3) and requests that Debtor's exemption be reduced by an unspecified amount to conform to that statute. Doc. #22. Debtor has not responded to Trustee's objection.

Under Florida law, which is consistent with Federal Rule of Bankruptcy Procedure 4003(c), "the burden is on the objecting party to establish with preponderance of the evidence that the Debtor in fact is not entitled to the exemptions claimed." In re Ehnle, 124 B.R. 361, 363 (Bankr. M.D. Fla. 1991); In re Haning, 252 B.R. 799, 806 (Bankr. M.D. Fla. 2000); see also Fed. R. Bankr. P. 4003(c). This is different from exemptions claimed under California law, where "the 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 [law] 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 "where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation.").

Here, neither Trustee's objection nor the supporting declaration explain why the amount claimed as exempt by Debtor exceeds the amount permitted under

Florida Statute § 222.25(3) or by what amount Debtor's claimed exemption should be reduced and how that amount is calculated. The court determines based on the evidence currently before the court that Trustee has not established by a preponderance of the evidence that Debtor is not entitled to the exemption claimed under Florida Statute § 222.25(3) and has therefore not met his burden under Federal Rule of Bankruptcy Procedure 4003(c) and Florida law.

Accordingly, Trustee's objection is **OVERRULED** without prejudice.

2. [20-12813](#)-A-7 **IN RE: JESUS RODRIGUEZ AND MARIA GUADALUPE BAEZA**
[JES-2](#)

MOTION TO EMPLOY BAIRD AUCTIONS & APPRAISALS AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
3-3-2021 [\[45\]](#)

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 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.

James E. Salven ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Jesus Buzo Rodriguez and Maria Guadalupe Rodriguez Baeza (together, "Debtors"), moves the court for an order (1) authorizing the employment of Baird Auctions & Appraisals ("Auctioneer"); (2) authorizing the sale of a 1998 Honda EX, VIN 1HGCG6673WA210533, and a 2006 Audi, VIN WAUAF78E76A136539 (together, the "Property") at public auction on or after May 4, 2021 at Auctioneer's location at 1328 N. Sierra Vista, Suite B, Fresno, California; and (3) authorizing the estate to pay Auctioneer commission and expenses pursuant to 11 U.S.C. § 328. Tr.'s Mot., Doc. #45.

Pursuant to 11 U.S.C. §363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under §363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed

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in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under §363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Decl. of James E. Salven, Doc. #47. Trustee's experience indicates that a sale of the Property at public auction will yield the highest net recovery to the estate. Doc. #74. The proposed sale is made in good faith.

Section 327(a) of the Bankruptcy Code provides, in relevant part, "the trustee, with the court's approval, may employ . . . auctioneers . . . 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). The trustee may, with the court's approval, employ an auctioneer 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. 11 U.S.C. §328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

The court finds that Auctioneer is a disinterested person as defined by 11 U.S.C. §101(14) and does not hold or represent an interest adverse to the estate. Decl. of Jeffrey Baird, Doc. #48. Trustee requires Auctioneer's services to advertise the sale of the Property, assist in storing the Property until sold, and assist in other matters related to the auction sale of the Property. Doc. #47. Trustee has agreed to pay Auctioneer a commission of 15% of the gross sale price and up to \$600.00 for storage fees and preparation for sale. Doc. #47. Trustee unambiguously requests pre-approval of payment to Auctioneer pursuant to §328. Doc. #45; Doc. #47.

Accordingly, this motion is GRANTED. Trustee's business judgment is reasonable and the proposed sale of the Property at public auction is in the best interests of creditors and the estate. The arrangement between Trustee and Auctioneer is reasonable in this instance. Trustee is authorized to sell the Property on the terms set forth in the motion. Trustee is authorized to employ and pay Auctioneer for services as set forth in the motion. Trustee shall submit a form of order that specifically states that employment of Auctioneer has been approved pursuant to 11 U.S.C. § 328.

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-3-2021 [\[18\]](#)

CALIFORNIA LIVESTOCK PRODUCERS, INC./MV
JUSTIN HARRIS/ATTY. FOR DBT.
MARCUS HALL/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.

California Livestock Producers, Inc. ("Movant") is the plaintiff in a state court action filed against F & J Farms - Delano ("Debtor") and others. Movant filed the state court complaint on March 9, 2020, and the action is currently pending in the Superior Court of California, County of Tulare as California Livestock Producers, Inc. v. F & J Farms - Delano et al., Case No. VCU282391 (the "Tulare Action"). Decl. of Craig C. Crockett ¶¶ 1-3, Doc. #22. Debtor filed for relief under chapter 7 of the Bankruptcy Code on October 1, 2020. Movant requests relief from the Bankruptcy Code's automatic stay pursuant to 11 U.S.C. § 362(d)(1) so that Movant may proceed with pretrial proceedings, trial, post-trial motions, and any appellate proceedings in the Tulare Action. Mot., Doc. #18. Movant does not seek relief from the automatic stay to pursue any enforcement of any judgment against Debtor that Movant may obtain in the Tulare Action. Doc. #18. Debtor did not respond to Movant's motion.

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).

When a movant seeks relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court may consider the "Curtis factors" to determine whether cause exists to grant relief from the automatic stay. In re Kronemyer, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in determining whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." Id. The relevant 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; (5) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; (6) whether the litigation in the other forum has progressed to the point where the parties are prepared for trial; and (7) the impact of the automatic stay and the "balance of hurt." In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984). Here, the Curtis factors support finding cause to grant relief from stay as requested in the motion.

Debtor's Schedule E/F names Movant as a nonpriority creditor with a claim arising from a lawsuit for trade debt. Schedule E/F, Doc. #10. Granting relief from stay to permit the Tulare Action to proceed in state court will result in a complete resolution of Debtor's liability to Movant. The Tulare Action will not interfere with the bankruptcy case, and the chapter 7 trustee does not oppose Movant's request. Crockett Decl. ¶ 7, Doc. #22. The state court has the expertise to hear the Tulare Action, which sets forth two causes of action arising under California state contract law. Crockett Decl. ¶ 6, Doc. #22. However, the Tulare Action has not progressed to the point where the parties are prepared for trial, and Debtor may be in default in the Tulare Action. Crockett Decl. ¶ 4, Doc. #22. Because Movant will not be granted relief to enforce a judgment against Debtor should Movant succeed in the Tulare Action, granting relief from the stay favors judicial economy and will not prejudice the interests of other creditors.

Accordingly, the court finds that cause exists to lift the stay and this motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to proceed with the Tulare Action. No other relief is awarded.

4. [20-13528-A-7](#) **IN RE: JOSE/MONICA MALDONADO**
[UST-3](#)

MOTION TO APPROVE STIPULATION TO DISMISS CHAPTER 7 CASE
WITHOUT ENTRY OF DISCHARGE
3-10-2021 [[73](#)]

TRACY DAVIS/MV
LAYNE HAYDEN/ATTY. FOR DBT.
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 at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the chapter 7 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.

Tracy Hope Davis ("UST"), the United States Trustee for Region 17, moves the court for an order approving the *Stipulation to Dismiss Chapter 7 Case Without Entry of Default* filed as Doc. #72, UST-3 (the "Stipulation"). According to the Stipulation, Jose Maldonado and Monica Maldonado (together, the "Debtors") desire to voluntarily dismiss this chapter 7 case prior to entry of discharge. Doc. #72.

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

The court finds that dismissing Debtors' voluntary chapter 7 case will cause no legal prejudice to interested parties. UST states that no bad faith or abusive conduct exists that would limit Debtors' right to dismissal. Doc. #73. Further, UST has stipulated to the dismissal, and no party in interest has objected. The court finds cause exists to dismiss Debtors' voluntary chapter 7 case.

Accordingly, this motion is GRANTED.

5. [20-13528](#)-A-7 **IN RE: JOSE/MONICA MALDONADO**
[UST-4](#)

MOTION TO DISGORGE FEES
3-10-2021 [\[76\]](#)

TRACY DAVIS/MV
LAYNE HAYDEN/ATTY. FOR DBT.
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 at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter

will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Tracy Hope Davis ("UST"), the United States Trustee for Region 17, and Layne Hayden, attorney for the chapter 7 debtors, have stipulated to the entry of an order disgorging fees pursuant to 11 U.S.C. § 329 (the "Stipulation"). See Doc. #77. The parties have agreed to a proposed form of order. Ex. A, Doc. #77. UST moves the court for an order disgorging fees consistent with the stipulation and proposed form of order. Doc. #76.

Under 11 U.S.C. § 329, the court may order the return of compensation received by an attorney representing a debtor to the extent that the compensation received exceeds the reasonable value of such services. Based on UST's motion and the Stipulation, the court finds that an order disgorging fees pursuant to 11 U.S.C. § 329 is warranted.

Accordingly, this motion is GRANTED.

6. [21-10146](#)-A-7 **IN RE: GILBERT/DEYSY MARTINEZ**
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-9-2021 [\[23\]](#)

MERCEDES-BENZ FINANCIAL SERVICES USA LLC/MV
SCOTT LYONS/ATTY. FOR DBT.
JOHN KIM/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.

The movant, Mercedes-Benz Financial Services USA LLC dba Daimler Truck Financial ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2016 Kenworth T680 ("Vehicle"). Doc. #23.

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 four complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$10,899.28, which includes recovery fees of \$1,100.00 and an early payoff penalty of \$1,697.72. Doc. #25.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. The Vehicle is valued at \$41,200.00 and the debtors owe \$61,368.60. Doc. #23.

Accordingly, the motion is 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. According to the debtors' Statement of Intention, the Vehicle will be surrendered. Doc. #1. The Vehicle was voluntarily surrendered to Movant on January 11, 2021. Doc. #25.

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

7. 19-14953-A-7 **IN RE: STARLENE VEGA**
FW-3

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
FOR PETER A. SAUER, TRUSTEES ATTORNEY(S)
3-11-2021 [75]

JAMES SALVEN/MV
BENNY BARCO/ATTY. FOR DBT.
PETER FEAR/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.

Fear Waddell, P.C. ("Movant"), general counsel for Chapter 7 trustee James Salven ("Trustee"), requests an allowance of final compensation and reimbursement for expenses for services rendered April 23, 2020 through March 10, 2021. Doc. #75. Movant provided legal services valued at \$7,688.50, and requests compensation for that amount. Doc. #75. Movant requests reimbursement for expenses in the amount of \$330.95. Doc. #75. Movant has not filed prior fee or expense applications.

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) case administration; (2) investigating and resolving encumbrances on the debtor's real property; (3) resolving issues related to the sale of the debtor's real property; and (4) preparing employment and fee applications. Exs. A, B, and C, Doc. #79. 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 \$7,688.50 and reimbursement for expenses in the amount of \$330.95. Trustee is authorized to make a combined payment of \$8,019.45, 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.

8. [21-10362](#)-A-7 **IN RE: JACK/PATRICIA MENDONSA**
[DVW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-22-2021 [\[16\]](#)

21ST MORTGAGE CORPORATION/MV
JUSTIN HARRIS/ATTY. FOR DBT.
DIANE WEIFENBACH/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. 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, 21st Mortgage Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2007 Palm Harbor Manufactured Home, Serial No. PH208862A/PH208862B/PH208862C Decal No. LBJ4123, located at 14180 Ave. #16, Delano, California ("Property"). Doc. #16.

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 Movant has produced evidence that the debtors have failed to make at least six complete pre- and post-petition payments. Doc. #18.

Relief from stay pursuant to 11 U.S.C. § 362(d)(2) will be denied because Movant has provided no evidence regarding the value of the Property as asserted in the motion.

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

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

9. [20-11191](#)-A-7 **IN RE: JOHN/MELISSA TAPIA**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-19-2021 [\[50\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV
GABRIEL WADDELL/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo 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, Toyota Motor Credit Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2019 Toyota Camry ("Vehicle"). Doc. #50.

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 six complete post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$3,244.90 and there is a lack of insurance. Doc. #52; Doc. #54.

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 \$21,100.00 and the debtors owe \$29,684.15. Doc. #52.

Accordingly, the motion is 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.

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-17-2021 [\[15\]](#)

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

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo 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 2019 Ford F150 ("Vehicle"). Doc. #15.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least two complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$1,567.88. Doc. #18. Movant has possession of the vehicle. 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 \$34,850.00 and the debtor owes \$46,642.21. Doc. #15.

Accordingly, the motion is 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 debtor did not list this vehicle on his Statement of Intention.

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

11. [18-14996](#)-A-7 **IN RE: DEREK LOTZ**
[NES-3](#)

MOTION TO AVOID LIEN OF CITIBANK, N.A.
3-24-2021 [\[42\]](#)

DEREK LOTZ/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

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 non-responding parties in interest are entered. However, constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

Derek Matthew Lotz ("Debtor"), the chapter 7 debtor, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Capital One Bank (USA), N.A. ("Creditor") on Debtor's residential real property commonly referred to as 5810 Oneida Falls Drive, Bakersfield, CA 93312 (the "Property"). Doc. #42; Am. Schedules C and D, Doc. #40.

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

Debtor filed the bankruptcy petition on December 15, 2018. A judgment was entered against Debtor in the amount of \$8,815.79 in favor of Creditor on May 31, 2018. Ex. D, Doc. #46. The abstract of judgment was recorded pre-petition in Kern County on August 27, 2018. Ex. D, Doc. #46. The lien attached to Debtor's interest in the Property located in Kern County. Doc. #46. The

Property also is encumbered by a lien in favor of Loancare in the amount \$248,000.00. Am. Schedule D, Doc. #40. Debtor claimed an exemption of \$23,184.21 in the Property under California Code of Civil Procedure § 703.140(b)(5). Am. Schedule C, Doc. #40. Debtor asserts a market value for the Property as of the petition date at \$280,000.00. Am. Schedule A/B, Doc. #40.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$8,815.79
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$248,000.00
Amount of Debtor's claim of exemption in the Property	+	\$23,184.21
	sum	\$280,000.00
Value of Debtor's interest in the Property absent liens	-	\$280,000.00
Amount Creditor's lien impairs Debtor's exemption	=	\$0.00

Application of the arithmetical formula required by § 522(f)(2)(A) shows that the other liens on the Property plus Debtor's claimed exemption total \$271,184.21, leaving \$8,815.79 in equity in the Property to pay Creditor's judicial lien, so Creditor's judicial lien does not impair Debtor's exemption in the Property.

Accordingly, this motion is DENIED without prejudice.