UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, June 30, 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.

9:30 AM

1. 20-11606-B-11 **IN RE: MICHAEL PENA**

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
5-4-2020 [1]

JUSTIN HARRIS/ATTY. FOR DBT.

NO RULING.

2. 20-11612-B-11 **IN RE: BENTON ENTERPRISES, LLC**

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
5-5-2020 [1]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

3. 18-11651-B-11 **IN RE: GREGORY TE VELDE**
SG-1

MOTION TO EXTEND TIME AND/OR MOTION TO AUTHORIZE THE FILING OF A CLASS PROOF OF CLAIM
5-12-2020 [3242]

JESUS GARAY/MV
MICHAEL COLLINS/ATTY. FOR DBT.
MARCO PALAU/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

The parties are advised that the Judicial Law Clerk for this Department, Mr. Leatham, has accepted a position with the Wanger Jones Helsley ("WJH") law firm. WJH is special counsel to the Trustee on unrelated matters. WJH is not involved in this matter. Mr. Leatham was screened from the claim objection that precipitated this motion, but because WJH is not involved in this matter, was not screened from working on this matter. Nevertheless the parties are urged to consult with their clients and determine whether they will

ask the court to recuse from this matter notwithstanding the screening process involving Mr. Leatham.

11:00 AM

1. 20-11096-B-7 **IN RE: LLOYD/MARIA MAGRUDER**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION - 2020 RAV 4
5-31-2020 [21]

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtors' counsel shall notify the debtor that no appearance is necessary.

No hearing or order is required. The form of the Reaffirmation Agreement complies with 11 U.S.C. §524(c) and 524(k), and it was signed by the debtors' attorney with the appropriate attestations. Pursuant to 11 U.S.C. §524(d), the court need not approve the agreement.

2. 20-11096-B-7 **IN RE: LLOYD/MARIA MAGRUDER**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION - 2020 TOYOTA CAMRY
5-31-2020 [22]

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtors' counsel shall notify the debtor that no appearance is necessary.

No hearing or order is required. The form of the Reaffirmation Agreement complies with 11 U.S.C. §524(c) and 524(k), and it was signed by the debtors' attorney with the appropriate attestations. Pursuant to 11 U.S.C. §524(d), the court need not approve the agreement.

1:30 PM

1. 20-11535-B-7 **IN RE: RUBEN/MARIA RODRIGUEZ**
JHW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-26-2020 [10]

TD AUTO FINANCE LLC/MV
IRMA EDMONDS/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 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 that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The movant, TD Auto Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) with respect to a 2015 Dodge Dart ("Vehicle"). Doc. #15.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors have failed to make at least six pre-petition payments. The movant has produced evidence that debtors are delinquent at least $2,103.78. Doc. #13, 15.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) to permit the 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 movant has obtained possession of the vehicle and the vehicle is a depreciating asset.

2. 20-11657-B-7 **IN RE: MARICEL/CHRISTOPHER LOCKE**
GB-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-27-2020 [17]

BRIDGECREST CREDIT COMPANY,
LLC/MV
L. JAQUEZ/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 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 that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The movant, Bridgecrest 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 2014 Volkswagen Passat 4C ("Vehicle"). Doc. #19.

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

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 debtors have failed to make at least five pre- and post-petition payments. The movant has produced evidence that debtors are delinquent at least $2,183.45. Doc. #19, 20.

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 debtors are in chapter 7. Id. The Vehicle is valued at $10,075.00 and debtor owes $12,320.19. Id.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the 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 debtor has failed to make at least five pre- and post-petition payments to Movant and the Vehicle is a depreciating asset.

3. 20-11483-B-7 **IN RE: LORENZO SAMBRANO**
RA-1

OPPOSITION/OBJECTION TO NOTICE OF INTENT TO CLOSE CASE WITHOUT ENTRY OF DISCHARGE
6-16-2020 [16]

RALPH AVILA/ATTY. FOR DBT.

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

DISPOSITION: Opposition is dismissed.

ORDER: The court will issue an order.

This opposition is DISMISSED for two reasons.

First, the opposition fails to comply with the Local Rules of Practice ("LBR").

The notice of hearing 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 after 4:00 p.m. the day before the hearing.

Second, the opposition misapprehends the basis of the Clerk's Notice of Intent to Close Case Without Entry of Discharge. Doc. #14. The Social Security information for this debtor was filed (doc. #5) But the Clerk's notice states the discharge cannot be entered because Mr. Sambrano's social security number was used in a previous case.

A discharge was entered in the previous case. Under 11 U.S.C. § 727(a)(8) the debtor is not eligible for a discharge in this case. A discharge was entered in the prior case less than eight years before this petition was filed. There is no evidence supporting the opposition relevant to this issue.

4. 20-11296-B-7 **IN RE: KYLE/DEANNA MAURIN**
APN-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-27-2020 [35]

FORD MOTOR CREDIT COMPANY/MV
PETER FEAR/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

TENTATIVE RULING: The matter will proceed as scheduled.

DISPOSITION: Granted only as to the debtors' possessory and any subrogation/redemption interests by virtue of the Guaranty.

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 movant, Ford Motor Credit Company ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2019 Ford F-250 ("Vehicle"). The court notes that the evidence filed with the motion shows that the Vehicle is owned by Maurin Construction Corp. See doc. #39. The Vehicle is listed on Schedule B in case no. 20-11295.

The motion concedes these debtors are guarantors under the sales contract that has been assigned to the movant. The court notes the exhibits containing terms of the guaranty and the contract itself

are illegible. If this motion was opposed, that exhibit would be excluded from consideration as irrelevant.

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 debtors have failed to make at least four pre-petition payments and two post-petition payments. Doc. #38. Movant has produced evidence that debtor is delinquent at least $5,893.62. Id., doc. #39.

The court also finds that the debtors do not have any equity in the property and the property is not necessary to an effective reorganization. Indeed, these debtors do not own the collateral that is the subject of this motion. It is not property of the estate. Movant has valued the Vehicle at $34,706.00. Doc. #38. The amount owed to Movant is $44,712.05. Id.

What may be property of the estate are a guarantor's subrogation rights. Cal. Civ. Code §§ 2848, 2849. The court is unable to discern the status of those rights under the existing guaranty. But since there is no opposition, stay relief will be granted as to these rights as well.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) as to movant against debtors' possessory and subrogation/redemption interests only. An appropriate motion must be filed, served, and noticed for hearing in the related business case to obtain any other relief. No other relief is awarded.

The court notes a stay relief motion (APN-1) was filed and prosecuted in the related case, but the court denied the motion for procedural reasons. Doc. #40.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least six payments to Movant.

5. 20-11296-B-7 **IN RE: KYLE/DEANNA MAURIN**
SSA-2

MOTION TO SELL
6-4-2020 [43]

IRMA EDMONDS/MV
PETER FEAR/ATTY. FOR DBT.
STEVEN ALTMAN/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 Federal Rule of Bankruptcy Procedure 2002(a)(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.

This motion is GRANTED. 11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, No. 16-00327-GS, 2018 WL 6584772, at *2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 2018 WL 6584772, at *4, 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., citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

The chapter 7 trustee ("Trustee") asks this court for authorization to sell real and personal property of the debtors ("Estate Assets") back to the debtors, subject to higher and better bids at the hearing, for $40,000.00. Doc. #43. The list of items to be sold are exhibits 1 and 2. See doc. #47. The Estate Assets appear to include

at least one parcel of real property, two vehicles, and personal property. Much of the property is only partly exempted.

It appears that the sale of the Estate Assets is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith. Unless opposition is presented at the hearing, the court intends to GRANT the motion.

Any party interested in overbidding must be present at the hearing and bid in increments of $1,000.00 above the current bid tendered for sale. The sale contains no warranties and is made "as-is." The sale is for all property listed – no items shall be separately sold.

6. 20-10297-B-7 **IN RE: ALEXANDRA MIYASATO**
USA-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-22-2020 [15]

ARMY AND AIR FORCE EXCHANGE SERVICE/MV
JANINE ESQUIVEL OJI/ATTY. FOR DBT.
JEFFREY LODGE/ATTY. FOR MV.
DISCHARGED 5/4/20

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

DISPOSITION: Granted in part and denied as moot in part.

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 IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on May

4, 2020. Doc. #13. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, the United States acting on behalf of its agency the Army and Air Force Exchange Service ("AAFES"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) (d)(2) with respect to $8,314.66 ("Property") received from the Department of Treasury as an offset recognized by 11 U.S.C. § 553. Doc. #15. No party has opposed this motion.

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.

A bankruptcy court has authority to make exceptions to, and to annul, the automatic stay under § 362(d). See Schwartz v. United States (In re Schwartz), 954 F.2d 569, 572-73 (9th Cir. 1992) ("Section 362(d) outlines the bankruptcy court's authority to make exceptions to the general operation of the stay."). This authority includes annulment providing retroactive relief, which, if granted, moots any issue as to whether the violating sale was void because, then, there would have been no actionable stay violation. Id. at 573. The Ninth Circuit has held that the bankruptcy court has "wide latitude in crafting relief from the automatic stay, including the power to grant retroactive relief from the stay." Id. at 572; National Envtl. Waste Corp. v. City of Riverside (In re National Envtl. Waste), 129 F.3d 1052, 1054-55 (9th Cir. 1977); Mataya v. Kissinger (In re Kissinger), 72 F.3d 107, 109 (9th Cir. 1995).

The standard for determining "cause" to annul the automatic stay retroactively is a "[b]alancing the equities" test. National Envtl. Waste Corp., 129 F.3d at 1055; Gasprom, Inc. v. Fateh (In re Gasprom, Inc.), 500 B.R. 598, 607–08 (9th Cir. BAP 2013). Courts have focused on two factors in determining whether cause exists to annul the stay: "(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." See National Envtl. Waste Corp., 129 F.3d at 1055. Courts employ many other factors, which further examine the debtor's and creditor's good faith, the prejudice to the parties, and the judicial or practical efficacy of annulling the stay including:

1. Number of filings;
2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;
3. A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;

4. The Debtor's overall good faith (totality of circumstances test): cf. Fid. & Cas. Co. of N.Y. v. Warren (In re Warren), 89 B.R. 87, 93 (9th Cir. BAP 1988)(chapter 13 good faith);
5. Whether creditors knew of stay but nonetheless took action, thus compounding the problem;
6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;
7. The relative ease of restoring parties to the status quo ante;
8. The costs of annulment to debtors and creditors;
9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;
10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;
11. Whether annulment of the stay will cause irreparable injury to the debtor;
12. Whether stay relief will promote judicial economy or other efficiencies.

Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 25 (9th Cir. BAP 2003). These factors are a framework for analysis and in any given case one factor may so outweigh the others as to be dispositive. Id

AAFES's Setoff Rights are preserved by 11 U.S.C. § 553, which provides:

> Except as otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case....

Setoffs in bankruptcy have been "generally favored," and a presumption in favor of their enforcement exists. See In re De Laurentiis Entertainment Group, Inc., 963 F.2d 1269, 1277 (9th Cir. 1992) (citations omitted). Although the Bankruptcy Code does not create its own right of setoff, section 553(a) preserves any non-bankruptcy right of setoff a party might have.

Four requirements must be satisfied for setoff to be valid, including:

1. the creditor's claim must arise before the commencement of the case;
2. the creditor must have a debt to the debtor that arose before the commencement of the case;
3. the claim and debt must be mutual; and
4. the claim must be valid and enforceable.

11 U.S.C. § 553; In re Wade Cook Fin. Corp., 375 B.R. 580, 594 (9th Cir. BAP 2007) (three conditions listed and the fourth condition implied) (citations omitted); see also USDA Rural Housing Service v. Riley, 485 B.R. 361, 367 (W.D. Ky. 2012) (citing 5 Collier on Bankruptcy § 553.01[1] (Alan N. Resnick & Henry J. Sommer eds., 16th

ed. rev. 2010); see also In re Abbott, 2012 WL 2576469, at *2 (Bankr. E.D. N.C. July 3, 2012).

Here, AAFES's right of setoff was valid and meets all four requirements of § 553. Requirement one is met because the Debtor owed a federal agency $8,533.29 for goods and services more than sixty days before the case. Doc. #18. Requirement two is met because the Debtor filed her federal tax return before the commencement of the case and there was a tax overpayment of $8,314.66. Id.; see Wade Cook Fin. Corp., 375 B.R. at 596 (The character of a claim does not transform from prepetition to postpetition because the claim is contingent). Requirement three is met because there is a mutuality of parties. AAFES and IRS are a single governmental unit for purposes of setoff. The general rule is that all agencies of the federal government are treated as a single entity for purposes of setoff. Hal, Inc. v. United States (In re Hal, Inc.), 122 F.3d 851, 853 (9th Cir. 1997); see also USDA Rural Housing Service v. Riley, 485 B.R. 361, 367; In re Abbott, 2012 WL 2576469, at *2. AAFES functions as part of the Department of Defense's operations. See 10 U.S.C. § 2481; 32 C.F.R. § 842.127. AAFES is a governmental agency with mutuality for purpose of setoff. Shortt, 277 B.R. 683. Therefore, under the unitary creditor theory, there was mutuality of parties because a federal agency had a claim (AAFES) and a federal agency (U.S. Treasury) intercepted a tax refund. Lastly, requirement four is met because the claim is valid and enforceable pursuant to 26 U.S.C. § 6402 and 31 U.S.C. § 3720A.

The TOP derives its non-bankruptcy authority to intercept federal tax refunds to offset prior federal debt from 26 U.S.C. § 6402(d) and 31 U.S.C. § 3720A. The Secretary of the Treasury's ("Secretary") authority to issue a refund derives from 26 U.S.C. § 6402, which says, "[i]n the case of any overpayment, the Secretary ... shall, subject to subsections (c), (d), (e), and (f)[,] refund any balance to such person." 26 U.S.C. § 6402(a). Under subsection (d), the Secretary must reduce the amount of a person's tax overpayment by the amount of any past-due legally enforceable debt the person owes to a federal agency and notify the person that his tax overpayment has been reduced by the amount necessary to satisfy the debt. See § 6402(d). Section 3720A also requires that the federal agency give notice to the debtor before requesting setoff with the Secretary. See 31 U.S.C. § 3720A (a)-(b); see also Shortt, 277 B.R. at 689. As the Second Circuit explained in Aetna Casualty & Surety Co. v. LTV Steel Co. (In re Chateaugay Corp.), 94 F.3d 772, 778-79 (2d Cir.1996), "Section 6402(d) authorizes the Secretary of the Treasury to set off a tax refund against the taxpayer's debt to another Federal agency. Section 3720A provides the procedural framework for that setoff." Id. Due to the mandatory action required of the Secretary under section 6402(d) and section 3720A, the TOP setoff of the debtor's federal tax refund was valid and enforceable. Because the setoff was valid, the Debtor never became entitled to any tax refund. The Secretary was required to reduce the overpayment to zero because the Debtor owed AAFES in excess of her tax refund. See In re Lyle, 324 B.R. 128, 131 (Bankr. N.D. Cal. 2005). Nothing remained to become property of the estate after the Secretary's mandatory reduction of the Debtor's tax refund. See, e.g., id. Because the

Debtor's tax refund never became property of the estate, the U.S. Treasury is under no obligation to turn over the funds.

Courts have recognized that "the setoff right is an established part of our bankruptcy laws [and] should be enforced unless "compelling circumstances" require otherwise. In re Buckenmaier, 127 B.R. 233, 237 (9th Cir. BAP 1991) (citation omitted). While allowance of setoff rights under section 553 is permissive, not mandatory, there are no compelling circumstances to deny AAFES's right of setoff. AAFES asserted its setoff rights one year before the Debtor filed bankruptcy. Therefore, the Debtor was on notice that AAFES and the IRS would seek to set off overpayments against liabilities. AAFES's claim is secured by the overpayment and setoff. 11 U.S.C. § 506. No offer of adequate protection has been made by the Debtor. The Ninth Circuit has determined that setoff rights are superior to a debtor's exemption rights. See Gould, 401 B.R. at 428. AAFES froze the account pending hearing on this motion for relief from stay. Doc. #18.

Courts generally recognize that, by establishing a right of setoff, the creditor has established a prima facie showing of "cause" for relief from the automatic stay under § 362(d)(1). See In re Ealy, 392 B.R. 408, 414 (Bankr. E.D. Ark. 2008) (citing cases). As shown above, AAFES possessed a valid right of setoff under section 553(a) which is a prima facie showing that cause existed for relief from stay.

As shown above, the amount of Debtor's prepetition overpayments totaled $8,314.66. AAFES's claim for unpaid prepetition liabilities totals $8,533.29. Doc. #18. After the accrued penalty and interest, the amount of unpaid prepetition debt to AAFES totals $9,394.80. Id. Applying Debtor's prepetition tax overpayments to her prepetition unpaid liabilities leaves a balance of unpaid liabilities of $218.63. Accordingly, there is no equity for Debtor, and further, there is no refund to which Debtor's claimed exemption could attach. See IRS v. Luongo (In re Luongo), 259 F.3d 323, 335; Lyle, 324 B.R. at 131–33. The United States has met its burden of showing that the Debtor has no equity in the property.

AAFES initiated the TOP against the Debtor on July 23, 2019, more than six months before the bankruptcy. Doc. #18. The Debtor filed bankruptcy on the eve of the TOP setoff and made no attempt to provide adequate protection. AAFES will be prejudiced if the stay relief is not made retroactive because the security is not adequately protected and may not be replaced. AAFES did not actively violate the automatic stay and upon learning of the bankruptcy froze the account and immediately sought relief from stay to address its right to the offset.

If AAFES is required to turn over the TOP payment, the Debtor will likely spend the money and it will be extremely difficult to restore its secured position. Annulment is not harmful to the Debtor or the other creditors because the Debtor has no prospect for an effective reorganization and the AAFES secured claim will be satisfied by the payment. AAFES's setoff rights are superior to any claim of exemption in the anticipated tax refunds. Gould, 401 B.R. at 428.

For these reasons, the automatic stay should be annulled to allow AAFES to complete to the TOP setoff.

Accordingly, the motion will be granted in part as to trustee's interests pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. The motion is denied as moot in part as to the debtor's interest because debtor's discharge was entered on May 4, 2020. No other relief is awarded.

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