

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, July 14, 2021
Place: Department A - Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court will begin in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

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. [20-11606](#)-A-11 **IN RE: MICHAEL PENA**

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-17-2021 [[137](#)]

ROCKY TOP RENTALS, LLC/MV
JUSTIN HARRIS/ATTY. FOR DBT.
ROBERT ARONSON/ATTY. FOR MV.
DISMISSED 6/30/21

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on June 30, 2021. Doc. #150. The motion will be DENIED AS MOOT.

2. [20-11606](#)-A-11 **IN RE: MICHAEL PENA**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
5-4-2020 [[1](#)]

JUSTIN HARRIS/ATTY. FOR DBT.
DISMISSED 6/30/21

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED

An order dismissing this case was entered on June 30, 2021. Doc. #150. The status conference will be DROPPED AS MOOT.

1. [21-11215](#)-A-7 **IN RE: GABRIEL/LUXILA GALLEGOS**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION
6-17-2021 [\[15\]](#)

MONICA ROBLES/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 debtor 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 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 the debtors' 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 debtors' attorney.

1. [18-14207](#)-A-7 **IN RE: ELMER/KATHLEEN FALK**
[FW-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
WITH TANYA MOORE
6-30-2021 [\[112\]](#)

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

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Local Rule of Practice ("LBR") 9014-1(f) (2) allows a moving party to file and serve a motion on at least 14 days' notice "unless additional notice is required by the Federal Rules of Bankruptcy Procedure."

For a motion to approve the compromise of a controversy, the Federal Rules of Bankruptcy Procedure require additional notice. Federal Rule of Bankruptcy Procedure ("Rule") 2002(a) requires at least 21 days' notice by mail of "the hearing on approval of the compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent." Rule 2002(a) (3).

Notice by mail of this motion was sent June 30, 2021, with a hearing date set for July 14, 2021. Because this motion to approve the compromise of a controversy was set for hearing on less than 21 days' notice and the court has not, for cause shown, directed that notice not be sent, this motion is DENIED WITHOUT PREJUDICE for improper notice under Rule 2002.

2. [21-11017](#)-A-7 **IN RE: DAVID/DIANE EBEL**

AMENDED MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
6-25-2021 [\[20\]](#)

ALAN EIGHMEY/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Local Rule of Practice ("LBR") 9014-1(f) (2) allows a moving party to file and serve a motion on at least 14 days' notice "unless additional notice is required by the Federal Rules of Bankruptcy Procedure."

For a motion to convert a chapter 7 case to another chapter under 11 U.S.C. § 706, the Federal Rules of Bankruptcy Procedure require additional notice. "In

a chapter 7 liquidation," Federal Rule of Bankruptcy Procedure ("Rule") 2002(a) requires at least 21 days' notice by mail of the hearing on "the conversion of the case to another chapter, unless the hearing is under § 707(a)(3) or § 707(b) or is on dismissal of the case for failure to pay the filing fee." Rule 2002(a)(4).

Notice by mail of this motion was sent June 25, 2021, with a hearing date set for July 14, 2021. Because this motion to convert the chapter 7 case to chapter 13 pursuant to 11 U.S.C. § 706 was set for hearing on less than 21 days' notice, this motion is denied without prejudice for improper notice under Rule 2002.

Additionally, the notice of hearing filed with this motion does not comply with LBR 9014-1(d)(3)(B), which requires that the moving party advise potential respondents whether written opposition is required and how to determine whether the matter has been resolved without oral argument. Further, because no written opposition is required under LBR 9014-1(f)(2) and opposition may be presented at the hearing, LBR 9014-1(g)(3) does not apply to parties who choose not to submit written opposition.

Also, the motion does not comply with LBR 9014-1(c), which requires a Docket Control Number be included "on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). The motion does not contain a docket control number.

Accordingly, because this motion does not satisfy the notice requirements of Rule 2002(a) and the supporting documents do not comply with the Local Rules of Practice, the motion is DENIED WITHOUT PREJUDICE.

3. [18-14920-A-7](#) **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA
[BMJ-20](#) GENERAL PARTNERSHIP**

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BAKER MANOCK & JENSEN, PC
FOR JOHN JACKSON WASTE, TRUSTEES ATTORNEY(S)
6-3-2021 [[363](#)]

JACOB EATON/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Baker Manock & Jensen, PC ("Movant"), counsel for chapter 7 trustee David Sousa ("Trustee"), requests allowance of interim compensation for services rendered from May 1, 2020 through February 28, 2021. Doc. #363. Movant provided legal services valued at \$21,709.00, and requests compensation for that amount. Doc. #363. Movant does not request reimbursement for any expenses.

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) advising Trustee regarding issues of estate administration; (2) coordinating with Blakeley, LLC, special litigation counsel to the estate; (3) analyzing all creditor claims; (4) assisting with the preparation and filing of fee application for Sousa & Company, accountant for the estate; (5) negotiating with creditor, Dias Law Firm, Inc., regarding withdrawal of claim pursuant to settlement agreement; (6) preparing motion for allowance of interim distribution to unsecured creditors; and (7) preparing and filing objection to duplicative claim filed by creditor, Animal Health International. Ex. 1, Doc. #367; Decl. of J. Jackson Waste, Doc. #366; Doc. #363. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on an interim basis. The court allows interim compensation in the amount of \$21,709.00. Trustee is authorized to make a payment of \$21,709.00 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.

4. [21-11226](#)-A-7 **IN RE: RICKEY GREEN**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-9-2021 [\[15\]](#)

SANTANDER CONSUMER USA INC./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 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 movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Santander Consumer USA Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2015 Jeep Patriot ("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 three complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$2,597.67, which includes late fees of \$328.57, recovery fees in the amount of \$570.00, redemption fees in the amount of \$125.00, transportation fees in the amount of \$75.00, keys fees in the amount of \$250.00 and insufficient funds fees of \$15.00. Doc. #12.

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. According to the debtor's Schedule D, the Vehicle is valued at \$12,000.00 and the debtor owes \$12,234.88. Doc. #1, 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. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1. The Vehicle was recovered by Movant on May 10, 2021. Doc. #15.

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 three pre- and post-petition payments to Movant, the Vehicle is a depreciating asset and Movant has already recovered the Vehicle.

5. [21-10935](#)-A-7 **IN RE: DANIEL GONZALEZ**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-9-2021 [\[13\]](#)

FIRST TECH FEDERAL CREDIT UNION/MV
JOEL WINTER/ATTY. FOR DBT.
WENDY LOCKE/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 movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, First Tech Federal Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2013 Dodge Challenger ("Vehicle"). Doc. #13.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least eight complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$3,312.96. Doc. #16.

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 \$18,550.00 and the debtor owes \$21,718.67. Doc. #16.

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.

6. [21-10675](#)-A-7 **IN RE: JEFFREY SHAFFER**
[EPE-1](#)

MOTION TO AVOID LIEN OF MIDLAND FUNDING, LLC.
6-16-2021 [18]

JEFFREY SHAFFER/MV
ERIC ESCAMILLA/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.

Jeffrey Steven Shaffer ("Debtor"), the debtor in this chapter 7 case, 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 Midland Funding LLC ("Creditor") on Debtor's residential real property commonly referred to as 513 E. Weldon Ave., Fresno, CA 93704 (the "Property"). Doc. #18; Schedule C, Doc. #1.

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 debtors' 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 March 22, 2021. Doc. #1. A judgment was entered against Jeffrey Shaffer in the amount of \$1,753.47 in favor of Creditor on April 19, 2017. Ex. 2, Doc. #21. The abstract of judgment was recorded pre-petition in Kern County on August 6, 2020. Ex. 4, Doc. #21. The lien attached to Debtor's interest in the Property located in Fresno County. Doc. #21. The Property also is encumbered by a lien in favor of Nationstar Mortgage, LLC

d/b/a Mr. Cooper in the amount \$159,500.00. Am. Schedule D, Doc. #12. Debtor claimed an exemption of \$100,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$253,000.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$1,753.47
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$159,500.00
Amount of Debtor's claim of exemption in the Property	+	\$100,000.00
	sum	\$261,253.47
Value of Debtor's interest in the Property absent liens	-	\$253,000.00
Amount Creditor's lien impairs Debtor's exemption	=	\$8,253.47

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

7. [21-11387](#)-A-7 **IN RE: VJ AVOCADO RANCH PROPERTIES, LLC**

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 12
6-21-2021 [[21](#)]

RUBEN FUENTES/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

In a chapter 7 liquidation, Federal Rule of Bankruptcy Procedure ("Rule") 2002(a) requires at least 21 days' notice by mail of the hearing on "the conversion of the case to another chapter, unless the hearing is under § 707(a)(3) or § 707(b) or is on dismissal of the case for failure to pay the filing fee." Rule 2002(a)(4).

Local Rule of Practice ("LBR") 9014-1(f)(2)(C) provides that "[w]hen fewer than twenty-eight (28) days' notice of a hearing is given, no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion."

Notice by mail of this motion was sent June 23, 2021, with a hearing date set for July 14, 2021, which satisfies Rule 2002(a). However, this motion to convert the chapter 7 case to chapter 12 pursuant to 11 U.S.C. § 706 was set for hearing on less than 28 days' notice. Pursuant to LBR 9014-1(f)(2), written opposition was not required, but the Notice of Hearing filed with this motion stated that opposition must be filed and served no later than fourteen days before the hearing and that failure to file written response may result in the court granting the motion prior to the hearing. The Notice of Hearing does not comply with LBR 9014-1(f)(2).

The motion also does not comply with LBR 9014-1(c), which requires a Docket Control Number be included "on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). The motion and supporting documents do not contain a docket control number.

Accordingly, this motion is DENIED WITHOUT PREJUDICE for failing to comply with LBR 9014-1.

8. [21-11387](#)-A-7 **IN RE: VJ AVOCADO RANCH PROPERTIES, LLC**
[ETW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY, AND/OR MOTION TO CONFIRM
TERMINATION OR ABSENCE OF STAY
6-17-2021 [\[15\]](#)

IRA SERVICES TRUST COMPANY CDN FBO JOSEPH D. LUNG IRA/MV
RUBEN FUENTES/ATTY. FOR DBT.
EDWARD WEBER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted pursuant to 11 U.S.C. § 362(d)(4), denied as to
11 U.S.C. § 362(d)(1) and (d)(2).

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor filed written opposition on July 1, 2021. Doc. #28. 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. The court is inclined to grant the motion for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(4), and this matter will proceed as scheduled.

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 debtor's opposition to this motion does not comply with LBR 9004-2(c) and (d), which require declarations, exhibits and proofs of service to be filed as separate documents. The court encourages counsel for both parties 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.

Joseph D. Lung and Sandra A. Lung, as Co-Trustees of the Lung Family Trust dated April 7, 2017, as to an undivided 310,000/599,000 interest and IRA Services Trust Company CDN FBO Joseph D. Lung IRA, as to an undivided 289,000/599,000 interest ("Movant"), seek relief from the automatic stay under 11 U.S.C. § 362(d)(1), (d)(2) and (d)(4) with respect to real property commonly described as 17097 Rowlee Road, Wasco, CA 93280 ("Property"). Doc. #15. VJ Avocado Properties Ranch, LLC ("Debtor") filed written opposition on July 1,

2021. Doc. #28. Debtor's written opposition disputes Movant's valuation of the Property but otherwise does not dispute or raise any objection to the material facts set forth and supported by Movant's papers. Doc. #28.

A stay relief motion is a contested matter under Federal Rule of Bankruptcy Procedure 9014. First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.), 470 B.R. 864, 870 (B.A.P. 9th Cir. 2011). "An evidentiary hearing is generally appropriate when there are disputed and material factual issues that the bankruptcy court cannot readily determine from the record." Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 636 (B.A.P. 9th Cir. 2010). In cases where the parties do not request an evidentiary hearing or the core facts are not disputed, "the bankruptcy court is authorized to determine contested matters . . . on the pleadings and arguments of the parties, drawing necessary inferences from the record." Id. (quoting Gonzalez-Ruiz v. Doral Fin. Corp. (In re Gonzalez-Ruiz), 341 B.R. 371, 381 (B.A.P. 1st Cir. 2006)).

Movant argues that the automatic stay should be terminated because Debtor filed for bankruptcy in bad faith and for the purpose of delaying or preventing Movant from foreclosing on the Property, citing 11 U.S.C. § 362(d) (4). Doc. #15. Movant also argues that cause exists to lift the stay because there is no equity in the Property, citing 11 U.S.C. § 362(d) (1) and (d) (2). Doc. #15.

Debtor filed written opposition on July 1, 2021. Doc. #28. Debtor argues that Movant's interest in the Property is fully protected by an equity cushion of at least \$800,000 and that Debtor filed its chapter 7 case in good faith. Doc. #28. Debtor also proposes to sell the Property under a chapter 12 plan and explains why Debtor qualifies for chapter 12 protection. Doc. #28. Debtor is currently in chapter 7.

The court is inclined to grant Movant relief from the automatic stay pursuant to 11 U.S.C. § 362(d) (4). Although Movant and Debtor disagree over the value of the Property, the court need not determine the value of the Property to grant relief from the stay under § 362(d) (4), and the court finds that no material factual disputes exist related to relief from the stay under § 362(d) (4). The court is inclined to deny relief from the automatic stay under § 362(d) (1) and (d) (2) because Movant has not met Movant's burden of proof with respect to Debtor's equity in the Property. 11 U.S.C. § 362(g) (1).

Relief under § 362(d) (4)

11 U.S.C. § 362(d) (4) allows the court to grant relief from the stay with respect to an act against real property

by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either –

- (A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or
- (B) multiple bankruptcy filings affecting such real property.

11 U.S.C. § 362(d) (4). There is no dispute that Movant is a creditor whose claim is secured by an interest in the Property.

To obtain relief under § 362(d)(4), the court must affirmatively find: (1) the debtor's bankruptcy filing is part of a scheme; (2) the object of the scheme is to delay, hinder, or defraud creditors; and (3) the scheme involves either (i) the transfer of some interest in real property without the secured creditor's consent or court approval or (ii) multiple bankruptcy filings affecting the property. First Yorkshire Holdings, 470 B.R. at 870-71.

"A scheme is an intentional construct. It does not happen by misadventure or negligence." In re Duncan & Forbes Dev., Inc., 368 B.R. 27, 32 (Bankr. C.D. Cal. 2007). Because direct evidence of a scheme is uncommon, "the court must infer the existence and contents of a scheme from circumstantial evidence. The party claiming such a scheme must present evidence sufficient for the trier of fact to infer the existence and content of the scheme." Id.; see Jimenez v. ARCPE 1, LLP (In re Jimenez), 613 B.R. 537, 545 (B.A.P. 9th Cir. 2020).

Section 362(d)(4) "does not require that it be the debtor who has created the scheme or carried it out, or even that the debtor be a party to the scheme at all." Duncan & Forbes, 368 B.R. at 32. "The language of § 362(d)(4) is likewise devoid of any requirement of a finding of bad faith by the Debtor." In re Dorsey, 476 B.R. 261, 267 (Bankr. C.D. Cal. 2012).

As an initial matter, Movant argues that Debtor filed this case in bad faith and Debtor counters that it acted in good faith. This is not a material factual dispute, however, because a finding of bad faith is not required when granting relief from the automatic stay under § 362(d)(4). Dorsey, 476 B.R. at 267.

The following facts are undisputed. In July 2018, Jesus Orozco executed a note in the original principal amount of \$599,000 secured by a Deed of Trust recorded against the Property. Decl. of Joseph D. Lung ¶ 2, Doc. #18; Exs. A & B, Doc. #19. The note was due in full on August 1, 2020. Lung Decl. ¶ 2, Doc. #18; Ex. A, Doc. #19. Jesus Orozco is in default pursuant to the terms of the note, which has a total payoff of \$837,396.46 as of May 27, 2021. Lung Decl. ¶ 4, Doc. #18; Decl. of Jesus Orozco ¶ 3, Doc. #28; Ex. C, Doc. #19.

Jesus Orozco is Debtor's managing member. Orozco Decl. ¶ 1, Doc. #28. Jesus Orozco commenced a voluntary chapter 12 bankruptcy case in the Southern District of California on October 13, 2020 ("First Case"). Ex. D, Doc. #19. No plan was confirmed in the First Case. Ex. D, Doc. #19. The First Case was dismissed on March 2, 2021, on the motion of Foreclosure Specialists, Inc. Ex. D, Doc. #19. The following day, on March 3, 2021, Jesus Orozco commenced a subsequent voluntary chapter 12 case in the Southern District of California ("Second Case"). Ex. E, Doc. #19. In the Second Case, the court granted Foreclosure Specialists, Inc.'s motion to dismiss on shortened time, ultimately dismissing the Second Case 14 days after the Second Case was filed without confirmation of a plan. Ex. E, Doc. #19.

This court may take judicial notice of another bankruptcy court's docket under Federal Rule of Evidence 201. While Movant has not provided this court with any documents filed in either the First Case or the Second Case, the dockets in both cases indicate that Jesus Orozco's chapter 12 cases were dismissed at the behest of a creditor, and the Second Case was dismissed on less time than is normally required under the Federal Rules of Bankruptcy Procedure. The court notes that based on the dates the First Case and Second Case were filed and the fact that both cases were dismissed in March 2021, under 11 U.S.C. § 362(c)(4), no automatic stay would have gone into effect if Jesus Orozco had filed a third bankruptcy case on the same date as Debtor filed this bankruptcy case.

On March 22, 2021, Movant recorded a Notice of Default and Election to Sell under Deed of Trust ("NOD") in Kern County initiating non-judicial foreclosure

proceedings against the Property. Lung Decl. ¶ 3, Doc. #18; Ex. F, Doc. #19. The NOD required Jesus Orozco to pay at least \$829,375.02 within approximately 90 days from March 22, 2021 (approximately June 21, 2021), or Movant could commence a non-judicial foreclosure sale of the Property. Ex. F, Doc. #19. On May 26, 2021, approximately two months after the NOD was recorded, Jesus Orozco transferred title to the Property to Debtor via a quitclaim deed. Ex. G, Doc. #19; Orozco Decl. ¶ 4, Doc. #28. The quitclaim deed was recorded in Kern County on May 27, 2021. Ex. G, Doc. #19. Movant did not consent to the transfer of the Property. Lung Decl. ¶ 7, Doc. #18. Debtor commenced this chapter 7 case in the Eastern District of California on May 27, 2021. Doc. #1.

In Schedule A/B, Debtor values its interest in the Property at \$3,350,000. Schedule A/B, Doc. #13. The total value of all Debtor's scheduled property is \$3,357,600. Id. Debtor's only scheduled creditors are Movant and Ramirez Zuniga Family, LLC, whose claims are both secured by deeds of trust on the Property. Schedule D, Doc. #13. Debtor did not schedule any creditors with unsecured claims. Schedule E/F, Doc. #13.

Based on the undisputed evidence, the court finds that Debtor's bankruptcy is part of a scheme. Movant's secured claim became fully due and payable on August 1, 2020. Ex. A, Doc. #19. Jesus Orozco filed the First Case on October 13, 2020, and the First Case was dismissed at the request of a creditor on March 2, 2021. Ex. D, Doc. #19. The following day, Jesus Orozco filed the Second Case. Ex. E, Doc. #19. The Second Case was dismissed 14 days later at the request of the same creditor that requested dismissal of the First Case. Ex. E, Doc. #19. Because Jesus Orozco had two pending bankruptcy cases dismissed within a one-year period, there would have been no automatic stay to protect the Property from foreclosure if Jesus Orozco had filed a third bankruptcy petition on the same day Debtor filed its bankruptcy petition. See 11 U.S.C. § 362(c)(4). Jesus Orozco would have had to affirmatively request that the bankruptcy court impose an automatic stay if Jesus Orozco had filed a third bankruptcy petition on the same day Debtor filed its bankruptcy petition. Id. Instead of filing a third individual bankruptcy case, Jesus Orozco, who is the managing member of Debtor, transferred title to the Property to Debtor on May 26, 2021. Ex. G, Doc. #19. The next day, on May 27, 2021, the quitclaim deed transferring title to the Property from Jesus Orozco to Debtor was recorded and Debtor filed for chapter 7 relief in the Eastern District of California. Ex. G, Doc. #19; Doc. #1. This is the third bankruptcy case affecting the Property since the loan matured on August 1, 2020.

The transfer of the Property to Debtor and the filing of Debtor's chapter 7 bankruptcy case did not happen by misadventure or negligence. The quitclaim deed was signed by the borrower on Movant's loan, Jesus Orozco, who could not himself file another individual bankruptcy case without risking that the bankruptcy court may not impose an automatic stay in that case. The quitclaim deed was notarized and recorded indicating intentional acts on the part of Jesus Orozco. Ex. G, Doc. #19. In addition, Debtor's bankruptcy case was filed through an attorney, indicating additional intentional acts on the part of Jesus Orozco and Debtor. Doc. #1.

The court further finds that the object of the scheme was to delay or hinder Movant's foreclosure of the Property and that the scheme involved both the transfer of ownership of the Property without Movant's consent and multiple bankruptcy filings affecting the Property.

Based on the uncontroverted evidence filed in support of the motion, Movant has satisfied the necessary elements to obtain relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(4).

Relief Under § 362(d)(1) and (d)(2)

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985). Bankruptcy Code § 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. Disputes over the lack of adequate protection and the debtor's equity in the property may require an evidentiary hearing. See In re Johnson, 756 F.2d 738, 740 (9th Cir. 1985).

The court is inclined to deny relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2). The moving party has the burden of proof on the issue of Debtor's equity. First Yorkshire Holdings, 470 B.R. at 869; 11 U.S.C. § 362(g). Movant relied on a printout from an online residential real estate estimate to establish the value of the Property and Debtor's alleged lack of equity. Ex. I, Doc. #19. Debtor countered with a broker's price opinion. Doc. #28. Based on the evidence filed, the court finds that Movant has not met Movant's burden of establishing Debtor's lack of equity in the Property as required by § 362(g)(1). Relief from the automatic stay will be granted pursuant to § 362(d)(4). The court finds no separate cause to lift the automatic stay under § 362(d)(1) or (d)(2).

Conclusion

The court finds that, based on the uncontroverted evidence in support of the motion, Movant has satisfied the necessary elements to obtain relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(4). No other relief is awarded.