

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, July 28, 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. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-24](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
7-7-2021 [[678](#)]

LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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 Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtors and debtors in possession Eduardo Zavala Garcia and Amalia Perez Garcia (collectively, "DIP"), requests allowance of interim compensation in the amount of \$44,830.00 and reimbursement for expenses in the amount of \$1,288.48 for services rendered from December 1, 2020 through June 30, 2021. Doc. #678.

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 counsel, 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) providing general case administration; (2) preparing and prosecuting two Motions for Authority to Sell Real Property Free and Clear of Liens for property identified as the "Portillo Ranch" and "Hacienda 1 Ranch"; (3) working with DIP's real estate broker, buyers, and agents for sale of the Portillo Ranch and the Hacienda 1 Ranch; (4) preparing and prosecuting fee and employment applications; (5) advising DIP on financing available in a chapter 11 case; (6) assisting DIP and special counsel in preparing Objections to Allowance of Claims; (7) preparing for and participating in the Bankruptcy Dispute Resolution Program Conference concerning DIP's disputes with the Nino claimants; (8) preparing and filing DIP's first amended plan of reorganization and first amended disclosure statement; (9) preparing and filing DIP's second amended plan of reorganization and second amended disclosure statement; and (10) prosecuting confirmation of the second amended plan including responding to objections to confirmation of the plan filed by creditors. Decl. of Leonard K. Welsh, Doc. #680; Ex. B, Doc. #682. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$44,830.00 and reimbursement of expenses in the amount of \$1,288.48. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consisted with the priorities of the Bankruptcy Code.

2. [21-10445](#)-A-11 **IN RE: HARDEEP KAUR**
[LKW-7](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
7-7-2021 [[101](#)]

LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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 Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtor and debtor in possession Hardeep Kaur ("DIP"), requests allowance of interim compensation in the amount of \$9,512.50 and reimbursement for expenses in the amount of \$416.31 for services rendered from June 1, 2021 through June 30, 2021. Doc. #101.

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). According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #32. In determining the amount of reasonable compensation to be awarded to counsel, 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) providing general case administration; (2) preparing and filing a Motion to Avoid Lien; (3) preparing and filing a motion for Order Authorizing Assumption of Unexpired Real Property Lease; (4) preparing and prosecuting employment and fee applications; (5) providing general claims administration; (6) obtaining confirmation of

DIP's plan of reorganization; and (7) preparing and filing a modification to DIP's plan of reorganization. Decl. of Leonard K. Welsh, Doc. #104; Ex. B, Doc. #105. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$9,512.50 and reimbursement of expenses in the amount of \$416.31. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

3. [21-10445](#)-A-11 **IN RE: HARDEEP KAUR**
[LKW-8](#)

MOTION TO AVOID LIEN OF NATIONAL LOAN ACQUISITIONS COMPANY
7-13-2021 [[116](#)]

HARDEEP KAUR/MV
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. 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.

Hardeep Kaur ("DIP"), the debtor and debtor-in-possession in this chapter 11 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid in part the non-possessory, non-purchase money security interest in her 2010 John Deere Tractor (the "Property"). Doc. #116; Am. Schedule C, Doc. #64.

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 § 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 § 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)).

DIP filed her bankruptcy petition on February 23, 2021. Doc. #1. Before filing her bankruptcy petition, DIP borrowed money from Bank of America. Decl. of Hardeep Kaur, Doc. #118. Bank of America secured its claim by filing a UCC Financing Statement with the Secretary of State's office on August 29, 2016 and assigned its lien to National Loan Acquisitions Company ("NLAC"). Decl., Doc. #118. DIP owns the Property that is subject to NLAC's lien. Decl., Doc. #118. The Property is used in the operation of DIP's farming business as a tool of the trade. Decl., Doc. #118.

Section 522(b)(3)(A) authorizes exemptions for any property that is exempt under State or local law that is applicable on the date of the filing of the petition. 11 U.S.C. § 522(b)(3)(A). The Property is exempt for \$8,725.00 under California Code of Civil Procedure ("C.C.P.") § 703.140(b)(6), the "tool of the trade" exemption. Am. Schedule C, Doc. #64. Additionally, the Property is exempt for \$10,448.73 under C.C.P. § 703.140(b)(5), the "wildcard" exemption. Am. Schedule C, Doc. #64.

Here, DIP has established that: (1) DIP is entitled to exemptions under § 522(b); (2) the Property is listed on DIP's schedules as exempt; (3) the lien impairs DIP's exemptions; and (4) the lien is a non-possessory, non-purchase money security interest in DIP's tool of the trade, which is listed in § 522(f)(1)(B)(ii).

DIP asserts a market value for the Property as of the petition date at \$20,000.00. Schedule C, Doc. #64. DIP's exemptions total \$19,173.73.

Accordingly, this motion is GRANTED. NLAC's lien in the Property is avoided to the extent it impairs DIP's exemptions in the total amount of \$19,173.73, and NLAC's lien in the Property is not avoided in the amount of \$826.27.

4. [21-10853](#)-A-12 **IN RE: MIKE WEBER**

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION
4-6-2021 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Continued to August 11, 2021, at 9:30 a.m.

ORDER: The court will issue an order.

Pursuant to the joint status report filed on July 21, 2021, Doc. #70, this status conference will be continued to August 11, 2021, at 9:30 a.m. to be heard in conjunction with the other motions scheduled on that date.

1. 20-12002-A-7 **IN RE: CRAIG SEGAL**
JES-1

MOTION TO COMPEL
6-27-2021 [22]

CRAIG SEGAL/MV
SCOTT LYONS/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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the exhibit filed in connection with this motion does not comply with LBR 9004-2(c)(1), which requires declarations and exhibits to be filed as separate documents. Additionally, the motion does not comply with LBR 9004-2(d)(1), which requires exhibits to be filed as a separate document. The declaration was filed as a single document that included the movant's exhibit. Doc. #24. The court encourages the trustee to review the local rules to ensure compliance in future matters.

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Craig Lee Segal ("Debtor"), moves the court to compel Debtor to turn over his 2020 federal and state tax refunds. Mot., Doc. #22; Decl. of James Salven, Doc. #24. Trustee believes the tax returns have equity above and beyond any exemption claimed by Debtor. Tr.'s Decl., Doc. #24.

11 U.S.C. § 541(a)(1) defines property of the estate as "all legal or equitable interests of the debtor in property as of the commencement of the case." In the Ninth Circuit, "the right to receive a tax refund constitutes an interest in property[.]" Nichols v. Birdsell, 491 F.3d 987, 990 (9th Cir. 2007).

11 U.S.C. § 542(a) requires a debtor to turn over property of the estate, or its value, then in debtor's possession, custody or control during the case. "Section 542(a) does not require the debtor to have current possession of the property which is subject to turnover. If a debtor demonstrates that he is not in possession of the property of the estate or its value at the time of the

turnover action, the trustee is entitled to recovery of a money judgment for the value of the property of the estate." Newman v. Schwartz (In re Newman), 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013) (citations and punctuation omitted).

Trustee believes the tax refunds have an estimated value of at least \$1,702 to the estate. Tr.'s Decl., Doc. #24. Debtor has been noncompliant and nonresponsive to various correspondence sent by Trustee. Tr.'s Decl., Doc. #24; Ex. A, Doc. #24.

Accordingly, this motion is GRANTED. Debtor shall turn over his 2020 federal and state tax refunds within 10 days of the court order. Failure to do so may result in sanctions pursuant to 11 U.S.C. § 105(a).

2. 20-12806-A-7 **IN RE: ROBERTO CHAVEZ**
JES-1

MOTION TO COMPEL
6-27-2021 [31]

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

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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.

As a procedural matter, the exhibit filed in connection with this motion does not comply with LBR 9004-2(c)(1), which requires declarations and exhibits to be filed as separate documents. Additionally, the motion does not comply with LBR 9004-2(d)(1), which requires exhibits to be filed as a separate document. The declaration was filed as a single document that included the movant's exhibit. Doc. #33. The court encourages the trustee to review the local rules to ensure compliance in future matters.

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Roberto R. Chavez ("Debtor"), moves the court to compel Debtor to turn over his accounts receivables ("Asset"). Mot., Doc. #31; Decl. of James Salven, Doc. #33. Trustee believes the Asset has equity over and above any encumbrance or exemption claimed by Debtor. Tr.'s Decl., Doc. #33.

11 U.S.C. § 541(a) (1) defines property of the estate as "all legal or equitable interests of the debtor in property as of the commencement of the case." Accounts "receivables bec[ome] the property of the bankruptcy estate at the time [debtors file] the bankruptcy petition. Tippin v. Commissioner, 104 T.C. 518, 527 (1995).

11 U.S.C. § 542(a) requires a debtor to turn over property of the estate, or its value, then in debtor's possession, custody or control during the case. "Section 542(a) does not require the debtor to have current possession of the property which is subject to turnover. If a debtor demonstrates that he is not in possession of the property of the estate or its value at the time of the turnover action, the trustee is entitled to recovery of a money judgment for the value of the property of the estate." Newman v. Schwartzer (In re Newman), 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013) (citations and punctuation omitted).

Trustee is of the opinion that the liquidation of the Asset will net the estate approximately \$10,000. Tr.'s Decl., Doc. #33. This chapter 7 case was filed on August 27, 2020. Tr.'s Decl., Doc. #33. Accounts receivables of \$10,000 were not disclosed in Debtor's petition. Ex. A, Doc. #33. Debtor owns a lawn and garden services business and remains in custody and control of the Asset. Tr.'s Decl., Doc. #33; Doc. #1. Debtor has been noncompliant and nonresponsive to correspondence sent by Trustee. Tr.'s Decl., Doc. #33; Ex. A, Doc. #33.

Accordingly, this motion is GRANTED. Debtor shall turn over the Asset to the estate for liquidation within 10 days of the court order. Failure to do so may result in sanctions pursuant to 11 U.S.C. § 105(a).

3. [20-12220-A-7](#) **IN RE: MICHAEL/NORMA DORADO**
[JES-1](#)

MOTION TO COMPEL
6-27-2021 [23]

JAMES SALVEN/MV
GRISELDA TORRES/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on July 21, 2021. Doc. #27.

4. 21-10548-A-7 **IN RE: RICHARD/ASHLEY BRAZIL**
JDR-1

MOTION TO AVOID LIEN OF KINGS FEDERAL CREDIT UNION
6-17-2021 [43]

ASHLEY BRAZIL/MV
JEFFREY ROWE/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Creditor Kings Federal Credit Union ("Creditor") timely filed written opposition on July 14, 2021. Doc. #50. In response to Creditor's opposition, Richard Patrick Brazil and Ashley Nicole Brazil (collectively, "Debtors"), the debtors in this chapter 7 case, filed an amended Schedule C on July 19, 2021. Am. Schedule C, Doc. #54. Debtors request that Creditor's opposition to the motion be overruled based on their amended homestead exemption. Doc. #56.

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 § 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 § 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)). Here, Debtors seek to avoid a judicial lien that Debtors argue impairs their homestead exemption. Doc. #43.

Federal Rule of Bankruptcy Procedure ("Rule") 4003(b)(1) allows a party in interest to object to a claim of exemption within 30 days after the conclusion of the § 341 meeting of creditors or 30 days after the filing of an amended Schedule C, whichever is later. Because Debtors filed an amended Schedule C that changed the amount of the claimed homestead exemption, the period to object to the claim of exemption has not yet expired.

Because parties in interest can still object to Debtors' amended claimed homestead exemption under Rule 4003 and Debtors seek to have the opposition overruled based on their amended exemption, the court finds Debtors have changed the grounds upon which the motion should be granted. Because Debtors cannot yet establish that they are entitled to the scheduled homestead exemption, this motion is not ripe for hearing.

This motion is denied without prejudice.

AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY
6-29-2021 [18]

CITY OF VISALIA/MV
RILEY WALTER/ATTY. FOR DBT.
HAGOP BEDOYAN/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). On July 8, 2021, the chapter 7 trustee in this case, Irma C. Edmonds ("Trustee"), filed a statement that Trustee does not oppose permitting relief from the automatic stay to permit the moving party to proceed to litigate, but not enforce, its claim against debtor Atlas World Food & Ag, Inc. ("Debtor"). Doc. #25. Debtor timely filed written opposition to the motion on July 14, 2021. Doc. ##27, 28. On July 20, 2021, the moving party, City of Visalia ("Movant"), timely replied to Debtor's opposition. Doc. #30.

By this motion, Movant seeks relief from stay to allow Movant to continue to final judgment state court litigation pending as City of Visalia v. Blain Farming Company, Inc., Case No. 277320, in the Superior Court of California, County of Tulare ("State Court Action"). On June 25, 2021, Movant filed its original motion. Doc. #13. On June 29, 2021, Movant filed an amended motion using the same docket control number as the original motion. Doc. #18.

Debtor opposes both motions asserting that: (a) the motion and amended motion should be treated as two separate motions with two separate docket control numbers, and (b) the amended motion was filed only to avoid the consequences of LBR 9014-1(f)(1)(A), which waives the time constraints of 11 U.S.C. § 362(e). Doc. #27. The court has reviewed the motion and amended motion and determined that the amended motion merely adds information not included in the original motion regarding a cross-complaint filed in the State Court Action by Blain Farming Company, Inc. ("Blain Farming"). The court finds there is no need for Movant to have filed a separate motion and there are no grounds for Debtor's speculation that the amended motion was filed only to avoid the consequences of LBR 9014-1(f)(1)(A), which waives the time constraints of 11 U.S.C. § 362(e).

The court has considered the motion, Trustee's conditional non-opposition, Debtor's opposition, and Movant's reply. After due consideration, this motion will be GRANTED for cause shown to permit Movant to continue the State Court Action to liquidate, but not enforce, Movant's claim against Debtor.

Factual Background

On February 7, 2019, Movant filed suit against Blain Framing, Debtor, Brody Blain, Brian Blain and Barrett Blain commencing the State Court Action. Decl. of Leonard Herr ¶ 4, Doc. #20; Ex. A, Doc. #21. The complaint alleges four causes of action: (1) money had and received, account stated; (2) breach of

contract; (3) conversion by fraud; and (4) declaratory relief. Herr Decl. ¶ 5, Doc. #20; Ex. A, Doc. #21.

On March 8, 2019, the state court issued an order granting a motion filed by Movant to (a) attach property of Debtor in the amount of \$1,330,989.11, and (b) grant a temporary protective order against Debtor. Herr Decl. ¶ 6, Doc. #20.

On March 21, 2019, Blain Farming filed a cross-complaint in the State Court Action against Movant asserting 56 causes of action for breach of contract and common counts arising under state law. Herr Decl. ¶ 7, Doc. #20. On May 16, 2019, Blain Farming filed a first amended cross-complaint against Movant in the State Court Action. Herr Decl. ¶ 8, Doc. #20.

A jury trial in the State Court Action was originally scheduled for February 24, 2020, and continued to April 6, 2020 due to a scheduling conflict with another jury trial. Herr Decl. ¶¶ 10-11, Doc. #20. At the mandatory settlement conference, the parties waived a jury trial and the matter was set for a bench trial to commence on June 22, 2020. Herr Decl. ¶ 12, Doc. #20. Due to the COVID-19 global pandemic and the inability to complete expert discovery, the bench trial was continued to September 14, 2020. Herr Decl. ¶ 13, Doc. #20. The September 14, 2020 trial date was vacated due to a major illness and recovery time for defense counsel. Herr Decl. ¶ 14, Doc. #20. At a case management conference on January 25, 2021, the bench trial was re-scheduled for June 14, 2021. Herr Decl. ¶ 15, Doc. #20. On June 8, 2021, at a mandatory settlement conference, the June 14, 2021 trial date was vacated due to the filing of Debtor's chapter 7 bankruptcy petition. Herr Decl. ¶ 16, Doc. #20. None of the other defendants in the State Court Action have filed for bankruptcy as of June 29, 2021. Herr Decl. ¶ 18, Doc. #20. Discovery is complete in the State Court Action and the case is ready for trial. Herr Decl. ¶ 19, Doc. #20. A further case management conference in the State Court Action is set for August 10, 2021. Herr Decl. ¶ 17, Doc. #20.

Debtor's opposition does not dispute any of the facts in support of the Motion.

Cause Exists to Grant Relief from Stay

Movant requests relief from the automatic stay under 11 U.S.C. § 362(d)(1) to continue to prosecute the State Court Action. Doc. #18.

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).

"Where a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues, cause may exist for lifting the stay as to the state court trial." Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162, 1166 (9th Cir. 1990). Moreover, the legislative history of § 362(d)(1) states that "a desire to permit an action to proceed to completion in another tribunal may provide [] cause" for relief from a stay. H.R. No. 595, 95th Cong., 1st Sess. 343, 1977 U.S. Code Cong. & Admin. News 5787, 630.

The Ninth Circuit in Tucson Estates set forth the following factors for a bankruptcy court to consider when deciding whether to abstain from exercising jurisdiction:

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention;
- (2) the extent to which state law issues predominate over bankruptcy issues;
- (3) the difficulty or unsettled nature of the applicable law;
- (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court;
- (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334;
- (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;
- (7) the substance rather than form of an asserted "core" proceeding;
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- (9) the burden of [the bankruptcy court's] docket;
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- (11) the existence of a right to a jury trial; and
- (12) the presence in the proceeding of nondebtor parties.

Tucson Estates, 912 F.2d at 1166-67 (quoting In re Republic Reader's Serv., Inc., 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987)).

Applying the Tucson Estates factors, the court finds these factors support permissive abstention, and therefore support relief from the automatic stay, as follows:

1. Effect on Administration of the Estate if Court Abstains: Granting relief from stay to permit the state court to liquidate Movant's claim against Debtor in the State Court Action will permit Movant's claim against Debtor to be liquidated. Abstention therefore would facilitate the administration of the estate. This factor weighs in favor of permissive abstention.
2. Extent to Which State Law Issues Predominate: State law issues predominate over the bankruptcy issues because the State Court Action only involves claims under state law. This factor weighs in favor of permissive abstention.
3. Difficulty or Unsettled Nature of Applicable Law: There is no indication that the law underlying the State Court Action is unsettled, difficult, or even novel. This factor weighs against permissive abstention.
4. Presence of Pending Related Proceeding: The State Court Action is pending in the California state court and has been since February 2019. Discovery is complete in the State Court Action and the case is ready for a bench trial. This factor weighs in favor of permissive abstention.

5. The Jurisdictional Basis Other than 28 U.S.C. § 1334: The only basis for jurisdiction appears to be 28 U.S.C. § 1334. This factor weighs in favor of permissive abstention.
6. Degree of Relatedness or Remoteness of the Proceeding to the Bankruptcy Case: Resolution of the State Court Action would liquidate Movant's claim against Debtor, and Trustee supports granting relief from stay to permit Movant's claim against Debtor to be liquidated in the State Court Action. This factor weighs in favor of permissive abstention.
7. Substance of the Asserted Core Proceeding: No party asserts that the State Court Action is a core proceeding. This factor weighs in favor of permissive abstention.
8. Feasibility of Severing State Law Claims from Core Bankruptcy Matters: Once resolved, the State Court Action will liquidate Movant's state law claim against Debtor. Liquidation of Movant's claim will facilitate administration of Debtor's chapter 7 case. This factor weighs in favor of permissive abstention.
9. Burden of Bankruptcy Court's Docket: Lifting the automatic stay to permit the state court to liquidate Movant's claim against Debtor likely would eliminate this court having to liquidate Movant's claim in this bankruptcy case, easing the burden on this court's docket. This factor weighs in favor of permissive abstention.
10. Likelihood of Forum Shopping: Because Debtor, a corporation, filed a liquidating chapter 7 bankruptcy case shortly before the commencement of the State Court Action bench trial, it appears Debtor may be forum shopping to have this court liquidate Movant's claim against Debtor. This factor weighs in favor of permissive abstention.
11. Existence of Right to Jury Trial: Movant states that all parties have waived their respective right to a jury trial. This factor weighs against permissive abstention.
12. Presence of Non-Debtor Parties in Related Proceeding: There are four non-debtor defendants named in the State Court Action. This factor weighs in favor of permissive abstention.

Given that most of the Tucson Estates factors weigh in favor of this court abstaining from exercising jurisdiction over Movant's claim against Debtor that is already the subject of the State Court Action and is ready for trial, the court finds that cause exists to lift the automatic stay to permit Movant to liquidate, but not enforce, Movant's claim against Debtor in the State Court Action.

In addition to the analysis under Tucson Estates, 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" in making its decision. 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 litigation 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.

Granting relief from stay will permit the state court to liquidate Movant's claim against Debtor, and Trustee supports granting relief from stay for this purpose. The claims involved in the State Court Action are routine state law claims. Moreover, the state court is ready to commence a bench trial in the State Court Action. It is in the interests of judicial economy and more expeditious and economical to lift the automatic stay to permit the state court to liquidate Movant's claim against Debtor in the State Court Action instead of this court determining that claim. Finally, there are several non-debtor defendants in the State Court Action and one of those defendants has asserted cross-claims against Movant that are best resolved by the state court in the State Court Action.

Accordingly, the court finds that cause exists to lift the stay and this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to liquidate, but not enforce, Movant's claim against Debtor in the State Court Action.

Movant also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3). Because the State Court Action is ready for trial and the Trustee does not oppose relief from stay to permit Movant to liquidate its claim against Debtor in the State Court Action, the 14-day stay is waived.

6. [21-10852](#)-A-7 **IN RE: GUILLERMO/ELIZABETH CORTINA**
[DRJ-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
6-21-2021 [\[23\]](#)

DAVID JENKINS/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 trustee, 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.

Guillermo Cortina, III and Elizabeth Sylvia Cortina (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 706(a) to convert this chapter 7 case to a case under chapter 13. Doc. #23.

11 U.S.C. § 706(a) authorizes a debtor to convert a case under chapter 7 to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. 11 U.S.C. § 706(a). Any waiver of the right to convert a case under this subsection is unenforceable. Id.

Debtors filed a voluntary petition under chapter 7 on April 6, 2021. Doc. #1. Debtors attended their first meeting of creditors on May 13, 2021 where James Edward Salven ("Trustee"), the chapter 7 trustee, suggested that a chapter 13 should be considered. Doc. #38. Shortly thereafter, Debtors' counsel informed Trustee that Debtors decided to convert their case to a chapter 13. Doc. #38. Trustee and the United States Trustee were duly, timely, and properly served with the motion to convert and neither party responded or objected to the motion. Doc. #38. Debtors' counsel contacted Trustee who verified that Trustee did not respond to Debtors' motion because he did not oppose the conversion of this case to a chapter 13 case. Doc. #38.

Debtors filed their chapter 13 plan on June 21, 2021. Doc. #27. Debtors assert they each have a regular income and their combined income is sufficient to fund the proposed plan payments. Decl. of Guillermo Cortina, III and Elizabeth Sylvia Cortina, Doc. #25. Moreover, this case has not been previously converted under section 1112, 1208, or 1307.

Accordingly, this motion is GRANTED.

7. [20-11854-A-7](#) **IN RE: RICHARD/RACHEL BEHRENS**
[JES-2](#)

MOTION TO COMPEL
6-27-2021 [[35](#)]

JAMES SALVEN/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on July 16, 2021. Doc. #39.

MOTION TO EXTEND TIME TO ASSUME EXECUTORY CONTRACTS AND LEASES
7-6-2021 [[362](#)]

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. 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.

Jeffrey M. Vetter ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Temblor Petroleum Company, LLC ("Debtor"), moves to extend by 90 days from the date of the hearing on the motion under 11 U.S.C. § 365(d)(2) the time to assume or reject non-operator interests in various oil and gas leases identified as the "Witter Field" ("Working Interests"). Doc. #362. Ninety days from the hearing date on the motion, July 28, 2021, is October 26, 2021.

Under 11 U.S.C. § 365(d)(1), in a chapter 7 bankruptcy case, an executory contract is deemed rejected if not assumed or rejected within 60 days from the order for relief unless the court, for cause, extends the time to assume or reject within that 60-day period. Debtor's bankruptcy case was converted to chapter 7 on May 5, 2021. Doc. #328. Ninety days from the conversion date was July 4, 2021. However, July 6, 2021, the date the motion was filed, is the first day after July 4, 2021 that is not a Sunday or legal holiday, so the motion was filed timely. Fed. R. Bankr. P. 9006(a)(1); Southwest Aircraft Servs., Inc. v. City of Long Beach (In re Southwest Aircraft Servs., Inc.), 831 F.2d 848, 853 (9th Cir. 1987); Carrico v. Tompkins (In re Tompkins), 95 B.R. 722, 724 (B.A.P. 9th Cir. 1989).

The Working Interests are among the assets of Debtor's estate. After interviewing representatives of Debtor and representatives from the entity employed in the chapter 11 case to market the Working Interests, Trustee has determined that Trustee should attempt to sell the Working Interests. Doc. #364. Trustee has not yet determined the value or ability to sell the Working Interests and seeks to preserve the rights of the chapter 7 estate in the Working Interests by extending the time to assume or reject the Working Interests for 90 days from the date of the hearing on the motion. Id.

The court finds that cause exists to extend the period to assume or reject the Working Interests. Trustee needs additional time to evaluate the Working Interests. The deadline for Trustee to assume or reject the Working Interests will be extended to October 26, 2021.

MOTION FOR TURNOVER OF PROPERTY
6-27-2021 [25]

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

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

DISPOSITION: Granted.

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

This motion was set for hearing on 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.

As a procedural matter, the exhibit filed in connection with this motion does not comply with LBR 9004-2(c)(1), which requires declarations and exhibits to be filed as separate documents. Additionally, the motion does not comply with LBR 9004-2(d)(1), which requires exhibits to be filed as a separate document. The declaration was filed as a single document that included the movant's exhibit. Doc. #27. The court encourages the trustee to review the local rules to ensure compliance in future matters.

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Guadalupe Arias ("Debtor"), moves the court to compel Debtor to turnover Debtor's 2020 federal and state tax refunds, or in the alternative, to provide the bankruptcy estate with the data necessary to complete the returns. Mot., Doc. #25; Decl. of James Salven, Doc. #27. Trustee believes the tax returns have equity above and beyond any exemption claimed by Debtor. Tr.'s Decl., Doc. #27.

11 U.S.C. § 541(a)(1) defines property of the estate as "all legal or equitable interests of the debtor in property as of the commencement of the case." In the Ninth Circuit, "the right to receive a tax refund constitutes an interest in property[.]" Nichols v. Birdsell, 491 F.3d 987, 990 (9th Cir. 2007).

11 U.S.C. § 542(a) requires a debtor to turn over property of the estate, or its value, then in debtor's possession, custody or control during the case. "Section 542(a) does not require the debtor to have current possession of the property which is subject to turnover. If a debtor demonstrates that he is not in possession of the property of the estate or its value at the time of the turnover action, the trustee is entitled to recovery of a money judgment for

the value of the property of the estate." Newman v. Schwartz (In re Newman), 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013) (citations and punctuation omitted).

Trustee believes the tax refunds have an estimated value of approximately \$6,200 to the estate. Tr.'s Decl., Doc. #27. Debtor has been noncompliant and nonresponsive to various correspondence sent by Trustee. Tr.'s Decl., Doc. #27; Ex. A, Doc. #27.

Accordingly, this motion is GRANTED. Debtor shall turn over the 2020 federal and state tax refunds within 10 days of the court order. Failure to do so may result in sanctions pursuant to 11 U.S.C. § 105(a).

10. [21-11387](#)-A-7 **IN RE: VJ AVOCADO RANCH PROPERTIES, LLC**
[MWP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-13-2021 [\[30\]](#)

RAMIREZ ZUNIGA FAMILY LLC/MV
RUBEN FUENTES/ATTY. FOR DBT.
MARTIN PHILLIPS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. 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.

Ramirez Zuniga Family LLC ("Movant") seeks 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. #30.

Based on the following analysis, the court is inclined to grant Movant relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(4) as well as § 362(d)(1). The court is inclined to deny relief from the automatic stay under § 362(d)(2) because, based on Movant's evidence filed with the motion, Debtor has equity in the Property. The court also is inclined to waive the 14-day stay under Federal Rule of Bankruptcy Procedure 4001(a)(3).

Facts

In January 2019, Jesus Orozco executed a note in the original principal amount of \$310,000 secured by a Deed of Trust recorded against the Property on January 30, 2019. Decl. of Joni Helmick ¶¶ 4-5, Doc. #32; Exs. 2 & 3, Doc. #34. The note was due in full on August 1, 2020. Helmick Decl. ¶ 5, Doc. #32; Ex. 2, Doc. #34. Jesus Orozco is in default pursuant to the terms of the note, which has a total payoff of \$165,450.76 as of July 9, 2021. Helmick Decl. ¶ 6,

Doc. #32. Movant recorded a notice of default against the Property on September 28, 2020, and a notice of sale on April 29, 2021, with an original foreclosure sale of the Property set for May 28, 2021. Helmick Decl. ¶ 5, Doc. #32.

The Property is encumbered by a senior deed of trust in favor of 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 (collectively, "The Lung Family Trust"). Doc. #13; Doc. #15. Based on papers filed in support of and in opposition to a motion for relief from stay filed by The Lung Family Trust in this case, in July 2018, Jesus Orozco executed a note in the original principal amount of \$599,000 in Favor of The Lung Family Trust secured by a deed of trust recorded against the Property. Decl. of Joseph D. Lung ¶ 2, Doc. #18; Exs. A & B, Doc. #19. Just like the note in favor of Movant, the note in favor of The Lung Family Trust was due in full on August 1, 2020. Lung Decl. ¶ 2, Doc. #18; Ex. A, Doc. #19. Also just like the note in favor of Movant, Jesus Orozco is in default pursuant to the terms of the note in favor of the Lung Family Trust, 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 the managing member of VJ Avocado Ranch Properties, LLC ("Debtor"). 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. The bankruptcy court dockets in The First Case and the Second Case both indicate that Jesus Orozco's chapter 12 cases were dismissed at the behest of Foreclosure Specialists, Inc., 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 Debtor filed this bankruptcy case.

On May 26, 2021, two days before Movant's scheduled foreclosure sale, 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. Debtor commenced this chapter 7 case in the Eastern District of California on May 27, 2021. Doc. #1. Movant first learned of the transfer of the Property to Debtor and of Debtor's chapter 7 bankruptcy filing on May 27, 2021. Helmick Decl. ¶ 11, Doc. #32; Ex. 6, Doc. #34.

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. In response to The Lung Family Trust's motion for relief from the automatic stay, Debtor filed a broker's price opinion valuing the Property at \$1,961,120.00. Doc. #28. In support of this motion, Movant filed the

declaration of Howard Glasser, a licensed real estate broker, valuing the Property at \$1,630,000.00. Decl. of Howard Glasser ¶¶ 1-2, Doc. #33; Ex. 5, Doc. #34. In addition to the outstanding secured claims owed to Movant and The Lung Family Trust, Movant estimates that there would be additional costs of sale of approximately \$130,400.00 associated with a marketed sale of the Property. Helmick Decl. ¶ 12, Doc. #32

Debtor's only scheduled creditors are Movant and The Lung Family Trust, 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.

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, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.), 470 B.R. 864, 870-71 (B.A.P. 9th Cir. 2011).

"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).

Based on the evidence before the court, 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. 2, Doc. #34. Movant recorded a notice of default against the Property on September 28, 2020. Helmick Decl. ¶ 5, Doc. #32. Jesus Orozco filed the First Case on October 13, 2020, and the First Case was

dismissed at the request of Foreclosure Specialists, Inc. 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 Foreclosure Specialists, Inc., the same party that requested dismissal of the First Case. Ex. E, Doc. #19.

Movant recorded a notice of sale on April 29, 2021, with an original foreclosure sale of the Property set for May 28, 2021. Helmick Decl. ¶ 5, Doc. #32. 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 he 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 day before Movant's foreclosure sale of the Property, 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 Movant's 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 scheduled for the day after Debtor filed its chapter 7 bankruptcy case and that the scheme involved multiple bankruptcy filings affecting the Property.

Based on the 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)

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).

Here, the holder of the senior deed of trust has been granted relief from the automatic stay to foreclose on the Property. Order, Doc. #44. Foreclosure on the Property by the senior deed of trust holder may result in the elimination of Movant's lien on the Property. Robin v. Crowell, 55 Cal. App. 5th 727, 743 (2020) ("As a general rule, the purchaser at a nonjudicial foreclosure sale receives title under a trustee's deed free and clear of any right, title or interest of the trustor or junior lienholders.").

The court finds cause exists to lift the automatic stay under § 362(d) (1) because the holder of the senior deed of trust on the Property has been granted relief from the automatic stay to foreclose and Movant's lien on the Property may be eliminated if the Property is foreclosed by the senior deed of trust holder before Movant can foreclose on the Property.

Relief Under § 362(d) (2)

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. Because Debtor is in chapter 7, the property is not necessary for an effective reorganization. However, based on the evidence filed with the motion, Debtor likely has equity in the Property. Specifically, if there was a sale of the Property at the value asserted by Movant:

Value of Property	\$1,630,000.00
LESS Costs of Sale	<u>- 130,400.00</u>
	1,499,600.00
LESS 1st DOT (approx.)	<u>- 837,396.46</u>
	662,203.54
LESS 2nd DOT (approx.)	<u>- 165,450.76</u>
Debtor's equity (approx.)	\$496,752.78

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). Because 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 stay is denied pursuant to § 362(d) (2).

Waiver of 14-day stay

Federal Rule of Bankruptcy Procedure ("Rule) 4001(a) (3) provides for a 14-day stay of an order granting a motion made in accordance with Rule 4001(a) (1) unless the court orders otherwise. Fed. R. Bankr. P. 4001(a) (3).

Here, The Lung Family Trust, which holds a senior deed of trust on the Property has been granted relief from stay to foreclose on the Property. If The Lung Family Trust forecloses on the Property before Movant, Movant may lose its secured interest in the Property under applicable California law. Accordingly, the court finds cause exists to waive the 14-day stay under Rule 4001(a) (3).

11. [21-11397](#)-A-7 **IN RE: JIMMY/CARMEN SMITH**
[WLG-1](#)

MOTION TO COMPEL ABANDONMENT
6-23-2021 [\[13\]](#)

CARMEN SMITH/MV
NICHOLAS WAJDA/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 trustee, 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.

Carmen Vargas Smith ("Joint Debtor"), the chapter 7 joint debtor in the Jimmy Duane Smith and Carmen Vargas Smith case, moves the court to compel the chapter 7 trustee to abandon the estate's interest in Joint Debtor's personal business, DBA Noggins N Nails, and its assets (collectively, the "Property"). Mot., Doc. #13. The assets include: (1) general inventory worth under \$1,000; and (2) miscellaneous salon equipment and chairs valued under \$3,000. Decl. of Carmen Vargas Smith, Doc. #15; Schedule C, Doc. #1. DBA Noggins N Nails has no market value, no employees, and no accounts receivables. Decl., Doc. #15. Joint Debtor asserts there is no non-exempt equity in the Property and the Property therefore has no value to the bankruptcy estate. Mot., Doc. #13.

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

Here, Joint Debtor must establish that the Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Joint Debtor's business itself has no market value and its assets are valued under \$4,000. Schedule C, Doc. #1. The Property is unencumbered. Schedule D, Doc. #1. Under California Civil Procedure Code § 704.060, Joint Debtor claimed a \$3,000.00 exemption in the Property. Schedule C, Doc. #1; Mot., Doc. #13. The court finds that Joint Debtor has met her burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate.

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