



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
HONORABLE RENÉ LASTRETO II  
Department B – Courtroom #13  
Fresno, California**

**Hearing Date: Tuesday, January 9, 2024**

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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## 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.

**Post-Publication Changes:** 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 any possible updates.

9:30 AM

1. [23-11332](#)-B-11     **IN RE: TWILIGHT HAVEN, A CALIFORNIA  
NON-PROFIT CORPORATION**  
[WJH-24](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT  
10-30-2023    [[271](#)]

TWILIGHT HAVEN, A CALIFORNIA  
NON-PROFIT CORPORATION/MV  
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

2. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY  
PETITION  
3-10-2023    [[1](#)]

RILEY WALTER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

3. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[PSJ-25](#)

MOTION FOR AN ORDER APPROVING DISCLOSURE STATEMENT,  
ESTABLISHING PROCEDURES FOR THE SOLICITATION AND TABULATION  
OF VOTES ON PLAN, SCHEDULING HEARING ON CONFIRMATION OF  
PLAN, APPROVING RELATED MATTERS FILED THE OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS  
11-17-2023    [[1121](#)]

CO-COUNSEL TO THE OFFICIAL  
COMMITTEE OF UNSECURED  
RILEY WALTER/ATTY. FOR DBT.  
PAUL JASPER/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.

4. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[WJH-19](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT  
4-6-2023    [[204](#)]

MADERA COMMUNITY HOSPITAL/MV  
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

5. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[WJH-21](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT  
4-6-2023    [[218](#)]

MADERA COMMUNITY HOSPITAL/MV  
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

6. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[WJH-22](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT  
4-7-2023    [[230](#)]

MADERA COMMUNITY HOSPITAL/MV  
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

7. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[WJH-3](#)

FURTHER HEARING RE: MOTION TO USE CASH COLLATERAL AND/OR  
MOTION FOR ADEQUATE PROTECTION  
3-13-2023    [[18](#)]

MADERA COMMUNITY HOSPITAL/MV  
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

8. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[WJH-40](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT  
4-26-2023    [[301](#)]

MADERA COMMUNITY HOSPITAL/MV  
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

9. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[WJH-42](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT  
5-2-2023    [[334](#)]

MADERA COMMUNITY HOSPITAL/MV  
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

11:00 AM

1. [23-12024](#)-B-7      **IN RE: ANNE HUDDLESTON**

REAFFIRMATION AGREEMENT WITH AMERICAN HONDA FINANCE  
CORPORATION  
11-15-2023    [\[14\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION:      Dropped.

ORDER:              The court will issue an order.

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

A Reaffirmation Agreement between Anne Huddleston ("Debtor") and American Honda Finance Corporation for a 2021 N/C Rebel 1100 motorcycle was filed on November 15, 2023. Doc. #14.

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when entering into the agreement. The form of the reaffirmation agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the Debtor's attorney with the appropriate attestations. *Id.* Pursuant to § 524(d), the court need not approve the agreement.

2. [23-12526](#)-B-7      **IN RE: NATHAN WINTERS**

REAFFIRMATION AGREEMENT WITH ONEMAIN FINANCIAL GROUP, LLC  
11-30-2023    [\[13\]](#)

SCOTT LYONS/ATTY. FOR DBT.

NO RULING.

3. [23-11829](#)-B-7      **IN RE: ARENA PHAPHILOM**

REAFFIRMATION AGREEMENT WITH VALLEY FIRST CREDIT UNION  
11-20-2023    [\[21\]](#)

JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION:      Dropped.

ORDER:              The court will issue an order.

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

A Reaffirmation Agreement between Arena Phaphilom ("Debtor") and Valley First Credit Union for a 2012 Toyota Highlander was filed on November 20, 2023. Doc. #14.

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when entering into the agreement. The form of the reaffirmation agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the Debtor's attorney with the appropriate attestations. *Id.* Pursuant to § 524(d), the court need not approve the agreement.

4. [23-11832](#)-B-7      **IN RE: OCTABIANO/VICTORIA SIGALA**

REAFFIRMATION AGREEMENT WITH HYUNDAI CAPITAL AMERICA  
11-16-2023    [\[21\]](#)

ERIC ESCAMILLA/ATTY. FOR DBT.

NO RULING.

5. [23-11954](#)-B-7      **IN RE: CHRISTINA CALVIN**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION  
11-15-2023    [\[17\]](#)

JAMES MILLER/ATTY. FOR DBT.

NO RULING.

6. [23-12272](#)-B-7      **IN RE: ROBERT MANOS**

REAFFIRMATION AGREEMENT WITH SOUTHEAST FINANCIAL CREDIT  
UNION

11-20-2023    [\[14\]](#)

GEORGE BURKE/ATTY. FOR DBT.

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

DISPOSITION:      Dropped.

ORDER:              The court will issue an order.

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

A Reaffirmation Agreement between Robert Manos ("Debtor") and  
Southeast Financial Credit Union Credit Union for a 2013 Harley  
Davidson motorcycle was filed on November 20, 2023. Doc. #14.

The court is not approving or denying approval of the reaffirmation  
agreement. Debtor was represented by counsel when entering into the  
agreement. The form of the reaffirmation agreement complies with 11  
U.S.C. § 524(c) and (k), and it was signed by the Debtor's attorney  
with the appropriate attestations. *Id.* Pursuant to § 524(d), the  
court need not approve the agreement.



1:30 PM

1. [23-12204](#)-B-7     **IN RE: RAMON VAZQUEZ**  
[WSL-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13  
12-7-2023    [\[21\]](#)

GREGORY SHANFELD/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.

Ramon Vazquez ("Debtor") moves for conversion of this bankruptcy case from one brought under Chapter 7 to one brought under Chapter 13. Doc. #22. No opposition has been filed.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 13 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 amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion will be GRANTED. 11 U.S.C. § 706(a) allows a debtor in chapter 7 to convert to chapter 13 "at any time," unless the case was previously converted to chapter 7 from another chapter.

However, the Supreme Court in *Marrama v. Citizens Bank*, 549 U.S. 365, 371-72 (2007), held that a debtor does not have an absolute right to convert a chapter 13 under § 706(a), but also must be eligible to be a debtor under chapter 13. The Supreme Court held that "[i]n practical effect, a ruling that an individual's Chapter 13 case should be dismissed or converted to Chapter 7 because of prepetition bad-faith conduct, including fraudulent acts committed in an earlier Chapter 7 proceeding, is tantamount to a ruling that the individual does not qualify as a debtor under Chapter 13." Therefore, the court must find that the debtor is eligible to be a debtor under chapter 13 in conformance with 11 U.S.C. § 1307(c).

The court finds that this case has not been previously converted to chapter 7 from another chapter, and that the debtor is eligible to be a debtor under chapter 13 in conformance with 11 U.S.C. § 1307(c). Further, the Office of the United States Trustee ("UST") filed a statement of no presumed abuse under 11 U.S.C. § 707(b)(2). Doc. #24. While the UST did note that a presumption of abuse had arisen based on documents initially submitted, after further review the UST determined that there was no presumption of abuse. *Id.* Therefore, this motion is GRANTED, and this case shall be CONVERTED to chapter 13.

2. [22-11907](#)-B-7      **IN RE: FREON LOGISTICS**  
[CAS-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-28-2023    [\[1161\]](#)

ALLY BANK/MV  
LEONARD WELSH/ATTY. FOR DBT.  
CHERYL SKIGIN/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.

Ally Bank ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to six (6) 2020 Freightliner tractors and one (1) 2020 GMC Sierra 1500 pickup ("Vehicles"). Doc. #1161. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). *Id.*

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") filed a Notice of Abandonment on April 13, 2023, abandoning the estate's interest in all of Debtor's trucks and trailers. Doc. #1038. Freon Logistics ("Debtor") did not oppose.

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

*prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has missed at least one pre-petition payment on all Vehicles and at least twelve post-petition payments on all Vehicles. Docs. ##1163 - 1165.

The court declines finding that Debtor does not have any equity in the Vehicles. Although this is a chapter 7 case and the Vehicles are not necessary for an effective reorganization, the moving papers indicate that Debtor has equity in six out of seven of the Vehicles. Doc. #1165. Although costs of sale may entirely shrink that remaining equity, Movant has not established a basis for asserting "Other Fees." In the absence of those fees and after subtracting costs of sale, Debtor may have some equity in the Property. Regardless, relief under § 362(d)(2) is moot because there is "cause" to grant the motion under § 362(d)(1).

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtor has failed to make at least twelve (12) post-petition payments to Movant and the Vehicles are depreciating assets.

3. [23-10719](#)-B-7     **IN RE: SONIA MALDONADO**  
[FW-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,  
P.C. FOR PETER A. SAUER, TRUSTEES ATTORNEY(S)  
12-11-2023    [\[68\]](#)

GRISelda TORRES/ATTY. FOR DBT.  
PETER SAUER/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.

Fear Waddell, P.C. ("Applicant"), general counsel for Chapter 7 Trustee James Salven ("Trustee") in the above-styled case, requests compensation under 11 U.S.C. § 330 in the amount of \$2,614.50 in

attorneys' fees and \$112.30 in expenses for a total award of \$2,726.80. Doc. #64. This is Applicant's first and final fee application in this case and covers the time period from July 6, 2023, through December 7, 2023. *Id.*

Trustee executed a Declaration on December 11, 2023, indicating that he has read the fee application and approves the same. Doc. #70.

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the chapter 13 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 amounts of damages). *Televideo Sys. Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The chapter 7 petition initiating this case was filed on April 8, 2023. Doc. #1. The court authorized Applicant's employment as general counsel for Trustee in an order dated August 21, 2023. Doc. #39.

Applicant's firm provided 10.0 billable hours of legal work at the following rates, totaling **\$2,614.50** in fees:

Professional	Rate	Billed	Total
Peter A. Sauer	\$280.00	5.80	\$1,624.00
Katie Waddell	\$260.00	3.50	\$910.00
Laurel Guenther	\$115.00	0.70	\$80.50
<b>Total Hours &amp; Fees</b>		<b>\$10.00</b>	<b>\$2,614.50</b>

Docs. ##68, 71. Applicant also requests expense reimbursement as follows:

Copying	\$54.76
Court Fees	\$9.00
Postage	\$48.54
<b>Total Expenses</b>	<b>\$112.30</b>

*Id.* These combined fees and expenses total **\$2,726.80**.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." 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, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services here included, without limitation: (a) case administration, (b) asset disposition, and (c) fee/employment applications. Doc. #71. The court finds these services and expenses reasonable, actual, and necessary. No party in interest timely filed written opposition and Trustee has consented to payment of the proposed fees. Doc. #70.

Accordingly, this motion will be GRANTED. Applicant shall be awarded \$2,614.50 in fees as reasonable compensation for services rendered and \$112.30 in reimbursement of actual, necessary expenses on a final basis under 11 U.S.C. § 330. The Trustee is authorized to pay a total compensation award of \$2,726.80 from estate funds as they become available.

4. [23-11723](#)-B-7     **IN RE: FELIPE REYNOSO**  
[FW-2](#)

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION TO PAY  
12-12-2023     [\[31\]](#)

PETER FEAR/MV  
PETER BUNTING/ATTY. FOR DBT.  
GABRIEL WADDELL/ATTY. FOR MV.

TENTATIVE RULING:     This matter will proceed for higher and better bids, only.

DISPOSITION:     Granted.

ORDER:     The Moving Party shall submit a proposed order after hearing.

Chapter 7 trustee Peter L. Fear ("Trustee") seeks authorization pursuant to 11 U.S.C. § 363 to sell the estate's interest in residential real property located at 805 Orange Avenue, Corcoran, CA 93212 (the "Property") to Miguel Oliveros and Elizabeth Saldana (collectively "the Buyers") for \$150,000.00 subject to higher and better bids at the hearing. Doc. #31. Trustee also requests to pay a six percent (6%) commission to the real estate brokers. *Id.* While the motion states that the commission is to be split evenly between the estate's broker, Berkshire Hathaway HomeServices California Realty ("Broker"), and the buyer's broker, the Trustee's Declaration indicates that Broker is representing both Trustee and Buyers and so will collect the entire commission. *Id.*; Doc. #33.

No party in interest timely filed written opposition. This motion will be GRANTED, and the hearing will proceed for higher and better bids only.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(2) and (a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

#### BACKGROUND

Felipe Reynoso ("Debtor") filed chapter 7 bankruptcy on August 8, 2023. Doc. #1. Trustee was appointed as interim trustee on that same day and became permanent trustee at the first § 341 meeting of creditors on September 11, 2023. Doc. #5; docket generally. In administering the estate, Trustee investigated the estate's assets, which included Property.

On October 17, 2023, the court granted Trustee's motion to employ Broker for purposes of marketing and selling the Property. Doc. #27. On December 12, 2023, Trustee filed the instant motion to sell the Property. Doc. #31. According to the motion, the Property is to be sold pursuant to the following terms:

The sale of the Property is in "As-Is" condition with no warranty or representations, express, implied or otherwise by the bankruptcy estate, the Debtors or their representatives. Any required reports, surveys, retrofit, or repairs will be the responsibility of the buyer. The bankruptcy estate will not maintain the Property or remove any remaining debris. The Property is being delivered subject to tenant rights, and leases are not available for buyer approval; any rents or deposits will not be prorated. The buyer agrees to hold Trustee and broker harmless for any further or future liability regarding this matter.

*Id.* at ¶7.

Trustee has secured an offer from and executed a Purchase Agreement with Proposed Buyers to sell Property to Proposed Buyers for \$150,000.00 and now requests approval under 11 U.S.C. § 363(b) and (f) to complete the sale. Docs. ## 31, 34.

## DISCUSSION

### Sale of Property

11 U.S.C. § 363(b) (1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing 240 N. Brand Partners v. Colony GFP Partners, Ltd. P'ship (*In re* 240 N. Brand Partners), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer, 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC* (*In re Old Cold LLC*), 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). Here, Trustee notes the existence of a potential insider relationship, as Debtor is apparently the former stepfather of Miguel Oliveros, one of the Buyers. Doc. #33. Trustee declares that the sale is nevertheless in the best interest of the estate despite this connection (subject to potential overbid) because the connection between Oliveros and Debtor "has motivated the buyers to purchase the property, maximizing the value of the Property to the bankruptcy estate." *Id.*

In light of Trustee's representations, the court is satisfied that the presence of this insider among the Buyers survives heightened scrutiny and is not fatal to the sale.

Debtor lists Property in his *Schedule A/B* as having a total value of \$60,000.00, of which he owns a one-half interest in fee simple valued at \$30,000.00. Doc. #1. Debtor did not exempt Property in *Schedule C*. *Id.*

Trustee disputes the limits of debtor's claim and the value of the interest. Trustee argues: (1) that the Property was Debtor's separate property owned 100% in fee simple prior to his marriage, (2) that he agreed as part of his settlement agreement with his ex-wife to transfer a 50% interest to her in exchange for a future payment of \$50,000.00 which the ex-wife never made, (3) that the grant deed which would have memorialized this transfer was never recorded, and (4) that even if the payments had been made, the agreed-upon price was not a reasonable value for the interest to be transferred. Doc. #31. Accordingly, Trustee argues that the ex-wife never acquired any interest in the Property and that, even if she

had, any such interest is avoidable as a fraudulent transfer. *Id.* Accordingly, any purported interest held by the ex-wife is disputed and not an obstacle to a § 363(f) sale. The ex-wife has not responded to the instant motion. The court is not making any finding as to the legitimacy of the ex-spouse's interest in granting this motion.

The Trustee also advises that several parties claim tenancy interests in the Property due to apparent authorization by Debtor to store items there. *Id.* Trustee states that there is no formal agreement authorizing this tenancy, and so those tenancies are disputed within the meaning of § 363.

11 U.S.C. § 363(f) permits the trustee to sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if:

1. applicable non-bankruptcy law permits sale of such property free and clear of such interest;
2. such entity consents;
3. such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
4. **such interest is in bona fide dispute;** or
5. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f) (emphasis added).

Here, the only such interests in the Property of which the court has been made aware are (1) the one-half interest in the Property purportedly held by Debtor's ex-wife, and (2) the tenancy interests purportedly held by Mandeep Puri and Jesus De Loera Lope. Based on the representations of the Trustee, the court is satisfied that these interests are the subject of a bona fide dispute of the type contemplated by § 363(f) (4). Based on the terms of the sale contract, the sale is subject to tenancy interests even though Trustee disputes them. Doc. # 33

Trustee entered into a contract ("Purchase Agreement") with Buyers to sell Property for \$150,000.00, subject to the terms and conditions outlined above.

Trustee included a copy of the preliminary title report as an exhibit, which is incorporated by reference in his declaration. Doc. #34 (*Exhibit B*). Other than the disputed co-ownership and tenancy issues alluded to above, Debtor appears to own the property free and clear. Doc. #31.

Taxes are currently owed or in default. which Trustee estimates total \$1,456.60, which will be paid through escrow. Doc. #33.

If sold at the proposed sale price, the proceeds from the proposed sale could be illustrated as follows:



Sale price	\$150,000.00
Property Taxes	- \$1,456.60
Estimated Closing Costs	- \$3,000.00
Estimated broker fee (6%)	- \$9,000.00
<b>Estimated net proceeds to estate</b>	<b>= \$136,543.40</b>

Doc. #33.

The sale under these circumstances should maximize potential recovery for the estate. The sale of the Property appears to be in the best interests of the estate because it will the outstanding property taxes owed and provide liquidity that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

#### Real Estate Brokers' Compensation

This motion affects the proposed disposition of estate assets and the Broker. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion to add Broker as a party.

LBR 9014-1(d)(5)(B)(ii) permits joinder of claims for authorization for the sale of real property and allowance of fees and expenses for such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rule 6004.

Pursuant to the employment order, Trustee requests to compensate Broker with a commission of 6%. *Id.* Broker represents both Trustee and the Buyers and will collect the entirety of the commission, estimated at \$9,000.00 assuming the property is sold at the proposed sale price. The court will authorize Trustee to pay broker commissions as prayed.

#### Overbid Procedure

Any party wishing to overbid shall, prior to the hearing, comply with the following overbid procedures:

1. Deposit with Trustee's counsel certified monies in the amount of 4,500.00 prior to the time of the sale motion hearing. Any unsuccessful bidder's deposit shall be returned at the conclusion of the hearing;
2. Provide proof in the form of a letter of credit, or some other written pre-qualification for any financing that may be required to complete the purchase of the Property sufficient to cover the necessary overbid amount;
3. Provide proof that any successful over bidder can and will close the sale within 15 days of delivery of a certified copy of the Court's order approving the sale and execute a Purchase Agreement for the Property;

4. Any successful overbid shall have the \$4,500.00 deposit applied to the successful overbid price;
5. In the event a successful overbidder fails to close the sale within 15 days of delivery of a certified copy of the court's order approving the sale and execute a Purchase Agreement for the Property, the \$4,500.00 deposit shall become non-refundable, and the next highest bidder shall become the buyer;
6. Any party wishing to overbid may do so by making an appearance at the hearing or having an authorized representative with written proof of authority to bid on behalf of the prospective overbidder.
7. All overbids shall be in the minimum amount of \$1,000.00 such that the first of any overbid shall be in the minimum amount of \$151,000.00.
8. The sale of the Property is in "as-is" condition with no warranty or representations, express, implied, or otherwise by the bankruptcy estate, the Debtor, or their representatives. Any required reports, surveys, retrofit, or repairs will be the responsibility of the buyer. The bankruptcy estate will not maintain the property or remove any remaining debris. The Property is being delivered subject to tenant rights, and leases are not available for buyer approval; any rents or deposits will be prorated. The buyer agrees to hold the trustee and broker harmless for any further or future liability regarding this matter.

Doc. #33

#### Waiver of 14-day Stay

Trustee does not request waiver of the 14-day stay of Rule 6004(h), and no such relief will be granted.

#### Conclusion

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be authorized: (1) to sell the Property to the prevailing bidder at the hearing, as determined at the hearing; (2) to execute all documents necessary to effectuate the sale of the Property; (3) to pay broker commission in the amount of 6% of the total sale price to be split evenly between Broker and the buyer's broker, as determined at the hearing; and (4) to pay all costs, commissions, and real property taxes directly from escrow.

Though the sale is subject to the disputed tenancy interests, the disputed interest of Debtor's ex-spouse has not been resolved. Any claim of the ex-spouse shall follow and encumber the proceeds subject to further order of the court.

5. [23-11625](#)-B-7      **IN RE: THOMAS STINER**  
[SL-2](#)

MOTION TO AVOID LIEN OF WILMINGTON SAVINGS FUND SOCIETY, FSB  
11-21-2023    [\[33\]](#)

THOMAS STINER/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.

Thomas Stephen Stiner ("Debtor") moves for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of Wilmington Savings Fund Society, FSB ("Creditor") in the sum of \$92,750.53 and encumbering residential real property located at 13743 Larkspur Way, Armona, California 93202 ("Property"). Doc. #33.

Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor's registered agent for service of process via certified mail. Doc. #37. No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of any party in interest, including but not limited to the creditors, the chapter 7 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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). § 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), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtors in favor of Creditor in the amount of \$92,750.52 on May 14, 2021. Doc. #36. The abstract of judgment was issued on July 14, 2021, and was recorded in Kings County on December 22, 2021. *Id.* That lien attached to Debtor's interest in Property. *Id.* Debtor estimates that the current amount owed on account of this lien is \$92,750.53. *Id.*; Doc. #1 (*Sched. D*).

As of the petition date, Property had an approximate value of \$353,000.00. Doc. #1 (*Sched. A/B*). Debtor claimed a \$189,050.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. Doc. #1 (*Sched. C*).

Property is encumbered by a first deed of trust in favor of Planet Home Lending ("PHL") in the amount of \$321,131.65. Doc. #1 (*Sched. D*). There are no other liens on the Property.

Creditor	Amount	Recorded	Status
1. PHL	\$321,131.65		Unavoidable
2. Creditor	\$93,750.53	12/22/21	Avoidable

"Under the full avoidance approach, as used in *Brantz*, the only way a lien would be avoided 'in full' was if the debtor's gross equity were equal to or less than the amount of the exemption." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 596 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999), citing *In re Brantz*, 106 B.R. 62, 68 (Bankr. E.D. Pa. 1989) ("Avoidance of all judicial liens results unless (3) [the result of deducting the debtor's allowable exemptions and the sum of all liens not avoided from the value of the property] is a positive figure."), citing *In re Magosin*, 75 B.R. 545, 547 (Bankr. E.D. Pa. 1987) (judicial lien was avoidable in its entirety where equity is less than exemption).

Strict application of the § 522(f)(2) formula with respect to Creditor's lien is illustrated as follows:

Amount of judgment lien		\$93,750.53
Total amount of unavoidable liens	+	\$321,131.65
Debtor's claimed exemption in Property	+	189,050.00
<i>Sum</i>	=	\$603,932.18
Debtor's claimed value of interest absent liens	-	\$353,000.00
Extent lien impairs exemption	=	\$250,932.18

*All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007); *accord. Hanger* 217 B.R. at 596, *Higgins v. Household Fin. Corp. (In re Higgins)*, 201 B.R. 965, 967 (B.A.P. 9th Cir. 1996); *cf. Brantz*, 106 B.R. at 68, *Magosin*, 75 B.R. at 549-50, *In re Piersol*, 244 B.R. 309, 311 (Bankr. E.D. Pa. 2000). Since there is no equity for liens to attach and this case does not involve fractional interests or co-owned property with non-debtor third parties, the § 522(f)(2) formula can be re-illustrated using the *Brantz* formula with the same result:

Fair market value of Property		\$353,000.00
Total amount of unavoidable liens	-	\$321,131.65
Homestead exemption	-	\$189,050.00
Remaining equity for judicial liens	=	(\$157,181.65)
Creditor's judicial lien	-	\$93,750.53
Extent Debtor's exemption impaired	=	(\$250,932.18)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support any judicial liens. Therefore, the fixing of Creditor's 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 § 522(f)(1). Accordingly, this motion will be GRANTED. The proposed order shall state that Creditor's lien is avoided from the subject Property only and include a copy of the abstract of judgment as an exhibit.

6. [22-11031](#)-B-7      **IN RE: ALEJANDRO ACOSTA-ZUNIGA AND ADRIANA ACOSTA**  
[TCS-1](#)

MOTION FOR CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT  
12-5-2023    [\[41\]](#)

ADRIANA ACOSTA/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING:      This matter will proceed as scheduled.

DISPOSITION:      Denied.

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

Alejandro Acosta-Zuniga and Adriana Acosta ("Debtors") move this court for consent to enter into a loan modification agreement with their mortgage holder, Wells Fargo Home Mortgage ("Lender"). For the reasons outlined below, this application is tentatively DENIED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of any party in interest, including but not limited to the creditors, the debtor, the U.S. Trustee, or any other party in interest, to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

No party in interest timely filed written opposition, and the defaults of all such parties will be entered. This matter will be called and proceed as scheduled.

The moving papers present the following salient facts: The Debtors commenced this Chapter 7 case on June 21, 2022. Oddly, the first sentence of the Application says that "Debtors commenced this case on April 13, 2019," before listing the correct date in the second sentence. Discharge was entered on September 27, 2022, but the case has not been closed as of this writing. The Debtors' primary residence secures a mortgage with Lender, and Debtors seek a loan modification. According to the terms as outlined in the Application, the agreement (if approved) will modify only the existing home mortgage by capitalizing the arrearage of \$4,371.55 and change the total due to \$217.022 [sic] as of August 1, 2023. The interest rate will remain the same, and the "new payment" including escrow will be \$1,281.22 per month. See Doc. #41.

Absent from the Application and the moving papers is any information regarding the current principal and what the current monthly payment is. Both the Application and the Declaration of Adriana Acosta state that the modification will "change the total amount due to \$217.022 [sic] as of August 1, 2023," and the court assumes this is meant to be the modified principal. But there is no indication that Debtors have been paying on an altered basis since that date, and in any event, "\$217.022" is not a comprehensible sum of money whatever this figure is meant to represent.

Most importantly, this court cannot approve the proposed loan modification agreement *because no loan modification agreement is included in the moving papers*. While Debtors have filed an Exhibit which purports to be a "Loan Modification," the attached document is simply correspondence from Lender to Adriana Acosta proposing terms for a deferral of Debtors' arrearage in the amount of \$4,371.55 to the date of the mortgage's maturity. Doc. #44. As there is not "agreement" signed by Debtors or any other party, this is not a true agreement which the court is able to approve.

Further, both the motion and supporting declaration reference a "Plan" and the ability of the debtors to maintain payments. The documents also state the modification will not prejudice any creditor. This is a Chapter 7 case, not a Chapter 13 case. So, much of the basis of the motion is irrelevant.

The Debtors' residence is fully exempt. The residence has not been abandoned but it appears the Trustee is finished administering the case and is awaiting approval of the Final Report. It also appears Debtors may have been paying their lender in accordance with the proposal outlined in the exhibit.

This matter will proceed as scheduled. The court is inclined to DENY this Application.

7. [23-12639](#)-B-7     **IN RE: JUAN GARCIA VARGAS**  
[JLS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR  
ADEQUATE PROTECTION  
12-22-2023    [\[22\]](#)

BLACKRIDGE CORPORATION/MV  
JOSHUA SCHEER/ATTY. FOR MV.  
DISMISSED 12-28-23

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 court will issue  
an order.

Blackridge Corporation ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(4) with respect to real property located at **Vacant Land, APN: 393-230-04, Area of Kingsburg, CA 93631** (the "Property") so that it may take all steps necessary under state and federal law to commence or complete its foreclosure sale. Doc. #22. Movant requests that the order be binding and effective under § 362(d)(4) in any other bankruptcy purporting to affect Property for a period of two years after entry of the order. Movant also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3) and Cal. Civ. Code § 3924g(d).

Written opposition was not required and may be presented at the hearing. The court notes that the underlying bankruptcy case was dismissed on December 29, 2023, for failure to timely file documents. Doc. #31. Nevertheless, because the Movant seeks relief under § 362(d)(4) and alleges that Juan Garcia Vargas ("Debtor") is a serial filer who filed this petition in bad faith as part of a scheme to hinder, delay, and defraud Movant, the court will address that part of the motion substantively. The court will not address the § 362(d)(1) arguments pertaining to adequate protection as, in the court's view, those issues were mooted by the dismissal.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults. 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. In the absence of any such opposition, the court is inclined to GRANT the motion.

To obtain relief under § 362(d)(4), Movant must show and the court must affirmatively find the following three elements: (1) the debtor's bankruptcy filing must have been part of a scheme; (2) the object of the scheme must have been to delay, hinder, or defraud creditors, and (3) the scheme must have involved either the transfer

of some interest in the real property without the secured creditor's consent or court approval, or 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 (B.A.P. 9th Cir. 2012).

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). A § 362(d)(4)(A) scheme is an "intentional artful plot or plan to delay, hinder or defraud creditors." *Id.* It is not common to have direct evidence of an artful plot or plan to deceive others - the court must infer the existence and contents of a scheme from circumstantial evidence. *Id.* Movant must present evidence sufficient for the trier of fact to infer the existence and content of the scheme. *Id.*

An order entered under § 362(d)(4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order.

Here, Movant is the current payee of a Promissory Note dated October 12, 2017, in the principal amount of \$230,000.00 for which the borrower is Maria Guadalupe Luna Manzo ("Manzo" or "Borrower"). Doc. #25. The debtor in the instant case, Juan Garcia Vargas ("Vargas" or "Debtor"), is not a borrower on the note nor a trustor under the Deed of Trust associated with the Property, and Vargas only claims an interest in the Property based on what Movant asserts is an unauthorized transfer of a portion of the Property immediately prior to the filing of an earlier bankruptcy filed by Vargas. *Id.* There is no indication in the record of whether this transfer was for any consideration.

Movant asks the court to take judicial notice of the fact that this bankruptcy case, which has already been dismissed for failure to timely file required documents, is the second bankruptcy filed by this Debtor and the *seventh* bankruptcy filed in the last three years in the Eastern District of California in which the automatic stay was imposed to prevent foreclosure of the Property by Movant. *Id.* See also Doc. #28 (Request for Judicial Notice).

**Bankruptcy #1:** On February 19, 2020, Manzo filed a Chapter 13 petition which was dismissed on July 17, 2020, for unreasonable delay and failure to file tax returns. Doc. #25. See also *In re Manzo I*, Case No. 20-10591.

**Bankruptcy #2:** On August 5, 2020 (about three weeks after the dismissal of Bankruptcy #1), Manzo filed a second Chapter 13 petition which was dismissed on March 11, 2021. Doc. #25. See also *In re Manzo II*, Case No. 20-12577. After dismissal of Bankruptcy #2, Movant set a foreclosure sale for September 29, 2022. Doc. #25.

**Bankruptcy #3:** On September 28, 2022 (the day before the scheduled foreclosure sale), Manzo filed a Chapter 13 petition which was dismissed on October 27, 2022, for failure to file Schedules, despite requesting and receiving an extension to do so. Doc. #25. See also *In re Manzo III*, Case No. 22-11670.



**Bankruptcy #4:** On November 2, 2022, the day of Movant's continued sale and less than one week after dismissal of Bankruptcy #3, Manzo filed a Chapter 13 petition, again with incomplete Schedules. Doc. #25. See also *In re Manzo IV*, Case No. 22-11877. In this instance, Manzo voluntarily dismissed Bankruptcy #4 on November 28, 2022, and the sale was postponed to November 30, 2022. *Id.*

**Bankruptcy #5:** On November 30, 2022, two days after dismissal of Bankruptcy #4 and on the same day as the scheduled sale, Manzo filed a Chapter 7 petition which was dismissed on March 3, 2023, due to Manzo's repeated failure to appear at the 341 meeting. Doc. #25. See also *Manzo V*, Case No. 22-12040. After dismissal of Bankruptcy #5, Manzo and Movant agreed to a forbearance agreement on the condition that Manzo would not delay foreclosure in bad faith after a default. Doc. #25. However, Manzo did default after making just two payment, and the Property was once again set for foreclosure on September 21, 2023. *Id.*

**Bankruptcy #6:** On September 21, 2023, the day of the rescheduled foreclosure sale, Vargas filed the first of two Chapter 13 bankruptcies. Doc. #25. Movant received a Notice of Bankruptcy Filing accompanied by notice of a transfer via Grant Deed from Manzo to Vargas which was purportedly executed the day before the foreclosure sale and purportedly recorded the day of the sale. *Id.* Movant avers that the transfer was done without Movant's knowledge or authorization. *Id.* Bankruptcy #7 was an incomplete filing which the court dismissed on October 20, 2023, for failure to timely file documents. Doc. #25. See also *Vargas I*, Case No. 23-12102.

**Bankruptcy #7:** Vargas filed the current Chapter 13 bankruptcy on November 29, 2023, one day before the most recent scheduled foreclosure sale. Doc. #25. See also *Vargas II*, Case No. 23-12639. As noted previously, Bankruptcy #7 was dismissed on December 29, 2023, for failure to timely file required documents. Doc. #31.

After review of the included evidence, the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of all or part ownership of the subject real property without the consent of the secured creditor or court approval.

Unless opposition is presented at the hearing, the court intends to GRANT this motion. The Court having rendered findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, as incorporated by Federal Rule of Bankruptcy Procedure 7052:

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is vacated concerning real property located at **Vacant Land, APN: 393-230-04, Area of Kingsburg, CA 93631**; and

IT IS FURTHER ORDERED, pursuant to 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval; or

multiple bankruptcy filing affecting such real property. The order shall be binding in any other case under Title 11 of the United States Code purporting to affect the real property described in the motion not later than two years after the date of entry of the order. A debtor in a subsequent case under Title 11 may move for relief from this order based on changed circumstances or for good cause shown after notice and a hearing.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the continued efforts of Manzo and Vargas to frustrate Creditor's rights through the filing of additional abusive bankruptcy filings.

8. [23-12553](#)-B-7      **IN RE: REBECCA MENDONCA**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE  
11-15-2023    [\[6\]](#)

REBECCA MENDONCA/MV  
REBECCA MENDONCA/ATTY. FOR MV.

NO RULING.

9. [20-10357](#)-B-7      **IN RE: STEPHEN MEZA**  
[PFC-1](#)

TRUSTEE'S FINAL REPORT  
10-12-2023    [\[158\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.  
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION:      Fee request granted.

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

Chapter 7 Trustee Peter L. Fear ("Trustee") requests fees of \$12,278.90 and costs of \$102.98 for a total of \$12,381.88 as statutory compensation and actual and necessary expenses pursuant to Local Rule of Practice ("LBR") 2016-2. Doc. #154.

This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by LBR 9014-1(f)(1) and LBR 2016-2. The failure of any party in interest, including but not limited to the creditors, the debtor, the U.S. Trustee, or any other party in interest, to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th

Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

No party in interest has responded, and the defaults of all such parties are entered.

11 U.S.C. § 326 permits the court to allow reasonable compensation to the chapter 7 trustee under § 330 for the trustee's services. Section 326(a) states:

In a case under chapter 7 or 11, other than a case under subchapter V of chapter 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including all holders of secured claims.

11 U.S.C. § 326(a).

11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses. 11 U.S.C. § 330(a)(1)(A) & (B).

Here, Trustee has requested:

- (1) \$1,250.00 (25%) of the first \$5,000.00;
- (2) \$4,500.00 (10%) of the next \$45,000.00; and,
- (3) \$6,528.90 (5%) of the next \$130,578.00.

Doc. #154. These percentages comply with the percentage restrictions imposed by § 326(a) and total \$12,278.90. These fees were incurred by Trustee during the course of this case, in which Trustee conducted the meeting of creditors, sold residential real property, reviewed and reconciled financial records, and prepared the final report. *Id.*

The court finds Trustee's services were actual and necessary to the estate, and the fees are reasonable and consistent with § 326(a). This motion will be GRANTED, and Trustee will be awarded the requested fees and costs.

10. [22-10060](#)-B-7     **IN RE: CURTIS/CHARTOTTE ALLEN**  
[PFC-1](#)

TRUSTEE'S FINAL REPORT  
10-12-2023    [\[152\]](#)

GABRIEL WADDELL/ATTY. FOR MV.

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

DISPOSITION:     Fee request granted.

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

Chapter 7 Trustee Peter L. Fear ("Trustee") requests fees of \$10,009.41 and costs of \$97.82 for a total of \$10,107.23 as statutory compensation and actual and necessary expenses. Doc. #154.

This motion will be GRANTED.

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

No party in interest has responded, and the defaults of all such parties are entered.

11 U.S.C. § 326 permits the court to allow reasonable compensation to the chapter 7 trustee under § 330 for the trustee's services. Section 326(a) states:

In a case under chapter 7 or 11, other than a case under subchapter V of chapter 11, the court may allow reasonable compensation under section 330 of this title

of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including all holders of secured claims.

11 U.S.C. § 326(a).

11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses. 11 U.S.C. § 330(a)(1)(A) & (B).

Here, Trustee has requested:

- (1) \$1,250.00 (25%) of the first \$5,000.00;
- (2) \$4,500.00 (10%) of the next \$45,000.00; and,
- (3) \$4,259.41 (5%) of the next \$85,188.11.

Doc. #154. These percentages comply with the percentage restrictions imposed by § 326(a) and total \$10,009.41. These fees were incurred by Trustee during the course of this case, in which Trustee conducted the meeting of creditors, sold residential real property, reviewed and reconciled financial records, and prepared the final report. *Id.*

The court finds Trustee's services were actual and necessary to the estate, and the fees are reasonable and consistent with § 326(a). This motion will be GRANTED, and Trustee will be awarded the requested fees and costs.

11. [23-11962](#)-B-7 **IN RE: BRANDON SOUZA AND BRIANNA MOORE**  
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-29-2023 [\[19\]](#)

U.S. BANK NATIONAL ASSOCIATION/MV  
GREGORY SHANFELD/ATTY. FOR DBT.  
DANE EXNOWSKI/ATTY. FOR MV.

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

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

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

U.S. Bank National Association ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect

to a 2021 Coleman Lantern recreational vehicle ("Vehicle"). Doc. #19. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). *Id.*

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

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The Debtors' discharge was entered on January 2, 2024. Doc. #26. Therefore, the automatic stay terminated with respect to the Debtors on January 2, 2024. This motion will be DENIED AS MOOT IN PART as to the Debtors' interest and will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

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

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

The court also finds that the Debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because Debtors are in chapter 7. *Id.* The Vehicle is valued at \$24,200.00 and Debtors owe \$40,752.34. Doc. #22.

Accordingly, the motion will be GRANTED IN PART as to the trustee's interest pursuant to § 362(d)(1) and (d)(2) and DENIED AS MOOT IN PART as to the Debtors' interest under § 362(c)(2)(C).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the Vehicle is a depreciating asset.

12. [17-11379](#)-B-7     **IN RE: STEPHEN/KATIE GONZALEZ**  
[FW-6](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,  
P.C. TRUSTEES ATTORNEY(S)  
11-28-2023    [\[78\]](#)

PETER SAUER/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.

Fear Waddell, P.C. ("Applicant"), general counsel for Chapter 7  
Trustee Peter L. Fear ("Trustee") in the above-styled case, requests  
compensation under 11 U.S.C. § 330 in the amount of \$7,665.50 in  
attorneys' fees and \$144.72 in expenses. Doc. #78. This is  
Applicant's final fee application in this case and covers the time  
period between July 14, 2021, through November 21, 2023. *Id.*

Trustee executed a Declaration on November 21, 2023, indicating that  
he has read the fee application and approves the same. Doc. #80.

This motion was set for hearing on 28 days' notice as required by  
Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P.  
("Rule") 2002(a)(6). The failure of any party in interest, including  
but not limited to debtors, creditors, the case 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 amounts of damages). *Televideo Sys. Inc. v.*  
*Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due  
process requires that a plaintiff make a *prima facie* showing that  
they are entitled to the relief sought, which the movant has done  
here.

No party in interest timely filed written opposition, and the  
defaults of all such parties in interest will be entered. This  
motion will be GRANTED.

Stephen Anthony Robert Gonzalez and Katie Kylene Gonzalez  
("Debtors") originally filed this Chapter 7 case on April 13, 2017.  
The case was reopened by an order dated June 14, 2021, and Trustee  
was reappointed. Docs. ##24, 26. The court authorized Applicant's  
employment as general counsel for Trustee in an order dated July 28,  
2023. Doc. #39.

Applicant's firm provided 29.40 billable hours of legal work at the following rates, totaling **\$7,665.50**. Docs. ##78, 82.

Professional	Rate	Hours	Fees
Peter Sauer (2021)	\$245.00	9.10	\$2,229.50
Peter Sauer (2022)	\$260.00	4.50	\$1,170.00
Peter Sauer (2023)	\$280.00	12.00	\$3,360.00
Katie Waddell (2021)	\$230.00	0.80	\$184.00
Katie Waddell (2023)	\$260.00	2.60	\$676.00
Laurel Guenther (2023)	\$115.00	0.40	\$46.00
<b>Total</b>		<b>29.4</b>	<b>\$7,665.50</b>

Applicant also requests expense reimbursement as follows:

Copying	\$79.80
Postage	\$65.92
<b>Total Expenses</b>	<b>\$144.72</b>

*Id.* These combined fees and expenses total **\$7,810.22**.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." 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, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services here included, without limitation: (a) case administration, (b) asset disposition, and (c) fee/employment applications. Doc. #82. The court finds these services and expenses reasonable, actual, and necessary. No party in interest timely filed written opposition and Trustee has consented to payment of the proposed fees. Doc. #80.

Accordingly, this motion will be GRANTED. Applicant shall be awarded **\$7,665.50** in fees as reasonable compensation for services rendered and **\$144.72** in reimbursement of actual, necessary expenses on a final basis under 11 U.S.C. § 330. The Trustee is authorized to pay a total compensation award of **\$7,810.22** from estate funds as they become available.



13. [23-11899](#)-B-7     **IN RE: CASSANDRA MONTEZ**  
[RAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-29-2023    [\[17\]](#)

U.S. BANK NATIONAL ASSOCIATION/MV  
JASON VOGELPOHL/ATTY. FOR DBT.  
FANNY WAN/ATTY. FOR MV.  
DISCHARGED 12/5/23

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

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

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

The movant, U. S. Bank National Association ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2017 GMC Sierra 1500 ("Vehicle"). Doc. #17. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). *Id.*

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

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The Debtor's discharge was entered on December 5, 2024. Doc. #24. Therefore, the automatic stay terminated with respect to the Debtor on December 5, 2024. This motion will be DENIED AS MOOT IN PART as to the Debtor's interest and will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay with respect to the chapter 7 trustee because Debtor has failed to make two pre-petition payments of \$685.97 and one post-petition payments totaling \$685.97. Movant has produced evidence that Debtor owes \$14,137.98 to Movant. Docs. ##19, 20.

Accordingly, the motion will be GRANTED IN PART as to the trustee's interest pursuant to § 362(d)(1) and DENIED AS MOOT IN PART as to the Debtor's interest under § 362(c)(2)(C).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the Vehicle is a depreciating asset.