



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Department B – Courtroom #13
Fresno, California**

Hearing Date: Thursday, January 10, 2025

Unless otherwise ordered, all matters before the Honorable René Lastreto II, shall be simultaneously: (1) **In Person** at, 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 or stated below.

All parties or their attorneys who wish to appear at a hearing remotely must sign up by **4:00 p.m. one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/CourtAppearances>. Each party/attorney who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties and their attorneys who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest and/or their attorneys may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press who wish to attend by ZoomGov may only listen in to the hearing using the Zoom telephone number. Video participation or observing are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may attend in person unless otherwise ordered.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#). If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

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. [24-11015](#)-B-11 **IN RE: PINNACLE FOODS OF CALIFORNIA LLC**
[MJB-12](#)

CONTINUED MOTION TO EXTEND TIME
11-18-2024 [[323](#)]

PINNACLE FOODS OF CALIFORNIA LLC/MV
MICHAEL BERGER/ATTY. FOR DBT.

NO RULING.

2. [24-11016](#)-B-11 **IN RE: TYCO GROUP LLC**
[MJB-11](#)

CONTINUED RE: MOTION TO EXTEND TIME
11-18-2024 [[247](#)]

TYCO GROUP LLC/MV
MICHAEL BERGER/ATTY. FOR DBT.

NO RULING.

11:00 AM

1. [24-12523](#)-B-7 **IN RE: CHRIS/TAMARA HARRIS**

PRO SE REAFFIRMATION AGREEMENT WITH LES SCHWAB TIRE CENTERS
OF CENTRAL CA, LLC.
12-9-2024 [[27](#)]

NO RULING.

2. [24-12754](#)-B-7 **IN RE: LYNETTE HERRERA**

PRO SE REAFFIRMATION AGREEMENT WITH CONSUMER CREDIT UNION
12-5-2024 [[31](#)]

NO RULING.

3. [24-12590](#)-B-7 **IN RE: KATHRYN/JOEY WILMER**

PRO SE REAFFIRMATION AGREEMENT WITH LAKEVIEW LOAN SERVICING, LLC
12-5-2024 [[17](#)]

NO RULING.

1:30 PM

1. [24-12602](#)-B-7 **IN RE: DEANNA RECTOR**
[SLL-1](#)

MOTION TO AVOID LIEN OF CAVALRY SPV I, LLC
11-21-2024 [\[28\]](#)

DEANNA RECTOR/MV
STEPHEN LABIAK/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.

Deanna Rector ("Debtor") moves for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of Cavalry SPV I, LLC, as assignee of Citibank, N.A. ("Creditor" or "Cavalry"), in the sum of \$3,586.61 and encumbering residential real property located at 1699 Champagne St., Tulare, California ("Property"). Doc. #28.

Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor's registered agent for service of process via first class mail on November 21, 2024. Doc. #17

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 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 Debtor in favor of Cavalry in the amount of \$3,586.61 on June 21, 2022. Doc. #31 (*Exhib. C*). The abstract of judgment was issued on September 28, 2023, and was recorded in Tulare County on November 13, 2023. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #30. Debtor estimates that the current amount owed on account of this lien is \$7,605.00. *Id.*

As of the petition date, Property had an approximate value of \$552,000.00. Doc. #1 (*Sched. A/B*). Debtor claimed a \$366,260.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. Doc. #14 (*Amended Sched. C*).

Property is heavily encumbered, as illustrated as follows:

1. A first deed of trust held by Carrington Mortgage in the amount of \$193,931.00.
2. A second deed of trust held by HUD in the amount of \$10,652.59.
3. 10 Tulare County property tax liens totaling \$4,936.23 and incurred between March 22, 2016, and September 25, 2024.
4. A judicial lien in the amount of \$2,709.56 by Central Creditor's Bureau recorded on January 4, 2017.
5. A judicial lien in the amount of \$53,701.27 by L.A. Commercial Group, Inc. recorded on August 1, 2017.
6. A judicial lien in the amount of \$19,588.94 by Scott Nabors recorded on August 18, 2017.
7. A judicial lien in the amount of 6,643.95 by State Farm General Insurance recorded on November 10, 2017.
8. A judicial lien in the amount of \$155,921.85 by Everardo Magan and Shawnda Magana recorded on June 1, 2018.
9. A judicial lien in the amount of \$43,704.99 by Fortune Energy Inc. recorded on August 28, 2018.
10. A judicial lien in the amount of 19,588.94 by Scott Nabors recorded on September 26, 2018.
11. A judicial lien in the amount of \$317,184.81 by State Farm General Ins. Co. recorded on March 22, 2019.
12. An older judicial lien in the amount of \$10,600.29 by Cavalry recorded on November 19, 2019.
13. A judicial lien in the amount of \$18,780.04 by Unifund CCR, LLC recorded on February 4, 2020.
14. A judicial lien in the amount of \$13,587.89 by Midland Funding LLC recorded on May 12, 2021.
15. A judicial lien in the amount of \$5,408.26 by American Express National Bank recorded on March 16, 2022.

16. Cavalry's judicial lien for \$3,586.61 and recorded on November 13, 2023.

Docs. #28, #30. Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. Carrington Mortgage	\$193,931.00		Unavoidable
2. HUD	\$10,672.59		Unavoidable
3. Tax liens	\$4,936.34		Unavoidable
4. All judicial liens before this one	\$884,452.50	Pre-11/13/23	Unavoidable
5. This lien	\$1,093,992.43	11/13/23	Avoidable

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*; § 522(f)(2)(B). Perfected judicial liens which were recorded prior to the junior-most lien are grouped with the unavoidable liens.

"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).

This lien is the most junior lien subject to avoidance and there is not any equity to support the lien. Strict application of the § 522(f)(2) formula with respect to Creditor's junior lien is illustrated as follows:

Amount of judgment lien	\$3,506.61
Total amount of unavoidable liens (incl. liens not yet avoided)	+ \$1,093,992.43
Debtor's claimed exemption in Property	+ 366,260.00
Sum	= \$1,463,759.04
Debtor's claimed value of interest absent liens	- \$552,000.00
Extent lien impairs exemption	= \$911,759.04

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	\$552,000.00
Total amount of unavoidable liens (incl. liens not yet avoided)	- \$1,093,992.43
Homestead exemption	- 366,260.00
Remaining equity for judicial liens	= (\$908,252.43)
Creditor's judicial lien	- \$3,506.61
Extent Debtor's exemption impaired	= (\$911,759.04)

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.

2. [24-13503](#)-B-7 **IN RE: MARK MCGUIRE AND MARIA MORENO**
[RDW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
12-18-2024 [\[22\]](#)

COREY AND FAYE FENIG 2008
REVOCABLE TRUST/MV
REILLY WILKINSON/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. Order preparation determined at the hearing.

Corey & Faye Fenig 2008 Revocable Trust as to an undivided 57,000.00/112,000.00 Interest ("the Fenig Trust") and Pokras Family Trust as to an undivided 55,000.00/112,000.00 interest, its successors and/or assignees ("the Pokras Trust") (collectively "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 13603 Chadron Ave., Hawthorne, California ("Property") so that it may take all steps necessary under state and federal law to commence or complete its foreclosure sale. Doc. #22 *et seq.*

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). *Id.* The motion is supported by:

1. the Declaration of Tony Pokras ("the Movant's Declaration") (Doc. #24);
2. the Memorandum of Authorities (Doc. #24);
3. and Exhibits (Doc. #27) in the form of
 - a. copies of the Note and the Deed of Trust,
 - b. a clerk's notice regarding the prior bankruptcy of *In re Raul Moors and Laura Kirk*, 24-90672 ("the Moors Bankruptcy"), and
 - c. a clerk's notice regarding the instant bankruptcy.

Written opposition was not required and may be presented at the hearing.

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

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).

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.

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.*

Here, Movant is the loan servicer for a mortgage secured by Property in favor of Cassandra A. Burke ("Burke" or "Borrower"), who is not a party to this bankruptcy. Doc. #27 (Exhibits 1 and 2). Debtors are on neither the Note nor the Deed of Trust. *Id.* Movant avers that Movant's loan is fully matured and Borrower owes \$129,121.95 on the mortgage as of November 19, 2024, with interest, fees, and costs accruing. Doc. #25. Movant avers that it scheduled a foreclosure sale for November 19, 2024, but before the sale could take place, Burke conveyed an interest in the Property, without Movant's knowledge, to herself and Raul Moors and Laura Kirk, the debtors from the Moors Bankruptcy ("the Moors Debtors"), on the same day that the Moors Bankruptcy was filed. *Id.* The Moors Bankruptcy was dismissed on December 5, 2024, due to failure to file documents and information, and Movant rescheduled the foreclosure for December 10, 2024. *Id.*

On the day of the rescheduled sale, Movant was notified that Burke had again conveyed an interest in the Property to someone else, this time the Debtors in the instant case. *Id.*; Doc. #24. Movant argues that this bankruptcy, like the dismissed Prior Bankruptcy, along with the unauthorized transfers which coincided with them, were done merely to hinder, delay and defraud Movant. *Id.*

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).

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.

To obtain relief under § 362(d)(4), Movant must show and the court must affirmatively find the following three elements: (1) the debtors' 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.*

After review of the included evidence, the court finds that "cause" exists to lift the stay because Borrower, who is not a party to this bankruptcy, has defaulted on the Note and because, for the reasons outlined below, the court finds that Borrower transferred Debtors' asserted interest in the Property to Debtors without authorization from the Movant.

Furthermore, 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 and that this is the second bankruptcy affecting this Property.

Movant has produced evidence showing that Burke conveyed the Property from herself to herself and the Moors Debtors, all as Joint Tenants on November 6, 2024, and the Moors Debtors filed the Moors Bankruptcy that same day. Doc. #27 (Exhibit 3). The evidence further shows that on December 2, 2024, Burke, already a joint tenant, conveyed the Property from herself to Debtor Mark McGuire, and the Debtors filed the instant bankruptcy two days later. Doc #27 (Exhibit 4).

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) did not arise affecting the/is vacated concerning real property located at 13603 Chadron Ave., Hawthorne, California; 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 both 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 and 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 request for attorney's fees is denied. Movant must separately file and set for hearing a motion for compensation in compliance with the LBR and Federal Rules of Bankruptcy Procedure. If movant does, then the court will consider that motion on its merits at the appropriate time.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived so that Movant may move ahead with foreclosure proceedings against Burke and the Property.

3. [24-11813](#)-B-7 **IN RE: MARIA MACHAIN AND MIGUEL NUNEZ**
HERNANDEZ
[DS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-20-2024 [\[21\]](#)

TH MSR HOLDINGS LLC/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
DANIEL SINGER/ATTY. FOR MV.
DISCHARGED 10/29/24

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

DISPOSITION: Denied without prejudice.

ORDER: The court will enter the order.

TH MSR Holdings, LLC ("Movant") seeks an order lifting the automatic stay under 11 U.S.C. § 362 in the above-captioned matter so that Movant may enforce its remedies against the property in accordance with applicable non-bankruptcy law on the real property commonly known as 36620 Avenue 12, Madera, California (the "Property"). Doc. #21.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 4001-1 states that motions for relief from the automatic stay of 11 U.S.C. § 362(a) shall be set for hearing in accordance with LBR 9014-1. LBR 9014-1, in turn, states that, under LBR 9014-1(d)(3)(B)(i), the Notice of the motion must include the names and addresses of the persons who must be served with such opposition. Here, the Notice only directed that written opposition should be served upon Movant's counsel. See *Doc. #22*. However, as the motion to lift stay implicates assets of the estate, the U.S. Trustee is included among "the persons who must be served with such opposition." Though the Trustee has filed a "Notice of No Distribution," the Property has not been abandoned from the estate.

LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other pleadings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System

Users use the *Official Certificate of Service Form*, EDC 007-005. Unless six or fewer parties in interest are served, the form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders. LBR 7005-1(a). The Clerk's Matrix of Creditors shall be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of downloaded. LBR 7005-1(d).

Here the Movant did not use the Official Certificate of Service Form. Doc. #27. See Official Certificate of Service Form Information on the court's website, <https://www.caeb.uscourts.gov/CertificateOfServiceForm>.

For the foregoing reasons, this motion will be DENIED WITHOUT PREJUDICE.

4. [24-12520](#)-B-7 **IN RE: FRIDA ORTEGA**
[PPR-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
12-10-2024 [\[30\]](#)

NASA FEDERAL CREDIT UNION/MV
D. GARDNER/ATTY. FOR DBT.
LEE RAPHAEL/ATTY. FOR MV.
DISCHARGED 12/12/24

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

DISPOSITION: Denied without prejudice.

ORDER: The court will enter the order.

TH MSR Holdings, LLC ("Movant") seeks an order lifting the automatic stay under 11 U.S.C. § 362 in the above-captioned matter so that Movant may enforce its remedies against the property in accordance with applicable non-bankruptcy law on the real property commonly known as 36620 Avenue 12, Madera, California (the "Property"). Doc. #21.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 4001-1 states that motions for relief from the automatic stay of 11 U.S.C. § 362(a) shall be set for hearing in accordance with LBR 9014-1. LBR 9014-1, in turn, states that, under LBR 9014-1(d)(3)(B)(i), the Notice of the motion must include the names and addresses of the persons who must be served with such opposition. Here, the Notice only directed that written opposition should be served upon Movant's counsel. See Doc. #22. However, as the motion to lift stay implicates assets of the estate, the U.S. Trustee is included among "the persons who must be

served with such opposition." Though the Trustee has filed a "Notice of No Distribution," the Property has not been abandoned from the estate.

LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other pleadings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users use the *Official Certificate of Service Form*, EDC 007-005. Unless six or fewer parties in interest are served, the form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) the list of Equity Security Holders. LBR 7005-1(a). The Clerk's Matrix of Creditors shall be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of download. LBR 7005-1(d).

Here the Movant did not use the Official Certificate of Service Form. Doc. #27. See Official Certificate of Service Form Information on the court's website, <https://www.caeb.uscourts.gov/CertificateOfServiceForm>.

For the foregoing reasons, this motion will be DENIED WITHOUT PREJUDICE.

5. [24-13123](#)-B-7 **IN RE: GLORIA LOPEZ**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-21-2024 [\[13\]](#)

EXETER FINANCE LLC/MV
BENNY BARCO/ATTY. FOR DBT.
SHERYL ITH/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.

Exeter Finance LLC ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2017 Nissan Versa (VIN 3N1CN7AP7HL820161) ("Vehicle"). Doc. #13. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). Id.

Gloria Lopez ("Debtor") did not file opposition and the Vehicle was recovered by Movant on October 9, 2024. No other party in interest timely filed written opposition.

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).

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has missed six (6) pre-petition payments totaling \$2,426.15. Docs. #15-16. Additionally, Movant recovered possession of the Vehicle pre-petition on October 9, 2024. *Id.* Since the Vehicle has been recovered, the only issue is disposition of the collateral.

The court also finds that the Debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because Debtor is in chapter 7. The Vehicle is valued at \$7,325.00 and Debtor owes \$11,640.35. Doc. #15.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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

6. [24-12735](#)-B-7 **IN RE: ESTEBAN MONTES AND ANDREA AGUILAR**
[DKF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-21-2024 [\[33\]](#)

MICHAEL ASPEITIA, TRUSTEE, OR THE SUCCESSOR TRUSTEE FBO
DANIEL FUJIMOTO/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.

Michael Aspeitia, Trustee, or the Successor Trustee FBO Michael Aspeitia Trust UDT August 30, 2002 ("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 located at s 7634 Pineridge Lane, Fair Oaks, CA 95628 ("Property"). Doc. #33. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.* Esteban Montes and Andrea Aguilar (collectively "Debtors") did not oppose.

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 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 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 court is aware that this case was dismissed on December 30, 2024, for failure to appear at the § 341(a) Meeting of Creditors. Doc. #45. Notwithstanding the dismissal, the Court will retain jurisdiction to hear this motion for relief from the automatic stay which was set for hearing prior to the dismissal. See *In re Rose Tr.*, No. 2:22-bk-10443-ER, 2022 Bankr. LEXIS 473, at *6 (Bankr. C.D. Cal. Feb. 22, 2022). The motion is not mooted by the dismissal because the Movant seeks prospective relief under § 362(d)(4).

Background

The facts, as outlined below, are drawn from the Motion, the Declaration of Michael Aspeitia, and the Exhibits. Docs. #33, #36, #37.

On August 26, 2021, Luis A. Gonzalez ("Gonzalez" or "Borrower"), who is not a party to this bankruptcy proceeding executed a promissory note in the principal sum of \$601,400.00 (the "Note"), which was made payable to Movant and which is secured by a Deed of Trust encumbering the Property. Borrower defaulted, and Movant set a foreclosure sale for September 11, 2024.

On the morning of the sale, Movant received a fax of what purported to be a Grant Deed transferring the Property from Borrower to Borrower and Eduardo Arellano ("Arellano") as joint tenants. Movant also received a copy of the Notice of Bankruptcy Filing for Arellano and Raisa Aeliana ("the Arellano Debtors") in Case No. 24-12484 ("the Arellano Bankruptcy"). The Arellano Bankruptcy was dismissed on September 24, 2024, for failure to file information.

Two days later, Movant received another fax consisting of a Grant Deed conveying the Property from Borrower to Esteban Montes and Andrea Aguilar ("Debtors" in the instant case), as well as notice of the filing of the instant case.

Movant has shown that Borrower missed payments from August 1, 2023, through November 1, 2024, totally \$45,938.88, plus fees and costs, and, as of the date of the filing of this motion, Borrower was delinquent in the amount of \$70,880.75 plus payments accruing thereafter. As of November 16, 2024, the total outstanding balance due under the Note is \$706,695.22. Movant declares that the fair market value for the Property is \$770,000.00, and that it is encumbered by the Deed of Trust securing a debt of \$706,695.22 with additional encumbrances of \$53,000.00. Movant opines that after subtracting the encumbrances from the fair market value, there is little equity for the Debtors or for the Chapter 7 Trustee to administer.

Discussion

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Borrower has failed to make at least 15

prepetition payments. Moreover, Debtors are not obligated under the Note as they are not signatories, and the Property was transferred to them without permission from Movant and under circumstances suggesting that the transfer was part of a scheme to delay and hinder Borrower's creditor.

The court declines finding that Debtors do not have any equity in the Property. Although this is a chapter 7 case and the Property is not necessary for an effective reorganization, the moving papers indicate that Borrower may have in the neighborhood of \$10,000.00 in equity. Nevertheless, relief under § 362(d)(2) is moot because there is "cause" to grant the motion under § 362(d)(1).

After review of the included evidence, the court finds that "cause" exists to lift the stay because Borrower, who is not a party to this bankruptcy, has defaulted on the Note and because, for the reasons outlined below, the court finds that Borrower transferred Debtors' interest in the Property to Debtors without authorization from the Movant.

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.

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.

Furthermore, after review of the included evidence, the court finds that the Debtors' 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.

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.*

Here, Movant made a loan to Borrower, who defaulted on the Note and, to prevent foreclosure, first conveyed an interest in the collateral (Property) to the Arellano Debtors on the eve of their bankruptcy filing. That bankruptcy, which was filed *pro se*, was swiftly dismissed for failure to provide required documents. Borrower then conveyed an interest in the Property to the Debtors in this case, also on the eve of filing bankruptcy. And this case, likewise, was filed *pro se* and was swiftly dismissed for failure to comply with the requirements laid upon debtors in bankruptcy.

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 11425 Buell Street, Santa Fe Springs, CA 90670; 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 filings 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 Rule 4001(a)(3) will be ordered waived because the Borrower has failed to make pre- and post-petition payments to Movant and has repeatedly sought to frustrate Creditor's rights through abuse of the bankruptcy process.

7. [24-12935](#)-B-7 **IN RE: ELOY ACOSTA**
[FW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-18-2024 [\[13\]](#)

FREEDOM MORTGAGE CORPORATION/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
FANNY WAN/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9014-1(f)(2)(C) states that motions filed on less than 28 days' notice, but at least 14 days' notice, require the movant to notify the respondent or respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.

LBR 9014-1(f)(1)(B) states that Motions filed on at least 28 days' notice require the movant to notify the respondent or respondents that any opposition to motions filed on at least 28 days' notice must be in writing and must be filed with the court at least fourteen (14) days preceding the date or continued date of the hearing.

This motion was filed on December 18, 2024, and set for hearing on January 9, 2024. Docs. ##13-14. January 9, 2024, is 22 days after December 18, 2024, and therefore this hearing was set on less than 28 days' notice under LBR 9014-1(f)(2). The notice stated that written opposition was required and must be filed at least 14 days preceding the date of the hearing. Doc. #14. That is incorrect. Because the hearing was set on 14 days' notice, the notice should have stated that no written opposition was required. Because this motion was filed, served, and noticed on less than 28 days' notice, the language of LBR 9014-1(f)(2)(C) needed to have been included in the notice.

For this reason, the motion will be DENIED WITHOUT PREJUDICE.

8. [24-13041](#)-B-7 **IN RE: MARIA MANZO**
[MJ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-25-2024 [\[16\]](#)

AMERICREDIT FINANCIAL SERVICES, INC./MV
MEHRDAUD JAFARNIA/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.

AmeriCredit Financial Services, Inc. dba GM Financial ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2019 Honda Accord Sedan (VIN: 1HGCV1F15KA048936) ("Vehicle"). Doc. #16. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). Id.

Maria De Jesus Manzo ("Debtor") did not file opposition and Debtor's Statement of Intention indicated that the Vehicle would be surrendered. No other 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 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).

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has failed to make at least one complete pre-petition payment in the amount of \$675.85 and one post-petition payment in the amount of \$675.85. The Movant has produced evidence that Debtor is delinquent at least \$ 1,351.70. Docs. ##18-19.

The court also finds that the Debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because Debtor is in chapter 7. The Vehicle is valued at \$19,725.00 and Debtor owes \$22,388.12. Doc. #19.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the Debtor's Statement of Intention, the Vehicle will be surrendered.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtor has failed to make at least one pre-petition payment and one post-petition payment to Movant, and the Vehicle is a depreciating asset.

9. [24-10350](#)-B-7 **IN RE: RAYMOND/CAROL TAVITA**
[ADJ-3](#)

MOTION TO SELL FREE AND CLEAR OF LIENS
12-11-2024 [\[35\]](#)

IRMA EDMONDS/MV
PETER BUNTING/ATTY. FOR DBT.
ANTHONY JOHNSTON/ATTY. FOR MV.

FINAL RULING: This matter will proceed for higher and better bids.

DISPOSITION: Granted subject to the below conditions.

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

Irma C. Edmonds ("Trustee"), in her capacity as Chapter 7 Trustee of the bankruptcy estate of Raymond David Tavita and Carol Lualeмага Tavita ("Debtors"), moves to sell a 100% fee simple interest in real property located at 5536 W. Cromwell Ave., Fresno, California ("the Property"), which is property of the estate, free and clear of liens pursuant to 11 U.S.C. §§ 363(b)(1) and (f). Doc. #35.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest timely filed written opposition, and the defaults of all nonresponding parties will be entered. The motion to sell free and clear of liens will GRANTED subject to the below conditions and subject to higher better bids at the hearing.

BACKGROUND

Debtors filed this bankruptcy on February 19, 2024. Doc. #1. The Trustee was appointed that same day. Doc. #5. On August 2, 2024, Trustee filed a motion to employ Robert Casey ("Casey") of Berkshire Hathaway Homeservices California Realty ("Berkshire Hathaway"), and the court granted that motion on August 9, 2024. Docs. #27, #30.

Trustee has since entered into an agreement, subject to this court's approval and overbidding, with Laura Maddaford ("Maddaford") for the sale and purchase of the Property for \$460,000.00. Doc. #37 (Decl. of Irma Edmonds). Maddaford has made an earnest money deposit of \$13,800.00 which will be applied to the down payment on the purchase price, which, assuming she remains the high bidder, will be paid as follows:

1. \$96,000.00 for a down payment; and
2. \$364,000.00 through a secured loan obtained by Maddaford from a third-party lender.

Id. Maddaford is represented by real estate agent Carrie Hawarth of Re/Max Gold ("Re/Max"). *Id.* Trustee seeks authority to pay a total of 6% of the purchase price to be split evenly between Berkshire Hathaway and Re/Max if Maddaford purchases the Property. *Id.*

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). There is no indication that Maddaford is an insider.

Property is listed in *Schedule A/B* with a value of \$501,500.00 Doc. #17 (*Amended Sched. A/B*). Debtors claimed a \$10,000.00 exemption in the Property pursuant to C.C.P. § 703.140(b)(1). *Id.* (*Amended Sched. C*). The Property is encumbered by a first deed of trust held by Superior Loan Servicing ("SLS"), and Trustee estimates that the current payoff as of the sale date will be \$370,875.00. Doc. #41 (*Exhib. J*); Doc. #35. The balance owed to SLS will be paid from the estimated net sale proceeds. Doc. #35.

The Trustee describes the proposed payout as follows:

Proposed sale price of Property		\$460,000.00
Real Estate Commission	-	(\$27,600.00)
Title and Escrow Costs	-	(\$2,300.00)
Property Taxes Owed	-	(\$15,000.00)
Deed of Trust	-	(\$370,875.00)
Debtor's Exemption	-	(\$10,000.00)
Estimated Sale Proceeds	=	\$34,225.00

Doc. #37.

The MVR Agreement and § 363(f)

The property is also subject to an *MVR Homeowner Benefit Agreement* ("the MVR Agreement") which was executed by Debtors prepetition and which purports to give MV Realty of California Inc. ("MVR"), *inter alia*, the exclusive right to list the Property for sale for 40 years, a right which is purportedly binding on successors in interest in the Property. Doc. #37; Doc. #40 (*Exhib. B - the MVR Agreement*). MVR also caused a

Memorandum of MVR Homeowner Benefit Agreement ("the MVR Memo") to be recorded with the Fresno County Recorder and thereby lay cloud on the title. Doc. #37; Doc. #40 (Exhib. C - the MVR Memo). The MVR Memo in section 3 states that "the obligations of Property Owner under the [MVR] Agreement constitute covenants running with the land and shall bind future successors-in-interest to title to the Property." *Id.*

Trustee avers that the Memo and the MVR Agreement are the subject of a bona fide dispute because MVR is currently the subject of ongoing litigation brought by the State of California and the District Attorneys of Santa Barbara County and Napa County that alleges violations of various state laws by MVR. Doc. #37. MVR is also subject to a preliminary injunction issued by the Superior Court of California, County of Los Angeles, that obliges MVR to record within five days of notification from any California homeowner, or agent acting on their behalf, a termination of any Memorandum like the MVR Memo at issue here if required for the homeowner to complete any transaction related to the homeowner's property. Docs. #37, #40 (Exhib. D - Preliminary Injunction).

Trustee avers that despite requests made pursuant to the injunction, MVR has not provided Trustee or any other party with a release of the Memo. Doc. #37. Trustee also notes that, while MVR was scheduled as an unsecured creditor in Debtor's Schedule E/F, MVR did not file a proof of claim, and Debtors received a discharge on June 3, 2024. *Id.*

Under 11 U.S.C. § 363(f), the trustee may sell estate property of the estate outside the ordinary course of business, after notice and a hearing, free and clear of any interest in such property of an entity other than the estate, only if:

- (1) applicable nonbankruptcy 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 (emphasis added).

Trustee argues, and the court agrees, that the applicability of the MVR Agreement constitutes an encumbrance on the Property that is subject to a bona fide dispute. Accordingly, the Trustee may sell the Property free and clear of any rights held by MVR by virtue of the MVR Agreement and/or the MVR Memo. Any claims represented by the MVR Agreement and/or the MVR Memo shall attach to the proceeds subject to further order of this court.

Overbids

Any party wishing to overbid must be present at the time of the hearing. Minimum overbids will be in increments of \$1,000.00, with the first overbid being in the minimum amount of \$461,000.00.

No warranties or representations are included with the Property; it will be sold "as-is."

Waiver of 14-day Stay

Although the Motion does not expressly request it, the Trustee in her Declaration asks the court to waive the 14-day stay of the order authorizing the sale of the Property imposed by Federal Rule of Bankruptcy Procedure 6004(h), as otherwise, interest accruing from the deed of trust will increase the outstanding pay-off by more than \$2,000.00 which would otherwise go to the bankruptcy estate. The court accepts this reasoning and will waive the 14-day stay of Rule 6004(h).

Conclusion

The sale of the Property appears to be in the best interests of the estate because it will pay off the first mortgage and all outstanding taxes while still providing \$34,225.00 as a dividend to unsecured creditors. See Doc. #37. The sale appears to be supported by a valid business judgment and proposed in good faith because the sale will pay provide a meaningful dividend to unsecured creditors. *Id.* Trustee's judgment appears to be reasonable and will be given deference.

This motion will be GRANTED, and the sale will proceed subject to higher and better bids. 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 Berkshire Hathaway and the buyer's broker, if any, as determined at the hearing; (4) to pay all costs, commissions, and real property taxes directly from escrow and (5) any interest represented by the MVR Agreement or MVR memo shall attach to the net proceeds subject to further order of this court. The 14-day stay of Rule 6004(h) will be ORDERED WAIVED.

10. [24-11852](#)-B-7 **IN RE: ROBERT/SHARYN SMITH**
[FW-2](#)

MOTION TO SELL
11-25-2024 [\[38\]](#)

PETER FEAR/MV
LEONARD WELSH/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 in
conformance with the ruling below.

Chapter 7 trustee Peter Fear ("Trustee") seeks authorization to sell the estate's interest in real property located at 2960 Pacini Street, Bakersfield, CA 93314 ("the Property") to Robert Davis Smith and Sharyn Crystal Smith ("Debtors") for \$25,000.00, subject to higher and better bids. Doc. #38.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest timely filed written opposition, and the defaults of all nonresponding parties will be entered. This motion will be GRANTED subject to higher and better bids at the hearing.

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 North 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 Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" *Id.* 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). This sale is to the Debtor so is subject to more scrutiny.

Based on the motion, Trustee's Declaration, the Schedules, and the Exhibits (Doc. #1 (*Schedules A/B, C & D*); Doc. #38 *et seq.*), the relevant facts appear to be as follows:

Debtors filed for Chapter 7 bankruptcy on July 2, 2024, with Trustee duly appointed thereafter. The Property, which is Debtors' homesteaded residence, was listed in the Schedules as having a value of \$840,000.00, and subject to two liens: \$441,003.00 owed to Flagstar Bank and \$133,553.29 owed to BSI Financial Services. Neither lienholder has yet filed a proof of claim. Debtors claim a homestead exemption of \$265,443.71 pursuant to C.C.P. § 704.730. Trustee believes that the maximum homestead exemption Debtors could claim is \$375,000.00.

Trustee estimates that the Property is worth in excess of \$1,000,000.00, which, if sold at that price, would provide a net to the estate of more than \$25,000.00. However, Trustee candidly admits that the Property might not go for that much and that, after payment of sale costs and real estate commission, there might be no net proceeds for the benefit of the estate. For that reason, Trustee agreed to sell and Debtors to purchase the equity in the Property for \$25,000.00. Trustee declares his belief that this proposed sale maximizes the value of the Property for the estate compared to what might be realized from a sale to a third party (which would necessitate paying off all liens on the Property, paying Debtors' available exemption amount, paying real estate broker fees, and closing costs, and paying Chapter 7 Trustee commission, all of which would likely exceed \$25,000.00).

It appears that the sale of the Property is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith. There are no objections or opposition to the motion.

The motion does not request, nor will the court authorize, the sale free and clear of any liens or interests. The motion acknowledges the two existing liens on the Property, which Debtors will continue to pay after the purchase is completed. Thus, the sale is subject to existing liens.

Any party wishing to overbid must appear at the hearing and acknowledge that no warranties or representations are include with the Vehicle; it is being sold "as-is." Any such party must also comply with the overbid procedures as outlined the *Notice of Hearing* accompanying this motion. See Doc. #39.

11. [24-12754](#)-B-7 **IN RE: LYNETTE HERRERA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-5-2024 [\[33\]](#)

\$199.00 FILING FEE PAID 12/6/24

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the \$199.00 filing fee was paid on December 6, 2024. Accordingly, this order to show cause will be VACATED.

12. [24-12754](#)-B-7 **IN RE: LYNETTE HERRERA**
[GAL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-21-2024 [\[20\]](#)

CONSUMERS CREDIT UNION/MV
GARRY MASTERSON/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue the order.

Consumers Credit Union ("Movant") asks the court for relief from the automatic stay to repossess and dispose of its' collateral: a 2012 Mercedes Benz GLK (Partial VIN: 923267) ("Vehicle")

The motion will be denied without prejudice for failure to follow local rules of court.

Stay relief motions are to be filed and served under LBR 9014-1 (LBR-4001-1 (a)). Under LBR 9014-1 (d)(3)(B) a notice of motion must state whether opposition should be filed, the deadline for filing and serving opposition "and the names and addresses of the persons who must be served with any opposition."

The notice here did not advise that opposition must be served and filed on the case Trustee. This is a chapter 7 case, and the Vehicle has not been abandoned.

Accordingly, this motion will be DENIED WITHOUT PREJUDICE for improper notice.

13. [24-12357](#)-B-7 **IN RE: NATHAN/VICKI CROUCH**
[PPR-2](#)

MOTION TO APPROVE LOAN MODIFICATION
11-27-2024 [\[21\]](#)

ROCKET MORTGAGE, LLC/MV
BENNY BARCO/ATTY. FOR DBT.
LEE RAPHAEL/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

Rocket Mortgage ("Creditor") and Nathan and Vicki Crouch ("Debtors") (collectively "Parties") move for entry of an order permitting the Parties to enter into a loan modification agreement on a lien held by Creditor and secured by Debtor's real property located at 2851 Winery Ave., Clovis, CA ("the Property"). Doc. #21.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters, and all other proceedings in this district that are filed by attorneys, trustees, or other Registered Electronic Filing System Users to document their service of any such pleadings and/or documents by filing a certificate of service and using the **Official Certificate of Service Form, EDC 007-005**. That form can be found on the court's website at

<https://www.caeb.uscourts.gov/CertificateOfServiceForm> (visited November 14, 2025). Movants did not employ the Official Form.

For the above reason(s), this motion will be DENIED WITHOUT PREJUDICE.

14. [24-13275](#)-B-7 **IN RE: EDWARD CLARKSTON**
[NLG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-5-2024 [\[18\]](#)

J.P. MORGAN MORTGAGE ACQUISITION CORP./MV
STEPHEN LABIAK/ATTY. FOR DBT.
NICHOLE GLOWIN/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. Order preparation
determined at the hearing.

J.P. Morgan Mortgage Acquisition Corp. ("Movant") seeks relief from the automatic stay pursuant to 11 U.S.C. § 362 with regard the real property owned by Edward Clarkston ("Debtor") and commonly identified as 42758 Badger Circle Dr., Coarsegold, California 93614 ("the Property"). Doc. #18. Movant argues that Movant is not adequately protected as described by § 362(d) (1) and that there is no equity in the Property, which is grounds to lift the stay pursuant to § 362(d) (2).

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).

Only the Debtor responded to the motion, and the defaults of all nonresponding parties are entered. Movant did not reply to contradict the factual assertions raised by Debtor, and the court will accept those factual allegations as true. *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

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.

Movant declares that "cause" exists to lift the stay because Debtor has not made any payments due between February 1, 2024, and December 1, 2024 (with another payment due on January 1, 2025). Doc. #20 (Declaration of Elsa C. Arroyo) The Movant has produced evidence that Debtor is delinquent at least \$33,653.93 and the entire balance of \$481,900.47 is due. *Id.*

Movant further declares that there is no equity in the Property. *Id.* Debtor values the property at \$590,000.00. Doc. #1 (Schedule A/B). The Property is encumbered by Movant's Deed of Trust in the amount of \$481,900.47 and by a Madera County Code Enforcement lien in the amount of \$91,069.00. Doc. #1 (Schedule D).

Fair Market Value	\$590,000.00
Movant's Deed of Trust	(\$481,900.47)
Madera County Code Enforcement	(\$91,069.00)
Equity	\$17,030.53

Doc. #20. Movant argues that the court should take into account the "reasonable costs associated with the sale of the Property," which Movant estimates to be \$47,200.00, and conclude that there is negative equity in the Property. *Id.*

In response, Debtor declares that he has increased his rental income by an estimated \$3,000.00 per month and that he has submitted a mortgage modification application. Doc. #30. Debtor avers that he previously attempted a mortgage modification in February of 2024 which was denied in August of 2024. *Id.* During that period, Movant allegedly tendered payments to Movant which Movant returned. *Id.* This appears to be supported by an Exhibit in the form of a printout of Debtor's payment history during the relevant period. Doc. #21. Debtor states his intention to obtain a discharge in this Chapter 7 case and then immediately file for Chapter 13 relief, with the intention of paying the ongoing mortgage payment and the arrearage through the plan. Docs. #28, #30.

In the absence of more persuasive arguments from Movant at the hearing, the court is inclined to DENY this motion CONDITIONALLY and WITHOUT PREJUDICE. The court is not persuaded by Movant's argument that Debtor has no equity under § 362(d)(2) because if the stay is lifted and the Property sold, the sale costs will eat up the estimated \$17,030.00 in equity that Debtor would expect to receive after the encumbrances are subtracted from the fair market value. Though this is a Chapter 7 case, and no reorganization is contemplated, Debtor has stated his intention to file Chapter 13, continue to make monthly payments, and resolve the arrearage in a Chapter 13 Plan.

Also, the Debtor does not intend to sell the Property. Rather Debtor intends to keep the property and pay the encumbrance.

Turning to § 362(d)(1), the Movant bases the motion for stay relief on the lack of adequate protection, including the lack of a sufficient equity cushion and/or Debtor's failure to tender periodic cash payments. Doc. #18. However, Debtor avers that he has attempted to submit periodic payments under the terms of an attempted mortgage modification but was rebuffed. Doc. #30. Debtor evinces a willingness to make payments until the Chapter 13 case is filed. *Id.* Debtor also declares that his rental income will increase to an amount sufficient to fund the Chapter 13 plan and cure the arrearage while paying the ongoing mortgage in the future. *Id.* Debtor estimates that his Chapter 7 discharge will be in mid-February of 2025, with his first Chapter 13 plan payment due in March of 2025. Doc. #28.

The court finds that based on this record, Movant will be adequately protected provided Debtor continues to make monthly payments in accordance with the provisions of the note that encumbers the Property.

Accordingly, this motion will be DENIED WITHOUT PREJUDICE subject to the following terms:

1. Debtor shall, within ten days of the entry of an order on this motion, pay the December 2024 and January 2025 payments to Movant.
2. Debtor shall thereafter pay regular monthly payments as they come due until such time as Debtor files his Chapter 13 case.
3. Once the Chapter 7 discharge is entered, the automatic stay will not apply as to Debtor's interest in the Property until and unless Debtor files his Chapter 13 case, and if Debtor does not follow through on filing a Chapter 13 petition, Movant may pursue its foreclosure remedies once the Chapter 7 case is closed.
4. If Debtor fails to comply with this order or delays in making the payments as directed, Movant may return and seek stay relief anew.

15. [24-13275](#)-B-7 **IN RE: EDWARD CLARKSTON**
[SLL-1](#)

MOTION TO COMPEL ABANDONMENT
11-21-2024 [\[13\]](#)

EDWARD CLARKSTON/MV
STEPHEN LABIAK/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.

Edward Lionel Clarkston ("Debtor") moves for an order compelling chapter 7 trustee Peter Fear("Trustee") to abandon the estate's interest in certain property of inconsequential value and benefit to the estate ("the Business Assets"). Doc. #13.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

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

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate."

To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment 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." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). *In re Galloway*, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at *16-17 (B.A.P. 9th Cir. 2014).

As of the petition date, Debtor was owner, in whole or in part, of the following businesses: (1) CW Dynamic Business Solutions ("CWDBS"); (2) Clark West Investment Business Solutions ("CWIBS"); (3) Slow Motion Film Group ("SMFG"); and Astos Matrix Group ("AMG"), as an independent contractor consultant. Doc. #13. Collectively, the four businesses owned the following assets which Debtor seeks to have abandoned:

Asset	Value	Exempt	Lien	Net
Chas Bank 0060 Checking	\$6.00	\$6.00	\$0.00	\$0.00
CWDBS 25% ownership	\$1,000.00	\$1,000.00	\$0.00	\$0.00
CWIBS 100% ownership	\$1.00	\$1.00	\$0.00	\$0.00
SFG 100 % ownership	\$10.00	\$10.00	\$0.00	\$0.00
AMG 25% ownership	\$1.00	\$1.00	\$0.00	\$0.00

Doc. #15 (Debtor's Declaration); Doc. #1 (Sched. A/B). None of the Business Assets are encumbered. Doc. #1 (Sched. D). Debtor exempted all the Business Assets for their full value as tools of the trade under Cal. Code Civ. Proc. § 703.140(b)(5). Doc. #1 (Sched. C).

Debtor certifies that Debtor was qualified and eligible to claim the exemptions under applicable law and understands that if for any reason it is determined that Debtor is not qualified to claim an exemption in the property listed, or if there is some other error in the exemption claimed, Trustee may demand that Debtor compensate the estate for any damage caused by the claimed exemption. Debtor agrees to not amend the exemptions affecting the Business Assets unless Trustee stipulated to that amendment or such relief is granted by further order of the court. *Id.*

No party in interest has opposed the motion. The court finds that that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately scheduled and is encumbered or exempted in their entirety. This motion is GRANTED.

The order shall specifically include the property to be abandoned.

16. [23-12383](#)-B-7 **IN RE: ANGELES ESTRADA**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
11-21-2024 [\[45\]](#)

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

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order that
conforms with the opinion below.

James Salven, Certified Public Accountant ("Applicant"), seeks approval of a final allowance of compensation under 11 U.S.C. § 330 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as accountant for Irma Edmonds, Trustee in the above-styled case ("Trustee"). Doc. #45.

Applicant was employed to perform services under § 327 of the Code pursuant to an order of this court dated October 30, 2024. Doc. #44. This is Applicant's first and final request for compensation.

Applicant seeks **\$2,436.00** in fees based on **8.7** billable from October 17, 2024, through November 20, 2024. Doc. #49. Based on the moving papers, it appears that James Salven was the only employee of Applicant to work on this case, and he billed at a rate of \$280.00 per hour. *Id.* Applicant seeks **\$165.07** for expenses which consists of copy fees, envelopes, tax processing, and costs and postage for serving the fee application. *Id.*

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" 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). Previous interim compensation awards under 11 U.S.C. § 331, if any, are subject to final review under § 330.

Applicant's services here included, without limitation: employment/fee applications; review of debtor's information prior to preparing tax returns; preparation and filing of tax returns. Doc. #49. The court finds the services and expenses reasonable, actual, and necessary. The Trustee has reviewed the Application and finds the requested fees and expenses to be reasonable. Doc. #48.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-

1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

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

This Application is GRANTED. The court will approve on a final basis under 11 U.S.C. § 330 compensation in the amount of **\$2,436.00** in fees and **\$165.07** in expenses. The court grants the Application for a total award **\$2,601.07** as an administrative expense of the estate and an order authorizing and directing the Trustee to pay such to Applicant from the first available estate funds.

17. [18-12189](#)-B-7 **IN RE: DEE DINKEL**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
11-21-2024 [\[75\]](#)

JAMES SALVEN/MV

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

DISPOSITION: Denied without prejudice.

ORDER: The court will prepare the order.

On November 21, 2024, James Salven ("Applicant"), acting in his capacity as Accountant for Chapter 7 Trustee James Salven ("Trustee"), filed this *Application for Compensation*. Doc. #75. Contemporaneously, Applicant filed a *Notice of Hearing* which erroneously stated that the hearing date was January 9, **2024**. Doc. #76 (emphasis added).

On November 25, 2024, the Clerk's Office issued a *Memo to File Re: Calendar Correction* directing Applicant to submit an Amended Notice of Hearing. Doc. #81. Applicant has not done so, and at this point, even if Applicant did file a corrected Notice, it would not arrive in time to

provide at least twenty-one (21) days' notice as required by Fed. Rule. Bankr. Pro. 2002(a) (6).

Accordingly, this Application will be DENIED WITHOUT PREJUDICE.

18. [24-12594](#)-B-7 **IN RE: SEUYTHAVINH/LINDA LOKEOMANIVONG**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-26-2024 [\[41\]](#)

MIDFIRST BANK/MV
PETER BUNTING/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.
DISCHARGED 12/13/24

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.

MidFirst Bank ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 135 South Filbert Avenue, Fresno, California ("Property"). Doc. #41. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). Id.

No party in interest timely filed written opposition. This motion will be GRANTED IN PART AND DENIED IN PART.

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 debtors' discharge was entered on December 13, 2024. Doc. #47. Therefore, the

automatic stay terminated with respect to the Debtors on December 13, 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's (or estate's) interest.

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 Debtors have failed to make three (3) pre-petition payments totaling and one (1) post-petition payment of \$1,678.34. Movant has produced evidence that Debtor owes \$6,713.36 to Movant. Docs. #43, #45.

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 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.

19. [24-13097](#)-B-7 **IN RE: ROBERT HERMAN**
[MAZ-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
11-27-2024 [\[14\]](#)

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.

Robert Herman ("Debtor") moves for an order converting this Chapter 7 Proceeding to one under Chapter 13. Doc. #14.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be

entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest timely filed written opposition, and the defaults of all nonresponding parties will be entered. 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 to 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 case shall be converted to chapter 13.

20. [23-11298](#)-B-7 **IN RE: OSCAR URVINA**
[NLG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-21-2024 [\[17\]](#)

U.S. BANK TRUST NATIONAL ASSOCIATION/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
NICHOLE GLOWIN/ATTY. FOR MV.
DISCHARGED 9/25/23

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

DISPOSITION: Denied without prejudice.

ORDER: The court will enter the order.

U.S. Bank Trust National Association ("Movant") seeks an order lifting the automatic stay under 11 U.S.C. § 362 in the above-captioned matter so that Movant may enforce its remedies against the property in accordance with applicable non-bankruptcy law on the real property commonly known as 319 Fig Street, Madera, California (the "Property"). Doc. #17.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 4001-1 states that motions for relief from the automatic stay of 11 U.S.C. § 362(a) shall be set for hearing in accordance with LBR 9014. LBR 9014, in turn, states that, under LBR 9014-1(d)(3)(B)(i), the Notice of the motion must include the names and addresses of the persons who must be served with such opposition. Here, the Notice only directed that written opposition should be served upon Movant's counsel. *See Doc. #18.* However, as the motion to lift stay implicates assets of the estate, the Chapter 7 Trustee and the U.S. Trustee are included among "the persons who must be served with such opposition."

Accordingly, the Notice is deficient, and this motion must be DENIED WITHOUT PREJUDICE.

21. [24-13098](#)-B-7 **IN RE: HEATHER FURGANG**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-27-2024 [\[11\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV
JASMINE MOTAZEDI/ATTY. FOR DBT.
KIRSTEN MARTINEZ/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.

Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2022 TOYOTA PRIUS, (V.I.N. JTDKAMFP9N3223516) ("Vehicle"). Doc. #11.

Heather J. Furgang ("Debtor") nor any other party in interest timely filed written opposition. This motion will be GRANTED. Debtor's Statement of Intention indicated that the Vehicle would be surrendered.

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).

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has failed to make two (2) post-petition payments totaling \$1,823.48 and one (1) post-petition payment in the amount of \$923.44. The Movant has produced evidence that Debtor is delinquent at least \$ 2,746.92. Docs. ##13-14.

The court also finds that the Debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because Debtor is in chapter 7. The Vehicle is valued at \$28,450.00 and Debtor owes \$43,581.73. Doc. #14.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the Debtor's Statement of Intention, the Vehicle will be surrendered.

2:00 PM

1. [24-12233](#)-B-13 **IN RE: HUIJUN LIU**
[JRL-2](#)

MOTION TO AVOID LIEN OF ANGELICA CARR
12-9-2024 [\[35\]](#)

HUIJUN LIU/MV
JERRY LOWE/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.

Huijun Liu ("Debtor") moves pursuant to 11 U.S.C. § 522(f) for an order avoiding a judicial lien in favor of Angelica Carr ("Creditor") in the sum of \$112,243.36 and encumbering residential real property located at 120 Gallo Court, Los Banos, California ("Property").
Doc. #35.

Debtor complied with Fed. R. Bankr. P. 2002(g) by properly serving Creditor c/o her attorney via certified mail. Doc. #39.

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 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 Debtor in favor of Creditor in the amount of \$106,551.31 on January 18, 2024. Doc. #38 (Exhib. A). The abstract of judgment was issued on April 5, 2024, and was recorded in Merced County on April 8, 2024. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #37. According to the proof of claim, Creditor's lien is valued at \$112,243.36. POC #3.

As of the petition date, Property had an approximate value of \$460,000.00. Doc. #1 (Schedule A/B). Debtor claimed a \$30,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.140(b)(1). Doc. #30 (Amended Schedule C).

Property is encumbered by a first deed of trust in favor of Planet Home Lending, LLC ("PHL") in the amount of \$450,596.00. Doc. #1 (Schedule D). Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. PHL	\$450,596.00		Unavoidable
2. Creditor	\$112,243.36	4/8/24	Avoidable

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*; § 522(f)(2)(B). Here, Debtor only seeks to avoid one lien.

"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).

This lien is the most junior lien subject to avoidance and there is not any equity to support the lien. Strict application of the § 522(f)(2) formula with respect to Creditor's junior lien is illustrated as follows:

Amount of judgment lien	\$112,243.36
Total amount of unavoidable liens (incl. liens not yet avoided)	+ \$450,596.00
Debtor's claimed exemption in Property	+ \$30,000.00
<i>Sum</i>	= \$592,839.36
Debtor's claimed value of interest absent liens	- \$460,000.00
Extent lien impairs exemption	= \$132,839.36

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	\$460,000.00
Total amount of unavoidable liens (incl. liens not yet avoided)	- \$450,596.00
Homestead exemption	- 30,000.00
Remaining equity for judicial liens	= (\$20,596.00)
Creditor's judicial lien	- \$112,243.36
Extent Debtor's exemption impaired	= (\$132,839.36)

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.

2. [10-17946](#)-B-13 **IN RE: JONI CHAVEZ**

MOTION FOR PAYMENT OF UNCLAIMED FUNDS IN THE AMOUNT OF
\$3,110.80 WITH CITIMORTGAGE INC.
12-11-2024 [\[44\]](#)

PETER BUNTING/ATTY. FOR DBT.
CLOSED: 11/15/2011; DEBTOR DISMISSED: 05/14/2011;

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The movant will prepare the order.

Citimortgage Inc. ("Movant") has filed the instant *Motion for Payment of Unclaimed Funds* and seeks to recoup the sum of \$3,110.80 from the unclaimed dividends paid into the court in the underlying Chapter 13 proceeding ("the Proceeding"). Doc. #44. Joni Chavez ("Debtor") commenced the Proceeding on July 15, 2010. Doc. #1. The case was dismissed on May 14, 2011, and closed on May 16, 2011. Docs. ##29-30. On October 28, 2011, the Trustee filed a notice of the turnover of unclaimed funds in the amount of \$3,110.80 to the Treasury Registry in connection with a claim for \$285,304.21 by Movant. Doc. #35; see POC #004 (Proof of Claim for Citimortgage, Inc.).

On December 11, 2024, Movant filed the instant motion, which was accompanied by an Exhibit in the form of a print-out of the Registry confirming that the amount in question was owed but not paid to Movant. Doc. #44. Additional exhibits verifying the identity of Angelo Valletta, Movant's Vice President for Abandoned Property and the individual who filed the instant motion, were attached to the motion. *Id.*

The court is satisfied that Movant has demonstrated entitlement to the unclaimed funds. A review of the California Secretary of State's website reflects that Movant is a corporation in good standing in this state.

The motion was filed on December 11, 2024, and, consistent with its internal procedures, the Clerk's Office generated a *Notice of Hearing on Application for Payment of Unclaimed Funds* on December 12, 2024. Doc. #46.

Although this matter was set on 28 days' notice, the certificate of service was one generated by the clerk's office which contains none of the language pertaining to the requirement of a written response when a matter is set for hearing under LBR 9014-1(f)(1). In light of the Movant's reliance on court-generated documents in its filing, the court is inclined to overlook any procedural defects. The moving papers include a court-generated certificate of service which indicates that Movant properly served the U.S. Attorney's Office as required by 28 U.S.C. § 2042. Accordingly, this matter will proceed as scheduled, and

any opposition may be presented at the hearing. In the absence of any such opposition, this motion will be GRANTED.

3. [10-17946](#)-B-13 **IN RE: JONI CHAVEZ**

MOTION FOR PAYMENT OF UNCLAIMED FUNDS IN THE AMOUNT OF
\$1,555.40 WITH CITIMORTGAGE INC.
12-11-2024 [\[45\]](#)

PETER BUNTING/ATTY. FOR DBT.
CLOSED: 11/15/2011; DEBTOR DISMISSED: 05/14/2011;

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The movant will prepare the order.

Citimortgage Inc. ("Movant") has filed the instant *Motion for Payment of Unclaimed Funds* and seeks to recoup the sum of \$1,555.40 from the unclaimed dividends paid into the court in the underlying Chapter 13 proceeding ("the Proceeding"). Doc. #45. Joni Chavez ("Debtor") commenced the Proceeding on July 15, 2010. Doc. #1. The case was dismissed on May 14, 2011, and closed on May 16, 2011. Docs. ##29-30. On August 12, 2011, the Trustee filed a notice of the turnover of unclaimed funds in the amount of \$1,555.40 to the Treasury Registry in connection with a claim for \$285,304.21 by Movant. Doc. #35; see POC #004 (Proof of Claim for Citimortgage, Inc.).

On December 11, 2024, Movant filed the instant motion, which was accompanied by an Exhibit in the form of a print-out of the Registry confirming that the amount in question was owed but not paid to Movant. Doc. #45. Additional exhibits verifying the identity of Angelo Valletta, Movant's Vice President for Abandoned Property and the individual who filed the instant motion, were attached to the motion. *Id.*

The court is satisfied that Movant has demonstrated that entitlement to the unclaimed funds. A review of the California Secretary of State's website reflects that Movant is a corporation in good standing in this state.

The motion was filed on December 11, 2024, and, consistent with its internal procedures, the Clerk's Office generated a *Notice of Hearing on Application for Payment of Unclaimed Funds* on December 12, 2024. Docs. #47.

Although this matter was set on 28 days' notice, the certificate of service was one generated by the clerk's office which contains none of the language pertaining to the requirement of a written response when a matter is set for hearing under LBR 9014-1(f)(1). In light of the Movant's reliance on court-generated documents in its filing, the court

is inclined to overlook any procedural defects. The moving papers include a court-generated certificate of service which indicates that Movant properly served the U.S. Attorney's Office as required by 28 U.S.C. § 2042. Accordingly, this matter will proceed as scheduled, and any opposition may be presented at the hearing. In the absence of any such opposition, this motion will be GRANTED.

4. [24-13253](#)-B-13 **IN RE: KHALID CHAOU**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-12-2024 [\[23\]](#)

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings and conclusions.

ORDER: The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

If the installment fees due at the time of hearing are paid before the hearing, the order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

5. [24-13253](#)-B-13 **IN RE: KHALID CHAOU**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-3-2024 [\[21\]](#)

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings and conclusions.

ORDER: The court will issue an order.

Khalid Chaoui ("Debtor") filed an *Amended Verification and Master Address List* on December 3, 2024. Doc. #21. A fee of \$34.00 is required at the time of filing these documents. A *Notice of Payment Due* was served on Debtor on November 20, 2024. Doc. #13.

On December 3, 2024, the Clerk of the court issued an *Order to Show Cause re Dismissal of Contested Matter or Imposition of Sanctions* directing Debtor to appear at the hearing and show cause why the motion should not be stricken, sanctions imposed on the party filer and/or

their counsel, or other relief ordered for failure to comply with the provisions of 28 U.S.C. § 1930(b). Doc. #21.

This matter will proceed as scheduled. If the filing fee of \$34.00 is not paid prior to the hearing, the motion may be stricken, and sanctions imposed on the filer and/or its counsel on the grounds stated in the OSC.

6. [23-12760](#)-B-13 **IN RE: CHRISTOPHER RANGEL**
[TCS-1](#)

MOTION TO MODIFY PLAN
11-19-2024 [\[34\]](#)

CHRISTOPHER RANGEL/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 12, 2025, at 9:30 a.m.

ORDER: The court will issue an order.

Christopher Rangel ("Debtor") moves for an order confirming the *First Modified Chapter 13 Plan* dated November 19, 2024. Doc. #39. Debtor's current plan was confirmed on February 22, 2024. Doc. #23. Chapter 13 trustee Lilian G. Tsang ("Trustee") timely objected to confirmation of the plan for the following reason(s):

1. The modified plan calls for Debtor to pay at least \$982.50 per month starting in month 12, which is not feasible according to Debtor's Schedule J.
2. Debtor's Amended Schedule J includes new expenses not previously disclosed, and Trustee requests documentation for them.
3. The plan provides for payment of attorney's fees in excess of what is allowed under LBR 2016-1(c). The attorney fee dividend must be reduced to \$138.13 per month.

Doc. #41.

This motion to confirm plan will be CONTINUED to **February 12, 2025, at 9:30 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or all objections to confirmation are withdrawn, the Debtor shall file and serve a written response to the objections no later than fourteen (14) days before the continued hearing date. The response shall specifically address each issue raised in the objection(s) to confirmation, state whether each issue is disputed or undisputed, and include admissible evidence to support the Debtor's position. Any replies shall be filed and served no later than seven (7) days prior to the hearing date.

If the Debtor elects to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than seven (7) days before the continued hearing date. If the Debtor does not timely file a modified plan or a written response, the objection will be sustained on the grounds stated, and the motion will be denied without further hearing.

7. [24-10360](#)-B-13 **IN RE: REBECCA SAVALA**
[LGT-1](#)

MOTION TO DISMISS CASE
11-25-2024 [\[28\]](#)

LILIAN TSANG/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Continued to February 12, 2025, at 9:30 a.m.

ORDER: The court will prepare the order.

On January 8, 2025, counsel for Debtor in this matter filed a late response to this motion averring that, through inadvertence, a timely response was not filed; that Debtor has made payments since the filing of the motion but not enough to bring her current; and that Debtor requests a continuance in which to either bring her plan current or file an amended plan. The court finds this request well-taken. Accordingly, this matter will be CONTINUED to February 12, 2025, at 9:30 a.m.

8. [04-14062](#)-B-13 **IN RE: ROSEMARY GILL**

MOTION FOR PAYMENT OF UNCLAIMED FUNDS IN THE AMOUNT OF \$
1,590.13 WITH CITIMORTGAGE INC.
12-11-2024 [\[63\]](#)

JAIMEE DORON/ATTY. FOR DBT.
CLOSED: 01/23/2006; DEBTOR DISMISSED: 12/22/2004;

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The movant will prepare the order.

Citimortgage Inc. ("Movant") has filed the instant *Motion for Payment of Unclaimed Funds* and seeks to recoup the sum of \$1,590.13 from the unclaimed dividends paid into the court in the underlying Chapter 13

proceeding ("the Proceeding"). Doc. #63. Rosemary Gill ("Debtor") commenced the Proceeding on May 10, 2004. Doc. #1. The case was dismissed December 22, 2004, and closed on January 23, 2005. Docs. #46, #52. On December 19, 2005, the Trustee filed a notice of the turnover of unclaimed funds in the amount of \$1,590.13 to the Treasury Registry in connection with a claim for \$ 5,571.07 by Movant. Doc. #50; see POC #005 (Proof of Claim for Citimortgage, Inc.).

On December 11, 2024, Movant filed the instant motion, which was accompanied by an Exhibit in the form of a print-out of the Registry confirming that the amount in question was owed but not paid to Movant. Doc. #63. Additional exhibits verifying the identity of Angelo Valletta, Movant's Vice President for Abandoned Property and the individual who filed the instant motion, were attached to the motion. *Id.*

The court is satisfied that Movant has demonstrated that entitlement to the unclaimed funds. A review of the California Secretary of State's website reflects that Movant is a corporation in good standing in this state.

The motion was filed on December 11, 2024, and, consistent with its internal procedures, the Clerk's Office generated a *Notice of Hearing on Application for Payment of Unclaimed Funds* on December 12, 2024. Doc. #64.

Although this matter was set on 28 days' notice, the certificate of service was one generated by the clerk's office which contains none of the language pertaining to the requirement of a written response when a matter is set for hearing under LBR 9014-1(f)(1). In light of the Movant's reliance on court-generated documents in its filing, the court is inclined to overlook any procedural defects. The moving papers include a court-generated certificate of service which indicates that Movant properly served the U.S. Attorney's Office as required by 28 U.S.C. § 2042. Accordingly, this matter will proceed as scheduled, and any opposition may be presented at the hearing. In the absence of any such opposition, this motion will be GRANTED.

3:00 PM

1. [24-13116](#)-B-7 **IN RE: FRANCISCO ZUNIGA**
[24-1048](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
11-14-2024 [1]

U.S. TRUSTEE V. ZUNIGA, JR.
DEANNA HAZELTON/ATTY. FOR PL.

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

DISPOSITION: Continued to February 12, 2025, at 11:00 am

ORDER: The court will issue the order.

The court notes that on December 23, 2024, Plaintiff UST requested and obtained entry of default against Defendant. UST has been ordered to file the necessary documents to obtain a default judgment in the next 30 days. The court will continue this status conference to February 12, 2025, at 11:00 am. If Plaintiff UST has filed the necessary documents and obtained a hearing date for the "prove-up," the status conference will be continued to the hearing date for the "prove-up." If the documents have not been filed or a hearing date set by February 12, Plaintiff UST shall serve and file a status report seven days before the continued status conference.

2. [24-11633](#)-B-7 **IN RE: THOMAS AMARO**
[24-1047](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
11-12-2024 [1]

U.S. TRUSTEE V. AMARO
MICHAEL FLETCHER/ATTY. FOR PL.

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

DISPOSITION: Continued to February 12, 2025, at 11:00 a.m.

ORDER: The court will prepare the order.

It appearing that the Debtor-Defendant in this adversary has not filed an Answer within the time allowed, this Status Conference will be continued to February 12, 2025, at 11:00 a.m. to give the U.S. Trustee opportunity to pursue a default judgment or to otherwise advise the court of the status of the case

3. [24-11739](#)-B-7 **IN RE: SAMUEL GAMERO AND YESENIA GARNICA**
[24-1044](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
11-1-2024 [[1](#)]

TRUCK.NET, LLC V. GAMERO ET AL
DAVID NEALE/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Concluded and dropped from calendar.

No order is required.

On December 17, 2024, the parties in this adversary submitted a stipulation to dismiss with prejudice, with each party to bear its own costs and fees. Accordingly, this Status Conference is CONCLUDED and will be DROPPED from the calendar.

4. [24-10350](#)-B-7 **IN RE: RAYMOND/CAROL TAVITA**
[24-1028](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-27-2024 [[1](#)]

TAVITA V. DEPARTMENT OF EDUCATION/MOHELA ET AL
CAROL TAVITA/ATTY. FOR PL.
RESPONSIVE PLEADING

After posting the original pre-hearing dispositions, the court has supplemented its intended ruling on this matter.

NO RULING.