

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Wednesday, January 27, 2021  
Place: Department A - Courtroom #11  
Fresno, California

**ALL APPEARANCES MUST BE TELEPHONIC**  
**(Please see the court's website for instructions.)**

*Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.*

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

**THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.**

1. [20-13293](#)-A-11     **IN RE: PATRICK JAMES, INC.**  
[MB-12](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
12-22-2020    [[148](#)]

PATRICK JAMES, INC./MV  
HAGOP BEDOYAN/ATTY. FOR DBT.

NO RULING.

2. [20-13293](#)-A-11     **IN RE: PATRICK JAMES, INC.**  
[MB-13](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF MCCORMICK, BARSTOW,  
SHEPPARD, WAYTE & CARRUTH LLP FOR HAGOP T. BEDOYAN, DEBTORS ATTORNEY(S)  
12-23-2020    [[157](#)]

HAGOP BEDOYAN/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

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

McCormick, Barstow, Sheppard, Wayte & Carruth, LLP ("Movant"), attorney for the Patrick James, Inc. ("DIP"), requests an allowance of interim compensation and reimbursement for expenses for services rendered October 9, 2020 through November 30, 2020. Doc. #160. Movant provided legal services valued at \$58,255.00, and requests compensation for that amount. Doc. #160. Movant requests reimbursement for expenses in the amount of \$618.84. Doc. #160.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 11 case. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of general counsel,

Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #104. In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) preparing and filing first day motions and a motion to limit notice; (2) preparing for and attending the initial debtor interview; (3) appearing at DIP's 341 meeting; (4) negotiating with suppliers and creditors and determining whether to assume executory contracts; (5) preparing and filing an motion for administrative expense under § 503(b)(9); (6) preparing and filing DIP's status report and monthly operating report; and (7) preparing and filing employment applications. Doc. #160. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$58,255.00 and reimbursement for expenses in the amount of \$618.84. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consisted with the priorities of the Bankruptcy Code.

3. [20-13293](#)-A-11     **IN RE: PATRICK JAMES, INC.**  
[MB-14](#)

MOTION FOR COMPENSATION FOR STAPLETON GROUP, INC., OTHER PROFESSIONAL(S)  
12-23-2020    [\[164\]](#)

STAPLETON GROUP, INC./MV  
HAGOP BEDOYAN/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

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

The Stapleton Group, Inc. ("Movant"), financial consultant for the Patrick James, Inc. ("DIP"), requests an allowance of interim compensation and reimbursement for expenses for services rendered October 9, 2020 through November 30, 2020. Doc. #167. Movant provided financial services valued at \$26,533.00, and requests compensation for that amount. Doc. #167.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a professional person. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #105. In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) reviewing and analyzing DIP's sales reports; (2) analyzing and forecasting DIP's cash flow and creating budgets; (3) analyzing and modeling DIP's revenue; (4) negotiating with critical vendors, suppliers, and creditors; (5) engaging with DIP's banks Wells Fargo and UMB; (6) revising and analyzing DIP's monthly operating report; and (7) assisting in hiring for payroll department and new controller. Doc. #167. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$26,533.00. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

4. [20-13293](#)-A-11     **IN RE: PATRICK JAMES, INC.**  
[MB-15](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT  
12-30-2020    [\[177\]](#)

PATRICK JAMES, INC./MV  
HAGOP BEDOYAN/ATTY. FOR DBT.

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on January 21, 2021. Doc. #199.

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
12-30-2020    [\[181\]](#)

PATRICK JAMES, INC./MV  
HAGOP BEDOYAN/ATTY. FOR DBT.

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

DISPOSITION:        Granted.

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

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

By the motion filed December 30, 2020, Patrick James, Inc. ("DIP"), the debtor and debtor in possession in this chapter 11 subchapter V case, asks the court for authorization to assume the executory contract originally effective April 1, 2007 (Ex. A, Doc. #184) with Phoenix Direct, LLC ("Phoenix") (the "Contract"). Doc. #181. Under the Contract, Phoenix provides e-commerce, email, and fulfillment services to DIP. Doc. #183.

11 U.S.C. § 365(a) states that "subject to the court's approval, [the debtor in possession] may assume . . . any executory contract . . . or unexpired lease of the debtor."

In evaluating a decision to assume an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." Agarwal v. Pomona Valley Med. Grp., Inc. (In re Pomona Valley Med. Grp., Inc.), 476 F.3d 665, 670 (9th Cir. 2007); In re Hertz, 536 B.R. 434, 442 (Bankr. C.D. Cal. 2015). The bankruptcy court should approve the assumption of an executory contract under § 365(a) unless the debtor in possession's conclusion is based on bad faith, whim, or caprice. Pomona Valley, 476 F.3d at 670. If there has been a default in the executory contract, the default must be cured and future performance assured. 11 U.S.C. § 365(b).

Here, DIP states that assumption of the Contract is important to DIP's successful reorganization because DIP requires Phoenix's services to maintain an online presence and generate online sales. Decl. of Patrick M. Mon Pere,

Doc. #183. The Contract allows DIP to maximize net income and repay creditors. Decl., Doc. #183. DIP will cure the arrearage and remain current with all ongoing postpetition obligations under the Contract. Decl., Doc. #183. The court finds that DIP's decision to assume the Contract is based on sound business judgment.

Accordingly, DIP is authorized to assume the Contract with Phoenix in conformance with DIP's motion (Doc. #181).

1. [17-11618](#)-A-7     **IN RE: JOE/NATALIE NINO**  
[PFT-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH  
CHARLES LONG AND SHERRY LONG AND/OR MOTION FOR COMPENSATION FOR  
THORNTON DAVIDSON, SPECIAL COUNSEL(S)  
12-21-2020    [\[51\]](#)

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

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

DISPOSITION:       Denied without prejudice.

ORDER:                The court will issue an order.

The motion will be DENIED WITHOUT PREJUDICE. Service of the motion and supporting papers does not comply with the Federal Rule of Bankruptcy Procedure 2002(a)(3) and (a)(6), which requires notice, by mail, to all creditors of a hearing on approval of the compromise or settlement of a controversy and of a hearing on any entity's request for compensation or reimbursement in excess of \$1,000, respectively.

Additionally, LBR 9014-1(d)(3)(A) requires a motion "set forth the relief or order sought" and "state with particularity the factual and legal grounds therefor. Legal grounds for the relief means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability." LBR 9014-1(d)(3)(A). The motion and supporting documents do not cite any statute, rule, case, or common law doctrine supporting special counsel's request for reimbursement of expenses or include sufficient evidence for the court to grant such relief.

The court urges counsel to review the federal and local rules in order to be compliant in future matters. The local rules can be accessed on the court's website at <http://www.caeb.circ9.dcn/LocalRules.aspx>.

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-18-2020    [\[14\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV  
MICHAEL REID/ATTY. FOR DBT.  
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION:        Granted.

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

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

The movant, 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 2018 Toyota 4Runner ("Vehicle"). Doc. #14.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least five complete pre-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$4,641.57 plus late fees of \$178.52. Doc. #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 the debtor is in chapter 7. Id. The Vehicle is valued at \$35,125.00 and the debtor owes \$39,213.93. Doc. #16.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law



and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. Movant has had possession of the Vehicle as of October 16, 2020, which was before this chapter 7 case was filed on November 25, 2020.

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

3. [20-13731](#)-A-7     **IN RE: TIMOTHY BUTTS**  
[EMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-30-2020    [\[20\]](#)

BROKER SOLUTIONS INC./MV  
MICHAEL REID/ATTY. FOR DBT.  
ERIN MCCARTNEY/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

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

The movant, Broker Solutions Inc. dba New American Funding ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to real property located at 644 Lim St., Merced, California ("Property"). Doc. #20.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least four complete pre-

and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$7,503.36 and the entire balance of \$244,823.13 is due. Doc. #22.

The court also finds that the debtor does not have any equity in the Property and the Property is not necessary to an effective reorganization because the debtor is in chapter 7. The property is valued at \$263,580.00 and the debtor owes \$284,855.13. Doc. #20.

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

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least four payments, both pre- and post-petition to Movant.

4. [20-10532](#)-A-7     **IN RE: LEE/LUCINDA PHILLIPS**  
[SL-1](#)

MOTION TO COMPEL ABANDONMENT  
12-23-2020    [[22](#)]

LEE PHILLIPS/MV  
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

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

Lee Jay Earl Phillips and Lucinda Marie Phillips (together, "Debtors"), the chapter 7 debtors in this case, move the court to order the trustee to abandon property of the estate known as the single-family residence located at 438 E. Putnam Ave., Porterville, CA 93257 (the "Property"). Doc. #22. Debtors assert that they have no non-exempt equity in the Property and the Property therefore

has no value to the bankruptcy estate. Doc. #22. No opposition has been filed in response to this motion.

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

Here, Debtors do not allege that the Property is burdensome to the estate. Mot., Doc. #22. Therefore, Debtors must establish that the Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Debtors' Property is valued at \$320,000.00 and is encumbered by a mortgage totaling \$225,423.45. Schedule D, Doc. #11 Decl. of Lee Jay Earl Phillips, Doc. #24. Under California Civil Procedure Code § 704.730, Debtors claimed a \$100,000.00 exemption in the Property. Schedule C, Doc. #1; Decl., Doc. #24. The court finds that Debtors have met their burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate.

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

5. [12-60536](#)-A-7      **IN RE: JEFFREY/MARY SAPPPIE**  
[JDR-2](#)

MOTION TO AVOID LIEN OF UNIFUND CCR PARTNERS  
12-28-2020    [\[26\]](#)

JEFFREY SAPPPIE/MV  
JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION:      Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered

and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Jeffrey Carl Sappie and Mary Ellen Sappie (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Unifund CCR Partners ("Creditor") on their residential real property commonly referred to as 47651 Hopi Ave., Coarsegold, CA 93614 (the "Property"). Doc. #26; Am. Schedule C, Doc. #24.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under section 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in section 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

A judgment was entered against Mary E. Sappie in the amount of \$8,797.39 in favor of Creditor on August 17, 2012. Ex. B, Doc. #30. The abstract of judgment was recorded in Madera County on October 30, 2012. Ex. B, Doc. #30. The lien attached to Debtors' interest in the Property located in Madera County. Doc. #26. Debtors' Schedule D reflects a first mortgage lien on the Property in favor of Bank of America, N.A. in the amount \$152,663.00. Schedule D, Doc. #1; Decl. of Jeffrey Carl Sappie, Doc. #29. Debtors also assert the existence of a mortgage lien against the Property in favor of Gateway Business Bank, DBA Mission Hills Mortgage Bankers, though this lien is not reflected in Debtors' schedules. However, the exclusion of the Gateway Business Bank lien does not alter the statutory calculation. Debtors claim an exemption of \$14,347.00 in the Property under California Code of Civil Procedure § 703.140(b)(1). Am. Schedule C, Doc. #24. Debtors assert a market value for the Property as of the petition date at \$133,314.00. Decl., Doc. #29.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$8,797.39
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$152,663.00
Amount of Debtors' claim of exemption in the Property	+	\$14,347.00
	sum	\$175,807.39
Value of Debtors' interest in the Property absent liens	-	\$133,314.00
Extent of impairment of Debtors' exemption	=	\$42,493.39

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

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

MOTION TO PAY  
12-22-2020    [\[33\]](#)

PETER FEAR/MV  
SUSAN HEMB/ATTY. FOR DBT.  
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION:      Granted.

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

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

Peter L. Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of F & K Rock & Sand, Inc. ("Debtor"), moves the court for an order authorizing the payment of \$826.00 to the State of California as an administrative income tax expense and for authorization to pay an additional amount for any unexpected tax liabilities without further court approval. Doc. #35.

11 U.S.C. § 503(b)(1)(B) states that, after notice and a hearing, administrative expenses shall be allowed for "any tax [] incurred by the estate, whether secured or unsecured, including property taxes . . . except a tax of a kind specified in section 507(a)(8) of this title[.]" "Pursuant to this subsection of § 503, a claim is entitled to allowance as an administrative expense if two requirements are satisfied: the tax must be incurred by the estate and the tax must not be a tax of a kind specified in § 507[(a)(8)]." Towers for Pacific-Atlantic Trading Co. v. United States (In re Pacific-Atlantic Trading Co.), 64 F.3d 1292, 1298 (9th Cir. 1995). Here, Trustee has shown that the tax was incurred by the estate, and the tax is not a tax of the kind specified in § 507(a)(8).

Accordingly, this motion is GRANTED. Trustee is authorized to pay an additional amount not to exceed \$1,000 for any unexpected tax liability incurred by the estate and not for a tax of a kind specified in § 507(a)(8).

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)  
12-16-2020    [\[27\]](#)

JAMES SALVEN/MV  
SUSAN HEMB/ATTY. FOR DBT.

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

DISPOSITION:        Granted.

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

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

James E. Salven ("Movant"), accountant for chapter 7 trustee James Salven ("Trustee"), requests an allowance of final compensation and reimbursement for expenses for services rendered November 30, 2020 through December 16, 2020. Doc. #27. Movant provided accounting services valued at \$1,952.50, and requests compensation for that amount. Doc. #27. Movant requests reimbursement for expenses in the amount of \$148.44. Doc. #51.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) compiling data from financial statements; (2) processing returns; and (3) preparing fee and employment applications. Ex. A, Doc. #30. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$1,952.50 and reimbursement for expenses in the amount of \$148.44. Trustee is authorized to make a combined payment of \$2,100.94, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

8. [20-13354](#)-A-7     **IN RE: EMMANUEL/REBECCA MENA**  
[DRJ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-17-2020    [[14](#)]

ANTONIO ESPINOZA/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
DAVID JENKINS/ATTY. FOR MV.

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

DISPOSITION:        Denied without prejudice.

ORDER:                The court will issue an order.

The motion will be DENIED WITHOUT PREJUDICE. Service of the motion and supporting papers does not comply with the Federal Rules of Bankruptcy Procedure ("FRBP" or "Rule"). FRBP 4001(a)(1) requires that a motion "for relief from an automatic stay provided by the Code . . . shall be made in accordance with Rule 9014[.]" FRBP 9014 states that "[t]he motion shall be served in the manner provided for service of a summons and complaint by Rule 7004[.]" FRBP 7004 requires service by first class mail.

Here, the chapter 7 trustee was not served by first class mail with the motion and related pleadings as required by FRBP 7004(b)(1). Instead, the chapter 7 trustee was served pursuant to FRBP 9036. Doc. #19. However, FRBP 9036 "does not apply to any pleading or other paper required to be served in accordance with Rule 7004." Accordingly, service of the motion and related pleadings is inadequate.

9. [20-13756](#)-A-7     **IN RE: DENNIS/KAREN CHABIEL**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-21-2020    [[16](#)]

TD AUTO FINANCE LLC/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
JENNIFER WANG/ATTY. FOR MV.  
NON-OPPOSITION

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

DISPOSITION:        Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, TD Auto Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2017 Nissan Rogue ("Vehicle"). Doc. #16.

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 debtors do not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least five complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$3,054.43. Doc. #19.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. Id. The Vehicle is valued at \$15,025.00 and the debtors owe \$21,879.75. Doc. #16. According to the debtors' Statement of Intention, the Vehicle will be surrendered.

The court notes the debtors' non-opposition filed December 30, 2020. Doc. #24.

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

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



MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-17-2020    [\[19\]](#)

FREEDOM MORTGAGE CORPORATION/MV  
RAYMOND PEREZ/ATTY. FOR DBT.  
DANE EXNOWSKI/ATTY. FOR MV.  
DISCHARGED 11/16/2020

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

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

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

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

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on November 16, 2020. Doc. #17. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Freedom Mortgage Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a piece of real property located at 12222 Hawksmoor Street, Bakersfield, California ("Property"). Doc. #19

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least 3 complete post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$6,401.43 and the entire balance of \$263,047.06 is due. Doc. #22.

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

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

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

11. [20-13785](#)-A-7     **IN RE: BRANDON/JENIFER THACKER**  
[DJP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-12-2021    [[11](#)]

EDUCATIONAL EMPLOYEES CREDIT UNION/MV  
GRISELDA TORRES/ATTY. FOR DBT.  
DON POOL/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The movant, Educational Employees Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2019 Ford Explorer XLT Sport Utility 4D ("Vehicle"). Doc. #11

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 debtors do not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors are one payment past due in the amount of \$795.54 plus fees of \$350.00. Doc. #13.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. The debtors value the Vehicle at \$25,224.00 and the amount owed to Movant is \$36,138.67. Doc. #11. According to the debtors' Statement of Intention, the Vehicle will be surrendered.

The court notes the debtors' non-opposition filed January 20, 2021. Doc. #18.

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

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

12. [20-12493](#)-A-7     **IN RE: STEPHANIE ORTIZ**  
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-13-2021    [\[35\]](#)

AMERICAN HONDA FINANCE CORPORATION/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
VINCENT FROUNJIAN/ATTY. FOR MV.  
DISCHARGED 1/5/21

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on January 5, 2021. Doc. #33. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, American Honda Finance Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2016 Honda Accord ("Vehicle"). Doc. #35.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least two complete post-

petition payments. Movant has produced evidence that the debtor is delinquent by at least \$947.58 plus late charges and fees of \$253.56. Doc. #35.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. Movant values the Vehicle at \$9,175.00 and the amount owed to Movant is \$12,509.43. Doc. #39.

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

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

13. [20-13153](#)-A-7     **IN RE: JULIO ALVAREZ**  
[DMS-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
12-29-2020    [[16](#)]

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

DISPOSITION:     Conditionally denied.

ORDER:             The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtor shall attend the meeting of creditors rescheduled for February 2, 2021 at 2:00 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtors' discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.