



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, January 29, 2025
Department A – Courtroom #11
Fresno, California

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at, Courtroom #11 (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 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 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 who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest 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 appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

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.

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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. [24-11422](#)-A-12 **IN RE: IGNACIO/CASAMIRA SANCHEZ**
[FW-16](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR
PETER L. FEAR, DEBTORS ATTORNEY(S)
12-23-2024 [[157](#)]

PETER FEAR/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 prior to the hearing date 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.

Fear Waddell, P.C. ("Movant"), counsel for Ignacio Sanchez and Casamira Ada Sanchez (together "Debtors"), requests allowance of interim compensation and reimbursement for expenses for services rendered from May 28, 2024 through November 30, 2024. Doc. #157. Movant provided legal services valued at \$73,026.50, and requests compensation for that amount. Id. Movant incurred expenses in the amount of \$1,496.49 and requests reimbursement for that amount. Id. Movant requests fees and expenses in the amount of \$13,060.49 to be paid through Debtors' confirmed chapter 12 plan and \$61,462.50 to be paid from a retainer held by Movant. Id. This is Movant's first fee application. Id. Debtors reviewed the application and have no objection. 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 12 case. 11 U.S.C. § 330(a)(1), (4)(B). 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 schedules and supporting documents; (2) preparing and filing a motion to sell; (3) corresponding with different potential buyers of real property; (4) clarifying issues of sales contracts with Debtors and real estate agent; (5) attending meeting of creditors; (6) communicating with Debtors' financial

consultant and the IRS regarding tax claim issues; (7) preparing and filing chapter 12 plan and supporting documents and confirming plan; (8) preparing and filing employment and fee applications; and (9) general case administration. Exs. A & B, Doc. #161; Decl. of Peter L. Fear, Doc. #159. 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 \$73,026.50 and reimbursement for expenses in the amount of \$1,496.49, for a total combined payment of \$74,522.99 to be paid in a manner consistent with the terms of the confirmed plan. 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.

2. [24-11967](#)-A-11 **IN RE: LA HACIENDA MOBILE ESTATES, LLC**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
5-9-2024 [[1](#)]

GREGORY TAYLOR/ATTY. FOR DBT.

NO RULING.

3. [24-11967](#)-A-11 **IN RE: LA HACIENDA MOBILE ESTATES, LLC**
[OHS-3](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
8-30-2024 [[224](#)]

TRAILS END UNITED FOR CHANGE/MV
GREGORY TAYLOR/ATTY. FOR DBT.
MARC LEVINSON/ATTY. FOR MV.

NO RULING.

4. [23-12784](#)-A-11 **IN RE: KODIAK TRUCKING INC.**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
12-15-2023 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

CONFIRMATION HEARING RE: AMENDED CHAPTER 11 SMALL BUSINESS SUBCHAPTER V
PLAN
10-29-2024 [[365](#)]

PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted; plan confirmed pursuant to 11 U.S.C. § 1191(b)
if issues regarding duplicative plan sections and Class 3
adequately addressed.

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.

Kodiak Trucking Inc. ("Debtor"), the debtor and debtor in possession in this Subchapter V Chapter 11 case, moves the court for confirmation of its Modified Subchapter V Plan of Reorganization, dated October 25, 2024, as modified by (i) Notice of Errata and Corrected Exhibit C to Plan filed on November 1, 2024, and (ii) Stipulation Between Debtor and eCapital Freight Factoring Corp. Regarding Confirmation of Debtor's Plan filed on January 7, 2025 (collectively, the "Plan"). Doc. ##365, 370, 382. The proposed changes to the Plan as set forth in the stipulation between Debtor and eCapital Freight Factoring Corp. (a) reduce the time for Debtor to modify an amortization schedule related solely to the claim of eCapital Freight Factoring Corp., and (b) require any reserve over \$1 million as of March 31 starting in 2026 to be paid as additional plan payments that will pay creditors on an accelerated basis. Doc. #382. The court finds that the proposed modifications only benefit holders of claims and do not require re-solicitation of the Plan.

The hearing to confirm the Plan was set by order of the court filed on November 1, 2024 ("Order"). Doc. #371. In the Order, the court ordered transmission of the Plan, Order, ballots, and notice of the confirmation hearing by November 19, 2024; acceptances or rejections of the Plan, and objections to confirmation by December 17, 2024; and responses to objections, tabulation of ballots, and brief by January 22, 2025. Doc. #371. The court finds notice and service of the Plan and related documents were proper and the confirmation hearing should proceed. Doc. #379. No objections to confirmation of the Plan have been filed.

As a procedural matter, the Plan duplicates certain section numbers so there are two of the following twelve Plan sections: (a) 6.01; (b) 6.01.1; (c) 6.01.2; (d) 6.01.3; (e) 6.02; (f) 6.02.1; (g) 6.02.2; (h) 6.02.3; (i) 6.03; (j) 6.03.1; (k) 6.03.2; and (l) 6.03.3. See Plan, Table of Contents & pp. 10-16, Doc. #365. At the hearing, counsel for Debtor and the Subchapter V Trustee shall be prepared to suggest how to remedy this issue.

The court finds that the Plan meets the requirements of 11 U.S.C. § 1190. Specifically, the Plan includes a brief history of Debtor's business operations, a liquidation analysis, and projections with respect to the ability of Debtor to make payments under the proposed Plan as required by § 1190(1). The Plan provides for the submission of all or such portion of Debtor's future earnings or other future income to the supervision and control of the Subchapter V Trustee as is necessary for the execution of the Plan as required by § 1190(2). The court finds § 1190(3) does not apply to the Plan.

Section 1191 of the Bankruptcy Code governs plan confirmation in Subchapter V. Here, § 1129(a)(8) has not been satisfied because Classes 2.1 through 2.11, 2.14 through 2.30, 2.36, 3, 4, 6, 7 and 8, each consisting of secured claims, and Class 10, consisting of non-tax priority unsecured claims, did not return ballots accepting the Plan or affirmatively consent in writing to confirmation of the Plan. Doc. #387. Thus, the Plan must be confirmed under § 1191(b).

In the Plan, Debtor requests confirmation on a non-consensual basis under § 1191(b). 11 U.S.C. § 1191(b) provides in relevant part:

[I]f all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1191(b). For a plan to be fair and equitable with respect to a class of secured claims that is impaired and has not accepted the Plan, the Plan must meet the requirements of § 1129(b)(2)(A). 11 U.S.C. § 1191(b), (c)(1). The Plan does not need to meet the requirements of § 1191(c)(2) and § 1191(c)(3) with respect to classes of secured claims. In re Trinity Family Practice & Urgent Care PLLC, Case No. 23-70068, 2024 Bankr. LEXIS 1234, at *17, n.61 (Bankr. W.D. Tex. May 24, 2024). For a plan to be fair and equitable with respect to a class of unsecured claims that is impaired and has not accepted the Plan, the Plan must meet the requirements of § 1191(c)(2) and § 1191(c)(3) as to those classes.

With respect to § 1129(a)(1), the Plan complies with the applicable provisions of Chapter 11 and meets the applicable mandatory provisions of 11 U.S.C. § 1123(a). The provisions of § 1123(a)(6) of the Code, which relate to the issuance of securities pursuant to a reorganization plan, are not applicable in this case. The provisions of § 1123(a)(8) do not apply in a Subchapter V case. 11 U.S.C. § 1181. The Plan:

- (1) Designates classes of claims other than claims of a kind specified in Bankruptcy Code sections 507(a)(2), 507(a)(3), or 507(a)(8) as required by § 1123(a)(1). The claims are Classes 1.1, 1.2, 2.1 through 2.36, 3 through 8 (secured claims); Class 10 (non-tax priority unsecured claims); Class 11 (general unsecured claims); and Class 12 (equity interests).
- (2) Specifies the classes that are not impaired under the Plan (Classes 5 and 12) as required by § 1123(a)(2).
- (3) Specifies the treatment of any class of claims or class of interest which is impaired under the Plan (Classes 1.1, 1.2, 2.1 through 2.36, 3, 4, 6, 7, 8, 10 and 11) as required by § 1123(a)(3).
- (4) Provides for the same treatment for each claim or interest of a particular class as required by § 1123(a)(4).
- (5) Provides adequate means for the implementation and execution of the Plan as required by § 1123(a)(5).
- (6) Contains no provisions inconsistent with the interests of creditors and equity security holders and public policy with respect to the manner of selection of any officer, director, or trustee under the

Plan and any successor to such officer, director, or trustee as required by § 1123(a)(7).

- (7) Provides for the assumption or rejection of all executory contracts and unexpired leases existing as of the petition date in accordance with Debtor's sound business judgment as required by § 1123(b)(2).

Debtor, as proponent of the Plan, provided adequate disclosure regarding the Plan to all creditors and interest holders in good faith and has complied with the applicable provisions of Chapter 11 as required by § 1129(a)(2).

The Plan has been proposed in good faith and not by any means forbidden by law as required by § 1129(a)(3).

Pursuant to § 1129(a)(4), the Plan provides that payments made or to be made to Debtor's attorneys and other professionals in connection with the case or the Plan are subject to approval of the court.

The Plan provides that Debtor will be responsible for implementation of the Plan through Debtor's current management, President Marco Arambula, and the Subchapter V Trustee will continue to serve until all plan payments are made, which is consistent with interests of creditors and equity security holders and with public policy as required by § 1129(a)(5).

Section 1129(a)(6) is inapplicable and no changes in regulatory rates are provided for in the Plan.

Section 1129(a)(7) requires each holder of a claim or interest in an impaired class has either accepted the Plan or will receive an amount equal to or greater than the amount such holder of a claim or interest would receive in a Chapter 7 case as of the effective date of the Plan. No member of Classes 2.1 through 2.11, 2.14 through 2.30, 2.36, 3, 4, 6, 7, 8 and 10 returned a ballot. The Plan complies with § 1129(a)(7) for Classes 2.1 through 2.11, 2.14 through 2.30, 2.36, 4, 6, 7, 8 and 10, but does not comply with respect to Class 3.

For Classes 2.1 through 2.11, 2.14 through 2.30, 2.36, 4, 6, 7 and 8, interest shall accrue on each claim after the effective date of the Plan ("Effective Date") at the "Till Rate," which is equal to the prime rate most recently published in the Wall Street Journal prior to the Effective Date plus one percentage point, and each claim shall be paid in full with interest within sixty months of the Effective Date. Plan, §§ 6.03.3 (first reference), 6.02.3 (second reference), 6.04.3, 6.05.1 & 6.06.3, Doc. #365. Because each claim in Classes 2.1 through 2.11, 2.14 through 2.30, 2.36, 4, 6, 7 and 8 will receive interest on the delayed payment of their claim, each of these classes will receive an amount equal to or greater than the amount such holder of a claim would receive in a Chapter 7 case.

According to the liquidation analysis, Class 3 is fully secured so the Class 3 claim would be paid in full on the Effective Date if this case were a Chapter 7 case. However, the arrears on the Class 3 claim are to be paid over 60 months without interest. Plan, § 6.01.3 (second reference), Doc. #365. Because Debtor is delaying payment of the arrears on the Class 3 claim and not paying interest to compensate the Class 3 claimant for the delayed stream of payments, the Class 3 claimant, who would be paid in full on the Effective Date if this case were a Chapter 7 case, is not receiving the same amount under the Plan as the Class 3 claimant would receive if this case were a Chapter 7 case as of the Effective Date. Thus, the Plan does not comply with § 1129(a)(7) as to Class 3.

Class 10, consisting of non-tax priority unsecured claims, shall be paid pro rata, and per the plan projections, Class 10 will be paid in full. Plan,

§ 6.07.3, Doc. #365; Ex. D, Doc. #385. According to the liquidation analysis attached to the Plan, non-tax priority unsecured claims would receive no distribution in a Chapter 7 case. Ex. A, Doc. #385. Thus, Class 10 will receive more under the Plan than in a Chapter 7 case.

Section 1129(a)(8) has not been satisfied because Classes 2.1 through 2.11, 2.14 through 2.30, 2.36, 3, 4, 6, 7, 8 and 10 did not return ballots accepting the Plan or affirmatively consent in writing to confirmation of the Plan. Bell Road Inv. Co. v. M Long Arabians (In re M Long Arabians), 103 B.R. 211, 215-16 (B.A.P. 9th Cir. 1989) (holding that when no creditors within a class vote to accept a plan, that class is deemed to have rejected the plan). Nevertheless, Section 1129(a)(8) need not be satisfied if the Subchapter V plan is confirmed, as here, under § 1191(b).

Pursuant to § 1129(a)(9), the Plan provides for treatment of claims under 11 U.S.C. §§ 507(a)(1), 507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6), 507(a)(7) and 507(a)(8), to the extent there are any, in a manner consistent with 11 U.S.C. § 1129(a)(9).

Section 1129(a)(10) need not be satisfied if the Subchapter V plan is confirmed, as here, under § 1191(b).

Regarding § 1129(a)(11), the Plan provides that Debtor will pay the plan payment amount for 60 months into a distribution fund that will be used to pay creditors in this case. Plan, Doc. #365; Ex. B, Doc. #385. Based on the evidence submitted by Debtor, the court finds that the Plan is feasible and confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of Debtor or any successor to Debtor under the Plan even if the claim of Vivian Capital Group, LLC is allowed as a fully secured claim at the amount asserted in the amended proof of claim filed by Vivian Capital Group, LLC on December 26, 2024. Decl. of Marco Arambula, Doc. #386; Ex. D, Doc. #385.

Section 1129(a)(12) has been satisfied because all fees due under 28 U.S.C. § 1930 have been paid.

Sections 1129(a)(13)-(16) are not applicable to this case.

Pursuant to § 1191(c)(1), with respect to a class of secured claims, the Plan meets the requirements of § 1129(b)(2)(A) with respect to Classes 2.1 through 2.11, 2.14 through 2.30, 2.36, 4, 6, 7 and 8, but not as to Class 3. Section 1129(b)(2)(A) provides that a plan is "fair and equitable" with respect to a class of secured claims if the plan provides:

- (1) the secured claimant retains his or her liens securing repayment of the creditor's claim, and
- (2) the secured claimant receives the present value of his or her claim on the effective date of the plan.

The court finds that the Plan is fair and equitable as to Classes 2.1 through 2.11, 2.14 through 2.30, 2.36, 4, 6, 7 and 8. The Plan satisfies 11 U.S.C. § 1129(b)(2)(A) with respect to Classes 2.1 through 2.11, 2.14 through 2.30, 2.36, 4, 6, 7 and 8 by providing that each secured claim remains fully secured and will be paid in full with interest through monthly payments over no more than 60 months after the Effective Date. Plan, §§ 6.03.3 (first reference), 6.01.3 (second reference), 6.04.3, 6.05.1 & 6.06.3, Doc. #365.

However, as noted above with respect to § 1129(a)(7), Class 3 is not receiving interest on the deferred payments of its arrears that are paid over 60 months

under the Plan. Plan, § 6.01.3 (second reference), Doc. #365. Because Class 3 is not receiving the present value on its arrears as of the Effective Date of the Plan and Class 3 is not receiving interest on those delayed payments, Class 3 is not receiving the present value of its claim on the Effective Date of the Plan. The Plan, as written, does not comply with § 1129(b)(2)(A)(i)(II) as to Class 3.

For confirmation pursuant to 11 U.S.C. § 1191(b), because Class 10 consists of members holding non-tax priority unsecured claims, the Plan must comply with § 1191(c)(2) and (c)(3). Section 1191(c)(2) requires that all projected disposable income received in the five years of the Plan be applied to make payments under the Plan or that the value of the property to be distributed under the Plan is greater than the projected disposable income of Debtor during the five-year period of the Plan. While "projected disposable income" is not defined in the Bankruptcy Code, § 1191(d) provides that, for purposes of § 1191, "the term 'disposable income' means the income that is received by the debtor and that is not reasonably necessary to be expended . . . for the payment of expenditures necessary for the continuation, preservation or operation of the business of the debtor." 11 U.S.C. § 1191(d)(2).

Based on the Plan projections, sufficient projected disposable income Debtor will receive during the five-year term of the Plan is being applied to make payments under the Plan such that all claims will be paid in full. Ex. D, Doc. #385. Because sufficient projected disposable income is being applied to make payments under the Plan such that all claims will be paid in full, the court finds that the Plan complies with 11 U.S.C. § 1191(c)(2)(A).

Section 1191(c)(3) requires that either Debtor will be able to make all payments under the Plan or there is a reasonable likelihood that Debtor will be able to make all payments under the Plan and the Plan provides appropriate remedies in the event Plan payments are not made.

With respect to § 1191(c)(3)(A), payments under the Plan are to be made from future income of Debtor. Plan, § 7.03, Doc. #365; Ex. D, Doc. #385. Debtor owns and operates a construction trucking service. Arambula Decl., Doc. #386. Based on Debtor's filed monthly operating reports, amended monthly operating reports and updated projections, the court finds Debtor will be able to make all payments under the Plan, so the Plan satisfies § 1191(c)(3)(A). Doc. ##83, 222, 223, 229, 251, 307, 308, 321, 355, 363, 375, 380, 383, 385 (Ex. D).

With respect to § 1191(c)(3)(B), because the Plan satisfies § 1191(c)(3)(A), the Plan does not need to provide any remedies to protect the holders of claims or interests in the event payments due under the Plan are not made. Thus, § 1191(c)(3)(B) does not need to be satisfied.

Accordingly, subject to Debtor adequately addressing the issues raised above regarding duplicative plan sections and the treatment of Class 3, confirmation of the Plan is proper under 11 U.S.C. § 1191(b), and the Plan will be confirmed under 11 U.S.C. § 1191(b).

1. [24-12804](#)-A-7 **IN RE: JOHN MURDOCH**
[EPE-1](#)

MOTION TO AVOID LIEN OF GFCS INC.
12-31-2024 [\[19\]](#)

JOHN MURDOCH/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date 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.

John Tyree Murdoch ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of GCFS, Inc. ("Creditor") on the residential real property commonly referred to as 986 N. Wilson Avenue, Fresno, California 93728 (the "Property"). Doc. #19; Schedule C & D, Doc. #1.

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

Debtor filed the bankruptcy petition on September 27, 2024. Doc. #1. A judgment was entered against Debtor in the amount of \$9,695.84 in favor of Creditor on December 3, 2004, renewed on March 19, 2012, and renewed again on September 1, 2021. Exs. 2-4, Doc. #22. The renewed abstract of judgment was recorded pre-petition in Fresno County on September 27, 2021, as document number 2021-0157665, in the renewed judgment amount of \$32,402.79. Ex. 4, Doc. #22. The lien attached to Debtor's interest in the Property located in Fresno County. Doc. #19. The Property not encumbered by any lien. Schedule D, Doc. #1. Debtor

claimed an exemption of \$267,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$267,000.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$32,402.79
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$0
Amount of Debtor's claim of exemption in the Property	+	\$267,000.00
		\$299,402.79
Value of Debtor's interest in the Property absent liens	-	\$267,000.00
Amount Creditor's lien impairs Debtor's exemption		\$32,402.79

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

Debtor has established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED. The proposed order shall state that Creditor's judicial lien is avoided on the subject Property only and include a copy of the abstract of judgment as an exhibit.

2. [24-13122](#)-A-7 **IN RE: MICHAEL HALE**
[CLB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-24-2024 [\[15\]](#)

BANK OF AMERICA, N.A/MV
CHAD BUTLER/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 prior to the hearing date 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Bank of America, N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2023 Entegra CO Odyssey 25R; VIN: 1FDXE4FN1PDD05094 ("Vehicle"). Doc. #15.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least four complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$4,253.90. Decl. of Latisha A. Spady, Doc. #18. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

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 \$80,000.00 and the debtor owes \$118,278.21. Spady Decl., 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 debtor has failed to make at least four pre- and post-petition payments to Movant and the Vehicle is a depreciating asset.

3. [24-13258](#)-A-7 **IN RE: ERNEDINA MADRIGAL**
[PTF-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT
SEC. 341(A) MEETING OF CREDITORS
12-17-2024 [\[18\]](#)

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 6, 2025 at 3:00 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 Federal Rules of Bankruptcy Procedure 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge or file motions for abuse, other than presumed abuse, under

11 U.S.C. § 707, is extended to 60 days after the conclusion of the meeting of creditors.

4. [24-13563](#)-A-7 **IN RE: PENNY COOK**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-20-2024 [\[12\]](#)

NEWTEK SMALL BUSINESS FINANCE LLC/MV
BENNY BARCO/ATTY. FOR DBT.
DAVID MCALLISTER/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 prior to the hearing date 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Newtek Small Business Finance LLC ("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 805 Lyon Avenue, Sanger, CA 93657 ("Property"). Doc. #12.

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 ten complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$74,148.00 and the entire balance of \$809,373.61 is due. Decl. of John D. Strathman, Doc. #14. According to the debtor's Statement of Intention, the Property will be surrendered. Doc. #1.

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 \$592,000.00 and the debtor owes \$809,373.61. Am. Sch. A/B, Doc. #7; Strathman Decl., Doc. #14.

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 ten payments, both pre- and post-petition, to Movant.

5. [24-13066](#)-A-7 **IN RE: MARTHA DUARTE**
[PBB-1](#)

MOTION TO AVOID LIEN OF STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
12-27-2024 [\[13\]](#)

MARTHA DUARTE/MV
PETER BUNTING/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 prior to the hearing date 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.

Martha Marie Duarte ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of State Farm Mutual Automobile Insurance Company ("Creditor") on the residential real property commonly referred to as 6758 East Harwood Avenue, Fresno, California 93727 (the "Property"). Doc. #13; Schedule C & D, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be

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

Debtor filed the bankruptcy petition on October 23, 2024. Doc. #1. A renewed judgment was entered against Debtor in the amount of \$12,631.54 in favor of Creditor on October 14, 2021. Ex. D, Doc. #15. The renewed abstract of judgment was recorded pre-petition in Fresno County on November 8, 2021, as document number 2021-0185036. Ex. D, Doc. #15. The lien attached to Debtor's interest in the Property located in Fresno County. Doc. #13. The Property is encumbered by a first deed of trust in the amount of \$146,768.00. Schedule D, Doc. #1. Debtor claimed an exemption of \$343,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$423,000.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$12,631.54
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$146,768.00
Amount of Debtor's claim of exemption in the Property	+	\$343,000.00
		\$502,399.54
Value of Debtor's interest in the Property absent liens	-	\$423,000.00
Amount Creditor's lien impairs Debtor's exemption		\$79,399.54

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

Debtor has established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED. The proposed order shall state that Creditor's judicial lien is avoided on the subject Property only and include a copy of the abstract of judgment as an exhibit.

6. [24-13368](#)-A-7 **IN RE: KATELYN FRITZ**
[WLG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-13-2025 [\[18\]](#)

GENEVA CAPITAL LLC/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
CHRISTOPHER BEYER/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 matter is DENIED WITHOUT PREJUDICE for improper notice and failure to comply with the Local Rules of Practice ("LBR").

Regarding improper notice, Federal Rules of Bankruptcy Procedure ("Rule") 4001(a)(1) and 9014(b) require service of a motion for relief from stay to be made pursuant to Rule 7004 on both the debtor as well as the chapter 7 trustee. Here, the moving party has attached copies of the exhibits to the certificate of service instead of attaching a list of the parties served. Doc. #22. Because the certificate of service does not have the correct attachment, the court cannot determine whether the debtor and the chapter 7 trustee were served by first-class mail as required by Rule 7004(b)(1).

As a further procedural matter, LBR 9014-1(d)(3)(D) requires in relevant part that "[e]very motion or other request for relief shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested." Here, there is no declaration filed with the motion (Doc. #18) to support the relief sought by the moving party or authenticate the exhibits filed with the motion. Because insufficient evidence was filed and served with the motion for relief from stay, the moving party has not met its required burden of proof or comply with this court's Local Rules of Practice.

The court encourages counsel for the moving party to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

7. [20-10271](#)-A-7 **IN RE: JEFFREY KERBO**

MOTION TO AVOID LIEN OF BANK OF AMERICA
12-15-2024 [\[64\]](#)

JEFFREY KERBO/MV
NICHOLAS WAJDA/ATTY. FOR DBT.
ORIGINALLY SET FOR 2/12/25; ORDER TO RESCHEDULE REJECTED

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

On December 15, 2024, the debtor filed a motion to avoid lien along with a notice of hearing setting this matter for hearing on January 16, 2025 at 11:00 a.m. Doc. ##64-65. On December 17, 2024, the clerk's office issued a memo to counsel for the debtor advising that a corrected notice of hearing needed to be filed because January 16, 2025 at 11:00 a.m. was not a valid date and time for this type of hearing. Doc. #66.

On January 14, 2025, the debtor filed a new notice of hearing setting this matter for hearing on February 12, 2025 at 1:30 p.m. Doc. #70. Also on January 14, 2025, the debtor filed an amended notice of hearing setting the matter for January 29, 2025 at 1:30 p.m. Doc. #71. The motion was set for hearing on less than 28 days' notice and is governed by LBR 9014-1(f)(2). Pursuant to LBR 9014-1(f)(2), written opposition was not required, and any opposition may be raised at the hearing. However, the amended notice of hearing stated that opposition must be filed and served no later than fourteen days before the hearing and that failure to file written response may result in the

court granting the motion prior to the hearing. The amended notice of hearing does not comply with LBR 9014-1(f)(2).

Further, Federal Rule of Bankruptcy Procedure ("Rule") 9014(b) requires a motion to avoid a lien under 11 U.S.C. § 522(f) be served "in the manner provided for service of a summons and complaint by Rule 7004." Service of the motion on Bank of America ("Creditor") does not satisfy Rule 7004.

Rule 7004(h) provides that service on an insured depository institution, such as Creditor, "shall be made by certified mail addressed to an officer of the institution unless" an appearance by an attorney of the institution has been entered, the court orders otherwise, or the institution waives its entitlement to service by designating an officer to receive service. The certificate of service filed in connection with this motion shows that service was made by certified mail but does not show service was made to the attention of anyone. Doc. #65. In addition, this motion does not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022. See Doc. ##64-65; 70-71.

As a further procedural matter, the notice of hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. Additionally, the notice of hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

As a further procedural matter, the motion does not comply with LBR 9004-2(d), which requires exhibits to be filed as a separate document. This motion was filed as a single twenty-four-page document that included the movant's exhibits. Doc. #64.

As a further procedural matter, the motion and supporting papers do not comply with LBR 9014-1(c). "In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6). Here, the motion and related documents did not include a Docket Control Number.

Further, had the motion and supporting papers been filed and served correctly, the motion to avoid lien would have been denied on its merits. LBR 9014-1(d)(3)(D) requires in relevant part that "[e]very motion or other request for relief shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested." Here, there is no declaration filed with the motion (Doc. #64) to support the relief sought by the debtor.

Additionally, in order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B).

11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)). Here, the debtor has provided no analysis or evidence to enable the court to consider the four factors as required by Goswami and Mohring.

The court encourages counsel for the debtor to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

8. [23-12473](#)-A-7 **IN RE: GEORGE/PATRICIA ROSALES**

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-12-2024 [\[46\]](#)

NHUT LE/MV
JOSEPH PEARL/ATTY. FOR DBT.
ANDY LE/ATTY. FOR MV.
DISCHARGED 06/27/2024

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The motion was resolved by stipulation and order entered on January 17, 2025.
Doc. #61.

As a procedural matter, the motion and supporting papers do not comply with Local Rule of Practice ("LBR") 9014-1(c). "In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6). Here, the motion and related documents did not include a Docket Control Number.

The court encourages counsel for the moving party to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

9. [23-11885](#)-A-7 **IN RE: GASPAR REYES**
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-31-2024 [\[17\]](#)

FREEDOM MORTGAGE CORPORATION/MV
LAYNE HAYDEN/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.
DISCHARGED 12/11/2023
WITHDRAWN 1/27/2025

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion for relief from automatic stay on January 27, 2025.
Doc. #25.

10. [24-13597](#)-A-7 **IN RE: BRADLEY MEDINA**
[MPS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-2-2025 [\[24\]](#)

RHB PM VISALIA, INC./MV
MICHAEL SMITH/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether a further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

As an informative matter, the certificate of service filed in connection with this motion (Doc. #29) was filed as a pdf of the fillable version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/2022) with the attachments filed as part of a separate document (Doc. #30) instead of being printed using the print button at the bottom of the last page of the court's form and the appropriate attachment attached to the pdf prior to the certificate of service form being filed with the court.

The movant, RHB PM Visalia, Inc. dba Bruce Evans Property Management ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362 with respect to real property located at 3024 South Byrd Court, Visalia, California

93292 (the "Property"). Doc. #24. Bradley Milhous Medina ("Debtor") filed this chapter 7 bankruptcy case on December 13, 2024. Doc. #1. Movant requests relief from the automatic stay to continue with an unlawful detainer action filed in state court against Debtor pre-petition, RHB PM Visalia, Inc. dba Bruce Evans Property Management v. Bradley Medina, et al., Case No. VCL314318, Superior Court of California, County of Tulare ("State Court Action"), and to proceed under applicable non-bankruptcy law to enforce Movant's remedies to gain possession of the Property. Doc. ##24, 27.

Movant is a property management company. Decl. of Ron Byrd, Doc. #27. On January 1, 2024, Debtor and the owner of the Property, Richard Anderson ("Property Owner"), entered into a written agreement by which Debtor was to pay \$3,000.00 a month in rent to Property Owner. Byrd Decl., Doc. #27; Ex. 1, Doc. #28. On March 20, 2024, Movant and Property Owner entered into an agreement for Movant to manage the Property on behalf of Property Owner. Byrd Decl., Doc. #27; Ex. 2, Doc. #28. Debtor was given notice of Movant's management of the Property on March 22, 2024. Byrd Decl., Doc. #27; Ex. 3, Doc. #28. After July 5, 2024, Debtor ceased making rental payments for the Property. Byrd Decl., Doc. #27. As of December 31, 2024, Debtor owed \$16,050.00 in outstanding rent and late fees. Byrd Decl., Doc. #27; Ex. 6, Doc. #28.

On October 11, 2024, Debtor was served with a 3-day notice to pay past due rent in the amount of \$6,000.00 or quit. Byrd Decl., Doc. #27; Ex. 4, Doc. #28. On November 1, 2024, Movant commenced the State Court Action. Byrd Decl., Doc. #27; Ex. 5, Doc. #28. On December 13, 2024, before the commencement of trial in the State Court Action, Debtor filed the instant bankruptcy case. Byrd Decl., Doc. #27.

The motion does not specify under which subsection of 11 U.S.C. § 362(d) Movant seeks relief from the automatic stay. Ideally, the motion would request relief under one of the subsections of 11 U.S.C. § 362(d) and provide an analysis pertaining to the specific subsection(s). Based on Movant's papers, the court finds that Movant has provided sufficient information to grant relief from the automatic stay under 11 U.S.C. § 362(d) (1).

11 U.S.C. § 362(d) (1) Analysis

11 U.S.C. § 362(d) (1) allows the court to grant relief from the automatic stay for cause. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985). When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court may consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in determining whether to grant relief from the automatic stay" to allow litigation in another forum. Id. The Curtis factors include: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the non-bankruptcy forum has the expertise to hear such cases; (4) whether litigation in another forum would prejudice the interests of other creditors; and (5) the interest of judicial economy and the expeditious and economical determination of litigation for the parties. In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984).

Here, granting Movant's relief from the stay will completely resolve the issue of Debtor's unlawful possession of the Property. Movant manages the Property, and Debtor failed to pay rent for August 2024 and thereafter. On November 1, 2024, Movant initiated the State Court Action to enforce its interest in the Property against Debtor and others. Byrd Decl., Doc. #27; Ex. 5, Doc. #28.

The state court has expertise in unlawful detainer actions with respect to unpaid rent and allowing Movant to pursue a judgment in the State Court Action will not prejudice the interests of other creditors. Finally, the interests of judicial economy favor granting relief from the automatic stay so that Movant can retain possession of the Property and receive damages caused by the unlawful detention of the Property by Debtor and others.

For these reasons, the court finds that cause exists under § 362(d)(1) to lift the stay to permit Movant to proceed with the State Court Action in state court and enforce any resulting judgment.

Conclusion

Accordingly, pending opposition being raised at the hearing, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to proceed under applicable nonbankruptcy law to continue to prosecute the State Court Action against Debtor and to enforce any resulting judgment for unlawful detainer, including all necessary steps to obtain possession of the Property from Debtor. No other relief is awarded.

Because Debtor has not paid rent on the Property since August 2024, the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived to permit movant to proceed with the State Court Action in state court.