



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

Hearing Date: Tuesday, February 11, 2025

Unless otherwise ordered, all matters before the Honorable René Lastreto II, shall be simultaneously: (1) **In Person** at, Courtroom #13 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

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

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

Please also note the following:

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

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

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

Post-Publication Changes: The court endeavors to publish its rulings as soon as possible. However, calendar preparation is ongoing, and these rulings may be revised or updated at any time prior to 4:00 p.m. the day before the scheduled hearings. Please check at that time for any possible updates.

9:30 AM

1. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[WJH-7](#)

CONTINUED MOTION TO COMPEL
10-17-2024 [[768](#)]

SANDTON CREDIT SOLUTIONS
MASTER FUND IV, LP/MV
PETER FEAR/ATTY. FOR DBT.
KURT VOTE/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

2. [24-11015](#)-B-11 **IN RE: PINNACLE FOODS OF CALIFORNIA LLC**
[MB-4](#)

MOTION TO REMOVE THE DEBTOR FROM POSSESSION AND EXPAND THE
POWERS OF THE SUBCHAPTER V TRUSTEE
1-29-2025 [[405](#)]

POPEYES LOUISIANA KITCHEN, INC./MV
MICHAEL BERGER/ATTY. FOR DBT.
HAGOP BEDOYAN/ATTY. FOR MV.
OST 1/30/25

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

DISPOSITION: Continued to March 25, 2025, at 9:30 a.m.

ORDER: The court will prepare the order.

Pursuant to the terms of this court's bench order issued on February 4, 2025, this matter will be CONTINUED to **March 25, 2025, at 9:30 a.m.**

3. [24-11015](#)-B-11 **IN RE: PINNACLE FOODS OF CALIFORNIA LLC**
[MJB-13](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
1-28-2025 [[394](#)]

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

NO RULING.

4. [24-11015](#)-B-11 **IN RE: PINNACLE FOODS OF CALIFORNIA LLC**
[VP-2](#)

MOTION TO REMOVE DEBTOR FROM POSSESSION AND EXPAND THE
POWERS OF THE SUBCHAPTER V TRUSTEE
1-27-2025 [[391](#)]

FLAGSTAR FINANCIAL & LEASING LLC/MV
MICHAEL BERGER/ATTY. FOR DBT.
KEVIN ETZEL/ATTY. FOR MV.

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

DISPOSITION: Continued to March 25, 2025, at 9:30 a.m.

ORDER: The court will prepare the order.

Pursuant to the terms of this court's bench order issued on February
4, 2025, this matter will be CONTINUED to **March 25, 2025**.

5. [24-11016](#)-B-11 **IN RE: TYCO GROUP LLC**
[MB-4](#)

MOTION TO REMOVE THE DEBTOR FROM POSSESSION AND EXPAND THE
POWERS OF THE SUBCHAPTER V TRUSTEE
1-29-2025 [[300](#)]

POPEYES LOUISIANA KITCHEN, INC./MV
MICHAEL BERGER/ATTY. FOR DBT.
HAGOP BEDOYAN/ATTY. FOR MV.
OST 1/30/25

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

DISPOSITION: Continued to March 25, 2025, at 9:30 a.m.

ORDER: The court will prepare the order.

Pursuant to the terms of this court's bench order issued on February
4, 2025, this matter will be CONTINUED to **March 25, 2025**.

6. [24-11016](#)-B-11 **IN RE: TYCO GROUP LLC**
[MJB-12](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
1-28-2025 [[289](#)]

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

NO RULING.

7. [24-11016](#)-B-11 **IN RE: TYCO GROUP LLC**
[VP-2](#)

MOTION TO REMOVE DEBTOR FROM POSSESSION AND EXPAND THE
POWERS OF THE SUBCHAPTER V TRUSTEE
1-27-2025 [[286](#)]

FLAGSTAR FINANCIAL & LEASING LLC/MV
MICHAEL BERGER/ATTY. FOR DBT.
LAUREN WERTHEIMER/ATTY. FOR MV.

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

DISPOSITION: Continued to March 25, 2025, at 9:30 a.m.

ORDER: The court will prepare the order.

Pursuant to the terms of this court's bench order issued on February 4, 2025, this matter will be CONTINUED to **March 25, 2025.**

8. [24-11017](#)-B-11 **IN RE: CALIFORNIA QSR MANAGEMENT, INC.**
[MB-4](#)

MOTION TO REMOVE THE DEBTOR FROM POSSESSION AND EXPAND THE
POWERS OF THE SUBCHAPTER V TRUSTEE
1-29-2025 [\[269\]](#)

POPEYES LOUISIANA KITCHEN, INC./MV
MICHAEL BERGER/ATTY. FOR DBT.
HAGOP BEDOYAN/ATTY. FOR MV.
OST 1/30/25

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

DISPOSITION: Continued to March 25, 2025, at 9:30 a.m.

ORDER: The court will prepare the order.

Pursuant to the terms of this court's bench order issued on February
4, 2025, this matter will be CONTINUED to **March 25, 2025**.

9. [24-11017](#)-B-11 **IN RE: CALIFORNIA QSR MANAGEMENT, INC.**
[MJB-11](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH MELISSA BAWAAN
1-13-2025 [\[247\]](#)

CALIFORNIA QSR MANAGEMENT, INC./MV
MICHAEL BERGER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order with a
copy of the stipulation attached as an exhibit. The
stipulation shall also be separately filed and
docketed as a stipulation.

California QSR Management, Inc., the Debtor and Debtor-in-Possession
in this Chapter 11 Subchapter V proceeding ("Debtor" or "DIP")
requests an order approving a settlement agreement to resolve a
prepetition litigation demand made by Melissa Bawaan ("Bawaan") in
which Bawaan alleges wrongful termination and labor law violations by
Debtor. Doc. #247.

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

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

Debtor filed for Chapter 11 Sub V bankruptcy on April 22, 2024. Doc. #1. Walter R. Dahl was appointed Chapter 11 Trustee on April 24, 2024. Doc. #23. According to the moving papers, Debtor entered into a prepetition Settlement Agreement and Release ("the Agreement") with Bawaan on March 30, 2024. Doc. #249 (Decl. of Imran Damani). Pursuant to the Agreement, Debtor was to pay Bawaan \$12,500.00. *Id.* On or about November 4, 2024, Bawaan agreed to an amendment to the Agreement ("the Amended Agreement") whereby Debtor's insurance carrier, Berkeley Select ("Berkeley") would pay the settlement amount on Debtor's behalf. *Id.* The Amended Agreement proposes that the settlement will be paid in the form of two checks issued by Berkeley: (1) a \$6,250.00 check issued directly to Bawaan, and (2) a \$6,250.00 check issued to Bawaan's counsel, Abramson Levin & Gindi, LLP, for attorneys' fees and expenses. *Id.* As the settlement amount is to be paid by the insurance carrier rather than Debtor, it appears that approval of this proposed settlement will have no effect on the bankruptcy estate or the terms of the as-yet unconfirmed plan.

The court notes that a copy of the settlement agreement was filed as an Exhibit to the instant motion but not as a stipulation in this case. The motion will only be granted if Trustee separately files the settlement agreement and docket it as a stipulation.

[Federal Rule of Bankruptcy Procedure 9019] T provides that the court may approve a compromise or settlement "on motion by the trustee." Subsection (b) provides that the court may authorize "the trustee" to compromise or settle classes of claims without further hearing or notice. Subject to certain limitations not relevant here, a debtor in possession "shall have all the rights . . . and powers and shall perform all the functions and duties . . . of a trustee serving in a case under this chapter." 11 U.S.C. § 1107. Thus, the rule, read in combination with § 1107, allows either the trustee or the debtor in possession to

propose settlements to the court for approval or, with prior court authorization, to settle and compromise classes of claims. Neither the rule nor the Bankruptcy Code addresses whether any other entity may propose or settle claims belonging to the estate.

Wells Fargo Bank, N.A. v. Guy F. Atkinson Co. (In re Guy F. Atkinson Co.), 242 B.R. 497, 500-01 (B.A.P. 9th Cir. 1999).

On a motion by the DIP and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. Pro. 9019. Approval of a compromise must be based upon considerations of fairness and equity. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that the DIP has considered the *A & C Props.* and *Woodson* factors, which weigh in favor of approving the settlement agreement as follows:

1. Probability of success in litigation: No litigation was commenced prior to the petition date. If litigation does proceed, the DIP will be the defendant. The DIP argues that settlement now will release the Debtor from liability relating to Bawaan's claims, eliminating the potential costs and delay associated with the case even if the DIP eventually prevailed. This factor favors approval.

2. Collection: The settlement amount of \$12,500 will be paid by Berkeley rather than the DIP. This factor favors approval.

3. Complexity of litigation: Because the Agreement resolves the dispute between the parties entirely, and the Amendment ensures that the settlement funds will not come from the DIP, approving the settlement will ensure that the dispute has no impact on Debtor's ongoing operations or on the Plan of Reorganization. In contract, if the litigation proceeds, it will inevitably involve more complexity, expense, inconvenience, and delay to Debtor than a settlement would. This factor favors approval.

4. Paramount interests of creditors: Approval of the settlement will result in a resolution of all claims without any impact on the rights of the Debtor's other creditors because this claim will be paid by Berkeley rather than the DIP. This factor favors approval.

The *A & C Props.* and *Woodson* factors appear to weigh in favor of approving the settlement. Therefore, the settlement appears to be a fair, equitable, and reasonable exercise of Trustee's business

judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.*

Accordingly, this motion will be GRANTED. The settlement between California QSR Management, Inc. and Bawaan will be approved.

This ruling is not authorizing the payment of any fees or costs associated with the settlement. Additionally, DIP shall attach a copy of the settlement agreement as an exhibit to the proposed order and shall separately file the settlement agreement and docket it as a stipulation.

10. [24-11017](#)-B-11 **IN RE: CALIFORNIA QSR MANAGEMENT, INC.**
[VP-2](#)

MOTION TO REMOVE DEBTOR FROM POSSESSION AND EXPAND THE
POWERS OF THE SUBCHAPTER V TRUSTEE
1-27-2025 [\[259\]](#)

FLAGSTAR FINANCIAL & LEASING LLC/MV
MICHAEL BERGER/ATTY. FOR DBT.
KEVIN ETZEL/ATTY. FOR MV.

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

DISPOSITION: Continued to March 25, 2025, at 9:30 a.m.

ORDER: The court will prepare the order.

Pursuant to the terms of this court's bench order issued on February 4, 2025, this matter will be CONTINUED to **March 25, 2025**.

11. [24-10546](#)-B-12 **IN RE: MAXIMINIO/MARIE SILVEIRA**
[FW-14](#)

MOTION TO SELL
1-13-2025 [\[182\]](#)

MARIE SILVEIRA/MV
PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Maximinio and Marie Silveira, Debtors in possession in the above-styled case ("Debtors" or "DIP", seek authorization to sell the estate's interest in certain assets described below (collectively "the Assets") to certain buyers, also described below (collectively "the Proposed Buyers") pursuant to 11 U.S.C. § 363, and subject to higher and better bids at the hearing. Doc. #182 et seq. Debtors filed for Chapter 12 bankruptcy on March 5, 2024. Doc. #1. Lilian G. Tsang was designated as Trustee that same day. Doc. #4. On November 20, 2024, the Chapter 12 plan was confirmed. Doc. #170. Among the plan provisions was Section 4.06, which identifies the Assets and directs that they be sold, and the proceeds distributed appropriately. Doc. #154, Section 4.06.

The Assets, Proposed Buyers, and proposed sale prices are as follows:

Asset	Proposed Buyer	Proposed Sale Price	Value (Sch. A/B)	Encumbrance
2016 Peterbilt 375 ("the Peterbilt").	Larry Silveira	\$12,000.00	\$25,000.00	\$4,375.80 Marlin Bus. Corp.
1997 Case IH Tractor 8950 ("the Case IH").	Linda Saldana	\$1,200.00	\$15,000.00	Unencumbered.
Kubota S175 High Flow Skid Steer ("the Kubota")	Frank Espinola	\$10,000.00	\$20,000.00	\$1,940.27 Kubota Credit Corp.
2017 Model 1100 Peecon TMR Mixer Wagon ("the Wagon")	Abraham Alvarez	\$5,000.00	unknown	Unencumbered.
Total		\$28,200.00	\$60,000.00	

Doc. #184; Doc. #15 (Sched. A/B). Debtors declare that Larry Silveira is an insider (specifically, their son) but argue that his bid is the

highest and best bid and more accurately reflect the fair market value of the Peterbilt. *Id.* Abraham Alvarez ("Alvarez"), who is not an insider, has offered a bid of \$10,000.00 for the Peterbilt. *Id.* On January 16, 2025, Debtors filed a Notice of Correction/Errata clarifying that, while only the Peterbilt and the Kubota are encumbered by purchase money liens, all the Assets are subject to the blanket lien of Bank of the Sierra ("Sierra"), the Class 3 Creditor in the confirmed plan. Doc. #186.

Debtors further clarify that, pursuant to Section 4.06 of the confirmed plan, any sale proceeds remaining after satisfaction of the purchase money liens will be turned over to Sierra. *Id.*

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

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

DISCUSSION

Sale of Property

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

674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). There is only one insider among the Potential Buyers, Larry Silveira, who is Debtors' son. Doc. #184. While an insider sale is subject to heightened scrutiny, it appears that Larry Silveira does have the highest and best bid, assuming he is not outbid at the sale.

Property is listed in *Schedule A/B* with an aggregate value of \$60,000.00, not counting the "unknown" value of the Wagon. Doc. #15. Debtor did not exempt any of the Assets. *Id.* (*Sched. C*).

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

Sale price	\$28,200.00
Marlin Bus. Corp. Lien	(\$4,375.80)
Kubota Credit Corp. Lien	(\$1,940.27)
Estimated net proceeds to be paid to Sierra	\$21,883.93

Doc. #184.

The sale of the Assets will eliminate the two purchase money liens which encumber the estate and reduce the outstanding balance of Sierra's blanket lien. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. Therefore, this sale is an appropriate exercise of Debtor's business judgment and will be given deference.

Overbid Procedure

Any party wishing to overbid shall, prior to the hearing, comply with the overbid procedures as outlined in the Motion and the Notice accompanying it. Docs. ##182-183.

Waiver of 14-day Stay

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

Conclusion

No party in interest timely filed written opposition. This motion will be GRANTED. Debtors will be authorized: (1) to sell the Assets to the prevailing bidder at the hearing, as determined at the hearing; and (2) to execute all documents necessary to effectuate the sale of the Assets. The 14-day stay of Rule 6004(h) will not be waived.

12. [24-10546](#)-B-12 **IN RE: MAXIMINIO/MARIE SILVEIRA**
[FW-15](#)

MOTION TO INCUR DEBT
1-17-2025 [\[188\]](#)

MARIE SILVEIRA/MV
PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Maximinio and Marie Silveira, Debtors in possession in the above-styled case ("Debtors" or "DIP") move for an order authorizing Debtors to borrow the sum of \$203,191.0 from Larry Silveira ("Larry"), secured by a deed of trust on the real property located at 4492 Lingard Road, Merced, California (the "One-Acre Farm"). Doc. #188. Debtors will use the funds to pay the amount of \$203,191.09, the liquidation value of the One-Acre Farm ("the Liquidation Amount"), to the trustee prior to the March 3, 2025, deadline for that payment, as provided in the Debtor's confirmed plan, and in doing so avoid the forced sale of the One-Acre Farm. *Id.*

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

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.

BACKGROUND

Debtors filed for Chapter 12 relief on March 5, 2024. Doc. #1. On November 20, 2024, the court confirmed the Debtors' *Modified Chapter 12 Plan dated October 20, 2024*, ("the Plan"). Doc. #170 (the Confirmation Order) and #154 (the Plan). The Plan, in paragraph 4.05, provides two options for liquidating non-exempt equity in the One-Acre Farm. Doc. #154, paragraph 4.05. The first option is that the DIP, no later than March 3, 2025, pay the Liquidation Amount to the Chapter 12 Trustee for distribution to creditors. *Id.* If this payment is not timely made, the One-Acre Farm is to be listed for sale and sold. *Id.*

While the One-Acre Farm is an asset of the bankruptcy estate, it is also the residence of Larry and his family. To effectuate the payments called for by the first option and to allow Larry to continue to live on the Property, Debtors and Larry propose a loan agreement with the following terms:

1. Larry will loan funds sufficient to pay the Liquidation Amount to Debtors.
2. The loan will be interest free, with full payment due by the end of March 2026.
3. Debtors anticipate that the loan will be paid off before then through the sale of the One-Acre Farm to Larry, subject to court approval of the sale.
4. The loan will be secured by a junior lien on the One-Acre Farm.

Doc. #190 (Decl. of Maximinio Silveira).

DISCUSSION

11 U.S.C. § 363(b) authorizes the trustee, after notice and a hearing, to use, sell, or lease, other than in the ordinary course of business, property of the estate, except for certain conditions not relevant here. 11 U.S.C. § 363(b). A debtor in possession has all the rights of a trustee and may perform all the functions and duties of a trustee (except for certain duties specified by the Code or where otherwise limited or prescribed by the court). 11 U.S.C. § 1203. Thus, Debtors may use property of the estate, here the One-Acre Farm, as collateral for a new post-petition loan, subject to court approval.

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

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc.*

v. Old Cold, LLC (In re Old Cold LLC), 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016).

According to Section 4.02.3 of the Plan, Debtors estimate that the One-Acre Farm is worth \$475,000.00 and is encumbered by a first deed of trust held by Class 9 Creditor Wells Fargo Bank, N.A. in the amount of \$233,808.91 ("the Class 9 Claim"). Doc. #154 (Section 2.09 and Section 4.02.3). Section 4.02.03 estimates the encumbrance of the One-Acre Farm at \$239,805.54, a difference of about \$6,000.00. The Liquidation Amount (\$203,191.09) represents the estimated net proceeds a hypothetical Chapter 7 trustee would receive if the One-Acre Farm were liquidated under Chapter 7. *Id.* at Section 4.05. The court assumes this figure (to which the Chapter 12 Trustee does not object) represents the equity in the One-Acre Farm after payment of the Class 9 Claim and minus any sale costs.

The motion is supported by Declarations from Debtor Maximinio Silveira and from Larry. Docs. ##190-91. While Larry is an insider, the One-Acre Farm is his residence, and so he is strongly motivated to provide the Liquidation Amount so that the property on which his family resides is not sold. He declares his intention to purchase the One-Acre Farm outright before the maturity of the loan which presently secures it.

The sale under these circumstances should maximize potential recovery for the estate. The sale of the One-Acre Farm appears to be in the best interests of the estate because it will ensure that the total Liquidation Amount will go to the Trustee to be distributed for the benefit of unsecured claims. The alternative is a public sale which would incur sale expenses and might not bring in as much as Larry is prepared to pay now. The sale appears to be supported by a valid business judgment and proposed in good faith and is, therefore, an appropriate exercise of Debtors' business judgment and will be given deference. In the absence of any objection at the hearing, the court is inclined to GRANT this motion.

13. [24-10546](#)-B-12 **IN RE: MAXIMINIO/MARIE SILVEIRA**
[FW-16](#)

MOTION TO SELL FREE AND CLEAR OF LIENS
1-21-2025 [\[193\]](#)

MARIE SILVEIRA/MV
PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Maximinio and Marie Silveira, Debtors in possession in the above-styled case ("Debtors" or "DIP") move for an order authorizing Debtors to sell certain property described below pursuant to 11 U.S.C. § 363(f) and § 1206, with senior liens to be paid in order of priority out of escrow. Doc. #193. The proposed sales price is \$4,500,000.00 and the proposed buyers are Wesley J. Bylsma and Gina L. Bylsma (collectively, "Proposed Buyers"). Debtor further seeks court authorization to pay a broker commission of three percent (3%), pursuant to 11 U.S.C. § 328, to be split equally between seller's broker and buyer's broker. *Id.* The motion is supported by: (1) the Declaration of real estate agent Amy Sullivan; (2) an Exhibit in the form of the proposed Sale Contract (the "Contract"); (3) a Memorandum and Points of Authority; and (4) the Declaration of Debtor Maximinio Silveira. Docs. ##195-98.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

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.

BACKGROUND

Debtors filed for Chapter 12 relief on March 5, 2024. Doc. #1. On November 20, 2024, the court confirmed the Debtors' *Modified Chapter 12 Plan dated October 20, 2024*, ("the Plan"). Docs. #170 (the Confirmation Order) and #154 (the Plan). Among the assets of the estate are certain parcels of land at 4210 Lingard Road, Merced, CA 95341 ("the 204-Acre Farm" or "the Property"). The Property bears assessor's parcel numbers 066-124-003-000, 066-124-004-000, 066-130-

003-000, and 066-130-049-000 and is legally described in the Memorandum of Points and Authorities and declaration of Debtor Maximinio Silveira. See Docs. ##197-198.

The 204-Acre Farm is more fully described in the moving papers but consists of 155 farmable acres, an additional 49 acres containing a dairy facility, and three homes and seven mobile homes. *Id.* The Property is described as an asset of the estate in Section 4.02.1 of the Plan, which says that the Property secures the Class 3 (Bank of the Sierra ("Sierra"); first deed of trust) and Class 4 (Associated Feed & Supply ("AFS"); second deed of trust) debts. Doc. #154. Sierra's claim is Claim No. 19 in the amount of \$7,148,248.55. *Id.* AFS's claim is Claim No. 15 in the amount of \$383,375.73. *Id.* Both creditors are secured by the 204-Acre Farm and a second property ("the 158-Acre Farm"). *Id.* Both creditors are also cross-collateralized against other assets of the Debtors. Doc. #197.

The Contract contains provisions whereby Debtors shall be entitled to live in their current residence on the Property rent free for three years after close of escrow. Doc. #196, pg. 29. The Contract also provides three months of rent-free stay to the adjacent home and shop to the individuals occupying those premises. *Id.* According to the Motion, the Debtor does not attach significant value to these provisions, and notes that anyone seeking to overbid on the Property does not need to maintain them unless they wish to do so. Doc. #193.

The liens of Sierra and AFS will attach to the proceeds of the sale and be paid in order of priority after costs of sale and property taxes. Doc. #193. The Motion proposes that payments from escrow to secured claim holders be treated as constructive disbursements for which the Chapter 12 Trustee shall be entitled to compensation. *Id.* Debtors anticipate that the entirety of the net proceeds will go to Sierra, and their hope is that AFS may receive some payment on the sale of the 158-Acre Farm or at least more than if Sierra foreclosed on both properties. Doc. #197.

The Motion contemplates a three (3%) percent real estate commission to Exit Realty ("Broker"). *Id.* Broker, through different agents, represents both Debtors and Proposed Buyers and so will collect a total commission of six (6%) unless there is an overbid by a buyer represented by a different realtor. *Id.*

DISCUSSION

The Sale.

Under 11 U.S.C. § 363(f), the DIP may sell estate property of the estate outside the ordinary course of business, after notice and a hearing, free and clear of "any interest in such property of an entity other than the estate" if one of several conditions apply. 11 U.S.C.S. § 363(f). Relevant to this matter, 11 U.S.C. § 1206 states that:

After notice and a hearing, in addition to the authorization contained in section 363(f), the trustee in a case under this chapter may sell property under section 363(b) and (c) free and clear of any interest in such property of an entity other than the estate if the property is farmland, farm equipment, or property used to carry out a commercial fishing operation (including a commercial fishing vessel), except that the proceeds of such sale shall be subject to such interest.

11 U.S.C.S. § 1206. A debtor in possession in a Chapter 12 case has all the rights of a trustee and may perform all the functions and duties of a trustee (except for certain duties specified by the Code or where otherwise limited or prescribed by the court). 11 U.S.C. § 1203. Thus, the Debtors, subject to notice, a hearing, and court approval, may sell farmland provided that the proceeds of the sale are subject to the interest of the former lienholders, which is what the Motion proposes.

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). There is nothing in the record suggesting that Proposed Buyers are insiders with respect to Debtor.

The 204-Acre Farm is listed in *Schedule A/B* with a value of \$6,000,000.00. Doc. #15 (Sched. A/B). Debtors claimed a \$420,000.00 exemption. *Id.* (Sched. C).

The sale under these circumstances should maximize potential recovery for the estate. The sale of the 204-Acre Farm, as contemplated by the confirmed Plan, appears to be in the best interests of the estate because it will substantially reduce the claim of Sierra and create a greater likelihood that AFS will receive at least some of the proceeds from the sale of the 154-Acre Farm. The sale appears to be supported by a valid business judgment and proposed in good faith. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference. If there are no objections at the hearing, the court is inclined to GRANT the motion to sell, subject to higher and better bids at the hearing.

Real Estate Brokers' Compensation

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

LBR 9014-1(d)(5)(B)(ii) permits joinder of claims for authorization for the sale of real property and allowance of fees and expenses for

such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rule 6004.

On June 4, 2024, the DIP moved to employ Broker to assist in effectuating the Plan by selling property of the estate, including the 204-Acre Farm. Doc. #72. The court authorized Broker's employment on June 13, 2024, under 11 U.S.C. §§ 327 and 328. Doc. #90.

Pursuant to the employment order, the DIP requests to compensate Broker with a commission of 3%, which will be split equally between Broker and the buyer's real estate broker, if different than Broker. Doc. #72. Proposed Buyers' realty agent is also Broker, which will collect the full 3% if sale to Proposed Buyers' goes through. Three percent of the \$4.5 million purchase prices is \$135,000, which will be paid to Broker if the sale to Proposed Buyers is approved or split evenly with the buyer's broker if there is a successful overbid. The court will authorize DIP to pay broker commissions as prayed.

Overbid Procedure

Any party wishing to overbid shall comply with the overbid procedures as outlined in the Motion and the Notice accompanying the Motion. Docs. ##193-194.

Waiver of 14-day Stay

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

Conclusion

This matter will proceed as scheduled. If there is no opposition at the hearing, the *Motion to Sell Free and Clear of Liens* will be GRANTED. The DIP will be authorized: (1) to sell the Property to the prevailing bidder at the hearing, as determined at the hearing; (2) to execute all documents necessary to effectuate the sale of the Property; (3) to pay broker commission in the amount of 3% of the total sale price to be split evenly between Broker and the buyer's broker, as determined at the hearing; and (4) to pay all costs, commissions, and real property taxes directly from escrow. The 14-day stay of Rule 6004(h) will not be waived.

11:00 AM

1. [24-13613](#)-B-7 **IN RE: MAXINE VILLAZANA**

REAFFIRMATION AGREEMENT WITH HYUNDAI CAPITAL AMERICA
1-14-2025 [[17](#)]

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

A Reaffirmation Agreement between Maxine Villazana ("Debtor") and Hyundai Motor Finance for a 2024 Hyundai Elantra (VIN: KMHL54DG5RU643046) ("Vehicle") was filed on January 14, 2025. Doc. #17.

11 U.S.C. § 524(c)(6)(A)(ii) states "An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable non-bankruptcy law, whether or not discharge of such debt is waived, only if the court approves such agreement as in the best interest of the debtor."

Debtor's Schedule B values the Vehicle at \$16,246.00. Doc. #1. The amount being reaffirmed by Debtor is \$31,999.66 with a 6.19% interest rate. Debtor has negative equity of \$15,753.66 with approximately 70 months (over five years) remaining on the loan and only \$66.48 remaining in the budget every month according to the Debtor's schedules. Debtor's Schedule J does not list the monthly payment to Safe 1 Credit Union for the 2017 Chevrolet Silverado listed on Debtor's Schedule D. *Id.* Including this payment in Debtor's budget would leave a negative net monthly income and create a presumption of undue hardship. Reaffirming this debt is not in the Debtor's best interest.

Accordingly, approval of the reaffirmation agreement is DENIED.

2. [24-13048](#)-B-7 **IN RE: JAMES/DENA HOLDEN**

REAFFIRMATION AGREEMENT WITH CAPITAL ONE AUTO FINANCE
1-17-2025 [\[17\]](#)

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

A Reaffirmation Agreement between James and Dena Holden ("Debtors") and Capital One Auto Finance for a 2011 GMC Sierra (VIN: 1GTN1TEA4BZ310995) ("Vehicle") was filed on January 17, 2025. Doc. #17.

11 U.S.C. § 524(c)(6)(A)(ii) states "An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable non-bankruptcy law, whether or not discharge of such debt is waived, only if the court approves such agreement as in the best interest of the debtor."

According to Debtor's Schedule H (Doc. #1) the Debtor is a co-signer on the contract. This means another party may be liable for this obligation.

Approval of the reaffirmation agreement is DENIED.

3. [24-13356](#)-B-7 **IN RE: QUINTON/JENNIFER GREEN**

REAFFIRMATION AGREEMENT WITH 21ST MORTGAGE CORPORATION
12-18-2024 [\[10\]](#)

PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtors' counsel shall notify the debtors that no appearance is necessary.

A Reaffirmation Agreement between Quinton Brendan Green ("Debtor") and 21st Mortgage Corporation for a 1999 Champion Manufactured Home was filed on December 18, 2024. Doc. #10.

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

4. [24-13057](#)-B-7 **IN RE: STEVEN/BARBARA CORBETT**

REAFFIRMATION AGREEMENT WITH THE HUNTINGTON NATIONAL BANK
1-13-2025 [[17](#)]

JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors' counsel will inform debtors that no appearance is necessary.

A Reaffirmation Agreement between Steven and Barbara Ann Corbett ("Debtors") and The Huntington National Bank for a 2006 Safari Cheetah motor home ("Motor Home") was filed on January 13, 2025. Doc. #17.

11 U.S.C. § 524(c)(6)(A)(ii) states "An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable non-bankruptcy law, whether or not discharge of such debt is waived, only if the court approves such agreement as in the best interest of the debtor."

Reaffirming this debt with its remaining term and the age of the Motor Home is not in the Debtors' best interest.

Approval of the reaffirmation agreement is DENIED.

5. [24-12989](#)-B-7 **IN RE: DEANDRE CLARK**

PRO SE REAFFIRMATION AGREEMENT WITH ALLY BANK
1-23-2025 [[31](#)]

NO RULING.

1:30 PM

1. [24-11813](#)-B-7 **IN RE: MARIA MACHAIN AND MIGUEL NUNEZ HERNANDEZ**
[DS-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-10-2025 [[32](#)]

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

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

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

As an informative matter, the certificate of service filed in connection with this motion is an older version of the court's *Official Certificate of Service* form (EDC Form 7-005, Rev. 10/22) instead of the most updated version of the form (EDC Form 7-005, Rev. 1/8/2025). Doc. #38. The correct form can be accessed on the court's website. See Official Certificate of Service Form Information on the court's website, <https://www.caeb.uscourts.gov/CertificateOfServiceForm>.

Here, the declarant marked Sections 6. A. 1. and 6. B.1. of the Certificate of Service attesting to append Attachments 6A1 and 6B1. The Certificate of Service did not include Attachments 6A1 and 6B1.

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

2. [24-13218](#)-B-7 **IN RE: ANTONIO GARCIA**
[JNV-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-6-2025 [\[18\]](#)

FAIR SQUARE, LLC/MV
HENRY NUNEZ/ATTY. FOR DBT.
JUSTIN VECCHIARELLI/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

Fair Square, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) to permit Movant to proceed with a state court action in the Fresno County Superior Court styled *Fair Square, LLC v. Antonio Garcia Moreno*, Case No. 23CECG04130 (the "State Court Action"). Doc. #18. Antonio Garcia Moreno is the debtor ("Debtor") in this Chapter 7 proceeding. Doc. #1.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of any parties in interest, including but not limited to 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).

Debtor filed a Response on January 18, 2025, and Movant filed a Reply on February 4, 2025. Docs. #28, #33. The defaults of all nonresponding parties are entered. Constitutional due process requires that Movant make a *prima facie* showing that they are entitled to the relief sought. Because Debtor has responded to the Motion, this matter will be heard as scheduled.

The Motion is supported by: (1) the Declaration Paropkar Kaila, the manager for Movant; (2) the Declaration of Movant's counsel; (3) Exhibits consisting of the State Action complaint and various orders filed in relation to it; (4) a Memorandum of Points and Authorities; and the Section 362 Information Sheet. Docs. ##19-20, ##22-24. The Debtor's Response is accompanied by: (1) a Memorandum of Points and

Authorities; (2) the Declaration of Debtor's Counsel; and (3) a Request for Judicial Notice as to Debtor's Schedules A/B, C, and D. Docs. ##28-30.

BACKGROUND

Except where noted otherwise, the factual background of this matter is derived from Movant's Declarations and Memoranda.

On October 3, 2023, Movant filed the State Court Action against Debtor, alleging a single cause of action for specific performance seeking to enforce a Resident Purchase Agreement ("the Agreement") entered into between Movant and Debtor, whereby Debtor agreed to sell the real property commonly known as 4730 E. Garrett Avenue, Fresno, California ("the Property") to Movant. The Property is listed on Debtor's Schedule A/B and is exempted on Debtor's Schedule C as a homestead pursuant to C.C.P. 704.730. Doc. #13 (Sched. A/B and C).

On October 11, 2023, Movant recorded a Notice of Pendency of Action ("the Lis Pendens") with the Fresno County Recorder to prevent Debtor from selling the Property to another buyer during the pendency of the State Court Action.

Debtor was served with the State Court Action on February 17, 2024, but apparently did not file a timely answer. On April 10, 2024, Movant filed an Entry of Default requesting that a default be entered against Debtor and in favor of Movant. Debtor filed a motion to set aside the default, which the state court denied. On October 10, 2024, Movant filed an Application for Court Judgment, with a hearing set for November 7, 2024. On November 1, 2024, Debtor filed a petition for Chapter 7 relief, and on November 4, Debtor filed a Notice of Stay Proceedings in the State Court Action which led the state court to enter an order taking the Application off the calendar due to the automatic stay.

Movant filed the instant motion for stay relief on January 6, 2025. Doc. #18. The motion asks the court to lift the stay due to "[lack of] adequate protection" under 11 U.S.C. § 362(d)(1). The motion also asks the court for stay relief for cause under a permissive abstention theory because of the pending State Court Action, citing 28 U.S.C. § 1334(c)(1).

Debtor lists Movant as an unsecured claim on Schedule E/F as a Notice Only claim with a value of \$0.00. Doc. #15 (Sched. E/F).

DISCUSSION

The court begins with two threshold matters worthy of discussion.

First, Movant did not name Case Trustee Peter Fear or the UST as parties to this case and did not serve the UST at all. Docs. #18, #25. While the Case Trustee has filed a Report of No Distribution, the

Trustee has not abandoned the Property from the estate either. And as long as the case remains open, the Trustee still has an interest in the property.

Second, while Movant makes much of the fact that Movant does not seek any sort of lien against Debtor's assets but simply specific performance on the Agreement, no judgment entitling Movant to specific performance was entered in the State Court Action prior to the petition date. Indeed, the whole purpose of seeking stay relief is to allow the State Court Action to proceed to a judgment that Movant is entitled to specific performance.

But in the court's view, in the absence of any such order being entered or any such right to specific performance established prior to the filing of the petition, the Agreement remains simply an executory contract, one that Debtor listed on Schedule G. Doc. #13 (Sched. G). The deadline for assuming or rejecting an executory passed on January 2, 2025, and the Agreement is therefore deemed rejected. 11 U.S.C. § 365(d)(1). Rejection of an executory contract results in damages for breach of contract, not specific performance. § 365(g); 3 COLLIER ON BANKRUPTCY ¶ 365.10[1] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.)

With that in mind, the court turns to the Movant's arguments for stay relief for cause and for permissive abstention.

11 U.S.C. § 362(d)(1).

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until the case is closed, dismissed, or discharge is granted or denied, whichever is earliest. The case is ongoing, and so the automatic stay is still active.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection of an interest in property. "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).

The court fails to see how § 362(d)(1) is relevant to these circumstances. As noted above, § 362(d)(1) deals with lack of adequate protection **of an interest in property**. § 362(d)(1) (emphasis added). Here, Movant does not indicate an interest in any property which is not adequately protected. This is because the State Court Action was interrupted by the filing of the petition before the state court could grant a default judgment which Movant could then attach to Debtor's property.

When a debtor files for bankruptcy, subject to certain exceptions not present here, section 362(a) of the Bankruptcy Code automatically stays any other judicial

proceeding involving the debtor. See 11 U.S.C. § 362(a)(1). The automatic stay provision of the Bankruptcy Code "plays a vital role in bankruptcy. It is designed to protect debtors from all collection efforts while they attempt to regain their financial footing." *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992) (describing the automatic stay as "one of the fundamental debtor protections provided by the bankruptcy laws"). The provision provides stability and certainty to both the debtor and creditors who might otherwise be tempted to bring independent actions to obtain default judgments. See *id.* at 571-72.

In fact, the automatic stay provision is so central to the functioning of the bankruptcy system that this circuit regards judgments obtained in violation of the provision as void rather than merely voidable on the motion of the debtor. See *id.* at 571. Courts regularly void state court default judgments against debtors when the judgments are obtained in violation of the automatic stay provision, even where the debtor filed for bankruptcy in the midst of the state court proceedings. See, e.g., *In re Fillion*, 181 F.3d 859, 861 (7th Cir. 1999); *In re Graves*, 33 F.3d 242, 247 (3d Cir. 1994).

Far Out Prods. v. Oskar, 247 F.3d 986, 994-95 (9th Cir. 2001). When Debtor filed his petition, the automatic stay was triggered, and if the state court had granted the default judgment after the petition date, that order would have been void. Accordingly, there is no judgment and consequently no interest in property for which Movant is not adequately protected.

Permissive Abstention

Alternatively, Movant argues that the court should lift the stay to allow the State Court Action to proceed under a theory of permissive abstention, citing the multi-factor test announced in *In re Curtis*, 40 B.R. 795, 7990800 (Bankr. D. Utah 1984) and adopted by the Ninth Circuit in *In re Kronemyer*, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009) (applying the factors articulated in *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984).

The relevant 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 foreign proceeding involves the debtor as a fiduciary;
4. whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;

5. whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
6. whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
7. whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
8. whether the judgment claim arising from the foreign action is subject to equitable subordination under section 510(c);
9. whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under section 522(f);
10. the interests of judicial economy and the expeditious and economical determination of litigation for the parties;
11. whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
12. the impact of the stay on the parties and the "balance of hurt."

Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.), 311 B.R. 551 (Bankr. C.D. Cal. 2004) (citing *Curtis*, 40 B.R. at 799-800); see also *Kronemyer*, 405 B.R. at 921.

The court will address these twelve factors in turn.

1. Whether the relief will result in a partial or complete resolution of the issues: Movant argues that "[g]ranting relief from the stay to permit the Fresno County Superior Court to complete the State Court Action would result in a determination of Movant's rights under the [Agreement], a final resolution to the parties' rights and interest in the Property, better characterize Movant's claim against the bankruptcy estate." Doc. #23. Movant further argues that "if a judgment is obtained and executed," it would "dispense with the claims of Movant as a creditor of the estate. *Id.*

The court disagrees with this analysis of the first factor. The issue is whether to lift the stay or not so the state court can award Movant specific performance rights under the Agreement. However, as the court has already noted, the Agreement itself was deemed rejected on January 2, 2025, prior to the filing of the instant motion. Specific performance, in the court's view, is not an option anymore, and Movant's only available relief is in the form of damages for breach, which (a) is worth nothing if such damages cannot be attached to Debtor's property with a lien and (b) is still worth nothing if the lien is subsequently avoided, as damages for breach of contract are generally dischargeable.

2. The lack of any connection with or interference with the bankruptcy case: Movant argues that the State Court Action is not connected with this bankruptcy case. This is patently incorrect, as the State Court Action is to determine the disposition of Property which is listed on

Schedule A/B and exempted on Schedule C pursuant to the Agreement which is listed on Schedule G and has been implicitly rejected.

3. Whether the foreign proceeding involves the debtor as a fiduciary: This factor does not appear to be relevant.

4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases: Movant concedes that the Fresno County Superior Court is not a specialized tribunal but claims that it does "have expertise in California law and specifically the facts and law in this particular case." Doc. #23. No disrespect to the Fresno County Superior Court but the court does not see that its expertise in basic California property law is any greater than that of any other California court of competent jurisdiction (including this one if Movant had sought to pursue remedies via adversary proceeding).

5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation: This factor does not appear to be relevant.

6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question: This factor does not appear to be relevant.

7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties: Movant argues that allowing the State Court Action to proceed would not result in prejudice to any other creditors or interested parties. The court disagrees and has already noted that the Trustee and the UST have an interest in the disposition of the Property, which is an asset of the estate.

8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c): This factor does not appear to be relevant.

9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f): Movant asserts that the sale of the Property would not result in an avoidable judicial lien because "the State Court is authorized to act as an elisor to execute the judgment," and "[a] judicial lien is not necessary." The court has already expressed its doubts as to whether specific performance is available as a remedy under the facts of this case. Setting aside the question of whether issuing a judicial lien attached to Debtor's Property and acting as an elisor to execute the judgment are distinct enough to evade Debtor's avoidance powers, if specific performance is not permissible, then money damages are the only remedy possible, which in turn will result in an avoidable lien.

10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties: Movant argues that "[t]he State Court Action is pending in Fresno County Superior Court and could be resolved if the automatic stay is lifted," thus "likely [eliminating] the need for this court to adjudicate any ongoing dispute between Movant and Debtor." Doc. #23. The court disagrees. If anything, denying the request for stay relief will instead render the State Court Action moot entirely, as any remedy the state court is capable of providing will be subject to avoidance.

11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial: It is unclear to the court whether a state court action that is on the eve of granting a default judgment has "progressed to the point where the parties are prepared for trial." Even if this were the case, however, the court is not required to give equal weight to all the *Curtis* factors, and the court does not consider the fact that this bankruptcy was filed just before a default judgment could be entered to outweigh the other factors.

12. The impact of the stay on the parties and the "balance of hurt": Finally, Movant argues that "the impact of the stay and balance of hurt weighs in favor of granting stay relief because Movant has incurred significant costs in litigating the State Action and the inability or delay in obtaining a judgment and the inability to secure its interest in the Property would result in significant harm to Movant." Doc. #23. This argument is unpersuasive, as it could be made about any proceeding in a non-bankruptcy forum which was interrupted prior to issuance and attachment of a judgment by the filing of a bankruptcy petition.

After review of the *Curtis* factors, the court finds that they do not support stay relief under these facts. Movant also argues for application of permissive abstention pursuant to the multifactor test announced in *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)* ("Tucson"), 912 F.2d 1162 (9th Cir.1990). These factors are:

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,
- (2) the extent to which state law issues predominate over bankruptcy issues,
- (3) the difficulty or unsettled nature of the applicable law,
- (4) the presence of a related proceeding commenced in state court or other non-bankruptcy court,
- (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,
- (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case,
- (7) the substance rather than form of an asserted "core" proceeding,
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be

entered in state court with enforcement left to the bankruptcy court, (9) the burden of the bankruptcy court's docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of non-debtor parties.

Id. at 1167 quoting *In re Republic Reader's Serv., Inc.*, 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987). The court's review of the *Tucson* factors reflects the following:

1. Effect on administration of the estate if the court abstains. Movant argues that "[g]ranted relief from the stay to permit the state courts to complete the State Court Action will result in a determination of Movant's rights under [the Agreement], a resolution to the parties' rights and interest in the Property, better characterize Movant's claim against the bankruptcy estate, and if a judgment is obtained and executed, dispense of the claims of Movant as a creditor of the estate." However, as the court has noted, the Agreement was rejected by operation of law prior to the filing of this motion. Moreover, there are parties [the Case Trustee and the UST] who have rights and interests vis a vis the Property that cannot be redressed in state court.
2. Extent to which state law issues predominate. The court agrees with Movant that the sole issue remaining in the State Court Action is Movant's Application for default judgment. The court does not find this issue dispositive for the reasons outlined above.
3. The difficulty or unsettled nature of the applicable law. Movant concedes that the applicable California law is straightforward, but incorrectly asserts that this factor weighs in favor of abstention. On the contrary, it is when the applicable law is difficult or unsettled that the bankruptcy court should lean towards abstention to avoid effectively "making state law" that should properly be decided by a state court.
4. Presence of a related proceeding commenced in state court: The court acknowledges the existence of a parallel state court proceeding. Indeed, it is the entire focus of the instant motion. However, the mere existence of a related proceeding in state court does not automatically command abstention or else the application of the automatic stay to ongoing judicial proceedings would be a nullity. The court does not consider this factor to support abstention under these circumstances because the entire goal of the State Court Action is to determine the disposition of an asset of the bankruptcy estate.
5. Jurisdictional basis other than 28 U.S.C. § 1334: Movant argues that 28 U.S.C. § 1334 appears to be the only basis for jurisdiction here which weighs in favor of abstention.
6. The degree of relatedness or remoteness of the proceeding to the main bankruptcy case. Movant concedes that determination of the Movant and Debtor's interests in the Property will directly affect

the administration of the bankruptcy case but argues that the court's administration will be "facilitated" by a resolution of the State Court Action. On the contrary, "resolution" of the State Court Action will inevitably affect the status of an important asset of the estate, thereby invading the province of the bankruptcy court.

7. Substance rather than form of the asserted "core" proceeding. Movant concedes that administration of property of the estate is a core proceeding.
8. Feasibility of severing state law claims from core bankruptcy matters. The State Court Action seeks specific performance of an executory contract implicitly rejected by the Debtor and either transfer of an estate asset or else breach of contract damages. In the court's view, the State Court Action cannot be severed from core bankruptcy matters.
9. Burden on the bankruptcy court's docket. Movant argues that [l]ifting the automatic stay to permit Movant to resolve the State Court Action would likely eliminate the need for this court to adjudicate any ongoing dispute between Movant and Debtor." On the contrary, allowing the State Court Action to proceed would either mean compelling Debtor to comply with an executory contract which was implicitly rejected or saddling Debtor with a judgment for breach of contract damages, likely resulting in a subsequent avoidance action.
10. Likelihood of forum shopping. Movant contends that Debtor is forum shopping to delay the State Court in ruling on the Application and prevent a favorable outcome for Movant but cites no basis for this conclusion. Filing bankruptcy as a way to terminate litigation against the debtor-defendant is clearly contemplated by the Bankruptcy Code as the very first provision of § 362(a) states that the filing of the petition operates as a stay, applicable to all entities of the commencement or continuation of any judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case or to recover a claim against the debtor that arose before the commencement of the case. The court is unpersuaded that the filing of the bankruptcy case was an attempt at forum shopping.
11. Existence of a right to a jury trial. Movant concedes that this factor is not implicated in the State Court Action.
12. Presence of non-debtor parties in related proceeding. Obviously, the Movant is a non-debtor party in the related proceeding. But the court does not find that dispositive when so many other factors militate against stay relief.

CONCLUSION

Having reviewed the *Tucson* factors, the court finds that they, like the application of the *Curtis* factors, do not warrant permissive abstention. There is likewise no cause to grant stay relief under § 362(d)(1). Accordingly, this motion will be DENIED.

3. [23-11723](#)-B-7 **IN RE: FELIPE REYNOSO**
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, TRUSTEES ATTORNEY(S)
1-10-2025 [\[72\]](#)

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

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

DISPOSITION: Granted.

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

Fear and Waddell P.C. ("Applicant") seeks approval of a final allowance of compensation under 11 U.S.C. §§ 330 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as counsel for Peter L. Fear, Trustee in the above-styled case ("Trustee"). Doc. #72.

Applicant was employed to perform services under § 327 of the Code pursuant to an order of this court dated October 4, 2023. Doc. #20. This is Applicant's first and final request for compensation.

Applicant seeks **\$13,829.00** in fees based on **40.90** billable hours from **September 20, 2023, through January 7, 2025**, as follows:

Professional	Hourly Rate	Hours	Total
Gabriel J. Waddell (2023)	\$360.00	8.00	\$2,880.00
Gabriel J. Waddell (2024)	\$380.00	20.90	\$7,942.00
Peter A. Sauer (2024)	\$300.00	0.80	\$240.00
Katie Waddell (2023)	\$260.00	4.00	\$1,040.00
Katie Waddell (2024)	\$280.00	3.30	\$924.00
Katie Waddell (2025)	\$295.00	1.80	\$531.00
Laurel Guenther (2023)	\$135.00	0.80	\$92.00
Laurel Guenther (2024)	\$135.00	1.00	\$135.00
Laurel Guenther (2025)	\$150.00	0.30	\$45.00
Total		40.90	\$13,829.00

Doc. #76. Applicant also requests expense reimbursement as follows:

Type of expense	Amount
Copying	\$207.38
Court Fees	\$563.00
Postage	\$100.93
Total	\$871.31

Id.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3). Previous interim compensation awards under 11 U.S.C. § 331, if any, are subject to final review under § 330.

Applicant's services here included, without limitation: asset disposition; fee/employment applications; and claims administration and objections. Doc. #76. The court finds the services and expenses reasonable, actual, and necessary. The Trustee has reviewed the Application and finds the requested fees and expenses to be reasonable. Doc. #74.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

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

This Application is GRANTED. The court will approve on a final basis under 11 U.S.C. §330 compensation in the amount of **\$13,829.00** in fees and **\$871.31** in expenses. The court grants the Application for a total award **\$14,700.31** as an administrative expense of the estate and an order authorizing and directing the Trustee to pay such to Applicant from the first available estate funds.

4. [24-12935](#)-B-7 **IN RE: ELOY ACOSTA**
[FW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-10-2025 [\[24\]](#)

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

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

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

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

Freedom Mortgage Corporation ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to s 1701 Ranch Road, Bakersfield, California (the "Property"). Doc. #24. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). Id.

Eloy Acosta ("Debtor") did not oppose. No other party in interest timely filed written opposition. This motion will be GRANTED IN PART AND DENIED IN PART.

As an informative matter, the certificate of service filed in connection with this motion used an older version of the court's *Official Certificate of Service* form (EDC Form 7-005, Rev. 10/30/2024) instead of the most updated version of the form (EDC Form 7-005, Rev. 1/8/2025). Doc. #30. The correct form can be accessed on the court's website. See Official Certificate of Service Form Information on the court's website, <https://www.caeb.uscourts.gov/CertificateOfServiceForm>.

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

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The debtors' discharge was entered on January 14, 2025, Doc. #32. Therefore, the automatic stay terminated with respect to the Debtor on January 14, 2025. This motion will be DENIED AS MOOT IN PART as to the debtors' interest and will be GRANTED IN PART for cause shown as to the chapter 7 trustee's (or estate's) interest.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay with respect to the chapter 7 trustee because Debtor has failed to make one (1) pre-petition payment of \$2,222.49 and two (2) post-petition payments totaling \$4,444.98. Movant has produced evidence that Debtor owes \$14,136.02 to Movant. Docs. #26; #29.

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 this is a chapter 7 case. Debtor's values the Property at \$303,600.00 and Debtor owes \$318,151.06, which leaves Movant under secured.

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

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

5. [21-10574](#)-B-7 **IN RE: MARK/JEANNETTE ESPARZA**
[MAE-2](#)

MOTION TO AVOID LIEN OF COLLMGMTRESO
1-10-2025 [[51](#)]

JEANNETTE ESPARZA/MV
WILLIAM EDWARDS/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

The Amended Notice of Hearing accompanying the motion states:

Pursuant to LBR 9014-1(f)(2), any party opposing the motion may file and serve a written opposition and request a hearing on this motion. If you fail to file a written response within 14 days of the date of service of this notice of motion and motion, plus an additional 3 days unless this notice of motion and motion was served by personal delivery or posting as described in Federal Rules of Civil Procedure 5(b)(2)(A)-(B), the court may treat such failure as a waiver of your right to oppose this motion and may grant the requested relief.

Doc. #58. This is incorrect for two reasons. First, LBR 9014-1(f)(2) refers to motions filed with less than 28 days' notice. The motion was filed on January 10, 2025, and the operative Amended Notice of Hearing was filed on January 13, 2025, after receiving a clerk's memo requesting a calendar correction. Docs. #51, #55, #56. The duration between the amended hearing notice and the hearing date is 29 days, which means that LBR 9014-1(f)(1) is applicable, not (f)(2).

Furthermore, LBR 9014-1(f)(1) states that opposition must be submitted in writing at least fourteen (14) days preceding the hearing date, not within fourteen (14) days from the date of service of the motion (plus 3 days for mailing).

Further confusing matters, the Amended Notice of Hearing also states:

When fewer than twenty-eight (28) days' notice of a hearing is given, no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may

continue the hearing to permit the filing of evidence and briefs.

Doc. #58. While this is an accurate summation of LBR 9014-1(f)(2), it is inapplicable where, as here, notice was given on more than 28 days' notice.

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

6. [24-13477](#)-B-7 **IN RE: ANA AGUILAR AND LUIS AGUILAR MORFIN**
[FAT-1](#)

MOTION TO SPLIT/SEVER CHAPTER 7 CASE
1-21-2025 [\[16\]](#)

LUIS AGUILAR MORFIN/MV
FLOR DE MARIA TATAJE/ATTY. FOR DBT.

NO RULING.

Ana Cesilia Aguilar ("Aguilar") and Luis E. Aguilar Morfin ("Morfin") (collectively "Debtors") move for an order severing this case so that Aguilar may continue with this case and obtain a discharge while Morfin becomes the debtor in a separate case which Morfin will seek to have dismissed due to the fact that he is not eligible for a Chapter 7 discharge on account of a prior Chapter 7 discharge he received less than eight years prior to the filing of the petition in this case. Doc. #16.

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.

According to the moving papers, Morfin filed a prior Chapter 7 case on March 27, 2017 (Case No. 17-11204, filed March 31, 2017, discharged July 14, 2017). Doc. #16. Aguilar has also filed a prior Chapter 7 case, but she apparently received her discharge more than eight years prior to filing this case, and so her prior bankruptcy is not an impediment to her receiving a discharge here. *Id.* The Debtors seek to sever the estates and convert Morfin to a separate case, which will then be dismissed. *Id.*

The motion is unaccompanied by any declarations or exhibits, but the court takes judicial notice of the docket in Case No. 17-11204, which does reflect that a discharge was entered for Morfin on July 14, 2017. Thus, he will not be eligible to obtain another discharge under

Chapter 7 until at least eight years after his prior discharge, i.e. no earlier than July 14, 2025. See 11 U.S.C. § 727(a)(8).

While it is within the court's power to grant the relief requested, this approach, in the court's view, has an unnecessary step. Since Morfin is not eligible for a Chapter 7 discharge and proposes to dismiss his separate case after severance, the court is inclined to treat the motion to sever as a motion to dismiss instead. Thus, Morfin can be dismissed and allow Aguilar to proceed to the conclusion of her case more expeditiously.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to treat the instant motion as a motion to dismiss Morfin as a joint debtor and to allow Aguilar to proceed as an individual debtor and GRANT the motion on that basis.

7. [23-12383](#)-B-7 **IN RE: ANGELES ESTRADA**
[ADJ-4](#)

MOTION TO PAY
1-28-2025 [[57](#)]

IRMA EDMONDS/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
ANTHONY JOHNSTON/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 will submit a proposed order after hearing.

Chapter 7 trustee Irma C. Edmonds ("Trustee") seeks authority to pay outstanding income tax balance in the amount of \$4,017.00 (fiscal year ending October 31, 2024) to the United States Treasury on behalf of Angeles Estrada ("Debtor"). Doc. #57. The motion is supported by a Declaration from Trustee and an Exhibit in the form of a letter from James E. Salven, who performed accounting work on behalf of the estate. Docs. ##59-60.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

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.

11 U.S.C. § 503 allows an entity to file a request for payment of administrative expenses. After notice and a hearing, payment of certain administrative expenses shall be allowed, other than those specified in § 502(f), including:

- (B) any tax—
 - (i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title; or
 - (ii) attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after commencement of the case;
- (C) any fine, penalty, or reduction in credit relating to a tax of a kind specified in subparagraph (B) of this paragraph; and
- (D) notwithstanding the requirements of subsection (a), a governmental unit shall not be required to file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense[.]

11 U.S.C. § 503(b)(1)(B-D). Under 28 U.S.C. § 960(b), trustees are required to pay estate taxes on or before the date they become due even if the respective tax agency does not file a request for administrative expenses. *Dreyfuss v. Cory (In re Cloobek)*, 788 F.3d 1243, 1246 (9th Cir. 2015).

Debtor filed chapter 7 bankruptcy on October 25, 2023. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors. Doc. #3; docket generally. Trustee moved to employ James E. Salven ("Accountant") to provide accounting services to the estate on October 17, 2024, which was approved by this court on October 30, 2024. Docs. #41, #44. Accountant has prepared the final Fiduciary income tax returns for the bankruptcy estate and advised Trustee that the estate has tax liability of \$4,017.00 on the federal return. Doc. #60. Accountant anticipates a refund to the estate of \$1,222.00 for state taxes. *Id.*

This motion was noticed on less than 28 days, and no party was required to respond. In the absence of opposition at the hearing, this motion will be GRANTED. Trustee will be authorized to pay, in Trustee's discretion, \$4,017.00 to the United States Treasury in satisfaction of the balance owed on Debtor's income taxes.

8. [18-12189](#)-B-7 **IN RE: DEE DINKEL**
[JES-4](#)

MOTION FOR COMPENSATION FOR JAMES SALVEN, ACCOUNTANT(S)
1-10-2025 [\[94\]](#)

JAMES SALVEN/MV

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

DISPOSITION: Granted.

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

James E. Salven, C.P.A. ("Applicant") seeks approval of a final allowance of compensation under 11 U.S.C. §§ 330 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as accountant for James Salven, Trustee in the above-styled case ("Trustee"). Doc. #94 *et seq.* The debtor is Dee Dinkel ("Debtor").

Applicant was employed to perform services under § 327 of the Code pursuant to an order of this court dated February 5, 2024. Doc. #58. This is Applicant's first and final request for compensation.

Applicant seeks **\$1,652.00** in fees based on **5.9** billable hours from January 22, 2024, through November 20, 2024. Doc. #96. Based on the moving papers, it appears that James Salven was the only employee of Applicant to work on this case, and he billed at a rate of \$280.00 per hour. *Id.* Applicant also seeks an award of **\$170.06** for expense reimbursement for copies, envelopes, postage, service of the fee application, and use of the Lacerte Tax Preparation software. *Id.*

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3). Previous interim compensation awards under 11 U.S.C. § 331, if any, are subject to final review under § 330.

Applicant's services here included, without limitation: work on the employment/fee application; gathering data regarding Debtor's tax liability determination; input, processing, and finalization of Debtor's tax returns. Doc. #96. The court finds the services and expenses reasonable, actual, and necessary. The Trustee has reviewed

the Application and finds the requested fees and expenses to be reasonable. Doc. #98.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

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

This Application is GRANTED. The court will approve on a final basis under 11 U.S.C. §330 compensation in the amount of **\$1,652.00** in fees and **\$170.06** in expenses. The court grants the Application for a total award **\$1,822.06** as an administrative expense of the estate and an order authorizing and directing the Trustee to pay such to Applicant from the first available estate funds.

9. [24-13393](#)-B-7 **IN RE: DANIEL HERRERA**
[EAT-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-13-2025 [[31](#)]

LAKEVIEW LOAN SERVICING, LLC/MV
CASSANDRA RICHEY/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 Lakeview Loan Servicing LLC ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 5116 Wingspan Lane, Bakersfield, California 93306. Doc. #31.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with Rules 4001(a) (1) and 7004 and LBR 9014-1(d) (3) (B) (i).

The notice did not comply with Local Bankruptcy Rule 9014-1(d) (3) (B) (i), which requires the notice of hearing to include the names and addresses of persons who must be served with any opposition. Here, Movant's notice did not include the Chapter 7 Trustee and the U.S. Trustee as persons to serve. Doc. #32.

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

10. [23-11298](#)-B-7 **IN RE: OSCAR URVINA**
[NLG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-14-2025 [\[29\]](#)

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

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

LBR 9004-2(a) (6), (b) (5), (b) (6), (e) (3), LBR 9014-1(c), and (e) (3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings

A Motion for Relief from Stay was previously filed on November 21, 2024 (Doc. #17) and denied without prejudice on January 10, 2025. Doc. #28. The DCN for that motion was NLG-1. This motion also has a DCN of NLG-1 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

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

11. [23-10008](#)-B-7 **IN RE: RODERICK-OLAF FONSECA**

MOTION TO AVOID LIEN OF KATHLEEN ALLISON; ROB BONTA, ARLENE BARRERA, JAMES HILL FOR BRIAN CATES, MOTION FOR TURNOVER OF PROPERTY UNDER SEC. 542(A)
12-9-2024 [\[43\]](#)

RODERICK-OLAF FONSECA/MV
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied with prejudice.

ORDER: The court will issue an order.

Roderick-Olaf Fonseca ("Debtor") comes before the court on what is styled as a *Motion to Avoid Lien under 11 U.S.C. § 522(f)*. Doc. #43. The motion is brought against the following individuals in their official capacities (collectively "Respondents"): Kathleen Allison, the (former) Secretary for the California Department of Corrections and Rehabilitation ("CDCR"); Rob Bonta, the Attorney General for the State of California; Arlene Barrera, the Auditor-Controller for Los Angeles (California) County (misidentified in the Los Angeles County Assessor/County Clerk); and James Hill, Warden of the Richard J. Donovan Correctional Facility (substituted for Brian Cates). *Id.*

The initial motion is a form document generated for use in the U.S. Bankruptcy Court for the Central District of California. *Id.* This form document is not appropriate for filings in the Eastern District. On December 26, 2024, a Response was filed on behalf of Respondents Allison and Bonta. Doc. #48. On February 3, 2025, Debtor filed a Reply. Doc. #67.

While this motion could be denied without prejudice on a plethora of procedural grounds, the court elects to DENY WITH PREJUDICE. This is because, while the motion vaguely references a "fraudulent executory contract" which Debtor asserts was discharged in the underlying bankruptcy case, it appears from Debtor's Reply that the "executory contract" in question was, in fact, restitution owed by Debtor stemming from his 2006 conviction in Los Angeles County for committing a lewd act upon a child [Cal. Pen. Code ("PC") §288(a)] and one count of aggravated assault of a child, rape, and inflicting great bodily injury upon the victim [PC §§ 261(a)(2), 269(a)(1), 1192.7(c)(8)]. See *Fonseca v. Allison et al.*, Adv. Pro. 23-01004 (the Adversary Proceeding), AP Doc. #44.

Debtor brought the Adversary Proceeding against various defendants in their official capacity on January 23, 2023, and the adversary was dismissed on April 10, 2023, in an order affirming the prior tentative

ruling handed down on April 5, 2023. AP Doc. #55, #44. Those rulings are incorporated here. The underlying facts and conclusions of law are outlined in the tentative. AP Doc. #44. In that tentative order, the court granted dismissal of the adversary under Civ. Rule 12(b)(1), finding that the court had no subject-matter jurisdiction over Debtor's claims because federal bankruptcy courts have no jurisdiction to invalidate the results of state criminal court proceedings. *Id.* That lack of jurisdiction has not been cured by the passage of time. That ruling is the law of the case. This court has no subject matter jurisdiction to give Debtor the relief he seeks.

In his (confusingly written) Reply brief, Debtor indicates that the motion, unlike the Adversary Proceeding, does not seek to alter the terms of Debtor's confinement nor avoid the restitution order connected with his conviction. Doc. #67. Rather, Debtor seeks "a release from all liens that U.S. Trustee Jeffery [sic] Vetter has investigated and determined are dischargeable as presented to this Honorable Judge." *Id.* As best the court can divine from the Reply, Debtor appears to argue through tortured analysis of Black's Law Dictionary and 17A Am Jr 2d Contracts that the abstract of judgment entered against Debtor's property arising from the restitution order is somehow a "Fraudulent Executory Contract" that was discharged by his bankruptcy. *Id.*

The court has already ruled that there is no contract involved here, but rather a criminal conviction. That has not changed. The Supreme Court has long cautioned that Bankruptcy Courts should not invalidate the results of state criminal convictions. *Kelly v. Robinson*, 479 U.S. 36,47 (1986). The liens Debtor discusses are consequences of his criminal conviction. The relief he asks for involves a term of his criminal conviction. This court has no jurisdiction to modify that sentence or any term of the sentence.

Debtor argues that the restitution order is "an implied in fact" contract. Debtor is confusing the criminal restitution order that was entered by the California Superior Court as part of a criminal sentence with the civil remedy of restitution available in civil proceedings to resolve a claim of "unjust enrichment" of one party at the expense of another party. Thus, the "abstract of judgment" does not pertain to any contract at all but is a by-product of Debtor's conviction.

Debtor even quotes the "Discharge Order" which says on page 2 (not included in Debtor's response): "Some debts are not discharged. Examples of debts that are not discharged are. . .debts for most fines, penalties, forfeitures, or criminal restitution obligations." So, Debtor is simply incorrect that any lien related to his conviction was discharged. Having reviewed the pleadings, the court is of the firm conviction that this motion is simply an effort to relitigate the issues raised by his failed Adversary Proceeding which the court has already found to be meritless.

As Debtor is acting *pro se* in this matter, the hearing in this matter will proceed as scheduled. In the absence of any authority more persuasive than provided thus far, this motion will be DENIED WITH PREJUDICE.