



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Wednesday, February 14, 2024  
Department A – Courtroom #11  
Fresno, California**

Unless otherwise ordered, all hearings before Judge Niemann are simultaneously: (1) **IN PERSON** in Courtroom #11 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [21-11814](#)-A-11     **IN RE: MARK FORREST**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION  
7-22-2021    [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION:                    Dropped as moot.

NO ORDER REQUIRED

This bankruptcy case is being converted to chapter 7 pursuant to calendar matter #3 below. Therefore, this status conference will be dropped as moot.

2. [21-11814](#)-A-11     **IN RE: MARK FORREST**  
[NCK-13](#)

MOTION TO EMPLOY NOEL KNIGHT AS ATTORNEY(S)  
1-17-2024    [[594](#)]

MARK FORREST/MV  
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Denied.

ORDER:                            The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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 non-responding parties in interest are entered. Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

Debtor in possession Mark Alan Forrest ("Debtor" or "DIP") moves pursuant to 11 U.S.C. § 327(a) for authorization to employ The Knight Law Group ("Counsel") to serve as general bankruptcy counsel in this chapter 11 case. Doc. #594.

Section 1107 of the Bankruptcy Code gives DIP all the rights and powers of a trustee and requires that DIP perform all the functions and duties of a trustee, subject to certain exceptions not applicable here. 11 U.S.C. § 1107. Section 327(a) of the Bankruptcy Code permits DIP to employ, with court

approval, professionals "that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist" DIP in carrying out DIP's duties under the Bankruptcy Code. 11 U.S.C. § 327(a).

However, there are two issues with respect to Counsel's motion. First, as provided in calendar matter #3 below, this court is granting Debtor's motion to convert this chapter 11 bankruptcy case to chapter 7. Thus, there is no longer a chapter 11 bankruptcy estate and no need for chapter 11 counsel to be employed on behalf of the debtor in possession. To the extent Counsel seeks to represent Debtor in the converted chapter 7 case, bankruptcy court approval is not required.

Second, to the extent that the motion seeks retroactive employment of Counsel in the chapter 11 case, Counsel has not addressed the requisite standard. In the Ninth Circuit, bankruptcy courts "possess the equitable power to approve retroactively a professional's valuable but unauthorized services." In re Grant, 507 B.R. 306, 309 (Bankr. E.D. Cal. 2014) (quoting Atkins v. Wain, Samuel & Co. (In re Atkins), 69 F.3d 970, 973 (9th Cir. 1995)). Such awards should be limited to exceptional circumstances where an applicant can show both (1) a satisfactory explanation for the failure to receive prior judicial approval and (2) that he or she has benefited the bankruptcy estate in some significant manner. E.g., Atkins, 69 F.3d at 975-76; In re THC Fin. Corp., 837 F.2d 389, 392 (9th Cir. 1988). These two factors must be met in order for a professional to establish exceptional circumstances, while additional factors may, but need not, be considered by the court in exercising its discretion. Atkins, 69 F.3d at 976.

Accordingly, the court is inclined to DENY Debtor's motion to employ Counsel.

3. [21-11814](#)-A-11      **IN RE: MARK FORREST**  
[NCK-14](#)

MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7  
1-17-2024    [\[590\]](#)

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION:      Granted.

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

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

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

Mark Alan Forrest ("Debtor") moves the court for an order converting Debtor's chapter 11 case to chapter 7 pursuant to 11 U.S.C. § 1112(a). Doc. #590.

Bankruptcy Code § 1112(a) permits the debtor to convert a chapter 11 case to chapter 7 unless: (1) the debtor is not a debtor in possession; (2) the case originally was commenced as an involuntary case under this chapter; or (3) the case was converted to a case under this chapter other than on the debtor's request. 11 U.S.C. § 1112(a).

Here, Debtor initiated this subchapter V chapter 11 case by filing a voluntary petition on July 22, 2021, and Debtor is conducting his bankruptcy case as a debtor in possession. Decl. of Mark Alan Forrest, Doc. #592. A review of the docket in this bankruptcy case shows that this case has not been converted previously. Therefore, the Bankruptcy Code does not preclude Debtor from voluntarily converting to chapter 7.

Accordingly, this motion is GRANTED.

4. [22-12016](#)-A-11     **IN RE: FUTURE VALUE CONSTRUCTION, INC.**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION  
11-28-2022    [[1](#)]

D. GARDNER/ATTY. FOR DBT.

NO RULING.

5. [22-10778](#)-A-11     **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION  
5-8-2022    [[1](#)]

NOEL KNIGHT/ATTY. FOR DBT.

NO RULING.

6. [23-12784](#)-A-11     **IN RE: KODIAK TRUCKING INC.**  
[FWP-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-26-2024    [[110](#)]

INTEGRATED VEHICLE LEASING, INC./MV  
PETER FEAR/ATTY. FOR DBT.  
THOMAS PHINNEY/ATTY. FOR MV.

NO RULING.

1. [23-12716](#)-A-7     **IN RE: MARISELA/FERNANDO ALCANTAR**

PRO SE REAFFIRMATION AGREEMENT WITH U.S. BANK NATIONAL ASSOCIATION  
1-26-2024    [[22](#)]

OSCAR SWINTON/ATTY. FOR DBT.

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

DISPOSITION:     Dropped.

ORDER:             The court will issue an order.

The debtors' counsel will inform the debtors that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. The debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. In re Minardi, 399 B.R. 841, 846 (Bankr. N.D. Okla. 2009). The reaffirmation agreement, in the absence of a declaration by the debtors' counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. The debtors shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by their bankruptcy attorney.

1. [23-12221](#)-A-7     **IN RE: MALACHI/JULIA KIRKMAN**  
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-10-2024    [\[18\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.  
DISCHARGED 01/08/2024

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

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

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

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

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtors' interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtors' discharge was entered on January 8, 2024. Doc. #17. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Toyota Motor Credit Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2020 Toyota Camry, VIN: 4T1C11AKXLU978935 (the "Vehicle"). Doc. #18.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least three complete

pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$1,200.45. Decl. of Debra Knight, Doc. #21. The evidence also shows that there is a lack of insurance. Id.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. Movant values the Vehicle at \$21,475.00 and the amount owed to Movant is \$23,820.65. Knight Decl., Doc. #21.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtors have failed to make at least three pre- and post-petition payments to Movant, the Vehicle is a depreciating asset, and there is a lack of insurance.

2. [23-12362](#)-A-7     **IN RE: ANDREY/KHRYSTYNA BORSCH**  
[JES-1](#)

MOTION TO SELL  
12-29-2023    [\[16\]](#)

JAMES SALVEN/MV  
RABIN POURNAZARIAN/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled for higher and better offers.

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 the hearing.

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

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Andrey V. Borsch and Khrystyna Borsch (collectively, "Debtors"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the bankruptcy estate's interest in a 2014 Audi and a 2008 BMW (collectively, the "Vehicles") to Debtors for a total purchase price of \$3,500.00, subject to higher and better bids at the hearing. Doc. #16.



Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 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, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Trustee Decl., Doc. #18. Trustee's proposed sale to Debtors is made in consideration of the full and fair market value of the Vehicles minus Debtors' claimed exemption credit. Id. Debtors offered to buy the Vehicles for the net purchase price of \$3,500.00, subject to overbid at the hearing. Id. The court recognizes that no commission will need to be paid because the sale is to Debtors.

It appears that the sale of the estate's interest in the Vehicles is in the best interests of the estate, the Vehicles will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith.

Accordingly, subject to overbid offers made at the hearing, the court is inclined to GRANT Trustee's motion and authorize the sale of the estate's interest in the Vehicles to Debtors on the terms set forth in the motion.

3. [22-11268](#)-A-7     **IN RE: IVAN MENDOZA AND YADIRA MADRIGAL**  
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION/APPLICATION TO CONFIRM  
TERMINATION OR ABSENCE OF STAY  
1-3-2024    [\[36\]](#)

AMERICREDIT FINANCIAL SERVICES, INC./MV  
T. O'TOOLE/ATTY. FOR DBT.  
SHERYL ITH/ATTY. FOR MV.  
DISCHARGED 11/07/2022

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

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

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as

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

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtors' interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtors' discharge was entered on November 7, 2022. Doc. #18. The automatic stay was terminated as to the debtors' interest when the discharge was entered on November 7, 2022. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Americredit Financial Services, Inc. DBA GM Financial ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2018 Chevrolet Malibu, VIN: 1G1ZD5ST0JF290568 (the "Vehicle"). Doc. #36

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least five post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$2,359.68. Decl. of Aaron Rangel, Doc. #42.

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

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

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-12-2024    [\[12\]](#)

DEERE AND COMPANY/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
JAMES MACLEOD/ATTY. FOR MV.

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

DISPOSITION:        Granted.

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

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

The movant, Deere & Company ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2021 John Deere 1023E Tractor (the "Tractor"). Doc. #12.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors indicated in their bankruptcy schedules that they intended to surrender the Tractor and, post-petition, Movant took possession of the Tractor from the debtors. Doc. #1; Decl. of Joseph W. Kenyon, Doc. #14.

The court does not find that relief from stay is appropriate pursuant to 11 U.S.C. § 362(d)(2) because, while the Tractor is not necessary to an effective reorganization because the debtors are in chapter 7, the debtors do have some equity in the Tractor. The Tractor is valued at \$11,900.00 and the debtors owe \$10,569.40. Kenyon Decl., Doc. #14.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtors have surrendered the Tractor to Movant and the Tractor is a depreciating asset.

5. [23-12387](#)-A-7     **IN RE: LESLIE RICHARDT**  
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT  
SEC. 341(A) MEETING OF CREDITORS  
1-9-2024    [\[27\]](#)

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

DISPOSITION:     Conditionally denied.

ORDER:             The court will issue the order.

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

The debtor shall attend the meeting of creditors rescheduled for March 4, 2024 at 4:00 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Federal Rules of Bankruptcy Procedure 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge or file motions for abuse, other than presumed abuse, under 11 U.S.C. § 707, is extended to 60 days after the conclusion of the meeting of creditors.

6. [23-12191](#)-A-7     **IN RE: MOISES/LUS VARGAS**  
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-17-2024    [\[22\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.  
DISCHARGED 01/30/2024

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

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

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

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

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtors' interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtors' discharge was entered on January 30, 2024. Doc. #28. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Toyota Motor Credit Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2022 Toyota Avalon, VIN: 4T1H21FB4NU080857 (the "Vehicle"). Doc. #22.

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

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

Movant has produced evidence that the debtors are delinquent by at least \$3,155.10. Decl. of Debra Knight, Doc. #24. After review of the included evidence, the court finds that "cause" does not exist to lift the automatic stay as to the chapter 7 trustee for the failure of the debtors to make at least three pre-petition payments. There is no indication of a post-petition default.

However, the court finds that relief from stay should be granted pursuant to 11 U.S.C. § 362(d)(2) because the bankruptcy estate does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. Movant values the Vehicle at \$42,675.00 and the amount owed to Movant is \$51,501.49. Knight Decl., Doc. #24.

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

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

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.  
1-11-2024    [\[15\]](#)

PETER SCOTT/MV  
JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

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

Peter Bulkeley Scott ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Capital One Bank (USA), N.A. ("Creditor") on the residential real property commonly referred to as 30656 Seminole Drive, Coarsegold, CA 93614 (the "Property"). Doc. #15; Schedule C & D, Doc. #1. According to Debtor's Schedule D, Debtor's ex-wife owns 50% of the Property. Schedule D, Doc. #1.

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

In the case of fractionally-owned property, all consensual encumbrances on the co-owned property must be deducted from the total value of the property before a debtor's fractional interest is determined. All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007). Once the debtor's fractional interest is determined, the consensual encumbrances on the co-owned property are excluded from the calculation of "all other liens on the property" under § 522(f)(2)(A)(iii). Id. at 90.

Here, Debtor's Schedule A/B states that Debtor's ex-wife owns 50% of the Property. Schedule A/B, Doc. #1. The value of the encumbrance against the entire Property held by Specialized Loan Servicing LLC is \$154,000.00, and the Property is valued at \$420,000.00. See Schedule A/B, Doc. #1; Schedule D, Doc. #24. Applying the Meyer formula requires deducting the \$154,000.00 encumbrance on the co-owned property from the total value of the property, \$420,000.00. This amount totals \$266,000.00. After dividing this value of the Property by Debtor's 50% ownership interest in the Property, it is established that Debtor's interest in the Property for purposes of § 522(f) is \$133,000.00.

Debtor filed the bankruptcy petition on October 26, 2023. Doc. #1. A judgment was entered against Debtor in the amount of \$11,535.11 in favor of Creditor on April 13, 2023. Ex. A, Doc. #18. The abstract of judgment was recorded pre-petition in Madera County on July 26, 2023, as document number 2023014144. Ex. A, Doc. #18. The lien attached to Debtor's interest in the Property located in Madera County. Schedule D, Doc. #1. Debtor claimed an exemption of \$175,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$11,535.11
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$0
Amount of Debtor's claim of exemption in the Property	+	\$175,000.00
		\$186,535.11
Value of Debtor's interest in the Property absent liens	-	\$133,000.00
Amount Creditor's lien impairs Debtor's exemption		\$53,535.11

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

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

8. [24-10092](#)-A-7     **IN RE: EDUARDO MEZA IBARRA**  
[HRH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-23-2024    [\[14\]](#)

BMO BANK N.A./MV  
RAYMOND PEREZ/ATTY. FOR DBT.  
RAFFI KHATCHADOURIAN/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                  Granted.

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

This motion was filed and served at least 14 days prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as

scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The movant, BMO Bank N.A. f/k/a BMO Harris Bank N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to two (2) 2022 Hyundai 53' Dry Vans, VIN 3H3V532K5NJ143090 and 3H3V532K9NJ143089 (collectively, the "Trailers"). Doc. #14.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make the monthly installments due to Movant since October 1, 2023. Decl. of Bryan Schrepel, Doc. #17. Movant obtained possession of the Trailers pre-petition. Id.

The court also finds that the debtor does not have any equity in the Trailers and the Trailers are not necessary to an effective reorganization because the debtor is in chapter 7. Movant values the Trailers at \$27,250.00 each, or an aggregate value of \$54,500, and the amount owed to Movant with respect to the Trailers is \$58,770.61. Schrepel Decl., Doc. #17.

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

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



MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-26-2024    [\[25\]](#)

MATRIX FINANCIAL SERVICES CORPORATION/MV  
PETER BUNTING/ATTY. FOR DBT.  
NATHAN SMITH/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

This motion was filed and served at least 14 days prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. While not required, the debtor filed written non-opposition to the motion. Doc. #31. Unless opposition is presented at the hearing, the court intends to enter the defaults of the non-responding parties and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The movant, Matrix Financial Services Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property located at 7319 W. Jones Ave., Phoenix, AZ 85043 ("Property"). Doc. #25.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least six pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$14,399.15. Decl. of Karen Clamp, Doc. #28. The debtor does not oppose the motion. Doc. #31.

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

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