



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Wednesday, February 15, 2023  
Department A – Courtroom #11  
Fresno, California**

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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. [22-10416](#)-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION  
3-18-2022 [[1](#)]

RILEY WALTER/ATTY. FOR DBT.

NO RULING.

2. [22-10416](#)-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**  
[WJH-6](#)

CONTINUED MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
6-7-2022 [[112](#)]

KR CITRUS, INC., A CALIFORNIA CORPORATION/MV  
RILEY WALTER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to the same date and time as the hearing to  
confirm the debtor's plan of reorganization.

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

Because the stipulation to assume this lease depends upon confirmation of the  
debtor's plan of reorganization and the court intends to continue the hearing  
to confirm the debtor's proposed plan, the court will continue the hearing on  
this motion to the same date and time as the continued confirmation hearing.

3. [22-10416](#)-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**  
[WJH-9](#)

AMENDED CHAPTER 11 SMALL BUSINESS PLAN  
12-21-2022 [[353](#)]

RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to permit the debtor to supplement the record  
with respect to plan confirmation.

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

KR Citrus, Inc. ("Debtor"), the debtor and debtor in possession in this Subchapter V Chapter 11 case, moves the court for confirmation of its Second Amended Plan of Reorganization dated May 31, 2022 as corrected by the Notice of Errata (collectively, the "Plan"). Doc. #353, 360. The hearing to confirm the Plan was set by order of the court filed on December 21, 2022 ("Order"). Doc. #349. In the Order, the court ordered transmission of the Plan, Order, ballots, and notice of the confirmation hearing by December 21, 2022; acceptances or rejections of the Plan, and objections to confirmation by February 1, 2023; and responses to objections, tabulation of ballots, and brief by February 8, 2023. The court finds notice and service of the Plan and related documents were proper and the confirmation hearing should proceed. Doc. #354, 357, 361. No objections to confirmation of the Plan have been filed.

Based on the record before the court, Debtor needs to address certain issues (identified below) before the court will confirm the Plan. The court is inclined to continue the confirmation hearing to permit Debtor to file supplemental pleadings to address the following concerns of the court.

First, the Plan has the wrong collateral listed for Class 3.11. The collateral listed in the Plan is a 2021 Forklift when the actual collateral is a 30' Freedom Trailer. This needs to be corrected.

Next, the Plan improperly specifies Class 4 as not impaired under the Plan when Class 4 is impaired. Pursuant to 11 U.S.C. § 1124(1), a claim is not impaired if the plan "leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest[.]" 11 U.S.C. § 1124(1). Here, Section 7.4.2 of the Plan provides that Class 4 claimants will be paid in full within 180 days after confirmation. Under the court's interpretation of § 1124(1) and relevant case law, such treatment results in Class 4 being impaired. In re Valley View Shopping Ctr., L.P., 260 B.R. 10, 32-33 (Bankr. D. Kan. 2001) (holding unsecured creditors were impaired where the plan paid claims in full, without interest, 90 days after the effective date of the plan).

Further, contrary to Debtor's assertion, the Plan cannot be confirmed under § 1191(a) because § 1129(a)(8) has not been satisfied. This court follows Ninth Circuit Bankruptcy Appellate Panel authority, which holds that a class is deemed to have rejected the plan when no creditors within a class vote to accept a plan. Bell Road Inv. Co. v. M Long Arabians (In re M Long Arabians), 103 B.R. 211, 215-16 (B.A.P. 9th Cir. 1989). Here, Classes 3.3, 3.14, 3.15 and 4 are impaired and have not affirmatively voted to accept the Plan. In addition, Class 7 has not affirmatively consented to accept the Plan. Thus, the Plan must be confirmed under § 1191(b). Debtor did not address confirmation under § 1191(b) in its confirmation brief.

Finally, the Plan does not provide adequate means for the implementation and execution of the Plan as required by § 1123(a)(5) and is not feasible under § 1129(a)(11) because the projected budget filed with the Plan does not contain sufficient funds to pay unpaid pre-confirmation professional fees and expenses owed to Debtor's counsel or pre-confirmation fees and expenses owed to the Subchapter V trustee. With respect to Debtor's counsel, the motion to employ Debtor's counsel indicates that Debtor's counsel does not have a retainer. Doc. #59. Section 5.4 of the Plan states that, as of December 15, 2022, fees in the amount of \$150,926.00 and expenses in the amount of \$3,661.17 have been allowed as to Debtor's counsel, although the court calculates the allowed fees to be \$148,561.00 and allowed expenses to be \$3,688.17. Compare Plan at 11:9-10, Doc. #353 with Doc. #111, 202, 336. Of these amounts, only \$40,000.00 in allowed fees has been paid, which leaves over \$110,000.00 in unpaid, allowed fees and expenses. Plan at 11:10, Doc. #353. Based on the pleadings related to

approval of fees and expenses for Debtor's counsel, the allowed fees and expenses are for services rendered from the petition date through October 15, 2022. Doc. ##96, 146, 292. The court assumes that Debtor's counsel has incurred additional pre-confirmation fees and expenses that will need to be paid within 30 days of the effective date of the Plan or when allowed. Plan, § 5.4, Doc. #353. However, the projections filed with the Plan only provide for a total of \$20,000 to be paid on account of pre-confirmation fees and expenses due to Debtor's counsel. With respect to the pre-confirmation fees and expenses of the Subchapter V trustee, there are no funds included in the budget to pay these fees. Thus, the projections, as filed, do not provide adequately for payment of administrative expenses, and the Plan does not explain from what source the unpaid administrative expenses will be paid.

The court is inclined continue the confirmation hearing to permit Debtor to address the issues raised by the court.

4. [22-12016](#)-A-11     **IN RE: FUTURE VALUE CONSTRUCTION, INC.**  
[DMG-2](#)

CONTINUED MOTION TO UTILIZE FUNDS HELD IN ESCROW  
12-28-2022    [[21](#)]

FUTURE VALUE CONSTRUCTION, INC./MV  
D. GARDNER/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on February 1, 2023. Doc. #76.

5. [22-12016](#)-A-11     **IN RE: FUTURE VALUE CONSTRUCTION, INC.**  
[DMG-4](#)

MOTION TO APPROVE STIPULATION RE: DEBTOR'S USE OF CASH COLLATERAL  
2-1-2023    [[82](#)]

FUTURE VALUE CONSTRUCTION, INC./MV  
D. GARDNER/ATTY. FOR DBT.

NO RULING.

6. [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.

1. [18-14207](#)-A-7     **IN RE: ELMER/KATHLEEN FALK**  
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.  
FOR PETER A. SAUER, TRUSTEES ATTORNEY(S)  
1-11-2023    [\[155\]](#)

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

Fear Waddell, P.C. ("Movant"), general counsel for Chapter 7 trustee James Salven ("Trustee"), requests allowance of final compensation and reimbursement for services rendered from March 19, 2019 through January 5, 2023. Doc. #155. Movant provided legal services valued at \$102,396.00, and requests compensation for that amount. Doc. #155. Movant requests reimbursement for expenses in the amount of \$1,341.11. Doc. #155. This is Movant's first and final fee application.

Movant understands that Trustee is currently holding approximately \$56,053.00 in this case, and the case is administratively insolvent. Ex. A, Doc. #159. Movant seeks approval of the full amount of its fees, understanding that Movant will receive a pro rata share of Movant's allowed fees and costs. Ex. A, Doc. #159.

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

Movant's services included, without limitation: (1) extensive legal research and analysis regarding Trustee's legal options and the scope of his authority with regards to a third-party entity, Mission Law Firm; (2) extensive analysis

of Mission Law Firm assets; (3) research and analysis regarding issues of substantive consolidation; (4) prosecute and settle the adversary proceeding between Tanya Moore and Trustee regarding the transfer of Mission Law Firm; (5) determine avoidance power that Trustee could exercise to avoid the corporate dissolution actions taken by Ms. Moore in relation to Mission Law Firm; (6) research, analyze, and prepare a motion for preliminary injunction to prevent Ms. Moore from continuing to use the Mission Law Firm name or to take fee awards from Mission Law Firm that Trustee asserted belonged to the bankruptcy estate; (7) assist Trustee in preparing responsive pleadings to interpleader suit filed by one of the defendants in Ms. Moore's federal court-claim; (8) negotiate with Ms. Moore's counsel to refer adversary proceeding to the court's bankruptcy dispute resolution panel; (9) work out arrangement with Ms. Moore to permit her to pay a monthly amount to Trustee secured by a deed of trust on certain of her real property, to be paid from the proceeds of the Moore Law Firm; and (10) communicate and consult with Trustee. Exs. A, B, & C, Doc. #159; Decl. of Peter Sauer, Doc. #158. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED. The court allows final compensation in the amount of \$102,396.00 and reimbursement for expenses in the amount of \$1,341.11. Trustee is authorized to make a combined payment of \$103,737.11, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

2. [21-11034](#)-A-7     **IN RE: ESPERANZA GONZALEZ**  
[DMG-5](#)

CONTINUED MOTION FOR COMPENSATION FOR D. MAX GARDNER, TRUSTEES ATTORNEY(S)  
1-4-2023     [\[208\]](#)

RESPONSIVE PLEADING

NO RULING.

3. [23-10044](#)-A-7     **IN RE: GRICELDA GARCIA GOMEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
1-24-2023     [\[14\]](#)

\$10.00 FILING FEE PAID 1/25/23

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

DISPOSITION:     The order to show cause will be vacated.

ORDER:     The court will issue an order.

The record shows that the installment fees now due have been paid. The case shall remain pending.



4. [22-12061](#)-A-7     **IN RE: LEO BRADSHAW**  
[DJP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-31-2023    [\[15\]](#)

EDUCATIONAL EMPLOYEES CREDIT UNION/MV  
GABRIEL WADDELL/ATTY. FOR DBT.  
DON POOL/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 certificate of service filed in connection with this motion for relief from the automatic stay shows that the chapter 7 trustee was only served electronically pursuant to Federal Rule of Civil Procedure 5 and Federal Rules of Bankruptcy Procedure ("Rule") 7005, 9036 Service. Doc. #21. However, Rules 4001(a)(1) and 9014(b) require service of a motion for relief from the automatic stay to be made pursuant to Rule 7004. Rule 7004(b)(1) provides that service upon an individual be made "by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession." Rule 9036(e) does not permit electronic service when any paper is required to be served in accordance with Rule 7004.

Because the chapter 7 trustee was not served with this motion by mail as required by Rule 7004(b)(1), the motion was not served properly on the chapter 7 trustee.

Accordingly, this motion is DENIED WITHOUT PREJUDICE for improper service.

5. [22-12074](#)-A-7     **IN RE: CLAUDIA ABU**  
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
1-13-2023    [\[25\]](#)

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

DISPOSITION:        Conditionally denied.

ORDER:                The court will issue the order.

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

The debtor shall attend the meeting of creditors rescheduled for February 16, 2023 at 9:00 a.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

debtors' discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.

6. [22-11596](#)-A-7     **IN RE: GURINDER/JATINDER BATH**  
[PBB-7](#)

MOTION TO AVOID LIEN OF CREDITORS BUREAU USA  
1-12-2023    [\[67\]](#)

JATINDER BATH/MV  
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

This motion was set for hearing on at least 28 days' notice 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 movants have done here.

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #71. However, Federal Rules of Bankruptcy Procedure 9014 requires service of a motion to avoid a lien under 11 U.S.C. § 522(f) be made pursuant to Federal Rule of Bankruptcy Procedure 7004, which was done. The declarant should have marked boxes under Section 6A of the current form instead. The declarant properly attached appropriate attachments to the court's mandatory Certificate of Service form, which show that service of the motion and related pleadings was proper.

Gurinder Singh Bath and Jatinder Kaur Bath (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Creditors Bureau USA ("Creditor") on the residential real property commonly referred to as 7303 West Browning Avenue, Fresno, CA 93723 (the "Property"). Doc. #67; Am. Schedule C, Doc. #10; 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 debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security

interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtors filed their bankruptcy petition on September 15, 2022. Doc. #1. On July 30, 2019, a judgment was entered against Gurinder Singh Bath and Fast Tech Trans Inc., a California Corporation, in the amount of \$8,153.15 in favor of David Jensen. Ex. D, Doc. #70. Creditor is the assignee of Mr. Jensen. Ex. D, Doc. #70. The abstract judgment was recorded pre-petition in Fresno County on February 17, 2021, as document number 2021-0025470. Ex. D, Doc. #70. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #67. Debtors estimate the judicial lien to be \$9,865.13 as of September 15, 2022. Doc. #67.

Debtors assert a market value for the Property as of the petition date at \$635,800.00. Am. Schedule A/B, Doc. #10.

The Property also is encumbered by a first deed of trust in favor of Wells Fargo Home Mortgage in the amount \$325,688.34 and two tax liens totaling \$54,308.96.<sup>1</sup> Schedule D, Doc. #1. On January 12, 2023, this court issued orders avoiding four senior judicial liens on the Property. Doc. ##73-76. The first senior judicial lien was recorded in Fresno County on May 26, 2017 with respect to a judgment of \$892,979.72 entered on December 20, 2016. Ex. D, Doc. #54. Debtors estimate the judicial lien to be \$1,363,579.00 as of September 15, 2022. Doc. #67. The second senior judicial lien was recorded in Fresno County on August 1, 2019 with respect to a judgment of \$8,153.15 entered on July 29, 2019. Ex. D, Doc. #42. Debtors estimate the judicial lien to be \$8,153.15 as of September 15, 2022. Doc. #67. The third senior judicial lien was recorded in Fresno County on November 18, 2019 with respect to a judgment of \$892,979.72 entered on December 20, 2016. Ex. D, Doc. #37. Debtors estimate the judicial lien to be \$1,389,640.08 as of a proof of claim filed October 5, 2022. Doc. #67. The fourth senior judicial lien was recorded in Fresno County on November 17, 2020 with respect to a judgment of \$3,718.09 entered on August 2, 2019. Ex. D, Doc. #32. Debtors estimate the judicial lien to be \$4,498.88 as of September 15, 2022. Doc. #67.

Applying the statutory formula:

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<sup>1</sup> There is a discrepancy between the motion and Schedule D as to the amount of the California Employment Development Department Tax Lien recorded on May 10, 2022. The motion lists the amount at \$53,053.31 and Schedule D lists the amount as \$53,023.31. The court will use the schedule amount listed in Debtor's petition Schedule D instead of the value used in the motion. Petition, Doc. #1.

Amount of Creditor's judicial lien		\$9,865.13
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$3,145,868.41
Amount of Debtor's claim of exemption in the Property	+	\$312,000.00
		\$3,467,733.54
Value of Debtor's interest in the Property absent liens	-	\$635,800.00
Amount Creditor's lien impairs Debtor's exemption		\$2,831,933.54

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

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

7. [22-11897](#)-A-7 **IN RE: ROSENDO VERDUSCO AND MA DE LOURDES DE VERDUZCO**  
[KR-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-1-2023 [\[24\]](#)

THE GOLDEN 1 CREDIT UNION/MV  
T. O'TOOLE/ATTY. FOR DBT.  
KAREL ROCHA/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 on at least 14 days' notice 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.

As a procedural matter, the certificate of service (Doc. #30) and exhibits (Doc. #29) filed in support of this motion do not comply with LBR 9014-1(c). "In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6). The certificate of service and exhibits list the DCN as KGR-2 instead of the correct DCN which is DCN KR-2. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

The movant, The Golden 1 Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2018 Nissan Sentra ("Vehicle"). Doc. #24.

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 debtors are 2 payments past due in the amount of \$569.48 plus fees and costs of \$688.00, for a total of \$1,257.48. Doc. #27.

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 \$8,953.00 and the amount owed to Movant is \$15,158.59. Doc. #27.

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. According to the debtors' Statement of Intention, the Vehicle will be surrendered. Doc. #1.

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 two pre-petition payments and the Vehicle is a depreciating asset.

8. [22-12097](#)-A-7     **IN RE: LYDIA TORRES**  
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-5-2023    [[21](#)]

U.S. BANK TRUST NATIONAL ASSOCIATION/MV  
JENNIFER WONG/ATTY. FOR MV.  
DISMISSED 1/11/23

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

DISPOSITION:     Denied as moot.

ORDER:             The court will issue an order.

An order dismissing this case was entered on January 11, 2023. Doc. #27.  
Therefore, this motion will be DENIED AS MOOT.