



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

Hearing Date: February 27, 2024

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/RemoteAppearances>. 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.

9:30 AM

1. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**
NON-PROFIT CORPORATION
[WJH-12](#)

CONTINUED MOTION TO COMPEL
7-11-2023 [[88](#)]

TWILIGHT HAVEN, A CALIFORNIA
NON-PROFIT CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Withdrawn.

No order is required.

On February 9, 2024, Twilight Haven withdrew without prejudice this *Motion to Compel*. Doc. #472. Accordingly, this motion is WITHDRAWN.

2. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**
NON-PROFIT CORPORATION
[WJH-2](#)

FURTHER HEARING RE: MOTION TO USE CASH COLLATERAL
6-23-2023 [[18](#)]

TWILIGHT HAVEN, A CALIFORNIA
NON-PROFIT CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Denied as moot.

ORDER: The court will enter the order.

On February 13, 2024, the Debtor's *Chapter 11 Plan of Reorganization* was confirmed. Accordingly, this matter is DENIED as moot.

3. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
3-10-2023 [[1](#)]

RILEY WALTER/ATTY. FOR DBT.

NO RULING.

4. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[PSJ-25](#)

CONTINUED MOTION FOR AN ORDER APPROVING DISCLOSURE
STATEMENT, ESTABLISHING PROCEDURES FOR THE SOLICITATION AND
TABULATION OF VOTES ON PLAN, SCHEDULING HEARING ON
CONFIRMATION OF PLAN, APPROVING RELATED MATTERS FILED THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS
11-17-2023 [[1121](#)]

CO-COUNSEL TO THE OFFICIAL
COMMITTEE OF UNSECURED
RILEY WALTER/ATTY. FOR DBT.
PAUL JASPER/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

5. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[SSA-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION TO
TURNOVER PROPERTY
1-22-2024 [[1303](#)]

TELCION COMMUNICATIONS
GROUP/MV
RILEY WALTER/ATTY. FOR DBT.
STEVEN ALTMAN/ATTY. FOR MV.

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

DISPOSITION: Continued to March 26, 2024, at 9:30 a.m.

No order is required.

Pursuant to Stipulation of the parties approved by this court (Doc.
#1468), this matter is CONTINUED to March 26, 2024, at 9:30 a.m.

6. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-19](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-6-2023 [[204](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

7. [23-104757](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-21](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-6-2023 [[218](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

8. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-22](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-7-2023 [[230](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

9. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-40](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-26-2023 [[301](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

10. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-42](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
5-2-2023 [[334](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

11. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-18](#)

CONTINUED OBJECTION TO CLAIM OF TULARE HOSPITALIST GROUP,
CLAIM NUMBER 231
1-8-2020 [[1784](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 4/30/24 AS SCHEDULING CONFERENCE PER ECF ORDER #2646

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

DISPOSITION: Continued to April 30, 2024, at 9:30 a.m.

No order is required.

Pursuant to Stipulation of the parties approved by this court (Doc. #2646), this matter is CONTINUED to April 30, 2024, at 9:30 a.m.

12. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-19](#)

CONTINUED STATUS CONFERENCE RE: OBJECTION TO CLAIM OF
GUPTA-KUMAR MEDICAL PRACTICE, CLAIM NUMBER 232
1-8-2020 [[1789](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 4/30/24 AS SCHEDULING CONFERENCE PER ECF ORDER #2647

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

DISPOSITION: Continued to April 30, 2024, at 9:30 a.m.

No order is required.

Pursuant to Stipulation of the parties approved by this court (Doc. #2647), this matter is CONTINUED to April 30, 2024, at 9:30 a.m.

13. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-25](#)

CONTINUED STATUS CONFERENCE RE: OBJECTION TO CLAIM OF
INPATIENT HOSPITAL GROUP, INC., CLAIM NUMBER 230
1-10-2020 [[1834](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 4/30/24 AS SCHEDULING CONFERENCE PER ECF ORDER #2648

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

DISPOSITION: Continued to April 30, 2024, at 9:30 a.m.

No order is required.

Pursuant to Stipulation of the parties approved by this court (Doc.
#2648), this matter is CONTINUED to April 30, 2024, at 9:30 a.m.

11:00 AM

1. [23-12516](#)-B-7 **IN RE: ALEXANDER/CHRISTINA TRISTAO**

REAFFIRMATION AGREEMENT WITH CAPITAL ONE AUTO FINANCE - -
2020 RAM 1500 CREW CAB
1-25-2024 [\[16\]](#)

RABIN POURNAZARIAN/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 Alexander and Cristina Tristao ("Debtors") and Capital One Auto Finance for a 2020 Ram 1500 Crew Cab was filed on January 25, 2024. Doc. #16.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Debtors monthly income as stated in Schedule I is \$6,194.48 and expenses stated in Schedule J is \$7,686.00, leaving debtors with a negative net income of \$(1,491.52). Although the debtors' attorney executed the agreement, he did not indicate by checking the applicable box on Part C: Certification by Debtor's Attorney that in his opinion the debtors are able to make the required payment. Further, no evidence has been presented to the court to indicate how the debtors can afford to make the payment. The debtors claim their income has increased and expenses have decreased but have not provided the court with an amended Schedule I and J. Therefore, the reaffirmation agreement with Capital One Auto Finance will be DENIED.

2. [23-12516](#)-B-7 **IN RE: ALEXANDER/CHRISTINA TRISTAO**

REAFFIRMATION AGREEMENT WITH CAPITAL ONE AUTO FINANCE - -
2017 JEEP WRANGLER
2-2-2024 [\[17\]](#)

RABIN POURNAZARIAN/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 Alexander and Cristina Tristao ("Debtors") and Capital One Auto Finance for a 2017 Jeep Wrangler Utility 4D was filed on February 2, 2024. Doc. #17.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Debtors monthly income as stated in Schedule I is \$6,194.48 and expenses stated in Schedule J is \$7,686.00, leaving debtors with a negative net income of \$(1,491.52). Although the debtors' attorney executed the agreement, he did not indicate by checking the applicable box on Part C: Certification by Debtor's Attorney that in his opinion the debtors are able to make the required payment. Further, no evidence has been presented to the court to indicate how the debtors can afford to make the payment. The debtors claim their income has increased and expenses have decreased but have not provided the court with an amended Schedule I and J. Therefore, the reaffirmation agreement with Capital One Auto Finance will be DENIED.

3. [23-12699](#)-B-7 **IN RE: LEONARD/LORETTA JOHNSTONE**

PRO SE REAFFIRMATION AGREEMENT WITH KUBOTA CREDIT CORPORATION
2-6-2024 [\[23\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

A Reaffirmation Agreement between Leonard Frank and Loretta Ann Johnstone ("Debtors") and Kubota Credit Corporation for three Kubota tractors was filed on February 6, 2024. Doc. #23.

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. Ok. 2009) (emphasis in original). In this case, the Debtors' attorney affirmatively represented that the agreement established a presumption of undue hardship and that in his opinion the Debtors were not able to make the required payments.

Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

4. [23-12699](#)-B-7 **IN RE: LEONARD/LORETTA JOHNSTONE**

REAFFIRMATION AGREEMENT WITH CARVANA, LLC
1-18-2024 [\[20\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

A Reaffirmation Agreement between Leonard Frank and Loretta Ann Johnstone ("Debtors") and Carvana, LLC for a 2019 Ford Explorer Utility 4D XLT was filed on January 18, 2024. Doc. # 20.

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. Ok. 2009) (emphasis in original). In this case, the Debtors' attorney affirmatively represented that the agreement established a presumption of undue hardship and that in his opinion the Debtors were not able to make the required payments. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

1:30 PM

1. [24-10015](#)-B-7 **IN RE: HARKAMAL SINGH**
[HRH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-1-2024 [\[17\]](#)

PNC EQUIPMENT FINANCE, LLC/MV
GURJEET RAI/ATTY. FOR DBT.
RAFFI KHATCHADOURIAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The court intends to grant the motion for relief on the grounds stated in the motion.

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

PNC Equipment Finance, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to one 2016 Utility Reefer Trailer and one 2015 Thermo King S600 Reefer Unit Precedent ("Collateral"). Doc. #17. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). *Id.*

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. No written opposition was required.

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.

This motion relates to an executory contract or lease of personal property. Under the Code, the chapter 7 trustee has sixty (60) days after the order for relief in which to assume or reject a lease. 11 U.S.C. § 365(d)(1). The petition was filed on January 4, 2024, and so the trustee has until March 4, 2024, in which to assume or reject (or do neither, as § 365(p)(1) states that a failure to timely assume the lease will operate as a rejection).

Further complicating matters is the fact that this lease was not listed on Harkamal Singh's ("Debtor") Schedule G or Statement of Intention, while Movant is only listed as a nonpriority unsecured creditor of Schedule F. Doc. #1. Consequently, it is probable that the trustee had no notice of the existence of this lease agreement prior to the filing of the instant motion for stay relief. Nevertheless, even if the time limit set by § 365(d)(1) has not passed, the court may still grant stay relief if appropriate under 11 U.S.C. § 362(d)(1) or (d)(2).

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 for the following reasons. First, it appears that Debtor has made no payments since the filing of the petition and apparently has made no payments since approximately October 1, 2019. Doc. #20. Second, because of a suit filed by Movant against Debtor in 2020, a judgment for possession of the Collateral was entered in favor of Movant and against Debtor. *Id.* And third, Debtor has not listed the Collateral in his Schedules or his Statement of Intention. *Id.* See Doc. #1.

Additionally, Debtor has no equity in the Collateral as they are leased vehicles, and because this is a chapter 7 case, the Collateral is not necessary for an effective reorganization.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d) (1) and (d) (2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

The 14-day stay of Rule 4001(a) (3) will be ordered waived because Debtor has failed to make pre- and post-petition payments to Movant and the Vehicles are depreciating assets.

2. [23-11228](#)-B-7 **IN RE: BELLA VINEYARD AG SERVICES, INC.**
[DMG-5](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH BANK OF AMERICA, NA
1-19-2024 [\[48\]](#)

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.

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.

Chapter 7 trustee Jeffrey Vetter ("Trustee") requests an order approving a settlement agreement to resolve the amended claim of

Bank of America ("Creditor") pursuant to Fed. R. Bankr. P. ("Rule") 9019. Doc. #48.

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 a party in interest, including but not limited to 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.

Bella Vineyard Ag Services, LLC ("Debtor") filed chapter 7 bankruptcy on June 3, 2023. Doc. #1. Trustee was appointed as the interim trustee on that same date and became permanent trustee at the 341 meeting of creditors on January 24, 2022. Doc. #4; docket generally.

While administering the estate, Trustee initiated efforts to compromise Creditor's amended claim in the amount of \$354,195.83. POC #2-2. This claim originated in a loan agreement entered by Debtor and Creditor on September 16, 2015, as a line of credit, and it was subsequently extended by these parties, most recently on or about September 12, 2022. Doc. #50. Trustee avers that the claim was not scheduled by Debtor, and while the Proof of Claim properly identified the debt as secured, the Claims Register did not designate the debt as a secured claim. *Id.*; Doc. #51.

Trustee further avers that she has concluded estate administration, and the estate assets which have been secured and/or liquidated include:

Description	Amount
Bank of America account turned over by Debtor at time of filing	\$39,593.82
Right to payment/insurance reimbursement from Zenith Insurance	\$44,799.00
Collection of a note-payable from Chloe Equipment Rentals (court ordered pursuant to DCN DMG-3	\$28,725.17
James Parker account receivable	\$2,157.00
California Choice insurance reimbursement	\$875.94

Auction of several estate owned trucks (net proceeds after commission and expenses)	\$68,637.50
Subtotal	\$184,788.43

Id. The court notes that there are some discrepancies in the total funds outlined by Trustee, but it does not affect the disposition of this matter.

In an effort to avoid litigation over the inadvertent auction of secured collateral, Trustee and Creditor have entered into a settlement. *Id.* Trustee and Creditor have agreed, subject to court approval, that Trustee will pay to Creditor the sum of \$100,000.00 and retain the remaining funds (\$84,779.43 according to the moving papers; \$84,788.43 by the court's estimation) to pay to unsecured creditors on a pro rata basis. Doc. #50. The remainder of Creditor's claim will be treated as unsecured and receive a pro rata distribution. *Id.* Within three days of the entry of an order approving the Stipulation, Trustee will deliver payment of the \$100,000.00 to Creditor, and Creditor will file an amended proof of claim for the balance owed as a general unsecured claim. *Id.*

The court notes that a copy of the settlement agreement has not been filed in this case but merely attached to the motion as an exhibit. See Doc. #51. The motion will only be granted if Trustee separately files the settlement agreement and docket it as a stipulation.

As representative of the chapter 7 bankruptcy estate, Trustee has the authority to settle claims of Debtor subject to court approval. 11 U.S.C. § 323(a). On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Rule 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 Trustee has considered the *A & C Props.* and *Woodson* factors, which weigh in favor of approving the settlement agreement as follows:

1. Probability of Success: Trustee avers that the proposed outcome (\$100,000.00 to Creditor with the balance remaining as an unsecured debt and the remainder of the estate assets divided pro rata among all general unsecureds) "roughly approximates" what the Trustee might recover if Trustee were to bring a § 506(c) proceeding.
2. Difficulties of Collection: This is not a factor because Debtor has been fully liquidated and the funds are ready for immediate distribution. "What is uncertain is the amount of surcharge [Creditor] would be required to pay."

3. Difficulty of litigation: Trustee avers that litigation would not be difficult.
4. Interest of the creditors: Trustee asserts that settlement serves the interests of creditors because it obtains a sum certain for the estate without the expenditure of attorney's fees that would be paid out as administrative expenses.

Doc. #48.

The court agrees with Trustee that 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 the estate and Bank of America will be approved.

This ruling is not authorizing the payment of any fees or costs associated with the settlement. Additionally, Trustee 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.

3. [24-10077](#)-B-7 **IN RE: FERNANDO/ANGELA VERDIALEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
1-29-2024 [[12](#)]

GRISELDA TORRES/ATTY. FOR DBT.
\$338.00 FILING FEE PAID 1-30-24

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the \$338.00 filing fee was paid on January 30, 2024. Accordingly, this order to show cause will be VACATED.

4. [23-12885](#)-B-7 **IN RE: JAIME GONZALES AND ANNA GARCIA**
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-24-2024 [15]

UNIFY FINANCIAL CREDIT
UNION/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
DANE EXNOWSKI/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.

UNIFY Financial Credit Union ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2019 Jeep Wrangler (VIN: 1C4HJXFN8KW547724) ("Vehicle"). Doc. #15. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). Id.

Jaime Gonzales and Anna Garcia ("Debtors") did not oppose. No other 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 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(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 because Debtors have failed to make at one pre-petition payment and two complete post-petition payments. The Movant has produced evidence that Debtors' are delinquent at least \$2,505.96. Doc. #18.

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 Debtors are in chapter 7. *Id.* The Vehicle is valued at \$35,045.00 and Debtors owe \$49,510.38. Doc. #19.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the 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 Debtor has failed to make at least 3 payments to Movant and the Vehicle is a depreciating asset.

5. [23-10487](#)-B-7 **IN RE: CHERYLANNE FARLEY**
[DMG-2](#)

MOTION TO SELL
1-25-2024 [[106](#)]

JEFFREY VETTER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.
RESPONSIVE PLEADING

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.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") seeks authorization to sell the estate's interest in residential real property located at 504 Winchester Street, Bakersfield, CA 93309 ("Property") to Cartag USA, LLC ("Proposed Buyer") for \$322,000.00 pursuant to 11 U.S.C. § 363, and subject to higher and better bids at the hearing. Doc. #106. Trustee also requests to pay a six percent (6%) commission to the real estate broker in the amount of \$19,320.00. *Id.* Trustee further requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 6004(h). *Id.*

No party in interest timely filed written opposition, though M&T Bank ("M&T"), the servicer Lakeview Loan Servicing, LLC ("Lakeview") filed a conditional non-opposition stating that it would not oppose the sale so long as any order by the court in this matter states that approval of the sale is contingent upon Lakeview receiving

proceeds sufficient to pay off Lakeview's lien in full. 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 (other than M&t/Lakeview) 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.

BACKGROUND

Cherylanne Lee Farley ("Debtor") filed chapter 13 bankruptcy on March 14, 2023. Doc. #1. The case was later converted to Chapter 7 on August 9, 2023. Doc. #48. Trustee was appointed as interim trustee on that same day and became permanent trustee at the first § 341 meeting of creditors on June 27, 2022. Doc. #48; docket generally. In the course of administering the estate, Trustee investigated the estate's assets, which included Property. Doc. #106.

On November 22, 2023, the Trustee filed an Application to Employ Watson Realty to advertise the Property, show it to interested parties, and advise Trustee as to any sale prospects. Doc. #97. The court granted the Application to Employ on November 29, 2023. Doc. #101.

Trustee now seeks approval to sell Property to Prospective Buyer subject to the following terms:

- a. A \$322,000.00 sale price;
- b. A 1.55% deposit of \$5,000.00;
- c. A six (6%) percent commission to the broker for \$19,320.00;
- d. The Property to be sold "as-is"; and.
- e. The Bankruptcy Court to retain jurisdiction over any dispute.

Doc. #106. Trustee also avers his belief that the Property is subject only to the following liens and encumbrances:

- a. Kern County Tax Collector: \$1432.85; and
- b. First Deed of Trust in the amount of \$136,057.64 in favor of Lakeview (good through March 1, 2024).

Doc. #106. Trustee now requests approval under 11 U.S.C. § 363(b) to complete the sale. Doc. #104.

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 nothing in the record suggesting that Proposed Buyer is an insider with respect to Debtor. Proposed Buyer is neither listed in the schedules nor the master address list. Docs. ##5, 10.

Property is listed in *Schedule A/B* with an unknown value. Doc. #10, *Sched. A/B*. Debtor exempted Property in *Schedule C* up to the statutory amount of \$313,207.00. Doc. #10, *Sched. C*. However, Debtor subsequently amended her *Schedule C* to remove the exemption for the Property completely. Doc. #89. In her *Schedule D*, Debtor listed the Property as being encumbered by a \$116,101.92 deed of trust with M&T. Doc. #10, *Schedule D*.

Trustee entered into a contract ("Purchase Agreement") with Proposed Buyer to sell Property for \$322,000.00 subject to the terms and conditions outlined previously. Doc. #109, *Exhibit A*. Trustee did not include a copy of the preliminary title report as an exhibit but did aver that he has reviewed it and believes that only the Kern County tax lien and the M&T/Lakeview deed of trust encumber the property. Doc. #108. Both liens will be paid off through escrow.

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

Sale price	\$322,000.00
M&T/Lakeview deed of trust	- \$136,057.64
Estimated taxes	- \$1432.85
Estimated broker fee (6%)	- \$6,000.00
Estimated net proceeds to estate	= \$178,509.51

Doc. #50. The Trustee did not list any expected costs of the sale or the subsequent transfer.

The sale under these circumstances should maximize potential recovery for the estate. The sale of the Property appears to be in the best interests of the estate because it will pay off the deed of trust in favor of M&T/Lakeview and the outstanding tax lien while providing liquidity that can be distributed for the benefit of unsecured claims. 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 Trustee's business judgment and will be given deference.

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 November 22, 2023, Trustee moved to employ Broker to assist the trustee in carrying out the trustee's duties by selling property of the estate. Doc. #97. The court authorized Broker's employment November 29, 2023, under 11 U.S.C. §§ 327 and 328. Doc. #101.

Pursuant to the employment order, Trustee requests to compensate Broker with a commission of 6%. Doc. #108. Broker represents both seller and buyer and will collect the full commission in the amount of \$6,000.00, if there are no overbidders and Property is sold at the proposed sale price. *Id.* The court will authorize Trustee to pay broker commissions as prayed.

Overbid Procedure

Any party wishing to overbid shall, prior to the hearing, comply with the overbid procedures as outlined in the Trustee's *Motion to Sell*. See Doc. #106, pp. 3-4.

Waiver of 14-day Stay

Trustee does 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. Trustee 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 6% of the total sale price to be paid to 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.

6. [23-11987](#)-B-7 **IN RE: SHERRY SURLES**
[TCS-1](#)

MOTION TO AVOID LIEN OF FIRST NATIONAL BANK OF OMAHA
2-6-2024 [\[26\]](#)

SHERRY SURLES/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Sherry Surles ("Debtor") seeks to avoid a judicial lien in favor of First National Bank of Omaha, a National Banking Association, ("Creditor") in the sum of \$18,851.23 and encumbering residential real property located at 250 Yosemite Avenue, Fresno, CA ("Property"). Doc. #26.

Debtor complied with Fed. R. Bankr. P. 7004(b)(3), (b)(h), and (b)(i) by serving on February 6, 2024, a copy of the moving papers via certified mail addressed to Creditor's current President/CEO and via first class mail to Creditor's attorney from the abstract of judgment and to Creditor's address for service of bankruptcy paperwork. Doc. #30.

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.

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). § 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), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was originally entered against Debtor in favor of Creditor in the sum of \$18,851.23 on August 31, 2022. *Ex. B*, Doc. #28. The abstract of judgment was issued on October 5, 2022, and recorded in Fresno County on October 27, 2022. *Id.* That lien attached to Debtor's interest in Property. *Id.* Debtor Decl., Doc. #29.

According to Debtor's *Amended Schedule A*, the Property had an approximate value of \$240,000.00 as of the petition date. Doc. #24, *Amended Sched. A*. Property is encumbered by a \$115,092.00 in favor of Mrc/United Wholesale M ("Mortgagee"). *Id.*, *Amended Sched. D*. There do not appear to be any other interests encumbering Property besides the mortgage and this judgment lien. *Id.* Debtor claimed a homestead exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730 in the amount of \$136,908.00 *Id. Amended Sched. C*.

Strict application of the § 522(f) (2) formula indicates that Debtor's exemption is impaired by Creditor's lien as follows:

Amount of judgment lien		\$18,851.23
Total amount of unavoidable liens	+	\$115,092.00
Debtor's claimed exemption in Property	+	136,908.00
<i>Sum</i>	=	\$270,851.23
Debtor's claimed value of interest absent liens	-	\$240,000.00
Extent lien impairs exemption	=	\$30,851.23

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f) (2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property		\$240,000.00
Total amount of unavoidable liens	-	\$115,092.00
Homestead exemption	-	\$136,908.00
Remaining equity for judicial liens	=	(\$133,000.00)
Creditor's judicial lien	-	18,851.23
Extent Debtor's exemption impaired	=	(\$151,851.23)

After application of the arithmetical formula required by 11 U.S.C. § 522(f) (2) (A), there is insufficient equity to support the 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 § 522(f)(1). In the absence of opposition at the hearing, the court is inclined to GRANT this motion. The proposed order shall state that the lien is avoided as to the subject Property only and include a copy of the abstract of judgment attached as an exhibit.

7. [23-11391](#)-B-7 **IN RE: DEREK WHITE AND LILIYA RUDAN**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
1-22-2024 [66]

JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue an order.

Chapter 7 trustee James E. Salven ("Trustee") seeks dismissal of this case for the debtor's failure to appear and testify at the § 341(a) meeting of creditors held on January 18, 2024. Doc. #67.

Derek White and Liliya Rudan ("Debtors") timely filed written opposition. Doc. #76. Debtors aver that this case was converted from Chapter 13, and they did not realize they would have to attend a second post-conversion §341 meeting. *Id.* Also, Debtor Liliya Rudan avers that she had a prior commitment with an out-of-town seminar for which she was a presenter which coincided with the January 18, 2024, hearing date. *Id.*

This motion to dismiss will be **CONDITIONALLY DENIED**.

Debtor shall attend the meeting of creditors rescheduled for March 14, 2024, at 3:00 p.m. See Doc. #67. If Debtor fails to appear at testify at the rescheduled meeting, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The times prescribed in Fed. R. Bankr. P. 1017(e)(1) and 4004(a) for the Chapter 7 Trustee and U.S. trustee to object to Debtor's discharge or file motions for abuse, other than presumed abuse under § 707, are extended to 60 days after the conclusion of the meeting of creditors.