



UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Jennifer E. Niemann
Hearing Date: Wednesday, February 28, 2024
Department A - Courtroom #11
Fresno, California

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at Courtroom #11 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

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

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

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

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

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

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.

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.

9:30 AM

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

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-23-2024 [[439](#)]

CITIZENS BUSINESS BANK/MV
RILEY WALTER/ATTY. FOR DBT.
MICHAEL LAMPE/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE.

Local Rule of Practice ("LBR") 9014-1(d)(1) requires that every motion or other request for an order "shall be comprised of a motion, or other request for relief, notice, evidence, and a certificate of service." Here, the moving party did not file a motion for relief from the automatic stay. Rather, the pleading that was docketed as the motion (Doc. #439) is a Relief from Stay Summary Sheet required to be filed by LBR 4001-1(a)(3) as a separate document when a motion for relief from stay is filed. Because the moving party did not file a separate motion for relief from the automatic stay, there is no motion pending before the court informing the court and interested parties of the relief being requested and stating with particularity the factual and legal grounds for that relief as required by LBR 9014-1(d)(3)(A). Accordingly, the motion is denied without prejudice for the failure of the moving party to comply with this court's Local Rules of Practice.

Even if a proper motion had been filed, the declarant failed to complete sections 3 through 6 of the court's mandatory certificate of service form. Doc. #443. The failure of the declarant to complete sections 4 and 5 of the certificate of service form means that the court does not know what documents were served on which parties and the date on which those documents were served. Consequently, the court cannot determine whether service of the motion and related pleadings was proper.

2. [23-10325](#)-A-11 **IN RE: ROBERT CHAMPAGNE**
[DL-1](#)

MOTION FOR COMPENSATION FOR WALTER R. DAHL, CHAPTER 11 TRUSTEE(S)
1-29-2024 [\[189\]](#)

WALTER DAHL/MV
PETER SAUER/ATTY. FOR DBT.
WALTER DAHL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether a further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Walter R. Dahl ("Trustee"), the subchapter V trustee appointed in this case, requests allowance of interim compensation for services rendered from February 27, 2023 through January 29, 2024. Doc. #189. Trustee requests compensation in the amount of \$8,041.50 and reimbursement for expenses of \$94.26. Doc. #189. Trustee has not filed any prior motions for compensation.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a trustee. 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a trustee under chapter 11, 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).

Trustee's services included, without limitation: (1) reviewing the debtor's first day motions, motion to value the IRS' collateral, and monthly operating reports; (2) conferring with counsel for the debtor regarding the tender of plan payments to Trustee; (3) general subchapter V trustee case administration; (4) reviewing and commenting on subchapter V plans of reorganization; (5) attending hearings and status conferences; and (6) preparing and prosecuting the fee application. Ex. A, Doc. #191; Decl. of Trustee, Doc. #192. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$8,041.50 and reimbursement for expenses in the amount of \$94.26. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may be paid consistent with the debtor's confirmed subchapter V plan.

3. [23-12784](#)-A-11 **IN RE: KODIAK TRUCKING INC.**
[FW-7](#)

FINAL HEARING RE: MOTION TO ENTER INTO COMMERCIAL INSURANCE PREMIUM FINANCE
AND SECURITY AGREEMENT
1-24-2024 [[86](#)]

KODIAK TRUCKING INC./MV
PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for final hearing on February 28, 2024 pursuant to the
initial motion papers and an interim order authorizing the debtor to enter into
a commercial insurance premium finance and security agreement ("Interim
Order"). Doc. #129. The final hearing was set on at least 14 days' notice prior
to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 4001(c)(2)
and 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 on a final basis. If opposition is
presented at the hearing, the court will consider the opposition and whether a
further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an
order if a further hearing is necessary.

Kodiak Trucking, Inc. ("Debtor" or "DIP"), the chapter 11 debtor and debtor-in-
possession, filed this subchapter V chapter 11 bankruptcy case on December 15,
2023. Doc. #1. DIP moves the court for an order authorizing Debtor to enter
into a commercial insurance premium finance and security agreement ("Motion").
Doc. #91. The motion was heard initially on January 31, 2024 and was granted on
an interim basis by the Interim Order. Doc. #129. A final hearing was set for
February 28, 2024 pursuant to the Interim Order. Id.

Section 364(d)(1) of the Bankruptcy Code permits the court to authorize the
incurring of debt secured by a senior or equal lien on property of the estate
that is subject to a lien only if the chapter 11 debtor in possession is unable
to obtain such credit otherwise; and there is adequate protection of the
interest of the holder of the lien on the property of the estate on which such
senior lien is proposed to be granted. The debtor bears the burden of proof on
the issue of adequate protection. 11 U.S.C. § 364(d)(2). "The determination of
adequate protection is a fact-specific inquiry." In re Mosello, 195 B.R. 277,
289 (Bankr. S.D.N.Y. 1996). The purpose of § 364(d) is to "facilitate a plan
that will inure to the benefit of all creditors and the estate." In re Stoney
Creek Techs., LLC, 364 B.R. 882, 895 (Bankr. E.D. Pa. 2007).

Courts generally give debtors in possession considerable deference to
determine, in their business judgment, the terms under which they obtain post-
petition secured credit. See, e.g., In re Los Angeles Dodgers LLC, 457 B.R.
308, 313 (Bankr. D. Del. 2011); In re Ames Dep't Stores, Inc., 115 B.R. 34, 40
(Bankr. S.D.N.Y. 1990). To determine whether a debtor in possession has met
this business judgment standard, a court need only "examine whether a
reasonable business person would make a similar decision under similar
circumstances." In re Exide Techs., 340 B.R. 222, 239 (Bankr. D. Del. 2006);

see also In re Curlew Valley Assocs., 14 B.R. 506, 513-14 (Bankr. D. Utah 1981).

Debtor operates a company that provides construction trucking services, primarily for highway construction. Decl. of Marco Arambula, Doc. #88. Debtor has approximately 50 trucks that are used to haul dirt, bring in base, haul concrete, remove refuse, haul equipment, and perform other tasks that are supportive of highway construction. Id. Pre-petition, Debtor joined a "captive" insurance group. Id. However, Debtor fell behind on paying its insurance premiums in the fall of 2023, and Debtor is no longer able to reinstate its captive insurance policy. Id. Because it appears that DIP may not have insurance at the time the motion was filed, DIP was not operating its trucks on the road for customers as of when the motion was filed and was focusing on maintenance and truck repairs so DIP could start placing its trucks back on the road and generate more accounts receivable once DIP had insurance in place. Id.

Post-petition, Debtor has obtained insurance coverage that is more expensive than its prior captive insurance, and the new insurance coverage will require that Debtor finance the premium. Arambula Decl., Doc. #88. The total premium for the six-month period starting on January 19, 2024 is \$722,126.69 plus a finance charge of \$6,483.53. Id. DIP moves the court for an order authorizing DIP to enter into a commercial insurance premium financing agreement with BankDirect Capital Finance, a division of AFCO Credit Corp. ("BankDirect"), similar to the agreement filed as Ex. A, Doc. #89. Under the proposed agreement, DIP will make a down payment of \$265,000.00, with three monthly payments of \$154,536.74 each. Arambula Decl., Doc. #88. The annual percentage rate for the financing is 8.49%. Id. While the premium will be paid in full at the end of the third month, if the full amount of the premium was spread over the six-month term, the average monthly insurance cost would be \$121,435.04. Id.

In order for BankDirect to provide the proposed financing, BankDirect requires that DIP provide a security interest to BankDirect in "(a) any and all unearned premiums or dividends which may become payable for any reason under all insurance policies financed by AFCO, (b) loss payments which reduce the unearned premiums, subject to any mortgagee or loss payee interests and (c) any interest in any state guarantee fund relating to any financed policy [(collectively, the "Insurance-Related Future Assets")." Ex. A, Doc. #89. DIP believes that no other party would have a lien on these potential Insurance-Related Future Assets and that BankDirect would have a first position lien on these particular assets. Motion, Doc. #86. The only possible exception would be the post-petition lien created by the prior cash collateral order to compensate secured creditors for DIP's use of cash collateral. Id. Due to the importance of securing insurance coverage to Debtor's business operations as well as the fact that the potential insurance asset is being created by the insurance contract, DIP requests that BankDirect be given a first-position lien pursuant to 11 U.S.C. § 364(d). Id.

Based on the evidence before this court, DIP requires insurance to operate its business. DIP is unable to obtain the necessary credit to obtain insurance coverage without granting BankDirect a first-priority security interest in the Insurance-Related Future Assets. Thus, DIP has met its required showing under 11 U.S.C. § 364(d) (1) (A).

With respect to the requirement of showing adequate protection under 11 U.S.C. § 364(d) (1) (B), the court finds that, to the extent that there are senior secured creditors with respect to the Insurance-Related Future Assets, those creditors are adequately protected for the placement of a priority lien by the purchase of insurance for Debtor's operations and the return of Debtor to placing its trucks on the road for the benefit of Debtor's customers because

the post-petition accounts receivable that currently secure the use of cash collateral are more than sufficient to provide the necessary adequate protection for the BankDirect senior lien.

Accordingly, the motion will be GRANTED on a final basis.

4. [23-12784](#)-A-11 **IN RE: KODIAK TRUCKING INC.**
[FW-8](#)

FINAL HEARING RE: MOTION TO USE CASH COLLATERAL
1-25-2024 [[93](#)]

KODIAK TRUCKING INC./MV
PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for final hearing on February 28, 2024 pursuant to the initial motion papers and an interim order for authority to use additional cash collateral ("Interim Order"). Doc. #128. The final hearing was set on at least 14 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 4001(b)(2) and 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 requested use of cash collateral on a final basis. If opposition is presented at the hearing, the court will consider the opposition and whether a further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Kodiak Trucking, Inc. ("Debtor" or "DIP"), the chapter 11 debtor and debtor-in-possession, moves the court for authority to use additional cash collateral of: (i) Triple E Trucking, LLC; (ii) U.S. Small Business Administration; (iii) Corporation Service Company, as representative for one or more unknown entities; (iv) EC Master Trust; (v) eCapital Freight Factoring Corp.; (vi) California Employment Development Department; (vii) Mint Business Capital; (viii) Vivian Capital Group, and (ix) the Internal Revenue Service (collectively, "Secured Creditors") through March 2024 on a monthly basis subject to a budget. Motion, Doc. #93. DIP seeks such supplemental authority in order to enter into a commercial insurance premium finance and security agreement. Id. The court had previously authorized DIP's use of cash collateral through March 31, 2024 to pay expenses incurred by DIP in the normal course of its business that provides construction trucking service, primarily for highway construction. Order, Doc. #82. As adequate protection for DIP's use of cash collateral, DIP will grant a replacement lien against its post-petition accounts receivable for the Secured Creditors with valid liens to the extent cash collateral is actually used. Motion, Doc. #93.

Pursuant to 11 U.S.C. § 363, a debtor in possession can use property of the estate that is cash collateral by obtaining either the consent of each entity that has an interest in such cash collateral or court authorization after notice and a hearing. 11 U.S.C. § 363(c)(2). "The primary concern of the court in determining whether cash collateral may be used is whether the secured

creditors are adequately protected." In re Plaza Family P'ship, 95 B.R. 166, 171 (E.D. Cal. 1989) (citing 11 U.S.C. § 363(e)). Bankruptcy Code section 361(1) states that adequate protection may be provided by "requiring the [debtor in possession] to make a cash payment or periodic cash payments to such entity, to the extent that . . . use, sale, or lease under section 363 of this title . . . results in a decrease in the value of such entity's interest in such property." 11 U.S.C. § 361(1). Pursuant to 11 U.S.C. § 363(p), DIP carries the burden of proof on the issue of adequate protection.

The court finds DIP has met its burden of showing that Secured Creditors are adequately protected for DIP's use of their cash collateral by the proposed replacement liens. Moreover, DIP needs to use the additional cash collateral to continue its post-petition business operations. Decl. of Marco Arambula, Doc. #96.

Accordingly, the court is inclined to GRANT DIP's request to use additional cash collateral on a final basis on the terms set forth in the motion.

5. [23-12784](#)-A-11 **IN RE: KODIAK TRUCKING INC.**
[FWP-1](#)

CONTINUED RE: 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.

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

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-26-2024 [[101](#)]

MINITUBISHI HC CAPITAL AMERICA INC./MV
PETER FEAR/ATTY. FOR DBT.
HOLLY NOLAN/ATTY. FOR MV.
RESPONSIVE PLEADING

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 pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). On February 14, 2024, the debtor filed a statement of non-opposition. Doc. #152. 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 non-responding 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 a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Mitsubishi HC Capital America Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2022 Freightliner 114SD, VIN: 3ALHG3FE5NDND3365, and a 2022 18' Demo Dump Box (collectively, the "Vehicle"). Doc. #101.

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 Movant has produced evidence that the debtor has failed to make at least three complete pre- and post-petition payments. Decl. of Gary Gray, Doc. #103.

The court also finds that the debtor does not have any equity in the Vehicle because the Vehicle is valued at \$158,000.00 and the debtor owes \$252,529.06 to Movant. Gray Decl., Doc. #103. The court further finds that the Vehicle is not necessary to an effective reorganization based on the debtor's non-opposition. Doc. #152.

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 does not oppose relief from the automatic stay, the debtor has failed to make at least three complete pre- and post-petition payments to Movant, and the Vehicle is a depreciating asset.

1. [24-10123](#)-A-7 **IN RE: JOSE/PAULETTE REYNOSA**
[SLL-1](#)

MOTION TO COMPEL ABANDONMENT
1-29-2024 [[12](#)]

PAULETTE REYNOSA/MV
STEPHEN LABIAK/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 movants have done here.

Jose Pena Reynosa and Paulette G. Reynosa (together, "Debtors"), the chapter 7 debtors in this case, move the court to compel the chapter 7 trustee to abandon the estate's interest in Debtors' personal property consisting of a petition and signature gathering business known as Concerned Citizens for Government. Motion, Doc. #12. The assets include the name of the business, a checking account ending in 0931 at Wells Fargo Bank, tables, chairs, clipboards, paper and an Easy Up Canopy (collectively, the "Property"). Decl. of Jose and Paulette Reynosa, Doc. #14. Debtors assert that they have no non-exempt equity in the Property and the Property therefore has no value to the bankruptcy estate. Id. No opposition has been filed in response to this motion.

11 U.S.C. § 554(b) permits the court, on request of a party in interest and after notice and a hearing, to order the trustee to abandon property that is burdensome to the estate or of inconsequential value and benefit to the estate. Vu v. Kendall (In re Vu), 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). To grant a motion to abandon property, the bankruptcy court must find either that the property is (1) burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. Id. (citing Morgan v. K.C. Mach. & Tool Co. (In re K.C. Mach. & Tool Co.), 816 F.2d 238, 245 (6th Cir. 1987)). However, "an order compelling abandonment [under § 554(b)] is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset. . . . Absent an attempt by the trustee to churn property worthless to the estate just to

increase fees, abandonment should rarely be ordered.” Id. (quoting K.C. Mach. & Tool Co., 816 F.2d at 246).

Here, Debtors do not allege that the Property is burdensome to the estate. Motion, Doc. #12. Therefore, Debtors must establish that the Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Debtors’ Property is valued at \$1,500.00 and is unencumbered. Schedules A/B & D, Doc. #1. Under California Civil Procedure Code §§ 704.225 and 704.010, Debtors claimed \$1,500.00 in exemptions in the Property. Schedule C, Doc. #1; Reynosa Decl., Doc. #14. Although the time period to object to Debtors’ claimed exemption in the Property has not yet passed pursuant to Federal Rule of Bankruptcy Procedure 4003, the court finds that Debtors have met their burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate.

Accordingly, this motion is GRANTED. The order shall specifically identify the property abandoned.

2. [23-11126](#)-A-7 **IN RE: LEONEL GERONIMO-SEPULVEDA**
[MJP-4](#)

MOTION TO AVOID LIEN OF BANK OF AMERICA, N.A.
1-12-2024 [\[39\]](#)

LEONEL GERONIMO-SEPULVEDA/MV
MICHAEL PRIMUS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied in part.

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

This motion was 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 done only in part.

As an initial procedural matter, the motion violates LBR 9014-1(d)(5), which requires that every “request for an order shall be filed separately from every other request.” Here, the movant seeks to avoid two separate judicial liens held by the same creditor. Because the judicial liens have separate priority, the movant should have filed a separate motion for each judicial lien.

As a further procedural matter, the notice of hearing filed in connection with this motion (Doc. #40) does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The notice of hearing does not list the addresses of parties to be served with opposition.

As a further procedural matter, the exhibits filed by the movant (Doc. #34) do not include an exhibit index and have not been properly numbered as required by LBR 9004-2(d)(2) and (d)(3).

As a final procedural matter, the certificate of service filed in connection with this motion does not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022.

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 rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

Leonel Geronimo-Sepulveda ("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 liens of Bank of America, N.A. ("Creditor") on Debtor's residential real property commonly referred to as 2228 Birchwood Ct., Merced, CA 95341 (the "Property"). Motion, Doc. #39.

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 section 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair that 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 section 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), aff'd, 24 F.3d 247 (9th Cir. 1994 (table))).

Debtor filed the bankruptcy petition on May 26, 2023. Doc. #1. A judgment was entered against Debtor the amount of \$11,831.50 in favor of Creditor on September 1, 2022. Ex. A, Doc. #34. The abstract of judgment was recorded pre-petition in Merced County on January 20, 2023, as document number 2023001303. Id. The lien attached to Debtor's interest in the Property located in Merced County. The Property is further encumbered by a separate, senior judicial lien in favor of Creditor also recorded on January 20, 2023, as document number 2023001302, for \$5,030.84 and a consensual lien in favor of Lakeview Loan Servicing, LLC in the amount \$212,456.00. Ex. A, Doc. #34; Schedule D, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$365,000.00. Schedule A/B, Doc. #1.

Debtor claimed an exemption of \$140,713.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. While Debtor asserts in the motion that Debtor is entitled to claim up to \$678,391.00 as an exemption pursuant to California Code of Civil Procedure § 704.730, that is not the amount that Debtor claimed as exempt on his Schedule C. As set forth in Goswami, in order for a lien to be avoided, the property must be listed on the debtor's schedules, claimed as exempt and the lien must impair that exemption. Goswami, 304 B.R. at 391. Here, the exemption claimed by Debtor in the Property on his filed Schedule C is \$140,713.00, so that is the value that the court will use in applying 11 U.S.C. § 522(f)(1).

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). “[J]udicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached.” Id.

Applying the statutory formula to the most junior judicial lien first:

Amount of Creditor’s junior judicial lien		\$11,831.50
Total amount of all other liens on the Property	+	\$217,486.84
Amount of Debtor’s claim of exemption in the Property	+	\$140,713.00
		<u>\$370,031.34</u>
Value of Debtor’s interest in the Property absent liens	-	\$365,000.00
Extent of impairment of Debtor’s exemption	=	<u>\$5,031.34</u>

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is sufficient equity in the Property to partially support Creditor’s lien. Creditor’s judicial lien does not fully impair Debtor’s exemption in the Property. Therefore, Creditor’s judicial lien will be partially avoided and reduced to the amount of \$6,800.16.

Continuing in reverse order of priority, a judgment was entered against Debtor in the amount of \$5,030.84 in favor of Creditor on September 2, 2022. Ex. A, Doc. #34. The abstract of judgment was recorded pre-petition in Merced County on January 20, 2023, as document number 2023001302. Id. The lien attached to Debtor’s interest in the Property located in Merced County. The Property is further encumbered by a consensual lien in favor of Lakeview Loan Servicing, LLC in the amount \$212,456.00. Schedule D, Doc. #1. Debtor claimed an exemption of \$140,713.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$365,000.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor’s senior judicial lien		\$5,030.84
Total amount of all other liens on the Property (excluding junior judicial lien)	+	\$212,456.00
Amount of Debtor’s claim of exemption in the Property	+	\$140,713.00
		<u>\$358,199.84</u>
Value of Debtor’s interest in the Property absent liens	-	\$365,000.00
Extent of impairment of Debtor’s exemption	=	<u>-\$6,800.16</u>

Application of the arithmetical formula required by § 522(f)(2)(A) shows Creditor’s judicial lien does not impair Debtor’s exemption in the Property.

Accordingly, this motion is GRANTED IN PART and DENIED IN PART. Creditor’s junior judicial lien (the abstract of judgment recorded pre-petition in Merced County on January 20, 2023, as document number 2023001303) will be partially avoided and reduced to the amount of \$6,800.16. The motion is denied as to the senior judicial lien held by Creditor (the abstract of judgment recorded pre-petition in Merced County on January 20, 2023, as document number 2023001302).

MOTION TO COMPEL ABANDONMENT
1-31-2024 [\[15\]](#)

SANDRA SAELEAW/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

As an informative matter, the movant did not attach a copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice applicable to this case with the court's mandatory Certificate of Service form (Doc. #19) filed in connection with the motion. Instead of using a copy of the Request for Special Notice List as required when service is made on parties who request special notice by U.S. Mail under Rule 5 and Rules 7005, 9036 Service, the movant attached a list of names and addresses served that was generated through PACER. In the future, the movant should attach a copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice applicable to this case instead of another generated list of names and addresses served. That list can be generated by using the following link on the court's website: <https://www.caeb.uscourts.gov/RequestForSpecialNotice>.

Sandra Saeleaw ("Debtor"), the chapter 7 debtor in this case, moves the court to compel the chapter 7 trustee to abandon the estate's interest in real property located at 31011 Wolf St., Visalia, CA 93291 (the "Property"). Doc. #15. Debtor asserts that she has no non-exempt equity in the Property and the Property therefore has no value to the bankruptcy estate. Doc. #15.

11 U.S.C. § 554(b) permits the court, on request of a party in interest and after notice and a hearing, to order the trustee to abandon property that is burdensome to the estate or of inconsequential value and benefit to the estate. Vu v. Kendall (In re Vu), 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). To grant a motion to abandon property, the bankruptcy court must find either that the property is (1) burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. Id. (citing Morgan v. K.C. Mach. & Tool Co. (In re K.C. Mach. & Tool Co.), 816 F.2d 238, 245 (6th Cir. 1987)). However, "an order compelling abandonment [under § 554(b)] is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset. . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." Id. (quoting K.C. Mach. & Tool Co., 816 F.2d at 246).

Here, Debtor does not allege that the Property is burdensome to the estate. Motion, Doc. #15. Therefore, Debtor must establish that the Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Debtor's Property is valued at \$330,000.00 and is encumbered by a mortgage totaling \$97,837.00. Schedule D, Doc. #1. Under California Civil Procedure Code § 704.730, Debtor claims a \$340,000.00 exemption in the Property. Schedule C, Doc. #1; Decl. of Sandra Saeleaw, Doc. #17. Although the time period to object to Debtor's claimed exemption in the Property has not yet passed pursuant to Federal Rule of Bankruptcy Procedure 4003, the court finds that Debtor has met her burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate.

Accordingly, this motion will be GRANTED. The order shall specifically identify the property abandoned.

4. 23-12766-A-7 **IN RE: AMALIA GODINEZ**
JES-1

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT
SEC. 341(A) MEETING OF CREDITORS
1-22-2024 [17]

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 14, 2024 at 3:00 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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

5. 24-10070-A-7 **IN RE: BRANDON/AMANDA RUSTLE**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
1-12-2024 [6]

AMANDA RUSTLE/MV
BRANDON RUSTLE/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-30-2024 [\[17\]](#)

JEWELL VENTURA-PARTIDA/MV
PETER BUNTING/ATTY. FOR DBT.
LYNDSIE RUSSELL/ATTY. FOR MV.
RESPONSIVE PLEADING

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). On February 13, 2024, the debtor filed written non-opposition to the motion. Doc. #26. 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 non-responding 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.

As a procedural matter, the certificate of service filed in connection with this motion does not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022.

As a further procedural matter, the exhibits filed in connection with this motion do not comply with LBR 9004-2(c)(1) and (d)(1), which require declarations and exhibits to be filed as separate documents. The declaration was filed as a single document that included the movant's exhibits. E.g., Doc. #20.

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 rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

Jewell Ventura-Partida ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1). Doc. #17. Movant has a claim against Maria Esther Romero ("Debtor") arising out of a pre-petition car accident. Motion, Doc. #21. On January 16, 2024, Movant filed a personal injury civil action against Debtor and others entitled Jewell Ventura-Partida v. Charanjeet Kaur dba University Deli Liquor, et al. in the Superior Court of California, County of Fresno, Case Number 24CECG00200 ("State Court Action"). Id. Movant requests relief from the

automatic stay to pursue Movant's claim against Debtor in name only and to recover only proceeds from Debtor's insurance policy. Id.

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

Here, a Notice of Filing Report of No Distribution was filed on January 10, 2024 (Doc. #14), so permitting Movant to pursue a judgment in state court will not prejudice the interests of other creditors. The state court has expertise in automobile accident cases. Movant is seeking to pursue Movant's claim against Debtor in name only and to recover only proceeds from Debtor's insurance policy, and there will be minimal interference with the bankruptcy case. Decl. of Lyndsie N. Russell, Doc. #20. Granting Movant relief from the stay will completely resolve the issue of Debtor's liability to Movant. Finally, the interests of judicial economy favor granting relief from the automatic stay so that Movant may pursue her claims against Debtor's insurer. Russell Decl., Doc. #20. For these reasons, the court finds that cause exists to lift the stay.

Accordingly, this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to recover proceeds from Debtor's insurance company and prosecute to conclusion the State Court Action for the purpose of recovering from Debtor's insurance company. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Movant only seeks to recover from Debtor's insurance and Debtor does not oppose the motion.