



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Tuesday, February 28, 2023  
Department B – Courtroom #13  
Fresno, California**

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in 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. Parties in interest and members of the public may connect to ZoomGov, free of charge, using the information provided:

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

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
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## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [21-11001](#)-B-11     **IN RE: NAVDIP BADHESHA**  
[RMB-16](#)

CONTINUED SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF  
CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION, CLAIM  
NUMBER 8  
4-11-2022     [[241](#)]

NAVDIP BADHESHA/MV  
MATTHEW RESNIK/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to May 9, 2023 at 9:30 a.m.

ORDER:     The court will issue an order.

The court is in receipt of the parties' *Joint Status Report on Debtor's Objection to California Department of Tax and Fee Administration* ["CDTFA"] *Claim No. 8* filed February 21, 2023. Doc. #319. Since CDTFA is engaged in proceedings in District Court to enforce a subpoena against Tarnvir Dhaliwal to testify at a deposition related to this matter, the parties request a continuance to May 9, 2023. Accordingly, this scheduling conference will be CONTINUED to May 9, 2023 at 9:30 a.m. The parties shall file a joint or unilateral status report not later than May 2, 2023.

2. [22-11540](#)-B-11     **IN RE: VALLEY TRANSPORTATION, INC.**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V  
VOLUNTARY PETITION  
9-1-2022     [[1](#)]

RILEY WALTER/ATTY. FOR DBT.

NO RULING.

The court is in receipt of the *Fourth Chapter 11 Sub V Status Conference Statement* filed by Valley Transportation, Inc. ("Debtor") on February 21, 2023. Doc. #344. This status conference will be called and proceed as scheduled.

3. [22-11540](#)-B-11     **IN RE: VALLEY TRANSPORTATION, INC.**  
[HLG-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF HATMAKER LAW  
GROUP FOR SUSAN K. HATMAKER, SPECIAL COUNSEL(S)  
2-7-2023     [[325](#)]

SUSAN HATMAKER/MV  
RILEY WALTER/ATTY. FOR DBT.  
SUSAN HATMAKER/ATTY. FOR MV.

NO RULING.

Susan K. Hatmaker of Hatmaker Law Group ("Applicant"), special counsel to chapter 11, subchapter V debtor-in-possession Valley Transportation, Inc. ("Debtor"), requests interim compensation under 11 U.S.C. § 331 in the sum of \$141,706.26. Doc. #325. This amount consists of \$112,706.00 in fees as reasonable compensation for services rendered and \$29,000.26 in reimbursement for actual, necessary expenses between December 1, 2022 and January 31, 2023. *Id.*

Deborah Simpson—Debtor's President, CEO, and representative—filed a client approval with declaration indicating that she has reviewed the application, determined that the application reflects services rendered and costs incurred, and Debtor has no objection to payment of the proposed compensation. Doc. #329.

Applicant filed a notice of errata regarding the title of the client approval for Simpson. Doc. #339. The contents of Simpson's client approval clearly identify this fee application, so this clerical error is *de minimis*.

Written opposition was not required and may be presented at the hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Fed. R. Bankr. P. 2002(a)(6) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults. 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.

Applicant was authorized as special counsel to provide services related to the following: (a) serving as general counsel for Debtor and providing consultation regarding general business and employment matters; (b) representing Debtor in and addressing issues arising from any further actions taken in Fresno County Superior Court Case No. 22CECG01786, entitled *Mendoza v. Valley Transportation, Inc.* ("VTI Action"), including but not limited to appearing for Debtor at the Bankruptcy Status Conference scheduled for March 10, 2023; (c) serving as litigation counsel in defense of Debtor with regard to the dispute

alleged in the VTI Action, whether that disputes proceeds as an action in Bankruptcy Court or in State Court; (d) serving as litigation counsel in defense of Debtor's employees, Deborah Simpson and Rodney Heintz, in Fresno County Superior Court Case No. 22CECG02752, entitled *Mendoza v. Deborah Simpson, Rodney Heintz, and Barrett Business Services, Inc.* ["BBSI"], et al ("Simpson Action"), whether it proceeds in Bankruptcy Court or in State Court. *Id.*

This is Applicant's second interim fee application. The court previously awarded \$136,142.00 in fees and \$3,186.00 in expenses on an interim basis under § 331 for the period between August 30, 2022 and November 30, 2022. Docs. #299; #320. Total compensation of \$140,034.56 was paid from Applicant's \$144,117.52 pre-petition retainer, leaving a remaining balance of \$4,083.96 to be held in trust for future fee applications. Doc. #299.

Applicant's firm provided 457.60 billable hours of legal services at the following rates, totaling **\$112,706.00**:

Professional	Rate	Hours	Fees
Susan K. Hatmaker, Attorney	\$325	108.4	\$35,230.00
Robert W. Branch, Attorney	\$305	143.1	\$43,645.50
Ray S. Pool, Law Clerk	\$185	83.3	\$15,410.50
Melanie Salas, Paralegal	\$150	55.2	\$8,280.00
Kathy Giambalvo, Paralegal	\$150	38.7	\$5,805.00
Melanie Grandalski, Paralegal	\$150	28.9	\$4,335.00
<b>Total Hours &amp; Fees</b>		<b>457.6</b>	<b>\$112,706.00</b>

Doc. #325; *Exs. B-D*, Doc. #328. These fees can be further delineated as (a) 347.90 hours totaling \$86,391.50 in fees for the VTI Action, (b) 3.60 hours totaling \$900.50 in fees for the Simpson Action, and (c) 106.10 hours totaling \$25,414.00 for matters relating to this bankruptcy case. *Id.*

Applicant also incurred **\$29,000.26** in expenses, which are itemized as follows:

VTI Action	
Expert Fee	\$4,512.50
Process Service	+ \$603.25
CA E-Filing Fees	+ \$154.14
FedEx Overnight	+ \$44.10
Postage	+ \$6.42
Photocopies (4,142 @ \$0.18)	+ \$745.56
Color Photos (265 @ \$0.38)	+ \$100.70
Legal Research	+ \$2,747.12
Deposition Transcript Vols. 1-4	+ \$16,044.40
Consultant Retainer	+ \$3,500.00
VTI Action Expenses	= \$28,458.19
Simpson Action	
CA E-Filing Fees	\$7.71
Postage	+ \$2.01
Photocopies (8 @ \$0.18)	+ \$1.44
Color Photos (1 @ \$0.38)	+ \$0.38
Simpson Action Expenses	= \$11.54
Bankruptcy Action	
Postage	\$56.41
Photocopies (2,634 @ \$0.18)	+ \$474.12
Simpson Action Expenses	= \$530.53
Total Expenses	
<b>VTI + Simpson + Bankr. Action Expenses</b>	<b>= \$29,000.26</b>

*Exs. E-G, id.* These combined fees and expenses total **\$141,712.26**.

Applicant is currently holding a \$4,082.96 retainer. If applied to the fees, a total of \$137,629.30 will remain to be paid by Debtor.

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

Applicant's services included, without limitation: (1) assisting Debtor's counsel in the motion to estimate the claim of Andrew Mendoza and the 2004 Examination of Deborah Simpson, (2) preparing and filing the first interim fee application, (3) representing Debtor in the VTI Action and briefing issues of setting a trial date and whether it would be a preferential trial; (4) scheduling the deposition of Mendoza; (5) preparing VTI discovery responses; (5) drafting meet and

confer communications and pretrial discovery conference requests; (6) reviewing and analyzing the second amended complaint; and (7) filing a demurrer and motion to strike the same. *Ex. A*, Doc. #328. Debtor has consented to payment of the proposed fees and expenses.

Written opposition was not required. The court will inquire at the hearing whether any parties in interest oppose. The court will also inquire about the expense reimbursements for the expert fee and the consultant retainer.

4. [22-11540](#)-B-11     **IN RE: VALLEY TRANSPORTATION, INC.**  
[WJH-8](#)

CONTINUED CONFIRMATION HEARING RE: CHAPTER 11 SMALL BUSINESS PLAN  
11-29-2022    [[149](#)]

RILEY WALTER/ATTY. FOR DBT.  
CONT'D TO 3/28/23 PER ECF ORDER #324

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

DISPOSITION:     Continued to March 28, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

The court issued an order continuing this confirmation hearing to March 28, 2023 at 9:30 a.m. Doc. #324.

5. [23-10244](#)-B-11     **IN RE: BEAM & COMPANY, INC.**  
[FW-2](#)

CONTINUED MOTION TO USE CASH COLLATERAL  
2-13-2023    [[6](#)]

BEAM & COMPANY, INC/MV  
PETER FEAR/ATTY. FOR DBT.

NO RULING.

The court is in receipt of the supplemental declaration of Brandon Cooper and revised monthly budget. Docs. ##37-38. The hearing on this motion will be called and proceed as scheduled.

6. [22-10885](#)-B-11     **IN RE: SYNCHRONY OF VISALIA, INC.**  
[LKW-10](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)  
1-26-2023    [\[196\]](#)

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

Leonard K. Welsh of the Law Offices of Leonard K. Welsh ("Applicant"), general counsel to debtor-in-possession Synchrony of Visalia, Inc. ("Debtor"), requests final compensation in the sum of \$9,263.15 under 11 U.S.C. § 330. Doc. #196. This amount consists of \$9,112.50 in fees as reasonable compensation for services rendered and \$150.65 in reimbursement for actual, necessary expenses between December 1, 2022 and January 31, 2023. *Id.*

Maria Ortiz-Nance-Debtor's Executive Officer-filed a declaration indicating that Debtor has reviewed the application and has no objection to payment of the fees and costs requested. Doc. #198. The fees and costs will be paid from income generated by Debtor from the operation of its business or money advanced to Debtor by a third-party or third-parties associated with Debtor. *Id.*

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) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the subchapter V trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.



Debtor filed chapter 7 bankruptcy on May 25, 2022. Doc. #1. On July 11, 2022, the court granted Debtor's motion to convert the case to subchapter V of chapter 11 of the Bankruptcy Code. Doc. #40. Lisa Holder was appointed as subchapter V trustee on July 14, 2022. Doc. #46.

This is Applicant's second and final fee application. On November 16, 2022, the court awarded Applicant \$17,742.50 in fees and \$1,260.97 in costs on an interim basis for services and expenses from June 1, 2022 through September 30, 2022. Docs. #163; #169. After drawing down the \$10,500.00 pre-petition retainer, \$8,503.47 was paid directly by Debtor. *Id.*

Applicant's firm provided 29.00 billable hours of legal services at the following rates, totaling **\$9,112.50**:

Professional	Rate	Hours	Fees
Leonard K. Welsh	\$350	24.50	\$8,575.00
Leonard K. Welsh (no charge)	\$0	0.20	\$0.00
Trinette M. Lidgett	\$125	4.30	\$537.50
<b>Total Hours &amp; Fees</b>		<b>29.00</b>	<b>\$9,112.50</b>

Doc. #196; *Ex. B*, Docs. ##199-200. Applicant also incurred **\$150.65** in expenses:

CourtCall	\$45.00
WebPACER Charges	\$47.30
Postage	\$58.35
<b>Total Costs</b>	<b>\$150.65</b>

*Id.* These combined fees and expenses total **\$9,263.15**, which will be paid to Applicant directly from the Debtor. Doc. #198.

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

Applicant's services included, without limitation: (1) advising Debtor about the administration of a subchapter V case and its duties as debtor-in-possession; (2) continuing Debtor's opposition to the appointment of a patient care ombudsman (UST-1); (3) preparing and amending the petition and schedules; (4) assisting in preparing and filing monthly operating reports for September through November, 2022; (5) preparing a motion for authorization to maintain pre-petition bank accounts (LKW-9); (6) confirming for Debtor that certain employees or

agents are not "professionals" for the purposes of bankruptcy; (7) preparing and prosecuting Debtor's first interim fee application (LKW-8); (8) advising Debtor about and prosecuting the subchapter V plan (LKW-7); and (9) modifying the subchapter V plan before confirmation. Doc. #196; #199. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Debtor reviewed the fee application and consents to payment of the requested compensation. Doc. #198.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$9,112.50 in fees and \$150.65 in expenses on a final basis under 11 U.S.C. § 330. Debtor will be authorized to pay Applicant \$9,263.15 for services rendered and/or costs incurred between October 1, 2022 and January 31, 2023. Further, the court will authorize on a final basis the interim compensation awarded on November 16, 2022 in the amount of \$19,003.47 for June 1, 2022 through September 30, 2022.

7. [22-10885](#)-B-11     **IN RE: SYNCHRONY OF VISALIA, INC.**  
[LKW-11](#)

MOTION FOR ENTRY OF DISCHARGE AND/OR MOTION FOR FINAL DECREE  
AND ORDER CLOSING CASE  
1-31-2023    [[202](#)]

SYNCHRONY OF VISALIA, INC./MV  
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

Synchrony of Visalia, Inc. ("Debtor"), moves for entry of an order of discharge and entry of a final decree closing this bankruptcy case under 11 U.S.C. § 350 and Fed. R. Bankr. P. ("Rule") 3022. Doc. #202.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the subchapter V trustee, 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.

11 U.S.C. § 350 requires the court to close the case after an estate is fully administered and the court has discharged the trustee.

Rule 3022 provides that after an estate is fully administered in a chapter 11 reorganization case, *sua sponte* or on motion of a party in interest, the court shall enter a final decree closing the case.

When a case has been fully administered is not specified in the Bankruptcy Code or Rules. However, the Advisory Committee Note to Rule 3022 indicates that the following factors should be considered in determining if any estate in a chapter 11 reorganization case has been fully administered:

- (a) whether the order confirming plan has become final;
- (b) whether deposits required by the plan have been distributed;
- (c) whether the property proposed by the plan to be transferred has been transferred;
- (d) whether the debtor or successor to the debtor under the plan has assumed the business and management of the property dealt with under the plan;
- (e) whether the payments under the plan have commenced; and
- (f) whether all motions, contested matters, and adversary proceedings have been resolved.

Rule 3022 Advisory Committee Notes.

Debtor filed chapter 7 bankruptcy on May 25, 2022. Doc. #1. On July 11, 2022, the court granted Debtor's motion to convert the case to subchapter V of chapter 11 of the Bankruptcy Code. Doc. #40. Debtor filed *Debtor's Plan of Reorganization Dated September 27, 2022* and the *Modification to Plan of Reorganization Dated September 27, 2022 Before Confirmation* on October 21, 2022 (collectively the "Plan"). Docs. #108; #137. The Plan was confirmed on November 17, 2022. Doc. #173. The Plan provides that (a) Debtor will continue its business after confirmation of the Plan to generate income for the operation of its business and to fund the Plan, (b) Debtor will make the payments to creditors required and authorized by the Plan, and (c) Debtor would receive a discharge from any debt that arose before confirmation of the Plan or the effective date of the Plan.

Since then, Debtor has remained in possession of its property, continued operation of its business, and commenced making payments to

claimants as required by the Plan. Doc. #204. Debtor has made payments of \$3,590.00 to the priority claimants on their Class One Claims, the balance of which will be paid over the five-year term of the Plan after the case is closed. *Id.* Additionally, the Plan provides "Debtor shall file a Motion seeking the entry of a Final Decree and Order Closing Chapter 11 Case after Debtor's estate has been fully administered and the Plan has been substantially consummated as permitted by law." Plan, Art. XIII, Section 13.02 at 12, Doc. #108.

"Substantial consummation" is defined in § 1101(2). It requires three things: (1) transfer of all or substantially all property proposed by the plan to be transferred; (2) assumption by the Debtor's successor under the plan of the management of all or substantially all of the property dealt with by the plan; and (3) commencement of distribution under the plan. "Substantial consummation" is a question of fact. *Jorgensen v. Fed. Land Bank of Spokane (In re Jorgensen)*, 66 B.R. 104, 106 (B.A.P. 9th Cir. 1986).

Debtor claims that it has completed the requirements for the court to enter an order of discharge and there are no further actions required of Debtor or any other party in interest before the court can enter a final decree except for (1) ruling on the second and final fee application by Debtor's attorney, which is the subject of matter #6 above (LKW-10), and (2) entering an order of discharge, because the Plan was confirmed under § 1191(a) rather than § 1191(b). Doc. #202.

Since the order confirming the Plan is final, Debtor has assumed the business and management of property dealt with under the Plan, Debtor has commenced the payments to creditors under the Plan, and there are no motions, contested matters, or adversary proceedings that need to be resolved after the second and final fee application is approved, Debtor contends that the case has been fully administered and is ready for an order of discharge and a final decree. *Id.* Other than the pending fee application, all motions in this case have been resolved. The Plan has been substantially consummated under 11 U.S.C. § 1101(2).

Accordingly, this motion will be GRANTED. The court will enter an order of discharge and a final decree closing this case after the pending fee application in matter #6 above has been resolved.

1:30 PM

1. [22-10005](#)-B-7     **IN RE: PATRICIA TESSENDORE**  
[ADJ-3](#)

MOTION FOR TURNOVER OF PROPERTY  
2-2-2023    [[99](#)]

IRMA EDMONDS/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
ANTHONY JOHNSTON/ATTY. FOR MV.

NO RULING.

Chapter 7 trustee Irma C. Edmonds ("Trustee") moves for an order compelling Patricia Marie Tessendore ("Debtor") to turnover certain property of the estate. Doc. #99.

Written opposition was not required and may be presented at the hearing.

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.

Debtor filed chapter 13 bankruptcy on January 3, 2022. Doc. #1. The case was converted to chapter 7 on April 26, 2022 and Trustee was appointed as the chapter 7 trustee. Docs. ##47-48. Debtor's schedules disclose that she owns real property located at 909 East Dartmouth Drive, Fresno, California ("Property"), which was valued at \$694,900.00. *Sched. A/B*, Doc. #10 Debtor listed a mortgage held by PHH Mortgage Services in the amount of \$236,780.00, secured by a deed of trust encumbering Property. *Sched. D, id.*

Trustee believes Property has an estimated fair market value between \$683,000.00 and \$700,000.00, so Property has approximate equity between \$446,220.00 and \$463,220.00. Doc. #101. Since Trustee intends to object to Debtor's \$350,000.00 homestead exemption, Trustee believes that there is approximately \$146,220.00 to \$163,220.00 in non-exempt equity in Property. *Id.*

Debtor refuses to cooperate with Trustee in the sale of Property, including by refusing to open the door to communicate with the real estate broker, Robert Casey, and recently refusing to respond to telephone or text message correspondence. *Id.* Notably, the evidence on this issue appears to be the Trustee's statements of what Mr. Casey told the Trustee and is hearsay. Fed. R. Evid. 801-03. Nevertheless,

in the absence of contrary evidence, there appears to be little reason to doubt the veracity of the statements.

In the Ninth Circuit, the Trustee must prove by a preponderance of the evidence that the estate is entitled to turnover. *Wolfe v. Jacobsen* (*In re Jacobsen*), 676 F. 3d 1193, 1201 (9th Cir. 2012).

Under 11 U.S.C. § 541(a), Debtor created a bankruptcy estate on January 3, 2022 by filing the petition. The estate "is comprised of all of the following property, wherever located and by whomever held: . . . all legal or equitable interests of the debtor in property as of the commencement of the case." § 541(a)(1).

Under 11 U.S.C. § 521(a)(4), Debtor has a duty to surrender to Trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to the property.

As trustee of the bankruptcy estate, Trustee has a duty to "collect and reduce to money the property of the estate . . . and close such estate as expeditiously as is compatible with the best interests of parties in interest." § 704. In furtherance of those duties, a bankruptcy trustee has the power to use, sell, or lease property of the estate under § 363. The trustee is empowered by § 542(a) to compel the debtor to "deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." § 542(a); *In re Gerwer*, 898 F.2d 730, 733 (9th Cir. 1990).

Trustee here requests an order compelling Debtor to turnover or provide to Trustee the following: (1) the Property; (2) upon 24 hours' notice to Debtor, access to the Property to the Trustee, the Trustee's real estate brokers or agents, potential buyers and/or their real estate brokers or agents, and appraisers, inspectors, and other appropriate persons in connection with any potential sale of the Property; (3) a copy of the current insurance policy for the Property, if any; and (4) such further relief as deemed proper.

This matter will be called and proceed as scheduled. The court is inclined to GRANT the motion.

2. [22-10005](#)-B-7     **IN RE: PATRICIA TESSENDRE**  
[ADJ-4](#)

MOTION FOR CONTEMPT  
2-9-2023    [[103](#)]

IRMA EDMONDS/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
ANTHONY JOHNSTON/ATTY. FOR MV.

NO RULING.

Chapter 7 trustee Irma C. Edmonds ("Trustee") moves for an order to show cause why Patricia Marie Tessendore ("Debtor") should not be held in civil contempt for failing to comply with an order compelling her appearance at a § 341 meeting of creditors. Doc. #103.

Written opposition was not required and may be presented at the hearing.

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.

On January 17, 2023, the court entered the *Order to Compel Attendance at Creditor's Meeting and Turnover of Estate Assets* ("Order"), which required Debtor to appear at the § 341 meeting of creditors scheduled for January 23, 2023. Doc. #98. Trustee served the order on Debtor on January 18, 2023. *Ex. B*, Doc. #106. Trustee declares that Debtor did not so appear. Doc. #105.

As a result, Trustee prays: (1) that this court issue an order requiring Debtor to file and serve a response to the allegations made and show cause, if any, why she should not be adjudged in civil contempt for failing to comply with the Order; (2) following appropriate proceedings, that this court adjudge Debtor in civil contempt; (3) that this court enter an order requiring Debtor to purge herself of such civil contempt by (i) appearing at a § 341 meeting of creditors; (ii) paying all costs, expenses, and attorney's fees incurred by Trustee to enforce the Order in an amount to be determined upon motion by Trustee; and (iii) finding that this matter constitutes "appropriate circumstances" to impose sanctions and punitive damages against Debtor for any continued willful violation of the Order on such other terms or amounts set by the court; and (iv) other and further relief as deemed reasonably necessary and appropriate to assure compliance with the Order.

This matter will be called and proceed as scheduled. The court intends to GRANT the motion and issue an order to show cause.

3. [22-11907](#)-B-7     **IN RE: FREON LOGISTICS**  
[AKA-10](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-3-2023    [[772](#)]

M&T EQUIPMENT FINANCE CORPORATION/MV  
LEONARD WELSH/ATTY. FOR DBT.  
ANDREW ALPER/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

M & T Equipment Finance Corporation ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to five (5) 2022 Peterbilt 579 Tractors ("Tractors"). Doc. #772. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.*

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

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

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory certificate of service form. Doc. #778. Rules 4001(a)(1) and 9014(b) require service of a motion for relief to be made pursuant to Rule 7004, which was done here. But in Section 6, the declarant marked that service was effectuated by Fed. R. Civ. P. 5 and Rules 7005, 9036. In Section 6, the declarant should have checked the appropriate box under Section 6A for Rule 7004 service. Also, the declarant did not mark the appropriate box for Attachment 6B4.

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 the debtor has missed two pre-petition and two post-petition payments in the total amount of \$66,376.00. Doc. #777. The debtor owes Movant a total of 529,280.54 plus accruing interest and costs. Doc. #774. Additionally, the debtor has failed to maintain insurance coverage and Movant has stipulated with Trustee for stay relief.

The court also finds that the debtor does not have any equity in the Tractors and the Tractors are not necessary to an effective reorganization because debtor is now in chapter 7. Movant values the Tractors at \$475,000.00 and the amount owed to Movant is \$529,280.54. Doc. #777.

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. Adequate protection is unnecessary in light of the relief granted herein.

The 14-day stay of Rule 4001(a)(3) will be ordered waived because the debtor has failed to make post-petition payments, failed to maintain insurance coverage, and the Tractors are depreciating assets.

4. [22-11907](#)-B-7     **IN RE: FREON LOGISTICS**  
[AKA-11](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-8-2023    [[806](#)]

COMMERCIAL CREDIT GROUP INC./MV  
LEONARD WELSH/ATTY. FOR DBT.  
ANDREW ALPER/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

Commercial Credit Group, Inc. ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to 200 trucks, trailers, tractors and refrigerated units ("Equipment"). Doc. #806. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.*

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

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

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. Doc. #825. Rules 4001(a)(1) and 9014(b) require service of a motion for relief to be made pursuant to Rule 7004, which was done here. In Section 6, the declarant marked that service was effectuated by Fed. R. Civ. P. 5 and Rules 7005, 9036. In Section 6, the declarant should have checked the appropriate box under Section 6A for Rule 7004 service. Also, the declarant did not mark the appropriate box for Attachment 6B4.

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 debtor has missed pre- and post-petition payments across 28 loans. Doc. #810. In total, the debtor owes Movant a total of \$11,369,814.92 plus accruing interest and costs. Doc. #808. Additionally, the debtor has failed to maintain insurance coverage and Movant has stipulated with Trustee for stay relief.

The court also finds that the debtor does not have any equity in the Equipment and the Equipment is not necessary to an effective reorganization because debtor is now in chapter 7. Movant values the Equipment at \$11,213,250.00 and the amount owed to Movant is \$11,662,092.61. Doc. #810.

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. Adequate protection is unnecessary in light of the relief granted herein.

The 14-day stay of Rule 4001(a)(3) will be ordered waived because the debtor has failed to make post-petition payments, failed to maintain insurance coverage, and the Equipment is a depreciating assets.

5. [22-11907](#)-B-7     **IN RE: FREON LOGISTICS**  
[AKA-8](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-2-2023    [[754](#)]

M2 EQUIPMENT FINANCE, LLC/MV  
LEONARD WELSH/ATTY. FOR DBT.  
ANDREW ALPER/ATTY. FOR MV.

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

M2 Equipment Finance ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to two 2023 Peterbilt Model 579 vehicles and three 2023 Kenworth T680 3-Axel Tractors with special Agility Fuel Systems ("Vehicles"). Doc. #754. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.*

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

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

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory certificate of service form. Doc. #760. Rules 4001(a)(1) and 9014(b) require service of a motion for relief to be made pursuant to Rule 7004, which was done here. But in Section 6, the declarant marked that service was effectuated by Fed. R. Civ. P. 5 and Rules 7005, 9036. In Section 6, the declarant should have checked the appropriate box under Section 6A for Rule 7004 service. Also, the declarant did not mark the appropriate box for Attachment 6B4.

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 the debtor has missed three pre-petition payments and six post-petition payments in the combined amount of \$193,887.60. Doc. #757. The debtor owes Movant a total of \$1,228,008.76. *Id.*; Doc. #756. Additionally, the debtor has failed to maintain insurance coverage and Movant has stipulated with Trustee for stay relief.

The court also finds that the debtor does not have any equity in the Vehicles and the Vehicles are not necessary to an effective reorganization because debtor is now in chapter 7. Movant values the Vehicles at \$950,000.00 and the amount owed to Movant is \$1,228,088.76. Doc. #757.

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. Adequate protection is unnecessary in light of the relief granted herein.

The 14-day stay of Rule 4001(a)(3) will be ordered waived because debtor has failed to make post-petition payments, failed to maintain insurance coverage, and the Vehicles are depreciating assets.

6. [22-11907](#)-B-7     **IN RE: FREON LOGISTICS**  
[AKA-9](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-3-2023    [[764](#)]

ASCENTUM CAPITAL, LLC/MV  
LEONARD WELSH/ATTY. FOR DBT.  
ANDREW ALPER/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

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

Ascentium Capital, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to ten (10) Utility Trailers VS 2DX and five (5) 579 Peterbilt tractors (collectively "Tractors"). Doc. #764. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.*

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

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

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory certificate of service form. Doc. #770. Rules 4001(a)(1) and 9014(b) require service of a motion for relief to be made pursuant to Rule 7004, which was done here. But in Section 6, the declarant marked that service was effectuated by Fed. R. Civ. P. 5 and Rules 7005, 9036. In Section 6, the declarant should have checked the appropriate box under Section 6A for Rule 7004 service. Also, the declarant did not mark the appropriate box for Attachment 6B4.

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 the debtor failed to make payments of \$13,476.90 for November and December, 2022, as well as all post-petition payments. Doc. # 767. The debtor owes Movant a total of \$741,229.50 plus accruing interest and costs. Doc. #769. Additionally, the debtor has failed to maintain insurance coverage and Movant has stipulated with Trustee for stay relief.

The court also finds that the debtor does not have any equity in the Tractors and the Tractors are not necessary to an effective reorganization because debtor is now in chapter 7. Movant values the Tractors at \$611,751.60 and the amount owed to Movant is \$741,229.50. Doc. #769.

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. Adequate protection is unnecessary in light of the relief granted herein.

The 14-day stay of Rule 4001(a)(3) will be ordered waived because the debtor has failed to make post-petition payments, failed to maintain insurance coverage, and the Tractors are depreciating assets.

7. [22-11907](#)-B-7     **IN RE: FREON LOGISTICS**  
[BPC-1](#)

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC STAY  
1-9-2023    [\[453\]](#)

MIDLAND STATES BANK/MV  
LEONARD WELSH/ATTY. FOR DBT.  
VALERIE PEO/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 with the Stipulation attached as an exhibit.

Midland States Bank ("Movant") requests an order approving a joint stipulation ("Stipulation") with chapter 7 trustee Jeffrey M. Vetter ("Trustee") under Fed. R. Bankr. P. ("Rule") 4001(d). Doc. #453. The Stipulation also provides for waiver of the 14-day stay of Rule 4001(a)(3). Doc. #674.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion.

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.

As a preliminary matter, the motion and supporting documents did not comply with the local rules.

First, the certificates of service filed in connection with this motion used an older version of the court's *Official Certificate of Service* form (EDC Form 7-005, New 06/2022) instead of the most updated

version of the form (EDC Form 7-005, Rev. 10/22). Docs. #456; #643; #676; #751. The correct form can be accessed on the court's website.<sup>1</sup>

Second, the attachments to the certificates of service do not appear to be official matrices from the Clerk of the Court as required by LBR 7005-1. Docs. #456; #643; #676. Unless six or fewer parties are served, LBR 7005-1 requires the movant to attach the Clerk's official matrices containing the names and addresses of all parties served. The Clerk's matrices are available on the court's website or through PACER, shall be downloaded not more than seven days prior to the date of serving the pleadings or other documents, and shall reflect the date of download. LBR 7005-1(d). Movant appears to have corrected this issue in the last certificate of service by attaching official matrices. Doc. #751.

Third, Debtor and Trustee were not properly served the motion, Stipulation, and other supporting documents. Docs. #456; #643; #676. As above, Movant did serve the notice of hearing on both Debtor and Trustee, and Trustee is a party to the Stipulation. Doc. #751.

Fourth, LBR 9004-2(d) requires exhibits to be filed as a separate exhibit document, requires an exhibit index stating the page number at which each exhibit is found within the exhibit document, and requires use of consecutively numbered exhibit pages throughout the exhibit document, including any separator, cover, or divider sheets. Here, the exhibits were not consecutively numbered and did not contain an exhibit index. Doc. #675.

Since stay relief is effective as of January 2023 and Movant cured the service issues, the court will overlook the procedural deficiencies in this instance to avoid unduly delaying this proceeding. LBR 1001-1(f).

Movant is a secured creditor of Debtor with a perfected security interest in two 2019 Peterbilt 567 trucks and two 2019 Kenworth T680 trucks (collectively the "Vehicles"). Doc. #675.

Movant and Trustee agreed by the Stipulation to grant Movant relief from the automatic stay effective as of January 6, 2023 to permit it to exercise its remedies under California law and the respective loan and security agreements, including repossession and sale of the Vehicles. Doc. #674. Additionally, Debtor shall immediately provide to Movant the known location of the Vehicle and will cooperate in all respects in its surrender to Movant. *Id.*

Movant separately filed the Stipulation and docketed it as a stipulation. *Id.* Movant now requests approval of the Stipulation. Doc. #453.

Under Rule 4001(d)(1)(A)(iii), a party may file a motion for approval of an agreement to modify or terminate the stay provided in § 362. The motion contains the required contents outlined in Rule 4001(d)(1)(B) and was properly served on all creditors as required by Rule

4001(d)(1)(C). Pursuant to Rule 4001(d)(1), (2), and (3), a hearing was set on at least seven days' notice and the parties required to be served (Debtor and Trustee) were given at least 14 days to file objections or may appear to object at the hearing.

This matter will be called as scheduled to inquire whether any party in interest opposes. In the absence of opposition at the hearing, this motion will be GRANTED, and the Stipulation approved. The court will also order the 14-day stay of Rule 4001(a)(3) waived because the parties have consented to stay relief. Any proposed order shall attach the Stipulation as an exhibit.

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<sup>1</sup> See, Official Certificate of Service Form Information, <https://www.caeb.uscourts.gov/CertificateOfServiceForm> (visited Feb. 24, 2023).

8. [22-11907](#)-B-7      **IN RE: FREON LOGISTICS**  
[BSH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-27-2023    [[689](#)]

INDIGO COMMERCIAL FUNDING, LLC/MV  
LEONARD WELSH/ATTY. FOR DBT.  
BRIAN HEALY/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 motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9014-1(e)(2) requires a proof of service, in the form of a certificate of service, to be filed with the Clerk of the Court concurrently with the pleadings or documents served, or not more than three days after the papers are filed. See also LBR 7005-1. Here, the movant did not file a certificate of service.

LBR 9004-2(d) requires exhibits to be filed as a separate exhibit document, requires an exhibit index stating the page number at which each exhibit is found within the exhibit document, and requires use of consecutively numbered exhibit pages throughout the exhibit document, including any separator, cover, or divider sheets. Here, the exhibits are attached separately, do not contain an exhibit index, and are not consecutively numbered. Docs. ##691-92.

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



9. [22-11907](#)-B-7     **IN RE: FREON LOGISTICS**  
[DAD-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-1-2023    [[736](#)]

CHANNEL PARTNERS CAPITAL, LLC/MV  
LEONARD WELSH/ATTY. FOR DBT.  
ALEX DARCY/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

Channel Partners Capital, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2022 Peterbilt, Model 579 ("Vehicle"). Doc. #736. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.*

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

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

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 the debtor has missed one pre-petition and three post-petition payments in the combined amount of \$13,691.16. Docs. #738, #740. Additionally, the debtor has failed to maintain insurance coverage.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. Movant values the Vehicle at \$105,000.00 and the amount owed to Movant is \$128,344.65. Doc. #740.

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. Adequate protection is unnecessary in light of the relief granted herein.

The 14-day stay of Rule 4001(a)(3) will be ordered waived because the debtor has failed to make post-petition payments and the Vehicle is a depreciating asset.

10. [22-11907](#)-B-7     **IN RE: FREON LOGISTICS**  
[DJH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-13-2023    [\[851\]](#)

THE HUNTINGTON NATIONAL BANK/MV  
LEONARD WELSH/ATTY. FOR DBT.  
DARRYL HOROWITT/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

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

The Huntington National Bank ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to two (2) 2019 Peterbilt 579-Series, one (1) 2022 Peterbilt 579-Series, one (1) 2022 Peterbilt, two (2) 2022 Kenworth T680, and six (6) Utility Trailers ("Transportation Equipment"). Doc. #851. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.*

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether

further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

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 the debtor has missed a total of twelve payments over four contracts in the combined amount of \$232,495.84. Doc. #855. Additionally, the debtor has failed to maintain insurance coverage.

The court also finds that the debtor does not have any equity in the Transportation Equipment and the Transportation Equipment is not necessary to an effective reorganization because debtor is in chapter 7. Movant values the Transportation Equipment at \$425,000.00 and the amount owed to Movant is \$649,739.94. Docs. #853, #855.

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. Adequate protection is unnecessary in light of the relief granted herein.

The 14-day stay of Rule 4001(a)(3) will be ordered waived because the debtor has failed to make post-petition payments, has failed to maintain insurance coverage, and the Transportation Equipment consists of depreciating assets.

11. [22-11907](#)-B-7     **IN RE: FREON LOGISTICS**  
[DMG-8](#)

MOTION TO SELL  
1-31-2023    [\[715\]](#)

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

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 commercial real property located at 1135 Enos Lane, Bakersfield, CA 93307 ("Property") to Gurpreet Singh and Gurdeep Kaur (collectively "Proposed Buyers") for \$3.0<sup>2</sup> million dollars (\$3,000,000.00), subject to higher and better bids at the hearing. Doc. #715. Trustee also requests to pay all costs, commissions, consensual liens, and taxes directly from escrow, including a six percent (6%) commission split between the real estate brokers. *Id.*

Trustee filed a status report on February 23, 2023 indicating that there are three parties who have qualified to bid at the hearing. Doc. #884.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. The court will solicit higher and better bids at the hearing.

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

Freon Logistics ("Debtor") filed chapter 11 bankruptcy on November 8, 2022. Doc. #1. On December 14, 2022, the case was converted to chapter

7 and Trustee was appointed as the chapter 7 trustee. Docs. ##291-92. In the course of administering the estate, Trustee investigated the estate's assets, including Property, which is a commercial truck lot with a service garage and office space. Trustee now moves to sell Property pursuant to 11 U.S.C. § 363(b). Doc. #715.

### 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 *North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 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 Adventure, LLC*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, 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). Trustee wishes to sell Property to Proposed Buyer. There is nothing in the record suggesting that Proposed Buyer is an insider with respect to Debtor. Proposed Buyers are not listed in the lists of equity security holders or 20 largest creditors, but multiple entries for Gurpreet Singh at different addresses are listed as having unsecured, priority wage claims in *Schedule E/F*. Doc. #194. It is unclear whether Gurpreet Singh is a creditor of Debtor. Gurdeep Kaur is not listed in the schedules and does not appear to be a creditor. *Id.*

Property is valued in the schedules at \$2.1 million dollars (\$2,000,000.00). *Sched. A/B* ¶ 55.3 at 4, Doc. #193. Property is subject to a \$27,600.00 tax lien in favor of the Kern County Tax Collector ("KCTC Lien") and a \$2,100,000.00 first deed of trust in favor of Steve's Oilfield Service, Inc., a California Corporation, and Steven B. Whaley and Kimberley D. Whaley, Trustees of the Steven B. and Kimberley D. Whaley Family Trust ("Deed of Trust"). Doc. #717. Trustee believes that the Property is being sold for its fair market value based upon his investigation and consultation with the real estate broker. *Id.* Trustee has accepted an offer of \$3,000,000.00 from

Proposed Buyers for the sale of Property. Proposed Buyers have made an earnest money deposit of \$60,000.00, which is being held in escrow.

If sold at the proposed sale price, the sale would be illustrated as follows:

Sale price	\$3,000,000.00
KCTC Lien	- \$27,600.00
Deed of Trust	- \$2,100,000.00
Brokers fees (6% split)	- \$180,000.00
<b>Estimated net proceeds to estate</b>	<b>= \$692,400.00</b>

The sale under these circumstances should maximize the potential recovery for the estate. The sale of Property appears to be in the best interests of the estate because it will pay off the KCTC Lien and Deed of Trust 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. Unless any party presents opposition at the hearing, this sale appears to be an appropriate exercise of Trustee's business judgment, which will be given deference.

#### Real Estate Brokers' Compensation

This motion affects the proposed disposition of estate assets and the estate's real estate broker, Watson Realty ("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.

Trustee moved to employ Broker on December 27, 2022. Doc. #401. The court approved Broker's employment on January 4, 2023 under 11 U.S.C. §§ 327 and 329-31. Doc. #443. The order provided that all compensation would be subject to court approval on a noticed motion. *Id.*

Pursuant to the employment order, Trustee requests to compensate Broker and the buyer's broker with a 6% commission, to be evenly split at 3% each. Doc. #715.

If sold at the proposed sale price, Broker and the buyer's broker will split \$180,000.00 in compensation: \$90,000.00 each. The court will authorize Trustee to pay the brokers' compensation as prayed.

### Overbid Procedure

Any party wishing to overbid shall complete the following prior to the hearing:

1. Provide certified funds to Trustee in the amount of \$60,000.00 plus the initial overbid amount of \$10,000.00 for a total of \$70,000.00 no later than three days prior to the time of the hearing on this motion, and any unsuccessful bidder's deposits shall be returned at the conclusion of the hearing.
2. Provide proof in the form of a letter of credit, or some other written pre-qualification, for any financing that may be required to complete the purchase of the Property sufficient to cover the necessary overbid amount.
3. Provide proof that any successful overbidder can and will close the sale within 45 days of delivery of a copy of the order approving the sale and execute a Purchase Agreement for the Property.
4. Any successful overbid shall have the \$60,000.00 deposit plus \$10,000.00 overbid applied to the successful overbid price.
5. In the event a successful overbidder fails to close the sale within 45 days of delivery of a certified copy of the order approving the sale and execute a Purchase Agreement for the Property, then the \$60,000.00 deposit shall become non-refundable.
6. Any party wishing to overbid may do so only by meeting the above requirements and being present at the hearing, or in their absence, have an authorized representative with proof of authority to bid on behalf of the prospective overbidder.
7. Overbids may also be made by attending the hearing telephonically by dialing 1-866-582-6878, however, all of the requirements still must be met to be qualified to bid as an overbidder at the time of the sale.
8. All overbids shall be in the minimum amount of \$10,000.00 such that the first of any overbid shall be in the minimum of \$3,010,000.00 (three million, ten thousand dollars).
9. Any unsuccessful bidder's deposit shall be returned at the conclusion of the hearing on this motion to sell.
10. Any party wishing to overbid must acknowledge that there are no warranties or representations included with the Property; it being sold "as-is, where-is."

### Conclusion

No party in interest timely filed written opposition. This motion will be GRANTED. The court will solicit higher and better bids at the hearing. Since Trustee has complied with all applicable notice and procedure requirements regarding the sale of Property, Trustee will be authorized to sell Property to the highest bidder as determined at the hearing, to pay all costs, commissions, consensual liens, and taxes directly from escrow, and to execute any documents necessary or convenient to close the sale. In the event the Property is sold by

overbid to any party satisfying the overbid requirements, the court will order that the sale is in "good faith" within the meaning of 11 U.S.C. § 363(m) based on that party's compliance with the overbid procedure.

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<sup>2</sup> The motion states a \$2.0 million sale price as an essential term of the sale, which appears to be a clerical error. ¶ 7, Doc. #715. Elsewhere in the motion and in the declaration, the sale price is listed as \$3.0 million. Doc. #717.

12. [22-11907](#)-B-7     **IN RE: FREON LOGISTICS**  
[GRI-2](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
12-27-2022    [\[405\]](#)

FRUITVALE FINANCIAL, LLC/MV  
LEONARD WELSH/ATTY. FOR DBT.  
LAUREN RODE/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:        Continued to March 14, 2023 at 1:30 p.m.

ORDER:                The court will issue an order.

This motion was originally heard on January 10, 2023. Doc. #461.

Fruitvale Financial, LLC ("Movant"), sought relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) with respect to commercial real property located at 235 Mt. Vernon, Bakersfield, CA 93307 ("Property").

Trustee presented opposition at the hearing, so the matter was continued to February 28, 2023. Docs. #461; #487. Trustee and Movant were ordered to file and serve opposition and a reply no later than February 14 and 21, 2023, respectively.

On February 16, 2023, Trustee filed a response indicating that the sale of Property was progressing and should close escrow before the end of March 2023. Doc. #872. Property would be appraised on February 18, 2023, and a motion to approve a compromise to resolve its lien would be set for hearing on March 14, 2023. *Id.*

On February 21, 2023, Movant timely replied. Doc. #875. Movant is amenable to a brief continuance until March 14, 2023 and will continue negotiations regarding resolving this motion through a negotiated "drop-dead date" for sale closing. *Id.*



Accordingly, this motion will be further CONTINUED to March 14, 2023 at 1:30 p.m.

13. [22-11907](#)-B-7     **IN RE: FREON LOGISTICS**  
[HJN-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-17-2023    [\[579\]](#)

MITSUBISHI HC CAPITAL AMERICA INC./MV  
LEONARD WELSH/ATTY. FOR DBT.  
HOLLY NOLAN/ATTY. FOR MV.

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

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

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

Mitsubishi HC Capital America fka Hitachi Capital of America Corp. ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to four (4) 2019 Peterbilt 579 trucks ("Vehicles"). Doc. #579. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.*

No party in interest timely filed written opposition. This motion will be GRANTED IN PART and DENIED AS MOOT IN PART.

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 chapter 7 trustee, 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.

As an informative matter, the notice did not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice of hearing to include the names and addresses of persons who must be served with any opposition.

Counsel is advised to review the local rules and ensure procedure compliance in subsequent matters. Docs. #580; #601.

As an additional informative matter, Rules 4001(a)(1) and 9014(b) require service of a motion for relief from the automatic stay to be made pursuant to Rule 7004, which was done here. Docs. #585, #684. In Sections 6 and 7 of Movant's certificate of service, the declarant should have checked the appropriate boxes for first class mail under Rule 7004. Docs. #585; #602. It appears that Movant did comply with Rule 7004 but failed to check the correct boxes evidencing the same.

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 the debtor has failed to make at least three pre-petition and six post-petition payments totaling \$130,750.38. Doc. #584. Additionally, the debtor has failed to maintain insurance coverage.

The court declines finding that Debtor does not have any equity in the Vehicles. Although this is a chapter 7 case and the Vehicles are not necessary for an effective reorganization, the moving papers indicate that Debtor has approximately \$102,641.61 in equity. Doc. #584. Nevertheless, relief under § 362(d)(2) is moot because there is "cause" to grant the motion under § 362(d)(1).

Accordingly, the motion will be GRANTED IN PART pursuant to 11 U.S.C. § 362(d)(1) 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 motion will be DENIED AS MOOT IN PART with respect to § 362(d)(2).

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

14. [22-11907](#)-B-7     **IN RE: FREON LOGISTICS**  
[HJN-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-26-2023    [\[678\]](#)

SUMITOMO MITSUI FINANCE AND LEASING CO., LTD./MV  
LEONARD WELSH/ATTY. FOR DBT.  
HOLLY NOLAN/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.

Sumitomo Mitsui Finance and Leasing Co., Ltd. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to two (2) 2023 Peterbilt 579 trucks ("Vehicles"). Doc. #678. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.*

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *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 of entitlement to the relief sought, which the movant has done here.

As an informative matter, the notice did not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice of hearing to include the names and addresses of persons who must be served with any opposition. Counsel is advised to review the local rules and ensure procedure compliance in subsequent matters. Doc. #679.

As an additional informative matter, Rules 4001(a)(1) and 9014(b) require a motion for relief from the automatic stay to be served pursuant to Rule 7004, which was done here. Doc. #683. But in Sections

6 and 7 of Movant's certificate of service, the declarant should have checked the appropriate boxes for first class mail under Rule 7004. *Id.* It appears that Movant did comply with Rule 7004 but failed to check the correct boxes evidencing the same.

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 debtor has failed to make at least two complete post-petition payments in the combined amount of \$13,983.90. Doc. #682. Additionally, the debtor has failed to maintain insurance.

The court also finds that the debtor does not have any equity in the Vehicles and the Vehicles are not necessary to an effective reorganization because the debtor is in chapter 7. *Id.* The Vehicle is valued at \$330,000.00 and the debtor owes \$398,541.15. Doc. #682.

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 the debtor has failed to make post-petition payments to Movant, has failed to maintain insurance coverage, and the Vehicles are depreciating assets.

15. [22-11907](#)-B-7     **IN RE: FREON LOGISTICS**  
[JDC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR  
ADEQUATE PROTECTION  
1-27-2023    [\[696\]](#)

BANKFINANCIAL, NATIONAL ASSOCIATION/MV  
LEONARD WELSH/ATTY. FOR DBT.  
JEFFREY CAWDREY/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 motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, continuances without a court order are not permitted. LBR 9014-1(j). This motion was originally set for hearing on March 1, 2023. Doc. #697. Since the court does not have a chapter 7 calendar on March 1, 2023, the clerk issued a calendar correction memo that same day. Doc. #707.

On January 31, 2023, the movant filed and served an amended notice of hearing, setting the hearing for February 28, 2023. Doc. #724. But on February 13, 2023, a second amended notice of hearing was filed and served, which changed the hearing date to March 14, 2023. Doc. #846. LBR 9014-1(j) permits oral requests for continuances or in advance by written application.

Second, Movant's first and second certificates of service do not contain official matrices from the Clerk of the Court.<sup>3</sup> Docs. #700; #725. Unless six or fewer parties are served, LBR 7005-1 requires the movant to attach the Clerk's official matrices containing the names and addresses of all parties served. The Clerk's matrices are available on the court's website or through PACER, shall be downloaded not more than seven days prior to the date of serving the pleadings or other documents, and shall reflect the date of download. LBR 7005-1(d).

Third, Movant's third, fourth, and fifth certificates were filed as a fillable version of the court's official form instead of being saved or printed prior to filing. Docs. #850; ##858-59. The versions filed can be altered because they are still fillable. Additionally, although the other attachments appear to be from the Clerk, Movant's Attachment 6B2 appear to be custom generated. *Id.* Since they contain more than six parties, they should have attached official matrices from PACER or the court's website.

Fourth, LBR 9004-2(d) requires exhibits to be filed as a separate exhibit document, requires an exhibit index stating the page number at which each exhibit is found within the exhibit document, and requires use of consecutively numbered exhibit pages throughout the exhibit document, including any separator, cover, or divider sheets. Here, two declarations contained attached exhibits that were not filed separately, did not contain an index, and were not consecutively numbered. Docs. #698; #857. Another exhibit document was filed separately with an index, but it was not consecutively numbered. Doc. #847.

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

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<sup>3</sup> See, Official Certificate of Service Form Information, <https://www.caeb.uscourts.gov/CertificateOfServiceForm> (visited Feb. 24, 2023).

16. [22-11907](#)-B-7     **IN RE: FREON LOGISTICS  
RAP-1**

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-6-2023    [[779](#)]

WESTERN TRUCK PARTS & EQUIPMENT COMPANY/MV  
LEONARD WELSH/ATTY. FOR DBT.  
RAYMOND POLICAR/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted in part; denied as moot 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 hearing.

Western Truck Parts & Equipment ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a two (2) 2019 579 Peterbilt tractors and four (4) 2023 579 Peterbilt tractors ("Tractors"). Doc. #779. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3).

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

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.

As an informative matter, Rules 4001(a)(1) and 9014(b) require a motion for relief from the automatic stay to be served pursuant to Rule 7004, which was done here. Doc. #785. But in Sections 6 and 7 of Movant's certificate of service, the declarant should have checked the appropriate boxes for first class mail under Rule 7004. *Id.* It appears that Movant did comply with Rule 7004 but failed to check the correct boxes evidencing the same.

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 the debtor has missed one pre-petition and five post-petition payments in the combined amount of \$126,330.00. Docs. #782, #784. Additionally, the debtor has failed to maintain insurance coverage.

The court declines finding that Debtor does not have any equity in the Tractors. Although this is a chapter 7 case and the Tractors are not necessary for an effective reorganization, the moving papers indicate that Debtor has approximately \$4,267.29.00 in equity. Doc. #784. Nevertheless, relief under § 362(d)(2) is moot because there is "cause" to grant the motion under § 362(d)(1).

Accordingly, the motion will be GRANTED IN PART pursuant to 11 U.S.C. § 362(d)(1) 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 motion will be DENIED IN PART AS MOOT with respect to § 362(d)(2).

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

17. [22-11907](#)-B-7     **IN RE: FREON LOGISTICS**  
[RK-7](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-10-2023    [\[838\]](#)

NEWLANE FINANCE COMPANY/MV  
LEONARD WELSH/ATTY. FOR DBT.  
RAFFI KHATCHADOURIAN/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

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

New Lane Finance Company ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to two (2)

2021 Utility VS2RA Reefer trailer with attached 2020 Carrier X4 7500 refrigeration unit (collectively "Trailers"). Doc. #838. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3).

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.

As an informative matter, Rules 4001(a)(1) and 9014(b) require a motion for relief from the automatic stay to be served pursuant to Rule 7004, which was done here. Doc. #844. But in Sections 6 and 7 of Movant's certificate of service, the declarant should have checked the appropriate boxes for first class mail under Rule 7004. *Id.* It appears that Movant did comply with Rule 7004 but failed to check the correct boxes evidencing the same.

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 the debtor has missed one pre-petition and two post-petition payments in the combined amount of \$11,946.72. Docs. #841; #843.

The court declines finding that Debtor does not have any equity in the Trailers. Although this is a chapter 7 case and the Trailers are not necessary for an effective reorganization, the moving papers indicate that Debtor has approximately \$100,595.92 in equity. Doc. #843. Nevertheless, relief under subsection (d)(2) is moot because there is "cause" to grant the motion under subsection (d)(1).

Accordingly, the motion will be GRANTED IN PART pursuant to 11 U.S.C. § 362(d)(1) 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 motion will be DENIED IN PART AS MOOT with respect to § 362(d)(2).



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

18. [22-12111](#)-B-7     **IN RE: MARIO GONZALEZ MARTINEZ**  
[PBB-1](#)

MOTION TO AVOID LIEN OF DEPARTMENT STORES NATIONAL BANK  
1-5-2023    [[12](#)]

MARIO GONZALEZ MARTINEZ/MV  
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION:        Granted.

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

Mario Orlando Gonzalez Martinez ("Debtor") seeks to avoid a judicial lien in favor of Department Stores National Bank ("DSNB") and its Successor by merger, Citi Bank, N.A. ("Citi Bank"), in the sum of \$3,950.00 and encumbering residential real property located at 1127 East Simpson Avenue, Fresno, CA 93704 ("Property").<sup>4</sup> Doc. #12.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, 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.

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 entered in favor of DSNB against Debtor in the amount of \$3,457.90 on August 26, 2020. *Ex. D*, Doc. #15. The abstract of judgment was issued on October 29, 2020 and was recorded in Fresno County on November 13, 2020 (the "DNSB Lien"). *Id.* The DNSB Lien attached to Debtor's interest in Property. *Id.*; Doc. #14. DSNB was closed by merger or acquisition on July 1, 2022 and Citi Bank became its successor in interest and the holder of the DNSB Lien.<sup>5</sup>

As of the petition date, Property had an approximate value of \$237,000.00. *Sched. A/B*, Doc. #1. Property was encumbered by a first deed of trust in favor of Mr. Cooper/United Wholesale Mortgage ("Mr. Cooper") in the approximate sum of \$78,350.00. *Sched. D*, *id.* Debtor claimed a \$300,000.00 homestead exemption under Cal. Code Civ. Proc. ("CCP") § 704.730. *Sched. C*, *id.*

Property is encumbered by two liens. The first is a senior judgment lien in favor of Citi Bank, N.A. ("Citi Bank"), in the amount of \$7,489.17, which was recorded on January 27, 2020 (the "Citi Bank Lien"). *Ex. D*, Doc. #19. A motion to avoid the Citi Bank Lien is the subject of matter #5 below. See, PBB-2. Property's encumbrances can be illustrated with the following priorities:

Lien	Amount	Recorded	Status
1. Mr. Cooper mortgage	\$78,350.00	04/??/13	Unavoidable deed of trust
2. Citi Bank Lien	\$7,489.17	01/27/20	Avoidable if most junior
3. DSNB Lien	\$3,457.90	11/13/20	Avoidable here

When a debtor seeks to avoid multiple liens under § 522(f)(1), 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), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*

The DSNB Lien must be avoided first because it is junior to the Citi Bank Lien. The Citi Bank Lien is avoidable only after it becomes the most junior judgment lien. Strict application of the § 522(f)(2) formula with respect to the DSNB lien is as follows:

Amount of DNSB Lien	\$3,950.00
Total amount of unavoidable liens <sup>6</sup>	+ \$85,839.17
Debtor's claimed exemption in Property	+ \$300,000.00
Sum	= \$389,789.17
Debtor's claimed value of interest absent liens	- \$237,000.00
Extent DNSB Lien impairs exemption	= \$152,789.17

*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. The lien avoidance formula can be re-illustrated as follows:

Fair market value of Property	\$237,000.00
Total amount of unavoidable liens	- \$85,839.17
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$148,839.17)
DSNB Lien	- \$3,950.00
Extent Debtor's exemption impaired	= (\$152,789.17)

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 the DNSB Lien impairs Debtors' 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). This motion will be GRANTED. The proposed order shall state that the DNSB Lien is avoided from the subject Property only and include a copy of the abstract of judgment attached as an exhibit.

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<sup>4</sup> Debtor complied with Fed. R. Bankr. P. 7004(h) and (i) by serving the Sunil Garg, the CEO of DSNB's successor, Citi Bank, by certified mail on January 6, 2023. Doc. #20.

<sup>5</sup> See, DNSB FDIC Cert. #58180, <https://banks.data.fdic.gov/bankfind-suite/bankfind/details/58180> (visited Feb. 21, 2023).

<sup>6</sup> This amount consists of the \$78,350.00 deed of trust in favor of Mr. Cooper and the \$7,489.17 Citi Bank Lien because the Citi Bank Lien is unavoidable until all junior liens have been avoided.

19. [22-12111](#)-B-7     **IN RE: MARIO GONZALEZ MARTINEZ**  
[PBB-2](#)

MOTION TO AVOID LIEN OF CITIBANK, N.A.  
1-5-2023    [\[16\]](#)

MARIO GONZALEZ MARTINEZ/MV  
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

Mario Orlando Gonzalez Martinez ("Debtor") seeks to avoid a judicial lien in favor of Citi Bank, N.A. ("Citi Bank"), in the sum of \$7,489.17 and encumbering residential real property located at 1127 East Simpson Avenue, Fresno, CA 93704 ("Property").<sup>7</sup> Doc. #16.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, 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.

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 entered in favor of Citi Bank against Debtor in the amount of \$6,747.71 on August 26, 2020. *Ex. D*, Doc. #19. The abstract of judgment was issued on January 1, 2020 and was recorded in Fresno County on January 27, 2020 (the "Citi Bank Lien"). *Id.* The Citi Bank Lien attached to Debtor's interest in Property. *Id.*; Doc. #18. Debtor estimates the petition-date value of the Citi Bank Lien to be \$7,489.17. *Id.*

As of the petition date, Property had an approximate value of \$237,000.00. *Sched. A/B*, Doc. #1. Property was encumbered by a first deed of trust in favor of Mr. Cooper/United Wholesale Mortgage ("Mr. Cooper") in the approximate sum of \$78,350.00. *Sched. D*, *id.* Debtor claimed a \$300,000.00 homestead exemption under Cal. Code Civ. Proc. ("CCP") § 704.730. *Sched. C*, *id.*

Property is encumbered by two liens. The first is the senior Citi Bank Lien, and the second is a junior lien in favor of Department Stores National Bank in the amount of \$3,457.90, which was recorded on November 13, 2020 (the "DNSB Lien"). Debtor has estimated the petition-date value of the DNSB Lien to be \$3,950.00. A motion to avoid the DNSB Lien is the subject of matter #18 above. See, PBB-1. Property's encumbrances can be illustrated with the following priorities on the petition date:

Lien	Amount	Recorded	Status
1. Mr. Cooper mortgage	\$78,350.00	04/??/13	Unavoidable deed of trust
2. Citi Bank Lien	\$7,489.17	01/27/20	Avoidable
3. <del>DSNB Lien</del>	\$3,950.00	11/13/20	Avoided (PBB-1)

When a debtor seeks to avoid multiple liens under § 522(f)(1), 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), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*

The DSNB Lien must be avoided first because it is junior to the Citi Bank Lien. In matter #18 above, the court intends to grant Debtor's motion to avoid the DNSB Lien because it impairs Debtor's exemption. After the DNSB Lien is avoided, the Citi Bank Lien becomes the most junior lien subject to avoidance. Strict application of the § 522(f)(2) formula with respect to the Citi Bank Lien is as follows:

Amount of Citi Bank Lien	\$7,489.17
Total amount of unavoidable liens	+ \$78,350.00
Debtor's claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$385,839.17
Debtor's claimed value of interest absent liens	- \$237,000.00
Extent Citi Bank Lien impairs exemption	= \$148,839.17

*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. The lien avoidance formula can be re-illustrated as follows:

Fair market value of Property	\$237,000.00
Total amount of unavoidable liens	- \$85,839.17
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$141,350.00)
Citi Bank Lien	- \$7,489.17
Extent Debtor's exemption impaired	= (\$148,839.17)

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 the Citi Bank 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). This motion will be GRANTED. The proposed order shall state that the Citi Bank Lien is avoided from the subject Property only and include a copy of the abstract of judgment attached as an exhibit.

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<sup>7</sup> Debtor complied with Fed. R. Bankr. P. 7004(h) and (i) by serving the Sunil Garg, the CEO of Citi Bank, by certified mail on January 6, 2023. Doc. #21.

20. [15-12715](#)-B-7 **IN RE: JOAQUIN/PAMELA DENIZ**  
[ADJ-2](#)

MOTION FOR DISTRIBUTION OF PROCEEDS OF JUDGMENT TO  
 BANKRUPTCY TRUSTEE  
 1-26-2023 [[51](#)]

IRMA EDMONDS/MV  
 MARK ZIMMERMAN/ATTY. FOR DBT.  
 ANTHONY JOHNSTON/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.

Chapter 7 Trustee Irma C. Edmonds ("Trustee") requests an order authorizing the court appointed administrator of a class action

settlement, Simpluris, Inc. ("Administrator"), to withhold certain mandatory amounts for employment related taxes from an award payable to the bankruptcy estate. She also requests the order authorize Administrator to pay the remainder of the award to the estate. Doc. #52.

No party in interest filed timely opposition. The court will GRANT the motion.

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

Joaquin Deniz ("Debtor") is a member of a plaintiff class consisting of truck drivers for Wal-Mart. Doc. #53. A class action alleging several wage and hour violations were committed by Wal-Mart was filed in 2008 in the Northern District of California. *Id.* Seven years later, this bankruptcy case was filed. *Id.* Debtor and Pamela Deniz received their discharge November 13, 2015 and the bankruptcy case was closed shortly thereafter. *Id.*

About six years later, this case was re-opened, and Trustee was appointed to administer the remaining asset—this class action settlement. Doc. #52.

The District Court entered a distribution order. Doc. #54. Among its provisions, Debtor is awarded a gross amount of \$99,378.59. *Id.* That order allocates 60% of the award to back wages and 40% to interest. *Id.* The order goes on to provide that all Federal, State, Social Security, Medicare, local employment taxes, and withholdings are to be deducted from the back wage portion and no deduction taken from the interest portion. *Id.* The distribution order further precludes payment to the Debtor absent an order from the bankruptcy court. *Id.*

By this motion, the Trustee asks for authorization for the Administrator to withhold the necessary taxes from the back wages portion of the award and for the balance of the award to be remitted to the Trustee.

This claim is property of the estate under § 541. It arose many years before this bankruptcy case was filed. Accordingly, Trustee is required to collect, be accountable for, and administer the assets of the estate. § 704.

Under § 363(b), Trustee can only use property of the estate after court approval. The collection of this class action award and eventual distribution to creditors with allowed claims and to defray administrative expenses is consistent with Trustee's duties. Compliance with the distribution order of the Northern California District Court is also required of the Trustee. This is an appropriate exercise of the Trustee's discretion and will benefit the estate.

The motion is GRANTED.

21. [22-12024](#)-B-7     **IN RE: PATRICIA APPELEGATE**  
[PFT-1](#)

MOTION TO EMPLOY GOULD AUCTION AND APPRAISAL COMPANY AS  
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION  
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES  
1-31-2023    [\[13\]](#)

PETER FEAR/MV  
MARIO LANGONE/ATTY. FOR DBT.  
PETER FEAR/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.

Chapter 7 trustee Peter L. Fear ("Trustee") seeks authorization to (i) employ Gould Auction and Appraisal Company ("Auctioneer") under 11 U.S.C. § 328; (ii) sell the estate's interest in a 1953 Chrysler Windsor ("Vehicle") at public auction under § 363(b)(1); and (iii) compensate Auctioneer under §§ 327(a) and 328. Doc. #13. The auction will be held on or after April 8, 2023 at 9:00 a.m. at 6200 Price Street, Bakersfield, California. *Id.*

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) and Fed. R. Bankr. P. ("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). 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.

#### Employment and Compensation

This motion affects the proposed disposition of estate assets and Auctioneer. 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)(iii) permits joinder of requests for authorization to employ a professional, i.e., auctioneer, for sale of estate property at public auction, and allowance of fees and expenses for such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rules 6004-05.

11 U.S.C. § 327 allows the trustee, with the court's approval, to employ one or more attorneys, accountants, auctioneers, or other professional persons to represent or assist the trustee in carrying out the trustee's duties. The professional is required to be a disinterested person and neither hold nor represent interests adverse to the estate. § 327(a).

11 U.S.C. § 328(a) permits employment of "a professional person under section 327" on "any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." Section 328(a) further "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.'" *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002).

Under these sections, Trustee requests to employ and compensate Auctioneer by paying: (i) a 15% commission on the gross proceeds from the sale; and (ii) up to \$500.00 for extraordinary expenses and a \$350.00 pick-up fee. Doc. #13. In addition to those fees and expenses, Auctioneer charges buyers an additional 10% premium on the purchase price. Doc. #15. The buyer's premium and commission include Auctioneer's necessary expenses, including, but not limited to,

inventory, advertising, and other costs of sale. *Id.* Auctioneer holds a \$150,000.00 bond as required by the U.S. Trustee.

Trustee and Jerry Gould, Auctioneer's owner, filed declarations attesting that Auctioneer is a disinterested person as defined in § 101(14) and does not hold any interests adverse to the estate in accordance with § 327(a). Docs. ##15-16. With respect to Debtor, Auctioneer is not a creditor, equity security holder, insider, investment banker for a security of the debtor within the three years before the petition date, or an attorney for such investment banker, and within two years of the petition date was not a director, officer, or employee of the debtors or an investment banker. *Id.* Auctioneer does not have an interest materially adverse to the interest of the estate, creditors, Debtors, equity security holders, an investment banker for a security of the debtors, or any other party in interest, and had not served as an examiner in this case. *Id.* Auctioneer does not have any connection with any creditors, parties in interests, their attorneys, accountants, the U.S. Trustee, or anyone employed by the U.S. Trustee. *Id.* Additionally, no agreement exists between Auctioneer or any other person for the sharing of compensation received by Auctioneer in connection with the services rendered. *Id.*

Trustee declares that it is necessary to employ Auctioneer to liquidate Vehicle. *Id.* Trustee believes that the proposed fees and expenses for services are reasonable and customary for the services to be rendered by Auctioneer. *Id.*

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. §§ 327(a), 328 and authorize Trustee to pay the 15% commission, and up to \$500.00 for extraordinary expenses and a \$350.00 pick-up fee.

#### Proposed Sale

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 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 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 Adventure, LLC*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, 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).

Vehicle is listed in the schedules with a value of \$10,900.00 and is exempted in the amount of \$3,625.00 under Cal. Code Civ. Proc. § 704.010. *Scheds. A/B & C*, Doc. #1. Vehicle does not appear to be encumbered by any security interests. *Sched. D, id.*

If Trustee sells Vehicle at auction at the proposed sale price under § 363(b), then the proposed sale could be illustrated as follows:

Sale price	\$10,900.00
Debtor's exemption	- \$3,625.00
Auctioneer fees (15%)	- \$1,635.00
Pick-up fee	- \$350.00
Extraordinary expenses	- \$500.00
<b>Estimated net proceeds to estate</b>	<b>= \$5,140.00</b>

Trustee believes that using the auction process to sell Vehicle will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #16. Based on Trustee's experience, this could yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.*

Sale by auction under these circumstances should maximize potential recovery for the estate such that the sale of the Vehicle would be in the best interests of the estate if it will provide liquidity to the estate 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. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Trustee will be permitted to employ Auctioneer, sell the Vehicle at public auction, and pay Auctioneer for its services as outlined above. If the sale is completed, Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale and payment of up to \$500.00 for extra ordinary expenses and \$350.00 for pick-up fees.

22. [22-11730](#)-B-7      **IN RE: GARY FRENCH**  
[DWE-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-26-2023    [\[27\]](#)

U.S. BANK NATIONAL ASSOCIATION/MV  
NEIL SCHWARTZ/ATTY. FOR DBT.  
DANE EXNOWSKI/ATTY. FOR MV.  
DISCHARGED 1/24/23

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

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

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

U.S. Bank National Association ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2014 Aspect 27K Winnebago ("Vehicle"). Doc. #27. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3).

No party in interest timely filed written opposition. This motion will be GRANTED IN PART and DENIED AS MOOT IN PART.

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

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The debtor's discharge was entered on January 24, 2023. Doc. #24. Therefore, the automatic stay terminated with respect to the debtor on January 24, 2023. This motion will be DENIED AS MOOT IN PART as to the debtor's interest.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay with respect to the chapter 7 trustee because the debtor has failed to make four post-petition payments and Movant has produced evidence that debtor is delinquent at least \$1,981.00. Docs. #30, #32. Additionally, the debtor has stated an intention to surrender the Vehicle. Doc. #1.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because this is a chapter 7 case. Movant values the Vehicle at \$58,000.00 and Debtor owes \$69,142.01, which leaves Movant under secured.

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

The 14-day stay of Rule 4001(a)(3) will be ordered waived because the Vehicle is a depreciating asset and the debtor intends to surrender the Vehicle.

23. [22-12138](#)-B-7      **IN RE: AEEDE MASHAEL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
2-7-2023    [[20](#)]

SCOTT LYONS/ATTY. FOR DBT.  
\$32.00 FILING FEE PAID 2/7/23

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 \$32.00 filing fee was paid on February 7, 2023. Accordingly, this order to show cause will be VACATED.

24. [22-12040](#)-B-7     **IN RE: MARIA LUNA MANZO**  
[ICE-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
1-25-2023    [\[15\]](#)

MARK ZIMMERMAN/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 Irma C. Edmonds ("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 23, 2023. Doc. #15.

Maria Luna Manzo ("Debtor") timely filed written opposition. Doc. #19.

This motion to dismiss will be CONDITIONALLY DENIED.

Debtor's response was in Spanish. The court will not translate the response. English is the official language in Federal Court proceedings, but an interpreter will be available at the meeting of creditors and court hearings.

Debtor shall attend the meeting of creditors rescheduled for February 27, 2023 at 11:00 a.m. See, Doc. #16. If Debtor fails to appear and 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.

25. [21-11754](#)-B-7     **IN RE: MICHAEL ANARADIAN**  
[FW-7](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,  
P.C. FOR GABRIEL J. WADDELL, TRUSTEES ATTORNEY(S)  
1-26-2023    [\[84\]](#)

LEONARD WELSH/ATTY. FOR DBT.  
GABRIEL WADDELL/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.

Fear Waddell, P.C. ("Applicant"), attorney for chapter 7 trustee Peter L. Fear ("Trustee"), requests final compensation in the sum of \$10,264.78. Doc. #84. This amount consists of \$9,766.50 in fees as reasonable compensation for services rendered and \$498.28 in reimbursement for actual, necessary expenses from September 9, 2021 through January 23, 2023. *Id.*

Trustee has reviewed the application, believes payment of the fees and expenses is reasonable and necessary for the administration of the estate, and has no objections to the proposed payment. Doc. #87.

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) and Fed. R. Bankr. P. ("Rule") 2002(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). 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.

Michael Peter Anaradian ("Debtor") filed chapter 7 bankruptcy on July 14, 2021. Doc. #1. Trustee was appointed as interim trustee on July 16, 2021 and became permanent trustee at the first § 341 meeting of

creditors on August 10, 2021. Doc. #6; docket generally. Trustee moved to employ Applicant on September 14, 2021. Doc. #17. The court approved Applicant's employment September 22, 2021, effective September 1, 2021. Doc. #23. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for legal services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Applicant's services here were within the time period prescribed by the employment order.

This is Applicant's first and final fee application. Applicant's firm provided 32.70 billable hours at the following rates, totaling **\$9,766.50** in fees:

Professional	Rate	Hours	Amount
Gabriel J. Waddell (2021)	\$330	5.30	\$1,749.00
Gabriel J. Waddell (2022)	\$345	14.20	\$4,899.00
Gabriel J. Waddell (2023)	\$360	0.90	\$324.00
Katie Waddell (2021)	\$230	1.90	\$437.00
Katie Waddell (2022)	\$245	7.10	\$1,739.50
Katie Waddell (2023)	\$260	1.80	\$468.00
Laurel Guenther (2022)	\$100	1.50	\$150.00
<b>Total Hours &amp; Fees</b>		<b>32.70</b>	<b>\$9,766.50</b>

Exs. B-C, Docs. #86; #88. Applicant also incurred **\$498.28** in expenses:

Copying	\$235.30
Official Fees	\$38.40
Postage	\$224.58
<b>Total Costs</b>	<b>\$498.28</b>

Ex. B, *id.* These combined fees and expenses total **\$10,264.78**.

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

Applicant's services included, without limitation: (1) securing authorization for employment (FW-1); (2) preparing a demand for return of preferential payments made in the 90 days prior to filing and resolving the claim; (3) preparing and filing a motion to approve the settlement (FW-2) and communicating with an interested party regarding that motion; (4) seeking and obtaining approval for the sale of royalty interests (FW-3); (5) objecting to erroneous claims filed



against Debtor's corporate entity (FW-4, FW-5, FW-6); and (6) preparing and filing this fee application (FW-7). *Exs. A-B*, Docs. #86; #88. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Trustee has reviewed the application and consents to payment of the requested fees and expenses. Doc. #87.

No party in interest timely filed written opposition to this motion. Accordingly, this motion will be GRANTED. Applicant will be awarded \$9,766.50 in reasonable fees and \$498.28 in actual, necessary expenses on a final basis pursuant to § 330. Trustee will be authorized, in Trustee's discretion, to pay Applicant \$10,264.78 on the terms outlined above for services rendered and costs incurred from September 9, 2021 through January 23, 2023.

26. [22-11769](#)-B-7     **IN RE: PREMIER RAIL SERVICES, INC.**  
[JEM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-27-2023    [\[34\]](#)

CATERPILLAR FINANCIAL SERVICES CORPORATION/MV  
D. GARDNER/ATTY. FOR DBT.  
JASON MURTAGH/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.

Caterpillar Financial Services ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to two (2) Caterpillar Model 450F Backhoe Loaders ("Equipment"). Doc. #34. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.*

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the chapter 7 trustee, 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.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make any complete post-petition payments. The movant has produced evidence that debtor is delinquent at least \$69,652.74. Doc. #34, 37.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) 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 any post-petition payments to Movant and the Equipment consists of depreciating assets.

27. [22-11170](#)-B-7     **IN RE: DOUA YANG**  
[APN-4](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-23-2023    [\[94\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
AUSTIN NAGEL/ATTY. FOR MV.

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

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

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

Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2021 Toyota Tundra ("Vehicle"). Doc. #94. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.*

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

be GRANTED as to the debtor and DENIED AS MOOT as to chapter 7 trustee.

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

This motion relates to an executory contract or lease of personal property. The case was filed on July 29, 2022 and the lease was not assumed by the chapter 7 trustee within the time prescribed in 11 U.S.C. § 365(d)(1). Pursuant to § 365(p)(1), the leased property is no longer property of the estate and the automatic stay under § 362(a) has already terminated by operation of law.

Doua Yang ("Debtor") did not file opposition. Since there is no opposition from Debtor, the court is unaware if Debtor exercised the option to assume the lease under § 365(p)(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 because Debtor has defaulted under the lease and has not maintained insurance coverage. Doc. #96.

The court also finds that the debtor does not have any equity in the Vehicle because it is leased and the Vehicle is not necessary to an effective reorganization because this is a chapter 7 case.

Accordingly, the motion will be GRANTED as to Debtor 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 motion will be DENIED AS MOOT as to the chapter 7 trustee pursuant to § 365(p)(1). The leased property is no longer property of the estate and the automatic stay under § 362(a) has already terminated by operation of law.

28. [22-11974](#)-B-7     **IN RE: ROBERT/MAKAYLA WILEY**  
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-30-2023    [\[18\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV  
JERRY LOWE/ATTY. FOR DBT.  
AUSTIN NAGEL/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.

Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2020 Mazda CX-5 Sign ("Vehicle"). Doc. #18.

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

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

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 least one complete post-petition payments. The movant has produced evidence that debtors are delinquent at least \$609.39. Docs. #20, #21.

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. The Vehicle is valued at \$31,000.00 and debtors owe \$31,242.53. *Id.*

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.