UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, March 10, 2021
Place: Department A – Courtroom #11
Fresno, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

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. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

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

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

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

9:30 AM

1. 20-11606-A-11 **IN RE: MICHAEL PENA**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
5-4-2020 [1]

JUSTIN HARRIS/ATTY. FOR DBT.
CONT'D TO 3/31/21 PER ECF ORDER #105

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

DISPOSITION: Continued to March 31, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

On January 26, 2021, the court issued an order continuing the status conference to March 31, 2021 at 9:30 a.m. Doc. #105

2. 20-10010-A-11 **IN RE: EDUARDO/AMALIA GARCIA**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
1-2-2020 [1]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

3. 20-10010-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
LKW-21

AMENDED CHAPTER 11 DISCLOSURE STATEMENT FILED BY JOINT DEBTOR AMALIA PEREZ GARCIA, DEBTOR EDUARDO ZAVALA GARCIA
2-18-2021 [521]

LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Debtors and Debtors in Possession Eduardo and Amalia Garcia (together, "Debtors") request the court's approval of their Second Amended Disclosure Statement Dated February 18, 2021 ("Disclosure Statement"). Doc. #521. Notice of the hearing and the time for filing objections was set pursuant to two orders issued by the court stemming from a hearing on January 7, 2021. Doc. ##464, 495. No party in interest has filed an objection.

Bankruptcy Code section 1125(b) requires a plan proponent to transmit a disclosure statement containing adequate information to creditors when soliciting acceptance of a plan, and the disclosure statement must be approved by the court before the disclosure statement and proposed plan may be sent to all creditors and parties in interest. "The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court." Computer Task Grp., Inc. v. Brotby (In re Brotby), 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003) (citation omitted). Under Bankruptcy Code section 1125(a)(1), the court considers "the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information" in determining whether there is "adequate information." 11 U.S.C. § 1125(a)(1).

Here, Debtors are married individuals who own several parcels of real property and operate a cattle business in California. Debtors own significant amounts of farmland and are shareholders in 4G Farming, Inc. Debtors filed this chapter 11 case on January 2, 2020, to prevent foreclosure sales on two of Debtors' properties as well as stop collection actions initiated against them by other creditors.

The proposed plan is a plan of reorganization that provides for the sale of several parcels of Debtors' real property and payment in full of undisputed secured and unsecured creditor claims with interest on or before December 31, 2021. The plan designates creditors into eighteen classes of claims. Class 1 consists of priority unsecured claims. Debtors do not believe there are any Class 1 claimants. Class 2 through Class 14 consist of various secured claims. Class 5 through Class 12 and Class 14 are impaired under the plan and entitled to vote on the plan. Class 15 and Class 16 consist of general unsecured creditors and are entitled to vote on the plan. Class 17 consists of Debtors' executory contracts and unexpired leases and is not impaired under the plan and is not entitled to vote on the plan. Class 18 consists of Debtors' interests, is impaired under the plan, and is entitled to vote on the plan.

The Disclosure Statement sets forth significant events during the bankruptcy case, including a narrative about the Debtors' assets and claims, and a chart of the expected values of Debtors' property and the claims to be paid from those sale proceeds.

Having reviewed the Disclosure Statement, the court finds that the Disclosure Statement contains "adequate information" as defined under 11 U.S.C. § 1125(a)(1) regarding Debtors' proposed chapter 11 plan. The court approves the Disclosure Statement. At the March 10 hearing, the court will schedule a date and time for the confirmation hearing and set deadlines for (i) soliciting the plan, (ii) filing ballots and objections to confirmation, and (iii) filing a confirmation brief and ballot tabulation.

4. 20-10945-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
WLG-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-24-2021 [166]

JASKARAN SIHOTA/MV
DAVID JENKINS/ATTY. FOR DBT.
LENDEN WEBB/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied without prejudice in part.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion in part and deny the motion in part without prejudice, as explained below. If opposition is presented at the hearing, the court will consider the opposition and whether a further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

This motion will be GRANTED for cause shown to permit Jaskaran Sihota, Kewal Singh and Jaswinder Kaur (collectively, "Movants") to take the necessary actions to finalize the arbitration pending under the auspices of Jaskaran Sihota, et al. v. Bhajan Sihota, et al., Case No. 18CECG01393, Superior Court of California, County of Fresno ("State Court Action") and enter any arbitration awards in the State Court Action. This motion will be DENIED WITHOUT PREJUDICE to the extent that Movants seek a stay of the pending adversary proceeding between Movants and Ajitpal Singh and Jatinderjeet Sihota (together, "Debtors") (Adv. Proc. No. 20-1041), as such relief should be sought through a motion filed in the adversary proceeding.

Movants filed a proof of claim against Debtors based on an arbitration award issued on January 25, 2020, after a four-day arbitration under the auspices of the State Court Action, that was not confirmed by the California state court prior to Debtors filing for bankruptcy. Doc. #166. Shortly after the arbitration award was issued on January 25, 2020, Movants filed a motion in the state court to confirm the arbitration award. In response, Debtors moved to vacate the award. On the eve of the hearing on Movants' motion to confirm, and after a tentative ruling denying Debtors' motion to vacate and granting Movants' motion to confirm, Debtors filed a bankruptcy petition. Doc. #168.

Movants request relief from the automatic stay under 11 U.S.C. § 362(d)(1) to (i) permit Movants to take the necessary actions to finalize the arbitration and enter any arbitration award in the State Court Action, and (ii) stay the pending adversary proceeding between Movants and Debtors to address the state court defenses asserted by Debtors. Doc. #166.

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

Movants seek relief from stay for cause based on permissive abstention pursuant to 28 U.S.C. § 1334(c)(1). "Where a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues, cause may exist for lifting the stay as to the state court trial." Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162, 1166 (9th Cir. 1990). Moreover, the legislative history of § 362(d)(1) states that "a desire to permit an action to proceed to completion in another tribunal may provide [] cause" for relief from a stay. H.R. No. 595, 95th Cong., 1st Sess. 343, 1977 U.S. Code Cong. & Admin. News 5787, 630.

The Ninth Circuit in Tucson Estates set forth the following factors for a bankruptcy court to consider when deciding whether to abstain from exercising jurisdiction:

(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention;

(2) the extent to which state law issues predominate over bankruptcy issues;

(3) the difficulty or unsettled nature of the applicable law;

(4) the presence of a related proceeding commenced in state court or other nonbankruptcy court;

(5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334;

(6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;

(7) the substance rather than form of an asserted "core" proceeding;

(8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;

(9) the burden of [the bankruptcy court's] docket;

(10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;

(11) the existence of a right to a jury trial; and

(12) the presence in the proceeding of nondebtor parties.

Tucson Estates, 912 F.2d at 1166-67 (quoting In re Republic Reader's Serv., Inc., 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987)).

Applying the Tucson Estates factors, the court finds these factors support abstention, and therefore relief from the automatic stay, as follows:

1. Effect on Administration of the Estate if Court Abstains: Granting relief from stay to permit the state court to finalize the arbitration award in the State Court Action will permit final resolution of the arbitration award. If that award is finalized, Movants can use the award to resolve outstanding issues in Movants' non-dischargeability adversary proceeding through issue preclusion. Abstention therefore would

facilitate the administration of the estate. This factor weighs in favor of abstention.

2. Extent to Which State Law Issues Predominate: While dischargeability involves federal bankruptcy law, whether the arbitration award is final for issue preclusion purposes implicates state law. The state law issues predominate over the bankruptcy issues since the bankruptcy court can use issue preclusion to resolve the non-dischargeability lawsuit if the arbitration award is a final award. This factor weighs in favor of abstention.

3. Difficulty or Unsettled Nature of Applicable Law: Whether and when the arbitration award in the State Court Action is final appears to be unsettled under California law and is best determined by the state court. See Lonky v. Patel, 51 Cal. App. 5th 831 (2020). This factor weighs in favor of abstention.

4. Presence of Pending Related Proceeding: The State Court Action is pending in the California state court and could be finally resolved if the automatic stay is lifted. This factor weighs in favor of abstention.

5. The Jurisdictional Basis Other than 28 U.S.C. § 1334: The only basis for jurisdiction appears to be 28 U.S.C. § 1334. This factor weighs in favor of abstention.

6. Degree of Relatedness or Remoteness of the Proceeding to the Bankruptcy Case: The determination of dischargeability of Movants' claim is directly related to the administration of the Debtors' bankruptcy case. However, this determination could be greatly facilitated by the issuance of a final arbitration award in the State Court Action. This factor weighs in favor of abstention.

7. Substance of the Asserted Core Proceeding: Determination of dischargeability is a core proceeding. However, this determination could be greatly facilitated by the issuance of a final arbitration award in the State Court Action. This factor weighs in favor of abstention.

8. Feasibility of Severing State Law Claims from Core Bankruptcy Matters: The arbitrator has liquidated Movants' claim through an award after a four-day arbitration. However, that award has not been finalized so it currently cannot be used to resolve the non-dischargeability adversary proceeding through the application of collateral estoppel. If the arbitration award could be finalized, that award could be used to resolve the dischargeability complaint. This factor weighs in favor of abstention.

9. Burden on Bankruptcy Court's Docket: Lifting the automatic stay to permit the state court to finalize the arbitration award likely would eliminate this court having to try the non-dischargeability adversary proceeding, which already has been the subject of a four-day arbitration, easing the burden on this court's docket. This factor weighs in favor of abstention.

10. Likelihood of Forum Shopping: Because Debtors filed a bankruptcy case on the eve of the state court finalizing the arbitration award in the State Court Action in Movants' favor, it appears Debtors may be forum shopping to have this court try the evidence presented at the four-day arbitration anew. This factor weighs in favor of abstention.

11. Existence of Right to Jury Trial: The right to a jury trial is not implicated with respect to the arbitrated claims, and there is no right to a jury trial in the non-dischargeability adversary proceeding. This factor weighs against abstention.

12. Presence of Non-Debtor Parties in Related Proceeding: The only non-debtor parties in the related arbitration with respect to the Award are Movants and other parties who also filed for bankruptcy. This factor weighs against abstention.

Given that most of the Tucson Estates factors weigh in favor of this court abstaining from exercising its jurisdiction over the claims between Movants and Debtors that are already the subject of the State Court Action, cause exists to lift the automatic stay to permit Movants to take the necessary actions to finalize the arbitration and enter any arbitration award in the State Court Action.

In addition to the analysis under Tucson Estates, when a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court may consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in determining whether to grant relief from the automatic stay" to allow litigation in another forum. Id. The relevant Curtis factors include: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the non-bankruptcy forum has the expertise to hear such cases; (4) whether litigation in another forum would prejudice the interests of other creditors; (5) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; (6) whether the litigation in the other forum has progressed to the point where the parties are prepared for trial; and (7) the impact of the automatic stay and the "balance of hurt." In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984). Here, the Curtis factors support finding cause to grant relief from stay as requested in the motion.

Granting relief from stay to permit the state court to finalize the arbitration award in the State Court Action will finally resolve the arbitration award. If that award is finalized, Movants can use the award to resolve outstanding issues in Movants' non-dischargeability adversary proceeding through collateral estoppel. Moreover, the state court has the expertise to hear motions to finalize an award based on an arbitration ordered by the state court. Here, a four-day arbitration has already been held, and the state court can readily finalize any award from that arbitration. It is in the interests of judicial economy and more expeditious and economical to lift the automatic stay to permit the state court to finalize the arbitration of the claims in the State Court Action before this court has to hear all of the matters previously arbitrated anew. Because there are minimal additional proceedings that need to be undertaken in the State Court Action to finalize the arbitration award, lifting the automatic stay would benefit all parties by permitting the state court to determine what is needed to finalize the arbitration award so that award could be utilized efficiently in this court to resolve Movants' non-dischargeability adversary proceeding.

Accordingly, the court finds that cause exists to lift the stay and this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movants to take the necessary actions to finalize the arbitration and enter any arbitration award in the State Court Action. No other relief is awarded.

In the request for relief as part of the motion, Movants request waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). However, Movants have provided no factual basis or legal analysis to support the requested waiver, and so the 14-day stay is not waived.

With respect to Movants' request for a stay of their adversary proceeding pending against Debtors to permit the state court defenses to be addressed, there is no automatic stay with respect to the adversary proceeding. Any request for a stay of the adversary proceeding needs to be made by motion filed in the adversary proceeding and based on applicable law. That request is denied without prejudice.

5. 20-10569-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
WLG-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-24-2021 [394]

KEWAL SINGH/MV
DAVID JENKINS/ATTY. FOR DBT.
LENDEN WEBB/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied without prejudice in part.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion in part and deny the motion in part without prejudice, as explained below. If opposition is presented at the hearing, the court will consider the opposition and whether a further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

This motion will be GRANTED for cause shown to permit Jaskaran Sihota, Kewal Singh and Jaswinder Kaur (collectively, "Movants") to take the necessary actions to finalize the arbitration pending under the auspices of Jaskaran Sihota, et al. v. Bhajan Sihota, et al., Case No. 18CECG01393, Superior Court of California, County of Fresno ("State Court Action") and enter any arbitration awards in the State Court Action. This motion will be DENIED WITHOUT PREJUDICE to the extent that Movants seek a stay of the pending adversary proceeding between Movants and Bhajan Sihota and Balvinder Kaur (together, "Debtors") (Adv. Proc. No. 20-1042), as such relief should be sought through a motion filed in the adversary proceeding.

Movants filed a proof of claim against Debtors based on an arbitration award issued on January 25, 2020, after a four-day arbitration under the auspices of the State Court Action, that was not confirmed by the California state court prior to Debtors filing for bankruptcy. Doc. #394. Shortly after the arbitration award was issued on January 25, 2020, Movants filed a motion in the state court to confirm the arbitration award. In response, Debtors moved to vacate the award. On the eve of the hearing on Movants' motion to confirm, and

after a tentative ruling denying Debtors' motion to vacate and granting Movants' motion to confirm, Debtors filed a bankruptcy petition. Doc. #397.

Movants request relief from the automatic stay under 11 U.S.C. § 362(d)(1) to (i) permit Movants to take the necessary actions to finalize the arbitration and enter any arbitration award in the State Court Action, and (ii) stay the pending adversary proceeding between Movants and Debtors to address the state court defenses asserted by Debtors. Doc. #394.

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

Movants seek relief from stay for cause based on permissive abstention pursuant to 28 U.S.C. § 1334(c)(1). "Where a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues, cause may exist for lifting the stay as to the state court trial." Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162, 1166 (9th Cir. 1990). Moreover, the legislative history of § 362(d)(1) states that "a desire to permit an action to proceed to completion in another tribunal may provide [] cause" for relief from a stay. H.R. No. 595, 95th Cong., 1st Sess. 343, 1977 U.S. Code Cong. & Admin. News 5787, 630.

The Ninth Circuit in Tucson Estates set forth the following factors for a bankruptcy court to consider when deciding whether to abstain from exercising jurisdiction:

(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention;

(2) the extent to which state law issues predominate over bankruptcy issues;

(3) the difficulty or unsettled nature of the applicable law;

(4) the presence of a related proceeding commenced in state court or other nonbankruptcy court;

(5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334;

(6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;

(7) the substance rather than form of an asserted "core" proceeding;

(8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;

(9) the burden of [the bankruptcy court's] docket;

(10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;

(11) the existence of a right to a jury trial; and

(12) the presence in the proceeding of nondebtor parties.

Tucson Estates, 912 F.2d at 1166-67 (quoting In re Republic Reader's Serv., Inc., 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987)).

Applying the Tucson Estates factors, the court finds these factors support abstention, and therefore relief from the automatic stay, as follows:

1. Effect on Administration of the Estate if Court Abstains: Granting relief from stay to permit the state court to finalize the arbitration award in the State Court Action will permit final resolution of the arbitration award. If that award is finalized, Movants can use the award to resolve outstanding issues in Movants' non-dischargeability adversary proceeding through issue preclusion. Abstention therefore would facilitate the administration of the estate. This factor weighs in favor of abstention.

2. Extent to Which State Law Issues Predominate: While dischargeability involves federal bankruptcy law, whether the arbitration award is final for issue preclusion purposes implicates state law. The state law issues predominate over the bankruptcy issues since the bankruptcy court can use issue preclusion to resolve non-dischargeability lawsuit if the arbitration award is a final award. This factor weighs in favor of abstention.

3. Difficulty or Unsettled Nature of Applicable Law: Whether and when the arbitration award in the State Court Action is final appears to be unsettled under California law and is best determined by the state court. See Lonky v. Patel, 51 Cal. App. 5th 831 (2020). This factor weighs in favor of abstention.

4. Presence of Pending Related Proceeding: The State Court Action is pending in the California state court and could be finally resolved if the automatic stay is lifted. This factor weighs in favor of abstention.
5. The Jurisdictional Basis Other than 28 U.S.C. § 1334: The only basis for jurisdiction appears to be 28 U.S.C. § 1334. This factor weighs in favor of abstention.

6. Degree of Relatedness or Remoteness of the Proceeding to the Bankruptcy Case: The determination of dischargeability of Movants' claim is directly related to the administration of the Debtors' bankruptcy case. However, this determination could be greatly facilitated by the issuance of a final arbitration award in the State Court Action. This factor weighs in favor of abstention.

7. Substance of the Asserted Core Proceeding: Determination of dischargeability is a core proceeding. However, that determination could be greatly facilitated by the issuance of a final arbitration award in the State Court Action. This factor weighs in favor of abstention.

8. Feasibility of Severing State Law Claims from Core Bankruptcy Matters: The arbitrator has liquidated Movants' claim through an award after a four-day arbitration. However, that award has not been finalized so it currently cannot be used to resolve the non-dischargeability adversary proceeding through the application of collateral estoppel. If the arbitration award could be finalized, that award could be used to resolve the dischargeability complaint. This factor weighs in favor of abstention.

9. Burden on Bankruptcy Court's Docket: Lifting the automatic stay to permit the state court to finalize the arbitration award likely would

eliminate this court having to try the non-dischargeability adversary proceeding, which already has been the subject of a four-day arbitration, easing the burden on this court's docket. This factor weighs in favor of abstention.

10. Likelihood of Forum Shopping: Because Debtors filed a bankruptcy case on the eve of the state court finalizing the arbitration award in the State Court Action in Movants' favor, it appears Debtors may be forum shopping to have this court try evidence presented at the four-day arbitration anew. This factor weighs in favor of abstention.

11. Existence of Right to Jury Trial: The right to a jury trial is not implicated with respect to the arbitrated claims, and there is no right to a jury trial in the non-dischargeability adversary proceeding. This factor weighs against abstention.

12. Presence of Non-Debtor Parties in Related Proceeding: The only non-debtor parties in the related arbitration with respect to the Award are Movants and other parties who also filed for bankruptcy. This factor weighs against abstention.

Given that most of the Tucson Estates factors weigh in favor of this court abstaining from exercising its jurisdiction over the claims between Movants and Debtors that are already the subject of the State Court Action, cause exists to lift the automatic stay to permit Movants to take the necessary actions to finalize the arbitration and enter any arbitration award in the State Court Action.

In addition to the analysis under Tucson Estates, when a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court may consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in determining whether to grant relief from the automatic stay" to allow litigation in another forum. Id. The relevant Curtis factors include: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the non-bankruptcy forum has the expertise to hear such cases; (4) whether litigation in another forum would prejudice the interests of other creditors; (5) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; (6) whether the litigation in the other forum has progressed to the point where the parties are prepared for trial; and (7) the impact of the automatic stay and the "balance of hurt." In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984). Here, the Curtis factors support finding cause to grant relief from stay as requested in the motion.

Granting relief from stay to permit the state court to finalize the arbitration award in the State Court Action will finally resolve the arbitration award. If that award is finalized, Movants can use the award to resolve outstanding issues in Movants' non-dischargeability adversary proceeding through collateral estoppel. Moreover, the state court has the expertise to hear motions to finalize an award based on an arbitration ordered by the state court. Here, a four-day arbitration has already been held, and the state court can readily finalize any award from that arbitration. It is in the interests of judicial economy and more expeditious and economical to lift the automatic stay to permit the state court to finalize the arbitration of the claims in the State Court Action before this court has to hear all of the matters previously arbitrated anew. Because there are minimal additional proceedings that need to

be undertaken in the State Court Action to finalize the arbitration award, lifting the automatic stay would benefit all parties by permitting the state court to determine what is needed to finalize the arbitration award so that award could be utilized efficiently in this court to resolve Movants' non-dischargeability adversary proceeding.

Accordingly, the court finds that cause exists to lift the stay and this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movants to take the necessary actions to finalize the arbitration and enter any arbitration award in the State Court Action. No other relief is awarded.

In the request for relief as part of the motion, Movants request waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). However, Movants have provided no factual basis or legal analysis to support the requested waiver, and so the 14-day stay is not waived.

With respect to Movants' request for a stay of their adversary proceeding pending against Debtors to permit the state court defenses to be addressed, there is no automatic stay with respect to the adversary proceeding. Any request for a stay of the adversary proceeding needs to be made by motion filed in the adversary proceeding and based on applicable law. That request is denied without prejudice.

6. 20-12577-A-11 **IN RE: MARIA LUNA MANZO**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
8-5-2020 [1]

JUSTIN HARRIS/ATTY. FOR DBT.

NO RULING.

7. 20-12577-A-11 **IN RE: MARIA LUNA MANZO**
HLF-4

CONTINUED CONFIRMATION HEARING RE: CHAPTER 11 SMALL BUSINESS SUBCHAPTER V PLAN
11-10-2020 [76]

JUSTIN HARRIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

8. 20-12577-A-11 **IN RE: MARIA LUNA MANZO**
HLF-7

CONTINUED MOTION TO DISMISS CASE
2-3-2021 [114]

MARIA LUNA MANZO/MV
JUSTIN HARRIS/ATTY. FOR DBT.

NO RULING.

9. 20-10188-A-12 **IN RE: MIKE WEBER**
MHM-1

MOTION TO DISMISS CASE
2-2-2021 [118]

MICHAEL MEYER/MV
DAVID JENKINS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Michael H. Meyer ("Trustee"), the chapter 12 trustee, moves the court to dismiss this case for material default by the debtor with respect to the terms of a confirmed plan pursuant to 11 U.S.C. § 1208(c)(6). Doc. #118. Michael H. Weber ("Debtor"), the chapter 12 debtor, failed to make the plan payment due in January 2021 in the sum of $879,664.34. Doc. #118. Debtor did not timely oppose Trustee's motion.

Under 11 U.S.C. § 1208(c)(6), the court may convert or dismiss a case for cause, including "material default by the debtor with respect to a term of a confirmed plan." 11 U.S.C. § 1208(c)(6). "A failure to make a payment required under the plan is a material default and is cause for dismissal." Grooms v. W/C Millings, Co. (In re Grooms), 64 F. App'x. 922, 923 (6th Cir. 2003).

There is "cause" for dismissal under 11 U.S.C. § 1208(c)(6) for material default by the debtor with respect to a term of a confirmed plan because Debtor has failed to make a payment of $879,664.54 due January 31, 2021, and is delinquent $879,664.34. Decl., Doc. #120.

Accordingly, this motion will be GRANTED. The case will be dismissed.

10. 20-13293-A-11 **IN RE: PATRICK JAMES, INC.**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
10-9-2020 [1]

HAGOP BEDOYAN/ATTY. FOR DBT.

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

DISPOSITION: Continued to April 28, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

After reviewing the status report filed on March 3, 2021 (Doc. #259), the court will continue the status conference to April 28, 2021 at 9:30 a.m. to be held in conjunction with the hearing to confirm the debtor's subchapter V plan of reorganization.

11. 20-13293-A-11 **IN RE: PATRICK JAMES, INC.**
MB-17

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT AND/OR MOTION TO ENTER INTO A NEW LEASE
1-29-2021 [214]

PATRICK JAMES, INC./MV
HAGOP BEDOYAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Patrick James, Inc. ("DIP"), the debtor and debtor in possession in this chapter 11 subchapter V case, moves the court for authorization to assume one nonresidential commercial lease and Covid-19 amendment with RPI Fig Garden, L.P. ("RPI") (together, the "Assumed Lease"). Doc. #214; Exs. A and B, Doc. #216. DIP also moves for authorization to enter into a new lease with RPI for the same nonresidential commercial property, a redacted copy of which is filed with the court as Ex. C, Doc. #216 (the "New Lease"). Doc. #214. The

Assumed Lease terminated January 31, 2021, and the New Lease commenced February 1, 2021 and will extend through January 31, 2023. Doc. #214.

Lessor	Location	Term of Lease
RPI Fig Garden, LP c/o Fig Garden Village 350 N. Orleans St. Suite 300 Chicago, IL 60654	Fig Garden Village Suite 0041 790 W. Shaw Ave. Fresno, CA 93704	Assumed Lease expires January 31, 2021 New Lease: February 1, 2021 through January 31, 2021

11 U.S.C. § 365(a) states that "subject to the court's approval, [the debtor in possession] may assume [any] unexpired lease of the debtor." 11 U.S.C. § 363 similarly permits the debtor in possession to lease property outside the ordinary course of business after notice and a hearing. 11 U.S.C. § 363(b)(1).

In evaluating a decision under § 365(a) to assume an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." Agarwal v. Pomona Valley Med. Grp., Inc. (In re Pomona Valley Med. Grp., Inc.), 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted). The bankruptcy court should approve the assumption under § 365(a) unless the debtor in possession's conclusion is based on bad faith, whim, or caprice. Id. Similarly, under § 363(b), a debtor in possession that wishes to enter into a post-petition lease of property outside the ordinary course of business must demonstrate that such disposition has a valid business justification. 240 N. Brand Partners v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996).

Here, DIP states that assumption of the Assumed Lease and entry into the New Lease are essential to DIP's successful reorganization. Decl. of Patrick M. Mon Pere, Doc. #217. DIP will be able to focus on reorganizing and establishing a profitable business model while maintaining the "flagship" Fig Garden Village location. Decl., Doc. #217. DIP has been performing according to the terms of the Assumed Lease and expects to perform successfully under the New Lease. Decl., Doc. #217. DIP believes that assumption of the Assumed Lease and entry into the New Lease are in the best interests of the estate and will enable a feasible plan of reorganization to repay creditors. Decl., Doc. #217. The court finds that DIP's decisions are based on sound business judgment.

DIP is authorized to assume the Assumed Lease, as defined here, in conformance with DIP's motion. Doc. #214. DIP is authorized to enter into the New Lease as defined herein, in conformance with DIP's motion. Doc. #214.

12. 20-13293-A-11 **IN RE: PATRICK JAMES, INC.**
MB-18

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
1-29-2021 [221]

PATRICK JAMES, INC./MV
HAGOP BEDOYAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Patrick James, Inc. ("DIP"), the debtor and debtor in possession in this chapter 11 subchapter V case, through the First Omnibus Motion to assume unexpired leases, moves the court for authorization to assume eight nonresidential commercial leases. Doc. #221; Exs. A-H, Doc. ##225-228, 231. The leases to be assumed (hereafter, "Leases") are further identified as:

LESSOR	**LOCATION**	**TERM OF LEASE**
Hartz Avenue Holdings, LLC and DH Investors, LLC c/o Castle Management Company 12885 Alcosta Blvd., Ste A San Ramon, CA 94583	200 Railroad Ave., Ste E Danville, CA 94526	Original Term Expires 10/01/2021 Amended Term Expires 12/31/2021
G&I VII Reno Operating LLC c/o Bayer Properties, LLC 2222 Arlington Avenue Birmingham, AL 35205	13935 S. Virginia St. #300 Reno, NV 89511	Original Term Expires 01/31/2021 Amended Term Expires 01/31/2022
V&F Jones Partners, L.P. 5648 Carnegie Way Livermore, CA 94550	641 Higuera St. San Luis Obispo, CA 93401	Original Term Expires 01/31/2021 Amended Term Expires 01/31/2024
Aptos Center, LLC 820 Bay Avenue #220 Capitola, CA 95010	7538 Soquel Drive Aptos, CA 95003	Original Term Expires 01/31/2024 No Amended Term
Donahue Schriber Realty Group LP 980 Fulton Ave. Sacramento, CA 95825	536 Pavilions Lane Sacramento, CA 95825	Original Term Expires 01/31/2022 No Amended Term
Protea Flower Hill Mall, LLC 3262 Holiday Ct. Ste. 100 La Jolla, CA 92037	2650 Via De La Valle Suites #C-140 and C-240 Del Mar, CA 92014	Original Term Expires 01/31/2025 No Amended Term

LESSOR	LOCATION	TERM OF LEASE
Sima Barnyard, LLC c/o Sima Management Group 1231-B State Street Santa Barbara. CA 93101	3744 The Barnyard Carmel, CA 93923	Original Term Ended 08/31/2020 Lease is currently month to month. Amended term retroactively extends to 08/31/2021
Montgomery Village Limited Partnership PO Box 9128 Santa Rosa, CA 95405	2340 Sonoma Ave. Santa Rosa, CA	Original Term Ended 07/31/2020 Lease is currently month to month. Amended Term expires 01/31/2026

11 U.S.C. § 365(a) states that "subject to the court's approval, [the debtor in possession] may assume . . . any executory contract or unexpired lease of the debtor."

Federal Rule of Bankruptcy Procedure ("Rule") 6006(f) permits a single omnibus motion to assume multiple unexpired leases of real property. However, the Rule requires an omnibus motion, *inter alia*, to: (1) conspicuously direct parties receiving the motion to locate their leases; (2) list parties alphabetically and identify the corresponding lease; and (3) specify the terms, including the curing of defaults, for each requested assumption. Rule 6006(f)(1)-(3). The instant omnibus motion filed by DIP does not satisfy the Rule's requirements. However, because no party has filed written opposition and DIP declares that all landlords have consented to DIP's assumption of the Leases to which they are party, the defects do not prevent the court from ruling on this motion. The court urges counsel to ensure future omnibus motions comply with the Rules.

In evaluating a decision to assume an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." Agarwal v. Pomona Valley Med. Grp., Inc. (In re Pomona Valley Med. Grp., Inc.), 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted); In re Hertz, 536 B.R. 434, 442 (Bankr. C.D. Cal. 2015). The bankruptcy court should approve the assumption under § 365(a) unless the debtor in possession's conclusion is based on bad faith, whim, or caprice. Pomona Valley, 476 F.3d at 670. If there has been a default in the executory contract or unexpired lease, the default must be cured and future performance assured. 11 U.S.C. § 365(b).

Here, DIP states that assumption of the Leases is in the best interest of the bankruptcy estate and will enable DIP to propose a feasible plan of reorganization in the near future. Decl. of Patrick M. Mon Pere, Doc. #223. All landlords have consented to the assumption of their respective leases. Decl., Doc. #223. DIP has received rent concessions from all of the named landlords that will improve the profitability of these Leases. Decl., Doc. #223. All of the locations represented by the Leases are profitable. Decl., Doc. #223. DIP was further able to obtain lease extensions of the Danville, Reno, San Luis Obispo, Carmel, and Santa Rosa leases on favorable terms. Decl., Doc. #223. The court finds that DIP's decisions are based on sound business judgment.

Accordingly, this motion is GRANTED. DIP is authorized to assume the Leases, as defined here, in conformance with DIP's motion. Doc. #221.

13. 20-10010-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
LKW-17

CONTINUED AMENDED CHAPTER 11 DISCLOSURE STATEMENT
12-4-2020 [382]

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Dropped as moot.

ORDER: The court will issue an order.

The debtors have filed and set for hearing a second amended plan (LKW-21), which is item number 3 on this calendar. Doc. #520. Therefore, this motion will be DROPPED AS MOOT.

11:00 AM

1. 20-13818-A-7 **IN RE: PEDRO/OLGA JIMENEZ**

PRO SE REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
2-10-2021 [17]

NO RULING.

2. 20-12953-A-7 **IN RE: JOSHUA SMITH**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION
2-9-2021 [30]

NO RULING.

1. 20-12519-A-7 **IN RE: ISIDRO RAMOS**
JES-4

MOTION FOR TURNOVER OF PROPERTY
2-5-2021 [40]

JAMES SALVEN/MV
JERRY LOWE/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on February 22, 2021. Doc. #47. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Isidro Ramos ("Debtor"), moves the court to compel Debtor to turn over the following assets of the estate: (1) a Remington Express 20 gauge pump action shotgun, serial no. ending 341C; (2) a .45 handgun, serial no. ending 5628; (3) a Remington .308 hunting rifle with scope, serial no. ending 0418; (4) a Ruger .308 hunting rifle with scope, serial no. ending 2969; and (5) a .22 Ruger rifle, serial no. ending 0545 (collectively, the "Property"). Doc. #40.

Debtor timely filed written opposition to Trustee's motion to compel turnover. Doc. #47. On January 25, 2021, Debtor amended his Schedules A/B and C, and Debtor argues that Debtor's amended schedules entitle Debtor to claim an exemption in the Property. Doc. #47.

On March 3, 2021, Trustee filed a declaration in reply to Debtor's opposition stating that Debtor's opposition is improper because this court has already sustained an objection to the same exemption in the Property. Doc. #51. Trustee asserts that Debtor's amended schedules reflect nothing more than a change in the description of the Property and an alleged increase in value, which does not renew the claim of exemption. Doc. #51; see Am. Schedules A/B and C, Doc. #38. The court agrees with Trustee.

Federal Rule of Bankruptcy Procedure ("Rule") 1009(a) allows a debtor to amend a schedule "at any time before the case is closed." Fed. R. Bankr. P. 1009(a). Debtor correctly states that this Rule permits Debtor to amend his Schedules A/B and C, but this Rule does not allow Debtor to renew exemptions that already have been disallowed by the court. Whether a debtor may amend his schedules post-petition is separate from the question whether the exemption

itself is allowable. Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 630 (B.A.P. 9th Cir. 2010), partially abrogated on other grounds by, Law v. Siegel, 571 U.S. 415 (2014).

Rule 4003, in conjunction with 11 U.S.C. § 522(l), requires the debtor to list property claimed as exempt. Rule 4003(b)(1) allows a party in interest to object to a claimed exemption "within 30 days after the meeting of creditors is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later." Fed. R. Bankr. P. 4003(b)(1). A new 30-day objection period, therefore, does begin to run when the debtor amends his list of exempt property, "but only with respect to the exemptions added via the amendment." Bernard v. Coyne (In re Bernard), 40 F.3d 1028, 1032 (9th Cir. 1994).

Here, Debtor's amended Schedule C filed on January 25, 2021 does not add an exemption or alter the exemption claimed in the Property, and therefore does not renew the 30-day period to object to a claim of exemption in the Property. Doc. #38. In Debtor's prior schedules filed on September 21, 2020, Debtor claimed an exemption in the Property under California Code of Civil Procedure ("C.C.P.") § 704.020. See Schedules A/B and C, Doc. #14. Trustee objected to Debtor's claim of exemption in the Property, and Debtor did not respond to Trustee's objection. Doc. #20. This court sustained Trustee's objection on the ground that Debtor did not show that the Property is "ordinarily and reasonably necessary" as required by C.C.P. § 704.020(b). Order Sustaining Trustee's Objection to Exemptions ("Order"), Doc. #29.

In the Ninth Circuit, "a bankruptcy court's order denying a claim of exemption is a final, appealable order under 28 U.S.C. § 158(a)(1) and any appeal from such an order must be taken within the time allowed under the bankruptcy rules, or the right to appeal will be waived." Preblich v. Battley, 181 F.3d 1048, 1056 (9th Cir. 1999); see Phillips v. Gilman (In re Gilman), 887 F.3d 956, 963 (9th Cir. 2018) (continuing to apply Preblich). In this case, Debtor's claim of exemption in the Property under C.C.P. § 704.020 was timely objected to by Trustee and disallowed by the court on December 21, 2020. See Order, Doc. #29. Therefore, Debtor has no claim of exemption in the Property under C.C.P. § 704.020. While Debtor may freely amend his schedules, such amendment does not renew exemptions previously claimed but disallowed.

Turning to the merits of Trustee's motion, 11 U.S.C. § 542(a) requires Debtor to turn over property of the estate, or its value, then in Debtor's possession, custody or control during the case. "If a debtor has an interest in property, the trustee can order the turnover of the property to the estate." In re Contractors Equip. Supply Co., 861 F.2d 241, 244 (9th Cir. 1988). "[Section] 542(a) does not require the debtor to have current possession of the property which is subject to turnover. If a debtor demonstrates that he is not in possession of the property of the estate or its value at the time of the turnover action, the trustee is entitled to recovery of a money judgment for the value of the property of the estate." Newman v. Schwartzer (In re Newman), 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013) (citations and punctuation omitted).

Trustee is of the opinion that the liquidation of the Property will net the estate approximately $1,025.00. Tr.'s Decl., Doc. #42. Debtor does not have an exemption in the Property, and the Property is not encumbered. See Schedule D, Doc. #1; Order, Doc. #29.

Accordingly, this motion is GRANTED. Debtor is ordered to turn over the Property to the Trustee within 10 days of the court order. Failure to do so may result in sanctions pursuant to 11 U.S.C. § 105(a).

2. 21-10021-A-7 **IN RE: CARYN JENSEN**
JHW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-9-2021 [9]

SANTANDER CONSUMER USA INC./MV
DUSHAWN JOHNSON/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Santander Consumer USA Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2011 Ford Edge ("Vehicle"). Doc. #9.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least five complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least $2,282.75, which includes late fees of $240.66 and insufficient funds fees of $15.00. Doc. #12.

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 the debtor is in chapter 7. The Vehicle is valued at $8,500.00 and the debtor owes $14,454.77. Doc. #9.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1. The Vehicle was voluntarily surrendered to Movant on January 14, 2021. Doc. #9.

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

3. 21-10130-A-7 **IN RE: ROBERTO RAMIREZ**
JHW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-29-2021 [14]

AMERICREDIT FINANCIAL SERVICES, INC./MV
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Americredit Financial Services, Inc. dba GM Financial ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2018 Chevrolet Silverado 1500 ("Vehicle"). Doc. #14.

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

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 five complete pre- and post-petition payments. Movant has produced evidence that the debtor is

delinquent by at least $2,609.91, which includes late fees of $123.56 and recovery fees of $375.00. Doc. #17.

The court also finds that the Movant does not have a sufficient equity cushion. The Vehicle is valued at $33,788.00 and the debtor owes $31,920.25, leaving equity of $1,867.75. Doc. #14, Doc. #17.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1. Movant recovered the Vehicle on January 19, 2021. Doc. #14.

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

4. 19-14136-A-7 **IN RE: F & K ROCK & SAND, INC.**
FW-3

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR PETER L. FEAR, TRUSTEES ATTORNEY(S)
2-10-2021 [43]

SUSAN HEMB/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Fear Waddell, P.C. ("Movant"), counsel for Chapter 7 trustee Peter L. Fear ("Trustee"), requests an allowance of final compensation and reimbursement for expenses for services rendered December 14, 2020 through February 9, 2021. Doc. #43. Movant provided legal services valued at $1,102.00, and requests compensation for that amount. Doc. #43. Movant requests reimbursement for expenses in the amount of $51.54. Doc. #43.

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

Movant's services included, without limitation: (1) case administration; (2) resolution of the debtor's outstanding tax liability; and (3) preparing fee and employment applications. Exs. A, B, and C, Doc. #47. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of $1,102.00 and reimbursement for expenses in the amount of $51.54. Trustee is authorized to make a combined payment of $1,153.54, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

5. 21-10146-A-7 **IN RE: GILBERT/DEYSY MARTINEZ**
JHW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-5-2021 [12]

TD AUTO FINANCE LLC/MV
SCOTT LYONS/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, TD Auto Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2013 RAM 1500 ("Vehicle"). Doc. #12.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear

definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least two complete pre-petition payments. Movant has produced evidence that the debtors are delinquent by at least $1,182.36. Doc. #14.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. The Vehicle is valued at $17,800.00 and the debtors owe $26,695.47. Doc. #12.

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

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

6. 21-10448-A-7 **IN RE: MARINA SALAZAR**
LKW-1

MOTION TO COMPEL ABANDONMENT
2-23-2021 [5]

MARINA SALAZAR/MV
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. While not required, on March 4, 2021, the chapter 7 trustee filed a written statement that he has no opposition to the motion. Doc. #23. 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.

Marina Salazar ("Debtor"), the chapter 7 debtor in this case, moves the court to compel the chapter 7 trustee to abandon the estate's interest in Debtor's

real property consisting of a restaurant and the fixtures therein located at 210 Oak Street, Bakersfield, CA 93304 (the "Property"). Doc. #5. Debtor asserts that the Property is encumbered by a Deed of Trust, a tax lien, and a perfected security interest in the fixtures which render the Property burdensome and of inconsequential value to the chapter 7 estate. Doc #5.

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

Debtor must establish that the Property is burdensome or of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Here, Debtor alleges that the Property is both burdensome to the estate and of inconsequential value. Mot., Doc. #5. Debtor believes the Property is worth $250,000.00 and the secured claims encumbering the Property total $226,381.66, which, in consideration of the costs of sale and chapter 7 trustee's fees, would not return any value to the estate. Decl. of Marina Salazar, Doc. #7. Further, Debtor does not believe the Property could easily be sold due to impacts of the Covid-19 pandemic on restaurant businesses. Decl., Doc. #7. The court finds that Debtor has met her burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate. Moreover, the chapter 7 trustee has no opposition to the motion. Doc. #23.

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

7. 21-10448-A-7 **IN RE: MARINA SALAZAR**
LKW-2

MOTION TO COMPEL ABANDONMENT
2-23-2021 [11]

MARINA SALAZAR/MV
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. While not required, on March 4, 2021, the chapter 7 trustee filed a written statement that he has no opposition to the motion. Doc. #24. 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.

Marina Salazar ("Debtor"), the chapter 7 debtor in this case, moves the court to compel the chapter 7 trustee to abandon the estate's interest in Debtor's personal property consisting restaurant equipment, fixtures, and stock in trade (the "Property"). Doc. #11. Debtor asserts that the Property is encumbered by a perfected security interest which renders the Property burdensome and of inconsequential value to the chapter 7 estate. Doc #11.

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

Debtor must establish that the Property is burdensome or of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Here, Debtor alleges that the Property is both burdensome to the estate and of inconsequential value. Mot., Doc. #11. Debtor believes the Property is worth $8,300.00 and the secured claim encumbering the Property totals $197,054.62, the sale of which, in consideration of the costs of sale and chapter 7 trustee's fees, would not return any value to the estate. Decl. of Marina Salazar, Doc. #13. The court finds that Debtor has met her burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate. Moreover, the chapter 7 trustee has no opposition to the motion. Doc. #24.

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

8. 21-10152-A-7 **IN RE: PAUL/ROSINDA JONES**
JHW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-2-2021 [11]

AMERICREDIT FINANCIAL SERVICES, INC./MV
STEPHEN LABIAK/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Americredit Financial Services, Inc. dba GM Financial ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2017 Chevrolet Impala ("Vehicle"). Doc. #11.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least three complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least $2,316.77, including late fees of $299.53. Doc. #14.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. The Vehicle is valued at $18,625.00 and the debtors owe $26,828.02. Doc. #11.

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

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

9. 20-12554-A-7 **IN RE: ARAXY MARKARIAN**
DMS-1

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
2-2-2021 [36]

BARRY WEBER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Trustee's Motion to Dismiss will be granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). A creditor of the debtor, Pacific Western Bank ("Bank"), timely filed written opposition on February 10, 2021. Doc. #43. The failure of other 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 non-responding parties in interest are entered.

David M. Sousa ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Araxy Markarian ("Debtor"), moved to dismiss this case after Debtor failed to appear at the continued § 341 meeting of creditors held on February 2, 2021. Doc. #37. In addition to the § 341 held February 2, 2021, a review of the docket in this case shows that Debtor failed to attend prior continued §341 meetings on November 5, 2020, and December 28, 2020. Debtor has not responded to Trustee's motion to dismiss.

11 U.S.C § 707(a) permits the court to dismiss a chapter 7 case "only after notice and a hearing and only for cause, including [] unreasonable delay by the debtor that is prejudicial to creditors." 11 U.S.C. § 707(a)(1). The causes listed in § 707(a) "are merely illustrative and not exhaustive." In re Sacramento Metro. Real Estate Invs., 28 B.R. 228, 229 (Bankr. E.D. Cal. 1983). However, if the "cause" justifying dismissal is contemplated by a specific provision of the Bankruptcy Code, there is no "cause" for dismissal under § 707(a). All. United Ins. Co. v. Krasnoff (In re Venegas), 623 B.R. 555, 563 (B.A.P. 9th Cir. 2020). "If there is no specific Bankruptcy Code provision that addresses the asserted 'cause,' the question becomes whether the totality of circumstances amount to § 707(a) 'cause.'" Hickman v. Hana (In re Hickman), 384 B.R. 832, 840 (B.A.P. 9th Cir. 2008).

Dismissing a chapter 7 case due to a debtor's failure to attend § 341 meetings and participate in the bankruptcy case is not specifically addressed by any provision of the Bankruptcy Code. Considering, then, the totality of circumstances, there is "cause" to dismiss Debtor's chapter 7 case because Debtor has not attended a § 341 meeting since October 2020 and has not responded to the United States Trustee's ("UST") request for additional information. See Doc. ##39-44. Debtor has not responded to this motion to

dismiss. Additionally, a declaration filed by the UST in support of UST's motion to extend deadlines states that Debtor's counsel has not responded to any UST communications since October 29, 2020. Decl. of Carla K. Cardero, Doc. #41.

On February 10, 2021, Bank filed a limited opposition to Trustee's motion to dismiss. Doc. #44. By the opposition, Bank requests the court delay dismissal of Debtor's chapter 7 case until after Bank succeeds on its motion for entry of default judgment against Debtor in Adversary Proceeding No. 20-01063 filed by Bank against Debtor. Doc. #44. Entry of default judgment would render claims held by Bank non-dischargeable under § 523(a)(2)(A), (B), and/or (a)(6). Doc. #44.

The court will deny Bank's request to delay dismissal of Debtor's case. The determination, by default judgment, that a debt is non-dischargeable may be binding against the Debtor in subsequent bankruptcy proceedings. See Gayden v. Nourbakhsh (In re Nourbakhsh), 67 F.3d 798, 801 (9th Cir. 1995). Bankruptcy courts are hesitant to enter default judgment against a defendant debtor who has failed to answer a § 523 non-dischargeability claim. See Lu v. Liu (In Re Liu), 282 B.R. 904, 907-08 (Bankr. C.D. Cal. 2002). This concern stems from "the risk that a creditor may obtain a default judgment, regardless of the merits of the complaint, against an honest debtor who is in such a precarious financial condition that the debtor cannot afford to defend a non-dischargeability claim." Liu, 282 B.R. at 908. Here, the court is motivated by similar concerns. Dismissing Debtor's chapter 7 case, rather than entering a default judgment, would reduce any potential risk of prejudice that would stem from a determination, in Debtor's absence, that Bank's claims are non-dischargeable. To this point, the court notes that the strong policy of favoring decisions on the merits is one of the factors that a court considers in determining whether to award a default judgment. Liu, 282 B.R. at 908.

Accordingly, Bank's opposition is overruled and Trustee's motion to dismiss for "cause" is GRANTED.

10. 20-12554-A-7 **IN RE: ARAXY MARKARIAN**
UST-2

MOTION TO EXTEND TIME TO FILE A MOTION TO DISMISS CASE UNDER SEC. 707(B) AND/OR MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR
2-5-2021 [39]

TRACY DAVIS/MV
BARRY WEBER/ATTY. FOR DBT.
JUSTIN VALENCIA/ATTY. FOR MV.

NO RULING.

11. 21-10284-A-7 **IN RE: GREGORY MONDS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-18-2021 [11]

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 full filing fee was paid on March 1, 2021.

12. 20-12488-A-7 **IN RE: MICHAEL/MEREDITH SICARD**
JES-1

MOTION TO SELL
1-29-2021 [23]

JAMES SALVEN/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

James Salven ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Michael Andre Sicard and Meredith Margaret Sicard (together, the "Debtors"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the bankruptcy estate's interest in a 2013 Toyota Camry (the "Vehicle") to Debtors for the purchase price of $6,000.00, less a lien in favor of Educational Employees Credit Union in the approximate amount of $400 and less $3,250.00 exemption credit, for a net total to the estate of $2,275.00, and subject to higher and better bids at the hearing. Doc. #23

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether

they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Doc. #25. Trustee's proposed sale to Debtors is made in consideration of the full and fair market value of the Vehicle. Doc. #25. Debtors offered to buy the Vehicle for the net purchase price of $6,000, subject to liens of record and less exemption amounts, and subject to overbid at the hearing. Doc. #25. The court recognizes that no commission will need to be paid because the sale is to Debtors.

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

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

13. 17-12389-A-7 **IN RE: DON ROSE OIL CO., INC.**

TRUSTEE'S FINAL REPORT
1-12-2021 [1192]

RILEY WALTER/ATTY. FOR DBT.
DANIEL EGAN/ATTY. FOR MV.
OBJECTION WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Pursuant to the stipulation, Doc. #1202, and the withdrawal of the opposition to the trustee's final report, Doc. # 1203, the hearing will be dropped from calendar.

14. 14-10490-A-7 **IN RE: VIOLETA ALVAREZ**
FW-3

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT AND/OR MOTION TO PAY
2-4-2021 [41]

PETER FEAR/MV
PHILLIP GILLET/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.

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

Peter L. Fear ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Violeta Maldonado Alvarez ("Debtor"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019 approving the compromise of all claims and disputes arising out of Debtor's participation in a multi-district litigation against the manufacturer of a prescription drug which Debtor had been prescribed (the "MDL"). Doc. #41. Debtor retained Robins Kaplan, LLP and Sokolove Law, LLC (together, "Special Counsel") to represent Debtor in the MDL. Doc. #41. The court authorized the retroactive employment of Special Counsel on September 17, 2020. Order, Doc. #40. Trustee also requests authorization of final compensation for Special Counsel pursuant to 11 U.S.C. § 328 as required by the Order. Doc. #41; Order, Doc. #40.

Settlement Agreement

Among the assets of the estate is a claim against a drug manufacturer for injuries to Debtor, which is now settled in the MDL against the manufacturer. Decl. of Gary Wilson, Doc. #44. As part of the MDL settlement agreement, a fund was created by the court overseeing the MDL. Decl., Doc. #44. Special Counsel submitted Debtor's claim to the claim administrator who determined that Debtor was entitled to a gross award of $105,294.04. Decl., Doc. #44. Deducted from the gross award are MDL fees and costs, which are taxed against the gross proceed. Decl., Doc. #44. The court has previously authorized the employment of

Special Counsel pursuant to a contingency fee agreement. See Order, Doc. #40. The projected amount to the bankruptcy estate is $45,024.98. Doc. #41.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Properties), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #41. Special Counsel represents that the resolution of claims in the MDL is complicated, time consuming, and may be prohibitively expensive if pursued individually. Wilson Decl., Doc. #44. Special Counsel estimates that trying Debtor's case individually would cost at least $500,000 to $1,000,000. Decl., Doc. #44. The Trustee states the settlement will result in a cash payment to the estate that should be sufficient to pay all claims in full, including administrative claims, and will provide for an excess to Debtor. Decl. of Peter L. Fear, Doc. #43. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, Trustee's request to authorize the compromise is GRANTED, and the settlement is approved.

Final Compensation

Trustee requests an allowance of final compensation and reimbursement for expenses payable to Special Counsel for services rendered in connection with the MDL. Doc. #41. Trustee was authorized to employ Special Counsel on a contingency basis whereby Special Counsel would receive 40% of settlement, split 80/20 to Robins Kaplan, LLP, and Sokolove Law, LLC, respectively, and Robins Kaplan, LLP would be entitled to reimbursement for costs. Order, Doc. #40. The total fees to be awarded Special Counsel is $35,378.81. Doc. #41. Robins Kaplan, LLP separately incurred costs totaling $15,413.80. Wilson Decl., Doc. #44.

The trustee may, with the court's approval, employ a professional person 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. 11 U.S.C. § 328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

Here, the court previously authorized the employment of Special Counsel expressly under 11 U.S.C. §§ 327(e) and 328. Order, Doc. #40. The Order authorized Trustee to pay Special Counsel pursuant to the contingency fee agreement only after the settlement agreement was approved by this court pursuant to Federal Rule of Bankruptcy Procedure 9019. Order, Doc. #40. Upon the granting of this motion, the settlement agreement is approved.

Trustee is authorized to pay Special Counsel in a manner consisted with Trustee's motion and the court's Order Granting Trustee's Motion for Order Authorizing Retroactive Employment of Special Counsel to the Estate Pursuant to 11 U.S.C. § 328(a), Doc. #40.

Accordingly, Trustee's motion is GRANTED. The settlement is approved, Trustee is authorized to enter into, execute, and deliver any releases and other documents as may be required to effectuate the settlement, payment to Special Counsel is authorized, and Trustee is authorized to pay the MDL deductions as required by the settlement.

15. 20-13397-A-7 **IN RE: LOURDES MOSQUEDA BRISENO**
EAT-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-8-2021 [20]

KINECTA FEDERAL CREDIT UNION/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
MARK BLACKMAN/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Kinecta Federal Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2016 Honda Pilot ("Vehicle"). Doc. #20.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must

be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least four complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least $2,494.00 plus late fees of $93.54. Doc. #12.

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 the debtor is in chapter 7. The Vehicle is valued at $23,000.00 and the debtor owes $27,060.65. Doc. #9.

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

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