

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, March 10, 2020
Place: Department B – Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. 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. [19-15277](#)-B-11 **IN RE: SVENHARD'S SWEDISH BAKERY**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-30-2020 [\[48\]](#)

FORD MOTOR CREDIT COMPANY/MV
DERRICK TALERICO/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE.

Local Rule of Practice 4001-1(a)(3) requires the movant to "file and serve as a separate document completed Form EDC 3-468, *Relief from Stay Summary Sheet*" (emphasis added).

The court notes that the certificate of service shows that the Relief from Stay Summary Sheet was served (doc. #52), but the sheet was not filed with the court. Therefore the motion is denied without prejudice.

2. [19-15277](#)-B-11 **IN RE: SVENHARD'S SWEDISH BAKERY**
[APN-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-30-2020 [\[53\]](#)

FORD MOTOR CREDIT COMPANY/MV
DERRICK TALERICO/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE.

Local Rule of Practice 4001-1(a)(3) requires the movant to "file and
serve as a separate document completed Form EDC 3-468, *Relief from
Stay Summary Sheet*" (emphasis added).

The court notes that the certificate of service shows that the
Relief from Stay Summary Sheet was served (doc. #57), but the sheet
was not filed with the court. Additionally, there is no date on the
certificate, nor was the certificate signed.

3. [19-15277](#)-B-11 **IN RE: SVENHARD'S SWEDISH BAKERY**
[APN-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-30-2020 [\[58\]](#)

FORD MOTOR CREDIT COMPANY/MV
DERRICK TALERICO/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE.

Local Rule of Practice 4001-1(a)(3) requires the movant to "file and
serve as a separate document completed Form EDC 3-468, *Relief from
Stay Summary Sheet*" (emphasis added).

The court notes that the certificate of service shows that the
Relief from Stay Summary Sheet was served (doc. #62), but the sheet

was not filed with the court. Additionally, there is no date on the certificate, nor was the certificate signed.

11:00 AM

1. [19-15218](#)-B-7 **IN RE: ALYSSA MATA**

PRO SE REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
2-14-2020 [[14](#)]

NO RULING.

2. [20-10229](#)-B-7 **IN RE: KATHY GARCIA**

PRO SE REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT
CORPORATION
2-13-2020 [[13](#)]

NO RULING.

3. [20-10158](#)-B-7 **IN RE: RINALDO/ANGELINA ORTEZ**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION
2-20-2020 [[15](#)]

NO RULING.

4. [19-15068](#)-B-7 **IN RE: MARLYN ALCANTARA**

PRO SE REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT
CORPORATION
2-13-2020 [[19](#)]

NO RULING.

5. [19-15074](#)-B-7 **IN RE: MARIA GONZALEZ**

REAFFIRMATION AGREEMENT WITH WELLS FARGO BANK N.A.
1-28-2020 [\[13\]](#)

JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Although the debtor's attorney executed the agreement, the attorney could not affirm that, (a) the agreement was not a hardship and, (b) the debtor would be able to make the payments.

1:30 PM

1. [20-10303](#)-B-7 **IN RE: ANGEL/MARGARET NANEZ**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
1-30-2020 [\[5\]](#)

ANGEL NANEZ/MV

NO RULING.

2. [20-10209](#)-B-7 **IN RE: BOSOTHY BIN
[CAS-1](#)**

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-11-2020 [\[14\]](#)

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

The movant, BMW Bank of North America ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) & (2). 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).

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

The collateral is a 2016 BMW S1000RR, which has a total amount owed of \$16,498.98. Doc. #17. Movant estimates the value of the collateral to be \$12,940.00. Doc. #16, 18. The debtor's schedules A/B and E/F indicate that the debtor is no longer in possession of the collateral and Movant is listed as an unsecured creditor. Doc. #1. It is unclear whether Movant has possession of the collateral.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least fifteen payments. Doc. #17. Additionally, the court finds that the debtor does not have an equity in the property and the property is not necessary to an effective reorganization. Id. Movant has produced evidence that the debtor is delinquent at least \$4,664.25 and an additional payment of \$310.95 will become due before this hearing. Doc. #16.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least fifteen payments to movant and the collateral is a depreciating asset. No other relief is granted.

3. [19-15212](#)-B-7 **IN RE: BRANDON/KACEY MORROW**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-28-2020 [\[13\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

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

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

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of

any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The movant, Toyota Motor Credit Corporation, seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) & (2). Doc. #13. This motion relates to unexpired lease of personal property.

The property is a 2016 Toyota Camry and the lease has a remaining balance of \$16,884.30. Doc. #17. The movant estimates the value of the property to be \$14,225.00. Id.

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

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

Accordingly, the motion will be GRANTED IN PART as to the debtor pursuant to 11 U.S.C. § 362(d)(1) & (2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is granted.

Under 11 U.S.C. § 365(p)(1), if a lease of personal property is rejected or not timely assumed by the trustee, the leased property is no longer property of the estate and the stay under § 362 is automatically terminated. The trustee may assume the lease within 60 days from the commencement of the case or the lease will be deemed rejected under § 365(d)(1).

This case was filed on December 16, 2019, so the chapter 7 trustee had until February 14, 2020 to assume the lease. The chapter 7 trustee did not file a motion to assume the lease, so the lease is rejected pursuant to § 365(d)(1). Therefore, the motion is DENIED AS MOOT as to the chapter 7 trustee because the leased property is no longer property of the estate and the automatic stay under § 362(a) has already terminated by operation of law.

4. [18-14315](#)-B-7 **IN RE: BRANDON/SANDRA CAUDEL**
[AP-2](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY AND/OR MOTION
FOR RELIEF FROM AUTOMATIC STAY
2-7-2020 [\[37\]](#)

JPMORGAN CHASE BANK, N.A./MV
D. GARDNER/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

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

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

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

This motion relates to a lease of personal property. This case was filed on October 23, 2018 and is still pending. The property is a 2017 Subaru Forester Prem. Doc. #40. The lease matured on January 2, 2020 with all payments made and the property was surrendered by the debtors to the movant on or about January 5, 2020. Doc. #39.

The motion is DENIED AS MOOT as to the chapter 7 trustee because the leased property is not property of the estate and the automatic stay under section 362(a) has already terminated by operation of law. Under 11 U.S.C. § 365(p)(1), if a lease of personal property is rejected or not timely assumed by the trustee, the leased property is no longer property of the estate and the stay under section 362 is automatically terminated. The trustee may assume the lease within 60 days from the commencement of the case or the lease will be deemed rejected under section 365(d)(1).

This case was filed on October 23, 2018, so the chapter 7 trustee had until December 22, 2018 to assume the lease. The chapter 7 trustee did not file a motion to assume the lease, so the lease is rejected pursuant to 11 U.S.C. § 365(d)(1).

Movant's request for an order confirming the absence of the automatic stay is DENIED. Movant cites no authority for such an order in this circumstance. This is not a motion under 11 U.S.C. § 362(c) or (j).

The motion for stay relief is GRANTED as to the debtors for cause under § 362(d)(1). The lease has matured. The debtor has surrendered the vehicle. Thus, no interest of the debtor (possessory or otherwise) has the protection of the automatic stay.

5. [14-12616](#)-B-7 **IN RE: SAMUEL/CORAZON REIGHARD**
[PK-2](#)

MOTION TO AVOID LIEN OF GENE WEBBER
2-25-2020 [\[40\]](#)

SAMUEL REIGHARD/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

This motion was filed and served on February 25, 2020 and set for hearing on March 10, 2020. Doc. #41, 45. March 10, 2020 is 13 days after February 25, 2020. An amended notice of hearing was filed and served on February 26, 2020. Doc. #46.

First, the original notice was entirely deficient of much of the information required under LBR 9014-1(d) and (f). Doc. #41. The amended notice (doc. #46) cured those problems but was one day late under the minimum 14 day deadline pursuant to LBR 9014-1(f)(2). The court has not entered an order shortening time, either.

Second, the certificate of service only shows that the declaration of Corazon C. Reighard was served. There is no certificate of service which shows that the motion, notice, memorandum of points and authorities, and exhibits were served.

Because this motion was not properly noticed or served, the motion is DENIED WITHOUT PREJUDICE.

6. [19-12217](#)-B-7 **IN RE: JASON BLANKENSHIP**
[TCS-2](#)

MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS FOR VIOLATION OF
THE DISCHARGE INJUNCTION
2-11-2020 [\[42\]](#)

JASON BLANKENSHIP/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE. Constitutional due process requires that the movant make a *prima facie* showing that they are entitled to the relief sought. Here, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" In re Tracht Gut, LLC, 503 B.R. 804, 811 (9th Cir. BAP, 2014), citing Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007).

First, the motion is asking for relief which is beyond contempt. Federal Rule of Bankruptcy Procedure 9020 permits contempt to be tried as a "contested matter" but this asks for not only that finding, but declarations about whether the debt is discharged, contract damages, breach of contract, among other relief.

Second, Sunset Credit Services, Citi Assist Student Loans, and Arrowood Indemnity Co. were not served. No relief can be awarded without due process and service on the respondents.

Third, the motion is contradictory and needs to be amended. For instance, paragraph 3 states that Sunset Credit Services was the original lender, but paragraph 19 states that the debtor never received money from Sunset Credit Services.

This action must be filed as an adversary proceeding. See Fed. R. Bankr. P. 7001. Services must be done in accordance with relevant rules and law. See Fed. R. Bankr. P. 7004.

7. [19-14521](#)-B-7 **IN RE: ARTHUR GUTIERREZ**
[EPE-1](#)

MOTION TO EXTEND TIME TO FILE REAFFIRMATION AGREEMENT AND/OR
MOTION TO DELAY DISCHARGE
1-31-2020 [\[19\]](#)

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

This motion is GRANTED. Federal Rule of Bankruptcy Procedure 4008 requires reaffirmation agreements to be filed not later than 60 days after the first § 341 meeting of creditors. The rule also "at any time and in [the court's discretion]" allows the court to enlarge the time to file a reaffirmation agreement. Fed. R. Bankr. P. 4004(c)(2) authorizes the court to defer the entry of discharge for 30 days.

The § 341 meeting was held on December 5, 2019, and no reaffirmation agreement was filed with the court within the 60 day deadline. Debtors have not yet received their discharge. Debtor asks to extend the deadline to file a reaffirmation agreement to and including April 3, 2020, and that his discharge be deferred until after April 3, 2020. Doc. #19.

Debtor is in the process of negotiating a reaffirmation agreement with U.S. Bank regarding his mortgage debt but "additional time is needed to finalize the agreement." Doc. #21.

The motion is GRANTED. The court finds that no prejudice shall occur to any party in the granting in this motion. The order does not approve the reaffirmation agreement. That must be the subject of a separate hearing.

8. [19-10526](#)-B-7 **IN RE: GORDON/LESLIE SMITH**
[GSS-6](#)

MOTION TO AVOID LIEN OF TCM FUNDING CORP.
2-5-2020 [[102](#)]

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

This motion is GRANTED. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of TCM Funding Corp. in the sum of \$2,253.57 on August 31, 2005. Doc. #104. The abstract of judgment was recorded with Tulare County on October 11, 2005 and was renewed on August 24, 2015. Id. That lien attached to the debtor's interest in a residential real property in Tulare, CA.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$180,000.00 as of the petition date. Doc. #16. The unavoidable liens total \$20,293.10, consisting of a first deed of trust in favor of Ocwen Loan Service. Doc. #34. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of \$175,000.00. Doc. #16.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

9. [19-15344](#)-B-7 **IN RE: RYAN WEGMAN AND TERILYNN WEGMAN-CONNOLLY**
[RLM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-10-2020 [\[15\]](#)

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

The movant, State Farm Mutual Automobile Insurance Company, seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) for the limited purpose of proceeding against the debtors' auto insurance policy in the amount of \$5,000 in relation to a state civil matter and thereafter seek compensation from the debtors' insurer. Doc. #15.

When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court must consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). The relevant factors in this case 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 foreign proceeding involves the debtor as a fiduciary;
- (4) whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- (5) whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- (6) whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- (7) whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
- (8) whether the judgment claim arising from the foreign action is subject to equitable subordination under section 510(c);
- (9) whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under section 522(f);
- (10) the interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- (11) whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
- (12) the impact of the stay on the parties and the "balance of hurt"

Relief from the stay will not result in complete resolution of the issues because the action against the debtors exceeds the value of the automobile insurance policy. Doc. #17. The matter in the state courts is not connected to nor will interfere with this bankruptcy because the state court action is a personal injury tort action, and not a matter the bankruptcy court can hear. Additionally, movant has stated that they will only be looking to insurance proceeds and NOT property of the debtors, so the interests of other creditors will not be prejudiced. The debtors and trustee did not oppose.

This motion will be granted only for the limited purpose of continuing with the state court action to liquidate the claim and to seek relief only against the insurance policy. Movant is not permitted to pursue collection from the bankruptcy estate and its assets.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived. No other relief is granted.

10. [19-13048](#)-B-7 **IN RE: CRAIG BREWER**
[RWR-2](#)

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION FOR
COMPENSATION FOR CMT PROPERTIES, BROKER(S)
2-3-2020 [\[47\]](#)

JAMES SALVEN/MV
PETER BUNTING/ATTY. FOR DBT.
RUSSELL REYNOLDS/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed for higher and better
bids only.

DISPOSITION: Granted.

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

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

This motion is GRANTED. Under 11 U.S.C. § 363(f), the chapter 7 trustee ("Trustee") may sell estate property of the estate outside the ordinary course of business, after notice and a hearing, free and clear of "any interest in such property of an entity other than the estate, only if the price at which such property is to be sold is greater than the aggregate value of all liens on such property" or also if ". . . such entity consents"

Trustee wishes to sell real property located at 18405 Ridgedale Drive in Madera, CA ("Property") for \$225,000.00 to Ucdiel Jesus Vargas ("Buyer"). Doc. #47. Trustee's declaration states that there is one lien on the Property in favor of Bank of America in the "approximate amount of Twenty-five Thousand Dollars (\$25,000)." Doc. #50. Bank of America filed non-opposition (doc. #53) contingent upon Bank of America being paid off in full through escrow before satisfying any other liens on the Property, inter alia.

Buyer has paid a \$1,000.00 deposit. Trustee is authorized to pay CMT properties a 6% commission to be shared with any cooperating broker pursuant to custom and any cooperating broker's agreement.

Because Bank of America has conditionally consented and "the price at which such property is to be sold is greater than the aggregate value of all liens on such property," the trustee may sell the property located at 18405 Ridgedale Drive in Madera, CA to Buyer for \$225,000.00 and free and clear of liens. The liens are transferred to the proceeds. The 14 day stay under Federal Rule of Bankruptcy Procedure 6604(h) is waived.

11. [19-14053](#)-B-7 **IN RE: JAMES/SUSAN JEFF**
[PBB-2](#)

MOTION TO AVOID LIEN OF JANET WEISS MD
2-5-2020 [\[39\]](#)

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

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Janet Weiss MD in the sum of \$40,650.00 on June 24, 2008. Doc. #42. The judgment was renewed on May 24, 2018. Id. The abstract was recorded with Fresno County on June 4, 2018. Id. That lien attached to the debtor's interest in a residential real property in Fresno, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$100,000.00 as of the petition date. Doc. #25. The unavoidable liens totaled \$138,780.77 on that same date, consisting of a first deed of trust in favor of Ditech Financial LLC in the amount of \$95,478.00, a second deed of trust in favor of 21st Mortgage Corp in the amount of \$13,302.77, and a third deed of trust in favor of Ray Bergman in the amount of \$25,000.00. Doc. #41, 42. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(2) in the amount of \$100,000.00. Doc. #15.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

12. [20-10367](#)-B-7 **IN RE: FLOYD MARIN**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
2-14-2020 [\[10\]](#)

HONDA LEASE TRUST/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
VINCENT FROUNJIAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The movant, Honda Lease Trust, seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) & (2) for an unexpired lease of personal property. Doc. #10.

The property is a 2019 Honda Civic and the lease has a remaining balance of \$18,344.99. Doc. #12, 13. The movant estimates the value of the vehicle to be between \$15,725.00 and \$19,000.00. Doc. #12, 14.

The debtor lists the property, creditor, and lease on Schedule A/B, D, G, and Statement of Intention, but indicates that the lease has a remaining balance of \$7,410.00 and intent to retain the vehicle pursuant to the lease. Doc. #1.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least two payments. The movant has produced evidence that the debtor is delinquent at least \$752.49 plus late charges and fees of \$37.62. Doc. #12.

Accordingly, the motion will be GRANTED IN PART as to the debtor pursuant to 11 U.S.C. § 362(d)(1) & (2).

Under 11 U.S.C. § 365(a), the trustee may assume or reject any executory contract or unexpired lease of the debtor. Section 365(p)(1) states that if a lease of personal property is rejected or not timely assumed by the trustee, the leased property will no longer be property of the estate and the stay under section 362 will be automatically terminated. Under section 365(d)(1), the trustee has within 60 days from the commencement of the case to assume the lease or it will be deemed rejected.

This case was filed on January 31, 2020, so the chapter 7 trustee has until March 31, 2020 to assume the lease or it will be deemed rejected. The chapter 7 trustee has not yet opposed, but written opposition is not required and may be presented at the hearing. This matter will be called and if the trustee does not oppose, the motion will be GRANTED.

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 two payments and the property is a depreciating asset. No other relief is granted.

13. [19-14170](#)-B-7 **IN RE: JOHNNY GONZALES**
[KAS-4](#)

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION FOR
COMPENSATION FOR BERKSHIRE HATHAWAY HOME SERVICES, BROKER(S)
2-10-2020 [\[66\]](#)

PETER FEAR/MV
KELSEY SEIB/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. Unless otherwise
determined at the hearing, the court will
issue the order.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). 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 Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Even if a party defaults the court may deny entry of a default judgment if it determines there is insufficient evidence to support the claim. The court has discretion not to enter a default judgment if the facts pled are insufficient to establish liability. Cashco Financial Services, Inc. v. McGee (In re McGee), 359 BR 764, 771 (B.A.P. 9th Cir. 2007)

Under 11 U.S.C. § 363(f), the chapter 7 trustee ("Trustee") may sell estate property of the estate outside the ordinary course of business, after notice and a hearing, free and clear of "any interest in such property of an entity other than the estate, only if . . . such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest."

Trustee wishes to sell real property located at 4755 E. Braly Avenue in Fresno, CA ("Property") for \$140,000.00 to Diego Esae Garcia ("Buyer"). Doc. #66.

There appear to be at least 11 liens against the Property:

1. a bail bond deed of trust in favor of Absolute Bail Bonds in the amount of \$20,000.00;
2. a deed of trust in favor of Mid Valley Services, Inc. in the amount of \$114,000.00 (outstanding principal balance is approximately \$140,000.00);
3. a tax lien in favor of the IRS in the amount of \$2,573.62;
4. a tax lien in favor of the IRS in the amount of \$19,715.41;

5. a penalty lien in favor of the Director of Industrial Relations as Administrator of the Uninsured Employers Fund State of California in the amount of \$6,000.00;
6. an abstract of judgment in favor of the State Labor Commissioner Chief, Division of Labor Standards Enforcement State of California in the amount of \$500.00;
7. an abstract of judgment in favor of Lorena Elizabeth Saenz in the amount of \$2,937.93;
8. an abstract of judgment in favor of Maria Saenz in the amount of \$2,917.01;
9. an abstract of judgment in favor of Maria Luz Zapien in the amount of \$2,936.52;
10. an abstract of judgment in favor of Sandra Rubio in the amount of \$5,102.64; and
11. an abstract of judgment in favor of the California Franchise Tax Board in the amount of \$7,737.95. Doc. #68.

Trustee is asking to sell the Property free and clear of the liens junior to Mid Valley Services, Inc.'s deed of trust pursuant to 11 U.S.C. § 363(f)(5) and 11 U.S.C. § 724(b).

Trustee argues that the tax lien distribution scheme of 11 U.S.C. § 724(b) is "precisely the kind of 'legal or equitable proceeding' that precisely fits the narrow Clear Channel view of Section 363(f)(5)." Doc. #106.

Several courts have found that Section 724(b) is precisely the type of "legal or equitable proceeding" described in Section 363(f)(5). See, e.g., In re Healthco Int'l, Inc., 174 B.R. 174, 177 (Bankr. D. Mass. 1994); In re Grand Slam U.S.A., Inc., 178 B.R. 460, 463-64 (E.D. Mich. 1995); In re A.G. Van Metre, Jr., Inc., 155 B.R. 118, 123 (Bankr. E.D. Va. 1993), subsequently aff'd, 16 F.3d 414 (4th Cir. 1994); In re Gulf States Steel, Inc. of Alabama, 285 B.R. 497, 509 (Bankr. N.D. Ala. 2002). The Ninth Circuit Bankruptcy Appellate Panel has cited the Gulf States Steel case. See Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC), 391 B.R. 25, 42-43 (B.A.P. 9th Cir. 2008).

There are at least three impediments to the relief requested by the Trustee here. First, not all lienholders appear to have been served. Among the lienholders listed in the motion — the abstract of judgment lien is part of the evidence — is a judgment lien in favor of Lorena Saenz. The judgment was entered against the debtor June 1, 2011 in the amount of \$2,937.93. This lien is among those the Trustee contends should not impede the sale. But neither Lorena Saenz nor her counsel was served. Notably, the Trustee did serve other claimants through counsel for the Labor Commissioner, James E. Berry. But not Lorena Saenz. Nor is the separate service of James Berry enough unless counsel affirmatively agrees to accept service. See, Beneficial Cal., Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

Second, the Trustee has not met the requirements of § 724(e). In order to subordinate tax liens to administrative and other priority expenses under § 724(b), the Trustee must exhaust the unencumbered assets of the estate and recover appropriate preservation costs from

secured creditors. There is nothing in the record of this motion that the Trustee has done that. This seems a requirement before using § 724(b) to satisfy the requisites of a free and clear sale under § 363(f)(5). The Trustee's own declaration references another property (4767 E. Braly Ave., Fresno, CA) which may be unencumbered upon payment of the senior lien in this sale. Doc. #69. So, there are going to be unencumbered assets, perhaps, that would need to be considered before a subordination of distribution could be ordered.

Third, even if § 724(b) is applicable, the lienholders with unavoidable liens subordinate to the tax liens are not affected and "set aside" by the subordination of tax liens to administrative and certain priority expenses. The Trustee asserts that Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC), 391 B.R. 25, 42 (B.A.P. 9th Cir. 2008) supports the proposition that § 724(b) is the type of "legal or equitable proceeding" described in § 363(b)(5). But Clear Channel disagrees with most of the authorities the Trustee cites: In re Grand Slam U.S.A., 178 B.R. 460 (E.D. Mich. 1995) and In re Healthco Int'l, Inc., 174 B.R. 174 (Bankr. D. Mass. 1994). Clear Channel, 391 B.R. at 46. The court does not read Clear Channel's reference to In re Gulf States Steel, 285 B.R. 497, 509 (Bankr. N.D. Ala. 2002) as broadly as the Trustee. Clear Channel cited Gulf States Steel as a reference to the requisite type of "legal and equitable" proceeding that would satisfy § 363(f)(5). But Gulf States Steel largely relied on Chapter 11 "cram down" plan provisions to meet the requisites. The "cram down" is explicitly rejected as a qualifying proceeding by Clear Channel. See Clear Channel, 391 B.R. at 46. Also, the Clear Channel court did not include the § 724(b) subordination as an example of a qualifying "legal and equitable proceeding." Id. at 43. There is no reason the court would not since it cited cases the Trustee relies upon using § 724(b). The only logical conclusion is that the omission was intentional.

The motion is DENIED.