



UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Wednesday, March 13, 2024  
Department A - Courtroom #11  
Fresno, California

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

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

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

Please also note the following:

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

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

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

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

**Unauthorized Recording is Prohibited:** Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [23-10571](#)-A-11 **IN RE: NABIEKIM ENTERPRISES, INC.**  
[FW-2](#)

FURTHER HEARING RE: MOTION TO USE CASH COLLATERAL  
3-24-2023 [6]

NABIEKIM ENTERPRISES, INC./MV  
PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted on a further interim basis through June 30, 2024.

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

This motion was set for hearing pursuant to an interim order authorizing use of cash collateral ("Interim Order"). Doc. #185. The motion was heard initially on March 29, 2023, and again on April 12, 2023, June 28, 2023, September 27, 2023, and December 13, 2023, and was granted each time on an interim basis. See Doc. ##22, 46, 82, 132, 185. A further hearing on use of cash collateral was set for March 13, 2024. Interim Order, Doc. #185. The Interim Order provided that the debtor may file and serve any supplemental documents, which may include a revised budget, on or before February 28, 2024. Id.

On February 28, 2024, the debtor filed a supplemental document and revised budget. Doc. ##213, 214. Because the request authorizing continued use of cash collateral was set on less than 28 days' notice, opposition to the continued use of cash collateral may be raised at the hearing. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant continued use of cash collateral on an interim basis through June 30, 2024. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper. The court will issue an order if a further hearing is necessary.

NabieKim Enterprises, Inc. ("Debtor" or "DIP") moves the court for an order authorizing Debtor to use the cash collateral of Small Business Administration ("SBA") on a monthly basis subject to a revised budget. Ex. A, Doc. #214. Debtor asserts SBA holds a duly perfected security interest in nearly all of Debtor's cash collateral, including funds in Debtor's bank accounts at Wells Fargo. Motion, Doc. #6. Based on Debtor's schedules, SBA is owed \$312,300.00 and its collateral, as of the petition date, was \$49,657.38. Schedule D, Doc. #34. While there are other entities that may assert a security interest in Debtor's cash collateral, all other entities hold a junior security interest to the undersecured SBA and are, thus, unsecured.

Pursuant to 11 U.S.C. § 363, a debtor in possession can use property of the estate that is cash collateral by obtaining either the consent of each entity that has an interest in such cash collateral or court authorization after notice and a hearing. 11 U.S.C. § 363(c)(2). "The primary concern of the court in determining whether cash collateral may be used is whether the secured creditors are adequately protected." In re Plaza Family P'ship, 95 B.R. 166 (E.D. Cal. 1989) (citing 11 U.S.C. § 363(e)). Pursuant to 11 U.S.C. § 363(o), DIP carries the burden of proof on the issue of adequate protection.

Here, DIP seeks court authorization to use cash collateral to pay costs incurred by DIP in the normal course of its business from April 1, 2024 through June 30, 2024. Doc. #213; Ex. A, Doc. #214. As adequate protection for DIP's use of SBA's cash collateral, to the extent cash collateral is actually used, DIP will grant SBA a replacement lien against DIP's post-petition sales and other income as well as granting a replacement lien to any other creditor with a valid security interest in DIP's cash collateral that was served with notice of the motion. Decl. of Kaye Kim, Doc. ##8, 24.

By the supplemental statement, DIP explains that the amount of cash collateral needed for April 2024 through June 2024 is identical the budget submitted for the previous three-month period of January 2024 through March 2024. Supp. Stmt., Doc. #213.

Accordingly, pending any opposition at the hearing, the motion will be GRANTED on a further interim basis through June 30, 2024, consistent with the budget attached as Exhibit A to Doc. #214. At the hearing, counsel for DIP should be prepared to set a new hearing date for the further use of cash collateral and date to file and serve supplemental pleadings in case Debtor's chapter 11 plan is not confirmed by June 30, 2024.

2. [23-12784](#)-A-11 **IN RE: KODIAK TRUCKING INC.**  
[ZM-1](#)

MOTION FOR ADMINISTRATIVE EXPENSES  
2-14-2024 [[154](#)]

JEFFRIES BROS, INC./MV  
PETER FEAR/ATTY. FOR DBT.  
JACOB EATON/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 prior to the hearing date 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.

Jeffries Bros, Inc. ("Creditor"), creditor of Kodiak Trucking, Inc. ("DIP"), the debtor and debtor in possession in this chapter 11 subchapter V case, moves the court for an order granting Creditor an administrative expense under

11 U.S.C. § 503(b)(9) in the amount of \$45,251.47 and directing DIP to pay that administrative expense. Doc. #154.

11 U.S.C. § 503(b)(9) states that, after notice and a hearing, administrative expense shall be allowed for "the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business." The claimant must establish: (1) the vendor sold goods to the debtor; (2) the goods were received by the debtor within 20 days prior to filing; and (3) the goods were sold to the debtor in the ordinary course of business. In re Goody's Fam. Clothing, Inc., 401 B.R. 131, 133 (Bankr. Del. 2009).

After review of the included evidence, the court finds that Creditor sold goods to DIP, the goods were delivered to DIP within 20 days before the filing of DIP's subchapter V case, and Creditor sold the goods to DIP in the ordinary course of DIP's business. Decl. of Jeremy Jeffries, Doc. #157; Ex. A, Doc. #158. No opposition has been filed in response to Creditor's motion.

Accordingly, this motion is GRANTED. Creditor is allowed an administrative expense under 11 U.S.C. § 503(b)(9) in the amount of \$45,251.47, and DIP is directed to pay that administrative expense.

1. [23-12606](#)-A-7     **IN RE: ELBIO CARBALLO AND SANDRA SOLARINO DE CARBALLO**  
[JRL-1](#)

MOTION TO AVOID LIEN OF STATE OF CALIFORNIA EMPLOYMENT DEVELOPMENT  
DIVISION  
2-9-2024    [[17](#)]

SANDRA SOLARINO DE CARBALLO/MV  
JERRY LOWE/ATTY. FOR DBT.

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

**DISPOSITION:**       Denied without prejudice.

**ORDER:**                The court will issue an order.

Federal Rule of Bankruptcy Procedure ("Rule") 9014(b) requires a motion to avoid a lien under 11 U.S.C. § 522(f) be served "in the manner provided for service of a summons and complaint by Rule 7004." Service of the motion on State of California Employment Development Department (incorrectly named in the motion as the State of California Employment Development Division) ("Creditor") does not satisfy Rule 7004(b) (6).

As set forth in the Roster of Governmental Agencies, which can be found on the court's website at: <https://www.caeb.uscourts.gov/documents/Forms/EDC/EDC.002-785.pdf>, service of an adversary proceeding on Creditor needs to be addressed to: Employment Development Department, Legal Office, 800 Capitol Mall MIC 53, Sacramento, CA 95618. This is not the address to which the motion to avoid lien was served pursuant to the certificate of service filed in connection with this motion. Doc. #35. Thus, service of the motion on Creditor does not comply with Rule 7004(b) (6) and is not proper.

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #35. However, Rule 9014 requires service on the lienholder of a motion to avoid a lien under 11 U.S.C. § 522(f) to be made pursuant to Rule 7004. The declarant should have marked boxes under Section 6A of the current form instead of boxes under Section 6B for service of the motion on the lienholder.

Accordingly, this motion is DENIED WITHOUT PREJUDICE for improper service.

MOTION TO AVOID LIEN OF MIDLAND FUNDING LLC  
2-9-2024    [\[21\]](#)

SANDRA SOLARINO DE CARBALLO/MV  
JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

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

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Federal Rule of Civil Procedure 5 and Federal Rules of Bankruptcy Procedure ("Rule") 7005, 9036 Service. Doc. #36. However, Rule 9014 requires service on the lienholder of a motion to avoid a lien under 11 U.S.C. § 522(f) to be made pursuant to Rule 7004, which was done. The declarant properly attached appropriate attachments to the court's mandatory Certificate of Service form, which show that service of the motion and related pleadings was proper. The declarant should have marked boxes under Section 6A of the current form instead of boxes under Section 6B for service of the motion on the lienholder.

Elbio Ramon Carballo and Sandra Virginia Solarino De Carballo (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Rules 4003(d) and 9014 to avoid the judicial lien of Midland Funding LLC ("Creditor") on the residential real property commonly referred to as 4094 W. Providence Avenue, Fresno, CA 93722 (the "Property"). Doc. #21; Schedule C, Doc. #1; Schedule D, Doc. #1.

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). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). "[J]udicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtors filed their bankruptcy petition on November 22, 2023. Doc. #1. A judgment was entered against Debtors in the amount of \$4,601.69 in favor of Creditor on December 20, 2011. Ex. A, Doc. #24. The abstract of judgment was recorded pre-petition in Fresno County on January 18, 2012, as document number 2012-0006943. Id. The lien attached to Debtors' interest in the Property located in Fresno County. Id. Debtors assert a market value for the Property as of the petition date at \$356,000.00. Schedule A/B, Doc. #1; Decl. of Elbio Ramon Carballo, Doc. #23. The Property also is encumbered by a first deed of trust held by Select Portfolio Servicing, Inc. in the amount of \$100,127.00. Schedule D, Doc. #1. Debtors claimed an exemption of \$300,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1.

It appears that there are two senior judicial liens on the Property:

- (1) The first senior judicial lien was recorded in Fresno County on May 20, 2010 with respect to a judgment in favor of FIA Card Services, N.A. for \$7,361.81. Ex. A, Doc. #34; Carballo Decl., Doc. #33.
- (2) The second senior judicial lien was recorded in Fresno County on October 8, 2010 with respect to a judgment in favor of Fresno County Federal Credit Union nka Nobel Federal Credit Union for \$11,855.60. Ex. A, Doc. #28; Carballo Decl., Doc. #27.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$4,601.69
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$119,344.41
Amount of Debtors' claim of exemption in the Property	+	\$300,000.00
		\$423,946.10
Value of Debtors' interest in the Property absent liens	-	\$356,000.00
Amount Creditor's lien impairs Debtors' exemption		\$67,946.10

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED. The proposed order shall state that Creditor's judicial lien is avoided on the subject Property only and include a copy of the abstract of judgment as an exhibit.



3. 23-12606-A-7     **IN RE: ELBIO CARBALLO AND SANDRA SOLARINO DE CARBALLO**  
JRL-3

MOTION TO AVOID LIEN OF NOBLE FEDERAL CREDIT UNION  
2-9-2024    [25]

SANDRA SOLARINO DE CARBALLO/MV  
JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION:         Granted.

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

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

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Federal Rule of Civil Procedure 5 and Federal Rules of Bankruptcy Procedure ("Rule") 7005, 9036 Service. Doc. #37. However, Rule 9014 requires service on the lienholder of a motion to avoid a lien under 11 U.S.C. § 522(f) to be made pursuant to Rule 7004, which was done. The declarant properly attached appropriate attachments to the court's mandatory Certificate of Service form, which show that service of the motion and related pleadings was proper. The declarant should have marked boxes under Section 6A of the current form instead of boxes under Section 6B for service of the motion on the lienholder.

Elbio Ramon Carballo and Sandra Virginia Solarino De Carballo (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Rules 4003(d) and 9014 to avoid the judicial lien of Noble Federal Credit Union fdba Fresno County Federal Union ("Creditor") on the residential real property commonly referred to as 4094 W. Providence Avenue, Fresno, CA 93722 (the "Property"). Doc. #25; Schedule C, Doc. #1; Schedule D, Doc. #1.

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). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). "[J]udicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtors filed their bankruptcy petition on November 22, 2023. Doc. #1. A judgment was entered against Debtors in the amount of \$11,885.60 in favor of Creditor on November 15, 2008, and renewed on August 10, 2018. Ex. A, Doc. #28. The abstract of judgment was recorded pre-petition in Fresno County on October 8, 2010, as document number 2010-0135142. Id. The lien attached to Debtors' interest in the Property located in Fresno County. Id. Debtors assert a market value for the Property as of the petition date at \$356,000.00. Schedule A/B, Doc. #1; Decl. of Elbio Ramon Carballo, Doc. #27. The Property also is encumbered by a first deed of trust held by Select Portfolio Servicing, Inc. in the amount of \$100,127.00. Schedule D, Doc. #1. There also appears to be one senior judicial lien on the Property. A senior judicial lien was recorded in Fresno County on May 20, 2010 with respect to a judgment in favor of FIA Card Services, N.A. for \$7,361.81. Ex. A, Doc. #34; Carballo Decl., Doc. #33. Debtors claimed an exemption of \$300,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$11,885.60
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$107,488.81
Amount of Debtors' claim of exemption in the Property	+	\$300,000.00
		\$419,374.41
Value of Debtors' interest in the Property absent liens	-	\$356,000.00
Amount Creditor's lien impairs Debtors' exemption		\$63,374.41

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED. The proposed order shall state that Creditor's judicial lien is avoided on the subject Property only and include a copy of the abstract of judgment as an exhibit.

4. [23-12606](#)-A-7     **IN RE: ELBIO CARBALLO AND SANDRA SOLARINO DE CARBALLO**  
[JRL-4](#)

MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A.  
2-13-2024    [[29](#)]

SANDRA SOLARINO DE CARBALLO/MV  
JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION:         Denied without prejudice.

ORDER:                The court will issue an order.

Federal Rule of Bankruptcy Procedure ("Rule") 9014(b) requires a motion to avoid a lien under 11 U.S.C. § 522(f) be served "in the manner provided for service of a summons and complaint by Rule 7004." Service of the motion on FIA Card Services, N.A. ("Creditor") does not satisfy Rule 7004.

Creditor is an insured depository institution and must be served in accordance with Rule 7004(h). In re Field, Case No. A12-00154-DMD, 2012 Bankr. LEXIS 2097, \*3-4, 2012 WL 1655602 (Bankr. D. Alaska May 10, 2012). Rule 7004(h) provides that service on an insured depository institution "shall be made by certified mail addressed to an officer of the institution unless" an appearance by an attorney of the institution has been entered, the court orders otherwise, or the institution waives its entitlement to service by designating an officer to receive service. The certificate of service filed in connection with this motion does not show that service of the motion was made by certified mail or addressed to an officer Creditor. See Doc. #38. Further, a review of the docket shows no attorney for Creditor has appeared for Creditor in this bankruptcy case and no officer has been designated to receive service for Creditor in this bankruptcy case. Based on the pleadings filed with this court, Creditor was not served properly with this motion pursuant to Rule 7004(h).

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #38. However, as discussed above, Rule 9014 requires service on the lienholder of a motion to avoid a lien under 11 U.S.C. § 522(f) to be made pursuant to Rule 7004. The declarant should have marked boxes under Section 6A of the current form instead of boxes under Section 6B for service of the motion on the lienholder.

Accordingly, this motion is DENIED WITHOUT PREJUDICE for improper service.

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-9-2024    [\[14\]](#)

TD BANK, N.A./MV  
T. O'TOOLE/ATTY. FOR DBT.  
SHERYL ITH/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 prior to the hearing date pursuant to 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 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.

The movant, TD Bank, N.A., Successor in interest to 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 2024 Toyota RAV4, VIN: 2T3P1RFV5RC410998 (the "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).

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 not made any payments toward the contract. The debtors' first payment was due on February 11, 2024 in the amount of \$859.98. Decl. of Petrice Williams, Doc. #20. According to the debtors' Statement of Intention, the Vehicle will be surrendered. Doc. #1.

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. Id. The Vehicle is valued at \$33,875.00, and the debtors owe \$43,578.60. Ex. D. Doc. #19; Williams Decl., Doc. #20.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a) (3) will be ordered waived because the debtors have made no payments to Movant, the debtors intend to surrender the Vehicle to Movant, and the Vehicle is a depreciating asset.

6. [24-10132](#)-A-7     **IN RE: SANDRA SAELEAW**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
2-14-2024    [[23](#)]

MARK ZIMMERMAN/ATTY. FOR DBT.  
\$199.00 FILING FEE PAID 2/15/24

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

DISPOSITION:         The order to show cause will be vacated.

ORDER:                The court will issue an order.

The record shows that the filing fee for the motion to compel abandonment has been paid. Therefore, the order to show cause will be vacated.

7. [24-10145](#)-A-7     **IN RE: ALBERTO/JUANA MOSQUEDA**  
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-7-2024    [[14](#)]

AMERICREDIT FINANCIAL SERVICES, INC./MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
SHERYL ITH/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 prior to the hearing date pursuant to 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 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.

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 2023 Chevrolet Trailblazer, VIN: KL79MPS28PB097141 (the "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).

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-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$1,420.07 plus late fees in the amount of \$46.66. Decl. of Aaron Rangel, Doc. #19. According to the debtors' Statement of Intention, the Vehicle will be surrendered. Doc. #1.

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 \$23,350.00, and the debtors owe \$26,454.13. Decl. of John Eng, Doc. #16; Rangel Decl., Doc. #19.

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

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

8. [23-12847](#)-A-7 **IN RE: MIGUEL PICENO RODRIGUEZ AND HILDA PEREZ PICENO**  
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
1-30-2024 [[16](#)]

FORD MOTOR CREDIT COMPANY LLC/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
SHERYL ITH/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 prior to the hearing date pursuant to 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 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.

The movant, Ford Motor Credit Company LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2020 Ford Explorer, VIN: 1FMSK7DH6LGC31441 (the "Vehicle"). Doc. #16. Debtor Miguel Piceno Rodriguez is a co-buyer of the Vehicle. Ex. A, Doc. #21. The debtors list a 2021 Ford Explorer on their bankruptcy schedules but not a 2020 Ford Explorer. Schedules A/B, C & D, 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).

After review of the included evidence, the court finds that "cause" exists to lift the stay because the loan is delinquent by at least three complete pre- and post-petition payments. Movant has produced evidence that the account is delinquent by at least \$2,068.68 plus late fees in the amount of \$68.96. Decl. of Pamela Rucker, Doc. #22.

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.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the loan is delinquent by at least three complete pre- and post-petition payments, the debtor Miguel Piceno Rodriguez is a co-buyer of the Vehicle, and the Vehicle is a depreciating asset.

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR  
GABRIEL J. WADDELL, TRUSTEES ATTORNEY(S)  
2-13-2024    [60]

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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 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"), attorney for chapter 7 trustee Peter L. Fear ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from June 8, 2021 through February 8, 2024. Doc. #60. Movant provided legal services valued at \$6,135.00, and requests compensation for that amount. Id. Movant requests reimbursement for expenses in the amount of \$96.29. Id. This is Movant's first and final fee application.

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) providing counsel to Trustee as to the administration of the chapter 7 case; (2) reviewing and preparing various documents for an agreement memorializing terms of payments entitled to the debtor from selling interest in a business; (3) reviewing and analyzing various documents relating to the release of a lien on the debtor's property; and (4) preparing and filing employment and fee applications. Decl. of Gabriel J. Waddell, Doc. #62; Exs. A-C, Doc. #63. 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 \$6,135.00 and reimbursement for expenses in the amount of \$96.29. Trustee is authorized to make a combined payment of \$6,231.29, 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.

10. [23-12453](#)-A-7     **IN RE: ERIC ORTIZ**  
[JCW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-15-2024    [[31](#)]

WELLS FARGO BANK, N.A./MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
JENNIFER WONG/ATTY. FOR MV.  
DEBTORS DISCHARGED 02/12/2024

TENTATIVE RULING:        This matter will proceed as scheduled.

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

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

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 as moot in part. 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 motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on February 12, 2024. Doc. #27. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #36. However, Federal Rules of Bankruptcy Procedure 4001(a)(1) and 9014 require service of a motion for relief from stay on the debtor and on the chapter 7 trustee to be made pursuant to Federal Rule of Bankruptcy Procedure 7004, which was done. In Section 6, the declarant should have checked the appropriate box under Section 6A in addition to the boxes checked in Section 6B.

The movant, Wells Fargo Bank, N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a piece of real property located at 3004 SE La Vida Court, Visalia, CA 93292 (the "Property").

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 been in default since July 1, 2022. Decl. of Tifanee T. Brown, Doc. #33. The debtor's statement of intention indicates that the debtor intends to surrender the Property. Doc. #1.

The court also finds that the debtor does not have any equity in the Property and the Property is not necessary to an effective reorganization because the debtor is in chapter 7. The debtor has valued the Property at \$186,000.00. Schedule A/B, Doc. #1. The amount owed to Movant is \$206,035.57. Brown Decl., Doc. #33.

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

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor intends to surrender the Property and the amount owed to Movant exceeds the value of the Property.

11. [23-10789](#)-A-7     **IN RE: KEE LEE**  
[BLF-3](#)

MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR BERKSHIRE HATHAWAY  
HOMESERVICES, REALTOR(S)  
2-13-2024    [\[45\]](#)

IRMA EDMONDS/MV  
PETER BUNTING/ATTY. FOR DBT.  
LORIS BAKKEN/ATTY. FOR MV.

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 shall submit a proposed order after the hearing.

This motion was set for hearing on at least 28 days' notice prior to the hearing date 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). Therefore, the defaults of the above-mentioned parties in interest are entered. This matter will proceed as scheduled for higher and better offers.

Irma C. Edmonds ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Kee Lee ("Debtor"), moves the court pursuant to 11 U.S.C. § 363 for an order

authorizing the sale of vacant land located at 8207 N. Thompson Ave., Clovis, CA 93619 (the "Property") to Cook Triangle Properties, LLC ("Buyer") for the purchase price of \$325,000.00, subject to higher and better bids at the hearing. Doc. #45. Trustee states that a preliminary title report shows that all liens appearing on the title report have been released and there are no liens or encumbrances attaching to the Property. Doc. #45; Decl. of Trustee, Doc. #48. Trustee also seeks authorization to pay a commission for the sale to realtor Robert Casey of Berkshire Hathaway HomeServices ("Broker"). Doc. #45.

#### Selling Property of Estate under 11 U.S.C. § 363(b)(1) Permitted

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. Trustee Decl., Doc. #48. The Property was appraised by the Broker who valued the Property at \$300,000. Id. Buyer tendered an offer of \$305,000, which Trustee counteroffered at \$325,000 and conditioned upon the court's approval and subject to better and higher offers at the hearing. Id. Buyer has accepted the sale of the Property at \$325,000 subject to higher and better offers. Id. Buyer is the assignee of the original party that contracted with Trustee to purchase the Property, Shamoo's Hope Triangle, LLC. Doc. #47, Ex. D; Trustee Decl., Doc. #48. The sale is "as is, where is" with limited disclosures. Trustee Decl., Doc. #48. Buyer has made an initial deposit of \$305,000.00. Ex. A. Doc. #47. Based upon estimates obtained from the preliminary title report, the sales contract, and charges common in the industry, Trustee estimates a benefit to the estate of \$299,000.00. Trustee Decl., Doc. #48. Property taxes are current, and there are no liens or encumbrances on the Property. Id. Trustee expects to pay a \$19,500.00 commission to Broker and \$6,500.00 in costs of sale. Id.

It appears that the sale of the estate's interest in the Property is in the best interests of the estate, the Property 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 will GRANT Trustee's motion and authorize the sale of the Property pursuant to 11 U.S.C. § 363(b)(1). The motion does not specifically request, nor will the court authorize, the sale free and clear of any liens or interests. Trustee indicates that there are no liens or encumbrances on the Property.

#### Compensation to Broker

Trustee also seeks authorization to pay Broker a commission for the sale of the Property. This court has determined that employment of Broker is in the best

interests of the estate and has previously authorized employment pursuant to 11 U.S.C. § 328. Order, Doc. #36.

Trustee seeks to pay Broker a 6% commission on the sale of the Property as the real estate broker for the sale, with the commission to be shared with any participating buyer's agent pursuant to custom and any cooperating broker's agreement. Trustee Decl., Doc. #48. The 6% fee is the industry standard commission for sales of vacant land in the area where the Property is located. Id. Trustee estimates that Broker's commission for the sale of the Property will equal \$19,500. Id. The court finds the compensation sought is reasonable, actual, and necessary.

### Conclusion

Accordingly, subject to overbid offers made at the hearing, the court will GRANT Trustee's motion and authorize the sale of the Property pursuant to 11 U.S.C. § 363(b)(1). Trustee is authorized to pay Broker for services as set forth in the motion.

12. [23-12793](#)-A-7 **IN RE: GRACIELA FLORES**  
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-1-2024 [[13](#)]

TOYOTA MOTOR CREDIT CORPORATION/MV  
JEFFREY ROWE/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/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 prior to the hearing date 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 movant 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 ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2019 Toyota Camry, VIN: 4T1B11HK9KU706649 (the "Vehicle"). Doc. #13.

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 three complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$1,627.56. Decl. of Debra Knight, Doc. #15. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. The Vehicle is valued at \$18,775.00, and the debtor owes \$24,422.04. Knight Decl., Doc. #15.

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

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