



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, March 15, 2023
Department A – Courtroom #11
Fresno, California**

Unless otherwise ordered, all hearings before Judge Niemann are simultaneously: (1) **IN PERSON** in 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.

To appear via zoom gov video or zoom gov telephone for law and motion or status conference proceedings, you must comply with the following new guidelines and procedures:

1. Review the pre-hearing dispositions at:
<https://www.caeb.uscourts.gov/Calendar/PreHearingDispositions>
2. You are required to give the court 24 hours advance notice at
niemann_virtual@caeb.uscourts.gov.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided:

Video web address:

<https://www.zoomgov.com/j/1601323290?pwd=OGdaY0xWU1Vhd1oxK0I1b1hacndndz09>

Meeting ID: 160 132 3290

Password: 691502

Zoom.Gov Telephone: (669) 254-5252 (Toll Free)

Please join at least 10 minutes before the start of your hearing and wait with your microphone muted until your matter is called.

Prior to the hearing, parties appearing via Zoom or CourtCall are encouraged to review the court's [Zoom Procedures and Guidelines](#) or [CourtCall Appearance Information](#).

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screenshots" 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. [21-11814](#)-A-11 **IN RE: MARK FORREST**
[LKW-16](#)

STATUS CONFERENCE RE: MOTION TO CONFIRM CHAPTER 11 PLAN
7-22-2022 [\[238\]](#)

MARK FORREST/MV
LEONARD WELSH/ATTY. FOR DBT.
PLAN WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The status conference will be dropped from calendar. Movant withdrew the chapter 11 plan on February 3, 2023. Doc. #368.

2. [22-10416](#)-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**
[WJH-1](#)

CONTINUED MOTION TO USE CASH COLLATERAL
3-21-2022 [\[14\]](#)

KR CITRUS, INC., A CALIFORNIA CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted on an interim basis through May 30, 2023.

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 and granting adequate protection ("Interim Order"). Doc. #185. The motion was heard initially on March 24, 2022, again on March 30, 2022, again on April 27, 2022, again on July 13, 2022, again on September 14, 2022, and again on December 14, 2022 and each time was granted on an interim basis. See Doc. ##49, 65, 95, 185, 267, and 356. A continued hearing for interim use of cash collateral was set for March 15, 2023. Interim Order, Doc. #356. Pursuant to the Interim Order, opposition to the continued use of cash collateral may be raised at the hearing. Id. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion on an interim basis. 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.

KR Citrus Inc. ("Debtor" or "DIP"), the chapter 11 debtor and debtor-in-possession, moves the court for a further interim order authorizing DIP to use the cash collateral of (1) PTF, a partnership; (2) California FarmLink;

(3) Small Business Administration ("SBA"); and (4) Vox Funding, LLC from March 23, 2023 through May 30, 2023 ("Subject Period"). Sixth Suppl. Decl. of James Reed in Support of Mot. for Authority to Use Cash Collateral ("Reed 6th Suppl. Decl."), Doc. #401.

DIP asserts PTF has a producer's lien on dragon fruit plants and proceeds to secure a debt of approximately \$234,000. Reed 6th Suppl. Decl. ¶ 14, Doc. #401. PTF has consented to allow the budgeted uses of cash collateral without any adequate protection payments. Id. PTF will be paid for slips/raw wood it sells post-petition, but no payment will be made for pre-petition slips/raw wood. Id.

California FarmLink is owed about \$203,361. Reed 6th Suppl. Decl. ¶ 15, Doc. #401. California FarmLink holds a duly perfected security interest in nearly all of Debtor's personal property and farm products. Id. All payments owed to California FarmLink are current through February 2023. Id. The proposed budget proposes monthly payments to California FarmLink to keep the loan current. Ex. A, Doc. #402.

SBA holds a junior security interest to California FarmLink to secure a debt of approximately \$500,000. Reed 5th Suppl. Decl. ¶ 16, Doc. #401. The note interest rate is 3%. Id. SBA does not have a security interest in farm products, but does have a security interest in accounts. Id. No payments are to be made to SBA during the Subject Period. Id.

Vox Funding's claim has been resolved. Reed 6th Suppl. Decl. ¶ 18, Doc. #401. According to the settlement agreement with Vox Funding, Vox Funding holds a general unsecured claim. Settlement Agreement, Ex. A, Doc. #327; Order, Doc. #369.

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); see 11 U.S.C. § 363(e). Bankruptcy Code § 361(1) states that adequate protection may be provided by "requiring the [debtor in possession] to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property." 11 U.S.C. § 361(1). DIP carries the burden of proof on the issue of adequate protection. 11 U.S.C. § 363(p).

DIP moves the court for an order authorizing DIP to use cash collateral through May 30, 2023, consistent with the budget filed as Ex. A, Doc. #402. DIP seeks court authorization to use cash collateral to pay expenses incurred by DIP to operate and maintain the DIP's business and to pay critical expenses. Reed 6th Suppl. Decl., Doc. #401. As adequate protection for DIP's use of cash collateral, DIP will grant a replacement lien against its post-petition accounts receivable for those creditors with valid liens to the extent cash collateral is actually used as well as adequate protection payments to California FarmLink. Ex. A, Doc. #402.

Bankruptcy Code § 361 requires DIP to provide adequate protection to the secured creditors for DIP's use of cash collateral for any decrease in the value of the secured creditors' interest in the accounts receivable due to DIP's use of cash collateral. Based on the evidence before the court, the new crops and proceeds produced and generated by Debtor through the use of cash

collateral will be greater than the amount of cash collateral sought to be used. Reed 6th Suppl. Decl. ¶ 22, Doc. #401.

Accordingly, the Motion will be GRANTED. The court grants DIP's request for use of cash collateral through May 30, 2023, consistent with the budget attached. Exhibit A, Doc. #402.

3. [23-10325](#)-A-11 **IN RE: ROBERT CHAMPAGNE**
[FW-2](#)

FINAL HEARING RE: MOTION TO USE CASH COLLATERAL
2-24-2023 [\[6\]](#)

ROBERT CHAMPAGNE/MV
PETER SAUER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for final hearing pursuant to the initial motion papers and an interim order authorizing use of cash collateral ("Interim Order"). Doc. #34. The final hearing was set on at least 14 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 4001(b)(2) and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion on a final basis. 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.

Robert T. Champagne ("Debtor" or "DIP"), the chapter 11 debtor and debtor-in-possession, moves the court for an order authorizing Debtor to use the cash collateral of the Internal Revenue Service (the "IRS") on a monthly basis subject to a budget. Doc. #6. Debtor asserts the IRS holds a duly perfected security interest in nearly all of Debtor's assets based on several tax liens. Id. Based on Debtor's list of 20 largest creditors, the IRS is owed \$2,030,788.08 and its collateral, as of the petition date, was \$870,178.02. Doc. #1. Based on Debtor's recently filed schedules, the IRS is owed \$2,030,788.08 and its collateral, as of the petition date, was \$1,235,411.35. Schedule D, Doc. #57. 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 IRS and are, thus, unsecured.

The motion was heard initially on February 28, 2023 and was granted on an interim basis by the Interim Order. Doc. #34. A final hearing was set for March 15, 2023, as indicated in the initial motion. Id.

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 the IRS's cash collateral. The court finds DIP has met his burden of showing that the IRS is adequately protected for DIP's use of its cash collateral by the replacement liens provided in the proposed cash collateral order. Moreover, DIP needs to use the IRS's cash collateral to continue his post-petition operations. Declaration of Robert T. Champagne, Doc. #8.

Accordingly, the motion will be GRANTED.

4. [23-10325](#)-A-11 **IN RE: ROBERT CHAMPAGNE**
[FW-3](#)

FINAL HEARING RE: MOTION TO PAY PRIORITY WAGES
2-24-2023 [[11](#)]

ROBERT CHAMPAGNE/MV
PETER SAUER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for final hearing pursuant to an interim order authorizing the debtor to pay pre-petition priority wage claims owed to employees for the period of February 5 through February 19, 2023 in the amount of \$121,293.74 ("Interim Order"). Doc. #35. The final hearing was set on at least 14 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 4001(b)(2) and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion on a final basis. 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.

Robert T. Champagne ("Debtor"), the chapter 11 debtor and debtor-in-possession, moves the court for an order authorizing Debtor to pay pre-petition priority wage claims owed to employees for the period of February 5 through February 19, 2023. Doc. #11.

The motion was heard initially on February 28, 2023 and was granted on an interim basis by the Interim Order. Doc. #35. A final hearing was set for March 15, 2023 pursuant to the Interim Order. Id.

Debtor operates a landscaping business and provides commercial landscaping services to approximately 300 customers. Declaration of Robert T. Champagne, Doc. #13. Debtor employs approximately 80 employees in his business operations. Id. Debtor's continued business operations depend upon the continued services of his employees. Id. All pre-petition wages to be paid pursuant to the motion have priority under 11 U.S.C. § 507(a)(4). Id.

This court interprets the bankruptcy court's equitable powers under 11 U.S.C. § 105(a) to permit pre-petition wage claims not to exceed the priority amount to be paid prior to confirmation of a plan. See In re Adams Apple, 829 F.2d 1484, 1490 (9th Cir. 1987) (in dictum noting the payment of pre-petition wages to key employees prior to confirmation of a plan when necessary for the debtor's rehabilitation). Based on the evidence before the court, the court finds good cause exists under 11 U.S.C. § 105 to authorize Debtor to pay pre-petition priority wage claims owed to employees for the period of February 5 through February 19, 2023 in the amount of \$121,293.74 on a final basis.

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

5. [22-10778](#)-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
5-8-2022 [\[1\]](#)

NOEL KNIGHT/ATTY. FOR DBT.

NO RULING.

6. [22-10778](#)-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
[NCK-13](#)

MOTION TO APPROVE MOTION/APPLICATION TO APPROVE DISCLOSURE STATEMENT
FILED BY DEBTOR COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC
2-28-2023 [\[312\]](#)

COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC/MV
NOEL KNIGHT/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 matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice by mail of this motion was sent February 28, 2023, with a hearing date set for March 15, 2023. However, Federal Rule of Bankruptcy Procedure 2002(b) requires at least 28 days' notice of the period to object to a disclosure statement. Because the Notice of Hearing does not comply with Federal Rule of Bankruptcy Procedure 2002(b), the motion is denied without prejudice.

As a procedural matter, the certificate of service filed in connection with this motion does not comply with Local Rule of Practice 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

The court also notes that no new plan was filed with the new disclosure statement. A disclosure statement accompanies a plan for solicitation purposes. 11 U.S.C. § 1125(b). If the debtor intended for the new disclosure statement to accompany solicitation of the plan filed on August 30, 2022 (Doc. #150), the disclosure statement is not consistent with that plan. For example, the disclosure statement includes classes for priority unsecured claims and equity security holders, but those classes are not included in the plan filed on August 30, 2022. Compare Plan at p. 4, Doc. #150 with Disclosure Statement at pp. 9-13, Doc. #314.

1. [22-11019](#)-A-7 **IN RE: CATHRYN SMITH**
[FW-6](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR
GABRIEL J. WADDELL, TRUSTEES ATTORNEY(S)
2-9-2023 [\[115\]](#)

PETER BUNTING/ATTY. FOR DBT.
GABRIEL WADDELL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Fear Waddell, P.C. ("Movant"), attorney for chapter 7 trustee James Salven ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from July 29, 2022 through February 8, 2023. Doc. #115. Movant provided legal services valued at \$10,090.50, and requests compensation for that amount. Doc. #115. Movant requests reimbursement for expenses in the amount of \$893.96. Doc. #115. 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 analyzing various documents regarding Bronco property sale; (3) preparing motion to approve sale of Bronco property; (4) preparing motion to sell vacant lot; (5) reviewing and preparing various documents regarding motion for relief from stay on Petaluma property; (6) preparing application to employ real estate agent; and (7) preparing and filing employment and fee applications. Decl. of

Gabriel J. Waddell, Doc. #119; Ex. A , B, & C, Doc. #118. 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 \$10,090.50 and reimbursement for expenses in the amount of \$893.96. Trustee is authorized to make a combined payment of \$10,984.46, 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.

2. [21-11034](#)-A-7 **IN RE: ESPERANZA GONZALEZ**
[JPW-1](#)

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY, MOTION FOR RELIEF
FROM AUTOMATIC STAY
2-7-2023 [\[226\]](#)

U.S. BANK NATIONAL ASSOCIATION/MV
JOHN WARD/ATTY. FOR MV.
DISCHARGED 8/16/21

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

As a procedural matter, the certificate of service filed in connection with this motion does not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

US Bank National Association, as Trustee for Velocity Commercial Capital Loan Trust 2017-2, and its successors and/or assignees ("Movant") moves the court for an order determining that real property located at 15046 Avenue 224, Tulare, CA, 93274 (the "Property") is no longer property of the bankruptcy estate ("Estate"), and therefore, the automatic stay terminated as a matter of law on the Property based upon entry of order discharging the debtor Esperanza Hansen Gonzalez ("Debtor") on August 16, 2021 and upon the chapter 7 trustee James Edward Salven ("Trustee") completing a sale of the Estate's interest in the Property to Debtor ("Compromise") pursuant to the entry of the court's Order Approving the Compromise ("Compromise Order") and Debtor's payment in

full to the Estate for the Estate's interest in the Property. Compromise Order, Doc. #142; Motion, Doc. #226.

Movant brings this motion because Debtor's attorney alleges that the automatic stay as to the Estate is still in effect as to the Property because the chapter 7 case remains open, and Movant is stayed from proceeding with a foreclosure sale of the Property because such actions are a violation of the automatic stay of Debtor's chapter 7 bankruptcy case. Motion, Doc. #226. Alternatively, Movant seeks relief from the automatic stay under § 362(d)(1) and retroactive annulment of the automatic stay to December 20, 2021 for Movant's post-petition actions taken to record a Notice of Default and a Notice of Sale against the Property, which were done with the belief that the Property was no longer property of the Estate. Id.

11 U.S.C. § 362(c) Analysis

Pursuant to 11 U.S.C. § 362(c)(1), "the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate" and pursuant to § 362(c)(2)(C), the stay of any other act under subsection (a) of this section continues until the earliest of "if the case is a case under chapter 7 of this title concerning an individual . . . the time a discharge is granted or denied."

When property is no longer property of the estate, the automatic stay remains in effect as to such property until the case is closed, dismissed, or a discharge is granted or denied. 11 U.S.C. § 362(c)(2)(C); see In re D. Papagni Fruit Co., 132 B.R. 42, 45 (Bankr. E.D. Cal. 1991).

The court finds that the automatic stay terminated as to Debtor's interest in the Property on August 16, 2021 upon entry of an order discharging Debtor. 11 U.S.C. § 362(c)(2)(C).

The court further finds that the automatic stay terminated with respect to the Estate's interest in the Property on December 20, 2021, when this court entered the Compromise Order approving the sale of the Estate's interest in the Property to Debtor and Trustee completed the sale. 11 U.S.C. § 362(c)(1).

Trustee states that Trustee negotiated and entered into a Compromise with Debtor to sell the Estate's interest in the Property to Debtor for a sum of \$20,000.00, and Trustee received the full settlement payment on or about September 17, 2021. Decl. of James E. Salven, Doc. #229. The Estate's interest in the Property included Trustee's power to avoid a tax lien for penalties in excess of \$16,000.00 for the benefit of the Estate pursuant to 11 U.S.C. § 724(a). Mot. to Compromise Claims, Doc. #73.

The Property was encumbered by a first deed of trust in favor of Mr. Cooper, in the amount of \$317,277.00. Schedule D, Doc. #21. The Property also was subject to a tax lien in favor of the Internal Revenue Service in the amount of \$20,430.00. Id. Trustee wanted to use his avoidance power consistent with the provisions of 11 U.S.C. § 724 to avoid in excess of \$16,000.00 of tax claims, which would render the tax claims as unsecured claims and preserve the amount avoided for the benefit of the Estate. Mot. to Compromise Claims, Doc. #73. If Trustee avoided the tax liens to the extent allowed, Trustee would have stepped into the position of the tax lien claimant thereby giving the Estate a favored position for sale after marketing the Property and paying off the priority liens and encumbrances. Id. at ¶¶ 3, 6. Instead, Debtor bought the Estate's interest avoiding the tax liens for penalties for the benefit of the Estate for a sum of 20,000.00 in the Compromise. Id.

Trustee filed and served a motion to approve the Compromise. Salven Decl. at ¶ 4, Doc. #229. On December 20, 2021, the court entered the Compromise Order approving the sale of the Estate's interest in the Property to Debtor. Compromise Order, Doc. #142. Trustee considered the Estate's interest in the Property fully administered upon completion of the sale of the Estate's interest in the Property to Debtor, as contemplated by the Compromise. Salven Decl. at ¶¶ 6, 7, Doc. #229.

11 U.S.C. § 362(d) (1) Analysis

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

Here, there is cause to lift the stay because Debtor has failed to make at least 18 complete post-petition payments. Movant has produced evidence that Debtor is delinquent by at least \$92,004.66, and the entire balance of \$415,651.48 is due to Movant. Decl. of Sandie Lawrence, Doc. #232.

Retroactive Annulment of Automatic Stay Analysis

Section 362(d) allows the court to grant relief from the stay with respect to real property by terminating, annulling, modifying, or conditioning such stay. The bankruptcy court has "wide latitude in crafting relief from the automatic stay, including the power to grant retroactive relief from the stay." Schwartz v. United States (In re Schwartz), 954 F.2d 569, 572-73 (9th Cir. 1992). In the Ninth Circuit, a court "balances the equities in order to determine whether retroactive annulment is justified." See Nat'l Envtl. Waste Corp. v. City of Riverside (In re Nat'l Envtl. Waste Corp.), 129 F.3d 1052, 1055 (9th Cir. 1997) (citations omitted).

Here, Debtor purchased the Estate's interest in the Property from Trustee in the fall of 2021. Debtor paid Trustee the \$20,000 agreed upon price and the court entered the Compromise Order approving the transaction. Upon Trustee's completion of the transaction with Debtor that was the subject of the Compromise, the Estate ceased to have an interest in the Property, and the automatic stay terminated as to the Estate. To the extent that the automatic stay did not terminate, Movant justifiably believed that the automatic stay terminated as to the Estate's interest in the Property on or about December 20, 2021.

Retroactive annulment of the automatic stay to validate any actions taken by Movant to foreclose on the Property as of December 20, 2021 is appropriate. Trustee has no opposition to Movant pursuing its available state law remedies against the Property and does not oppose any request for retroactive annulment of the automatic stay for Movant's post-petition actions taken after the Compromise was complete. Salven Decl. at ¶ 8, Doc. #229.

Based on the factors listed above, the court finds that cause exists for retroactive annulment of the automatic stay as to the Estate's interest in the Property effective as of December 20, 2021.

Conclusion

Accordingly, the court finds that the automatic stay terminated as to Debtor's interest in the Property on August 16, 2021 upon entry of an order discharging

Debtor. The court further finds that the automatic stay terminated with respect to the Estate's interest in the Property on December 20, 2021, when this court entered the Compromise Order approving the sale of the Estate's interest in the Property to Debtor and Trustee completed the sale.

Alternatively, 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. The court further finds that cause exists to annul the automatic stay retroactively so as to validate any actions taken by Movant to foreclose on the Property as of December 20, 2021. The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtor purchased the Estate's interest in the Property as of December 20, 2021, Debtor is delinquent by at least \$92,004.66, and the entire balance of \$415,651.48 is due. No other relief is awarded.

3. [22-12137](#)-A-7 **IN RE: AEF FARMS, LLC**
[LKW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-28-2023 [\[21\]](#)

CREAM OF THE CROP AG SERVICE, INC./MV
RILEY WALTER/ATTY. FOR DBT.
LEONARD WELSH/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

As a procedural matter, the certificate of service (Doc. #26) does not comply with LBR 9014-1(c) since it identifies DCN LKW-1 instead of DCN LKW-2. "In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6).

The movant, Cream of the Crop Ag Service, Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to collateral covered by the security interest created by a security agreement between Movant and AEF Farms, LLC ("Debtor") in (i) an account receivable owed to Debtor by 3 Family Farms for Debtor's 2019 hemp crop and (ii) proceeds received from the sale of Debtor's 2019 hemp crop or, in other words, Debtor's inventory (collectively, the "Property"). Doc. #21.

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 trustee has filed a notice of intent to abandon property of the estate, the trustee has filed a Report of No Distribution in Debtor's case, and Debtor is willing to stipulate to relief from the automatic stay and turn over its inventory to Movant. Doc. #21.

The court also finds that Debtor does not have any equity in the Property and the Property is not necessary to an effective reorganization because Debtor is in chapter 7. Doc. #21. Debtor's Schedule A/B and Schedule D confirm that there is no equity in the Property for Debtor. Doc. #1.

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 trustee has confirmed that trustee will not liquidate the Property and Debtor is willing to stipulate to relief from the automatic stay and turn over its inventory to Movant.

4. [21-12654](#)-A-7 **IN RE: EDWARD RUBALCABA**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-9-2023 [\[21\]](#)

U.S. BANK NATIONAL ASSOCIATION/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
JENNIFER WONG/ATTY. FOR MV.
DISCHARGED 02/22/2022

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The certificate of service filed in connection with this motion for relief from the automatic stay shows that the chapter 7 trustee was only served electronically pursuant to Federal Rule of Civil Procedure 5 and Federal Rules of Bankruptcy Procedure ("Rule") 7005, 9036 Service. Doc. #26. However, Rules 4001(a)(1) and 9014(b) require service of a motion for relief from the automatic stay to be made pursuant to Rule 7004. Rule 7004(b)(1) provides that service upon an individual be made "by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession."

Rule 9036(e) does not permit electronic service when any paper is required to be served in accordance with Rule 7004.

Because the chapter 7 trustee was not served with this motion by mail as required by Rule 7004(b)(1), the motion was not served properly on the chapter 7 trustee.

As an informative matter, the certificate of service filed in connection with the motion for relief from the automatic stay (Doc. #26) was filed as a fillable version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/2022) instead of being printed prior to filing with the court. The version that was filed with the court can be altered because it is still the fillable version. In the future, the declarant should print the completed certificate of service form prior to filing it with the court and not file the fillable version.

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

5. [09-11355](#)-A-7 **IN RE: LONA CRAMER**
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL PC
TRUSTEES ATTORNEY(S)
2-8-2023 [\[53\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Fear Waddell, P.C. ("Movant"), attorney for chapter 7 trustee James Salven ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from January 7, 2021 through February 6, 2023. Doc. #53. Movant provided legal services valued at \$7,674.00, and requests compensation for that amount. Doc. #53. Movant requests reimbursement for expenses in the amount of \$146.88. Doc. #53. 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) preparing motion to approve settlement of product liability claim pursuant to Federal Rule of Bankruptcy Procedure 9019; (3) preparing declarations in support of motion to approve compromise of product liability claim; and (4) preparing and filing employment and fee applications. Decl. of Peter A. Sauer, Doc. #56; Ex. A-C, Doc. #55. 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 \$7,674.00 and reimbursement for expenses in the amount of \$146.88. Trustee is authorized to make a combined payment of \$7,820.88, 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.

6. [23-10197](#)-A-7 **IN RE: MATT SULLIVAN**
[SC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-14-2023 [\[17\]](#)

BRECKENRIDGE PROPERTY FUND 2016, LLC/MV
SAM CHANDRA/ATTY. FOR MV.
DISMISSED 02/13/2023

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on February 13, 2023. Doc. #14. Therefore, this motion will be DENIED AS MOOT.

As a procedural matter, the certificate of service filed in connection with this motion does not comply with Local Rule of Practice 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form (EDC Form 7-005, Rev. 10/22) as of November 1, 2022. The court encourages counsel for the moving party to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.