

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, March 16, 2021
Place: Department B – Courtroom #13
Fresno, California

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [20-10800](#)-B-11 **IN RE: 4-S RANCH PARTNERS, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
3-2-2020 [\[1\]](#)

ALEXANDER LEE/ATTY. FOR DBT.
RENO FERNANDEZ/ATTY. FOR MV.

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

DISPOSITION: Continued to April 27, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

Debtor-in-possession 4-S Ranch Partners, LLC, filed its Third Amended Disclosure Statement and Chapter 11 Plan on March 15, 2021. Docs. #394, #396. The hearing on approval of the Disclosure Statement is set for April 27, 2021 at 9:30 a.m. Doc. #395. Accordingly, this status conference will be continued to April 27, 2021 at 9:30 a.m. to be heard in connection with the Third Amended Disclosure Statement.

2. [20-12642](#)-B-11 **IN RE: 3MB, LLC**
[LKW-12](#)

MOTION TO EMPLOY ASU COMMERICAL AS BROKER(S)
2-24-2021 [\[185\]](#)

3MB, LLC/MV
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Debtor-in-possession 3MB, LLC ("DIP") wishes to employ ASU Commercial ("Broker") as its real estate broker to market and sell two parcels of real estate in DIP's shopping center as required by the proposed chapter 11 plan. Doc. #185.

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

11 U.S.C. § 1107 gives the DIP all the rights and powers of a trustee and shall perform all the functions and duties, subject to certain exceptions inapplicable here.

Pursuant to 11 U.S.C. § 327(a), the DIP may employ, with the court's approval, one or more professionals to represent or assist the DIP in carrying out the DIP's duties so long as the professional (1) does not hold or represent an interest adverse to the estate, and (2) are disinterested persons. *In re Avon Townhomes Venture*, 433 B.R. 269, 313 (Bankr. N.D. Cal. 2010) ("A real estate broker is a 'professional person' as contemplated by § 327.>").

DIP filed chapter 11 bankruptcy on August 11, 2020. Doc. #1. DIP owns a shopping center at 1201 24th Street, Bakersfield, California containing two unoccupied parcels identified by DIP as "the Starbucks Pad" and "the Western Dental Pad" (collectively "Pads"). DIP intends to sell both Pads as part of its First Amended Plan of Reorganization ("Plan") filed on February 4, 2021. See LKW-11. Thus, DIP needs a real estate broker. Doc. #189, ¶ 3.

Robert Bell, DIP's sole member, filed a declaration stating that DIP seeks to employ Broker because it is a real estate broker licensed by the State of California with more than 30 years of experience. *Id.*, ¶ 4. Mr. Bell states that any compensation paid to Broker will be paid from the proceeds received from the sale and will be subject to court approval. *Id.*, ¶ 6. Broker has represented DIP in real estate transactions in the past and DIP was satisfied with Broker's performance. *Id.*, ¶ 8. Mr. Bell states that Broker has no other connection with DIP and therefore it does not hold interests adverse to the estate and are disinterested persons. *Ibid.*; Doc. #185.

Jeffrey A. Leggio is a real estate broker and salesperson employed by Broker. Doc. #188. Mr. Leggio states that he will be the person primarily responsible for marketing and selling the Pads and understands that any compensation will be paid from the sales proceeds and subject to court approval. Doc. #188, ¶ 6. Mr. Leggio further acknowledges previous real estate transactions performed on behalf of DIP, but states that Broker has no other connection to DIP, its creditors, or any other party in interest and Broker is a disinterested person as defined in § 101(14). *Id.*, ¶ 8.

After review of the evidence, Broker does not represent nor hold an adverse interest to the debtor or to the estate with respect to the matter on which Broker is to be employed.

The court notes that secured creditor US Bank, N.A., previously filed a Notice of Non-Consent to Use Cash Collateral on August 14, 2020. Doc. #10. Broker's compensation is subject to court approval and US Bank may later object if the motion for compensation is not on satisfactory terms or if US Bank is not adequately protected under § 363(e).

In the absence of opposition, this motion will be GRANTED. DIP will be authorized to employ Broker for the purpose of marketing and selling the Starbucks Pad and the Western Dental Pad as stated above and in the motion; the effective date of employment shall be January 25, 2021 and the payment, if any, to which Broker is entitled shall be subject to further court approval under 11 U.S.C. §§ 328, 330.

1:30 PM

1. [20-13716](#)-B-7 **IN RE: DESIREE KINGSTON**
[AP-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-9-2021 [\[26\]](#)

JPMORGAN CHASE BANK, N.A./MV
NEIL SCHWARTZ/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, JPMorgan Chase 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 2018 Cadillac Escalade ("Vehicle"). Doc. #26, #29.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make 2 pre-petition payments and at least 1 post-petition payment. The movant

has produced evidence that debtor is delinquent at least \$3,890.62. Doc. #29.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. *Id.* The Vehicle is valued at \$47,850.00 and debtor owes \$68,122.87.00. Doc. #29, #31.

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

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

2. [21-10120](#)-B-7 **IN RE: HOWARD/BRENDA CHADDICK**
[PK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-2-2021 [\[15\]](#)

WHITE AND ASH LLC/MV
LEONARD WELSH/ATTY. FOR DBT.
PATRICK KAVANAGH/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

The notice (Doc. #16) did not contain the language required under LBR 9014-1(d)(3)(B). LBR 9014-1(d)(3)(B)(iii), which is about noticing requirements, requires the movant to notify respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view pre-hearing dispositions by checking the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

3. [19-12927](#)-B-7 **IN RE: CEDAR MILL FARMS, LLC**
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG,
ACCOUNTANT(S)
2-16-2021 [\[137\]](#)

RATZLAFF TAMBERI & WONG/MV

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

DISPOSITION: Granted.

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

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

Ratzlaff Tamberi & Wong ("Accountant"), the certified public accountancy firm employed by chapter 7 trustee James E. Salven ("Trustee"), requests final compensation of \$3,817.00 in fees and \$23.97 in expenses for a total of \$3,840.97 for services rendered from September 4, 2019 through February 3, 2021. Doc. #137. Trustee's contemporaneously filed statement says that he has reviewed the fee application, has no objection, and all requested fees and expenses are reasonable and necessary to the administration of the estate. Doc. #140.

This motion will be GRANTED.

This court previously approved employment effective July 28, 2019 to review and audit financial records, prepare tax returns, and perform other tax consulting related services for Trustee pursuant to 11 U.S.C. §§ 327(a), 330, and 331. Doc. #28. No compensation was permitted except upon court approval and compensation was set at the "lodestar rate" for accounting services applicable at the time services are rendered as specified in *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). The order also specified that acceptance of employment shall be deemed an irrevocable waiver by Accountant of any pre-petition claims against the bankruptcy estate. *Id.*

Accountant indicates that his firm spent 1.6 billable hours at \$220.00 per hour (\$352) between August 20, 2019 and September 10, 2020 and 15.4 billable hours at \$225.00 per hour (\$3,465) from January 26, 2021 through February 3, 2021. Doc. #141, Ex. A. The hours and rates specified total **\$3,817.00**. Accountant also incurred **\$23.97** in postage expenses. *Ibid*.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Reviewing the petition and Trustee's accounting information; (2) Preparation and filing of the federal and state limited liability company income tax returns for the periods ending December 31, 2019 and December 31, 2020; (3) Preparation and filing of the final fee application. Doc. #141, Ex. A. The court finds the services reasonable and necessary, and the expenses requested actual and necessary.

Movant shall be awarded \$3,817.00 in fees and \$23.97 in costs. Trustee will be authorized to pay Accountant \$3,840.97 in the Trustee's discretion and in accord with statutory priorities.

4. [21-10029](#)-B-7 **IN RE: JUAN JOSE DIAZ**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-9-2021 [\[15\]](#)

SANTANDER CONSUMER USA INC./MV
SCOTT LYONS/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Santander Consumer USA Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2018 Hyundai Elantra ("Vehicle"). Doc. #15.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make 3 pre-petition payments and at least 1 post-petition payment. The movant has produced evidence that debtor is delinquent at least \$1,956.56. Doc. #17, 20.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. *Id.* The Vehicle is valued at \$13,375.00 and debtor owes \$16,978.24. Doc. #7.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. This Vehicle is not listed in Debtor's Schedules. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 4 payments to Movant and the Vehicle is a depreciating asset.

5. [20-11334](#)-B-7 **IN RE: RICK/LINDA MILLER**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
2-10-2021 [\[74\]](#)

JAMES SALVEN/MV
D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

James E. Salven ("Accountant"), the certified public accountant employed by chapter 7 trustee Peter L. Fear ("Trustee") requests final compensation of \$3,550.00 in fees and \$496.00 in expenses for a total of \$4,046.00 for services rendered from June 25, 2020 through February 8, 2021. Doc. #74. Trustee's contemporaneously filed statement says that he has reviewed the fee application, has no objection, and all requested fees and expenses are reasonable and necessary to the administration of the estate. Doc. #78. Accountant filed a supplemental declaration on February 12, 2021 correcting the Docket Control Number ("DCN") on his earlier declaration (Doc. #76) from JES-3 to JES-2. Doc. #81.

This motion will be GRANTED.

This court previously approved employment effective July 15, 2020 to review and audit financial records, prepare tax returns, and perform other tax consulting related services for Trustee pursuant to 11 U.S.C. §§ 327(a), 330, and 331. Doc. #50. No compensation was permitted except upon court approval and compensation was set at the "lodestar rate" for accounting services applicable at the time services are rendered as specified in *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). The order also specified that acceptance of

employment shall be deemed an irrevocable waiver by Accountant of any pre-petition claims against the bankruptcy estate. *Id.*

Accountant indicates that he spent 14.2 billable hours at \$250.00 per hour between June 25, 2020 and February 8, 2021 for a total of **\$3,550.00**. Doc. #77, Ex. A. Accountant also incurred the following expenses:

Expenses	
Copies (427 @ \$0.15)	\$64.05
Envelopes (5 @ \$0.20)	\$1.00
Lacerte Tax Proc (\$175.00 per debtor)	\$350.00
Passport Check re: Property Basis	\$10.00
Service Fees (1.29 @ \$55.00)	\$70.95
Total:	\$496.00

Id., Ex. B.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Preparation and filing of employment application; (2) Reviewing the petition and Trustee's accounting information; (3) Analyzing and revising tax plan due to \$150,000 overbid; (4) Preparing Form 593 to avoid withholding on sale for trustee; (5) Determining and transmitting all federal and state tax returns; (6) Preparation and filing of the final fee application. *Id.*, Ex. A. The court finds the services reasonable and necessary, and the expenses requested actual and necessary.

This motion will be GRANTED. Movant shall be awarded \$3,550.00 in fees and \$496.00 in costs. Trustee will be authorized to pay Accountant \$4,046.00 in the Trustee's discretion and in accord with statutory priorities.

6. [21-10352](#)-B-7 **IN RE: JOSE/GABRIELA VARGAS**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-25-2021 [\[13\]](#)

HONDA LEASE TRUST/MV
T. O'TOOLE/ATTY. FOR DBT.
VINCENT FROUNJIAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

This motion relates to an executory contract or lease of personal property. The time prescribed in 11 U.S.C. § 365(d)(1) for the lease to be assumed by the chapter 7 trustee has not expired and, pursuant to § 365 (p)(1), the leased property is still property of the estate and protected by the automatic stay under § 362(a).

The movant, Honda Lease Trust ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a leased 2018 Honda Pilot ("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 an equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors are in default under the terms of the lease agreement. Doc. #13.

The court also finds that the debtors do not have any equity in the Vehicle subject to the terms of the lease agreement, and the Vehicle is not necessary to an effective reorganization because debtors are in chapter 7. Movant values the Vehicle between \$25,525.00 and \$28,050.00. Doc. #17.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. The trustee has not moved to assume the subject lease and the debtors have indicated to surrender the vehicle in their Statement of Intention. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtors have defaulted under the terms of the lease agreement and the Vehicle is a depreciating asset.

7. [21-10352](#)-B-7 **IN RE: JOSE/GABRIELA VARGAS**
[VVF-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-25-2021 [\[19\]](#)

HONDA LEASE TRUST/MV
T. O'TOOLE/ATTY. FOR DBT.
VINCENT FROUNJIAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

This motion relates to an executory contract or lease of personal property. The time prescribed in 11 U.S.C. § 365(d)(1) for the lease to be assumed by the chapter 7 trustee has not expired and, pursuant to § 365 (p)(1), the leased property is still property of the estate and protected by the automatic stay under § 362(a).

The movant, Honda Lease Trust ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a leased 2019 Honda Civic ("Vehicle"). Doc. #19.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors are in default under the terms of the lease agreement. Doc. #19.

The court also finds that the debtors do not have any equity in the Vehicle subject to the terms of the lease agreement, and the Vehicle is not necessary to an effective reorganization because debtors are in chapter 7. Movant values the Vehicle between \$15,100.00 and \$18,375.00. Doc. #24.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. The trustee has not moved to assume the subject lease and the debtors have said they will surrender the vehicle in their Statement of Intention. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtors have defaulted under the terms of the lease agreement and the Vehicle is a depreciating asset.

8. [20-13879](#)-B-7 **IN RE: ESTHER/SAMUEL PEREZ**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-9-2021 [\[18\]](#)

MEDALLION BANK/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the 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 amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Medallion Bank ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2018 Rockwood 2703WS travel trailer ("Vehicle"). Doc. #18.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors have failed to make 3 pre-petition payments and at least 1 post-petition payment. The movant has produced evidence that debtors are delinquent at least \$1,743.54. Doc. #22, 21.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtors are in chapter 7. *Id.* The Vehicle is valued at \$24,000.00 and debtor owes \$27,157.77. Doc. #20.

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