



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, March 29, 2023
Department A – Courtroom #11
Fresno, California**

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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. [23-10202](#)-A-11 **IN RE: GRANDE OAK, LLC**
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
2-2-2023 [[1](#)]

PAUL MANASIAN/ATTY. FOR DBT.

NO RULING.

2. [23-10208](#)-A-11 **IN RE: GRANDE, LLC**
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
2-3-2023 [[1](#)]

PAUL MANASIAN/ATTY. FOR DBT.

NO RULING.

3. [21-11814](#)-A-11 **IN RE: MARK FORREST**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
7-22-2021 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

4. [21-11814](#)-A-11 **IN RE: MARK FORREST**
[DJP-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
8-2-2022 [[246](#)]

MEGAN KILGORE/MV
LEONARD WELSH/ATTY. FOR DBT.
DON POOL/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

5. [22-10416](#)-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
3-18-2022 [[1](#)]

RILEY WALTER/ATTY. FOR DBT.

NO RULING.

6. [22-10416](#)-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**
[WJH-6](#)

CONTINUED MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
6-7-2022 [[112](#)]

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

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 hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). On August 31, 2022, the lessors of the lease to be assumed filed a response stating that the lessors have no objection to assumption of the lease consistent with a stipulation for assumption of the lease entered into by the debtor and the lessors on August 30, 2022. Doc. #231. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered.

KR Citrus, Inc. ("DIP"), the debtor and debtor in possession in this chapter 11 subchapter V case, moves the court for authorization to assume an amended and restated agricultural lease dated January 1, 2009, including all modifications and amendments (the "Assumed Lease"), by and between DIP and Gary J. Icardo and Cynthia C. Icardo, as trustee of the Gary and Cynthia Icardo 2009 Revocable Trust, Elvin G. Berchtold and Ida E. Berchtold, as trustees of the Berchtold Family Trust dated September 23, 1998, and Richard Alan Harrison (collectively, "Lessors"). Doc. #112; Ex. A, Doc. #116. The Assumed Lease is for 100 acres of farmland located in Kern County, California on which DIP grows organic citrus fruit, including navel oranges, organic valencia oranges, and organic lemons. Decl. of James Reed ("Reed Decl."), Doc. #115. The Assumed Lease terminates on December 31, 2027, unless there is fruit to be harvested in the citrus orchards, in which case the lease will expire on June 1, 2028. Id. Annual rent on the leased agricultural property in the amount of \$94,018.00 is due twice a year: one-half on July 15 and the remaining balance on December 31 of each year. Id. At the time the bankruptcy petition was filed, DIP was not current on payments due under the Assumed Lease. Id. Pursuant to a stipulation for assumption of the Assumed Lease entered into by DIP and Lessors on August 30,

2022 ("Stipulation"), Lessors are prepared to consent to assumption of the Assumed Lease provided DIP confirms its plan of reorganization and pays Lessors all amounts necessary to cure all defaults under the terms of the Assumed Lease no later than the effective date of DIP's confirmed plan. Doc. ##229, 231.

Section 365(a) of the Bankruptcy Code states that "subject to the court's approval, [the debtor in possession] may assume [any] unexpired lease of the debtor." In evaluating a decision under § 365(a) to assume an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." Agarwal v. Pomona Valley Med. Grp., Inc. (In re Pomona Valley Med. Grp., Inc.), 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted). The bankruptcy court should approve the assumption under § 365(a) unless the debtor in possession's conclusion is based on bad faith, whim, or caprice. Id.

In addition, if there has been a default in the lease to be assumed, § 365(b)(1) "imposes several preconditions that must be met before assumption may be allowed." Smart Capital Invs. I, LLC v. Hawkeye Entm't, LLC (In re Hawkeye Entm't, LLC), 49 F.4th 1232, 1236 (9th Cir. 2022). The Ninth Circuit summarized these requirements as follows:

[A] debtor-in-possession may assume a lease only if it: (A) cures the default (or provides adequate assurances that it will); (B) provides compensation for any actual pecuniary loss resulting from the default (or provides adequate assurances that it will); and (C) provides adequate assurances of future performance under the lease.

Id. (emphasis in original) (citing 11 U.S.C. § 365(b)(1)(A)-(C)). The Ninth Circuit held that a debtor-in-possession must meet the requirements of 11 U.S.C. § 365(b)(1) before the bankruptcy court can approve an assumption "where a default has occurred regardless of whether that default has been resolved or is ongoing." Hawkeye Entm't, 49 F.4th at 1237.

Here, DIP's motion concedes that DIP is in default under the Assumed Lease. By a supplemental pleading filed by DIP on January 19, 2023, DIP states that, as of December 31, 2022, DIP has a small, uncured balance of \$4,225.00 consisting of legal fees. Doc. #375. DIP intends to pay all sums owed to Lessors as of confirmation of DIP's proposed plan, so all defaults will be cured. Id. DIP further states that assurance of future performance is shown by DIP's payment of all non-default rent and DIP's payment of defaulted sums plus significant legal fees. Id. In addition, the budgets attached to the proposed plan of reorganization provide for ongoing rent payments, and there have been no objections to feasibility of the proposed plan. Id.

Based on the supplemental pleading and the pleadings filed with respect to the proposed plan, the court finds that DIP has met the preconditions required by Hawkeye Entm't before assumption can be granted. The court is inclined to grant the motion consistent with the Stipulation.

CONTINUED CONFIRMATION HEARING RE: AMENDED CHAPTER 11 SMALL BUSINESS
SUBCHAPTER V PLAN
12-21-2022 [[353](#)]

RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Confirmed.

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.

KR Citrus, Inc. ("Debtor"), the debtor and debtor in possession in this Subchapter V Chapter 11 case, moves the court for confirmation of its Second Amended Plan of Reorganization dated May 31, 2022 as corrected by the Notice of Errata and Modifications (collectively, the "Plan"). Doc. ##353, 360, 406. The hearing to confirm the Plan was set by order of the court filed on December 21, 2022 ("Order"). Doc. #349. In the Order, the court ordered transmission of the Plan, Order, ballots, and notice of the confirmation hearing by December 21, 2022; acceptances or rejections of the Plan, and objections to confirmation by February 1, 2023; and responses to objections, tabulation of ballots, and brief by February 8, 2023. The court finds notice and service of the Plan and related documents were proper and the confirmation hearing should proceed. Doc. ##354, 357, 361. No objections to confirmation of the Plan have been filed.

At a hearing held on February 15, 2023, the court requested that Debtor supplement the record before the court would confirm the Plan. Debtor filed supplemental pleadings on March 10, 2023 and March 15, 2023. Doc. ##406-408, 410-413. Based on the record before the court, the court will confirm the Plan.

The court finds that the Plan meets the requirements of 11 U.S.C. § 1190. Specifically, the Plan includes a brief history of Debtor's business operations, a liquidation analysis, and projections with respect to the ability of Debtor to make payments under the proposed Plan as required by § 1190(1). The Plan provides for the submission of all or such portion of Debtor's future earnings or other future income to the supervision and control of the Subchapter V Trustee as is necessary for the execution of the Plan as required by § 1190(2). The court finds § 1190(3) does not apply to the Plan.

Section 1191 of the Bankruptcy Code governs plan confirmation in Subchapter V. Here, § 1129(a)(8) has not been satisfied because three classes of impaired claims (Classes 3.3, 3.14 and 4), consisting of two classes of secured claims and one class of general unsecured claims, did not return ballots accepting the Plan. Thus, the Plan must be confirmed under § 1191(b).

In the Plan, Debtor requests confirmation on a non-consensual basis under § 1191(b). 11 U.S.C. § 1191(b) provides in relevant part:

[I]f all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair

and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1191(b). For a plan to be fair and equitable with respect to a class of secured claims that is impaired and has not accepted the Plan, the Plan must meet the requirements of § 1129(b)(2)(A). 11 U.S.C. § 1191(b), (c)(1). For a plan to be fair and equitable with respect to a class of unsecured creditors that is impaired and that has not accepted the Plan, the Plan must meet the requirements of § 1191(c)(2) and § 1191(c)(3). 11 U.S.C. § 1191(b), (c)(2)-(3).

With respect to § 1129(a)(1), the Plan complies with the applicable provisions of Chapter 11 and meets the applicable mandatory provisions of 11 U.S.C. § 1123(a). The provisions of § 1123(a)(6) of the Code, which relate to the issuance of securities pursuant to a reorganization plan, are not applicable in this case. The provisions of § 1123(a)(8) do not apply in a Subchapter V case. 11 U.S.C. § 1181. The Plan:

- (1) Designates classes of claims other than claims of a kind specified in Bankruptcy Code sections 507(a)(2), 507(a)(3), or 507(a)(8) as required by § 1123(a)(1). The claims are Class 1 (priority claims); Class 2 (priority tax claims), Classes 3.1 through 3.17 (secured claims), Class 4 (administrative convenience claims), Class 5 (general unsecured claims); Class 6 (insiders) and Class 7 (equity interests).
- (2) Specifies the classes that are not impaired under the Plan (Classes 1, 2, 3.2 and 3.4 through 3.13) as required by § 1123(a)(2).
- (3) Specifies the treatment of any class of claims or class of interest which is impaired under the Plan (Classes 3.1, 3.3, 3.14 through 3.17, 4, 5, 6 and 7) as required by § 1123(a)(3).
- (4) Provides for the same treatment for each claim or interest of a particular class as required by § 1123(a)(4).
- (5) Provides adequate means for the implementation and execution of the Plan as required by § 1123(a)(5).
- (6) Contains no provisions inconsistent with the interests of creditors and equity security holders and public policy with respect to the manner of selection of any officer, director, or trustee under the Plan and any successor to such officer, director, or trustee as required by § 1123(a)(7).
- (7) Provides for the assumption or rejection of all executory contracts and unexpired leases not expressly rejected by Debtor in accordance with Debtor's sound business judgment as required by § 1123(b)(2).

Debtor, as proponent of the Plan, provided adequate disclosure regarding the Plan to all creditors and interest holders in good faith and has complied with the applicable provisions of Chapter 11 as required by § 1129(a)(2).

The Plan has been proposed in good faith and not by any means forbidden by law as required by § 1129(a)(3).

Pursuant to § 1129(a)(4), the Plan provides that payments made or to be made to Debtor's attorneys and other professionals in connection with the case or the Plan are subject to approval of the court.

The Plan provides that Debtor will be responsible for implementation of the Plan and Debtor's existing shareholders, Jim Reed and Janina Reed, will continue to manage Debtor and the subchapter V trustee will continue to serve until all plan payments are made, which is consistent with interests of creditors and equity security holders and with public policy as required by § 1129(a)(5).

Section 1129(a)(6) is inapplicable and no changes in regulatory rates are provided for in the Plan.

Pursuant to § 1129(a)(7), each holder of a claim or interest in an impaired class has either accepted the Plan or will receive an amount equal to or greater than the amount such holder of a claim or interest would receive in a Chapter 7 case. No member of Classes 3.3, 3.14 or 4 returned a ballot. Class 3.3 secured creditor claimant will retain its lien and be paid in full through monthly payments ending December 15, 2050. Plan, § 7.3.3, Doc. #353. The collateral for Class 3.14 secured creditor claimant was abandoned during the bankruptcy case, and any remaining claim owed to the Class 3.14 claimant is to be included in Class 5 (general unsecured claims). Plan, § 7.3.14, Doc. #353. Class 4 administrative convenience claimants will be paid in full within 180 days after confirmation of the Plan. Plan, § 7.4.2, Doc. #353. Because general unsecured creditor claimants would not receive any distribution in a hypothetical Chapter 7 liquidation, the Plan provides more to administrative convenience unsecured creditors than those creditors would receive in a Chapter 7 case. Plan, § 7.4.2, Doc. #353; Plan, Ex. B, Doc. #353.

Section 1129(a)(8) has not been satisfied because Classes 3.3, 3.14 or 4 did not return any ballots either accepting or rejecting the Plan. Bell Road Inv. Co. v. M Long Arabians (In re M Long Arabians), 103 B.R. 211, 215-16 (B.A.P. 9th Cir. 1989) (holding that when no creditors within a class vote to accept a plan, that class is deemed to have rejected the plan). Nevertheless, Section 1129(a)(8) need not be satisfied if the Subchapter V plan is confirmed, as here, under § 1191(b).

Pursuant to § 1129(a)(9), the Plan provides for treatment of claims under 11 U.S.C. §§ 507(a)(1), 507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6), 507(a)(7) and 507(a)(8), to the extent there are any, in a manner consistent with 11 U.S.C. § 1129(a)(9).

Section 1129(a)(10) need not be satisfied if the Subchapter V plan is confirmed, as here, under § 1191(b).

Regarding § 1129(a)(11), payments under the Plan are to be made from future income of Debtor as well as an infusion of cash to Debtor from Sunburst Packing, LLC ("Sunburst"), an entity that also is owned by Debtor's equity interest holders. Ex. 1, Doc. #407. The court finds, based on the evidence submitted by Debtor, that the Plan is feasible and confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of Debtor or any successor to Debtor under the Plan.

Section 1129(a)(12) has been satisfied because all fees due under 28 U.S.C. § 1930 have been paid.

Sections 1129(a)(13)-(16) are not applicable to this case.

Pursuant to § 1191(c)(1), with respect to a class of secured claims, the Plan meets the requirements of § 1129(b)(2)(A). Section 1129(b)(2)(A) provides that a plan is "fair and equitable" with respect to a class of secured claims if the plan provides:

- (1) the secured claimant retains his or her liens securing repayment of the creditor's claim, and
- (2) the secured claimant receives the present value of his or her claim on the effective date of the plan.

The court finds that the Plan is fair and equitable as to Class 3.3 (Small Business Administration) and Class 3.14 (Huntington National Bank). The Plan satisfies 11 U.S.C. § 1129(b)(2)(A) with respect to Class 3.3 by providing that the claim in remains fully secured and will be paid in full with interest through monthly payments through monthly payments ending December 15, 2050. Plan, § 7.3.3, Doc. #353. The Plan satisfies 11 U.S.C. § 1129(b)(2)(A) with respect to Class 3.14 because the collateral securing the Class 3.14 claimant has been abandoned to the Class 3.14 secured creditor and any remaining claim after liquidation of the collateral will be treated as a general unsecured claim. Plan, § 7.3.14, Doc. #353

Because Class 4 is a class of unsecured claims, the Plan must comply with § 1191(c)(2) and (c)(3). Section 1191(c)(2) requires that all projected disposable income received in the four years of the Plan be applied to make payments under the Plan or that the value of the property to be distributed under the Plan is greater than the projected disposable income of Debtor. While "projected disposable income" is not defined in the Bankruptcy Code, § 1191(d) provides that, for purposes of § 1191, "the term 'disposable income' means the income that is received by the debtor and that is not reasonably necessary to be expended . . . for the payment of expenditures necessary for the continuation, preservation or operation of the business of the debtor." 11 U.S.C. § 1191(d)(2).

Based on the revised Plan projections, all of the projected disposable income Debtor will receive during the four-year term of the Plan is being applied to make payments under the Plan as is required under 11 U.S.C. § 1191(c)(2)(A). Ex. 1, Doc. #407.

Section 1191(c)(3) requires that either Debtor will be able to make all payments under the Plan or there is a reasonable likelihood that Debtor will be able to make all payments under the Plan and the Plan provides appropriate remedies in the event Plan payments are not made.

With respect to § 1191(c)(3)(A), payments under the Plan are to be made from future income of Debtor as well as an infusion of cash to Debtor from Sunburst Packing, LLC, an entity that also is owned by Debtor's equity interest holders. Ex. 1, Doc. #407. Based on Debtor's filed monthly operating reports, the net income during Debtor's chapter 11 case is \$24,743.46 while the projected net income based on Debtor's cash collateral budget was -\$21,134. Monthly operating report for February 2023, Doc. #404. In addition, Debtor will receive a cash infusion from Sunburst to ensure that Plan payments are made. Ex. 1, Doc. #407. Accordingly, the court finds Debtor will be able to make all payments under the Plan, so the Plan satisfies § 1191(c)(3)(A).

With respect to § 1191(c)(3)(B), the Plan satisfies Section 1191(c)(3)(A); therefore, the Plan does not need to provide any remedies to protect the holders of claims or interests in the event payments due under the Plan are not made. Accordingly, § 1191(c)(3)(B) does not need to be satisfied.

Accordingly, confirmation of the Plan is proper under 11 U.S.C. § 1191(b), and the Plan will be confirmed.

MOTION TO BORROW
3-1-2023 [\[121\]](#)

FUTURE VALUE CONSTRUCTION, INC./MV
D. GARDNER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if record adequately supplemented at the hearing.

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 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). Therefore, the defaults of the above-mentioned parties in interest are entered. This matter will proceed as scheduled to permit the debtor to address the requirements of LBR 4001-1(c)(3).

As an informative matter, the caption of the notice of hearing indicates that the motion to be heard is a motion to approve borrowing/priming loan under 11 U.S.C. § 364(d)(1); however, the body of the notice of hearing states that the motion to be heard is the debtor's motion to utilize funds held in escrow. Doc. #122. In the future, the body of the notice of hearing should refer to the actual motion that is set for hearing.

By this motion, Future Value Construction, Inc. ("Debtor" or "DIP") seeks to borrow up to \$250,000 from CAVU/Rock Project 1, LLC ("Lender") secured by a second deed of trust against DIP's real property commonly referred to as Lot 16 in Lakeview at Rio Bravo (the "Property"). Decl. of Chuck A. Thomason, Doc. #123. The purpose of the loan is to complete the construction of a house on the Property so that the Property can be sold. Id. Lender already holds a second deed of trust on the Property that secures a \$40,000 loan pursuant to a promissory note dated April 11, 2019. Letter of intent, Ex. A, Doc. #124. Interest on the post-petition loaned funds will be 6% per annum from the date received by DIP. Id. The loan will be repaid upon the sale of the Property. Id.

Section 364(c) provides:

If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

. . .

(2) secured by a lien on property of the estate that is not otherwise subject to a lien[.]; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c). In a chapter 11 case, the debtor in possession has the rights and powers of a trustee. 11 U.S.C. § 1107(a). Debtors in possession must obtain the approval of the bankruptcy court when they wish to incur secured debt. 11 U.S.C. § 364(c)(2) and (3); In re Harbin, 486 F.3d 510, 521 (9th Cir. 2007). Section 364(c)(2) and (3) provide exceptions to the general prohibition against creating post-petition encumbrances on property of the bankruptcy estate. Harbin, 486 F.3d at 521.

Courts generally give debtors in possession considerable deference to determine, in their business judgment, the terms under which they obtain post-petition secured credit. See, e.g., In re Los Angeles Dodgers LLC, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender."); In re Ames Dep't Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.").

To determine whether a debtor in possession has met this business judgment standard, a court need only "examine whether a reasonable business person would make a similar decision under similar circumstances." In re Exide Techs., 340 B.R. 222, 239 (Bankr. D. Del. 2006); see also In re Curlew Valley Assocs., 14 B.R. 506, 513-14 (Bankr. D. Utah 1981) (recognizing the court should not entertain objections to a trustee's business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the [Bankruptcy] Code").

Before granting the motion, the court has a few issues that need to be addressed at the hearing or in supplemental pleadings. First, the motion does not contain a copy of the proposed credit agreement or the proposed order as required by Federal Rule of Bankruptcy Procedure 4001(c)(A). Second, DIP has not complied with LBR 4001-1(c)(3). LBR 4001-1(c)(3) requires DIP to identify and provide substantial justification if certain provisions are contained in the post-petition financing transaction with Lender.

Assuming DIP can adequately satisfy the court's concerns at the hearing, the court is inclined to grant the motion. The declaration of Chuck A. Thomason provides evidence for the court to make a finding that the proposed loan is needed to complete the house on the Property so the Property can be sold and DIP will have a better chance of obtaining take-out financing. Thomason Decl., Doc. #123. The declaration of Chuck A. Thomason also provides evidence for the court to make a finding that DIP has shown that DIP is unable to obtain an unsecured loan for the amount requested by the motion. Id. In addition, the declaration of Chuck A. Thomason provides evidence that there is sufficient equity in the Property to support the pre-petition lenders and the post-petition loan. Id.

If DIP can adequately satisfy the court's concerns at the hearing, the motion will be granted.

9. [22-12016](#)-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
[MBR-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
1-27-2023 [\[62\]](#)

JAYCO PREMIUM FINANCE OF CALIFORNIA, INC./MV
D. GARDNER/ATTY. FOR DBT.
MARSHALL HOGAN/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

10. [22-12016](#)-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
[MBR-2](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
1-27-2023 [\[69\]](#)

JAYCO PREMIUM FINANCE OF CALIFORNIA, INC./MV
D. GARDNER/ATTY. FOR DBT.
MARSHALL HOGAN/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

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

FINAL HEARING RE: MOTION TO PAY PRIORITY WAGES
3-1-2023 [\[39\]](#)

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 20 through February 23, 2023 in the amount of \$46,059.74 ("Interim Order"). Doc. #65. 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 20 through February 23, 2023. Doc. #39.

The motion was heard initially on March 9, 2023 and was granted on an interim basis by the Interim Order. Doc. #65. A final hearing was set for March 29, 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. ##41, 53. 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 20 through February 23, 2023 in the amount of \$46,059.74 on a final basis.

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

12. [20-12258](#)-A-11 **IN RE: JARED/SARAH WATTS**
[LKW-19](#)

MOTION TO SELL
2-28-2023 [[370](#)]

SARAH WATTS/MV
LEONARD WELSH/ATTY. FOR DBT.

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 to sell shows that the motion and related pleadings were not served on the following secured creditors affected by the motion: Safe 1 Credit Union and Kern County Treasurer - Tax Collector. Doc. #375. Only the notice of motion was served electronically pursuant to Federal Rule of Civil Procedure 5 and Federal Rules of Bankruptcy Procedure ("Rule") 7005, 9036 Service on Safe 1 Credit Union. Doc. #375. Kern County Treasurer - Tax Collector was not served with any papers related to this motion. Id.

Rule 9014(b) requires service of a motion to sell to be made pursuant to Rule 7004. Rule 7004(b)(3) provides that service upon a domestic or foreign corporation be given "to the attention of an officer, managing or general agent, or to any other agent authorized by appointment or law to receive service of process[.]" Fed. R. Bankr. P. 7004(b)(3). Rule 7004(b)(6) provides that service upon a governmental organization be given "by mailing a copy of

the summons or complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof." Fed. R. Bankr. P. 7004(b)(6). Rule 9036(e) does not permit electronic service when any paper is required to be served in accordance with Rule 7004.

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

13. [23-10571](#)-A-11 **IN RE: NABIEKIM ENTERPRISES**
[FW-2](#)

MOTION TO USE CASH COLLATERAL
3-24-2023 [[6](#)]

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

NO RULING.

14. [23-10571](#)-A-11 **IN RE: NABIEKIM ENTERPRISES**
[FW-3](#)

MOTION TO PAY
3-24-2023 [[11](#)]

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

NO RULING.

1. [23-10204](#)-A-7 **IN RE: GEORGE PULVINO**

PRO SE REAFFIRMATION AGREEMENT WITH NAVY FEDERAL CREDIT UNION
2-28-2023 [[23](#)]

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

The hearing on this reaffirmation agreement was set by the court. Doc. #24. The matter will proceed as scheduled.

On February 28, 2023, George Pulvino ("Debtor"), the chapter 7 debtor in this bankruptcy case, filed a motion to approve a reaffirmation agreement ("Agreement") to reaffirm the obligation Debtor owes to secured creditor Navy Federal Credit Union ("Creditor") that is secured by a 2007 Lexus RX350. Doc. #23. The Agreement is not signed by Creditor. Doc. #23.

A debtor's unilateral reaffirmation of a pre-petition debt does not constitute a valid reaffirmation agreement for purposes of 11 U.S.C. § 524(c). In re Turner, 156 F.3d 713 (7th Cir. 1998).

Because only Debtor has agreed to the Agreement, the Agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not approved.

1. [23-10009](#)-A-7 **IN RE: DEBORAH MART**
[PFT-1](#)

MOTION TO EMPLOY GOULD AUCTION AND APPRAISAL COMPANY AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF
AUCTIONEER FEES AND EXPENSES
3-1-2023 [\[15\]](#)

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

Peter L. Fear ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Deborah L Mart ("Debtor"), moves the court for an order authorizing (1) the employment of Gould Auction and Appraisal Company ("Auctioneer"); (2) the sale of a 2012 Kia Optima (the "Property") at public auction on or after April 8, 2023, at 9:00 a.m. at 6200 Price Street, Bakersfield, California; and (3) the estate to pay Auctioneer commission and expenses. Tr.'s Mot., Doc. #15.

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. Decl. of Peter L. Fear, Doc. #17. Trustee's experience indicates that a sale of the Property at public auction will yield the highest net recovery to the estate. Doc. #15. The proposed sale is made in good faith.

Section 327(a) of the Bankruptcy Code provides, in relevant part, "the trustee, with the court's approval, may employ . . . auctioneers . . . that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a). The trustee may, with the court's approval, employ an auctioneer on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. 11 U.S.C. § 328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

The court finds that Auctioneer is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Decl. of Jerry Gould, Doc. #18. Trustee requires Auctioneer's services to advertise the sale of the Property, assist in storing the Property until sold, and assist in other matters related to the auction sale of the Property. Doc. #15. Trustee has agreed to pay Auctioneer a commission of 15% of the gross sale price and a reimbursement for up to \$500.00 for extraordinary expenses and a \$350.00 pick-up fee. Fear Decl., Doc. #17. Auctioneer will also receive a 10% buyer's premium, which is on top of the bid price of the sale of personal property, paid directly from seller to Auctioneer. Id. Trustee unambiguously requests pre-approval of payment to Auctioneer pursuant to § 328. Doc. #15.

Accordingly, this motion is GRANTED. Trustee's business judgment is reasonable and the proposed sale of the Property at public auction is in the best interests of creditors and the estate. The arrangement between Trustee and Auctioneer is reasonable in this instance. Trustee is authorized to sell the Property on the terms set forth in the motion. Trustee is authorized to employ and pay Auctioneer for services as set forth in the motion. Trustee shall submit a form of order that specifically states that employment of Auctioneer has been approved pursuant to 11 U.S.C. § 328.

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-17-2023 [\[19\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV
SCOTT LYONS/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
DISCHARGED 03/16/23

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

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

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo 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 certificate of service filed in connection with the motion (Doc. #24) 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 and not file the fillable version.

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 March 16, 2023. Doc. #25. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

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 2022 Toyota Tacoma ("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 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 \$2,643.90. Doc. #21.

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. Id. The Vehicle is valued at \$32,775.00 and the debtor owes \$49,052.48. Doc. #19. According to the debtor's Statement of Intention, the Vehicle will be surrendered. 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.

3. [21-11034](#)-A-7 **IN RE: ESPERANZA GONZALEZ**
[DMG-5](#)

CONTINUED MOTION FOR COMPENSATION FOR D. MAX GARDNER, TRUSTEES ATTORNEY(S)
1-4-2023 [\[208\]](#)

D. GARDNER/ATTY. FOR MV.
RESPONSIVE PLEADING

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 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice 9014-1(f)(2). At the initial hearing held on January 25, 2023, the debtor objected to this court granting the motion until the Office of the United States Trustee had had an opportunity to review the debtor's allegations regarding the conduct of the chapter 7 trustee, James E. Salven ("Trustee"), in this case that the debtor had dropped off at the Office of the United States Trustee that day. Court Audio, Doc. #224. The debtor stated on the record that she did not oppose this court granting this motion so long as the Office of the United States Trustee had had the opportunity to review the debtor's allegations. Id. The court continued the hearing to March 29, 2023, to give the Office of the United States Trustee an opportunity to investigate and otherwise consider the debtor's allegations regarding Trustee's conduct. Id.

The Office of the United States Trustee has, among other things, oversight responsibilities for chapter 7 trustees. At the end of a chapter 7 case, a chapter 7 trustee submits a final report to the Office of the United States Trustee and, if the Office of the United States Trustee does not have any issues with the final report or the conduct of the chapter 7 trustee in a particular case, then Office of the United States Trustee files the final report with the court. Handbook for Chapter 7 Trustees (Effective as of October 1, 2012, as amended through June 2022), § 4.J.1, pp. 4-32 to 4-33, <https://www.justice.gov/ust/page/file/762521/download>.

On March 7, 2023, Trustee's final report was filed in this bankruptcy case. Doc. #243. The docket entry for the final report states: "Chapter 7 Trustee's Final Report, Application for Compensation and Applications for Compensation of Professionals filed on behalf of Trustee James Edward Salven. The United States Trustee has reviewed the Chapter 7 Trustee's Final Report. Filed by U.S. Trustee. (Semana, Monette)[.]" Doc. #243. Because the Office of United States Trustee filed the final report in this case, the Office of the United States Trustee must have reviewed and considered the debtor's allegations against Trustee in this case. Therefore, based on the debtor's statements on the record at the January 25, 2023 hearing, this motion can be granted.

D. Max Gardner, Attorney at Law ("Movant"), attorney for Trustee, requests allowance of final compensation and reimbursement for expenses for services rendered from October 21, 2021 through December 28, 2022. Doc. #208. Movant provided legal services valued at \$21,590.00, and requests compensation for that amount. Doc. #208. Movant requests reimbursement for expenses in the amount of \$284.21. Doc. #208. 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) drafting motion to compromise interest in property; (3) completing reply documents to opposition of motion to compromise; (4) drafting motion to abandon; (5) preparing supplemental points and authorities and supplemental declaration of Trustee regarding motion to compromise ABLP litigation; and (6) preparing and filing employment and fee applications. Decl. of D. Max Gardner, Doc. #210; Ex. A, Doc. #211. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

Accordingly, the court is inclined to GRANT Movant's motion to for compensation. The court allows final compensation in the amount of \$21,590.00 and reimbursement for expenses in the amount of \$284.21. Trustee is authorized to make a combined payment of \$21,874.21, 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.

CONTINUED MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
2-7-2023 [\[226\]](#)

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

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 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2). At the initial hearing held on March 15, 2023, the debtor Esperanza Hansen Gonzalez ("Debtor") objected to this court granting the motion and filed written opposition. Doc. #252. The court continued the hearing to March 29, 2023 to permit the moving party the opportunity to review Debtor's written opposition and file a reply. No reply to Debtor's opposition has been filed.

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 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. #79; 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.

In her opposition, Debtor requests that this court delay ruling on this motion because Debtor has an open investigation into the conduct of Trustee and counsel for Trustee with respect to their actions in this bankruptcy case. Doc. #252. However, Debtor does not dispute that an order discharging Debtor was entered on August 16, 2021, Doc. #53, or that Debtor and Trustee completed a sale of the Estate's interest in the Property to Debtor pursuant to the entry of the Compromise Order, Doc. #79, and Debtor's payment in full to the Estate for the Estate's interest in the Property.

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).

With respect to the Estate, 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 penalty claims and preserve the amount avoided for the benefit of the Estate. Mot. to Compromise Claims, Doc. #73. If Trustee avoided the tax penalty liens as allowed under the Bankruptcy Code, 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 of Trustee seeking to avoid the tax liens, Trustee negotiated and entered into a Compromise with Debtor to sell the Estate's interest to avoid the tax liens 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 at ¶¶ 3, 5, Doc. #229. Trustee filed and served a motion to approve the Compromise. Id. at ¶ 4. 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.

Based on the evidence in this case, the court 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).

11 U.S.C. § 362(d) (1) Analysis

Even if the stay were in place, the court finds grounds exist 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.

5. [23-10046](#)-A-7 **IN RE: LARRY OHANO**
[TCS-1](#)

MOTION TO AVOID LIEN OF THE BEST SERVICE CO, INC.
3-6-2023 [\[13\]](#)

LARRY OHANO/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 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. 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.

Larry Ohano ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of The Best Service Co., Inc. ("Creditor") on the residential real property located at 1436 E. Browning Ave. Fresno, CA 93710 (the "Property"). Doc. #13; 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 debtors' 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)).

Debtor filed the bankruptcy petition on January 10, 2023. Doc. #1. A judgment was entered against Larry Ohano in the amount of \$10,077.60 in favor of Creditor on February 26, 2020. Ex. B, Doc. #16. The abstract judgment was recorded pre-petition in Fresno County on August 11, 2020, as document number 2020-0103260. Ex. B, Doc. #16. The abstract judgment was erroneously re-recorded in Fresno County on November 16, 2022, as document number 2022-0140051. Ex. C, Doc. #16. The lien attached to Debtor's interest in the Property located in Fresno County. Doc. #13. The Property also is encumbered by a first deed of trust in favor of Chase Manhattan Mortgage Corporation in the amount of \$203,095.00. Schedule D, Doc. #1. Debtor claimed an exemption of \$180,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the

petition date at \$413,895.00 and owns \$206,947.50 as a joint tenant.
Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$10,077.60
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$203,095.00
Amount of Debtor's claim of exemption in the Property	+	\$180,000.00
		\$383,095.00
Value of Debtor's interest in the Property absent liens	-	\$206,947.50
Amount Creditor's lien impairs Debtor's exemption		\$176,147.50

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 Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

6. [23-10061](#)-A-7 **IN RE: KYLE/LINDSEY TAYLOR**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-17-2023 [\[16\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV
DAVID CHUNG/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 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo 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 certificate of service filed in connection with the motion (Doc. #21) 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 and not file the fillable version.

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 2014 Toyota Tundra ("Vehicle"). Doc. #16.

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 five complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$2,718.07. Doc. #16.

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 \$21,875.00 and the debtors owe \$30,233.36. Doc. #18. According to the debtors' Statement of Intention, the Vehicle will be surrendered. 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.

7. [22-12068](#)-A-7 **IN RE: ARMANDO GUTIERREZ**
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-17-2023 [\[54\]](#)

HB1 ALTERNATIVE HOLDINGS, LLC/MV
DANE EXNOWSKI/ATTY. FOR MV.

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

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

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered

and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The 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 March 22, 2023. Doc. #66. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, HB1 Alternative Holdings, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to real property located at 5146 N Sherman Ave, Fresno, California 93710 (the "Property"). Doc. #54. Movant requests relief from the automatic stay to pursue an unlawful detainer action in state court and to proceed under applicable non-bankruptcy law to enforce Movant's remedies to gain possession of the Property. Doc. #54.

11 U.S.C. § 362(d)(1) Analysis

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985). When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court may consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in determining whether to grant relief from the automatic stay" to allow litigation in another forum. Id. The Curtis factors include: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the non-bankruptcy forum has the expertise to hear such cases; (4) whether litigation in another forum would prejudice the interests of other creditors; and (5) the interest of judicial economy and the expeditious and economical determination of litigation for the parties. In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984).

Here, granting Movant's relief from the stay will completely resolve the issue of Debtor's unlawful possession of the Property as Debtor does not have or asserts an interest in the Property. Movant is the successor via a grant deed to the grantee Fannie Mae under the trustee's deed upon sale dated December 20, 2021 with respect to the Property. Doc. #54. The Property was foreclosed upon pre-petition on November 30, 2021 pursuant to the power of sale contained within a Deed of Trust that was executed by Rose S. Zaladana as Trustor, and under which Movant was beneficiary. Id. On May 5, 2022, Debtor was served with a Notice to Vacate that expired on September 9, 2022 requiring "All Persons in Possession" of the Property to quit and deliver up possession of the Property. Id.; Ex. C, Doc. #56. The previous owner of the Property and others, including Debtor, failed and refused to deliver possession of the Property after expiration of the Notice to Vacate. Id. On October 21, 2022, Movant initiated an unlawful detainer action in Superior Court, County of Fresno, ("State Court") to enforce its interests in the Property against the previous owner of the Property and others, including Debtor, who claim an interest in the Property. Id.; Ex. B, Doc. #56. Further, Debtor's bankruptcy petition, filed in this court on December 5, 2022, shows that Debtor does not have interest in the Property. Doc. #1. Although Debtor's voluntary petition lists the Property as Debtor's mailing address, the Property is not listed as Debtor's residence nor

has Debtor asserted any interest, possessory or otherwise, in the Property. Petition, Doc. #1; Schedule A/B, Doc. #1. Further, Debtor's Schedule G lists no executory contracts or unexpired leases. Schedule G, Doc. #1.

The State Court has expertise in unlawful detainer actions following a foreclosure sale. Movant is seeking possession of the Property of which the previous owner of the Property and others, including Debtor, have failed and refused to deliver possession of after a Notice to Vacate expired on September 9, 2022, and there will be no interference with the bankruptcy case. Ex. B, Doc. #56. Moreover, a Notice of Filing Report of No Distribution was filed on January 19, 2023 (Doc. #42), so permitting Movant to pursue a judgment in state court will not prejudice the interests of other creditors. Finally, the interests of judicial economy favor granting relief from the automatic stay so that Movant can retain possession of the Property and receive damages caused by the unlawful detention of the Property by the previous owner of the Property and others, including Debtor. Ex. B, Doc. #56.

For these reasons, the court finds that cause exists to lift the stay to permit Movant to continue in the State Court unlawful detainer action and enforce any resulting judgment.

11 U.S.C. § 362(d) (2) Analysis

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.

The court also finds that the debtor does not have any equity in the Property and is not the owner. Further, the Property is not necessary to an effective reorganization because the debtor is in chapter 7. Id.

Conclusion

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d) (1) and (d) (2) to permit Movant to proceed under applicable nonbankruptcy law to continue to prosecute the unlawful detainer action against Debtor and to enforce any resulting judgment for unlawful detainer, including all necessary steps to obtain possession of the Property from Debtor.

The 14-day stay of Fed. R. Bankr. P. 4001(a) (3) will be ordered waived to permit the State Court proceeding to continue.

MOTION/APPLICATION TO SELL, AND/OR MOTION FOR COMPENSATION FOR KELLER
WILLIAMS BAKERSFIELD, BROKER(S)
3-1-2023 [\[36\]](#)

PETER FEAR/MV
JEFFREY ROWE/ATTY. FOR DBT.
GABRIEL WADDELL/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 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.

Peter L. Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of
Judith Gail Diamond ("Debtor"), moves the court pursuant to 11 U.S.C. § 363 for
an order authorizing the sale of an empty lot located at 22935 Rim Way,
Tehachapi, CA 93561-8218 (the "Property") to Timothy Todd Huber ("Buyer") for
the purchase price of \$15,000.00, subject to higher and better bids at the
hearing. Doc. #36. Trustee states a preliminary title report shows that there
are real property taxes currently owed or in default on the Property, and these
taxes will be paid through escrow. Doc. #36; Decl. of Trustee, Doc. #38.
Trustee also seeks authorization to pay a 10% commission on the sale price to
Employ Keller Williams Bakersfield ("Broker"). Id. at ¶ 11.

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. Doc. #36. Buyer tendered an offer of \$15,000.00, which Trustee has accepted conditioned upon the court's approval and better and higher offers at the hearing. Id. The sale is "as is, where is" with no warranties or representations of any nature. Id. 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 \$11,772.63. Id. Property taxes will be paid through escrow, and there are no other liens or encumbrances. Id. Trustee expects to pay a \$1,500.00 commission to Broker and \$300.00 in costs of sale. Id.

Trustee requests that the court approve the following overbid procedures:

- (1) Deposit with counsel for Trustee certified monies in the amount of \$500.00 prior to the time of the sale motion hearing. Any unsuccessful bidder's deposit shall be returned at the conclusion of the hearing;
- (2) Provide proof in the form of a letter of credit, or some other written prequalification for any financing that may be required to complete the purchase of the Property sufficient to cover the necessary overbid amount;
- (3) Provide proof that any successful over bidder can and will close the sale within 15 days of delivery of a certified copy of the court's order approving the sale and execute a purchase agreement for the Property;
- (4) Any successful overbid shall have the \$500.00 deposit applied to the successful overbid;
- (5) In the event a successful overbidder fails to close the sale within 15 days of delivery of a certified copy of the court's order approving the sale and execute a purchase agreement for the Property, the \$500.00 deposit shall become non-refundable, and the next highest bidder shall become the buyer;
- (6) Any party wishing to overbid may do so by making an appearance at the hearing or having an authorized representative with written proof of authority to bid on behalf of the prospective overbidder;
- (7) All overbids shall be in the minimum amount of \$500.00 cash such that the first of any overbid shall be in the minimum amount of \$15,500.00; and
- (8) The sale of the Property is for "As-Is" condition with no warranty or representation, express, implied or otherwise by the bankruptcy estate, the Debtor or her representatives.

The Property will be sold at a price greater than the aggregate value of all liens on the Property and 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 the Property is subject to property taxes currently owed to Kern County that will be paid through escrow.

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 a percentage commission payment structure pursuant to 11 U.S.C. § 328. Order, Doc. #30.

Trustee seeks to pay Broker a 10% commission on the sale of the Property as the real estate broker for the sale, with the commission to be split equally with Buyer's broker. Decl. of Trustee, Doc. #38. Id. Trustee estimates that Broker's commission for the sale of the Property will equal \$1,500.00. 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.

9. [22-11499](#)-A-7 **IN RE: STEVEN HARO**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-17-2023 [\[40\]](#)

JPMORGAN CHASE BANK, N.A./MV
PETER BUNTING/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on March 27, 2023. Doc. #49.

10. [22-11933](#)-A-7 **IN RE: LORENA DE LA TRINIDAD**
[JES-1](#)

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A)
MEETING OF CREDITORS
2-19-2023 [\[13\]](#)

TRAVIS POTEAT/ATTY. FOR DBT.
OPPOSITION

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

As a procedural matter, the certificate of service filed in connection with the notice of hearing and opposition to trustee's motion to dismiss 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>.

In the notice of hearing and opposition to trustee's motion to dismiss filed on March 16, 2023, the debtor indicates that she attended the meeting of creditors held on December 2, 2022 but was not examined by the chapter 7 trustee Jim Salven ("Trustee") and that the debtor's attorney was unable to appear at the December 2 meeting because the debtor's attorney was not provided with an operable zoom link. Doc. #15. On January 15, 2023, the debtor and the debtor's attorney both appeared at the meeting of creditors and the debtor was examined successfully by Trustee. Id. Trustee continued the matter to February 16, 2023 in order for the debtor to take her two vehicles to Baird's Appraisal & Auction ("Baird's") for appraisal. Id. The debtor's attorney appeared at the continued meeting of creditors held on February 16, 2023, however the debtor failed to appear. Doc. #13. At the meeting of creditors held on February 16, 2023, Trustee stated that the debtor failed to take her vehicles to Baird's. Doc. #15.

On March 15, 2023, the debtor contacted her attorney's office and told her attorney's paralegal, Maria Ledezma ("Ms. Ledezma"), that the debtor was unable to take her two vehicles to Baird's for appraisal because both vehicles were non-operable and had transmission issues. Decl. of Maria Ledezma, Doc. #16. Further, the debtor stated that she intended to fix the transmission issues but could not afford to pay \$4,500 for a new transmission. Id. On this call, the debtor asked Ms. Ledezma if Baird's offered other methods to appraise a vehicle. Id. Since the debtor only speaks Spanish, Ms. Ledezma called Baird's to inform it of the two non-operable vehicles that needed to be appraised pursuant to Trustee's request. Id. Baird's indicated that if the debtor's two vehicles were non-operable, Ms. Ledezma should inform Trustee. Id. On March 16, 2023, Ms. Ledezma emailed Trustee about the non-operable vehicles to ask Trustee how to proceed. Id. at ¶ 7. Based on these events, the debtor requests that the meeting of creditors scheduled for April 13, 2023 at 2:00 p.m. move forward. Id.

The debtor shall attend the continued meeting of creditors scheduled for April 13, 2023 at 2:00 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.