

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, May 11, 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, **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.

11:00 AM

1. [21-10527](#)-B-7 **IN RE: ALFONSO VENEGAS**

PRO SE REAFFIRMATION AGREEMENT WITH NUVISION CREDIT UNION
4-19-2021 [\[15\]](#)

MONICA ROBLES/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

The debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

1:30 PM

1. [21-10604](#)-B-7 **IN RE: BREEZY HARBAN**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-12-2021 [\[11\]](#)

SANTANDER CONSUMER USA,
INC./MV
PATRICK KAVANAGH/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 2015 Nissan Altima ("Vehicle"). Doc. #11.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least

five pre-petition payments. The movant has produced evidence that debtor is delinquent at least \$2,692.70. Doc. #14, #16.

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 \$10,250.00 and debtor owes \$17,868.87. Doc. #14, #16.

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. Movant recovered the Vehicle pre-petition on February 17, 2021.

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

2. [21-10921](#)-B-7 **IN RE: ZACARIAS MORENO**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-20-2021 [\[11\]](#)

AMERICAN HONDA FINANCE
CORPORATION/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.

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

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least four complete pre- and post-petition payments. The movant has produced evidence that the debtor is delinquent at least \$2,719.34 plus late charges and fees of \$887.62. Doc. #14, #16.

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. Movant values the Vehicle at \$17,800.00 (Average Trade-in) and \$21,325.00 (Retail), and the amount owed to Movant is \$32,357.35. Doc. #14, #16.

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. Movant recovered the Vehicle pre-petition on March 6, 2021.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least four pre- and post-petition payments and the Vehicle is in Movant's possession.

3. [20-12159](#)-B-7 **IN RE: OGANES SHISHIKYAN**
[JDW-1](#)

MOTION TO AVOID LIEN OF DISCOVER BANK
4-13-2021 [\[27\]](#)

OGANES SHISHIKYAN/MV
JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

First, LBR 9004-2(a)(6), (b)(5), (b)(6), & (e) and LBR 9014-1(c) & (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

A Motion to Reopen Chapter 7 Bankruptcy Case was simultaneously filed on April 13, 2021 (Doc. #26) and the case was reopened April 14, 2021. Doc. #26. The DCN for that motion was JDW-1. This motion also has a DCN of JDW-1 and therefore does not comply with the local

rules. Each separate matter filed with the court must have a different DCN.

Second, LBR 9004-2(d) requires exhibits to be filed as a separate exhibit document and include an exhibit index and consecutively numbered pages.

In this instance, the exhibits were filed as four separate documents. Docs. ##31-34. The court notes that all exhibits may be filed in one document. LBR 9004-2(d)(1) only requires that the exhibits be separate from other non-exhibit documents, such as motions or declarations. This error is *de minimis*. However, the exhibits also did not contain an exhibit index and not all of them had consecutively numbered pages.

4. [21-10061](#)-B-7 **IN RE: JACINTO/KAREN FRONTERAS**
[JES-2](#)

MOTION TO EMPLOY BAIRD AUCTION AND APPRAISALS AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
4-9-2021 [\[21\]](#)

JAMES SALVEN/MV
GLEN GATES/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.

Chapter 7 trustee James E. Salven ("Trustee") asks the court to employ Baird Auctions & Appraisals ("Auctioneer") as auctioneer to sell property of the estate consisting of a 2001 Kawasaki motorcycle and a 2015 CanAm Spyder motorcycle (collectively "Property") at

public auction. The auction, which is set for June 1, 2021 at Baird Auctions & Appraisals, 1328 N. Sierra Vista, Suite B, Fresno, California. Doc. #21. Trustee requests to pay 15% of gross proceeds from the sale as compensation under 11 U.S.C. §§ 327(a) and 328, along with and up to \$1,500.00 for anticipated preparation, advertising, and storage expenses. Doc. #23. Trustee notes that Auctioneer also charges a buyer's premium of 10% on the purchase. *Id.* Trustee and Auctioneer both filed declarations stating that Auctioneer is a disinterested person as defined in § 101(14) and does not hold interests adverse to the estate as required by § 327(a). *Id.*; Doc. #24.

This motion will be GRANTED.

11 U.S.C. § 327 provides:

(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, 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). 11 U.S.C. § 328(a) permits employment of "a professional person under section 327" 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." Section 328(a) further "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.'" *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002).

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

Proposed sales under 11 U.S.C. § 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 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 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.* citing *In re Psychometric Systems, Inc.*, 367 B.R. 670, 674 (Bankr.

D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Trustee wishes to sell Property under 11 U.S.C. § 363(b). Doc. #21. Property is listed in the petition as follows:

2015 CanAm:	\$5,000.00
2001 Kawasaki:	<u>\$ 550.00</u>
Total:	\$5,550.00

Doc. #1, Schedule A/B, ¶¶ 3.1, 3.4. The CanAm is exempted in the amount of \$550.00 under Cal. Civ. Proc. Code § 704.010 and the Kawasaki is not exempted. *Id.*, Schedule C. Neither motorcycle is encumbered by secured creditors. *Id.*, Schedule D. Thus, \$5,000.00 in liquidity remains for the benefit of the estate.

Trustee believes that using an auction process to sell Property will result in the quickest liquidation of Property at the fair market price. Doc. #23. Sale by auction under these circumstances should maximize potential recovery for the estate because the Property will be exposed to a large number of prospective purchasers. Therefore, it is an appropriate exercise of Trustee's business judgment.

Trustee will be authorized to employ Auctioneer to sell Property at public auction. Trustee will also be authorized to compensate Auctioneer on a percentage collected basis, 15% of the gross proceeds from the sale, and reimbursement of reasonable expenses of up to \$1,500.00.

The court finds the proposed arrangement reasonable in this instance. If the arrangement proves improvident, the court may allow different compensation under § 328(a).

Sale by auction under these circumstances should maximize potential recovery for the estate. Therefore, it is an appropriate exercise of Trustee's business judgment.

This motion will be GRANTED. Trustee will be authorized to employ and pay Auctioneer for his services as outlined above, and the proposed sale at auction of the Property will be approved.

5. [20-10465](#)-B-7 **IN RE: JASPREET DHILLON**
[DMG-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH HARJEET K. RANDHAWA
4-12-2021 [\[43\]](#)

JEFFREY VETTER/MV
PHILLIP GILLET/ATTY. FOR DBT.
D. GARDNER/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.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") filed this motion seeking to approve a settlement agreement with the Jaspreet Dhillon's ("Debtor") ex-spouse, Harjeet K. Randhawa ("Randhawa"). Doc. #43. No party in interest timely filed written opposition.

This motion will be GRANTED.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

The Trustee requests approval of a settlement agreement between the estate and Randhawa for a claim that would be brought pursuant to Trustee's avoidance powers under 11 U.S.C. § 548 for monies received by Randhawa that are allegedly traceable to an insurance payout on Debtor's property at 3801 Mount Vernon Avenue ("Property"). Doc. #43. Debtor is alleged to have received up to \$486,000 in insurance proceeds as result of fire damage on Property, which is the subject of an adversary proceeding seeking to revoke Debtor's discharge filed by creditor Virginia Lee Atchley as Trustee of the Atchley Living Trust ("Atchley"). See *Atchley v. Dhillon*, adv. proc. no. 20-01065. Atchley also filed Claim No. 14 on February 8, 2021 in the sum of \$206,775.00. See Claim #14-1.

Trustee states that the parties have reached a "global settlement" that will result in the resolution of Randhawa and Atchley's claims against Debtor. Doc. #45. Under the terms of the compromise:

- (a) Atchley will withdraw Claim #14 in this chapter 7 case;
- (b) Randhawa will pay a total sum of \$105,000, which Trustee states is sufficient to pay off the remaining creditor claims and projected administrative expenses for this case. Randhawa has tendered a deposit of \$10,500 toward this total sum;
- (c) Atchley and Randhawa have reached a separate settlement that Trustee anticipates will cause Atchley's revocation of discharge adversary proceeding to be dismissed.

Id., ¶ 6. Trustee also attached an unsigned mutual general release that is awaiting signatures from Randhawa and Trustee. Doc. #46, Ex. A. The court notes that neither party has signed the release.

The court concludes that the *Woodson* factors balance in favor of approving the compromise. That is: (1) the probability of success is far from assured as all parties have vigorously disclaimed all liability. Trustee acknowledges that he could likely recover more in litigation, but the settlement accomplishes the satisfaction of creditor claims. Doc. #45, ¶ 7. (2) Trustee has already received a deposit as result of the settlement, and he states that he has the funds necessary to administer the estate. *Ibid.* If Trustee were to proceed with litigation and collect more, Trustee is unsure whether that additional amount would be difficult to collect. *Ibid.* (3) While a § 548 action is not necessarily complex, litigation is lengthy, which will decrease the net to the estate due to additional legal fees. (4) Creditors will greatly benefit from the net to the estate and the withdrawal of Atchley's claim, which will allow Trustee to pay all allowed claims in full. *Ibid.* Therefore, the settlement appears to be fair and equitable, and the compromise under Fed. R. Bankr. P. 9019 is a reasonable exercise of the Trustee's business judgment.

The court emphasizes that this agreement will not dismiss Atchley's adversary proceeding and neither Atchley nor Debtor are bound by this settlement, which is solely between the estate and Randhawa. Fed. R. Bankr. P. 7041 makes applicable Fed. R. Civ. P. 41 to adversary proceedings, but also provides:

[A] complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper.

The parties may settle the estate's claim against Randhawa by this motion, but dismissal of Atchley's claim against Debtor will require a separate motion with adequate notice and disclosures to all parties in interest. See Fed. R. Bankr. P. 7041; *In re Bates*, 211 B.R. 338, 347 (Bankr. D. Minn. 1997) ("[O]nce a creditor undertakes to advance the interests of the bankruptcy estate by filing a § 727 complaint, the creditor may not abdicate that responsibility or use that position to its own advantage by settling the litigation on terms which would allow it to receive a private benefit solely for itself.") (citations omitted).

Having filed the § 727 adversary proceeding, Atchley became a fiduciary to all other creditors and may not dismiss the adversary proceeding in a way that does not benefit all other creditors. *In re de Armond*, 240 B.R. 51, 58 (Bankr. C.D. Cal. 1999) ("The settlement of such a claim belongs to all creditors."); see also *In re Djili*, No. 09-47844, 2012 Bankr. LEXIS 4984 at **14-15 (Bankr. N.D. Cal. Oct. 23, 2012) ("[T]here must be some benefit to the estate and all creditors if [the court] is to approve a settlement of the Adversary Proceeding between the parties").

This motion will be GRANTED. The court concludes the compromise between Randhawa and the estate to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the Trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.*

This ruling is not authorizing the payment of any fees or costs associated with the litigation. Nor is this ruling applicable to Atchley's § 727 action against Debtor, which requires a separate motion, notice, and disclosures under Fed. R. Bankr. P. 7041. The order should be limited to the claims compromised as described in the motion.

6. [21-10368](#)-B-7 **IN RE: SIMONA PASILLAS**
[JES-1](#)

MOTION TO EMPLOY BAIRD AUCTION AND APPRAISALS AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
4-9-2021 [\[28\]](#)

JAMES SALVEN/MV
SCOTT LYONS/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Chapter 7 trustee withdrew this motion on April 30, 2021. Doc. #34.
Accordingly, this matter will be dropped from calendar.

7. [21-10569](#)-B-7 **IN RE: JAY GARRETSON**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-31-2021 [\[13\]](#)

FORETHOUGHT LIFE INSURANCE
COMPANY/MV
LAYNE HAYDEN/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, Forethought Life Insurance Company ("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 2228 West Michigan Avenue, Fresno, California 93705 ("Property"). 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 debtor has failed to make at least four complete pre-petition payments. The movant has produced evidence that debtor is delinquent at least \$3,787.84, plus other fees of \$473.49, and the entire balance of \$191,915.00 is due. Docs. #15, #19.

The court notes that even though the Property is not necessary to an effective reorganization because debtor is in chapter 7, there is some minimal equity in the property. The property is valued at \$234,000.00 and debtor owes \$191,915.00. Doc. #16.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) 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.

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

8. [20-13582](#)-B-7 **IN RE: CORINA HUERTA**
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-12-2021 [\[18\]](#)

FREEDOM MORTGAGE
CORPORATION/MV
PATRICIA CARRILLO/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.
DISCHARGED 3/15/21

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally granted in part and denied as
moot in part.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. The court will issue
an order and the Moving Party shall
subsequently 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 9014-1(f)(1).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). 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, Freedom Mortgage Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property located at 5206 N. Bonta Avenue, Fresno, CA 93723 ("Property"). 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(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The debtor's discharge was entered on March 15, 2021. Doc. #16. Therefore, the

¹ Unless otherwise indicated, references to "LBR" will be to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California; "Rule" will be to the Federal Rules of Bankruptcy Procedure; and "Civil Rule" will be to the Federal Rules of Civil Procedure.

automatic stay terminated with respect to the debtor on March 15, 2021.

However, the court intends to call this matter and conditionally grant in part and deny as moot in part the motion. Movant has failed to comply with the Federal Rules of Bankruptcy Procedure as to proper service of the moving papers.

Rule 4001(a)(1) requires motions for relief from the automatic stay to be "made in accordance with Rule 9014[.]" Rule 9014(b) requires the motion be served in the manner provided for service of a summons and complaint by Rule 7004. Meanwhile, Rule 9036 allows for service by electronic means, but "[t]his rule does not apply to any pleading or other paper required to be served in accordance with Rule 7004." Rule 9036.

Rule 7004 allows service in the United States by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business" and "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rules 7004(b)(1), (b)(3). This service requirement is not subject to waiver under Civil Rule 4(d). See Rule 7004(a)(1).

Here, the certificate of service indicates that UST was served "via Notification of Electronic Filing[.]" Doc. #24. Movants must serve or notify the UST, who may raise, appear, and be heard on any issue in any case under 11 U.S.C. § 307. Because relief is not being sought against the UST specifically, electronic notification under Rule 7005 and LBR 7005-1 is sufficient in this instance.

LBR 7005-1(a) allows for service by electronic means pursuant to Civil Rule 5(b)(2)(E), as made applicable by Rule 7005. But this rule typically only applies to pleadings filed after the original complaint and other papers specified in Civil Rule 5(a)(1). LBR 7005-1(d) states, in relevant part:

1) Upon Those Parties Consenting to Service by Electronic Means. Service by electronic means pursuant to Fed. R. P. 5(b)(2)(E) shall be accomplished by transmitting an email which includes as a PDF attachment the document(s) served. The subject line of the email shall include the words "Service Pursuant to Fed. R. Civ. P. 5," and the first line of the email shall include the case or proceeding name and number and the title(s) of the document(s) served.

. . .

3) Certificate of Service. The certificate of service shall include all parties served, whether by electronic or conventional means. Where service was accomplished by electronic means, the certificate of service shall include the email addresses to which the document(s) were transmitted, and the party, if any, whom the recipient represents.

LBR 7005-1(d)(1) & (3). Movant's certificate of service does not comply with LBR 7005-1(d)(3) because it does not include UST's email address. Doc. #24. This motion cannot be served "via Notification of Electronic Filing[.]" As noted above, even though Rule 7004 governs proof of service for relief from stay motions, the court will allow electronic service on the UST in this instance because no relief is being sought from the UST, but Movant must comply with LBR 7005-1(d)(3) and include UST's email address in the certificate of service.

Therefore, this motion will be CONDITIONALLY GRANTED IN PART AND DENIED AS MOOT IN PART to allow the Movant to properly serve the UST as stated above. The Certificate of Service shall be filed not later than May 18, 2021. The court will issue an order.

After that date, if Movant has complied, Movant shall submit an order granting in part as to the trustee's interest and denying as moot in part as to the debtor's interest under § 362(c)(2)(C). The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5. No other relief is awarded.

9. [21-10492](#)-B-7 **IN RE: ANNIE LARA**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
4-14-2021 [\[13\]](#)

JOEL WINTER/ATTY. FOR DBT.

NO RULING.

Chapter 7 trustee James Edward Salven ("Trustee") moves to dismiss this case for failure to appear at the § 341(a) meeting of creditors. Doc. #10. Trustee declares that Annie Lara ("Debtor") did not appear at the meeting of creditors scheduled for April 1, 2021. Doc. #11. If this case is not dismissed, Trustee requests that the deadlines to object to Debtor's discharge under § 727 and to file motions for abuse, other than presumed abuse, under § 707, be extended 60 days after the date of the continued meeting of creditors set for May 13, 2021. *Id.*

Debtor's attorney, Joel D. Winter ("Counsel"), filed form opposition to dismissal. Doc. #13. Counsel states that he attempted to contact Debtor through her friend because he has no direct contact with Debtor due to domestic abuse issues. *Id.* Counsel adds that Debtor did not realize she had to connect via videoconference on the day of the meeting of creditors because the "communication [with Debtor] happened too late[.]" *Id.*

This matter will be called as scheduled to inquire about the parties' intentions. The court is inclined to CONDITIONALLY GRANT Trustee's motion to dismiss. Debtor shall attend the meeting of

creditors rescheduled for May 13, 2021 2018 at 11:00 a.m. If Debtor fails to do so, 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 Debtor's discharge or file motions for abuse, other than presumed abuse, under § 707, will be extended to 60 days after the conclusion of the meeting of creditors.