



UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Wednesday, May 15, 2024  
Department A – Courtroom #11  
Fresno, California

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

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

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

Please also note the following:

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

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

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

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

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

## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

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

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION  
11-28-2022 [[1](#)]

D. GARDNER/ATTY. FOR DBT.

NO RULING.

2. [22-12016](#)-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**  
[DMG-13](#)

CONTINUED MOTION TO BORROW  
4-3-2024 [[425](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if the debtor adequately supplements the record 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 originally filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2). Though not required, Logan Investments, Inc., as agent for Robert Korda, Trustee of the Survivor's Trust created under the Robert and Rosina Korda Living Trust dated August 28, 2002 ("Secured Creditor"), filed written opposition on April 10, 2024 ("Opposition"). Doc. #440.

At the initial hearing on the motion, the court continued the hearing on the motion so Future Value Construction, Inc. ("DIP") could supplement the record in response to the Opposition. Order, Doc. #452. On May 6, 2024, DIP filed supplemental pleadings in support of the motion. Doc. ##461-463. Further opposition may be presented at the hearing, and this matter will proceed as scheduled. Order, Doc. #452. Unless further or additional opposition is presented at the hearing, the court intends to enter the defaults of the non-responding parties, overrule the Opposition, and grant the motion subject to DIP addressing certain questions of the court on the record. If further or additional opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

As a procedural matter, the Opposition and related certificate of service do not comply with LBR 9014-1(c)(4), which requires that all related papers filed by a party include the Docket Control Number assigned by the moving party. Neither pleading includes the Docket Control Numbers for the three motions to which those pleadings relate. In addition, Secured Creditor should not have

filed one omnibus opposition to three separate motions; three separate oppositions should have been filed, one for each motion.

As a further procedural matter, the certificate of service for the Opposition 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 for Secured Creditor 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>.

DIP seeks to borrow \$528,230 from CoFi ("Lender") secured by a first deed of trust against DIP's real property commonly referred to as Lot 8 in Lakeview at Rio Bravo ("Lot 8"). Decl. of Chuck R. Thomason, Doc. #427; Ex. B, Doc. #462. The purpose of the loan is to construct a house on Lot 8 so Lot 8 can be sold. Thomason Decl., Doc. #427. DIP estimates that the sale price of the constructed home on Lot 8 will be approximately \$720,000. Id. DIP estimates a profit with respect to Lot 8 of approximately \$100,000. Motion, Doc. #425. DIP believes commencing construction of Lot 8 will increase the probability that DIP can sell additional lots in the development on a pre-sold basis to increase cash flow as well as the prospect for take-out loans. Supp. Decl. of Chuck R. Thomason, Doc. #461.

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.

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); In re Harbin, 486 F.3d 510, 521 (9th Cir. 2007). Section 364(c)(2) provides an exception 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 the court will grant the motion, the court requires DIP to supplement the record at the hearing with respect to the following:

- (1) The first payment due date under the proposed promissory note is October 1, 2023, which has already passed. Ex. B, Doc. #462. DIP should be prepared to provide the court with the estimated date of the first interest-only monthly payment.
- (2) The term of the loan is not clear in the proposed promissory note. Ex. B, Doc. #462. DIP should be prepared to provide the court with the estimated maturity date of the proposed loan.
- (3) Section C.8 of the proposed promissory note requires an interest only-payment for February 1, 2024 through February 29, 2024, which has already passed, with the balloon payment due on the maturity date. Ex. B, Doc. #462. DIP should be prepared to provide the court with the new dates for this section.
- (4) The moving papers and supporting evidence do not provide any information regarding whether DIP has the funds to make the required interest-only monthly payments beyond the interest reserve set forth Exhibit A to the motion. Ex. A, Doc. #428.
- (5) The motion is not clear whether the proposed loan is to be subordinated to the pro-rata portion of real property taxes owed to the Kern County Tax Collector.

If DIP adequately supplements the record at the hearing with respect to this motion, and subject to further and/or additional opposition, the motion will be granted.

3. [22-12016-A-11](#) **IN RE: FUTURE VALUE CONSTRUCTION, INC.**  
[DMG-14](#)

CONTINUED MOTION TO BORROW  
4-3-2024 [[430](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if the debtor adequately supplements the record 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 originally filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2). Though not required, Logan Investments, Inc., as agent for Robert Korda, Trustee of the Survivor's Trust created under the Robert and Rosina Korda

Living Trust dated August 28, 2002 ("Secured Creditor"), filed written opposition on April 10, 2024 ("Opposition"). Doc. #440.

At the initial hearing on the motion, the court continued the hearing on the motion so Future Value Construction, Inc. ("DIP") could supplement the record in response to the Opposition. Order, Doc. #453. On May 6, 2024, DIP filed supplemental pleadings in support of the motion. Doc. ##467-469. Further opposition may be presented at the hearing, and this matter will proceed as scheduled. Order, Doc. #453. Unless further or additional opposition is presented at the hearing, the court intends to enter the defaults of the non-responding parties, overrule the Opposition, and grant the motion subject to DIP addressing certain questions of the court on the record. If further or additional opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

As a procedural matter, the Opposition and related certificate of service do not comply with LBR 9014-1(c)(4), which requires that all related papers filed by a party include the Docket Control Number assigned by the moving party. Neither pleading includes the Docket Control Numbers for the three motions to which those pleadings relate. In addition, Secured Creditor should not have filed one omnibus opposition to three separate motions; three separate oppositions should have been filed, one for each motion.

As a further procedural matter, the certificate of service for the Opposition 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 for Secured Creditor 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>.

As a further procedural matter, the Docket Control Number for the supplemental pleadings filed on May 6, 2024 does not comply with LBR 9014-1(c)(4). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). Here, the supplemental pleadings and related certificate of service filed on May 6, 2024 with respect to this motion on had Docket Control Number DMG-15 instead of DMG-14. Doc. ##467-469.

DIP seeks to borrow \$100,000 from Bon and Kathleen Reynolds ("Lender") secured by a second deed of trust against DIP's real property commonly referred to as Lot 8 in Lakeview at Rio Bravo ("Lot 8"). Decl. of Chuck R. Thomason, Doc. #432. The purpose of the loan is to make payments towards a performance bond for the completion of street and other common area improvements necessary to record the Phase 2 map of Lakeview at Rio Bravo and pay DIP's ongoing business expenses. Id. The proposed borrowing will be subordinate to the proposed post-petition borrowing from CoFi that is the subject of another motion (DMG-13) also set for hearing on this calendar. DIP estimates that the sale price of the constructed home on Lot 8 will be approximately \$720,000. Id. DIP estimates a profit with respect to Lot 8 of approximately \$188,000 in this motion. Supp. Decl. of Chuck R. Thomason, Doc. #467. Interest on the post-petition loaned funds will be 12% per annum. Ex. A, Doc. #433. Monthly loan payments are \$1,000, and the term of the loan is 12 months. Id.

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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—

. . .

(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)(3); In re Harbin, 486 F.3d 510, 521 (9th Cir. 2007). Section 364(c)(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 the court will grant the motion, the court requires DIP to supplement the record at the hearing with respect to the following:

- (1) How DIP will pay the monthly interest payments due under the proposed loan. Ex. A, Doc. #433. The budget filed with the supplemental materials only provides for two of the twelve months of interest payments. Ex. B, Doc. #468.
- (2) The motion is not clear whether the proposed loan is to be subordinated to the pro-rata portion of real property taxes owed to the Kern County Tax Collector.

If DIP adequately supplements the record at the hearing with respect to this motion, and subject to further and/or additional opposition, the motion will be granted.

4. 22-12016-A-11      **IN RE: FUTURE VALUE CONSTRUCTION, INC.**  
DMG-15

CONTINUED MOTION TO BORROW  
4-3-2024    [435]

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

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.

This motion was originally filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2). Though not required, Logan Investments, Inc., as agent for Robert Korda, Trustee of the Survivor's Trust created under the Robert and Rosina Korda Living Trust dated August 28, 2002 ("Logan"), filed written opposition on April 10, 2024 ("Logan Opposition") (Doc. #440), and Forge Trust Co. FBO Paul Francis Accinelli IRA 451782 ("Forge") filed written opposition on April 22, 2024 ("Forge Opposition") (Doc. #445).

At the initial hearing on the motion, the court continue the hearing on the motion so Future Value Construction, Inc. ("DIP") could supplement the record in response to the Logan Opposition and the Forge Opposition. Order, Doc. #454. On May 6, 2024, DIP filed supplemental pleadings in support of the motion. Doc. ##464-466. Further opposition may be presented at the hearing, and this matter will proceed as scheduled. Order, Doc. #454. Though not required, Forge filed a supplemental opposition on May 10, 2024. Doc. #474. Based on the failure of DIP to provide sufficient evidence that DIP cannot obtain junior financing for the proposed construction on Lot 18, the motion will be denied.

As a procedural matter, the Logan Opposition and related certificate of service do not comply with LBR 9014-1(c)(4), which requires that all related papers filed by a party include the Docket Control Number assigned by the moving party. Neither pleading includes the Docket Control Numbers for the three motions to which those pleadings relate. In addition, Logan should not have filed one omnibus opposition to three separate motions; three separate oppositions should have been filed, one for each motion.

As a further procedural matter, the certificate of service for the Opposition 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 for Secured Creditor 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>.

As a further procedural matter, the Docket Control Number for the supplemental pleadings filed on May 6, 2024 does not comply with LBR 9014-1(c)(4). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations

resolving that motion, shall include the same number." LBR 9014-1(c)(4). Here, the supplemental pleadings and related certificate of service filed on May 6, 2024 with respect to this motion on had Docket Control Number DMG-14 instead of DMG-15. Doc. #464-466.

DIP seeks to borrow \$540,173 from CoFi ("Lender") secured by a first deed of trust against DIP's real property commonly referred to as Lot 18 in Lakeview at Rio Bravo ("Lot 18"). Decl. of Chuck R. Thomason, Doc. #437. The purpose of the loan is to construct a house on Lot 18 so Lot 18 can be sold. Id. The proposed borrowing with respect to Lot 18 will be senior to the deed of trust currently held against Lot 18 by Forge in the amount of \$70,700, which DIP estimates will be \$88,500 at the time construction is complete. Id. DIP estimates that the sale price of the constructed home on Lot 18 will be approximately \$730,000. Id. DIP estimates a profit with respect to Lot 18 of approximately \$190,000 from which the Forge loan will be paid. Supp. Decl. of Chuck R. Thomason, Doc. #464. DIP believes commencing construction of Lot 18 will increase the probability that DIP can sell additional lots in the development on a pre-sold basis to increase cash flow as well as the prospect for take-out loans. Id.

Section 364(d) of the Bankruptcy Code permits the court to authorize the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if:

- (A) the chapter 11 debtor in possession is unable to obtain such credit otherwise; and
- (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior lien is proposed to be granted.

11 U.S.C. § 364(d)(1). The debtor bears the burden of proof on the issue of adequate protection. 11 U.S.C. § 364(d)(2). "The determination of adequate protection is a fact-specific inquiry." In re Mosello, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996). The purpose of § 364(d) is to "facilitate a plan that will inure to the benefit of all creditors and the estate." In re Stoney Creek Techs., LLC, 364 B.R. 882, 895 (Bankr. E.D. Pa. 2007).

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").

In its pre-hearing disposition related to the initial hearing on this motion, the court informed DIP that the court agreed with the Forge Opposition that DIP

had failed to meet one of the required showings before the court could grant this motion, namely that DIP had failed to provide sufficient evidence that DIP cannot obtain junior financing for the proposed construction on Lot 18. Forge Opp., Doc. #445. DIP has still not provided any evidence with respect to this factor. The court cannot grant the motion in the absence of this showing.

Accordingly, because DIP failed to provide sufficient evidence that DIP cannot obtain junior financing for the proposed construction on Lot 18, the motion will be denied.

5. [23-10571](#)-A-11     **IN RE: NABIEKIM ENTERPRISES, INC.**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION  
3-24-2023    [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

6. [23-10571](#)-A-11     **IN RE: NABIEKIM ENTERPRISES, INC.**  
[DNL-1](#)

CONTINUED STATUS CONFERENCE RE: MOTION TO DISMISS CASE AND/OR MOTION  
FOR REMOVAL OF DEBTOR IN POSSESSION  
9-19-2023    [[118](#)]

CALVIN KIM/MV  
PETER FEAR/ATTY. FOR DBT.  
J. CUNNINGHAM/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.

7. [23-10571](#)-A-11     **IN RE: NABIEKIM ENTERPRISES, INC.**  
[FW-5](#)

CONTINUED CHAPTER 11 SMALL BUSINESS SUBCHAPTER V PLAN  
6-22-2023    [[67](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

1. [24-10516](#)-A-7 IN RE: ERIKA DE LA TORRE

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION  
4-22-2024 [[14](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

The debtor was represented by counsel when she 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. Okla. 2009) (citation omitted). In this case, the debtor's attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable. Minardi, 399 B.R. at 847 ("If a debtor was represented during the course of negotiating a reaffirmation agreement, but debtor's counsel is unable or unwilling to make the required certifications, then the agreement does not satisfy § 524(c)(3) and is unenforceable.").

1. [23-12030](#)-A-7     **IN RE: CALIFORNIA'S CUSTOM CONCESSION TRAILERS, LLC**  
[ICE-3](#)

MOTION TO EMPLOY BAIRD AUCTION & APPRAISAL AS AUCTIONEER(S)  
4-5-2024    [\[32\]](#)

IRMA EDMONDS/MV  
JONATHAN DOAN/ATTY. FOR DBT.  
IRMA EDMONDS/ATTY. FOR MV.

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

**DISPOSITION:**     Granted.

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

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

Irma Edmonds ("Trustee"), the chapter 7 trustee of the bankruptcy estate of California Custom Concession Trailers, LLC, moves the court for an order authorizing the employment of Baird Auctions & Appraisals ("Auctioneer") to sell: (1) mechanic tools; (2) supplies; (3) miscellaneous trailer parts; (4) welder; and (5) forklift (together, the "Property") at public auction at Auctioneer's location at 1328 N. Sierra Vista, Suite B, Fresno, California. Doc. #32.

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 Jeffrey Baird, Doc. #34. 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. #32. Trustee has agreed to pay Auctioneer a commission of 20% of the gross sale price and estimated expenses of \$1,000.00. Doc. #32. Trustee unambiguously requests pre-approval of payment to Auctioneer pursuant to § 328. Id.

Accordingly, this motion is GRANTED. 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.

2. [23-12030](#)-A-7     **IN RE: CALIFORNIA'S CUSTOM CONCESSION TRAILERS, LLC**  
[ICE-4](#)

MOTION TO SELL AND/OR MOTION TO PAY  
4-5-2024     [\[37\]](#)

IRMA EDMONDS/MV  
JONATHAN DOAN/ATTY. FOR DBT.  
IRMA EDMONDS/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

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

Irma Edmonds ("Trustee"), the chapter 7 trustee of the bankruptcy estate of California Custom Concession Trailers, LLC, moves the court for an order authorizing Trustee to: (1) sell (a) mechanic tools, (b) supplies, (c) miscellaneous trailer parts, (d) welder, and (e) forklift (together, the "Property") at public auction at the location of Baird Auctions & Appraisals ("Auctioneer") at 1328 N. Sierra Vista, Suite B, Fresno, California; and (2) pay Auctioneer's commission and expenses. Tr.'s Mot., Doc. #37.

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. #37; Decl. of Irma Edmonds, Doc. #39. Trustee's experience indicates that a sale of the Property at public auction will yield the highest net recovery to the estate. Doc. #37; Edmonds Decl., Doc. #39. The proposed sale is made in good faith.

The court will authorize the employment of Auctioneer pursuant to 11 U.S.C. § 328. See DCN ICE-3, calendar matter #1 above. 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. Tr.'s Mot., Doc. #37. Trustee has agreed to pay Auctioneer a commission of 20% of the gross sale price and estimated expenses of \$1,000.00. Id. Trustee unambiguously requested pre-approval of payment to Auctioneer pursuant to 11 U.S.C. § 328. Doc. ##32, 37.

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 and pay Auctioneer on the terms set forth in the motion.

3. [24-10931](#)-A-7     **IN RE: RICHARD LEWIS**  
[BDB-1](#)

MOTION TO COMPEL ABANDONMENT  
4-23-2024    [\[12\]](#)

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

Richard J. Lewis ("Debtor"), the chapter 7 debtor in this case, moves the court to compel the chapter 7 trustee to abandon the estate's interest in Debtor's sole proprietorship DoorDash/UberEats delivery driving business. Doc. #12. The assets of the estate used in Debtor's business include a 2019 Chevy Bolt (the "Property"). Doc. #12. Debtor has no non-exempt equity in the Property and the Property therefore has no value to the bankruptcy estate. Doc. #12.

11 U.S.C. § 554(b) permits the court, on request of a party in interest and after notice and a hearing, to order the trustee to abandon property that is burdensome to the estate or of inconsequential value and benefit to the estate. Vu v. Kendall (In re Vu), 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). To grant a motion to abandon property, the bankruptcy court must find either that the property is (1) burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. Id. (citing Morgan v. K.C. Mach. & Tool Co. (In re K.C. Mach. & Tool Co.), 816 F.2d 238, 245 (6th Cir. 1987)). However, "an order compelling abandonment [under § 554(b)] is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset. . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." Id. (quoting K.C. Mach. & Tool Co., 816 F.2d at 246).

Here, Debtor does not allege that the Property is burdensome to the estate. Motion, Doc. #12. Therefore, Debtor must establish that the Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Debtor's Property is valued at \$10,500.00 and is not encumbered by any lien. Schedule D, Doc. #1; Decl. of Richard J. Lewis, Doc. #15. Under California Civil Procedure Code § 703.140, Debtor claimed a \$10,500.00 exemption in the Property. Schedule C, Doc. #1; Lewis Decl., Doc. #15. Further, there is no goodwill value in the business because the business is completed entirely by Debtor's manual labor. Lewis Decl., Doc. #15. The court finds that Debtor has met his burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate.

Accordingly, pending opposition at the hearing, this motion will be GRANTED. The order shall specifically identify the property abandoned.

4. [24-10637](#)-A-7      **IN RE: ALEXIS CHARLES**  
[ABA-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-16-2024    [\[14\]](#)

NUVISION FEDERAL CREDIT UNION/MV  
R. BELL/ATTY. FOR DBT.  
ALANA ANAYA/ATTY. FOR MV.

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

DISPOSITION:      Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date 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.

The movant, NuVision Federal Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2023 Audi A4, VIN: #4AUDAAF49PN001625 (the "Vehicle"). Doc. #14.

As a procedural matter, the notice of hearing (Doc. #15) filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition and requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. 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.

As a further procedural matter, the certificate of service (Doc. #19) 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 (EDC Form 7-005, Rev. 10/22) 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>.

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 \$4,039.52. Decl. of Cheryl Rice, Doc. #18.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. The Vehicle is valued at \$34,600.00 and the debtor owes \$58,762.88. Rice Decl., Doc. #18.

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. Debtor did not list the vehicle in her petition. Doc. #1.

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

5. [24-10042](#)-A-7     **IN RE: FELIPE/RACHEL CORTEZ**  
[BDB-1](#)

MOTION TO AVOID LIEN OF UNIFUND CCR PARTNERS  
4-5-2024    [\[20\]](#)

RACHEL CORTEZ/MV  
BENNY BARCO/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

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

Felipe Cortez and Rachel Cortez (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Rules 4003(d) and 9014 to avoid the judicial lien of Unifund CCR Partners and their Successors and Assigns (collectively, "Creditor") on the residential real property commonly referred to as 4514 E. Kaviland Ave, Fresno, CA 93725 (the "Property"). Doc. #20; Schedule C & D, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtors filed their bankruptcy petition on January 9, 2024. Doc. #1. A judgment was entered against Debtors in the amount of \$9,639.87 in favor of Creditor on June 15, 2006 and renewed on June 2, 2016. Ex. A, Doc. #22. The renewed abstract of judgment was recorded pre-petition in Fresno County on April 21, 2017, as document number 2017-0049664. Id. The lien attached to Debtors' interest in the Property located in Fresno County. Schedule D, Doc. #1. The Property also is encumbered by a first mortgage held by PHH Mortgage in the amount of \$157,734.00. Schedule D, Doc. #1. Debtors claimed an exemption of \$122,266.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at \$280,000.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

|   |   |              |
|---|---|--------------|
| Amount of Creditor's judicial lien  |   | \$9,639.87   |
| Total amount of all other liens on the Property (excluding junior judicial liens) | + | \$157,734.00 |
| Amount of Debtors' claim of exemption in the Property                             | + | \$122,266.00 |
|   |   | \$289,639.87 |
| Value of Debtors' interest in the Property absent liens                           | - | \$280,000.00 |
| Amount Creditor's lien impairs Debtors' exemption                                 |   | \$9,639.87   |

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

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

6. [24-10752](#)-A-7     **IN RE: SALVADOR/LILIANA SIERRA**  
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-17-2024    [\[13\]](#)

EXETER FINANCE LLC/MV  
SCOTT LYONS/ATTY. FOR DBT.  
SHERYL ITH/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date 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.

The movant, Exeter Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2016 Dodge Durango, VIN: 1C4RDJDG3GC362017 (the "Vehicle"). Doc. #13.

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

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the 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 seven complete pre-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$4,784.85 plus late fees of \$683.50, NSF fees of \$75.00 and recovery fees of \$725.00. Decl. of Nancy Wafer, Doc. #15. According to the debtors' Statement of Intention, the Vehicle will be surrendered. Doc. #1. Movant recovered the Vehicle pre-petition on March 17, 2024. Wafer Decl., Doc. #15.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. The Vehicle is valued at \$17,050.00 and the debtors owe \$28,515.94. Wafer Decl., Doc. #15.

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

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

7. [24-10567](#)-A-7      **IN RE: LUZ GARCIA**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE  
3-8-2024    [7]

LUZ GARCIA/MV  
LUZ GARCIA/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.

MOTION FOR RELIEF FROM AUTOMATIC STAY  
4-10-2024    [\[14\]](#)

ALLY BANK/MV  
D. GARDNER/ATTY. FOR DBT.  
CHERYL SKIGIN/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date 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.

The movant, Ally Bank ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2019 Nissan Sentra S Sedan 4D, VIN: #3N1AB7AP9KY446212 ("Vehicle"). Doc. #14.

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

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the 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 two complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$819.90 plus repossession charges of \$400.00 and other charges of \$32.43. Decl. of Paul Tangen, Doc. #16. Movant repossessed the Vehicle pre-petition on February 7, 2024. Id. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. The Vehicle is valued at \$11,624.00 and the debtor owes \$19,564.03. Tangen Decl., Doc. #16.

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

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

9. [24-10591](#)-A-7     **IN RE: ALEJANDRO MADRIGAL**  
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
5-13-2024    [[18](#)]

DISMISSED 05/06/2024

NO RULING.

1. [24-10201](#)-A-13     **IN RE: JOSHUA/DEODETE MENESES**  
[SDS-2](#)

MOTION TO CONFIRM PLAN  
3-26-2024    [[20](#)]

DEODETE MENESES/MV  
SUSAN SILVEIRA/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

This motion was set for hearing on at least 35 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

2. [24-10006](#)-A-13     **IN RE: JOSE SANCHEZ**

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR FEDERAL HOME LOAN MORTGAGE CORPORATION  
4-5-2024    [[25](#)]

FEDERAL HOME LOAN MORTGAGE CORPORATION/MV  
SCOTT LYONS/ATTY. FOR DBT.  
MEHRDAUD JAFARNIA/ATTY. FOR MV.

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

DISPOSITION:     Overruled.

ORDER:             The court will issue an order.

This objection to confirmation is OVERRULED for improper notice and failure to comply with the court's Local Rules of Practice.

Pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4), in order to properly object to confirmation of a chapter 13 plan served by the court, "[a]n objection and a notice of hearing must be filed and served upon the debtor, the debtor's attorney, and the trustee within seven (7) days after the first date set for the meeting of creditors held pursuant to 11 U.S.C. § 341(a). . . . The notice of hearing shall inform the debtor, the debtor's attorney, and the trustee that no written response to the objection is necessary." (Emphasis added). Here, the objecting creditor did not file and serve a notice of hearing filed in connection with this objection to confirmation to advise potential respondents (a) whether and when written opposition must be filed, (b) the deadline for filing and serving written opposition, and (c) the names and addresses of the persons who must be served with any opposition, notice of the objection to confirmation is not proper. LBR 3015-1(c)(4) further provides that the court may confirm the chapter 13 plan without a hearing in the absence of a properly noticed hearing on the objection. The objection is overruled for the failure of the creditor to properly notice its objection to confirmation pursuant to this court's Local Rules of Practice.

As a further procedural matter, the exhibits filed in connection with this objection do not comply with LBR 9004-2(c)(1) and (d)(1), which require exhibits to be filed as separate documents. The objection was filed as a single document that included the objecting party's exhibits. E.g., Doc. #25.

As a further procedural matter, the objection to confirmation and supporting papers do not comply with LBR 3015-1(c)(4), which requires an objection to confirmation to "comply with LBR 9014-1(a)-(e), (f)(2), and (g)(1), including the requirement for a Docket Control Number on all documents relating to the objection." LBR 3015-1(c)(4). Counsel for the objecting party did not include a Docket Control Number on any of the papers filed with respect to the objection.

As a further 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>.

3. [24-10006](#)-A-13     **IN RE: JOSE SANCHEZ**  
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG  
3-25-2024     [\[18\]](#)

SCOTT LYONS/ATTY. FOR DBT.  
RESPONSIVE PLEADING  
WITHDRAWN

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

DISPOSITION:                     Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection on May 7, 2024. Doc. #43.

4. [24-10611](#)-A-13     **IN RE: HERIBERTO ZURITA CARRILLO AND MARIA ZURITA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
4-17-2024    [\[16\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:                The minutes of the hearing will be the court's findings  
and conclusions.

ORDER:                        The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the order to show cause.

If the installment fees due at the time of hearing are paid before the hearing, the order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

5. [24-10846](#)-A-13     **IN RE: KENNETH MYERS**  
[DCJ-1](#)

CONTINUED MOTION TO EXTEND AUTOMATIC STAY  
4-11-2024    [\[9\]](#)

KENNETH MYERS/MV  
DAVID JOHNSTON/ATTY. FOR DBT.

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

DISPOSITION:        Denied.

ORDER:                        The court will issue an order.

Debtor Kenneth J. Myers ("Debtor") filed and served this motion to extend the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B) and set for the motion for an initial hearing on April 11, 2024. Doc. ##9-12. Though not required, F&M Bank of Central California ("Creditor") filed an opposition to Debtor's motion. Doc. #23. At the hearing held on April 11, 2024, the court continued this matter and extended the automatic stay to May 15, 2024 to permit Debtor to supplement his motion and rebut the presumption by clear and convincing evidence that this chapter 13 case is not filed in good faith no later than May 6, 2024. Order, Doc. #28, as amended, Doc. #31 (collectively, "Order").

Debtor had a chapter 13 case pending within the preceding one-year period that was dismissed, Case No. 22-12152 (Bankr. E.D. Cal.) (the "Prior Case"). The Prior Case was filed on December 20, 2022 and dismissed at Debtor's request on April 19, 2023. Decl. of Kenneth J. Myers, Doc. #11. Under 11 U.S.C. § 362(c)(3)(A), if a debtor had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day

after the filing of the current case. Debtor filed this case on April 2, 2024. Petition, Doc. #1. In accordance with Order from the prior hearing on this matter, the automatic stay will terminate in the present case on May 15, 2024.

Section 362(c)(3)(B) allows the court to extend the stay "to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed[.]" 11 U.S.C. § 362(c)(3)(B).

Section 362(c)(3)(C)(i) creates a presumption that the case was filed not in good faith if the debtor: (1) filed more than one prior case in the preceding year; (2) failed to file or amend the petition or other documents without substantial excuse, provide adequate protection as ordered by the court, or perform the terms of a confirmed plan; or (3) has not had a substantial change in his or her financial or personal affairs since the dismissal, or there is no other reason to believe that the current case will result in a discharge or fully performed plan. 11 U.S.C. § 362(c)(3)(C)(i).

The presumption of bad faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C). Under the clear and convincing standard, the evidence presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.'" Factual contentions are highly probable if the evidence offered in support of them instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition." Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288 n.11 (B.A.P. 9th Cir. 2016) (citations omitted) vacated and remanded on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019).

In this case, the presumption of bad faith arises only if Debtor has not had a substantial change in his financial or personal affairs since dismissal of the Prior Case. In support of this motion to extend the automatic stay, Debtor declares that the instant case was filed to resolve substantial debt issues, to avoid a judicial lien which impairs Debtor's homestead exemption, and to resolve a dispute in this court regarding an objection to an anticipated proof of claim. Decl. of Kenneth J. Myers, Doc. #11. Debtor asserts that his desire to save his home and vehicle are especially important to him because he has been determined by Social Security Administration to be totally disabled and would never be able to purchase another home with his limited income. Id.

The court finds that Debtor has not met his burden of rebutting the presumption that this case was not filed in good faith because the pleadings filed with the motion fail to explain a substantial change in Debtor's financial or personal affairs since the dismissal of the Prior Case or provide any reason to believe that the current case will result in a discharge or fully performed plan as required under 11 U.S.C. § 362(c)(3)(C). Previously, rather than allow the stay under § 362(a) to terminate pursuant to 11 U.S.C. § 362(c)(3)(C), the court extended the automatic stay to May 15, 2024 to permit Debtor to supplement his motion and rebut the presumption by clear and convincing evidence that this chapter 13 case is not filed in good faith. Debtor has not supplemented the record in support of granting this motion as ordered by the court.

For the reasons discussed above, Debtor's case "is presumptively filed not in good faith." 11 U.S.C. § 362(c)(3)(C). Debtor has not rebutted this presumption by clear and convincing evidence in the pleadings currently filed with the motion. Debtor has not timely filed any supplemental pleadings and, pursuant to the Order, a further extension of the automatic stay is denied without a further hearing.

OBJECTION TO CONFIRMATION OF PLAN BY NAVY FEDERAL CREDIT UNION  
4-9-2024    [\[15\]](#)

NAVY FEDERAL CREDIT UNION/MV  
JOEL WINTER/ATTY. FOR DBT.  
LEE RAPHAEL/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Sustained.

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

This objection to confirmation was filed and served pursuant to Local Rule of Practice ("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and sustain the objection. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

As a procedural matter, the exhibits filed in connection with this objection do not comply with LBR 9004-2(c)(1) and (d)(1), which require declarations and exhibits to be filed as separate documents. The motion was filed as a single document that included the objecting party's exhibits. E.g., Doc. #17.

As a further procedural matter, the certificate of service (Doc. #18) 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 (EDC Form 7-005, Rev. 10/22) 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>.

Vince Chittaphong and Vanida Chittaphong (together, "Debtors") filed the Chapter 13 Plan (the "Plan") on March 7, 2024. Plan, Doc. #3. Secured creditor Navy Federal Credit Union ("Creditor"), objects to confirmation of the Plan because the Plan proposes to pay interest on Creditor's claim, which does not comply with Till v. SCS Credit Corp., 541 U.S. 465 (2004). Plan, Doc. #3; Doc. #15.

The Till "formula approach" requires an interest rate "high enough to compensate the creditor for its risk but not so high as to doom the plan." Till v. SCS Credit Corp., 541 U.S. 465, 480 (2004). This is referred to as the "formula" or "prime-plus" rate, which the Supreme Court held best comports with the purposes of the Bankruptcy Code in the chapter 13 context. Id. at 479-80.

It is generally acknowledged that this approach starts with the national prime rate, which is then adjusted based on a number of factors. While the Supreme Court enunciated some factors to consider in adjusting the "prime-plus" rate upward, the Supreme Court also acknowledged some factors contribute to a reduction in risk (though not necessarily a rate less than prime). Till, 541 U.S. at 475 n.12. The Supreme Court in Till also noted that "if the court

could somehow be certain a debtor would complete his plan, the prime rate would be adequate to compensate any secured creditors forced to accept cram down loans." Till, 541 U.S. at 479 n.18.

Creditor argues that an interest rate of 9.5% to 11.5% is the appropriate rate. As of May 2024, the Wall Street Journal Prime Rate is 8.5%. The court can take judicial notice of the prime rates published in the Wall Street Journal. Stein v. JP Morgan Chase Bank, 297 F. Supp. 2d 286, 290 (S.D.N.Y. 2003); Fed. R. Evid. 201.

Setting the interest rate on Creditor's Class 2 claim at 0% when the current prime rate is 8.5% does not satisfy Till. Otherwise, the court makes no determination with respect to what a reasonable interest rate would be in this case.

Accordingly, the court is inclined to SUSTAIN Creditor's objection to confirmation of the Plan.

7. [24-10363](#)-A-13      **IN RE: ADRIANA GARIVAY DE LA TORRE**  
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG  
3-26-2024    [\[14\]](#)

MATTHEW GRECH/ATTY. FOR DBT.

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

DISPOSITION:      Overruled as moot.

ORDER:              The court will issue an order.

This objection to confirmation is OVERRULED AS MOOT. The debtor filed a first amended plan on April 16, 2024 (MGG-1, Doc. #27), with a motion to confirm the modified plan set for hearing on May 30, 2024 at 9:30 a.m. Doc. ##22-28.

8. [24-10570](#)-A-13      **IN RE: GUILLERMO/PATRICIA DIAZ**  
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG  
4-19-2024    [\[20\]](#)

PETER BUNTING/ATTY. FOR DBT.  
PLAN WITHDRAWN

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

DISPOSITION:      Dropped as moot.

ORDER:              The court will issue an order.

This objection to confirmation is DROPPED AS MOOT. The debtor withdrew the modified plan on April 22, 2024. Doc. #33.

9. [22-10973](#)-A-13     **IN RE: DANIEL NAKAHIRA**  
[PLG-5](#)

MOTION TO MODIFY PLAN  
4-4-2024    [[95](#)]

DANIEL NAKAHIRA/MV  
RABIN POURNAZARIAN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

10. [24-10281](#)-A-13     **IN RE: VAJOHN VANG AND VANG THAO**  
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG  
3-25-2024    [[14](#)]

JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION:     Overruled as moot.

ORDER:             The court will issue an order.

This objection to confirmation is OVERRULED AS MOOT. The debtor filed a first amended plan on May 7, 2024 (JRL-1, Doc. #27), with a motion to confirm the modified plan set for hearing on June 20, 2024 at 2:00 p.m. Doc. ##23-27.

11. [24-10088](#)-A-13     **IN RE: CHRISTOPHER ISAIS**  
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG  
3-25-2024    [[22](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Overruled as moot.

ORDER:             The court will issue an order.

This objection to confirmation is OVERRULED AS MOOT. The debtor filed a first modified plan on April 29, 2024 (TCS-1, Doc. #35), with a motion to confirm the modified plan set for hearing on June 13, 2024 at 9:30 a.m. Doc. ##30-36.

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH  
CALVIN J. KIM AND NABIEKIM ENTERPRISES, INC.  
4-23-2024    [[160](#)]

KAYE KIM/MV  
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

ORDER:                      The minutes of the hearing will be the court's findings  
and conclusions. The Moving Party 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.

Kaye Yekyung Kim ("Debtor"), the chapter 13 debtor, moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving a settlement agreement between Debtor and Calvin K. Kim ("Claimant") and co-defendant Nabiekim Enterprises, Inc. ("NEI") resolving Debtor's dispute of the validity of Claimant's claim. Doc. #160.

Pre-petition, Claimant filed a lawsuit in state court against Debtor and NEI claiming damages for actions associated with Debtor's purchase of Claimant's stock in NEI. Doc. #160. After Debtor's bankruptcy petition was filed, Claimant filed a proof of claim. Claim 1-1. Debtor disputes the validity of Claimant's claim. Doc. #160 However, Debtor and NEI agreed to mediate their disputes with Claimant and reached a settlement agreement. Id. The material terms of the settlement agreement are as follows:

- (1) Claimant will support confirmation of (i) Debtor's chapter 13 plan and (ii) NEI's amended chapter 11 plan of reorganization.
- (2) The state court litigation filed by Claimant will be dismissed without prejudice.
- (3) Claimant will be allowed a general unsecured claim against the NEI bankruptcy estate.
- (4) Claimant will be allowed a secured claim in the amount of \$587,868.57 in Debtor's chapter 13 case secured by Debtor's NEI stock.
- (5) NEI will propose an amended chapter 11 plan consistent with the terms of the settlement agreement.
- (6) Debtor will modify her chapter 13 plan ("Plan") to pay Claimant's claim as a secured claim outside of the Plan and with payments to Claimant extending beyond the term of the Plan.

- (7) All obligations underlying the proofs of claim filed by Claimant in both NEI and Debtor's bankruptcy cases will be deemed satisfied upon Claimant's receipt of \$324,000.00 in installment payments of at least \$3,000.00 per month.
- (8) If a sale of Debtor's NEI stock closes before Claimant receives the \$324,000.00 in installment payments, Claimant will receive \$116,000.00 of the sale proceeds as a bonus payment in addition to the monthly payments. Claimant's right to receive the bonus payment will terminate upon his timely receipt of \$324,000.00 in timely monthly installment payments.

Ex. A, Doc. #164.

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. Martin v. Kane (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. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Debtor has considered the standards of A & C Properties and Woodson. Doc. #160. The proposed settlement agreement has been proposed in good faith and is believed to be the best result that can be achieved under the facts of the case. Decl. of Leonard K. Welsh, Doc. #162; Decl. of Kaye Yekyung Kim, Doc. #163. Further, Debtor states that the dispute cannot be concluded without litigation and eliminating the high cost of litigation would be in the best interest of the chapter 13 estate. Id. Lastly, Debtor states that the settlement agreement is fair and equitable because (1) it settles the dispute between parties without the risk, cost, and delay associated with trial, (2) it provides for a compromised payment to Claimant on his potential claim against Debtor and NEI, and (3) it will permit Debtor and NEI to confirm plans without objection or opposition by Claimant. Id. The court concludes that the A & C Properties factors balance in favor of approving the compromise, and the compromise is in the best interest of the creditors and the estate.

Accordingly, pending any opposition at the hearing, the motion will be GRANTED, and the settlement between Debtor, NEI and Claimant will be approved. Debtor is authorized, but not required, to execute any and all documents necessary to satisfy the terms of the proposed settlement.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

13. [24-10297](#)-A-13     **IN RE: DOROTHY MCKINLEY**  
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG  
3-26-2024    [\[16\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

14. [21-11148](#)-A-13     **IN RE: JERRY/MARGARET HARVEY**  
[RSW-3](#)

MOTION TO GIVE A VEHICLE TO DEBTOR'S GRANDDAUGHTER  
5-4-2024    [\[58\]](#)

MARGARET HARVEY/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
OST 5/6/24

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.

On May 6, 2024, the court granted the debtors' ex parte Motion for Order Shortening Time to hear their Motion for Authorization to Give a Vehicle to Debtors' Granddaughter. On May 6, 2024, the court granted the debtors' ex parte Motion for Order Shortening Time to hear their Motion for Authorization to Give a Vehicle to Debtors' Granddaughter. Order, Doc. #64. This motion was set for hearing on May 15, 2024 at 2:00 p.m. pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3). Order, Doc. #64. 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.

Jerry Harvey and Margaret Harvey (together, "Debtors"), the chapter 13 debtors in this case, move the court for an order authorizing Debtors to give a 2014 Chevrolet Cruze (the "Vehicle") to their granddaughter. Doc. #58.

LBR 3015-1(h)(1)(E) provides that "if the debtor wishes to . . . transfer property on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

This motion was properly served and noticed pursuant to the order shortening time. Opposition can be presented at the hearing. Debtors' confirmed chapter 13 plan does not reconstitute property of the estate in Debtors upon confirmation. See Plan, Doc. #3. Debtors listed the Vehicle on their Schedule A/B and valued their interest in the Vehicle at \$6,350.00. Schedule A/B, Doc. #1. Debtors

claimed an exemption of \$6,350.00 in the Vehicle under California Code of Civil Procedure § 703.140. Schedule C, Doc. #1. Debtors explain that they are requesting permission to transfer title to the Vehicle to their granddaughter because the Vehicle is being paid for by their granddaughter<sup>1</sup> who currently drives and maintains the Vehicle. Decl. of Margaret Harvey, Doc. #60. Further, the Vehicle needs major repairs, and the granddaughter will be able to pay for the repairs if title to the Vehicle is put in the granddaughter's name. Id.

Accordingly, pending any opposition at the hearing, this motion will be GRANTED. Debtors will be authorized, but not required, to transfer title to the Vehicle to their granddaughter.

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<sup>1</sup> While the Declaration of Margaret Harvey, Doc. #60, states that the Vehicle is being paid for by her daughter, the motion indicates that Debtors' granddaughter is driving and maintaining the Vehicle and the granddaughter will pay for the necessary repairs if title is transferred to the granddaughter. Thus, the court assumes the declaration of Ms. Harvey incorrectly refers to Debtors' daughter instead of Debtors' granddaughter.

1. [23-12328](#)-A-7     **IN RE: RUSTY PITTS**  
[23-1056](#)

MOTION FOR JUDGMENT ON THE PLEADINGS  
3-19-2024    [\[14\]](#)

YOUNG V. PITTS  
KARNEY MEKHITARIAN/ATTY. FOR MV.

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

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

Notwithstanding the motion to vacate the hearing date filed by the defendant on May 9, 2024 (Doc. #25), which motion has not been granted by the court, the court denies the motion for judgment on the pleadings without prejudice for the failure of counsel for the defendant to comply with this court's Local Rules of Practice ("LBR").

As an initial procedural matter, the notice of hearing (Doc. #18) filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition and requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

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

As a further procedural matter, the motion and notice of hearing do not comply with LBR 9014-1(d)(4), which requires that every document listed in LBR 9014-1(d)(1) be filed as a separate document. Here, the motion filed by the defendant includes the memorandum of points and authorities. Doc. #14. Pursuant to LBR 9014-1(d)(4), the defendant should have filed the motion for judgment on the pleadings and the memorandum of points and authorities as separate documents. In addition, the defendant should have filed the answer to complaint and the motion for judgment on the pleadings as separate documents.

As a further procedural matter, the certificate of service (Doc. #17) 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 (EDC Form 7-005, Rev. 10/22) as of November 1, 2022.

The court encourages counsel for the defendant 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>.

Accordingly, this motion is DENIED WITHOUT PREJUDICE.

2. [20-10945](#)-A-12     **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**  
[20-1041](#)

RESCHEDULED PRE-TRIAL CONFERENCE RE: COMPLAINT  
6-26-2020    [\[1\]](#)

SIHOTA ET AL V. SINGH ET AL  
PETER SAUER/ATTY. FOR PL.  
RESPONSIVE PLEADING

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

DISPOSITION:        Continued to August 29, 2024 at 11:00 a.m.

ORDER:                The court will issue an order.

On May 13, 2024, counsel for the plaintiffs filed a declaration stating that the parties had settled all disputes between them and requested that the pre-trial conference be continued for 90 or 365 days to allow the settlement to be approved and implemented. Doc. #204. Accordingly, the pre-trial conference in this adversary proceeding is continued to August 29, 2024 at 11:00 a.m.

3. [20-10945](#)-A-12     **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**  
[22-1023](#)     [CAE-1](#)

RESCHEDULED STATUS CONFERENCE RE: COMPLAINT  
10-5-2022    [\[1\]](#)

BANK OF AMERICA, N.A. V. MEYER ET AL  
ELEANOR ROMAN/ATTY. FOR PL.  
RESPONSIVE PLEADING

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

DISPOSITION:        Continued to August 29, 2024 at 11:00 a.m.

ORDER:                The court will issue an order.

On May 13, 2024, counsel for the plaintiffs filed a declaration in Adversary Proceeding No. 20-1041 stating that the parties had settled all disputes between them, including this interpleader action, and requested that the status conference be continued for 90 or 365 days to allow the settlement to be approved and implemented. Adv. Proc. No. 20-1041, Doc. #204. Accordingly, the status conference in this adversary proceeding is continued to August 29, 2024 at 11:00 a.m.

4. [20-10569](#)-A-12     **IN RE: BHAJAN SINGH AND BALVINDER KAUR**  
[20-1042](#)

RESCHEDULED PRE-TRIAL CONFERENCE RE: COMPLAINT  
6-26-2020    [\[1\]](#)

SIHOTA ET AL V. SINGH ET AL  
LENDEN WEBB/ATTY. FOR PL.  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to August 29, 2024 at 11:00 a.m.

ORDER:             The court will issue an order.

On May 13, 2024, counsel for the plaintiffs filed a declaration stating that the parties had settled all disputes between them and requested that the pre-trial conference be continued for 90 or 365 days to allow the settlement to be approved and implemented. Doc. #199. Accordingly, the pre-trial conference in this adversary proceeding is continued to August 29, 2024 at 11:00 a.m.

5. [20-10569](#)-A-12     **IN RE: BHAJAN SINGH AND BALVINDER KAUR**  
[22-1022](#)     [CAE-1](#)

RESCHEDULED STATUS CONFERENCE RE: COMPLAINT  
10-5-2022    [\[1\]](#)

BANK OF AMERICA, N.A. V. MEYER ET AL  
ELEANOR ROMAN/ATTY. FOR PL.  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to August 29, 2024 at 11:00 a.m.

ORDER:             The court will issue an order.

On May 13, 2024, counsel for the plaintiffs filed a declaration in Adversary Proceeding No. 20-1042 stating that the parties had settled all disputes between them, including this interpleader action, and requested that the status conference be continued for 90 or 365 days to allow the settlement to be approved and implemented. Adv. Proc. No. 20-1042, Doc. #199. Accordingly, the status conference in this adversary proceeding is continued to August 29, 2024 at 11:00 a.m.

6. [21-10679](#)-A-13     **IN RE: SYLVIA NICOLE**  
[23-1029](#)     [SN-3](#)

MOTION FOR LEAVE TO AMEND COMPLAINT  
4-12-2024     [\[64\]](#)

NICOLE V. AAA INSURANCE ET AL

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

DISPOSITION:     Denied without prejudice.

ORDER:     The court will issue an order.

The court denies the motion for leave to amend the complaint without prejudice for the failure of counsel for the plaintiff to comply with this court's Local Rules of Practice ("LBR").

LBR 7015-1 requires the party seeking to amend a pleading before trial to include as exhibits to the motion: "(1) a copy of the proposed amendment, amended or supplemental pleading, which must be serially numbered to differentiate it from previous pleadings or amendments; and (2) either a redline copy, which compares the proposed pleading to the most recent applicable pleading, or a table that specifies the location by citation to the page and paragraph and receives verbatim each addition or deletion." LBR 7015-1. However, the plaintiff filed and served this motion without such exhibits.

Accordingly, this matter is DENIED WITHOUT PREJUDICE for the plaintiff's failure to comply with LBR 7015-1.