



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Department B – Courtroom #13
Fresno, California
Hearing Date: Tuesday, June 11, 2024**

Unless otherwise ordered, all matters before the Honorable René Lastreto II, shall be simultaneously: (1) **In Person** at, Courtroom #13 (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 or their attorneys 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/attorney 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 and their attorneys who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest and/or their attorneys 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 who wish to attend by ZoomGov may only listen in to the hearing using the Zoom telephone number. Video participation or observing are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may attend in person unless otherwise ordered.

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.

Post-Publication Changes: 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 any possible updates.

9:30 AM

1. [24-11015](#)-B-11 **IN RE: PINNACLE FOODS OF CALIFORNIA LLC**
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY
PETITION

4-22-2024 [[1](#)]

MICHAEL BERGER/ATTY. FOR DBT.

NO RULING.

2. [24-11016](#)-B-11 **IN RE: TYCO GROUP LLC**
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY
PETITION

4-22-2024 [[1](#)]

MICHAEL BERGER/ATTY. FOR DBT.

NO RULING.

3. [24-11017](#)-B-11 **IN RE: CALIFORNIA QSR MANAGEMENT, INC.**
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY
PETITION

4-22-2024 [[1](#)]

MICHAEL BERGER/ATTY. FOR DBT.

NO RULING.

4. [24-10546](#)-B-12 **IN RE: MAXIMINIO/MARIE SILVEIRA**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY
PETITION

3-5-2024 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Continued to July 11, 2024, at 9:30 a.m.

ORDER: The court will enter the order.

On June 6, 2024, Maximinio and Marie Silveira ("Debtors") filed a *Debtor's Status Report* advising the court that Debtors have filed a Chapter 12 plan which is set for confirmation on July 11, 2024, at

9:30 a.m. and requesting that this status conference be continued until that time. On June 6, 2024, the Trustee filed a *Request for Continuance* joining in the Debtor's request. Accordingly, this matter is CONTINUED to July 11, 2024, at 9:30 a.m.
a.m.

5. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[FWP-1](#)

CONTINUED MOTION FOR ADMINISTRATIVE EXPENSES
2-26-2024 [[1475](#)]

MADERA COUNTY/MV
RILEY WALTER/ATTY. FOR DBT.
JASON RIOS/ATTY. FOR MV.

NO RULING.

11:00 AM

1. [24-10663](#)-B-7 **IN RE: HAM/KIM MAN**

REAFFIRMATION AGREEMENT WITH ALLY BANK
5-16-2024 [\[15\]](#)

JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors' counsel will inform debtors that no appearance is necessary.

A Reaffirmation Agreement between Ham and Kim Man ("Debtors") and Ally Bank for a 2016 Lexus GS Sedan ("Vehicle") was filed on May 16, 2024. Doc. #15.

11 U.S.C. § 524(c)(6)(A)(ii) states "An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable non-bankruptcy law, whether or not discharge of such debt is waived, only if the court approves such agreement as in the best interest of the debtor."

Here, the Vehicle is valued at \$20,599.00. The amount being reaffirmed by Debtors is \$26,016.66 with an 11.99% interest rate. Debtors have negative equity of \$5,417.66 with approximately 60 months (five years) remaining on the loan and only \$1.00 remaining in the budget every month according to the Debtors' schedules.

The court finds no evidence that this Reaffirmation Agreement is in the best interest of the Debtor. Accordingly, approval of the Reaffirmation Agreement between Debtor and Ally Bank will be DENIED.

2. [24-10894](#)-B-7 **IN RE: STEVEN/LIZBETH GARCIA**

REAFFIRMATION AGREEMENT WITH CARVANA, LLC
5-16-2024 [\[17\]](#)

GRISELDA TORRES/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors' counsel will inform debtors that no appearance is necessary.

A Reaffirmation Agreement between Steven and Lizbeth Garcia ("Debtors") and Carvana, LLC for a 2019 GMC Terrain Utility ("Vehicle") was filed on May 16, 2024. Doc. #17.

11 U.S.C. § 524(c)(6)(A)(ii) states "An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable non-bankruptcy law, whether or not discharge of such debt is waived, only if the court approves such agreement as in the best interest of the debtor."

Here, the Vehicle is valued at \$16,462.00. The amount being reaffirmed by Debtors is \$20,699.14 with an %25.32 interest rate. Debtors have negative equity of \$4,237.14 with approximately 67 months (over five years) remaining on the loan and only \$7.70 remaining in the budget every month according to the Debtors' schedules.

The court finds no evidence that this Reaffirmation Agreement is in the best interest of the Debtor. Accordingly, approval of the Reaffirmation Agreement between Debtor and Ally Bank will be DENIED.

1:30 PM

1. [24-10804](#)-B-7 **IN RE: CHRISTOPHER FRANK**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
4-30-2024 [\[10\]](#)

JAMES DOAN/ATTY. FOR DBT.

NO RULING.

2. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[HBB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-26-2024 [\[1210\]](#)

DION GRAVINO/MV
LEONARD WELSH/ATTY. FOR DBT.
WILLIAM IRELAND/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Nicholas Bousquet, Scott Lee, and Dion Gravino ("Movants") seek to modify the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and 362(d)(2) to proceed to final judgment in a state court personal injury lawsuit against Freon Logistics ("Debtor") currently pending in Connecticut County Superior Court, Case No. HHD-CV 22-615879-S. Doc. #1178. Movants also request waiver of the 14-day stay of any stay relief order under Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3). *Id.*

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

LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Here, Movants first attempted to file a *Motion for Relief from Automatic Stay* on March 13, 2024, but that motion was denied for procedural reasons stemming from Movants failure to comply with the Local Rules in several ways. Docs. ##1178, 1208. While most of the filings of that earlier motion did not carry any DCNs at all, Movants' *Notice of Hearing* and *Certificate of Service* were identified as HBB-1. Docs. ##1192, 1193.

On April 26, 2024, Movants filed the instant motion, but the motion and the accompanying documents all carried the DCN HBB-1, which was the same DCN used in the prior motion which was dismissed. See *Doc. #1210 et seq.* This was incorrect. The instant motion is not a continuation of the prior *Motion for Relief* which the court denied without prejudice. It is a separate matter, each separate matter filed with the court must have a different DCN. Thus, the instant motion should have carried the DCN HBB-2 and any subsequent motions must increase the number by 1 each time.

For the above reason, this motion will be DENIED WITHOUT PREJUDICE.

3. [23-11025](#)-B-7 **IN RE: SANJUANA COVARRUBIAS**
[FW-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH SANJUANA BACA COVARRUBIAS AND RICARDO BACA
COVARRUBIAS
5-14-2024 [\[39\]](#)

JAMES SALVEN/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order with a copy of the stipulation attached as an exhibit. The stipulation shall also be separately filed and docketed as a stipulation.

Peter Fear ("Trustee"), Chapter 7 Trustee in the bankruptcy of Sanjuana Covarrubias ("Debtor"), requests an order approving a settlement agreement to resolve a dispute over real property located at 955 East Willow, Porterville, CA 93257 ("the Property") in which Debtor purportedly has an interest. Doc. #39.

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of

any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Debtor filed chapter 7 bankruptcy on May 15, 2023. Doc. #1. The case was closed on August 18, 2023, after discharge and later reopened on February 5, 2024, so that Debtor could properly schedule an Asset. Docs. #19, 23. Trustee was appointed as the successor trustee on February 8, 2024. Doc. #27.

Trustee declares that, while administering the reopened case, Trustee analyzed the issues surrounding Debtor's ownership interest in the Property, and while Debtor's Schedule A/B stated that Debtor was "merely on the title for probate purposes" and that the value of her interest was zero, Trustee concluded that the estate had claims to a portion of the Property, which Debtor owns jointly with a sibling, Ricardo Baca Covarrubias ("Ricardo"). Doc. #41. However, Trustee also concluded litigation would be required to determine the value of the estate's interest, if any, and such litigation would increase the administrative costs and reduce any potential recovery. *Id.*

Against this backdrop, Trustee and Debtor entered into a settlement agreement with Debtor and Ricardo whereby they would pay all unsecured claims filed in this case and all administrative expenses incurred up to a maximum of \$50,000.00 within 30 days of the claims bar deadline, and in exchange, Trustee would abandon any estate interest in the Property. *Id.* If Debtor and Ricardo fail to timely make the required payment, Trustee will be allowed to sell the Property without further litigation, with the entirety of the net proceeds of Debtor's interest paid to the estate. *Id.*; see Doc. #42 (*Exhibit A, Settlement Agreement*).

The court notes that a copy of the settlement agreement has not been filed as a separate document in this case. The motion will only be granted if Trustee separately files the settlement agreement and docket it as a stipulation.

As representative of the chapter 7 bankruptcy estate, Trustee has the authority to settle claims of Debtor subject to court approval. 11 U.S.C. § 323(a). On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Rule 9019. Approval of a compromise must be based upon considerations of fairness and equity. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the

complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that the Trustee has considered the *A & C Props.* and *Woodson* factors, which weigh in favor of approving the settlement agreement as follows:

1. Probability of success in litigation: While Trustee is confident that he would prevail in litigation, he believes the factual and legal issues involved would be "messy at best." Doc. #41. Trustee also believes that there is a significant risk that the estate's interest would be determined to be a legal interest only, with no beneficial interest that could lead to payout to creditors. This factor supports approval of the settlement.

2. Collection: Trustee believes that collectability of any judgment would not be an issue beyond the fact that increased litigation and administrative expenses would limit the final recovery. This factor supports approval of the settlement.

3. Complexity of litigation: Trustee characterizes the issues raised in this matter as "fairly complex" due to the "messy state of the property records relating to the Property." *Id.* Trustee believes that even successful litigation might not result in a recovery beneficial to creditors. *Id.* This factor supports approval of the settlement.

4. Paramount interests of creditors: Trustee argues that by eliminating the risks of litigation and significantly reducing the administrative expenses, settlement maximizes the return to unsecured creditors. *Id.* This factor supports approval of the settlement.

The *A & C Props.* and *Woodson* factors appear to weigh in favor of approving the settlement. Therefore, the settlement appears to be a fair, equitable, and reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.*

Accordingly, this motion will be GRANTED. The settlement will be approved.

This ruling is not authorizing the payment of any fees or costs associated with the settlement. Additionally, Trustee shall attach a copy of the settlement agreement as an exhibit to the proposed order and shall separately file the settlement agreement and docket it as a stipulation.

4. [24-10826](#)-B-7 **IN RE: FRANCES WHITE**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
4-30-2024 [[12](#)]

JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue an order.

Chapter 7 trustee Peter Fear ("Trustee") seeks dismissal of this case for the debtor's failure to appear and testify at the § 341(a) meeting of creditors held on April 29, 2024. Doc. #12.

Frances White ("Debtor") timely opposed. Doc. #15. Debtor's attorney appeared at the April 29, 2024, meeting of creditors. Debtor attempted to appear but encountered technical difficulties and was unable to timely troubleshoot the issue. Debtor will be present for the continued meeting.

This motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for July 10, 2024, at 3:00 p.m. See Doc. #12. If Debtor fails to appear and testify at the rescheduled meeting, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The times prescribed in Fed. R. Bankr. P. 1017(e)(1) and 4004(a) for the Chapter 7 Trustee and U.S. Trustee to object to Debtor's discharge or file motions for abuse, other than presumed abuse under § 707, are extended to 60 days after the conclusion of the meeting of creditors.

5. [24-10747](#)-B-7 **IN RE: ALFREDO CASILLAS-NARANJO AND ADRIANA DIAZ-BALLESTEROS**
[SK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-10-2024 [\[17\]](#)

SANTANDER CONSUMER USA INC./MV
R. BELL/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.

Santander Consumer USA Inc. ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2016 Chevrolet Silverado (VIN: 3GCPCREC3GG259214) ("Vehicle"). Doc. #17. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). *Id.*

Alfredo Casillas-Naranjo and Adriana Diaz-Ballesteros ("Debtors") did not file an opposition and the Vehicle was surrendered to the Movant on April 11, 2024. Debtors' Statement of Intention indicated that the Vehicle would be surrendered. No other party in interest timely filed written opposition. This motion will be GRANTED.

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

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtors have missed two pre-petition payments, one post-petition payment plus late fees and recovery fees totaling \$2,658.01. Docs. ##20, 22. Additionally, Movant recovered possession of the Vehicle on April 11, 2024. *Id.* Since the Vehicle has been recovered, the only issue is disposition of the collateral.

The court also finds that the Debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because Debtors are in chapter 7. The Vehicle is valued at \$27,375.00 and Debtors owe \$35,674.60. Doc. #20.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtors have failed to make two pre-petition payments and one post-petition payment to Movant and the Vehicle is a depreciating asset.

6. [24-10768](#)-B-7 **IN RE: VINCENT MORENO**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-6-2024 [\[13\]](#)

FIRST INVESTORS FINANCIAL
SERVICES/MV
JERRY LOWE/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.

First Investors Financial Services ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2018 Chevrolet Malibu (VIN: 1G1ZD5ST7JF206189) ("Vehicle"). Doc. #13. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). *Id.*

Vincent Moreno, Jr. ("Debtor") did not file an opposition and the Vehicle was surrendered to the Movant on March 21, 2024. Debtor's Statement of Intention indicated that the Vehicle would be surrendered. No other party in interest timely filed written opposition. This motion will be GRANTED.

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

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has missed, one post-petition payment in the amount of \$421.66. Docs. #15, 19. Additionally, Movant recovered possession of the Vehicle on March 21, 2024. *Id.* Since the Vehicle has been recovered, the only issue is disposition of the collateral.

The court also finds that the Debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because Debtor is in chapter 7. The Vehicle is valued at \$14,750.00 and Debtor owes \$17,308.72. Doc. #19.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtors have failed to one post-petition payment to Movant and the Vehicle is a depreciating asset.

7. [23-12477](#)-B-7 **IN RE: CHRISTINE COREA**
[FW-2](#)

MOTION TO SELL
5-10-2024 [\[39\]](#)

JAMES SALVEN/MV
ADELE SCHNEIDEREIT/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed for higher and better
 bids only.

DISPOSITION: Granted.

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

Chapter 7 trustee James Salven ("Trustee") seeks authorization to sell the non-exempt equity in debtor's homestead property located at 38777 Road 600, Raymond, CA 93653 ("the Property") to Christine Louise Corea ("Debtor") for \$50,000.00 pursuant to 11 U.S.C. § 363. Doc. #39. Trustee indicates that the Debtor has paid the \$10,000.00 deposit which is in Trustee's possession. *Id.*

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

No party in interest has responded, and the defaults of all non-responding parties will be entered. This motion will be GRANTED. The hearing will proceed for higher and better bids only.

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

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a

bankruptcy court “should determine only whether the trustee’s judgment was reasonable and whether a sound business justification exists supporting the sale and its terms.” *Alaska Fishing Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). “[T]he trustee’s business judgment is to be given great judicial deference.” *Id.* citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to the Debtor. The sale warrants scrutiny. As shown below, though Debtor here will “re-purchase” the interest for less than the value of Debtor’s non-exempt equity, when considering other sale costs, Debtor is actually paying a reasonable price for the interest.

Debtor’s *Schedule A/B* identifies the Property and values it at \$580,000.00 but states that the “current value of the portion [she] owned” to be \$632,745.00. Doc. #1 (*Sched. A/B*). The Trustee accepts that valuation for purposes of this motion. Doc. #41. Per Debtor’s *Amended Schedule C*, Debtor claimed a \$430,000.00 exemption in the Property. Doc. #21. The Trustee objected to that exemption, and on May 27, 2024, the court sustained the Objection and reduced the amount of Debtor’s exemption in the Property to \$416,000.00. Doc. #37. The Trustee declares that the Property is encumbered as follows:

Wells Fargo Home Mortgage	\$84,490.00
Matadors Community Credit Union	\$42,817.12

Doc. #41. Thus, the estate’s non-exempt equity in the Property can be expressed as follows:

Property’s Value	\$632,745.00
Wells Fargo Lien	(\$84,490.00)
Matadors Lien	(\$42,817.12)
Debtor’s Exemption	(\$416,000.00)
Non-Exempt Equity	\$89,437.88

Id. Trustee further declares that, if the property is sold at auction, additional fees and expenses will be added as follows:

Non-Exempt Equity	\$89,437.88
8% Broker Fee	(\$37,964.70)
2% Estimated Closing Costs	(\$12,654.90)
Estimated administrative costs for employment of a real estate broker	(\$1,500.00)
Equity realized for the estate	\$37,318.28

Id. Trustee proposes to sell the estate’s interest in the Property to Debtor for \$50,000.00, which is more than the amount Trustee expects to realize through an auction if this sale is not approved.

Id. The sale is subject to all liens and encumbrances currently on the Property, which will be sold as-is. *Id.*

Trustee contends that the sale price was determined by estimating the fair market value of the property and believes that the proposed sale is in the best interests of creditors. *Id.* No commission will be paid to any party in connection with this sale. *Id.* Trustee has presumably conducted due diligence and concluded the sale in the best interest of creditors and the estate.

It appears that the sale of the Property is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith. There are no objections or opposition to the motion.

The motion does not request, nor will the court authorize, the sale free and clear of any liens or interests. Any party wishing to overbid must (1) comply with the overbid procedures as outlined in the Notice accompanying this motion (see Doc. #40), (2) appear at the hearing and (3) acknowledge that no warranties or representations are include with the Vehicle; it is being sold "as-is."

8. [23-12477](#)-B-7 **IN RE: CHRISTINE COREA**
[FW-3](#)

MOTION TO SELL
5-10-2024 [\[46\]](#)

JAMES SALVEN/MV
ADELE SCHNEIDEREIT/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed for higher and better bids only.

DISPOSITION: Granted.

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

Chapter 7 trustee James Salven ("Trustee") seeks authorization to sell the non-exempt equity in debtor's personal property identified as a 2012 Polaris Ranger ("the Vehicle") to Christine Louise Corea ("Debtor") for \$3,500.00 pursuant to 11 U.S.C. § 363. Doc. #46. Trustee indicates that the Debtor has paid the \$1,000.00 deposit which is in Trustee's possession. *Id.*

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the

above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

No party in interest has responded, and the defaults of all non-responding parties will be entered. This motion will be GRANTED. The hearing will proceed for higher and better bids only.

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

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference." *Id.* citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to the Debtor. This sale warrants scrutiny. As shown below, the value of the Vehicle is questionable and the proposed sale results in a substantial payment to the estate.

Debtor's *Schedule A/B* identifies the Vehicle and values it at \$1,500.00 but states that the "current value of the portion [she] owned" to be \$0.00. Doc. #1 (*Sched. A/B*). The Trustee accepts that valuation for purposes of this motion. Doc. #48. Debtor did not exempt the Vehicle, which is unencumbered. *Id.*

Trustee proposes to sell the estate's interest in the Vehicle to Debtor for \$3,500.00, which is more than the amount Trustee expects to realize through an auction if this sale is not approved. *Id.* The sale is subject to all liens and encumbrances currently on the Property, which will be sold as-is. *Id.*

Trustee contends that the sale price was determined by estimating the fair market value of the property and believes that the proposed

sale is in the best interests of creditors. *Id.* No commission will be paid to any party in connection with this sale. *Id.* Trustee has presumably conducted due diligence and concluded the sale in the best interest of creditors and the estate.

It appears that the sale of the Vehicle to Debtor is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith. There are no objections or opposition to the motion.

The motion does not request, nor will the court authorize, the sale free and clear of any liens or interests. Any party wishing to overbid must (1) comply with the overbid procedures as outlined in the Notice accompanying this motion (see Doc. #47), (2) appear at the hearing and (3) acknowledge that no warranties or representations are include with the Vehicle; it is being sold "as-is."

9. [22-11587](#)-B-7 **IN RE: CARY SHAKESPEARE**
[DMG-3](#)

MOTION FOR ADMINISTRATIVE EXPENSES
5-14-2024 [\[73\]](#)

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Here, Chapter 7 Trustee Jeffrey Vetter ("Trustee") filed a *Notice of Intent to Abandon* the estate's interest in certain property of Cary Shakespeare ("Debtor"). Docs. ##71,80. That notice of intent/motion was filed under Docket Control Number DMG-3. *Id.* On May 14, 2024, the Trustee filed the instant *Motion for Order Authorizing Payment*

of Pre-petition Priority Tax and Domestic Support Obligation Claims.
Doc. #73.

The DCN for this motion is also DMG-3 and therefore, it does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

For the above reason, this motion will be DENIED WITHOUT PREJUDICE.

10. [24-10491](#)-B-7 **IN RE: GRETA HOLLINS**
[TCS-1](#)

MOTION TO AVOID LIEN OF TD BANK USA N.A.
5-22-2024 [\[17\]](#)

GRETA HOLLINS/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Greta Hollins ("Debtor") moves for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of TD Bank USA N.A. ("Creditor") in the sum of \$3,773.00 and encumbering residential real property located at 2387 Crestview Drive, Atwater, CA 95301 ("the Property"). Doc. #17.

Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor's registered agent for service of process via first class mail. Doc. #1. Debtor also complied with Rule 7004(h), which requires service to be made by **certified mail and addressed to an officer**, unless one of the three exceptions specified in subsections (h)(1) to (3) have been met. *Id.*

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

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

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). § 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), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of Creditor in the amount of \$3,883.00 on January 27, 2023. Doc. #20 (*Exh. B*). The abstract of judgment was issued on July 10, 2023 and was recorded in Merced County on July 24, 2023. *Id.* That lien attached to Debtor's interest in Property. *Id.* Debtor estimates that the current amount owed on account of this lien is \$3,773.00. Doc. #19.

As of the petition date, Property had an approximate value of \$381,800.00. Doc. #1 (*Sched. A/B*). Debtor claimed a \$300,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Id.* (*Sched. C*).

Property is encumbered by a first deed of trust in favor of Wells Fargo Home Mortgage ("Wells Fargo") in the amount of \$118,453.92. *Id.* (*Sched. D*). Property is also encumbered by the instant judgment lien in favor of Creditor, who is listed in the Schedules as "Target." *Id.*

Creditor	Amount	Recorded	Status
1. Wells Fargo	\$118,543.92	N/A	Unavoidable
2. Creditor	\$3,773.00	7/24/23	Avoidable.

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*; § 522(f)(2)(B). Here, only one avoidable lien is at issue.

"Under the full avoidance approach, as used in *Brantz*, the only way a lien would be avoided 'in full' was if the debtor's gross equity were equal to or less than the amount of the exemption." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 596 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999), citing *In re Brantz*, 106 B.R. 62, 68 (Bankr. E.D. Pa. 1989) ("Avoidance of all judicial liens results unless (3) [the result of deducting the debtor's allowable exemptions and the sum of all liens not avoided from the value of the property] is a positive figure."), citing *In re Magosin*, 75 B.R. 545, 547 (Bankr. E.D. Pa. 1987) (judicial lien was avoidable in its entirety where equity is less than exemption).

This lien is the most junior lien subject to avoidance and there is not any equity to support the lien. Strict application of the § 522(f)(2) formula with respect to Creditor's junior lien is illustrated as follows:

Amount of judgment lien	\$3,773.00
Total amount of unavoidable liens	+ \$118,453.92
Debtor's claimed exemption in Property	+ 300,000.00
<i>Sum</i>	= \$422,226.92
Debtor's claimed value of interest absent liens	- \$381,800.00
Extent lien impairs exemption	= \$40,426.92

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007); accord. *Hanger* 217 B.R. at 596, *Higgins v. Household Fin. Corp. (In re Higgins)*, 201 B.R. 965, 967 (B.A.P. 9th Cir. 1996); cf. *Brantz*, 106 B.R. at 68, *Magosin*, 75 B.R. at 549-50, *In re Piersol*, 244 B.R. 309, 311 (Bankr. E.D. Pa. 2000). Since there is no equity for liens to attach and this case does not involve fractional interests or co-owned property with non-debtor third parties, the § 522(f)(2) formula can be re-illustrated using the *Brantz* formula with the same result:

Fair market value of Property	\$381,800.00
Total amount of unavoidable liens	- \$118,453.92
Homestead exemption	- 300,000.00
Remaining equity for judicial liens	= (\$36,653.92)
Creditor's judicial lien	- \$3,773.00
Extent Debtor's exemption impaired	= (\$40,426.92)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support any judicial liens. Therefore, the fixing of Creditor's judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Accordingly, this motion will be GRANTED. The proposed order shall state that Creditor's lien is avoided from the subject Property only and include a copy of the abstract of judgment as an exhibit.