



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Department B – Courtroom #13  
Fresno, California  
Hearing Date: Tuesday, June 18, 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**  
[MJB-2](#)

CONTINUED MOTION TO USE CASH COLLATERAL  
4-23-2024    [\[12\]](#)

PINNACLE FOODS OF CALIFORNIA  
LLC/MV  
MICHAEL BERGER/ATTY. FOR DBT.

NO RULING.

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

CONTINUED MOTION TO USE CASH COLLATERAL  
4-23-2024    [\[8\]](#)

TYCO GROUP LLC/MV  
MICHAEL BERGER/ATTY. FOR DBT.

NO RULING.

3. [24-11017](#)-B-11     **IN RE: CALIFORNIA QSR MANAGEMENT, INC.**  
[MJB-2](#)

CONTINUED MOTION TO USE CASH COLLATERAL  
4-23-2024    [\[14\]](#)

CALIFORNIA QSR MANAGEMENT,  
INC./MV  
MICHAEL BERGER/ATTY. FOR DBT.

NO RULING.

4. [24-11017](#)-B-11     **IN RE: CALIFORNIA QSR MANAGEMENT, INC.**  
[MJB-5](#)

MOTION TO CONSOLIDATE LEAD CASE 24-11017 WITH 24-11015,  
24-11016  
5-29-2024    [\[79\]](#)

CALIFORNIA QSR MANAGEMENT,  
INC./MV  
MICHAEL BERGER/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:    Withdrawn.

No order is required.

On June 3, 2024, counsel for California QSR Management, Inc. (the "Debtor") withdrew this *Motion to Consolidate*. Doc. #92. Accordingly, this motion is WITHDRAWN.

5. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL  
SSA-2**

CONTINUED MOTION FOR ADMINISTRATIVE EXPENSES  
2-8-2024    [[1389](#)]

TELCION COMMUNICATIONS  
GROUP/MV  
RILEY WALTER/ATTY. FOR DBT.  
STEVEN ALTMAN/ATTY. FOR MV.

**After posting the original pre-hearing dispositions, the court has modified its intended ruling on this matter.**

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

DISPOSITION:                    Concluded and dropped from calendar.

ORDER:                            The court will enter the order.

On June 14, 2024, the parties in this matter filed a *Stipulation: (I) Resolving Telcion Communications Group's Motion for Allowance and Payment of Administrative Expense Claim; and (II) Allowing General Unsecured Claim*. Doc. #1885. As this stipulation appears to resolve the instant motion, this matter is CONCLUDED and DROPPED FROM THE CALENDAR.

6. [24-11198](#)-B-12     **IN RE: EDUARDO/AMALIA GARCIA  
CAE-1**

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION  
5-1-2024    [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

11:00 AM

1. [24-11216](#)-B-7      **IN RE: CLIFTON GINN**

PRO SE REAFFIRMATION AGREEMENT WITH FORD MOTOR CREDIT  
COMPANY, LLC  
5-28-2024    [\[15\]](#)

YAN SHRAYBERMAN/ATTY. FOR DBT.

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

DISPOSITION:      Dropped.

ORDER:              The court will issue an order.

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

A Reaffirmation Agreement between ("Debtor") and Ford Motor Credit Company LLC for a 2020 Ford F-150 Crew Cab was filed on May 28, 2024. Doc. #15.

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

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

2. [24-11199](#)-B-7      **IN RE: DEBORAH JASSO**

PRO SE REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION  
5-30-2024    [\[15\]](#)

NO RULING.

1:30 PM

1. [23-11508](#)-B-7     **IN RE: ANGELA WARREN**  
[FW-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH DALIA ANTOINETTE DEL RIO LAZO  
5-21-2024     [\[34\]](#)

PETER FEAR/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
GABRIEL WADDELL/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.

Chapter 7 trustee Peter Fear ("Trustee") requests an order approving a settlement agreement pursuant to Fed. R. Bankr. P. ("Rule") 9019 to resolve a property dispute between the estate and Dalia Antoinette Del Rio Lazo ("Del Rio") and involving real property located at 1094 Crestshire Loop SW, Ocean Shores, WA 98569 ("the Property"). Doc. #34.

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.

Angela Warren ("Debtor") filed chapter 7 bankruptcy on July 13, 2023. Doc. #1. Trustee was appointed as the interim trustee on that same date and became permanent trustee at the 341 meeting of creditors on August 14, 2023. Doc. #6; docket generally.

In Debtor's Schedule A/B, she listed an interest in the Property. Doc. #1. On her Statement of Financial Affairs, she also listed a claim on appeal from the Superior Court of the State of Washington, Cause no. 21-3-05063-9-8 KNT ("the Claim"). *Id.*

While investigating the assets of the estate, Trustee learned of the Claim and Debtor's estate's interest in the Property which arose from Debtor's allegations of an equity relationship between Debtor and Del Rio which would theoretically entitle Debtor to a share in the property otherwise in Del Rio's name. Doc. ##34,36. Prior to the filing of the petition, the Washington Court ruled adversely to Debtor, and she appealed. *Id.* Upon filing bankruptcy, Debtor's non-exempt property claims on appeal and all her rights in the Property became property of the estate. *Id.*

Trustee and Del Rio wish to settle the appeal and all claims related thereto, as well as the rights of the parties to the Property. *Id.* under the proposed terms of the settlement:

- a. Del Rio will pay a total of \$35,000.00 for the estate's interest in the Property and its interest in the appeal. This will be made in two payments of \$17,500.00, one of which has already been made to Trustee and the other to be paid one week after entry of the order approving settlement;
- b. Upon receiving the second payment, Trustee will execute a notarized quitclaim deed to the Property and other documents to release the estate's interest in the Property and to release any and all interest of the bankruptcy estate in the Appeal;
- c. If Del Rio fails to make the payments required by the Settlement Agreement, she agrees that Trustee may sell the Property free and clear of any claim of hers other than under the settlement agreement. Trustee will be entitled to pay the amounts owed under the settlement Agreement plus all attorney's fees and costs arising from sale of the Property and to enforce the agreement.
- d. The Settlement Agreement is subject to bankruptcy court approval.

*Id.* See also Doc. #37 (Exhib. Settlement Agreement).

The court notes that a copy of the settlement agreement has not been filed 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 believes he would be successful in litigating the appeal, he anticipates that it would result in a net loss to the estate after administrative and legal expenses are paid, including paying off the current mortgage on the Property. This factor favors settlement.

2. Collection: Because Trustee anticipates that litigating the Appeal and selling the estate's rights in the property would result in a net loss, Trustee does not believe he would succeed in collecting any net amount, much less the amount to be recovered for the estate under the Settlement Agreement. This factor favors settlement.

3. Complexity of litigation: Trustee asserts that the issues raised by the Appeal are complex, both factually and legally. This factor supports approval of the settlement.

4. Paramount interests of creditors: Trustee declares that, in his business judgment, the Settlement Agreement provides a certain recovery to unsecured creditors, while denial of the motion would likely result in no recovery for unsecured creditors whatsoever.

Doc. #36.

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 between the estate and Del Rio 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.

2. [20-11219](#)-B-7      **IN RE: NICHOLAS DONALDSON**  
[ICE-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH NICHOLAS J. DONALDSON  
5-14-2024    [\[21\]](#)

IRMA EDMONDS/MV  
MARK ZIMMERMAN/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 with  
a copy of the stipulation attached as an exhibit.  
The stipulation shall also be separately filed and  
docketed as a stipulation.

Chapter 7 trustee Irma Edmonds ("Trustee") requests an order approving a settlement agreement pursuant to Fed. R. Bankr. P. ("Rule") 9019 to resolve a dispute between the estate and Nicholas J. Donaldson ("Debtor") and arising from a preferential transfer made by Debtor to Debtor's father, Norman Donaldson ("Donaldson"). Doc. #21.

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 March 27, 2020. Doc. #1. Trustee was appointed as the interim trustee on that same date and became permanent trustee at the 341 meeting of creditors on May 11, 2020. Doc. #3; docket generally. During Trustee's review of the Schedules and examination of the Debtor, Trustee discovered that the estate assets included a prepetition claim in favor of the estate and against Donaldson in the sum of \$3,600.00. Doc. ##21,23. Preliminary investigation indicated that the claim was a

preferential payment and/or fraudulent conveyance from Debtor to Donaldson within one (1) year preceding the bankruptcy case. *Id.* Trustee declares that Debtor has since repaid the \$3,600.00 preference payment in full, as reflected by the *Agreement to Accept Repayment for a Preferential Payment* attached as an Exhibit to this motion. Doc. ##21,23-24. Trustee and Debtor seek court approval of the settlement agreement. ##21,23

The court notes that a copy of the settlement agreement has not been filed 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: Trustee has already received payment for the full amount of the alleged preferential transfer. Thus, any litigation could only reduce the amount to be recovered by the litigation costs. This factor favors settlement.

2. Collection: Collection is not an issue because Debtor has already paid the amount sought by Trustee in full. The proposed settlement would therefore save the estate litigation costs. This factor favors settlement.

3. Complexity of litigation: Trustee concedes the issues are not complex, but they do involve a mix of law and facts, and litigation would require a significant amount of administrative expenses that would be unnecessary with this settlement. This factor supports approval of the settlement.

4. Paramount interests of creditors: Trustee declares that, in his business judgment, the Settlement Agreement provides a certain recovery to unsecured creditors equal to the total amount sought by Trustee, while denial of the motion would diminish the return to something less than the full amount.

Doc. #21.

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 between Trustee and Debtor 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.

3. [24-11034](#)-B-7     **IN RE: IAN HOGAN**  
[ALG-2](#)

MOTION TO COMPEL ABANDONMENT  
5-30-2024    [\[16\]](#)

IAN HOGAN/MV  
JANINE ESQUIVEL OJI/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.

Ian Patrick Hogan ("Debtor") moves for an order compelling chapter 7 trustee Irma C. Edmonds ("Trustee") to abandon the estate's interest in certain business assets as outlined below ("the Business Assets"). Doc. #16.

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

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.

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the

estate or that is of inconsequential value and benefit to the estate."

To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment 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." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). *In re Galloway*, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at \*16-17 (B.A.P. 9th Cir. 2014).

According to the moving papers, Debtor holds a 100% interest in Shockwave Digital Advertising, LLC ("the LLC"). Doc. #16,19. The LLC is an authorized dealer for a digital marketing company called N-Compass, and Debtor installs flat screen TVs that provide digital marketing services. *Id.* While the business has been operating at a loss, Debtor declares his belief that if he can invest more personal time into the business, it may grow. *Id.* Debtor declares that because of the nature of his operation, he has no accounts receivable. *Id.* The following Business Assets have been exempted in Debtor's Schedules:

ASSET	VALUE	LIEN	EXEMPTION	NET VALUE
Goodwill	\$0.00	\$0.00	\$0.00	\$0.00
Accounts Receivable	\$0.00	\$0.00	\$0.00	\$0.00
20 Flat Screen TVs	\$2,000.00	\$0.00	\$2,000.00	\$0.00
Raspberry Pi's (digital hardware)	\$2,000.00	\$0.00	\$2,000.00	\$0.00

*Id.* This is consistent with Debtor's Schedules A/B and C. Doc. #1; Doc. #18 (*Exhib. A-B*). The TVs and the digital hardware are exempted under C.C.P. § 704.060. *Id.* None of the business assets is encumbered. Doc. #1 (*Sched. D*).

Debtor contends there is no goodwill value in the business because substantially all the income from the business is the result of the labor of Debtor. Doc. #19.

The court notes that the motion is devoid of any of the customary language indicating that Debtor was qualified and eligible to claim the exemptions under applicable law and understands that if for any reason it is determined that Debtor is not qualified to claim an exemption in the property listed, or if there is some other error in the exemption claimed, Trustee may demand that Debtor compensate the estate for any damage caused by the claimed exemption. Also absent

is a statement that Debtor agrees to not amend the exemptions affecting the Business Assets unless Trustee stipulated to that amendment or such relief is granted by further order of the court. The Trustee will have opportunity to address these deficiencies at the hearing.

Written opposition was not required and may be presented at the hearing. In the absence of opposition (and assuming Debtor can properly make the representations alluded to in the previous paragraph), the court will find that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately scheduled and is encumbered or exempted in their entirety. Therefore, the court intends to GRANT this motion.

The order shall specifically include the property to be abandoned.

4. [24-10056](#)-B-7     **IN RE: PEDRO JUNIO**  
[PBB-2](#)

MOTION TO SUBSTITUTE ATTORNEY  
5-31-2024    [\[35\]](#)

PEDRO JUNIO/MV  
SCOTT LYONS/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

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

Pedro Junio ("Debtor") moves for an order allowing substitution of Peter B. Bunting ("Bunting") as counsel of record for Debtor in the above-styled case. Doc. #35. In an order dated June 3, 2024, the court allowed Scott Lyons ("Lyons"), Debtor's prior counsel to withdraw from the case. Doc. #39.

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.

Substitution of counsel is governed by LBR 2017-1(h) which states:

(h) Substitution of Attorneys. An attorney who has appeared in an action may substitute another attorney and thereby withdraw from the action by submitting a

substitution of attorneys that shall set forth the full name and address of the new individual attorney and shall be signed by the withdrawing attorney, the new attorney, and the client. All substitutions of attorneys shall require the approval of the Court.

On May 8, 2024, Debtor filed an *Ex Parte Motion for Substitution of Attorney for Debtors* which requested the substitution of Bunting for Lyons and which was signed by Debtor and both attorneys. Doc. #27. The instant motion contains Bunting's full name and address. Doc. #35. The court is satisfied that the requirements of LBR 2017-1(h) have been met. Accordingly, in the absence of any opposition, the court intends to GRANT this motion and permit the substitution of Bunting for Lyons as attorney-of-record for this Debtor.

5. [24-11164](#)-B-7      **IN RE: BRIAN VARGAS AND BRITTANY COWEN-VARGAS**  
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
5-14-2024    [[11](#)]

MECHANICS BANK/MV  
TIMOTHY SPRINGER/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.

Mechanics Bank ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1)) with respect to a 2006 Toyota Tundra ("Vehicle"). Doc. #11. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). Id.

Briam William Vargas and Brittany Lynn Cowen-Vargas ("Debtors") did not file an opposition and 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 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).

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtors have failed to make at least one pre-petition payment, plus late fees in the amount of \$28.80 and NSF fees in the amount of \$15.00. The Movant has produced evidence that Debtors are delinquent at least \$331.95. Docs. #14, 15.

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

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

6. [24-11264](#)-B-7      **IN RE: SAMUEL MENDEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
5-31-2024    [\[19\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.  
\$199.00 FILING FEE PAID ON 5/31/24

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

DISPOSITION:      The OSC will be vacated.

ORDER:              The court will issue an order.

The record shows that the \$199.00 filing fee was paid on May 31, 2024. Accordingly, this order to show cause will be VACATED.

7. [24-11264](#)-B-7     **IN RE: SAMUEL MENDEZ**  
[MAZ-1](#)

MOTION TO COMPEL ABANDONMENT  
5-17-2024    [\[13\]](#)

SAMUEL MENDEZ/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

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

For motions filed on 28 days' notice, LBR 9014-1(f)(1)(B) requires the movant to notify respondents that any opposition to the motion must be in writing and filed with the court at least 14 days preceding the date of the hearing.

Here, the motion and supporting documents were filed and served on May 17, 2024, and set for hearing on June 18, 2024. Doc. # 13 *et seq.* May 17, 2024, is thirty-two (32) days before June 18, 2024. Therefore, this motion was set for hearing on 28 or more days of notice under LBR 9014-1(f)(1). Nevertheless, the notice provided:

Pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C), because this motion has been set with less than 28 days of notice given, no party in interest shall be required to file written opposition to the motion. If opposition is presented, or if there is any other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.

Doc. #14. This is incorrect. Since the hearing was set on more than 28 days' notice, LBR 9014-1(f)(1) is applicable. The notice should have stated that written opposition was required and must be filed at least 14 days before the hearing, and failure to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion. Instead, the respondents were told not to file and serve written opposition even though it was necessary. Therefore, the notice was materially deficient. If the movant gives 28 days or more of notice of the hearing, there is no option to simply pretend that the motion was set for hearing on less than 28 days of notice to dispense with the court's requirement that any opposition must be in writing and filed with the court. Also, under LBR 9014-1(d)(3)(B)(i), the motion must include the names and addresses of the persons who must be served with such opposition.

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

8. [24-10779](#)-B-7     **IN RE: ARTURO MONTEJANO MELGOZA AND LIDUVINA  
SEVILLA DE MONTEJANO**  
[JWC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-3-2024    [\[12\]](#)

BMO BANK N.A./MV  
ERIC ESCAMILLA/ATTY. FOR DBT.  
JENNIFER CRASTZ/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                The court intends to grant the motion for  
relief on the grounds stated in the motion.

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

BMO Bank N.A. ("Movant"), seeks relief from the automatic stay under  
11 U.S.C. § 362(d)(1) with respect to:

2016 Utility Dry Van - surrendered to trustee  
2013 Freightliner Cascadia Series Tractor  
2006 Great Dane Dry Van  
2016 Freightliner Tractor - surrendered to trustee  
2018 Utility Dry Vans Tractor - surrendered to trustee

("Vehicles"). Doc. #12. Movant also requests waiver of the 14-day  
stay of Fed. R. Bankr. P. 4001(a)(3). *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.

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).

After review of the included evidence, the court finds that "cause"  
exists to lift the stay. Debtors have surrendered all Vehicles (Doc.  
#15) with the exception of the 2013 Freightliner Cascadia Series  
Tractor and the 2006 Great Dane Dry Van (remaining "Vehicles"),

which are in Debtors possession. *Id.* Movant received payments through Debtor's prior chapter 13 bankruptcy case (case #20-10865-A-13) filed in this court. Debtors voluntarily dismissed that case before completing the plan payments. Debtors did not receive a discharge. Doc. #14. Debtors are four (4) pre-petition payments past due and three (3) post-petitions past due in the amount of \$10,154,62 on the remaining Vehicles. Doc. #16.

The court also finds that the Debtors do not have any equity in the remaining Vehicles and the remaining Vehicles are not necessary to an effective reorganization because Debtors are in chapter 7. Movant values the remaining Vehicles at \$27,125.00 and the amount owed to Movant is \$39,659.30. Doc. #16.

Absent any opposition, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. Adequate protection is unnecessary in light of the relief granted herein.

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 payments and the Vehicles are depreciating assets.

9. [24-11297](#)-B-7     **IN RE: MAYRA RAMIREZ**  
[BDB-1](#)

MOTION TO COMPEL ABANDONMENT  
6-3-2024    [\[12\]](#)

MAYRA RAMIREZ/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 hearing.

Mayra Alejandra Ramirez ("Debtor") moves for an order compelling chapter 7 trustee Irma C. Edmonds ("Trustee") to abandon the estate's interest in certain business assets as outlined below ("the Business Assets"). Doc. #12.

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

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.

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate."

To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment 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." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). *In re Galloway*, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at \*16-17 (B.A.P. 9th Cir. 2014).

According to the moving papers, Debtor is an independent contractor of a company called Top Marketing on whose behalf she sells telephone, and she is considered a sole proprietor. Doc. ##12, 14. Debtor avers that there is no goodwill in the business, as substantially all the income from the business is the result of Debtor's own labor and Debtor has no employees. *Id.*

Debtor has listed and exempted the following Business Assets in her bankruptcy Schedules:

DESCRIPTION	VALUE	LIEN	EXEMPTION	NET
Cell phone, computer, canopies, table and signs	\$500.00	\$0.00	\$500.00 (C.C.P. \$ 704.060)	\$0.00

*Id.* This is consistent with Debtor's Schedules A/B and C. Doc. #1.

Debtor certifies that Debtor was qualified and eligible to claim the exemptions under applicable law and understands that if for any reason it is determined that Debtor is not qualified to claim an exemption in the property listed, or if there is some other error in the exemption claimed, Trustee may demand that Debtor compensate the estate for any damage caused by the claimed exemption. Debtor agrees to not amend the exemptions affecting the Business Assets unless Trustee stipulated to that amendment or such relief is granted by further order of the court. Doc. #14.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court will find that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately scheduled and is encumbered or exempted in their entirety. Therefore, the court intends to GRANT this motion.

The order shall specifically include the property to be abandoned.

10. [22-11587](#)-B-7     **IN RE: CARY SHAKESPEARE**  
[DMG-4](#)

MOTION TO PAY  
6-10-2024    [\[85\]](#)

JEFFREY VETTER/MV  
LEONARD WELSH/ATTY. FOR DBT.  
D. GARDNER/ATTY. FOR MV.  
OST 6/10/24

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 hearing.

Chapter 7 Trustee Jeffrey M. Vetter ("Trustee") moves for authorization to pay certain pre-petition priority tax and domestic support obligation claims. Doc. #85. An earlier version of this motion was set for June 11, 2024, but was denied for procedural reasons. Doc. #73; *Docket generally*. Trustee has refiled the motion substantially unaltered but with the procedural defect cured, and the court has granted his motion for an Order Shortening Time so that it may be heard only one week after its originally set hearing date. Doc. #82.

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

This motion was filed with an order shortening time ("OST") to reduce the period of notice to permit the hearing to take place on June 18, 2024. Doc. #90. Debtor was required to give notice to all creditors, Debtor, the Trustee, and the U.S. Trustee's Office via ECF or email, if known, and first-class mail by June 15, 2023. *Id.* Debtor appears to have complied with the OST by serving notice on all requisite parties on June 10, 2024. *Id.*

The gravamen of the motion is that Debtor and his now ex-wife ("Jan") have been engaged in protracted and contentious divorce proceedings since 2017 in the Kern County Superior Court (case no. BFL-17-003918. Doc. #88. Jan previously filed a Motion for Relief from stay seeking permission for the divorce proceedings to continue, but the court denied the motion as moot on the grounds that the automatic stay was not applicable to matters such as the divorce proceedings. Doc. #47. The court later issued a final order holding *inter alia* that Family Law Court be allowed to adjudicate the Shakespeares' divorce in full, including any marital property division issues, but that an order of this court would be required to (a) enforce any judgment from property, or (b) collect or enforce any family law court judgment from property of the estate. Doc. #64.

On January 16, 2024, the Kern County Superior Court (Hon. Stephen D. Schuett, presiding) entered a dissolution of judgment along with various rulings pertaining to spousal support, property division, and attorneys' fees. Doc. #88. Portions of that judgment are on appeal by both Debtor and Jan. *Id.*

However, Debtor and Jan have entered into a "Stipulation and Order Regarding Payment of Taxes of the Parties and Equalization payment to Respondent Jan E. Shakespeare" (the "Stipulation and Order"). *Id.* It is that stipulation that gives rise to the instant motion. *Id.* Trustee requests that, pursuant to the Stipulation and Order, the court authorize the payment of the following priority claims:

- a. Amended Claim 1-2 filed February 17, 2023, by the Internal Revenue Service ("IRS") in the amount of \$1,349,414.38;
- b. Amended Claim 4-2 filed January 22, 2024, by the California Franchise Tax Board ("FTB") in the amount of \$628,726.79; and
- c. Equalization payment pursuant to the Stipulation and Order in the amount of \$645,724.00.

*Id.* The total funds to be distributed if the motion is granted is \$2,623,865.17. *Id.* Trustee avers that funds in the amount of \$2,930,365.00 are presently deposited in two blocked accounts under the supervision of the Kern County Superior Court, and the distribution, if approved, will come from these funds. *Id.*

Trustee anticipates that, due to interest accrued, the total funds to be paid to the IRS and the FTB will be higher than were listed in the proofs of claim. *Id.* Trustee seeks authorization to pay those entities the adjusted total amount due at the time of hearing. *Id.* An attachment to the Superior Court's judgment/ruling states that, after finds are distributed to the creditors, any balance will be equally distributed between the Debtor and his former spouse, but Trustee does not request that any such distribution be made at this time, as elements of the judgment are on appeal that could affect the final distribution and, in any event, the funds remaining after distribution are estate funds. *Id.*

In the motion, Trustee directs the court's attention to Fed. R. Bankr. P. 3009, which states that dividends to creditors in a Chapter 7 case "shall be paid as promptly as practicable." Doc. #85.

While such distributions are normally made at the time of the Trustee's filing of his final account, the court may authorize interim distributions if doing so would be in the best interests of the estate. *Id.* (citing *In re Bird*, 656 B.R. 382, 400 (Bankr. S.D. Tex 2017); *In re GPLA, Inc.*, No. 2:16-bk-13416-RK, 2016 Bankr. LEXIS 3085, at \*4 (Bankr. C.D. Cal. Aug. 22, 2016). Trustee also argues that the court has inherent authority to order an interim distribution under 11 U.S.C. § 105. *Id.* (citing *In re Franz*, No. 2:18-cv-0018-DCN, 2020 U.S. Dist., LEXIS 51778, at \*35 (D. Idaho March 25, 2020) (citing *Bird*, 565 B.R. at 400)).

The court is unaware of any controlling authority in this Circuit regarding the standard for determining whether to grant an interim payment to priority creditors of the sort requested here. *Franz*, which appears to be the most persuasive authority on the subject, is an Idaho District Court opinion affirming the bankruptcy court's grant of a motion for interim distribution using the standards outlined in *Bird*, a Texas case. *Frantz* No. 2:18-cv-00188-DCN, 2020 U.S. Dist. LEXIS 51778, at \*38. Trustee urges the court to apply the "Bird" factors to the issue at hand, those factors being:

[T]he Code does not bar an interim distribution, and when it benefits the estate to do so, the Court is authorized to approve any interim distribution using its authority pursuant to § 105(a). Here, the interim distribution will maximize distribution to the creditors because it will decrease the amount lost to bank fees. Stated differently, an interim distribution right now is in the best interests of the estate. Further, the deadline for filing proofs of claim has long since passed; thus, there is no risk that any more creditors will suddenly appear seeking a distribution from the Trustee.

*In re Bird*, 565 B.R. at 400 (citations omitted). Viewing *Bird* and other cases holistically, Trustee urges that the following non-exclusive list of factors be considered:

1. the benefit to existing creditors to receive the distribution;
2. the expense associated with delaying the distribution;
3. the prejudice to creditors who have yet to file proofs of claim;
4. whether sufficient funds exist in the estate to support the proposed distribution; and
5. whether the trustee has performed a diligent analysis concerning the respective claims at issue.

Doc. #85. Applying *Bird* to the case at hand, the Trustee notes that:

1. Distribution now will allow Jan to receive an equalization payment after the appeal of the divorce is concluded.
2. Interest will stop accruing on two very large tax claims.
3. There will be no prejudice to creditors who have not yet filed proofs of claim because the deadline to do so has run.
4. There are sufficient funds in the blocked accounts to support the distribution without dissipating any other estate funds.

5. Trustee declares that he has performed a diligent analysis of the respective claims at issue.

Doc. #88. The court finds the Trustee's arguments to be persuasive. In the absence of any opposition at the hearing, the court is inclined to GRANT this motion. Trustee will be authorized to carry out the proposed distributions to the IRS and the FTB as outlined in the motion on an interim basis. These distributions will not become final absent further order of the court.