



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, June 28, 2023
Department A – Courtroom #11
Fresno, California**

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [21-11814](#)-A-11 **IN RE: MARK FORREST**
[LKW-23](#)

MOTION TO DISMISS CASE
6-7-2023 [[449](#)]

MARK FORREST/MV
LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

2. [23-10571](#)-A-11 **IN RE: NABIEKIM ENTERPRISES, INC.**
[CAE-1](#)

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

PETER FEAR/ATTY. FOR DBT.

NO RULING.

3. [23-10571](#)-A-11 **IN RE: NABIEKIM ENTERPRISES, INC.**
[FW-2](#)

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

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted on a further interim basis through
September 30, 2023.

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

This motion was set for hearing pursuant to an interim order authorizing use of cash collateral ("Interim Order"). Doc. #46. The motion was heard initially on March 29, 2023, and again on April 12, 2023, and was granted on an interim basis each time. See Doc. ##22, 46. A further hearing on use of cash collateral was set for June 28, 2023. Interim Order, Doc. #46. The Interim Order provided that the debtor may file and serve any supplemental documents, which may include a revised budget, on or before June 14, 2023. Id. On June 14, 2023, the debtor filed a supplemental document and revised budget. Doc. ##64, 65. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper. The court will issue an order if a further hearing is necessary.

Nabiekim Enterprises, Inc. ("Debtor" or "DIP") moves the court for an order authorizing Debtor to use the cash collateral of Small Business Administration ("SBA") on a monthly basis subject to a revised budget. Ex. C, Doc. #65. Debtor asserts SBA holds a duly perfected security interest in nearly all of Debtor's cash collateral, including funds in Debtor's bank accounts at Wells Fargo. Motion, Doc. #6. Based on Debtor's list of 20 largest creditors, SBA is owed \$312,300.00 and its collateral, as of the petition date, was \$53,414.46. Doc. #1. Based on Debtor's schedules, SBA is owed \$312,300.00 and its collateral, as of the petition date, was \$49,657.38. Schedule D, Doc. #34. While there are other entities that may assert a security interest in Debtor's cash collateral, all other entities hold a junior security interest to the undersecured SBA and are, thus, unsecured.

Pursuant to 11 U.S.C. § 363, a debtor in possession can use property of the estate that is cash collateral by obtaining either the consent of each entity that has an interest in such cash collateral or court authorization after notice and a hearing. 11 U.S.C. § 363(c)(2). "The primary concern of the court in determining whether cash collateral may be used is whether the secured creditors are adequately protected." In re Plaza Family P'ship, 95 B.R. 166 (E.D. Cal. 1989) (citing 11 U.S.C. § 363(e)). Pursuant to 11 U.S.C. § 363(o), DIP carries the burden of proof on the issue of adequate protection.

Here, DIP seeks court authorization to use cash collateral to pay income and costs incurred by DIP in the normal course of its business for July 1 through September 30, 2023. Doc. #64; Ex. C, Doc. #65. As adequate protection for DIP's use of SBA's cash collateral, to the extent cash collateral is actually used, DIP will grant SBA a replacement lien against DIP's post-petition sales and other income as well as granting a replacement lien to any other creditor with a valid security interest in DIP's cash collateral that was served with notice of the motion. Declaration of Kaye Kim, Doc. ##8, 24.

In addition to filing and serving a notice of the hearing on June 28, 2023, DIP also filed and served a supplemental statement in support of the motion. Doc. ##64, 66. By the supplemental statement, DIP explains that the monthly budgets for July through September 2023 include both higher income and higher costs because DIP anticipates: (1) more events at the Save Mart Center (which is right across the street from DIP's location); (2) more events at the Maya Movie Theater; and (3) a substantial increase in clientele as students will be returning for summer vacation. Supplemental Statement, Doc. #64.

Previously, DIP requested that a payment totaling \$303.31 for a Dodge Caravan that is exclusively used for the business be added to the cash collateral budget. Supplemental Decl. of Kaye Kim, Doc. #24. The Dodge Caravan is titled in the name of Kaye Kim, Debtor's president, but equitably owned by Debtor. Schedule A/B, Doc. #34. The Dodge Caravan is used primarily by the kitchen manager to purchase restaurant supplies and serves the purpose of additional advertising. Kim Supplemental Decl., Doc. #24. There is no equity in the Dodge Caravan, and the payment covers the depreciation in the Dodge Caravan. Id. DIP continues to include this expense in its revised budget. Ex. C, Doc. #65.

DIP also requested that a payment totaling \$579.45 for a BMW that is used by Ms. Kim be added to the cash collateral budget. Supplemental Decl. of Kaye Kim, Doc. #24. Like the Dodge Caravan, the BMW is titled in the name of Ms. Kim but equitably owned by Debtor. Schedule A/B, Doc. #34. Ms. Kim uses the BMW almost exclusively for restaurant purposes, including running errands for the restaurant, attending business meetings related to Debtor's restaurant, making bank deposits, and picking up smaller food ingredient items while the kitchen manager uses the Dodge Caravan to make larger purchases. Kim Supplemental Decl., Doc. #24. Because Ms. Kim has not been paid a regular salary for her

over 80 hours per week when working for Debtor's restaurant, it has been reasonable and necessary to have Debtor pay the BMW car payment. Id. DIP continues to include this expense in its revised budget. Ex. C, Doc. #65.

Accordingly, pending any opposition at the hearing, the motion will be GRANTED on a further interim basis through September 30, 2023, consistent with the budget attached as Exhibit C to Doc. #65.

4. [22-10778](#)-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
5-8-2022 [[1](#)]

NOEL KNIGHT/ATTY. FOR DBT.

NO RULING.

5. [22-10778](#)-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
[NCK-15](#)

MOTION TO CONFIRM CHAPTER 11 PLAN
5-30-2023 [[376](#)]

COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC/MV
NOEL KNIGHT/ATTY. FOR DBT.

NO RULING.

As a procedural matter, the certificate of service filed in connection with this motion (Doc. #383) does not comply with Local Rule of Practice 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

6. [23-11178](#)-A-12 **IN RE: MARK FORREST**

ORDER TO SHOW CAUSE AS TO WHY THIS CHAPTER 12 CASE SHOULD NOT BE DISMISSED
6-5-2023 [[16](#)]

NOEL KNIGHT/ATTY. FOR DBT.

NO RULING.

As a procedural matter, the certificate of service filed in connection with the response to the order to show cause (Doc. #37) does not comply with Local Rule of Practice 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without

prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

1. [23-10110](#)-A-7 **IN RE: NICHOLAS GUTIERREZ**
[JES-1](#)

MOTION TO SELL
5-24-2023 [\[20\]](#)

JAMES SALVEN/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled for higher and better offers.

DISPOSITION: Granted.

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

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

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Nicholas Gutierrez ("Debtor"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the bankruptcy estate's interest in a 2011 Chevrolet Tahoe, license plate number 7VUD594 (the "Vehicle"), to Debtor for \$4,000.00. The \$4,000.00 price is based on the fair market value of the Vehicle of \$11,500.00 minus \$7,500.00 for Debtor's claimed exemption credit. Motion, Doc. #20. The estate has received \$3,000.00 from Debtor, and Debtor has arranged to pay the last installment of \$1,000.00 prior to the sale hearing. Decl. of Trustee, Doc. #22. The proposed sale is subject to higher and better bids at the hearing. Id.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)).

"[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Trustee Decl., Doc. #22. Trustee's proposed sale to Debtor is made in consideration of the full and fair market value of the Vehicle minus Debtor's claimed exemption credit. Id. Debtor offered to buy the Vehicle for the net purchase price of \$4,000.00, subject to overbid at the hearing. Id. The court recognizes that no commission will need to be paid because the sale is to Debtor.

It appears that the sale of the estate's interest in the Vehicle is in the best interests of the estate, the Vehicle will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith.

Accordingly, subject to overbid offers made at the hearing, the court is inclined to GRANT Trustee's motion and authorize the sale of the estate's interest in the Vehicle to Debtor on the terms set forth in the motion.

2. [22-11820](#)-A-7 **IN RE: GWENDOLYN PICKENS**
[UST-1](#)

MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B)
5-15-2023 [\[42\]](#)

TRACY DAVIS/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
JASON BLUMBERG/ATTY. FOR MV.

NO RULING.

As a procedural matter, the certificate of service form was not completed correctly. The declarant checked the box indicating that service was made pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 7004. Doc. #47. The declarant also checked the box indicating the declarant included an Attachment 6A1, which is required if service is effectuated under Rule 7004. However, the attachment with the certificate of service was a Clerk's Matrix of Creditors instead of "a list of the persons served, including their names/capacity to receive service, and address is appended [to motion] and numbered Attachment 6A1." If the movant intended to effectuate service pursuant to Rule 7004, the declarant should have attached the correct item.

3. [23-10228](#)-A-7 **IN RE: MARIVEL ARAIZA**
[DAB-1](#)

MOTION TO AVOID LIEN OF FIRST TECHNOLOGY FEDERAL CREDIT UNION
5-19-2023 [\[22\]](#)

MARIVEL ARAIZA/MV
DAVID BOONE/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Federal Rule of Bankruptcy Procedure ("Rule") 9014(b) requires a motion to avoid a lien under 11 U.S.C. § 522(f) be served "in the manner provided for service of a summons and complaint by Rule 7004." Service of the motion on First Technology Federal Credit Union ("Creditor") does not satisfy Rule 7004.

Rule 7004(h) provides that service on an insured depository institution, such as Creditor, "shall be made by certified mail addressed to an officer of the institution unless" an appearance by an attorney for the institution has been entered, the court orders otherwise, or the institution waives its entitlement to service by designating an officer to receive service. A review of the docket shows no attorney for Creditor has appeared for Creditor in this bankruptcy case and no officer has been designated to receive service for Creditor in this bankruptcy case.

Neither the original certificate of service nor the amended certificate of service filed in connection with this motion properly show that service of the motion was made by certified mail addressed to an officer of Creditor. See Doc. ##28, 32. While Section 7 of the original certificate of service and the amended certificate of service indicate that service of the motion and related pleadings were made by regular mail and certified mail, the declarant did not: (1) complete Section 5 indicating the parties being served; (2) complete Section 6 of either the original certificate of service or the amended certificate of service to indicate whether the pleadings were served by first class mail and certified mail; and (3) attach Attachment 6A1 or Attachment 6A2, indicating which parties were served at what address and in what manner. Based on the certificates of service filed with this court, Creditor was not served properly with this motion pursuant to Rule 7004(h).

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

4. [23-10272](#)-A-7 **IN RE: HELEN WINK**
[SAH-1](#)

MOTION TO COMPEL ABANDONMENT
6-13-2023 [\[58\]](#)

HELEN WINK/MV
SUSAN HEMB/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 matter is DENIED WITHOUT PREJUDICE for improper notice.

First, the Clerk's Matrix of Creditors used by the moving party to serve notice of the motion does not comply with Local Rule of Practice ("LBR") 7005-1(d), which requires that the Clerk's Matrix of Creditors used to serve a notice be downloaded not more than 7 days prior to the date notice is served. Here, the moving party served notice of the motion on June 13, 2023, using a Clerk's Matrix of Creditors that was generated on May 31, 2023. Doc. #61.

Second, the notice of the hearing on this motion was sent by mail on June 16, 2023 with a hearing date set for June 28, 2023. Doc. #59. Because the notice was sent on less than 28 days' notice, notice is governed by LBR 9014-1(f)(2), which states that "[w]hen fewer than twenty-eight (28) days' notice of a hearing is given, no party in interest shall be required to file written opposition" to the motion and that any opposition "shall be presented at the hearing on the motion." LBR 9014-1(f)(2)(C). While the Notice of Hearing included language indicating that "[n]o party in interest shall be required to file written opposition to the motion[,]" the Notice of Hearing also included language indicating that "written opposition shall be served" on the debtor, the debtor's counsel, and the standing Chapter 7 Trustee at their respective addresses listed in the Notice of Hearing. Doc. #59. The court finds inclusion of such language in the Notice of Hearing to be confusing as to whether written opposition was required or oral opposition could be presented at the hearing. The court encourages counsel to clarify future Notices of Hearing to clearly explain whether oral or written opposition is required.

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 7004 Service. Doc. #61. Instead, the declarant should have marked that service was effectuated by Rule 5 Service, checked the appropriate box under Section 6B2(a): U.S. Mail, and numbered the attachment as 6B2 because the declarant attached a copy of the Clerk's Matrix of Creditors. Further, the declarant incorrectly completed Section 7 of the court's mandatory Certificate of Service form. The declarant should have marked that service was accomplished by Rule 5 Service, not Rule 7004 Service.

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-22-2023 [\[22\]](#)

SANTANDER CONSUMER USA INC./MV
MARK ZIMMERMAN/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
DISCHARGED 08/01/2022

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

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

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

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

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on August 1, 2022. Doc. #20. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Santander Consumer USA Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2021 Ford Mustang (the "Vehicle"). Doc. #22.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least thirteen complete post-petition payments and Movant does not have proof the Vehicle is currently insured with Movant's name as loss payee. Decl. of Ashley Young, Doc. #27. Further, Movant has produced evidence that the debtor is delinquent by at least \$10,557.17. Young Decl., Doc. #27.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. Movant values the Vehicle at \$30,000.00 and the amount owed to Movant is \$43,218.09. Young Decl., Doc. #27.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least thirteen post-petition payments to Movant, the Vehicle is a depreciating asset, and the Vehicle is not insured with Movant's name as loss payee.

6. [23-10590](#)-A-7 **IN RE: DAVID/KIMBERLY WALTERS**
[DS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION TO COMPEL ABANDONMENT
6-5-2023 [\[18\]](#)

MERRICK BANK/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
LOVEE SARENAS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service. Doc. #24. However, Federal Rules of Bankruptcy Procedure 4001(a)(1) and 9014 require service of a motion for relief from stay be made pursuant to Federal Rule of Bankruptcy Procedure 7004, which was done. The declarant properly checked Section 7 of the Certificate of Service form by checking Rule 7004 Service § 6A(1): First Class Mail in Section 7 of the Certificate of Service form. In Section 6, the declarant should have checked the appropriate box under Section 6A, not Section 6B.

As a further informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. The declarant marked that service was made on parties who requested special notice by U.S. Mail under Rule 5 and Rules 7005, 9036 and checked the Rule 5 Service § 6B2(1): Request for Special Notice box in Section 7 of the Certificate of Service form.

Nevertheless, the declarant did not attach a copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice applicable to this case with the court's mandatory Certificate of Service form (Doc. #24). The court cannot determine from the certificate of service filed whether creditors who have filed a Request for Special Notice were served with the notice of the motion and supporting documents. In the future, the declarant should attach a copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice applicable to this case.

The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

The movant, Merrick Bank ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2013 Freedom Express Travel Trailer with VIN 5ZT2FEVB0DA007687 ("Trailer"). Doc. #18. Alternatively, pursuant to 11 U.S.C. § 554, Movant moves the court to order the trustee to abandon the Vehicle. Id.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least eight complete pre- and post-petition payments. Decl. of Todd H. Murray, Doc. #22. Movant asserts that the debtors are delinquent by at least \$11,460.00, including late fees of \$374.19. Motion, Doc. #18.

Movant also seeks relief under 11 U.S.C. § 362(d)(2) by arguing that the continuing diminution on the value of the Trailer does not provide enough equity cushion to protect Movant's security interest and the debtors' de minimis equity continues to erode. Motion, Doc. #18. While the Trailer is not necessary to an effective reorganization because the debtors are in chapter 7, the court finds the debtors have equity in the Trailer because the Trailer is valued at \$12,500.00 and the debtors owe \$11,460.00. Schedule A/B, Doc. #1; Motion, Doc. #18. According to the motion, the debtors have equity in the Trailer, albeit a small amount, so relief from stay pursuant to 11 U.S.C. § 362(d)(2) is denied. Motion, Doc. #18.

Because the court is granting Movant's request for relief pursuant to 11 U.S.C. § 362(d)(1), the court will not address Movant's requests for alternative relief to compel abandonment of the property pursuant to 11 U.S.C. § 554.

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

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

7. [22-11095](#)-A-7 **IN RE: SEAN/KRISTINA MOSS**
[DWE-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
7-28-2022 [\[15\]](#)

FREEDOM MORTGAGE CORPORATION/MV
SCOTT LYONS/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.
DISCHARGED 10/25/2022, RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on June 23, 2023. Doc. #109.