UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, July 10, 2024
Department A – Courtroom #11
Fresno, California

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

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

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

Please also note the following:

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

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

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

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. 22-10416-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**
CDC-1

MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION/APPLICATION TO CONFIRM TERMINATION OR ABSENCE OF STAY
6-12-2024 [448]

CITIZENS BUSINESS BANK/MV
RILEY WALTER/ATTY. FOR DBT.
MICHAEL LAMPE/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Citizens Business Bank, as successor by merger to Suncrest Bank ("Movant"), seeks confirmation that the automatic stay terminated upon confirmation of the plan of reorganization of KR Citrus, Inc. ("Debtor") with respect to real property located at 180 South E Street, Porterville, California 93257 (the "Property"). Doc. #448. Alternatively, Movant seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2). Id. Specifically, Movant requests retroactive relief from the automatic stay to validate Debtor's post-confirmation execution of a correctory deed of trust as well as prospective relief from the automatic stay to proceed under applicable non-bankruptcy law for Movant to exercise its rights and remedies to foreclose upon and obtain possession of the Property. Id.

Movant requests the court take judicial notice of true and correct copies of the following documents: (1) Grant Deed recorded on October 16, 2012 as Document No. 2012-0066631, see Ex. 1, Doc. #455; (2) Grant recorded on October 16, 2012 as Document No. 2012-0066632, see Ex. 2, Doc. #455; (3) Grant recorded on May 3, 2013 as Document No. 2013-0028265, see Ex. 3, Doc. #455; (4) Grant recorded on March 16, 2016 as Document No. 2016-0014117, see Ex. 4, Doc. #455; (5) Deed of Trust recorded on March 16, 2026 as Document No. 2016-0014118, see Ex. 5, Doc. #455; (6) Complaint filed with the California Superior Court of Tulare, Case No. VCU304854, see Ex. 6, Doc. #455; and (7) Correctory

Deed of Trust recorded on April 11, 2024 as Document No. 2024-0016074, see Ex. 7, Doc. #455.

This court may take judicial notice of and consider the records in this bankruptcy case, filings in other court proceedings, and public records. Fed. R. Evid. 201; Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015). The court takes judicial notice of the existence of exhibits 1 through 6 but does not take judicial notice of the truth or falsity of the contents of any such document for the purpose of making a finding of fact. In re Harmony Holdings, LLC, 393 B.R. 409, 412-15 (Bankr. D.S.C. 2008) (collecting cases).

11 U.S.C. § 362(c)(1) provides that the automatic stay imposed by 11 U.S.C. § 362(a) of an act against property of the estate "continues until such property is no longer property of the estate[.]" 11 U.S.C. § 362(c)(1). 11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of 11 U.S.C. § 362(a) of any other act continues in a chapter 11 case until the discharge is granted or denied.

Here, the Order Confirming Second Amended Subchapter V Plan Dated May 31, 2022 as Modified ("Order") provides in relevant part that "[u]pon Confirmation the automatic stay terminates pursuant to Section 362(c)(2)(C)." Order at ¶ 10, Doc. #423. However, this is a Subchapter V case, and Debtor's chapter 11 plan was confirmed on a nonconsensual rather than a consensual basis so there is a delay in Debtor's discharge. 11 U.S.C. §§ 1191(b), 1192. Accordingly, paragraph 11 of the Order provides that "the discharge will not be entered until after the Debtor completes payments for at least three years." Id. at ¶ 11. Thus, the Order is inconsistent with respect to the termination of the automatic stay under 11 U.S.C. § 362(c)(2)(C).

A bankruptcy court has jurisdiction to interpret the scope of an injunction contained in an order confirming a chapter 11 plan. Travelers Indem. Co. v. Bailey, 557 U.S. 137, 151 (2009). The court interprets paragraph 10 of the Order to terminate the automatic stay as to both property of the estate as well as any other act covered by 11 U.S.C. § 362(a) upon confirmation of Debtor's chapter 11 plan notwithstanding any inconsistent language in 11 U.S.C. § 362(c)(2)(C).

Accordingly, the motion is GRANTED. The court confirms that the automatic stay of 11 U.S.C. § 362(a) terminated in full upon confirmation of Debtor's chapter 11 plan.

2. 24-11422-A-12 **IN RE: IGNACIO/CASAMIRA SANCHEZ**
FW-3

MOTION TO SELL AND/OR MOTION TO PAY
6-18-2024 [23]

CASAMIRA SANCHEZ/MV
PETER FEAR/ATTY. FOR DBT.

NO RULING.

3. 24-11545-A-11 **IN RE: RIDGELINE CAPITAL INVESTMENTS, LLC**
MJB-2

MOTION TO EMPLOY MICHAEL JAY BERGER AS ATTORNEY(S)
6-19-2024 [20]

RIDGELINE CAPITAL INVESTMENTS, LLC/MV
MICHAEL BERGER/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 will submit a proposed order after the hearing.

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

As an informative matter, the movant incorrectly completed Section 3 of the court's mandatory Certificate of Service form. In Section 3, the declarant did not mark that this bankruptcy case was filed under chapter 11 of the Bankruptcy Code. Doc. ##25, 30. In Section 3, the declarant should have checked the appropriate box indicating the case is one filed under chapter 11.

Debtor in possession Ridgeline Capital Investments, LLC ("Debtor" or "DIP") moves pursuant to 11 U.S.C. § 327(a) for authorization to employ Michael Jay Berger and the Law Offices of Michael Jay Berger (collectively, "Counsel") to serve as general bankruptcy counsel in connection with DIP's chapter 11 bankruptcy case. Doc. #20.

Section 1107 of the Bankruptcy Code gives DIP all the rights and powers of a trustee and requires that DIP perform all the functions and duties of a trustee, subject to certain exceptions not applicable here. 11 U.S.C. § 1107. Section 327(a) of the Bankruptcy Code permits DIP to employ, with court approval, professionals "that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist" DIP in carrying out DIP's duties under the Bankruptcy Code. 11 U.S.C. § 327(a). The burden is on the applicant seeking to be employed under section 327(a) of the Bankruptcy Code to come forward with facts pertinent to the proposed professional's eligibility and to make full, candid and complete disclosures to

the court. Fed. R. Bankr. P. 2014(a); In re B.E.S. Concrete Products, Inc., 93 B.R. 228, 237 (Bankr. E.D. Cal. 1998).

DIP selected Counsel pre-petition because of Counsel's considerable experience and familiar with the affairs of the Debtor as it related to this chapter 11 proceeding. Doc. #20. DIP and Counsel entered into a legal services agreement dated June 4, 2024, which establishes, *inter alia*, Counsel's engagement to prepare, file and administer a chapter 11 bankruptcy case for Debtor in the Eastern District of California. Id.; Ex. 3, Doc. #23. DIP proposes to pay Counsel $645.00 per hour for the services of Michael Jay Berger, $595.00 per hour for the services of partner Sofya Davtyan, $475.00 per hour for services of associate attorney Robert Poteete, $275.00 per hour for services of senior paralegals and law clerks, and $200.00 per hour for services of bankruptcy paralegals. Id.; Decl. of Michael Jay Berger, Doc. #22.

Counsel has verified that he has no connection with Debtor, its creditors, attorneys, accountants, any other party in interest, or the United States Trustee. Berger Decl., Doc. #22; Decl. of Shaun Michael Reynolds, Doc. #24. DIP and Counsel agreed upon a retainer of $25,000.00 and DIP paid Counsel a $25,000.00 retainer plus the $1,738.00 filing fee. Id. DIP has incurred pre-petition fees in the amount of $1,425.50 and pre-petition costs in the amount of $1,738.00, which were withdrawn from DIP's client trust account. Id. Counsel believes he and his firm are disinterested persons as defined in 11 U.S.C. § 101(14). Id.; Supp. Decl. of Michael Jay Berger, Doc. #29.

After review of the evidence, the court finds that Counsel does not represent or hold an adverse interest to Debtor or to the estate with respect to the matter on which Counsel is to be employed.

Accordingly, subject to opposition being raised at the hearing, the court is inclined to GRANT DIP's motion to employ Counsel. DIP will be authorized to employ Counsel, and the effective date of such employment shall be June 4, 2024. The court is not approving or otherwise authorizing the hourly rate for services of Counsel. The order authorizing employment of Counsel shall specify that any compensation or reimbursement from the estate is subject to the court's approval pursuant to 11 U.S.C. § 330(a).

4. 23-12784-A-11 **IN RE: KODIAK TRUCKING INC.**
MR-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-11-2024 [256]

SETH MOJICA/MV
PETER FEAR/ATTY. FOR DBT.
MATTHEW RESNIK/ATTY. FOR MV.
WITHDRAWN 6/28/24

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on June 28, 2024. Doc. #287.

5. 23-12784-A-11 **IN RE: KODIAK TRUCKING INC.**
MR-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-11-2024 [261]

SETH MOJICA/MV
PETER FEAR/ATTY. FOR DBT.
MATTHEW RESNIK/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted with conditions set forth in conditional non-opposition.

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 on 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor Kodiak Trucking, Inc. ("Debtor") timely filed written conditional non-opposition on June 26, 2024. Doc. #284. The moving parties filed a timely reply consenting to the conditions set forth in Debtor's conditional non-opposition. Doc. #289. 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 non-responding parties in interest are entered.

As a procedural matter, the Clerk's Matrix of Creditors used by the moving party to serve notice of the motion does not comply with 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 15, 2024 using a Clerk's Matrix of Creditors that was generated on May 30, 2024. Doc. #272.

As a further procedural matter, the motion was not served pursuant to Federal Rules of Bankruptcy Procedure ("Rule") 4001(a)(1) and 9014(b), which require service of a motion for relief from the automatic stay to be made pursuant to Rule 7004. With respect to a domestic or foreign corporation or other unincorporated association, such as Debtor, service under Rule 7004(b)(3) may be made by mailing, first class prepaid, "a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 7004(b)(3). Here, the moving parties did not serve the motion and related pleadings on Debtor properly because Debtor was not served to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. However, in light of the fact that Debtor filed timely written opposition (Doc. #37) and does not oppose granting relief from stay subject to certain limitations to which the moving parties agree, the court is inclined to waive the improper service of the motion on Debtor.

Seth O. Mojica and Federal Insurance Company (collectively, "Movants") seek relief from the automatic stay under 11 U.S.C. § 362(d)(1) to continue state court proceedings currently pending against Debtor before the Kern County Superior Court as Case No. BCV-23-101584 ("State Court Action") arising from a

pre-petition personal injury and related subrogation claim (collectively, the "Claims"). Doc. #261.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause. "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). When a movant seeks relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court may consider the "Curtis factors" in making its decision. Kronemyer v. Am. Contrs. Indem. Co. (In re Kronemyer), 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the automatic stay" to allow litigation in another forum. Id. The Curtis factors include: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the non-bankruptcy forum has the expertise to hear such cases; (4) whether litigation in another forum would prejudice the interests of other creditors; and (5) the interest of judicial economy and the expeditious and economical determination of litigation for the parties. In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984).

Here, permitting Movants to pursue the State Court Action in state court by granting relief from the stay will promote judicial economy because the state court has expertise to hear and evaluate the Claims to determine liability and damages as well as apportionment among the parties. Doc. #261. Further, preliminary discovery has already been conducted in the State Court Action with party depositions remaining to be taken before the case proceeds trial or settlement. Id. Movants state it will be more efficient to let the Claims be decided by the state court since that litigation is already underway. Id. Additionally, by Debtor's insurance company representing Debtor in the State Court Action and responding to that litigation, Debtor's insurance carrier has assumed responsibility for defending the State Court Action. Doc. #261; Ex. B, Doc. #264. Lastly, Debtor has filed a conditional non-opposition to this motion asserting no opposition so long as the relief sought is limited to prosecution of the Claims to determine what liability, if any, is owed to Movants, which ensures Movants are limited to Debtor's applicable insurance proceeds in the event Movants prevail. Doc. #284. Movants consent to this condition. Doc. #289.

Accordingly, this motion will be CONDITIONALLY GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movants to recover proceeds from Debtor's insurance company and, if necessary, file and prosecute to conclusion the State Court Action as necessary to determine Debtor's liability to Movants for the Claims for the purpose of recovering from Debtor's insurance company only. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived in light of the consent by Movants to the conditional non-opposition filed by Debtor.

1. 24-11273-A-7 **IN RE: ROBERT BOGLE**

PRO SE REAFFIRMATION AGREEMENT WITH MERRICK BANK
6-24-2024 [16]

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

The court is not approving or denying approval of the reaffirmation agreement. The 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. Okla. 2009). The reaffirmation agreement, in the absence of a declaration by the 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 debtor's bankruptcy attorney.

2. 24-11080-A-7 **IN RE: ROBERTO GALVAN**

PRO SE REAFFIRMATION AGREEMENT WITH AMERICAN HONDA FINANCE CORPORATION
6-12-2024 [13]

SIMRAN HUNDAL/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

The court is not approving or denying approval of the reaffirmation agreement. The 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. Okla. 2009). The reaffirmation agreement, in the absence of a declaration by the 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 debtor's bankruptcy attorney.

3. 24-10883-A-7 **IN RE: NINA SWALM**

PRO SE REAFFIRMATION AGREEMENT WITH 21ST MORTGAGE CORPORATION
6-11-2024 [22]

PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

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

4. 23-12498-A-7 **IN RE: GEORGE SUPER**

PRO SE REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
6-21-2024 [47]

NO RULING.

1:30 PM

1. 24-11400-A-7 **IN RE: SCOTT CARR**
GT-1

MOTION TO DISMISS DUPLICATE CASE
6-6-2024 [10]

SCOTT CARR/MV
GRISELDA TORRES/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

As a procedural matter, the certificate of service shows service on more than six people, so a custom list is not permitted under LBR 7005-1(a). Doc. #21. Moreover, the matrix used by the moving party to show electronic service of the motion does not indicate when the list was generated and does not comply with LBR 7005-1(d), which requires that the Clerk's Matrix of Creditors used to serve a pleading reflect the date of downloading. Here, Attachment 6B1 was not generated from the court's website and does not indicate the date on which the matrix was generated. Doc. #21. The moving party should have used the court's website to generate Attachment 6B1. The link to generate such lists can be found at: http://www.caeb.circ9.dcn/MatrixOfRegisteredUsers.

Scott Richard Carr ("Debtor"), moves to dismiss this duplicative chapter 7 case on the grounds that Debtor's chapter 7 bankruptcy petition previously filed on May 23, 2024, commencing Case No. 24-11398-B-7 ("First Case"), was inadvertently filed for a second time on May 23, 2024, commencing the instant case, Case No. 24-11400-A-7 ("Second Case"). Doc. #10.

A debtor does not have an absolute right to dismiss a voluntary chapter 7 case. Bartee v. Ainsworth (In re Bartee), 317 B.R. 362, 366 (B.A.P. 9th Cir. 2004). Section 707 of the Bankruptcy Code governs dismissal of a chapter 7 case, whereby the court "may dismiss a case under this chapter only after notice and a hearing and only for cause." 11 U.S.C. § 707(a); In re Kaur, 510 B.R. 281, 285 (Bankr. E.D. Cal. 2014). Regarding cause, a voluntary chapter 7 debtor is entitled to dismissal so long as such dismissal will cause no legal prejudice to interested parties. Kaur, 510 B.R. at 286 (citations omitted).

The court finds that dismissing the Second Case will cause no legal prejudice to interested parties because Debtor is active in the First Case. Debtor's counsel asserts that the duplicate filing of the Second Case occurred while Debtor's counsel was attempting to file several other cases in a batch filling.

Decl. of Griselda Torres, Doc. #12. The court finds that cause exists to dismiss the Second Case.

Accordingly, subject to opposition being raised at the hearing, this motion will be GRANTED.

2. 24-11307-A-7 **IN RE: MARK SCHADE AND ELIZABETH ELLSTON**
PBB-1

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
6-26-2024 [13]

PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Local Rule of Practice ("LBR") 9014-1(f)(2) allows a moving party to file and serve a motion on at least 14 days' notice "unless additional notice is required by the Federal Rules of Bankruptcy Procedure."

For a motion to convert a chapter 7 case to another chapter under 11 U.S.C. § 706, Federal Rule of Bankruptcy Procedure ("Rule") 2002(a) requires at least 21 days' notice by mail to all creditors of the hearing in a chapter 7 case on "the conversion of the case to another chapter, unless the hearing is under § 707(a)(3) or § 707(b) or is on dismissal of the case for failure to pay the filing fee." Rule 2002(a)(4).

Notice by mail of this motion was sent to all creditors on June 26, 2024, with a hearing date set for July 10, 2024. Because this motion to convert the chapter 7 case to chapter 13 pursuant to 11 U.S.C. § 706 was set for hearing on less than 21 days' notice, this motion is DENIED WITHOUT PREJUDICE for improper notice under Rule 2002.

3. 23-11013-A-7 **IN RE: JOASH KEMEI**
UST-1

MOTION TO APPROVE STIPULATION TO DISMISS CHAPTER 7 CASE WITHOUT ENTRY OF DISCHARGE
6-12-2024 [84]

TRACY DAVIS/MV
RABIN POURNAZARIAN/ATTY. FOR DBT.
DEANNA HAZELTON/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the chapter 7 trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Tracy Hope Davis ("UST"), the United States Trustee for Region 17, moves the court for an order approving the *Stipulation to Dismiss Chapter 7 Case Without Entry of Default* filed as Doc. #83, UST-1 (the "Stipulation"). Doc. #84. According to the Stipulation, Joash Kipkurui Kemei ("Debtor") desires to voluntarily dismiss this chapter 7 case prior to entry of discharge. Doc. #84.

A debtor does not have an absolute right to dismiss a voluntary chapter 7 case. Bartee v. Ainsworth (In re Bartee), 317 B.R. 362, 366 (B.A.P. 9th Cir. 2004). Section 707 of the Bankruptcy Code governs dismissal of a chapter 7 case, whereby the court "may dismiss a case under this chapter only after notice and a hearing and only for cause." 11 U.S.C. § 707(a); In re Kaur, 510 B.R. 281, 285 (Bankr. E.D. Cal. 2014). Regarding cause, a voluntary chapter 7 debtor is entitled to dismissal so long as such dismissal will cause no legal prejudice to interested parties. Kaur, 510 B.R. at 286 (citations omitted).

The court finds that dismissing Debtor's voluntary chapter 7 case will cause no legal prejudice to interested parties. UST states that no bad faith or abusive conduct exists that would limit Debtor's right to dismissal. Doc. #84. Further, UST has stipulated to the dismissal, and no party in interest has objected. The court finds cause exists to dismiss Debtor's voluntary chapter 7 case.

Accordingly, this motion is GRANTED.

4. 24-11433-A-7 **IN RE: JOSE RIVERA**
BDB-1

MOTION TO COMPEL ABANDONMENT
6-21-2024 [12]

JOSE RIVERA/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.

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 a further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Jose Antonio Rivera ("Debtor"), the chapter 7 debtor in this case, moves the court to compel the chapter 7 trustee to abandon the estate's interest in a 2009 Chevy HHR (the "Property") that Debtor uses in his sole proprietorship DoorDash delivery driving business. Doc. #12. Debtor has no non-exempt equity in the Property and the Property therefore has no value to the bankruptcy estate. Doc. #12.

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

Here, Debtor does not allege that the Property is burdensome to the estate. Motion, Doc. #12. Therefore, Debtor must establish that the Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Debtor's Property is valued at $1,000.00 and is not encumbered by any lien. Schedule D, Doc. #1; Decl. of Jose A. Rivera, Doc. #14. Under California Civil Procedure Code § 703.140, Debtor claimed a $1,000.00 exemption in the Property. Schedule C, Doc. #1; Rivera Decl., Doc. #14. The court finds that Debtor has met his burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate.

Accordingly, subject to opposition being raised at the hearing, this motion will be GRANTED. The order shall specifically identify the property abandoned.

5. 23-10344-A-7 **IN RE: SUSAN QUINVILLE AND LOARINA DOMENA-QUINVILLE**
JRL-5

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-25-2024 [124]

TRUSTEES OF THE GRANT F. SCHREIBER TRUST/MV
BENNY BARCO/ATTY. FOR DBT.
JERRY LOWE/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The movant, Trustees of the Grant F. Schreiber Trust ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property located at 2943 E. Street, Selma, California 93662 ("Property"). Doc. #124.

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 the promissory note underlying Movant's claim against the Property matured on July 1, 2017, and the debtors have not made a payment to Movant since February 2024. Declaration of Carrie S. Arrata, Doc. #127.

Accordingly, subject to opposition being raised at the hearing, 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 order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the Promissory note matured on July 1, 2017, and the debtors have not made a payment to Movant since February 2024.

6. 24-10440-A-7 **IN RE: ZAC FANCHER**
ZZF-2

OBJECTION TO CLAIM OF COUNTY OF TULARE, CLAIM NUMBER 1
5-23-2024 [21]

ZAC FANCHER/MV

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Consolidate with Adversary Proceeding No. 24-1013.

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

This objection to claim was set for hearing on at least 44 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 3007-1(b)(1). Because the debtor filed an adversary proceeding on the same day this objection to claim was filed against the same entity that filed the proof of claim and that adversary proceeding involves the same facts and law as this objection to claim, the court is inclined to consolidate this objection to claim with Adversary Proceeding No. 24-1013.

Zac Zane Fancher ("Debtor"), the debtor in this chapter 7 bankruptcy case, objects to claim no. 1 (the "Claim") filed by County of Tulare (the "Claimant") on the grounds that the Claim is unenforceable under California state law and should be entirely disallowed pursuant to 11 U.S.C. § 502(b)(1). Obj., Doc. #21. On the same day that Debtor filed this objection to claim, Debtor also filed a complaint against Claimant initiating Adversary Proceeding No. 24-1013. Adv. Proc. No. 24-1013, Doc. #1. In the complaint initiating the adversary proceeding against Claimant, Debtor seeks, among other things, to disallow the Claim. Id.

"If a claim objection is filed separately from a related adversary proceeding, the court may consolidate the objection with the adversary proceeding pursuant to [Federal Rule of Bankruptcy Procedure] 7042." 10 COLLIER ON BANKRUPTCY ¶ 7001.01 (Richard Levin & Henry J. Sommer eds., 16th ed. 2024) (footnote omitted). Pursuant to Federal Rule of Bankruptcy Procedure 7042, incorporated into this objection to claim by Federal Rule of Bankruptcy Procedure 9014(c), this objection to claim may be consolidated with Adversary Proceeding No. 24-1013 if the two proceedings involve a common question of law or fact. "Whether such proceedings should be consolidated is a matter within the discretion of the court." Bennett v. Morton Bldgs, Inc. (In re Bennett), 2015 Bankr. LEXIS 4107, at *5 (Bankr. N.D. Ohio Dec. 7, 2015) (citations omitted).

When deciding whether to consolidate two related proceedings, the court must consider:

> Whether the specific risks of prejudice and possible confusion [are] overborne by the risk of inconsistent adjudications of common factual and legal issues, the burdens on parties, witnesses and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives.

Cantrell v. GAF Corp., 999 F.2d 1007, 1011 (6th Cir. 1993) (quoting Hendrix v. Raybestos-Manhattan, inc., 776 F.2d 1492, 1495 (11th Cir. 1985). Consolidation

may be denied where the cases involved are at different stages of preparedness for trial. Mills v. Beech Aircraft Corp., 886 F.2d 758, 762 (5th Cir. 1989).

Here, Debtor objects to the Claim on the grounds that the abatement lien underlying the Claim is void under California state law. This is the same grounds for disallowing the Claim as set forth in Adversary Proceeding No. 24-1013. Thus, this objection to claim and Adversary Proceeding No. 24-1013 involve common factual and legal issues.

In addition, the objection to claim and Adversary Proceeding No. 24-1013 were filed on the same day and are essentially at the same initial stages of proceedings. Moreover, both this objection to claim and Adversary Proceeding No. 24-1013 involve the same parties, Debtor and Claimant, which weighs in favor of consolidation. Because Debtor seeks to disallow the Claim in Adversary Proceeding No. 24-1013, it makes sense to the court to consolidate this objection to claim with Adversary Proceeding No. 24-1013.

After due consideration of the facts and the relevant law, the court is inclined to consolidate this objection to claim with Adversary Proceeding No. 24-1013.

7. 24-10947-A-7 **IN RE: MIGUEL DELGADO AND YADIRA ORTEGA**
BRM-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-19-2024 [32]

ROBERTO TOSCANO/MV
BRUCE MENKE/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

The movant, Roberto Toscano ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to commercial real property located at 3434 West 67th Street, Los Angeles CA 90043 ("Property"). Doc. #32.

Movant also seeks retroactive relief from the automatic stay to validate all postpetition acts of Movant, including entry of an unlawful detainer judgment. Doc. #36.

Relevant Facts

Movant leased the Property to tenant Redd Korman Robert ("Defendant"). Decl. of Hugo Cervantes, Doc. #34; Ex. 1, Doc. #37. Pre-petition, on January 5, 2024, Movant filed an unlawful detainer complaint ("Action") against Defendant. Cervantes Decl., Doc. #34; Ex. 3, Doc. #37. Also pre-petition, on January 16, 2024, Miguel Delgado and Yadira Ortega (together, "Debtors") filed a prejudgment claim of right to possession on the Property and added themselves into the Action. Ex. 4, Doc. #37.

On March 25, 2024, debtor Miguel Delgado filed a notice of stay of the Action based on a notice of removal of the Action to federal court. Ex. 5, Doc. #37. On March 27, 2024, the federal court denied the request for removal and remanded the Action back to state court. Ex. 6, Doc. #37.

On April 15, 2024, debtor Yadira Ortega filed a notice of stay of the Action based on a notice of removal of the Action to federal court. Ex. 7, Doc. #37. Also on April 15, 2024, Debtors filed this chapter 7 bankruptcy case. Doc. #1. On April 16, 2024, the federal court denied the request for removal and remanded the Action back to state court. Ex. 9, Doc. #37.

On April 16, 2024, a trial was held in the Action and judgment was entered in favor of Movant. Cervantes Decl., Doc. #34; Ex. 8, Doc. #37. Neither Defendant nor Debtors were present in court at the trial on the Action. Id. At the time trial in the Action was held, Movant was not aware that Debtors had filed a bankruptcy petition. Cervantes Decl., Doc. #34. Movant first learned of Debtors' bankruptcy case on April 25, 2024, when Debtors filed a notice of stay in the Action. Id.; Ex. 10, Doc. #37.

Applicable Law

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.

A request for retroactive relief from the automatic stay should be granted sparingly and should be the long-odds exception not the general rule. In re Skylar, 626 B.R. 750, 754 (Bankr. S.D.N.Y. 2021). When deciding whether to retroactively annul the automatic stay, the court should consider the following twelve factors, known as the Fjeldsted factors:

(1) the number of bankruptcy filings;

(2) whether, in a repeat filing case, the circumstances indicate an intent to delay and hinder creditors;

(3) a weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;

(4) the debtor's overall good faith (totality of circumstances test);

(5) whether the creditor knew of the stay but nonetheless took action, thus compounding the problem;

(6) whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;

(7) the relative ease of restoring the parties to the *status quo ante*;

(8) the costs of annulment to the debtor and the creditor;

(9) how quickly the creditor moved for annulment, or how quickly the debtor moved to set aside the sale or violative conduct;

(10) whether, after learning of the bankruptcy, the creditor proceeded to take steps in continued violation of the stay, or whether the creditor moved expeditiously to gain relief from the stay;

(11) whether annulment of the stay will cause irreparable injury to the debtor; and

(12) whether stay relief will promote judicial economy or other efficiencies.

Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 24-25 (B.A.P. 9th Cir. 2003). A single Fjeldsted factor may be of such import that it is dispositive on the issue. Id.

Legal Analysis

With respect to prospective relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1), after review of the included evidence, the court finds that "cause" exists to lift the stay. The Property is commercial real property. Ex. 4, Doc. #37. However, Debtors did not list an interest in the Property in their schedules. Schedules A/B and G, Doc. ##15, 22. Trial for the Action was held on April 16, 2024, and neither Defendant nor Debtors were present. Cervantes Decl., Doc. #34. Further, Movant was unaware of Debtors' bankruptcy filing until Debtors filed a Notice of Stay in the Action on April 25, 2024, which was nine days after trial in the Action was held and judgment was entered. Id.

With respect to prospective relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2), the court finds that the Property is not necessary to an effective reorganization because Debtors are in chapter 7. Debtors do not own the Property and, at most, have a possessory interest in the Property, although the Property is not listed in Debtors' bankruptcy schedules. Because Debtors do not own the Property, Debtors have no equity in the Property and relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) is warranted.

To the extent that Movant seeks relief from the automatic stay with respect to 11 U.S.C. §§ 362(b)(22) and 362(*l*), the court finds that neither of those sections apply to the facts at hand because 11 U.S.C. § 362(b)(22) applies to residential real property in which the debtors have a lease or rental agreement with the landlord and the landlord obtained a judgment for possession before the bankruptcy case was filed, which are not the facts before this court.

With respect to retroactive relief from the automatic stay, this is Debtors' only bankruptcy filing. However, Debtors filed a "barebones" bankruptcy petition on April 15, 2024, the day before the trial in the Action took place and delayed informing either Movant or the state court of the bankruptcy filing until April 25, 2024, after the trial took place and judgment against Debtors and Defendant was entered.

Based on a totality of the circumstances, Debtors did not proceed in this bankruptcy case in good faith. Debtors previously attempted to stop the trial

in the Action by seeking removal to federal court on two separate occasions. It appears that Debtors filed this bankruptcy case with the sole intent to prevent trial in the Action. Debtors did not appear at the 341 meeting of creditors, and Debtors' bankruptcy case is subject to dismissal. Doc. #19.

Upon learning of the existence of the bankruptcy case, Movant immediately ceased taking any action in violation of the automatic stay. However, Movant had previously proceeded with trial in the Action on April 16, 2024 and obtained a judgment against Defendant and Debtors. Debtors did not appear at the trial and failed to inform the state court of their bankruptcy filing until April 25, 2024. Movant filed this motion for retroactive relief from the automatic stay on May 19, 2024. Doc. #32.

Retroactive annulment of the stay will not cause irreparable injury to Debtors because the Property is not Debtors' residence. Moreover, Debtors did not list the Property in their original or amended Schedule A/B or their original Schedule G. Doc. ##15, 22. On the other hand, Movant is the owner of the Property on which Defendant and Debtors unlawfully retain possession. If the stay is not annulled retroactively, this bankruptcy case will have resulted in costs to Movant.

Finally, retroactive annulment of the automatic stay will promote judicial economy and other efficiencies because (i) it appears that Debtors filed this bankruptcy case on the eve of trial in the Action and did not notify either Movant or the state court of that bankruptcy filing for ten days, (ii) the state court already held a trial in the Action and entered a judgment, and (iii) requiring trial in the Action to be conducted again will not keep court costs and proceedings down.

Consideration of the Fjeldsted factors weighs in favor of Movant. The court finds retroactive relief from the automatic stay to the time and filing of the petition is particularly appropriate because Debtors' bankruptcy case was filed in bad faith to stop the trial in the Action and removal of Defendant and Debtors from the Property is appropriate. The court will retroactively annul the automatic stay to April 15, 2024, the date Debtors' bankruptcy case was filed.

Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3) provides for a 14-day stay of an order granting a motion made in accordance with Rule 4001(a)(1) unless the court orders otherwise. Fed. R. Bankr. P. 4001(a)(3). The court finds cause exists to waive the 14-day stay under Rule 4001(a)(3) because it appears that Debtors failed to inform Movant timely of this bankruptcy case.

Conclusion

Accordingly, subject to opposition being raised at the hearing, the motion is granted for prospective relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (2). The motion also is granted pursuant to 11 U.S.C. § 362(d)(1) to retroactively annul the automatic stay in Debtors' bankruptcy case to the date and time of the filing of Debtors' bankruptcy petition to permit Movant's action with respect to the Action. In addition, the 14-day stay of Rule 4001(a)(3) is ordered waived.

8. 24-11749-A-7 **IN RE: JESUS CONTRERAS AND MA GUADALUPE VAZQUEZ DE MUNOZ**
PBB-1

MOTION TO COMPEL ABANDONMENT
6-26-2024 [6]

MA GUADALUPE VAZQUEZ DE MUNOZ/MV
PETER BUNTING/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.

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 a further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Jesus Munoz Contreras and Ma Guadalupe Vazquez de Munoz (together, "Debtors"), the chapter 7 debtors in this case, move the court to compel the chapter 7 trustee to abandon business assets and inventory (collectively, the "Property") that debtor Ma Guadalupe Vazquez de Munoz uses as an independent contractor selling Mary Kay products. Doc. #6. Debtors assert that there is not enough non-exempt equity in the Property and the Property therefore has no value to the bankruptcy estate. Id.

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

Here, Debtors do not allege that the Property is burdensome to the estate. Motion, Doc. #6. Therefore, Debtors must establish that the Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Amongst Debtors' Property is a 2013 Toyota Prius valued at $4,965.00 and is not encumbered by any lien. Am. Schedule A/B, Doc. #11; Schedule D, Doc. #1. Debtors claim a $7,500.00 exemption in the 2013 Toyota Prius under California Civil Procedure Code § 704.010. Am. Schedule C, Doc. #11; Decl. of Ma Guadalupe Vazquez De Munoz, Doc. #8. The Property also includes Mary Kay product inventory with a liquidation value of $500 in which no exemption is claimed. Ms. Munoz further states that there is no goodwill in her business because Ms. Munoz has no employees, and the business is completed

entirely by Ms. Munoz's manual labor. Munoz Decl., Doc. #8. The court finds that Debtors have met their burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate.

Accordingly, subject to opposition being raised at the hearing, this motion will be GRANTED. The order shall specifically identify the property abandoned.

9. 19-12084-A-7 **IN RE: CRYSTAL HEARD**
DMG-6

MOTION FOR COMPENSATION FOR D. MAX GARDNER, TRUSTEES ATTORNEY(S)
6-11-2024 [73]

NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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 moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

D. Max Gardner, Attorney at Law, ("Movant"), general counsel for chapter 7 trustee Jeffrey M. Vetter ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from August 13, 2021 through February 20, 2024. Doc. #73. Movant provided legal services valued at $8,970.50 and requests compensation for that amount. Id. Movant requests reimbursement for expenses in the amount of $159.00. Id. This is Movant's first and final fee application.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Here, Movant's services included, without limitation: (1) preparing and filing motion to compromise controversy or approve settlement; (2) preparing fee and employment applications; and (3) general case assistance to Trustee. Decl. of

D. Max Gardner, Doc. #75; Ex. A, Doc. #77. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of $8,970.50 and reimbursement for expenses in the amount of $159.00. Trustee is authorized to make a combined payment of $9,129.50, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

10. 19-12084-A-7 **IN RE: CRYSTAL HEARD**
RTW-2

MOTION FOR COMPENSATION FOR RATZLAFF, TAMBERI & WONG, ACCOUNTANT(S)
5-20-2024 [62]

RATZLAFF, TAMBERI & WONG/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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 moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Ratzlaff, Tamberi & Wong ("Movant"), accountants for chapter 7 trustee Jeffrey M. Vetter ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from November 27, 2023 through May 13, 2024. Order, Doc. #54; Doc. #62. Movant provided accounting services valued at $2,268.19, and requests compensation for that amount. Doc. #62. Movant does not request reimbursement for expenses. Doc. #62. This is Movant's first and final fee application.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) reviewing information regarding tax matters of partnership; (2) corresponding with Trustee; (3) preparing federal and state fiduciary income tax returns; and (4) preparing the employment and fee applications. Decl. of Christopher A. Ratzlaff, Doc. #65; Ex. A, Doc. #66. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of $2,268.19. Trustee is authorized to make a payment of $2,268.19 to Movant from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

11. 24-10489-A-7 **IN RE: JOSEPH/MICHELLE MARIE DELA ROSA**
PFT-1

MOTION TO SELL
6-10-2024 [16]

PETER FEAR/MV
BENNY BARCO/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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 prior to the hearing date 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.

Peter L. Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Joseph Dela Rosa and Michelle Maria A Dela Rosa (together, "Debtors"), move the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the bankruptcy estate's interest in a 2015 Toyota Sienna and a 2015 Toyota Prius (collectively, "Vehicles") to Debtors for the purchase price of $15,792.12, subject to higher and better bids at the hearing. Doc. #16.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners,

L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Doc. #16; Decl. of Peter L. Fear, Doc. #18. Trustee's proposed sale to Debtors is made in consideration of the full and fair market value of the Vehicles less a claimed exemption in the 2015 Toyota Sienna and a listed encumbrance in the 2015 Toyota Prius. Id. Debtors offered to buy the Vehicles for the net purchase price of $15,792.12, subject to overbid at the hearing. Doc. #16. The court recognizes that no commission will need to be paid because the sale is to Debtors.

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

Trustee also requests that the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 6004(g) be waived. Doc. #16. However, Rule 6004(g) does not impose a stay on an order authorizing a sale of property; that provision is in Rule 6004(h). To the extent Trustee seeks a waiver of the 14-day stay pursuant to Rule 6004(h), the court will waive the 14-day stay of Rule 6004(h) because the sale is to Debtors.

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 Vehicles to Debtors on the terms set forth in the motion. The 14-day stay of Rule 6004(h) will be waived.

12. 24-11393-A-7 **IN RE: MICHAEL HALE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-21-2024 [23]

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

This matter will proceed as scheduled. An amended creditor matrix (Doc. #16) was filed by the debtor on June 5, 2024, which added creditors who were not listed on the previously filed creditor matrix. A fee of $34.00 was required at the time of filing because the amended creditor matrix added creditors. The fee was not paid. A notice of payment due was served on the debtor on June 12, 2022. Doc. #22.

If the filing fee of $34.00 is not paid prior to the hearing, the amended creditor matrix (Doc. #16) may be stricken, and sanctions may be imposed on the debtor on the grounds stated in the order to show cause.

2:00 PM

1. 23-11701-A-13 **IN RE: ENRIQUE ARTURO IBARRA OLGUIN AND NORMA CORTEZ IBARRA**
SLL-1

OBJECTION TO CLAIM OF STERNBERG LAW GROUP, CLAIM NUMBER 3
5-9-2024 [35]

NORMA CORTEZ IBARRA/MV
STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

This matter was resolved by an order filed on June 6, 2024 approving a stipulation resolving the objection to claim. Doc. #51.

2. 24-11304-A-13 **IN RE: CARLOS/HORALIA GUEVARA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-21-2024 [19]

T. O'TOOLE/ATTY. FOR DBT.
$313.00 FILING FEE PAID 6/28/24

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fees now due have been paid.

3. 23-11411-A-13 **IN RE: JASON/DANIELLE PETERSON**
SL-3

MOTION TO MODIFY PLAN
6-4-2024 [60]

DANIELLE PETERSON/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 3015-1(d)(2). The

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

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

4. 23-11520-A-13 **IN RE: THEDFORD JONES**
FW-2

MOTION FOR SANCTIONS
5-28-2024 [145]

THEDFORD JONES/MV
GABRIEL WADDELL/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

5. 23-11835-A-13 **IN RE: MICHAEL QUEZADA**
SLL-1

MOTION FOR COMPENSATION FOR STEPHEN L. LABIAK, DEBTORS ATTORNEY(S)
6-3-2024 [31]

STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Stephen L. Labiak ("Movant"), counsel for Michael Quezada ("Debtor"), the debtor in this chapter 13 case, requests interim allowance of compensation in the amount of $7,875.00 and reimbursement for expenses in the amount of $66.63 for services rendered from June 30, 2023 through May 23, 2024. Doc. #31. Debtor's confirmed plan provides, in addition to $500.00 paid prior to filing the case, for $9,000.00 in attorney's fees to be paid through the plan. Plan, Doc. ##3, 13. No prior fee application has been filed. Debtor consents to the amount requested in Movant's application. Doc. #36.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 13 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 13 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3). Here, Movant demonstrates services rendered relating to: (1) preparing and prosecuting Debtor's first modified plan; (2) resolving title issue of Debtor's legal interest in real property; (3) communicating with Debtor's creditors and the chapter 13 trustee; (4) preparing the fee application; and (5) general case administration. Exs. A, B & C, Doc. #33. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion.

This motion is GRANTED. The court allows on an interim basis compensation in the amount of $7,875.00 and reimbursement for expenses in the amount of $66.63 to be paid in a manner consistent with the terms of the confirmed plan.

6. 23-12841-A-13 **IN RE: ANDRE HOWELL**
LGT-2

MOTION TO DISMISS CASE
5-24-2024 [42]

LILIAN TSANG/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Unless the trustee's motion is withdrawn before the hearing, the motion will be granted without oral argument for cause shown.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor, creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by

the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the default of the debtor is 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 a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Here, the chapter 13 trustee asks the court to dismiss this case under 11 U.S.C. § 1307(c)(1) and (c)(4) for unreasonable delay by the debtor that is prejudicial to creditors. Doc. #42. Specifically, Trustee asks the court to dismiss this case for the debtor's failure to confirm a plan and make all payments due under the plan. Doc. #42. The debtor did not oppose.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by debtor that is prejudicial to creditors because the debtor failed to confirm a plan. Cause also exists under 11 U.S.C. § 1307(c)(4) to dismiss this case as the debtor has failed to make all payments due under the plan.

A review of the debtor's Schedules A/B, C and D and secured proofs of claim filed in this case shows that there is no equity in the debtor's assets after considering secured claims and claimed exemptions. Doc. ##1, 16; Claim Nos. 3, 4, 8 and 13. Thus, dismissal, rather than conversion to chapter 7, is in the best interests of creditors and the estate.

Accordingly, the motion will be GRANTED, and the case dismissed.

7. 24-11442-A-13 **IN RE: ANGELICA FUENTES**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-12-2024 [21]

DISMISSED 6/21/24

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on June 21, 2024. Doc. #36. The order to show cause will be dropped as moot. No appearance is necessary.

8. 13-16346-A-13 **IN RE: DANILO/EVELYN INACAY**

MOTION FOR PAYMENT OF UNCLAIMED FUNDS IN THE AMOUNT OF $3525.25 WITH CITIBANK NA
6-6-2024 [51]

STEPHEN LABIAK/ATTY. FOR DBT.
CLOSED 9/9/2019

NO RULING.

9. 24-10850-A-13 **IN RE: CHRIS ALCANTARA**
EAT-1

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY AJAX MORTGAGE LOAN TRUST 2021-C
4-30-2024 [19]

AJAX MORTGAGE LOAN TRUST 2021-C/MV
DARLENE VIGIL/ATTY. FOR MV.
DISMISSED 6/21/24

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

An order dismissing this case was entered on June 21, 2024. Doc. #31. Therefore, this objection will be OVERRULED AS MOOT.

10. 24-11550-A-13 **IN RE: RALPH TARTER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-21-2024 [12]

DISMISSED 6/24/24

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on June 24, 2024. Doc. #16. The order to show cause will be dropped as moot. No appearance is necessary.

11. 24-10963-A-13 **IN RE: DOLORES CALLES AND MARIA OLIVAR**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-20-2024 [29]

T. O'TOOLE/ATTY. FOR DBT.
$200.00 FILING FEE PAID 6/21/24

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fees now due have been paid.

12. 24-10963-A-13 **IN RE: DOLORES CALLES AND MARIA OLIVAR**
LGT-1

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE LILIAN G. TSANG
6-18-2024 [24]

T. O'TOOLE/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the objection to confirmation of the plan on June 20, 2024. Doc. #27.

13. 23-11678-A-13 **IN RE: TRAVIS BRIDGMAN**
SL-2

MOTION TO MODIFY PLAN
5-30-2024 [53]

TRAVIS BRIDGMAN/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of

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

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

14. 24-10088-A-13 **IN RE: CHRISTOPHER ISAIS**
TCS-1

CONTINUED MOTION TO CONFIRM PLAN
4-29-2024 [30]

CHRISTOPHER ISAIS/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

15. 23-11794-A-13 **IN RE: ENRIQUE HERRERA AND LYDIA MARTINEZ-HERRERA**
SL-2

MOTION TO MODIFY PLAN
5-15-2024 [50]

LYDIA MARTINEZ-HERRERA/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

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

16. 24-10297-A-13 **IN RE: DOROTHY MCKINLEY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-12-2024 [34]

MARK ZIMMERMAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

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

3:00 PM

1. 23-12905-A-7 **IN RE: REZA IMANI**
24-1009

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
6-19-2024 [20]

CREDITORS ADJUSTMENT BUREAU, INC. V. IMANI
MATTHEW ABBASI/ATTY. FOR MV.

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

DISPOSITION: Continued to July 31, 2024 at 3:00 p.m.

NO ORDER REQUIRED.

On June 28, 2024, the court issued an order continuing the motion to dismiss to July 31, 2024 at 3:00 p.m. Doc. #26.

2. 23-10947-A-13 **IN RE: SONIA LOPEZ**
23-1039 SDS-2

MOTION FOR SUMMARY JUDGMENT
5-29-2024 [73]

LOPEZ V. UNIFIED MORTGAGE SERVICE, INC. ET AL
SUSAN SILVEIRA/ATTY. FOR MV.
CONT'D TO 8/22/24 PER ECF ORDER NO. 90

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

DISPOSITION: Continued to August 22, 2024 at 11:00 a.m.

NO ORDER REQUIRED.

On June 21, 2024, the court issued an order continuing the summary judgment motion to August 22, 2024 at 11:00 a.m. Doc. #90.

3. 20-13451-A-7 **IN RE: AMANDEEP SINGH**
21-1004 HRH-5

MOTION TO STRIKE AND/OR MOTION FOR ENTRY OF DEFAULT JUDGMENT
6-5-2024 [126]

BMO HARRIS BANK, N.A. V. SINGH
RAFFI KHATCHADOURIAN/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

BMO Harris Bank, N.A. ("Plaintiff") moves to strike the defendant's answer and enter default judgment against the defendant pursuant to Federal Rule of Civil Procedure ("Rule") 37(d), incorporated into this adversary proceeding by Federal Rule of Bankruptcy Procedure 7037. Doc. #126.

Plaintiff filed a non-dischargeability complaint against Amandeep Singh ("Defendant") on February 5, 2021 ("Complaint"). Doc. #1. Defendant answered the Complaint on March 8, 2021 ("Answer"). Doc. #7. Pursuant to the Order Approving Second Stipulation to Continue Status Conference and Related Dates, fact discovery was extended from October 26, 2022 to August 14, 2023. Doc. #46. While Defendant was originally represented by counsel, Defendant's counsel withdrew from this adversary proceeding on April 5, 2023, and Defendant now represents himself. Doc. #53.

On May 3, 2023, Plaintiff served Defendant with Plaintiff's First Set of Interrogatories, First Set of Requests for Production of Documents, and First Set of Requests for Admissions. Decl. of Raffi Khatchadourian, Doc. #64. When Plaintiff did not receive a response from Defendant to its written discovery, Plaintiff sent a meet-and-confer letter ("First Letter") to Defendant on June 20, 2023, requesting a response no later than June 26, 2023. Khatchadourian Decl. at ¶ 5, Doc. #64.

Plaintiff did not receive a response to the First Letter. Khatchadourian Decl. at ¶ 6, Doc. #130. On August 17, 2023, Plaintiff, using online resources, located a phone number that matched the current address that Plaintiff has for Defendant. Decl. of Stephanie J. Schiern, Doc. #128. Plaintiff attempted to reach Defendant at that number, but the phone number was no longer in service. Id. at ¶ 2. On August 18, 2023, Plaintiff sent another meet-and-confer letter ("Second Letter") to Defendant via regular mail, certified mail, and Federal Express. Id. at ¶ 3. The Second Letter was delivered to Defendant on August 21, 2023. Id.; Ex. 2, Doc. #129. Plaintiff has not received a response from Defendant to the Second Letter. Schiern Decl. at ¶ 4, Doc. #128.

On August 31, 2023, Plaintiff's attorney emailed Defendant's previous attorney, Robert S. Williams, to request Defendant's current contact information. Schiern Decl. at ¶ 5, Doc. #128. Mr. Williams provided Plaintiff's attorney with the last known telephone numbers and an email address for Defendant the same day. Id. at ¶ 6. Also on August 31, 2023, Plaintiff's attorney called the two phone numbers provided by Mr. Williams and received a message that the call could not be completed as dialed for both phone numbers. Id. at ¶ 7. Plaintiff's attorney also emailed Defendant requesting that Defendant contact Plaintiff's attorney by Tuesday, September 5, 2023, to discuss responding to

the written discovery, but Plaintiff's attorney did not receive a response to this email. Id. at ¶ 8.

Defendant never responded to the written discovery, the First Letter, the Second Letter, or the email sent on August 31, 2023. Schiern Decl., Doc. #128. Further, Plaintiff was able to obtain three possible phone numbers for Defendant, none of which were in service. Id. Plaintiff filed a Motion for Sanctions on September 7, 2023, which was granted on October 10, 2023. Doc. #62, 87. Accordingly, Plaintiff filed its first motion to strike and/or enter default judgment on December 1, 2023, which was denied because Plaintiff's motion did not set forth the appropriate legal analysis upon which this court can grant the relief requested. Doc. #91. Plaintiff filed the instant motion on June 5, 2024. Doc. #128.

Under Rule 37(d), this court can issue sanctions listed in Rule 37(b)(2)(a)(i)-(vi) for the failure of a party to serve answers, objections or written response after being properly served with interrogatories under Rule 33. The sanctions permitted under Rule 37(b)(2)(a)(i)-(vi) include striking a pleading in whole or in part and rendering a default judgment against the non-complying party. The court has broad discretion to impose sanctions as a remedy for non-compliance with a discovery order. See Roadway Express v. Piper, 447 U.S. 752, 763 (1980).

Where the drastic sanctions of dismissal or default are imposed "the range of discretion is narrowed and the losing party's noncompliance must be due to willfulness, fault, or bad faith." Henry v. Gill Indus., Inc., 983 F.2d 943, 946 (9th Cir. 1993) (citations omitted). "'[D]isobedient conduct not shown to be outside of the control of the litigant' is all that is required to demonstrate willfulness, bad faith or fault." Id. at 948 (quoting Fjelstad v. American Honda Motor Co., 762 F.2d 1334, 1341 (9th Cir. 1985)).

As set forth in one of the decisions relied upon by Plaintiff in its motion, "[b]efore imposing the sanction of dismissal under Rule 37(b)(2), five factors must be considered: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the party seeking sanctions; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." Lebbos v. Schuette (In re Lebbos), 422 B.R. 235, 239 (E.D. Cal. 2009). The first two factors favor the imposition of sanctions, whereas the fourth factor cuts against drastic sanctions, "[t]hus the key factors are prejudice and the availability of lesser sanctions." Henry v. Gill Indus., Inc., 983 F.2d at 948. The fifth factor, the availability of less drastic sanctions, requires the court to consider three sub-factors: (a) the availability of lesser sanctions; (b) the use of lesser sanctions before terminations; and (c) whether the party was adequately warned of the possibility of termination. Adriania Int'l Corp. v. Lewis & Co., 913 F.2d 1406, 1412-13 (9th Cir. 1990).

Here, the court's previous discovery order did not warn Defendant of any consequences if Defendant failed to comply with that order. However, Plaintiff filed an ex parte application to amend the Order to add language to warn that any failure to obey this order may result in sanctions, including the rendering of a default judgment against Defendant upon motion by Plaintiff. Ex. 5, Doc. #129; Doc. #126. The court granted the ex parte application and Plaintiff then served Defendant with the Notice of Entry of Amended Order Granting Motion to Compel and/or Motion for Sanctions. Id. Plaintiff has not received any responses to its first set of interrogatories or first set of requests for production of documents or any other communication from Defendant. Schiern Decl., Doc. #128; Doc. #126. While Defendant has been given a third chance to

respond, Defendant still has not served Plaintiff with a response to the written discovery. Id.

Because Defendant has had ample time and opportunity to respond to Plaintiff's written discovery and has not responded or communicated with Plaintiff, the court GRANTS Plaintiff's request to strike the answer of Defendant and enter default judgment in favor of Plaintiff. Plaintiff shall submit two proposed orders to the court. One order shall grant this motion and the second order shall enter judgment by default.