

**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Thursday, July 28, 2022  
Place: Department B – Courtroom #13  
Fresno, California**



Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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## **INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

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

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

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

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

**Post-Publication Changes:** The court endeavors to publish its rulings as soon as possible. However, calendar preparation is ongoing, and these rulings may be revised or updated at any time prior to 4:00 p.m. the day before the scheduled hearings. Please check at that time for any possible updates.

11:00 AM

1. [22-10740](#)-B-7     **IN RE: KAREN COELHO**

REAFFIRMATION AGREEMENT WITH CAPITAL ONE AUTO FINANCE  
7-7-2022     [[20](#)]

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION:     Denied.

ORDER:     The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement.

Debtor's monthly income as stated in Schedule I is \$3,455.24 and expenses stated in Schedule J is \$3,844.59, leaving debtor with a negative net income of \$(389.35). Although the debtor's attorney executed the agreement, he did not indicate by checking the applicable box on Part C: Certification by Debtor's Attorney that in his opinion the debtor is able to make the required payment. Further, no evidence has been presented to the court to indicate how the debtor can afford to make the payment. The debtor claims fewer expenses (or that she has filed on all of her debt and can afford the payment) but have not provided the court with an amended Schedule J.

Therefore, the reaffirmation agreement with Capital One Auto Finance will be DENIED.

1:30 PM

1. [22-10602](#)-B-7     **IN RE: SUGEI RAMIREZ-AYON**  
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-23-2022    [\[20\]](#)

FIRST TECH FEDERAL CREDIT  
UNION/MV  
R. BELL/ATTY. FOR DBT.  
WENDY LOCKE/ATTY. FOR MV.

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

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

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

First Tech Federal Credit Union ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2019 Ford F150 ("Vehicle"). Docs. #20, #22.

No party in interest timely filed written opposition. 11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The debtor's discharge was entered on July 20, 2022. Doc. #27. Therefore, the automatic stay terminated with respect to the debtor on July 20, 2022. This motion will be DENIED AS MOOT IN PART as to the debtor's interest and will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

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

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least three (3) payments. The movant has produced evidence that debtor is delinquent at least \$1,960.77. Docs. #22, #23.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. *Id.* The Vehicle is valued at \$36,100.00 and debtor owes \$40,007.26. Docs. #23, #25.

Accordingly, the motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest under § 362(c)(2)(C).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least three (3) payments to Movant, debtor's Statement of Intention indicated the vehicle would be surrendered, and the Vehicle is a depreciating asset. No other relief is awarded.

2. [19-12103](#)-B-7     **IN RE: NELIDA CASTANEDA**  
[DMG-3](#)

MOTION TO AVOID LIEN OF CITIBANK, N.A.  
7-7-2022     [\[27\]](#)

NELIDA CASTANEDA/MV  
D. GARDNER/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.

Nelida Castaneda ("Debtor") seeks to avoid a judicial lien in favor of CitiBank, N.A. ("Creditor") in the sum of \$3,408.57 and encumbering residential real property located at 7213 Ammolite, Bakersfield, CA 93313 ("Property").<sup>1</sup> Doc. #27.

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

This matter was noticed 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 respondent's default and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$3,408.57 on June 7, 2016. Doc. #30, *Ex. A*. The abstract of judgment was issued on July 13, 2016 and recorded in Kern County on August 3, 2016. *Id.* That judgment, which Debtor estimates to be \$4,800 on the petition date, attached to Debtor's interest in Property and appears to be the only non-consensual judgment lien encumbering Property. Docs. #1, *Sched. A/B*; #29.

As of the petition date, Property had an approximate value of \$269,346.00. *Id.*; Doc. #1, *Sched. A/B*. Property is encumbered by a single deed of trust in favor of Penny Mac Loan Services, LLC in the amount of \$174,999.45. *Id.*, *Sched. D*. Debtor claimed a "homestead" exemption in Property pursuant to Cal. Code Civ. Proc. § 704.730 in the amount of \$94,346.55. *Id.*, *Sched. C*.

Strict application of the § 522(f)(2) formula is as follows:

Amount of Creditor's judicial lien (estimated)	\$4,800.00
Total amount of unavoidable liens	+ \$174,999.45
Debtor's claimed exemption in Property	+ \$94,346.55
Sum	= \$274,146.00
Debtor's claimed value of interest absent liens	- \$269,346.00
Extent Creditor's lien impairs Debtor's exemption	= \$4,800.00

*All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided

that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property	\$269,346.00
Total amount of unavoidable liens	- \$174,999.45
Homestead exemption	- \$94,346.55
Remaining equity for judicial liens	= \$0.00
Creditor's judicial lien (estimated)	- \$4,800.00
Extent Debtor's exemption impaired	= (\$4,800.00)

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

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). This motion will be GRANTED. The proposed order shall include a copy of the abstract of judgment attached as an exhibit.

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<sup>1</sup> Debtor complied with Fed. R. Bankr. P. 7004(h) by serving via certified Sunil Garg, Creditor's CEO, at Creditor's principal executive office on July 7, 2022. Doc. #31.

3. [21-12733](#)-B-7      **IN RE: YOLANDA GOMEZ**  
[JES-3](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)  
6-15-2022    [[51](#)]

JAMES SALVEN/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.

James E. Salven ("Applicant"), in his capacity as certified public accountant employed by himself in his capacity as chapter 7 trustee of the bankruptcy estate, seeks final compensation under 11 U.S.C. § 330 in the sum of \$1,297.98. Doc. #51. This amount consists of \$1,008.00 in fees as reasonable compensation for services rendered and \$289.98 in reimbursement of actual, necessary expenses from May 25, 2022 through June 6, 2022. *Id.*

Applicant, in his capacity as chapter 7 trustee, has reviewed the application and supporting documents, and consents to the proposed payment. Doc. #55.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Yolanda Godinez Gomez ("Debtor") filed chapter 7 bankruptcy on November 29, 2021. Doc. #1. Applicant was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors on December 30, 2021. Doc. #6; see also docket generally. Applicant, in his capacity as trustee, moved to employ himself as accountant on May 27, 2022 under 11 U.S.C. §§ 327, 330, and 331. Doc. #44. The court approved employment on June 6, 2022, effective May 20, 2022. Doc. #50. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for accounting services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Acceptance of employment was deemed to be an irrevocable waiver by Applicant of all pre-petition claims, if any, against the bankruptcy estate. *Id.* Applicant's services here were within the time frame prescribed by the employment order.

This is Applicant's first and final fee application. Doc. #51. Applicant performed 3.6 billable hours of accounting services at a rate of \$280.00 per hour, totaling **\$1,008.00** in fees.<sup>2</sup> Doc. #54, Ex. A. Applicant also incurred **\$289.98** for the following expenses:



Copies (117 @ \$0.20)	\$23.40
Envelopes (4 @ \$0.25)	+ \$1.00
Lacerte Tax Proc. (1 @ \$86.00)	+ \$86.00
Service (82 @ \$2.19)	+ \$179.58
<b>Total</b>	<b>= \$289.98</b>

*Id.*, *Ex. B*. These combined fees and expenses total **\$1,297.98**.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." 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, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services included, without limitation: (1) conflict review and preparing the employment application (JES-2); (2) analyzing and inputting data into the system and preparing returns; (3) finalizing returns and transmitting prompt determination letters; and (4) preparing and filing this fee application (JES-3). Doc. #54, *Exs. A, B*. The court finds the services and expenses actual, reasonable, and necessary. As noted above, Applicant, in his capacity as chapter 7 trustee, has reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #55.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$1,008.00 in fees and \$289.98 in expenses on a final basis pursuant to 11 U.S.C. § 330. Applicant, in his capacity as chapter 7 trustee and in his discretion, will be authorized to pay Applicant, in his capacity as accountant, \$1,297.98 for services rendered to and costs incurred for the benefit of the estate from May 25, 2022 through June 6, 2022.

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<sup>2</sup> Applicant waived fees for conflict review, preparing, and filing the employment application. Doc. #54, *Ex. A*.

4. [22-10949](#)-B-7     **IN RE: GENEVIEVE RODRIGUEZ**  
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-28-2022    [\[16\]](#)

FORD MOTOR CREDIT COMPANY  
LLC/MV  
JOHN KIM/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.

Ford Motor Credit Company ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2019 Ford Ecosport ("Vehicle"). Docs. #16, #18.

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

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

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least three (3) payments. The movant has produced evidence that debtor is delinquent at least \$1,666.27, including late fees. Doc. #19.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. *Id.* The Vehicle is valued at \$21,350.00 and debtor owes \$21,794.67. Docs. #20, #21.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor surrendered the vehicle to Movant on June 1, 2022. No other relief is awarded.

5. [18-13468](#)-B-7     **IN RE: MANUEL/LUPITA MENDOZA**  
[JES-3](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)  
6-8-2022    [[67](#)]

JAMES SALVEN/MV  
GABRIEL WADDELL/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.

James E. Salven ("Applicant"), in his capacity as certified public accountant employed by himself in his capacity as chapter 7 trustee of the bankruptcy estate, seeks final compensation under 11 U.S.C. § 330 in the sum of \$2,257.59. Doc. #67. This amount consists of \$1,848.00 in fees as reasonable compensation for services rendered and \$409.59 in reimbursement of actual, necessary expenses from May 12, 2022 through June 6, 2022. *Id.*

Applicant, in his capacity as chapter 7 trustee, has reviewed the application and supporting documents, and consents to the proposed payment. Doc. #70.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Manuel Alvarado Mendoza and Lupita Castro Mendoza ("Debtors") filed chapter 7 bankruptcy on August 24, 2018. Doc. #1. Trudi Manfredo was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors on October 1, 2018. Doc. #2; see also docket generally. Debtors' discharge was entered on December 10, 2018 and the bankruptcy case was closed by final decree on December 14, 2018. Docs. #16; #18. Debtors moved to reopen the case on July 19, 2019 and the case was reopened that same day. Docs. #18-19. Applicant was appointed as successor trustee on July 25, 2019 and the § 341 meeting of creditors was held on October 1, 2018. Doc. #29.

Applicant, in his capacity as trustee, moved to employ himself as accountant on May 13, 2022 under 11 U.S.C. §§ 327, 330, and 331. Doc. #57. The court approved employment on May 23, 2022, effective May 1, 2022. Doc. #66. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for accounting services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Acceptance of employment was deemed to be an irrevocable waiver by Applicant of all pre-petition claims, if any, against the bankruptcy estate. *Id.* Applicant's services here were within the time frame prescribed by the employment order.

This is Applicant's first and final fee application. Doc. #67. Applicant performed 3.6 billable hours of accounting services at a rate of \$280.00 per hour, totaling **\$1,848.00** in fees.<sup>3</sup> Doc. #71, Ex. A. Applicant also incurred **\$409.59** for the following expenses:

Copies (296 @ \$0.20)	\$59.20
Envelopes (4 @ \$0.25)	+ \$1.00
Lacerte Tax Proc. (2 @ \$86.00)	+ \$172.00
Service (81 @ \$2.19)	+ \$177.39
<b>Total</b>	<b>= \$409.59</b>

*Id.*, *Ex. B*. These combined fees and expenses total **\$2,257.59**.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." 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, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services included, without limitation: (1) conflict review and preparing the employment application (JES-2); (2) analyzing and inputting data into the system and preparing returns; (3) finalizing returns and transmitting prompt determination letters; and (4) preparing and filing this fee application (JES-3). Doc. #71, *Exs. A, B*. The court finds the services and expenses actual, reasonable, and necessary. As noted above, Applicant, in his capacity as chapter 7 trustee, has reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #70.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$1,848.00 in fees and \$409.59 in expenses on a final basis pursuant to 11 U.S.C. § 330. Applicant, in his capacity as chapter 7 trustee and in his discretion, will be authorized to pay Applicant, in his capacity as accountant, \$2,257.59 for services rendered to and costs incurred for the benefit of the estate from May 12, 2022 through June 6, 2022.

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<sup>3</sup> Applicant waived fees for conflict review, preparing, and filing the employment application. Doc. #71, *Ex. A*.

6. [22-10168](#)-B-7     **IN RE: GROW PURE CITRUS, LLC**  
[JRL-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-28-2022    [\[47\]](#)

RNS FARMS, LLC/MV  
JEFFREY ROWE/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.

Raul Santellan ("Santellan") and RNS Farms, LLC ("RNS" or collectively "Movants") request an order granting relief from the automatic stay for cause pursuant to 11 U.S.C. § 362(d)(1) to allow it to continue to a final judgment in an action pending in Fresno County Superior Court, Case No. 19CECG00256 ("State Court Action") against Grow Pure Citrus, LLC ("Debtor") and others. Doc. #47. Movants also request waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3).

Debtor timely filed written opposition. Doc. #60.

This matter will be called and proceed as scheduled. The court is inclined to GRANT the motion.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest except Debtor 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 except Debtor are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

#### BACKGROUND

Santellan is a contractor, citrus farmer, and member/owner of RNS. Doc. #50. Santellan also claims to be a "grower" and "producer" as defined in the California Food & Agriculture Code. RNS, meanwhile, is in the farming business and is a local producer of several varieties of citrus, including lemons, navel oranges, mandarins, cara-caras, and

other agricultural commodities (collectively "citrus"). Movants hire, partner, and contract with third parties to handle the post-cultivation phase of their commodities. One type of third party that the Movants deal with are marketers, who locate buyers and consummate transactions without the direct involvement of the grower. *Id.* Marketers select the harvesting and farm labor contractors, as well as the companies that ship the citrus from the field to the packing houses to be sorted, cleaned, prepared, and packaged. Many packing houses are owned and operated by Marketers, who oversee and control picking, packing, sorting, shipping, and collecting sales money. In sum, marketers sell the citrus, collect the proceeds, and then deduct agreed upon charges from the sales before remitting the remaining net funds to the grower.

The defendants in the State Court Action are Debtor and Mike Watts, the managing member of Debtor. *Id.* Watts is in the farming and ranching business and operates a packing house and commodity marketing business for citrus. Movants allege that Watts represented himself to be a seasoned professional in the agriculture business with experience farming, packing, and marketing. Movants claim that Watts convinced them to enter into a partnership with Debtor to form Grow Pure Agriculture, LLC ("GPA"). *Id.* At some point during the operation of GPA, Watts purportedly formed Debtor Grow Pure Citrus, LLC, which began to compete with GPA using GPA's and Movants' equipment and assets. As a result, Movants filed the State Court Action against Debtor and Watts on January 18, 2019 for claims of conversion and trespass to chattels. *Id.* After pending for three years, the state court ordered the parties to arbitrate on January 20, 2022. *Id.* Three weeks later, on February 7, 2022, Debtor filed bankruptcy. Doc. #1. Movants now seek relief from the automatic stay to proceed with the pending State Court Action.

#### DISCUSSION

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).

When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court must consider the "Curtis factors" in making its decision. *Kronmyer v. Am. Contractors Indem. Co. (In re Kronmyer)*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). The relevant factors in this case 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 foreign proceeding involves the debtor as a fiduciary;

4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee, and other interested parties;
8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
12. The impact of the stay on the parties and the "balance of hurt."

*Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004), citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984); see also *Kronemyer*, 405 B.R. at 921.

Here, Movants contend that the *Curtis* factors support stay relief. Doc. #47. Meanwhile, Debtor disagrees and argues that the *Curtis* factors do not warrant relief from the automatic stay. Analysis of the factors are as follows:

1. Partial or complete resolution of the issues: Movants contend that they cannot obtain final relief in the State Court Action while the stay is in effect, which caused significant damage to the Movants because the bankruptcy was filed on the eve of arbitration. *Id.* Allowing the State Court Action to proceed will allow Movants the opportunity to liquidate their claim and file a proof of claim in this case.

In response, Debtor claims that this is a no asset case. Doc. #60, citing *Notice of No Distribution*, Doc. #13. Since there is nothing to liquidate for the purpose of filing a proof of claim and there are no assets to distribute, no proof of claim is required.

However, modifying the automatic stay would allow the arbitration to proceed against both Debtor and Watts, which could resolve some or all of the claims raised in the State Court Action. This factor appears to slightly weigh in favor granting the motion and modifying the stay.



2. Lack of connection with or interference with the bankruptcy case: Movants insist that the State Court Action will not interfere with the bankruptcy case and will not prejudice the interests of other parties in interest. Doc. #47.

Debtor's response says that this is not true. Doc. #60. If the stay is lifted, Debtor would be required to defend a lawsuit that it cannot afford because it is no longer operating. Doc. #61. Debtor has not been in business since 2020 and the chapter 7 trustee has determined that there are no assets to distribute, which is evidence that Debtor does not have funds to defend the State Court Action. *Id.*; Doc. #13.

Once this case is closed there will be no stay in effect. 11 U.S.C. § 362(c)(2)(A). So, this debtor will be left with the choice of defending the state court action in any event.

Though true that this is a no asset case, the State Court Action is not solely against Debtor. Mike Watts, Debtor's owner, is also a defendant in the lawsuit. No information is provided as to whether Watts owns assets that could be used in defense of the State Court Action, nor was any evidence offered as to whether proceeding with the State Court Action against Watts would interfere with this bankruptcy.

3. Debtor as a fiduciary: Debtor does not appear to be operating as a fiduciary, so this factor appears to be inapplicable.

4. Specialized tribunal: Fresno County Superior Court has expertise in state court causes of action, including those relating to the agricultural industry. Further, the state court has ordered arbitration, which could potentially resolve the State Court Action altogether. This factor weighs in favor of modifying the automatic stay.

5. Insurance carrier's assumption of responsibility in defending: No information has been provided regarding whether the claims are subject to insurance coverage. But since Debtor claims to have no funds to defend against the lawsuit, it appears that no insurance carrier has assumed responsibility for defending the lawsuit. This factor is inapplicable or weighs slightly against modifying the automatic stay.

6. Whether the action involves third parties and debtor functions only as a bailee for goods or proceeds: The State Court Action involves third party defendant Mike Watts, the owner and operator of Debtor. However, Debtor does not appear to be functioning as a bailee for goods or proceeds. This factor is either neutral and inapplicable, or slightly favors stay modification.

7. Prejudice to other creditors and interested parties: Movants have claimed that the State Court Action will not prejudice the interests of other creditors and interested parties but no evidence or any other explanation has been provided as to why these parties will not be prejudiced. Doc. #47.

Debtor's response says that this is a no asset case, so it does not have the proceeds to defend the State Court Action. Doc. #60. This seems to imply that creditors and interested parties could be harmed if Debtor were forced to defend the lawsuit. However, since this is a no asset case, it is unclear how, if at all, creditors or other parties could be affected if the stay is lifted. The result appears to be the same either way. Also, this debtor is not entitled to a discharge in a Chapter 7 case. If the stay is lifted, creditors receive nothing. If the stay is not lifted, creditors receive nothing. This factor appears to weigh slightly in favor of modifying the stay.

8. Equitable subordination: Equitable subordination appears to be inapplicable here.

9. Whether the outcome in the foreign proceeding would result in an avoidable judicial lien: The outcome of the State Court Action could not result in an avoidable judicial lien because Debtor is a limited liability company. Therefore, Debtor cannot avoid any liens under § 522(f) because it will not be entitled to any exemptions that could be impaired. This factor favors stay modification.

10. Interests of judicial economy and expeditious and economical determination of litigation for the parties: Movants claim that termination of the stay would result in judicial economy. Doc.# 47.

Debtor notes that Movants have given no evidence or clear explanation as to why termination of the stay will result in judicial economy. Doc. #60.

However, since the state court has ordered arbitration that could potentially resolve the State Court Action, the interests of judicial economy could be served if arbitration leads to a final resolution of the lawsuit. The state action has been pending for three and one-half years. This factor appears to favor modifying the automatic stay.

11. Progressed to the point of trial: As noted above, the State Court Action has not progressed to the point of trial. The state court has, however, ordered arbitration, which could potentially resolve the State Court Action if it leads to a final resolution of the lawsuit. This factor weighs in favor of modifying the automatic stay.

12. Impact of the stay and the "balance of hurt": Movants contend that denial of this request to lift the automatic stay would place the balance of hurt on Movants. Doc. #47. Movants allege that Debtor and its co-defendant and owner, Mike Watts, engaged in serious misconduct. As a result, Movants contend that they are entitled to seek a judgment against Debtor and Watts and denying this request to lift the stay would unnecessarily and unjustifiably harm Movants and benefit Debtor and Watts.

Debtor again notes that Movants have not provided any evidence supporting the claim that they would be harmed if stay relief is not granted. Doc. #60. But since Debtor says it cannot afford to defend the lawsuit, it could be harmed if forced to defend the State Court Action at this time. This factor appears to be neutral. Again, this debtor is not entitled to a Chapter 7 discharge.

In sum, the *Curtis* factors appear to weigh slightly in favor of modifying the automatic stay to permit arbitration to proceed to finalize the State Court Action.

This matter will be called and proceed as scheduled. The court is inclined to GRANT the motion pursuant to 11 U.S.C. § 362(d)(1) to permit arbitration to proceed and to permit the Fresno County Superior Court to enter an order resolving the State Court Action. Movants will be permitted to liquidate the claim against third party Mike Watts only and are not permitted to enforce any judgment against Debtor or the bankruptcy estate without further order of this court.

Given the length of time this litigation has been pending, the lack of any opposition from Trustee, or any other creditors, the court is inclined to GRANT Movants' request for waiver of the 14-day stay under Rule 4001(a)(3).

7. [22-10168](#)-B-7     **IN RE: GROW PURE CITRUS, LLC**  
[JRL-4](#)

MOTION TO EXTEND TIME/DEADLINE TO OBJECT TO TRUSTEE'S REPORT  
OF NO DISTRIBUTION  
6-30-2022     [\[53\]](#)

RNS FARMS, LLC/MV  
JEFFREY ROWE/ATTY. FOR DBT.  
JERRY LOWE/ATTY. FOR MV.

TENTATIVE RULING:             This matter will proceed as scheduled.

DISPOSITION:                     Denied/overruled.

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

Raul Santellan and RNS Farms, LLC ("Movants") request an order extending the deadline to object to the chapter 7 trustee's report of no distribution. Doc. #53. Movants have been unable to schedule an examination of Grow Pure Citrus, LLC's ("Debtor") principal under Federal Rule of Bankruptcy Procedure ("Rule") 2004 and therefore seek a 90-day extension of the time to object to the trustee's report if no distribution.

Debtor timely filed written opposition. Doc. #63. Debtor contends that Movants' motion is untimely and unsupported by evidence. *Id.*

This matter will be called and proceed as scheduled. The court is inclined to DENY the motion or OVERRULE it as construed as an objection to the trustee's report of no distribution.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest except Debtor 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 except Debtor are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

On June 1, 2022, the court granted Movants' *ex parte* application to conduct a Rule 2004 examination of Debtor's managing member, Michael Watts. Doc. #30. However, Counsel for the parties have conflicting schedules and are working to find a mutually agreeable date for the Rule 2004 examination, but no date has been set at this time. Doc. #55. Movants' counsel anticipates that the examination will occur within the next 60 days. *Id.* Since the possibility of discovering assets exists, Movants request a 90-day extension to the deadline to object to the trustee's report of no distribution. Docs. #53; #55.

In response, Debtor first claims that Movants' motion is untimely because they brought the wrong motion. Doc. #63. Movants should have instead filed an objection to the trustee's notice of no assets, which was due on June 30, 2022. See Doc. #13. Instead, Movants filed this motion to extend time on June 30, 2022. Since Movants failed to file an objection by the June 30, 2022 deadline, this motion should be denied.

Rule 1001 provides that the Federal Rules of Bankruptcy Procedure shall be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding. Meanwhile, LBR 9001-1 supplements the definitions set forth in Rules 9001 and 9002 and provides that a "motion" includes "all motions, applications, objections, or other requests made to the Court for orders or other judicial activity." LBR 9001-1(n) (emphasis added). The court may resolve Debtor's first argument by construing Movants' motion for an extension of time to object to the trustee's report of no distribution as an objection to the trustee's report of no distribution. Since the motion/objection was filed on June 30, 2022, it was timely filed by the objection deadline.

Second, Debtor claims that the motion is unsupported by evidence. Movants cite to the "possibility" that assets may exist, which is a conclusion without any evidence. Doc. #63. Debtor says that Movants did not attend the \$ 341 meeting and the declaration of Jerry Lowe, Movants' attorney, does not specify how Movants determined that Debtor might have additional assets. *Id.*, citing Doc. #55. On this basis, Debtor asks the motion to be denied.

The court agrees. Movants have not provided any evidence in support of the motion/objection. The declaration of Jerry Lowe only states that "Counsel for the parties have impacted schedules and are working to find a mutually agreeable date for the examination but the date has not yet been set." No evidence was offered as to Movants' attempts to schedule a Rule 2004 examination. Additionally, in Movants' related stay relief motion in matter #6 above, they claim to have been in business with Debtor's owner and operator. See JRL-3. Rather than alleging specific assets that Debtor may own, the declaration only states that "the possibility exists for assets to be discovered during the examination . . ." Specific allegations regarding undisclosed assets are entirely omitted.

Since Movants have not offered any evidence in support of the motion/objection, the court is inclined to DENY the motion or OVERRULE it insofar as it can be construed as an objection. This matter will be called and proceed as scheduled.

8. [18-14689](#)-B-7     **IN RE: JAVIER GONZALEZ**  
[JES-3](#)

MOTION FOR COMPENSATION FOR JAMES SALVEN, CHAPTER 7  
TRUSTEE(S)  
6-13-2022    [\[146\]](#)

JAMES SALVEN/MV  
THOMAS GILLIS/ATTY. FOR DBT.  
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

Chapter 7 trustee James E. Salven ("Trustee") requests statutory compensation of \$10,630.69 under 11 U.S.C. §§ 326, 330. Doc. #146. This amount consists of \$10,391.78 as statutory fees for services rendered to the estate and \$238.91 in actual, necessary expenses from November 20, 2018 through June 11, 2022. *Id.*

This motion will be DENIED WITHOUT PREJUDICE because Trustee has failed to make a *prima facie* showing of entitlement to the relief

sought. The moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Tracht Gut, LLC v. County of L.A. (In re Tracht Gut, LLC)*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

11 U.S.C. § 326 permits the court to allow reasonable compensation to the chapter 7 trustee under § 330 for the trustee's services. Section 326(a) states:

In a case under chapter 7 or 11, other than a case under subchapter V of chapter 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including all holders of secured claims.

11 U.S.C. § 326(a). 11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses. 11 U.S.C. § 330(a)(1)(A) & (B). 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, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Here, though Trustee claims that the final report was filed with the Office of the United States Trustee on June 11, 2022, it does not appear to have been filed and docketed in this case. The Trustee's duties include making a final report and filing a final account of the administration of the estate with the court and with the United States Trustee. § 704(a)(9). There is no evidence that occurred here.

Additionally, Trustee did not include any exhibits with this motion. The court cannot evaluate whether the requested fees are within the limits specified by § 326 without evidence regarding proceeds disbursed to parties in interest. Further, the court cannot evaluate whether the fees and expenses are reasonable, actual, and necessary for the estate under § 330 without in the absence of any supporting evidence. The court is not inclined to question the statutory commission absent very good reasons. But currently there is no basis to determine the commission based on the evidence before the court.

Accordingly, for the above reasons, this motion will be DENIED WITHOUT PREJUDICE.