



UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Wednesday, July 31, 2024  
Department A – Courtroom #11  
Fresno, California

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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. [20-10945](#)-A-12     **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**  
[YW-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF YOUNG WOOLDRIDGE FOR  
LEONARD K. WELSH, DEBTORS ATTORNEY(S)  
7-9-2024    [[398](#)]

LEONARD WELSH/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.

The Law Offices of Young Wooldridge ("Movant"), successor counsel for Ajitpal Singh and Jatinderjeet Kaur Sihota (collectively, "Debtors"), the debtors in this chapter 12 case, requests allowance of compensation in the amount of \$7,720.00 and reimbursement for expenses in the amount of \$43.36 for services rendered from January 15, 2024 through June 30, 2024, pursuant to 11 U.S.C. § 330. Doc. #398. Debtors have no objection to the fees and expenses requested by Movant. Decl. of Jatinderjeet Kaur Sihota, Doc. #400. Movant requests fees and expenses to be paid by Debtors from wages earned by Debtors and income generated from the operation of their business. Doc. #398; Sihota Decl., Doc. #400; Decl. of Leonard K. Welsh, Doc. #402. This is Movant's first fee application in this case. The court substituted Movant as the attorney of record after former attorney of record Leonard K. Welsh closed his law offices and joined Movant in an "of counsel" capacity. Doc. ##377, 398.

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 12 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 12 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) advising Debtors and special counsel with respect to litigation and settlement of claims with the Toronto Group; (2) preparing substitution of counsel and employment application; and (3) general case administration. Exs. A & B, Doc. #401. The court finds that the compensation and reimbursement sought are reasonable,

actual, and necessary, and the court will approve the motion on an interim basis.

Accordingly, subject to opposition being raised at the hearing, this motion will be GRANTED. The court will allow on an interim basis compensation in the amount of \$7,720.00 and reimbursement for expenses in the amount of \$43.36 to be paid in a manner consistent with the terms of the confirmed plan. Movant may draw on any trust account held.

2. [24-11545](#)-A-11     **IN RE: RIDGELINE CAPITAL INVESTMENTS, LLC**  
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION  
6-4-2024    [\[1\]](#)

MICHAEL BERGER/ATTY. FOR DBT.

NO RULING.

As a procedural matter, the status conference statement and related pleadings do not comply with Local Rule of Practice ("LBR") 9014-1(c). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See also LBR 9004-2(b)(6). Here, the order setting the initial chapter 11 case status conference in this case (Doc. #6) has a Docket Control Number of CAE-1, while the status report, supporting declaration and related certificate of service have a Docket Control Number of MJB-3. The correct Docket Control Number for the status report, supporting declaration and related certificate of service should have been CAE-1.

3. [24-11545](#)-A-11     **IN RE: RIDGELINE CAPITAL INVESTMENTS, LLC**  
[MJB-2](#)

CONTINUED 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 if supplemental certificate of service filed;  
otherwise, the hearing will be continued.

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 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 a supplemental certificate of service showing proper service of the notice of continued hearing is filed before the hearing. Otherwise, the hearing will be

continued. If notice of the continued hearing was served properly and 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, there are two certificates of service showing the two supplemental declarations filed on July 9, 2024 were served on all creditors and other parties in interest. Doc. ##37, 39. However, there is no certificate of service showing that the notice of the continued hearing was served on all creditors and other parties in interest no later than July 17, 2024 as required by the court at the prior hearing. Order, Doc. #35. Unless a supplemental certificate of service is filed prior to the hearing showing that the notice of continued hearing was served on all creditors and other parties in interest no later than July 17, 2024, this hearing will be continued to permit such notice to be provided.

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 in chapter 11 proceedings. 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 it 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. The source of the retainer was a loan from The Shaun Michael Reynolds Living Trust, which is the living trust of Debtor's managing member. Supp. Decl. of Michael J. Berger, Doc. #31; Supp. Decl. of Shaun Michael Reynolds, Doc. #32. 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 prior to this bankruptcy case being filed. Berger Decl., Doc. #22. 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 a supplemental certificate of service is filed prior to the hearing showing that the notice of continued hearing was served on all creditors and other parties in interest no later than July 17, 2024 and 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 effective as of June 5, 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. [20-10569](#)-A-12      **IN RE: BHAJAN SINGH AND BALVINDER KAUR**  
[YW-3](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)  
7-9-2024    [[671](#)]

LEONARD WELSH/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.

The Law Offices of Young Wooldridge ("Movant"), successor counsel for Bhajan Singh and Balvinder Kaur (collectively, "Debtors"), the debtors in this chapter 12 case, requests allowance of compensation in the amount of \$8,110.00 and reimbursement for expenses in the amount of \$148.12 for services rendered from January 15, 2024 through June 30, 2024, pursuant to 11 U.S.C. § 330. Doc. #671. Debtors have no objection to the fees and expenses requested by Movant. Decl. of Bhajan Singh, Doc. #674. Movant requests fees and expenses to be paid by Debtors from wages earned by Debtors and income generated from the operation of their business. Doc. #671; Singh Decl., Doc. #674; Decl. of Leonard K. Welsh, Doc. #673. This is Movant's first fee application in this case. The court substituted Movant as the attorney of record after former attorney of record Leonard K. Welsh closed his law offices and joined Movant in an "of counsel" capacity. Doc. ##648, 671.

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 12 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 12 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) advising Debtors and special counsel with respect to litigation and settlement of claims with the Toronto Group; (2) preparing substitution of counsel and employment application; and (3) general case administration. Exs. A & B, Doc. #675. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on an interim basis.

Accordingly, subject to opposition being raised at the hearing, this motion will be GRANTED. The court will allow on an interim basis compensation in the amount of \$8,110.00 and reimbursement for expenses in the amount of \$148.12 to be paid in a manner consistent with the terms of the confirmed plan. Movant may draw on any trust account held.

5. [23-12784](#)-A-11      **IN RE: KODIAK TRUCKING INC.**  
[FW-14](#)

MOTION TO VALUE COLLATERAL OF EC MASTER TRUST  
7-3-2024    [\[291\]](#)

KODIAK TRUCKING INC./MV  
PETER FEAR/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.

Kodiak Trucking, Inc. ("Debtor"), the debtor in possession in this chapter 11 case, moves the court for an order valuing collateral of EC Master Trust, d/b/a EC Master Business Trust, d/b/a Entegra Capital, LLC ("Creditor"). Doc. #291. Among the assets of the estate is a 2016 Mack GU813, VIN: 1M2AX04C8GM027918 (the "Vehicle") and is security for a finance lease with Creditor. Doc. #291; Ex. A, Doc. #294.

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." 11 U.S.C. § 506(a)(2) states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2). Federal Rule of Bankruptcy Procedure 3012 "provides that the bankruptcy court may determine the value of a secured claim, upon motion of a party in interest, and after a hearing on notice to the holder of the secured claim." In re Shook, 278 B.R. 815, 823 (B.A.P. 9th Cir. 2002).

Debtor asserts the value of the Vehicle is \$40,000.00. Decl. of Marco Arambula, Doc. #293. Debtor is competent to testify as to the value of the Vehicle through its sole owner, Marco Arambula, who bases his opinion on his experience operating a large fleet of vehicles similar to the Vehicle, and his involvement in the purchase and selling of similar vehicles during the time he has operated Debtor. Id. Given the absence of contrary evidence, Debtor's opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. The court determines that the value of the Vehicle is \$40,000.00 for purposes of Debtor's chapter 11 case. The proposed order shall specifically identify the collateral that is being valued by the motion.



11:00 AM

1. [24-11106](#)-A-7     **IN RE: MARIO GAUDIO AND MISTY LOPEZ AMAYA**

PRO SE REAFFIRMATION AGREEMENT WITH EMBOLD CREDIT UNION  
7-15-2024    [[19](#)]

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

The court is not approving or denying approval of the reaffirmation agreement. The debtors were represented by counsel when they 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 debtors' counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. The debtors shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

2. [24-11574](#)-A-7     **IN RE: ADAM/MARY ORONA**

PRO SE REAFFIRMATION AGREEMENT WITH LES SCHWAB TIRE CENTERS OF  
CENTRAL CA, LLC.  
7-16-2024    [[20](#)]

NO RULING.

1:30 PM

1. [24-11111](#)-A-7     **IN RE: MARY ANN JAVAUX**  
[ICE-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT  
SEC. 341(A) MEETING OF CREDITORS  
6-28-2024     [[16](#)]

MARK ZIMMERMAN/ATTY. FOR DBT.

NO RULING.

2. [24-11530](#)-A-7     **IN RE: ISAIAH EBERLEIN**  
[THL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-16-2024     [[29](#)]

CALIFORNIA LIVING PROPERTIES, LLC/MV  
TYLER LESTER/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:             This matter will proceed as scheduled.

DISPOSITION:                     Granted.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Although not required, on July 18, 2024, the debtor filed written opposition. Doc. #39. Unless further opposition is presented at the hearing, the court intends to enter the respondents' defaults of the non-responding parties, overrule the debtor's opposition, and grant the motion. If further opposition is presented at the hearing, the court will consider the additional 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, California Living Properties, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to real property located at 2050 E. Indianapolis Ave, Fresno, California 93726 (the "Property"). Doc. #29. Pre-petition, Movant filed an unlawful detainer action in state court against Isaiah Daniel Eberlein ("Debtor") and others as case number 24CECL06037. Decl. of Glenn Hammerburg, Doc. #32. Debtor filed this chapter 7 bankruptcy case on June 3, 2024. Doc. #1. Movant requests relief from the automatic stay to continue the unlawful detainer action in state court against Debtor and to proceed under applicable non-bankruptcy law to enforce Movant's remedies to gain possession of the Property. Doc. #29.

Movant is the owner of the Property. Hammerburg Decl., Doc. #32. Movant's predecessor rented the Property to Debtor for a one-year term beginning on

June 7, 2023 for \$1,000.00 per month. Id. Movant claims Debtor has not paid any rent as of May 2024 and thereafter. Id. Currently, Debtor owes pre-petition rent in the amount of \$1,100.00 and post-petition rent in the amount of \$1,900.00. Id. Debtor opposes the motion on the grounds that this allocation of rent is inconsistent with the delinquent rent amount set forth in the unlawful detainer action. Doc. #39. However, it appears that Movant has prorated the June 2024 rent between pre- and post-petition amounts, so that the \$1,100 in pre-petition rent is for the delinquent May 2024 rent plus the first three days in June 2024 prior to Debtor filing his bankruptcy petition, and the \$1,900 in post-petition rent is for the remaining days in June 2024 plus July 2024.

With the bankruptcy petition, Debtor filed an initial statement about an eviction judgment and indicated that all the rent will be paid in full within 30 days from the filing of the initial statement. Doc. #8. However, there currently is no eviction judgment as the unlawful detainer case is on hold due to the automatic stay. Hammerburg Decl., Doc. #32. Also, Debtor has failed to tender any rent payments post-petition. Id.

### **11 U.S.C. § 362(d) (1) Analysis**

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 prays for 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. In re Kronemyer, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in determining 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, granting Movant's relief from the stay will completely resolve the issue of Debtor's unlawful possession of the Property. Movant owns the Property, and Debtor failed to pay rent in May 2024 and thereafter. On May 24, 2024, Movant initiated an unlawful detainer action in Superior Court, County of Fresno, ("State Court") to enforce its interests in the Property against Debtor and others who claim an interest in the Property. Hammerburg Decl., Doc. #32.

The State Court has expertise in unlawful detainer actions with respect to unpaid rent and expired written leases and can resolve the issues raised in Debtor's opposition to this motion. Doc. #39. Moreover, the written lease between Debtor and Movant's predecessor expired on June 6, 2024, so permitting Movant to pursue a judgment in State Court will not prejudice the interests of other creditors. Finally, the interests of judicial economy favor granting relief from the automatic stay so that Movant can retain possession of the Property and receive damages caused by the unlawful detention of the Property by Debtor and others.

For these reasons, the court finds that cause exists to lift the stay to permit Movant to continue in the State Court unlawful detainer action and enforce any resulting judgment.

## 11 U.S.C. § 362(d) (2) Analysis

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.

The court also finds that Debtor is not the owner of the Property and does not have any equity in the Property. Further, the Property is not necessary to an effective reorganization because Debtor is in chapter 7.

## Conclusion

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d) (1) and (d) (2) to permit Movant to proceed under applicable nonbankruptcy law to continue to prosecute the unlawful detainer action against Debtor and to enforce any resulting judgment for unlawful detainer, including all necessary steps to obtain possession of the Property from Debtor. No other relief is awarded.

Because Debtor's lease of the Property has expired, the 14-day stay of Fed. R. Bankr. P. 4001(a) (3) will be ordered waived to permit the unlawful detainer proceeding to continue in State Court.

3. [22-12133](#)-A-7     **IN RE: COMMUNITY REGIONAL ANESTHESIA MEDICAL GROUP, INC.**  
[FW-2](#)

MOTION TO SELL  
7-10-2024    [\[46\]](#)

IRMA EDMONDS/MV  
RILEY WALTER/ATTY. FOR DBT.  
PETER FEAR/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted.

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

This motion was filed and served on at least 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.

Irma Edmonds ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Community Regional Anesthesia Medical Group, Inc. ("Debtor"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the assignment to Jennifer Chi and Rhonda Hardy-Joel ("Assignees") of the bankruptcy estate's interest in legal claims in connection with the bad faith failure of Debtor's insurers to settle an employment-related lawsuit pending in Fresno County Superior Court as Case No. 20-CECG-0029 (the "Claims"). Doc. #46.

Assignees are involved in the employment-related lawsuit from which the Claims originate. Doc. #46; Decl. of Irma Edmonds, Doc. #48. Trustee agrees to assign the Claims to Assignees subject to court approval. Id. Under the proposed assignment, Trustee shall: (1) assign the Claims, including all claims, causes of action, rights to damages, equitable relief, and all other rights associated with the Claims, free and clear of any liens, encumbrances, or restrictions; and (2) be entitled to a contingent interest in the net recovery of the Claims based on the following sliding scale: (a) 5% of any net recovery below \$250,000.00; (b) 7.5% of any net recovery in excess of \$250,000.00 but below \$500,000.00; and (c) 10% of any net recovery in excess of \$500,000.00. Doc. #46; Ex. A, Doc. #49.

#### Selling Property of Estate under 11 U.S.C. § 363(b)(1) Permitted

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 the assignment of the Claims on the proposed terms is reasonable and in the best interest of the estate as it provides a mechanism for recovery of some value from the Claims. Edmonds Decl., Doc. #48. Assignees are represented by counsel who are familiar with the underlying facts and circumstances, which makes them more efficient to prosecute the Claims with a better opportunity to realize a definable benefit. Id.

It appears that the assignment of the estate's interest in the Claims is in the best interests of the estate, the terms of the assignment of interest to the Assignees is reasonable, and the assignment is supported by a valid business judgment and proposed in good faith.

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

Trustee also requests that the 14-day stay of Fed. R. Bankr. P. 6004(h) be waived because the parties are scheduled to mediate the claim on July 31, 2024, which will allow Trustee to know the parties' relative bargaining positions as soon as possible. Doc. #48. The 14-day stay of Fed. R. Bankr. P. 6004(h) will be ordered waived.

4. [24-11041](#)-A-7     **IN RE: JESSICA GRATEROLES**  
[ICE-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT  
SEC. 341(A) MEETING OF CREDITORS  
6-28-2024    [\[15\]](#)

NO RULING.

5. [17-10743](#)-A-7     **IN RE: RUPERTO MARTINEZ**  
[ALG-2](#)

MOTION TO AVOID LIEN OF COLLECT ACCESS, LLC  
7-2-2024    [\[29\]](#)

RUPERTO MARTINEZ/MV  
JANINE ESQUIVEL/ATTY. FOR DBT.  
JANINE ESQUIVEL OJI/ATTY. FOR MV.  
RESPONSIVE PLEADING

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

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE.

Ruperto Martinez ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure ("Rule") 4003(d) and 9014 to avoid the judicial lien of Collect Access, LLC ("Creditor") on residential real property commonly referred to as 2107 Riverview Drive, Madera, California 93637 (the "Property"). Doc. #29; Am. Schedule C & D, Doc. #27; Am. Schedule C, Doc. #41.

In order 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). 11 U.S.C. § 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)).

Rule 4003(b)(1) allows a party in interest to object to a claim of exemption within 30 days after the conclusion of the § 341 meeting of creditors or 30 days after the filing of an amended Schedule C, whichever is later. In this case, an amended Schedule C was filed on July 17, 2024. Am. Schedule C, Doc. #41. The amended Schedule C for the first time asserts a \$75,000 exemption in the real property that is the subject of this motion. Id.

Because parties in interest can still object under Rule 4003 to Debtor's claimed \$75,000 exemption in the Property, Debtor cannot yet establish that he is entitled to the scheduled exemption in the Property that Debtor asserts impairs Creditor's judicial lien. This motion is therefore premature and not

ripe for hearing because Debtor cannot satisfy the first element required to avoid a lien under § 522(f)(1).

6. [23-10344](#)-A-7     **IN RE: SUSAN QUINVILLE AND LOARINA DOMENA-QUINVILLE**  
[JRL-6](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-16-2024    [\[134\]](#)

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 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.

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 (the "Property"). Doc. #134.

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. #137.

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.

7. [24-11249](#)-A-7     **IN RE: JULIAN CASTELLANOS**  
[BDB-1](#)

MOTION TO AVOID LIEN OF PAWNEE LEASING CORPORATION  
7-15-2024    [\[17\]](#)

JULIAN CASTELLANOS/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 the hearing.

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

Julien Castellanos ("Debtor"), the debtor in this chapter 7 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Pawnee Leasing Corporation ("Creditor") on residential real property commonly referred to as 1502 Sonora Street, Madera, California 93638 (the "Property"). Doc. #17; Schedule C & D, Doc. #1.

In order 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). 11 U.S.C. § 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)).

Debtor filed the bankruptcy petition on May 8, 2024. Doc. #1. A judgment was entered against Debtor in the amount of \$42,942.32 in favor of Creditor on October 30, 2023. Ex. A, Doc. #19. The abstract of judgment was recorded pre-petition in Madera County on December 15, 2023, as document number 2023024829. Ex. A, Doc. #19. The lien attached to Debtor's interest in the Property located in Madera County. Doc. #17. The Property also is encumbered by a lien in favor of Golden 1 Cu/dovenmuehl in the amount \$48,293.00. Schedule D, Doc. #1. Debtor claimed an exemption of \$257,707.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$306,000.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

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Amount of Creditor's judicial lien		\$42,942.32
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$48,293.00
Amount of Debtor's claim of exemption in the Property	+	\$257,707.00
		\$348,942.32
Value of Debtor's interest in the Property absent liens	-	\$306,000.00
Amount Creditor's lien impairs Debtor's exemption		\$42,942.32

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's 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 11 U.S.C. § 522(f)(1). Accordingly, subject to opposition being raised at the hearing, the motion will be GRANTED. The proposed order shall state that Creditor's judicial lien is avoided on the subject Property only and include a copy of the abstract of judgment as an exhibit.

8. [24-10868](#)-A-7 **IN RE: JASDEEP SANDHU**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
7-15-2024 [[64](#)]

PHILLIP GILLET/ATTY. FOR DBT.  
FILING FEE PAID \$25.00 7/17/24

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.

9. [24-11397](#)-A-7 **IN RE: CLAUDIO VALLES FLORES AND JUAN FUENTES TORRES**  
[ADR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-16-2024 [[34](#)]

THE HILL FAMILY LIVING TRUST/MV  
GABRIEL LAW/ATTY. FOR DBT.  
ANTHONY ROWE/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will

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

As a procedural matter, the notice of hearing does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. The court encourages counsel for the moving party 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>.

As an informative matter, the movant did not attach a copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice applicable to this case with the court's mandatory Certificate of Service form filed in connection with the motion (Doc. #40). Instead of using the Clerk of the Court's matrix that can be generated from the court's website, the movant attached a PACER generated list of names and addresses served. In the future, the movant should attach a copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice applicable to this case that can be generated from this court's website.

The movant, The Hill Family Living Trust ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property located at 831 Iowa Avenue, C-2, Los Banos, California 93635 (the "Property"). Doc. #37. Movant requests relief from the automatic stay to pursue an unlawful detainer action in state court against Claudio Damian Valles Flores and Juan De Dios Fuentes Torres (collectively, "Debtors") and to proceed under applicable non-bankruptcy law to enforce Movant's remedies to gain possession of the Property. Doc. #37.

Movant is the lessor and owner of the Property who entered into a written residential rental agreement with Debtors where Debtors agreed to pay \$1,400.00 per month. Ex. 1, Doc. #39. Debtors failed to pay rent from October 2023 through April 2024 in the amount of \$9,100.00 in rent due. Decl. of Brianna Martinez, Doc. #38; Doc. #37. The rental agreement and Debtors' possession were terminated by a 3-day notice to pay rent or quit which was served and expired on April 18, 2024. Exs. 2 & 3, Doc. #39; Doc. #37. Debtors owe a total of \$11,000.00 in pre-petition rent. Doc. #37.

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 prays for 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. In re Kronemyer, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in determining 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, granting Movant's relief from the stay will completely resolve the issue of Debtors' unlawful possession of the Property. Movant owns the Property, and Debtors failed to pay rent from October 2023 through April 2024. The state court has expertise in unlawful detainer actions with respect to unpaid rent and terminated tenancy. The interests of judicial economy favor granting relief from the automatic stay so that Movant can retain possession of the Property and receive damages caused by the unlawful detention of the Property by Debtors.

For these reasons, the court finds that cause exists to lift the stay to permit Movant to initiate and prosecute in the state court an unlawful detainer action against Debtors and enforce any resulting judgment.

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 proceed under applicable nonbankruptcy law to initiate and prosecute in the state court an unlawful detainer action against Debtors, and to enforce any resulting judgment for unlawful detainer, including all necessary steps to obtain possession of the Property from Debtors. No other relief is awarded.

Because Debtors' possession of the Property terminated pre-petition pursuant to a 3-day notice to pay rent or quit which was served and expired on April 18, 2024, the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived to permit Movant to initiate and prosecute in the state court an unlawful detainer action against Debtors and enforce any resulting judgment.

10. [24-11397](#)-A-7     **IN RE: CLAUDIO VALLES FLORES AND JUAN FUENTES TORRES**  
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-28-2024    [\[22\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV  
GABRIEL LAW/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/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 as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-

mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Toyota Motor Credit Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2021 Toyota RAV4 HYBR; VIN: 2T3E6RFV1MW004152 (the "Vehicle"). Doc. #22.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least three complete pre-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$2,853.70. Decl. of Debra Knight, Doc. #25. According to the debtors' Statement of Intention, the Vehicle will be surrendered. Doc. #1.

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

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

1. [24-11303](#)-A-13     **IN RE: JAMES ELLIS**  
[RAS-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR U.S. BANK TRUST NATIONAL  
ASSOCIATION  
7-9-2024    [[21](#)]

U.S. BANK TRUST NATIONAL ASSOCIATION/MV  
PETER BUNTING/ATTY. FOR DBT.  
KELLI BROWN/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Sustained if amended certificate of service filed.

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 was filed and served pursuant to Local Rule of Practice  
("LBR") 3015-1(c)(4) and will proceed as scheduled. Unless opposition is  
presented at the hearing, the court intends to enter the respondents' defaults  
and sustain the objection if an amended certificate of service is filed prior  
to the hearing. If an amended certificate of service is filed and 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, section 4 of the certificate of service filed with this  
objection (Doc. #23) does not state the date on which the objection to  
confirmation was served. Because the certificate of service was signed on  
July 9, 2024, it appears that this objection to confirmation was filed and  
served by the deadline set forth in this court's notice of chapter 13 case.  
Doc. #18. However, because the certificate of service on file does not state  
the exact date that notice of the hearing and the objection to confirmation  
were served, the objecting party shall file an amended certificate of service  
that includes the date on which service was made before this court will hear  
this matter.

James Francis Ellis ("Debtor") filed his chapter 13 plan ("Plan") on May 28,  
2024. Doc. #14. U.S. Bank Trust National Association ("Creditor") objects to  
confirmation of the Plan on the ground that: (1) Debtor is not a borrower on  
the promissory note with Creditor, which makes Debtor not in privity of the  
contract with Creditor; and (2) the Plan provides for a cure amount of  
\$37,560.44 but the total amount of pre-petition arrears due and owing to  
Creditor is \$41,187.39. Doc. #21.

[T]here is a split of authority as to whether a Chapter 13 plan may  
cure a defaulted secured claim when no privity of contract exists  
between the debtor and the creditor. The majority of courts apply  
the Supreme Court's broad interpretation of "claim" in Johnson v.  
Home State Bank, 501 U.S. 78, 111 S. Ct. 2150, 115 L. Ed. 2d 66  
(1991), to permit confirmation of Chapter 13 plans that cure arrears  
where there are only *in rem* rights and no contractual privity  
between the debtor and creditor. On the other hand, a minority of

courts interpret "claim" narrowly, such that "claim" does not exist when there is no *in personam* liability.

In re Stevenson, Case No. 23-32811-KRH, 2023 Bankr. LEXIS 2712, \*3 (Bankr. E.D. VA. Nov. 8, 2023) (citations omitted) (collecting cases).

Assuming that Debtor has the ability to cure the default in Creditor's claim under the Plan, Federal Rule of Bankruptcy Procedure 3001(f) provides that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." 11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof of claim filed under section 501, is deemed allowed unless a party in interest objects. Creditor filed its proof of claim on July 8, 2024. Claim 10.

Section 3.02 of the Plan provides that the proof of claim determines the amount and classification of a claim. Doc. #14. The Plan fails to account for Creditor's claim. Claim 10; Doc. #14.

Accordingly, assuming an amended certificate of service is filed showing that service of the notice of hearing and objection to confirmation were properly served and subject to opposition being raised at the hearing, the objection will be SUSTAINED.

2. [24-11206](#)-A-13     **IN RE: MICHAEL/ANNIE RICHMOND**  
[NES-1](#)

MOTION TO CONFIRM PLAN  
6-21-2024    [\[17\]](#)

ANNIE RICHMOND/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 35 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 3015-1(d)(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.

As a procedural matter, on the court's mandatory certificate of service form filed with this motion (Doc. #21), the movant checked the box indicating that

service was made pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 7004. However, when the movant served all creditors with the pleadings, that service was made pursuant to Rule 7005, and the boxes in section 6B, not section 6A, should have been checked. In addition, the boxes checked under section 7A should have been under the column labeled Rule 5 Service, not the column labeled Rule 7004 Service.

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.

3. [23-10626](#)-A-13     **IN RE: DEREK WHITFIELD**  
[SL-2](#)

MOTION TO MODIFY PLAN  
6-12-2024    [[46](#)]

DEREK WHITFIELD/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.

4. [22-10438](#)-A-13     **IN RE: DEBBI CHACON**  
[FW-3](#)

MOTION TO MODIFY PLAN  
6-7-2024    [\[58\]](#)

DEBBI CHACON/MV  
PETER FEAR/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.

5. [23-10947](#)-A-13     **IN RE: SONIA LOPEZ**

MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS  
5-17-2024    [\[111\]](#)

SUSAN SILVEIRA/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Continued to September 12, 2024 at 9:30 a.m.

NO ORDER REQUIRED.

On July 24, 2024, the court issued an order continuing the hearing on the debtor's objection to the Notice of Default and Trustee Intent to Dismiss Case to September 12, 2024 at 9:30 a.m. Doc. #127.



6. [24-10995](#)-A-13     **IN RE: VICTOR TORRES FIGUEROA AND YAMAYRA SANTIAGO LOYO**  
[JRL-1](#)

AMENDED MOTION TO CONFIRM PLAN  
7-3-2024    [\[51\]](#)

YAMAYRA SANTIAGO LOYO/MV  
JERRY LOWE/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice by mail of this motion was sent on July 1, 2024, with a hearing date set for July 31, 2024. Because Local Rule of Practice 3015-1(d)(1) requires the motion to be served at least 35 days prior to the hearing date and the motion was set for hearing on less than 35 days' notice, the motion was not served properly.

3:00 PM

1. [23-11803](#)-A-7     **IN RE: VALERIE RODRIGUEZ**  
[23-1051](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
11-20-2023     [1]

RODRIGUEZ V. DEPT OF ED EDFINANCIAL ET AL  
RESPONSIVE PLEADING

NO RULING.

2. [23-12905](#)-A-7     **IN RE: REZA IMANI**  
[24-1009](#)

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

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

TENTATIVE RULING:             This matter will proceed as scheduled.

DISPOSITION:                 Granted with leave to amend.

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 pursuant to 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 plaintiff timely filed written opposition on July 17, 2024. Doc. #33. The defendant filed a written reply late on July 25, 2024. Doc. #25. The matter will proceed as scheduled.

#### **PROCEDURAL MATTERS**

While the stipulation of the parties addressed one procedural issue with the motion with respect to compliance with Local Rule of Practice ("LBR") 9014-1(f)(2)(A), there are several other procedural issues with the motion.

First, the notice of hearing (Doc. #21) filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving any written opposition, and the names and addresses of persons who must be served with any written opposition. The notice of hearing also does not comply with LBR 9014-1(d)(3)(B)(ii) because the notice of hearing fails to advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition. The notice of hearing also does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the notice to advise respondents that they can determine whether the matter has been

resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

Second, the motion and supporting papers do not comply with LBR 9014-1(c). "In motions filed in the bankruptcy case, a Docket Control Number (designated as DCN) shall be included by all parties immediately below the case number on all pleadings and other documents, including proofs of service, filed in support of or opposition to motions." LBR 9014-1(c)(1). "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6). Here, the motion and related pleadings do not have a Docket Control Number.

Third, the motion and notice of hearing do not comply with LBR 9014-1(d)(4), which requires that every document listed in LBR 9014-1(d)(1) be filed as a separate document. Here, the motion filed by the defendant includes the memorandum of points and authorities, a declaration, exhibits and a certificate of service. Doc. #20. Pursuant to LBR 9014-1(d)(4), the defendant should have filed the motion to dismiss and the memorandum of points and authorities as separate documents. In addition, the defendant should have filed the declaration, exhibits and certificate of service each as separate documents.

Fourth, the exhibits filed by the movant (Doc. #20) do not include an exhibit index and have not been properly numbered as required by LBR 9004-2(d)(2) and (d)(3).

Fifth, the certificates of service filed with the motion (Doc. #20) and the reply (Doc. #35) do 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 (EDC Form 7-005, Rev. 10/22) as of November 1, 2022.

Finally, the defendant failed to file his reply at least seven days prior to the hearing date as required by LBR 9014(f)(1)(C). The plaintiff requests that the court not consider the late-filed reply in ruling on this motion. Doc. #36. Because the reply was filed late, the court will not consider the reply in ruling on this motion.

The court encourages counsel for the defendant 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>.

## **APPLICABLE LAW**

### **A. Motion to Dismiss Under Rule 12(b)(6)**

The defendant's motion to dismiss is made under Federal Rule of Civil Procedure ("Rule") 12(b)(6), incorporated into this adversary proceeding by Federal Rule of Bankruptcy Procedure 7012. "A motion under Rule 12(b)(6) tests the formal sufficiency of the statement of the claim for relief." Greenstein v. Wells Fargo Bank, N.A. (In re Greenstein), 576 B.R. 139, 171 (Bankr. C.D. Cal. 2017). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)); Rule 8(a). "When there are well-pleaded factual allegations, a court should assume their veracity and then determine

whether they plausibly give rise to an entitlement to relief." Iqbal, 556 U.S. at 679.

**B. Claim for Relief Under 11 U.S.C. § 727(a)(4)(A)**

To deny a debtor a discharge under § 727(a)(4)(A), the plaintiff must show that: "(1) the debtor made a false oath in connection with the case; (2) the oath related to a material fact; (3) the oath was made knowingly; and (4) the oath was made fraudulently." Retz v. Samson (In re Retz), 606 F.3d 1189, 1197 (9th Cir. 2010) (citation omitted). "A false statement is material if it bears a relationship to the debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor's property." Fogal Legware of Switz., Inc. v. Wills (In re Wills), 243 B.R. 58, 62 (B.A.P. 9th Cir. 1999) (citations omitted).

**ANALYSIS**

With respect to a motion to dismiss under Rule 12(b)(6), this court will consider only the complaint filed by the plaintiff. As explained by one district court in a situation similar to the one here:

[T]he Court cannot consider this declaration in its Rule 12(b)(6) analysis. In assessing the sufficiency of the complaint, federal courts generally do not consider evidence outside of the pleadings unless the complaint 'necessarily relies' on such evidence. Manzarek v. St. Paul Fire & Marine Ins. Co., 519 F.3d 1025, 1031 (9th Cir. 2008). The [First Amended Complaint ("FAC")] does not refer to the declaration attached to Defendant's supplemental briefing. Also, the declaration is not central to the FAC because it is not a document upon which Plaintiffs' allegations depend. See id. at 1031. Even though Plaintiffs did not object to the Orise declaration, the declaration was written after and in response to the FAC's allegations. See id. No basis appears for the Court to consider the declaration with respect to Defendant's Rule 12(b)(6) motion.

Pham v. Jaddou, Case No. 23-cv-1058-W-KSC, 2024 U.S. Dist. LEXIS 79056 \*14-15 (S.D. Cal. Apr. 30, 2024) (footnote omitted).

Just as in Pham, the defendant's declaration filed with this motion is not a document upon which the plaintiff's allegations in the complaint depend and was written after and in response to the plaintiff's allegations in the complaint. Doc. #20. Accordingly, the court will not consider the defendant's declaration and supporting exhibits in ruling on this motion.

In the complaint, the plaintiff alleges that the defendant failed to disclose in his bankruptcy schedules at least one account with Morgan Stanley Private Bank, National Association and possibly an account with E\*Trade, a 401(k) account and an interest in a business called "Cape Saver" (collectively, the "Undisclosed Assets"). Complaint, ¶¶ 14-16, Doc. #1. However, the complaint fails to allege any facts showing that: (1) the Undisclosed Assets relate to a material fact; (2) the defendant's failure to disclose the Undisclosed Assets was made knowingly; and (3) the defendant's failure to disclose the Undisclosed Assets was made fraudulently. Considering the pleadings in the light most favorable to the plaintiff and accepting all factual allegations in the complaint as true, the court finds that the facts plead are insufficient to assert a claim for relief under 11 U.S.C. § 727(a)(4)(A).

Because the complaint does not adequately set forth facts that would support a possible claim for relief under 11 U.S.C. § 727(a)(4)(A) and because it is not clear to the court that such facts do not exist, the court is inclined to grant the motion to dismiss with leave to amend.

### CONCLUSION

Accordingly, the defendant's motion to dismiss is GRANTED with leave to amend. An amended complaint shall be filed and served not later than August 21, 2024.

3. [24-10440](#)-A-7     **IN RE: ZAC FANCHER**  
[24-1013](#)     [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT  
5-23-2024     [\[1\]](#)

FANCHER V. TULARE COUNTY  
RESOURCE MANAGEMENT AGENCY  
ZAC FANCHER/ATTY. FOR PL.

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

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

ORDER:     The court will issue an order.

The status conference will be continued to August 22, 2024 at 11:00 a.m. to be heard in conjunction with the hearing regarding the defendant's motion to dismiss this adversary proceeding. Doc. ##20, 28.

4. [23-10947](#)-A-13     **IN RE: SONIA LOPEZ**  
[23-1039](#)

RESCHEDULED PRE-TRIAL CONFERENCE RE: COMPLAINT  
9-21-2023     [\[1\]](#)

LOPEZ V. UNIFIED MORTGAGE SERVICE, INC. ET AL  
SUSAN SILVEIRA/ATTY. FOR PL.  
CONT'D TO 9/25/24 PER ECF NO. 89

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

DISPOSITION:     Continued to September 25, 2024 at 3:00 p.m.

NO ORDER REQUIRED.

On June 21, 2024, the court issued an order continuing the pre-trial conference to September 25, 2024 at 3:00 p.m. Doc. #89.

5. [17-13776](#)-A-7    **IN RE: JESSICA GREER**  
[18-1017](#)    [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
4-23-2018    [[1](#)]

SALVEN V. CALIFORNIA DEPARTMENT OF FOOD & AG  
SHARLENE ROBERTS-CAUDLE/ATTY. FOR PL.  
RESPONSIVE PLEADING

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

DISPOSITION:        Continued to August 29, 2024 at 11:00 a.m.

ORDER:                The court will issue an order.

Pursuant to the joint status report filed on July 24, 2024 (Doc. #115) and the court's schedule, the status conference is continued to August 29, 2024 at 11:00 a.m.

The parties shall file either joint or unilateral status report(s) not later than August 22, 2024.