

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: MONDAY
DATE: AUGUST 1, 2022
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

RULINGS

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

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [20-25322](#)-A-7 **IN RE: JOGINDER SINGH**
[KJH-5](#)

MOTION FOR COMPENSATION FOR KIMBERLY J. HUSTED, CHAPTER 7
TRUSTEE(S)
6-27-2022 [\[86\]](#)

DAVID ARIETTA/ATTY. FOR DBT.
LORIS BAKKEN/ATTY. FOR MV.
DEBTORS DISCHARGED: 09/07/2021

Final Ruling

Application: Allowance of Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Approved

Order: Civil minute order

Compensation: \$3,050.00

Reimbursement of Expenses: \$11.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Kimberly J. Husted, the chapter 7 trustee, seeks an order approving final compensation and reimbursement of expenses. Compensation is requested in the amount of \$3,050.00 with reimbursement of expenses in the amount of \$11.00.

COMPENSATION AND EXPENSES

A trustee's compensation is considered in accordance with §§ 326(a) and 330(a). In 2005, "Congress removed Chapter 7 trustees from the list of professionals subject to the Section 330(a)(3) factors. . . . [and] introduced a new provision to Section 330 requiring courts to treat the reasonable compensation awarded to trustees as a 'commission, based on Section 326.'" *Matter of JFK Capital Holdings, L.L.C.*, 880 F.3d 747, 752 (5th Cir. 2018) (quoting 11 U.S.C. § 330(a)(7)). "[A] trustee's request for compensation should be presumed reasonable as long as the amount requested does not exceed the statutory maximum calculated pursuant to § 326. [A]bsent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review. If the court has found that extraordinary circumstances are present, only then does it become appropriate to conduct a further inquiry to determine whether there exists a rational relationship between the compensation requested and the services rendered." *In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015) (second alteration in original) (citations omitted) (internal quotation marks omitted).

In short, § 330(a)(7) "treats the commission as a fixed percentage, using Section 326 not only as a maximum but as a baseline presumption for reasonableness in each case." *Matter of JFK Capital Holdings*, 880 F.3d at 755. This provision "is best understood as a directive to simply apply the formula of § 362 in every case." *Id.* at 753-54. The "reduction or denial of compensation . . . should be a rare event" occurring only when truly exceptional circumstances are present. *Id.* at 756.

In this Chapter 7 case, the trustee has applied for an allowance of compensation and reimbursement of expenses. The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that no extraordinary circumstances are present in this case, see *In re Salgado-Nava*, 473 B.R. 911 (B.A.P. 9th Cir. 2012); and (3) that expenses for which reimbursement is sought are actual and necessary.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The chapter 7 trustee's application for allowance of compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows to the trustee compensation in the amount of \$3,050.00 and reimbursement of expenses in the amount of \$11.00.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

2. [21-23522](#)-A-7 **IN RE: JOSEPH SMITH**
[DNL-5](#)

MOTION TO EMPLOY WEST AUCTIONS, INC. AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
6-30-2022 [\[83\]](#)

MARK WOLFF/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.
DEBTORS DISCHARGED: 01/24/2022

Final Ruling

Motion: Sell Property and Compensate Auctioneer

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Property: 2015 Toyota Prius

Sale Type: Public auction

Auctioneer: West Auctions, Inc.

Compensation Approved: 15% of gross sale proceeds

Reimbursement of Expenses: actual expenses not to exceed \$1,000.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 7 trustee, J. Michael Hopper, seeks an order approving the sale of a 2015 Toyota Prius via public auction and approval of the auctioneer West Auctions, Inc. The trustee further seeks approval of the compensation and reimbursement of expenses to the auctioneer, as indicated above.

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

3. [22-21530](#)-A-7 **IN RE: MICHAEL DISESSA**
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-30-2022 [\[16\]](#)

GEORGE BURKE/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.
EXETER FINANCE, LLC VS.

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Subject: 2017 Chevrolet Camaro

Cause: delinquent installment payments 3.79 months/\$2,384.40

These minutes constitute the court's findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a), *incorporated* by Fed. R. Bankr. P. 7052, 9014(c). The findings of fact are as set forth above; the conclusions of law are as set forth below.

DEFAULT OF RESPONDENT

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated* by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Movant, Exeter Finance, LLC, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). The subject of the motion is a 2017 Chevrolet Camaro. The debtor has indicated in his Statement of Intentions that he intends to surrender the subject vehicle. See Statement of Intentions, ECF No. 9.

STAY RELIEF

"[A]fter notice and a hearing," the court may terminate, annul, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); *see also* Fed. R. Bankr. P. 4001(a)(1). The party seeking stay relief bears the burden of proof as to "the debtor's equity in the property" and on the validity and perfection of its security interest, as well as the amount of its debt. 11 U.S.C. § 362(g)(1); *In re Dahlquist*, 34 B.R.

476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g., the debtor or Chapter 7 trustee, bears the burden of proof on all other issues. 11 U.S.C. § 362(g)(2).

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). The debtor bears the burden of proof. 11 U.S.C. § 362(g)(2). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2019) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)); see also *In re Weinstein*, 227 BR 284, 296 (9th Cir. BAP 1998) ("Adequate protection is provided to safeguard the creditor against depreciation in the value of its collateral during the reorganization process"); *In re Deico Electronics, Inc.*, 139 BR 945, 947 (9th Cir. BAP 1992) ("Adequate protection payments compensate undersecured creditors for the delay bankruptcy imposes upon the exercise of their state law remedies").

The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on such loan with the moving party, and postpetition payments are past due. Vehicles depreciate over time and with usage. Consequently, the moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default.

Cause exists to grant relief under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Exeter Finance, LLC's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2017 Chevrolet Camaro, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing

may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

4. [22-21453](#)-A-7 **IN RE: CHERYL SPRAGUE**
[SMJ-1](#)

MOTION TO AVOID LIEN OF CADLEROCK JOINT VENTURE, LP
6-24-2022 [\[12\]](#)

SCOTT JOHNSON/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Continued to September 12, 2022, at 9:00 a.m.

Order: Civil minute order

The debtor seeks an order avoiding the judicial lien of Cadlerock Join Venture, LP under 11 U.S.C. § 522(f).

The chapter 7 trustee has continued the meeting of creditors in this case until August 3, 2022. The court will continue the hearing on this motion to allow the trustee to complete the meeting of creditors and the time to expire for any objection to the debtor's claim of exemption in the debtor's residence at 8771 Blinman Way, Fair Oaks, California.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the motion is continued to September 12, 2022, at 9:00 a.m.

5. [21-24162](#)-A-7 **IN RE: CASEY WOODBURY**
[NLL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-30-2022 [\[112\]](#)

MARK SHMORGON/ATTY. FOR DBT.
NANCY LEE/ATTY. FOR MV.
WILMINGTON SAVINGS FUND SOCIETY, FSB VS.

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Subject: 961 Silverton Circle, Lincoln, California

Cause: 11 U.S.C. § 362(d)(1) - delinquent payments

Payments: Pre-Petition delinquency - 27 payments, \$66,147.03
Post-Petition delinquency - 6 payments, \$15,642.72

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Movant, Wilmington Savings Fund Society, FSB, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a). Movant seeks relief under 11 U.S.C. § 362(d)(1) as the debtor is in default in the total amount of \$82,297.65. The date of default is October 1, 2019. Further, Movant has advanced funds for property taxes and insurance. The total escrow default is \$26,166.57.

STAY RELIEF

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of 'cause' for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

The debtor has missed 6 post-petition payments due on the debt secured by the moving party's lien. This constitutes cause for stay relief.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Wilmington Savings Fund Society, FSB's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 961 Silverton Circle, Lincoln, California, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

6. [22-21095](#)-A-7 **IN RE: CALIFORNIA HISPANIC COMMISSION ON**
ALCOHOL AND DRUG ABUSE, INC.
[DK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-5-2022 [\[79\]](#)

GALEN GENTRY/ATTY. FOR DBT.
CHRISTIAN KIM/ATTY. FOR MV.
DENISE ALFARO VS.
RESPONSIVE PLEADING

Final Ruling

Motion: Relief from Stay
Disposition: Denied without prejudice
Order: Civil minute order

Movants, Denise Alfaro and Michelle Toth, request relief from the automatic stay of 11 U.S.C. § 362(a). The motion was noticed pursuant to LBR 9014(f)(1). See Notice, ECF No. 81, 2:12.

LBR 9014(f)(1)

Motions Set on 28 Days' Notice. Unless a different amount of time is required by the Federal Rules of Bankruptcy Procedure, these Local Rules, or by order of the Court, or the moving party elects to give the notice permitted by LBR 9014-1(f)(2), the moving party shall file and serve the motion at least twenty-eight (28) days prior to the hearing date.

LBR 9014(f)(1).

LBR 9014(f)(1) requires that a minimum of 28 days' notice of the motion shall be given to opposing parties. The certificate of service shows that the motion was served on July 5, 2022, thus only 27 days' notice was given. See Certificate of Service, ECF No. 81.

PROOF OF SERVICE NOT FILED AS SEPARATE DOCUMENT

Local Bankruptcy Rule 9014-1(e)(3) provides, "The proof of service for all pleadings and documents filed in support or opposition to a motion shall be filed as a separate document and shall bear the Docket Control Number. Copies of the pleadings and documents served shall not be attached to the proof of service. Instead, the proof of service shall identify the title of the pleadings and documents served."

In this case, the movant has attached the certificate of service to the notice of the motion. See ECF No. 81. The court finds the manner of service to violate Local Bankruptcy Rule 9014-1(e)(3). In the future, failure to following local rules may result in denial of the motion or other sanctions. LBR 1001-1(g).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Denise Alfaro and Michelle Toths' Motion for Relief from Automatic Stay has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

7. [22-21095](#)-A-7 **IN RE: CALIFORNIA HISPANIC COMMISSION ON**
ALCOHOL AND DRUG ABUSE, INC.
[DNL-6](#)

MOTION TO ABANDON
6-29-2022 [\[60\]](#)

GALEN GENTRY/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.

Final Ruling

Motion: Authorize Trustee's Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted only as to the 2015 Lincoln Navigator automobile as described in the motion

Order: Prepared by moving party pursuant to the instructions below

Asset Abandoned: 2015 Lincoln Navigator automobile to James Hernandez

Value: \$0

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The chapter 7 trustee moves for an order authorizing her abandonment of the bankruptcy estate's interest in the 2015 Lincoln Navigator automobile to James Hernandez, as described in the motion, ECF No. 60. The trustee further requests authority to execute all documents necessary to confirm legal title to Mr. Hernandez, to include execution of a pink slip (or replacement) and notice of release of liability. The motion is unopposed.

ABANDONMENT

The movant bears the burden of proof. *In re Pilz Compact Disc., Inc.*, 229 B.R. 630 (Bankr. E.D. Pa. 1999) (Chapter 7 trustee).

"[B]urdensome to the estate" means "consumes the resources and drains the income of the estate." *In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988). "[O]f inconsequential value and benefit to the estate" refers to assets not likely to be liquidated for the benefit of creditors. 11 U.S.C. § 704(a)(1); *Matter of Taxman Clothing Co.*, 49 F3d 310, 315 (7th Cir. 1995) (Chapter 7 trustee has no duty to liquidate assets where costs of doing so likely to exceed asset's value). Of inconsequential value and benefit to the estate includes assets that (1) have no equity (including post-petition appreciation), *In re Viet Vu*, 245 B.R. 644 (9th Cir. BAP 2000); and (2) assets with equity, which has been wholly and properly exempted by the debtor. *In re Montanaro*, 307 B.R. 194 (Bankr. E.D. Cal. 2004).

11 U.S.C. § 554(a)

"After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a).

Mr. Hernandez was an officer and director of the debtor for approximately 47 years and retired in August 2021. See Motion, ECF No. 61, 2:1-11. The subject vehicle was a debtor-owned vehicle Hernandez used from 2015 through his retirement. *Id.*, 2:12-13.

The trustee has investigated the debtor's affairs and examined the books and records of the debtor and determined as follows:

[O]ver the years, to meet operational shortfalls, Hernandez advanced to the Debtor loans aggregating about \$688,000, of which \$530,000 was forgiven; (d) at retirement, the balance due on the loans (after credit for payments) was about \$58,000; and (e) in December 2021, Hernandez purchased the Lincoln from the Debtor for \$15,000, payable by reduction of an approximate \$58,000 balance due on the loans. 8. I am informed by a vehicle registration report that on the petition date, the Lincoln was still registered in the name of the Debtor.

Declaration of Susan Smith, ECF No. 62, 2:17-23.

Additionally, the motion indicates that:

Post-petition, without the Trustee's knowledge or consent, a former director of the Debtor signed off on and delivered the Lincoln's pink slip to Hernandez. The Lincoln is presently registered to and insured by Hernandez.

Motion, ECF No. 61, 2:22-24.

The trustee contends that after her investigation and consultation with counsel that the subject vehicle is of no

value to the estate as Mr. Hernandez is the equitable owner of the vehicle.

Upon review of the Debtor's books and records, to include well-documented board meeting minutes, and follow up inquiry with witnesses, the Trustee is satisfied that on the petition date: (a) the Debtor's interest in the Lincoln was limited to title only; and (b) Hernandez was the equitable owner of the Lincoln.

Id., 2:25-28.

The court finds that the subject vehicle a 2015 Lincoln Navigator described above is either burdensome to the estate or of inconsequential value to the estate. An order authorizing the trustee's abandonment of the subject vehicle to Mr. Hernandez is warranted. The order will authorize abandonment of only the asset described in the motion. The trustee is further authorized to execute all documents necessary to confirm legal title to Mr. Hernandez, to include execution of a pink slip (or replacement) and notice of release of liability.

8. [22-21095](#)-A-7 **IN RE: CALIFORNIA HISPANIC COMMISSION ON ALCOHOL AND DRUG ABUSE, INC.**
[SW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-29-2022 [\[64\]](#)

GALEN GENTRY/ATTY. FOR DBT.
ANDREW STILL/ATTY. FOR MV.
CALIFORNIA PHYSICIANS' SERVICE VS.
TRUSTEE NON-OPPOSITION

Tentative Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); non-opposition by chapter 7 trustee

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Movant, California Physicians' Service dba Blue Shield of California, seeks relief from the stay to allow it to cancel health insurance contract(s) with the debtor, as the debtor has failed to

make required payments to the movant under its group health insurance plan. See Motion, ECF No. 64, 2:3-5. The chapter 7 trustee has filed a non-opposition to the motion. The motion is otherwise unopposed.

Movant alleges as follows:

Debtor's payment defaults began pre-petition when Debtor failed to make the payments that came due in March and April 2022. Debtor also failed to make the post-petition payment that came due on May 1, 2022. After sending the Debtor pre-petition notices of potential cancellation, Blue Shield cancelled the Debtor's health insurance plan on May 2, 2022. Unbeknownst to Blue Shield when it cancelled the policy, the Debtor had filed the above-captioned Bankruptcy Case on April 29, 2022, just three days prior to the cancellation. Blue Shield did not learn of the Bankruptcy Case until approximately May 23, 2022.

Id., 2:6-13.

STAY RELIEF

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of 'cause' for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

"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), citing 2 *Collier Bankruptcy Manual* § 362.06 (3d ed. 1979).

The Bankruptcy Code also recognizes that certain circumstances require the court to respond to other interests and permits a flexible approach to the stay as the circumstances may require. Section 362(d)(1) authorizes the bankruptcy court broad discretion to grant relief from the automatic stay imposed under section 362(a) for "cause." Such relief may include "terminating, annulling, modifying, or conditioning such stay."

In re Mila, Inc., 423 B.R. 537, 542 (B.A.P. 9th Cir. 2010), citing *Mataya v. Kissinger (In re Kissinger)*, 72 F.3d 107, 108-09 (9th Cir.1995).

Movant contends that it faces a clear risk of loss in that: 1) the debtor has breached the insurance agreements by not paying the pre-petition premiums due for March and April 2022 and has not sought to cure or otherwise pay post-petition premiums that would be due for May 2022; 2) under the terms of the agreements and California Health and Safety Code Section 1365(a)(1), the movant is prohibited from refusing health care benefit services to the debtor until the agreements are terminated; and 3) unless relief from the stay is granted, the movant could be forced to continue providing the monthly health insurance benefits without payment. See, Motion, ECF 64, 5:5-8, 5:11-15.

The debtor has missed pre-petition and post-petition payments due on required payments under its group health insurance plan. The resulting harm to movant if required to provide health insurance plan benefits without payment constitutes cause for stay relief.

RETROACTIVE RELIEF

"[S]ection 362 gives the bankruptcy court wide latitude in crafting relief from the automatic stay, including the power to grant retroactive relief from the stay." *In re Schwartz*, 954 F.2d 569, 572 (9th Cir. 1992). Furthermore, "[i]f a creditor obtains retroactive relief under section 362(d), there is no violation of the automatic stay" *Id.* at 573.

"In deciding whether 'cause' exists to annul the stay, a bankruptcy court should examine the circumstances of the specific case and balance the equities of the parties' respective positions. Under this approach, the bankruptcy court considers (1) whether the creditor was aware of the bankruptcy petition and automatic stay and (2) whether the debtor engaged in unreasonable or inequitable conduct." *In re Cruz*, 516 B.R. 594, 603 (B.A.P. 9th Cir. 2014).

In deciding whether to annul the stay retroactively, the court should consider the following factors:

1. Number of filings;
2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;

3. A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;
4. The Debtor's overall good faith (totality of circumstances test);
5. Whether creditors knew of stay but nonetheless took action, thus compounding the problem;
6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;
7. The relative ease of restoring parties to the status quo ante;
8. The costs of annulment to debtors and creditors;
9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;
10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;
11. Whether annulment of the stay will cause irreparable injury to the debtor;
12. Whether stay relief will promote judicial economy or other efficiencies.

Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 25 (B.A.P. 9th Cir. 2003).

These factors should not be construed as a "scorecard" for arithmetic reasoning. *Id.* The court is aware that "[t]hese factors merely present a framework for analysis and [i]n any given case, one factor may so outweigh the others as to be dispositive." *In re Cruz*, 516 B.R. at 604 (internal quotation marks omitted).

The court has considered the pertinent factors for deciding whether to grant retroactive relief from stay. The movant was unaware of the bankruptcy filing on April 29, 2022, when it cancelled the insurance contract on May 2, 2022. Movant took prompt action in filing this motion for annulment of the stay. The debtor terminated all employees prior to the filing of the petition and thus, there is no harm to the debtor or third parties in granting the relief requested. See Declaration of Susan Smith in Opposition to Motion For Allowance of Administrative Claim, ECF No. 97, 2:3-6.

The court finds that the factors discussed are dispositive on the question whether to grant retroactive relief from stay.

The court issues no ruling as to the rights of the debtor's prior employees regarding continued health care coverage which may be afforded under state or federal law. Relief is warranted under § 362(d)(1). Retroactive stay relief will be granted to the date of the petition. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief is ordered.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

California Physicians' Service dba Blue Shield of California's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated to allow the movant to proceed with its contractual and state law rights and remedies regarding the cancellation of health insurance benefit contracts with the debtor. Retroactive stay relief will be granted to the date of the petition. The 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

9. [22-21095](#)-A-7 **IN RE: CALIFORNIA HISPANIC COMMISSION ON**
ALCOHOL AND DRUG ABUSE, INC.
[SW-2](#)

MOTION FOR ADMINISTRATIVE EXPENSES
6-29-2022 [\[70\]](#)

GALEN GENTRY/ATTY. FOR DBT.
ANDREW STILL/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling