UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, August 25, 2021
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

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.

1. 21-11814-A-11 **IN RE: MARK FORREST**

STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
7-22-2021 [1]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING

2. 21-10853-A-12 **IN RE: MIKE WEBER**
TEC-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-20-2021 [64]

HARVINDER SINGH/MV
PETER FEAR/ATTY. FOR DBT.
THOMAS CAMPAGNE/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Mike Henry Weber ("Debtor") filed written opposition on August 11, 2021. Doc. ##120-124. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

Harvender Singh ("Creditor") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1), (2), and (4) with respect to 38.79 acres of real property including a single family residence and farm commonly known as 11921 S. De Wolf Avenue, Selma, CA 93662 (the "Property"). Doc. #64; Doc. #66. Debtor opposes stay relief and objects to the evidence submitted by Creditor supporting the motion for relief from stay. Doc. ##120, 121. Creditor replied to the evidentiary objections and the opposition on August 18, 2021. Doc. ##136-137.

The court has considered the motion, opposition, and reply. After due consideration, this motion will be DENIED. The court will address the evidentiary objections first.

Evidentiary Objections

Debtor's evidentiary objections have considerable overlap, as do Creditor's offers in response. The court will first set forth broad points of law and then set forth tentative rulings on each discrete evidentiary objection raised by Debtor.

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

Debtor objects to the relevance of much of the offered evidence. Federal Rule of Evidence ("FRE") 402 states that irrelevant evidence is not admissible, and FRE 401 that sets forth the test for relevance. FRE 401 states that:

> Evidence is relevant if:
>
> (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
>
> (b) the fact is of consequence in determining the action.

Fed. R. Evid. 401. Substantive law determines which facts are of consequence in a given action. Telum, Inc. v. E.F. Hutton Credit Corp., 859 F.2d 835, 838 (10th Cir. 1988). The substantive law in this case is § 362 of the Bankruptcy Code, specifically § 362(d)(1), (2), and (4).

Debtor also raises many objections under FRE 602, or lack of personal knowledge. Most of these objections are sustained because the declarant, Kari L. Ley, failed to establish personal knowledge of the facts asserted. Kari L. Ley is one of Creditor's attorneys. The statements contained in the Declaration of Kari L. Ley often make reference to the Declaration of Ermel Ray Moles that was filed in Debtor's previous chapter 12 bankruptcy case in support of a proof of claim. See Ex. A, Doc. #68. Kari L. Ley often adopted the statements of Ermel Moles exactly as those statements were written in the Moles declaration. Debtor objected to these statements on the grounds that the declarant, Kari L. Ley, lacked personal knowledge as required by FRE 602, and the court is sustaining many of these objections. These statements likely also would be prohibited as inadmissible hearsay. As the advisory committee note to FRE 602 states, FRE 602 "does not govern the situation of a witness who testifies to a hearsay statement as such, if he has personal knowledge of the making of the statement. Rules 801 and 805 would be applicable. This Rule [FRE 602] would, however, prevent [the witness] from testifying to the subject matter of the hearsay statement, as he has no personal knowledge of it." FRE 602 advisory committee notes. In other words, simply because Kari L. Ley has personal knowledge that someone made the statement does not mean that Kari L. Ley has personal knowledge of the subject matter of the statement.

When applicable, the court's rulings are limited to those specific statements or phrases objected to by Debtor in the evidentiary objections found at Doc. #120. With these general considerations in mind, the court is inclined to make the following rulings on Debtor's evidentiary objections:

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Statement Location	Basis for Objection	Ruling
1:25-28 (part of Paragraph 2)	Lacks Foundation (FRE 602)	Sustained. The declarant is Creditor's attorney and has not demonstrated personal knowledge.
2:16-26 (Paragraph 3)	Lacks Foundation (FRE 602); Lacks Relevance (FRE 401(b)); Prejudicial (FRE 403); Hearsay (FRE 802)	Overruled. The declarant is Creditor's attorney who has reviewed the dockets of Debtor's previous bankruptcies and the statements relate to the timeline of prior bankruptcy proceedings. Additionally, the statements are relevant to Debtor's past bankruptcy filings and do not include hearsay as defined by FRE 801(c). The probative value is not substantially outweighed by danger of prejudice.
3:1-19 (Paragraph 4)	Lacks Foundation (FRE 602); Lacks Relevance (FRE 401(b)); Hearsay (FRE 802)	Overruled. The court can take judicial notice of the authenticity of court documents. The statements are relevant to multiple bankruptcy filings affecting the Property. The quoted statements are not hearsay because the statements were made by Debtor, the opposing party.
3:20-25 (Paragraph 5)	Lacks Relevance (FRE 401(b))	Overruled. The court filings are relevant to the existence of multiple bankruptcy filings affecting the Property.
3:26-28 (Paragraph 6)	Lacks Relevance (FRE 401(b))	Overruled. The court filings are relevant to the existence of multiple bankruptcy filings affecting the Property.
4:1-3 (Paragraph 7)	Lacks Relevance (FRE 401(b); Lacks Foundation (FRE 602)	Sustained under FRE 602. The fact is relevant to bad faith but the declarant has not established any personal knowledge of the subject matter of the statement.
4:4-9 (Paragraph 8)	Lacks Relevance (FRE 401(b)); Prejudicial (FRE 403); Lacks Foundation (FRE 602)	Sustained under FRE 602. The fact is relevant to bad faith but the declarant has not established any personal knowledge of the subject matter of the statement.
4:10-12 (Paragraph 9)	Lacks Relevance (FRE 401(b)); Prejudicial (FRE 403); Lacks Foundation (FRE 602)	Sustained under FRE 602. The fact is relevant to bad faith but the declarant has not established any personal knowledge of the subject matter of the statement.

Statement Location	Basis for Objection	Ruling
4:13-17 (Paragraph 10)	Lacks Relevance (FRE 401(b)); Prejudicial (FRE 403); Lacks Foundation (FRE 602)	Sustained under FRE 602. The fact is relevant to bad faith but the declarant has not established any personal knowledge of the subject matter of the statement.
4:18-21 (Paragraph 11)	Lacks Relevance (FRE 401(b)); Lacks Foundation (FRE 602)	Sustained under FRE 602. The fact is relevant to bad faith but the declarant has not established any personal knowledge of the subject matter of the statement.
4:22-25 (Paragraph 12)	Lacks Relevance (FRE 401(b)); Lacks Foundation (FRE 602)	Sustained under FRE 602. The fact is relevant to bad faith but the declarant has not established any personal knowledge of the subject matter of the statement.
4:26 - 5:5 (Paragraph 13)	Lacks Relevance (FRE 401(b)); Prejudicial (FRE 403); Lacks Foundation (FRE 602)	Sustained under FRE 602. The fact is relevant to bad faith but the declarant has not established personal knowledge of the subject matter of the facts asserted.
5:6-15 (Paragraph 14)	Lacks Relevance (FRE 401(b)); Lacks Foundation (FRE 602); Hearsay (FRE 802)	Sustained in part. The court can take judicial notice of court documents. However, the declarant has not established personal knowledge of Earlene Weber's handwriting or the contents of the writing.
5:16-21 (Paragraph 15)	Lacks Relevance (FRE 401(b)); Lacks Foundation (FRE 602)	Sustained under FRE 401(b). The facts are not of consequence in determining the motion for stay relief.
5:22 - 6:2 (Paragraph 16)	Lacks Relevance (FRE 401(b)); Lacks Foundation (FRE 602)	Sustained under FRE 602. While the court can take judicial notice of court documents, the court does not take judicial notice of the truth of the facts asserted in the documents. The declarant has not established personal knowledge of the subject matter.
6:3-10 (Paragraph 17)	Lacks Relevance (FRE 401(b))	Overruled. The existence of other creditors with an interest in the Property is of consequence in determining this motion.

Statement Location	Basis for Objection	Ruling
6:11 - 7:4 (Paragraph 18)	Lacks Relevance (FRE 401(b)); Lacks Foundation (FRE 602); Prejudicial (FRE 403)	Overruled in part. Debtor's prior bankruptcy affecting the Property is of consequence to the motion and the probative value of the facts asserted is not substantially outweighed by a prejudicial effect. Sustained in part as to specific statements of Debtor's default on another creditor's loan and Debtor's reasons for filing the second chapter 12 bankruptcy case. The declarant has not established personal knowledge of the subject matter of these statements.
7:5 - 8:13 (Paragraph 19)	Lacks Relevance (401(b)): Lacks Foundation (FRE 602); Prejudicial (FRE 403)	Overruled in part. Debtor's prior bankruptcy affecting the Property is of consequence to the motion and the probative value of the facts asserted is not substantially outweighed by a prejudicial effect. Sustained in part as to the specific statement "Still having not been paid". The declarant has not established personal knowledge of the status of Debtor's loans with other creditors at that time.
8:17-21 (part of Paragraph 20)	Lacks Foundation (FRE 602); Lacks Relevance (FRE 401(b)); Prejudicial (FRE 403)	Sustained under FRE 602. Although Debtor's prior bankruptcy affecting the Property is of consequence to the motion and the probative value of the facts asserted is not substantially outweighed by any prejudicial effect, the declarant has not established personal knowledge of the subject matter of the statement. The declarant's review of documents filed with the bankruptcy court and the attendance of creditors meetings does not establish personal knowledge of Debtor's past conduct.

Statement Location	Basis for Objection	Ruling
8:23, 8:25 - 9:2 (part of Paragraph 21)	Lacks Foundation (FRE 602); Lacks Relevance (FRE 401(b)); Prejudicial (FRE 403)	Sustained in part under FRE 602 and FRE 401(b). The declarant has not established personal knowledge of the motivating factors before the assignment of the note and deed of trust and the motivation to sell and assign the interest in the deed of trust is not relevant to a determination of these issues. Overruled in part. The declarant has personal knowledge to state that the note and deed of trust were assigned to the declarant's client.
9:5-8 (Paragraph 22)	Lacks Foundation (FRE 602); Lacks Relevance (FRE 401(b); Prejudicial (FRE 403)	Overruled. The court can take judicial notice of court documents, and the declarant has personal knowledge of the court's docket. The reason for Debtor's dismissal is not subject to reasonable dispute. The prior bankruptcy filings affecting the Property are of consequence and their probative value is not substantially outweighed by the prejudicial effect.
No objection to Paragraph 23	N/A	N/A
10:15-18 (part of Paragraph 24)	Lacks Foundation (FRE 602); Lacks Relevance (FRE 401(b)); Prejudicial (FRE 403)	Overruled. The declarant has personal knowledge of Debtor's schedules and can compare the amounts asserted by Debtor. To the extent that Debtor objects to the admission of the declarant's opinion, the declarant's opinion as to why the amounts are different satisfies FRE 701. The statement is relevant and probative.
10:20-27 (part of Paragraph 25)	Lacks Foundation (FRE 602); Lacks Relevance (FRE 401(b)); Prejudicial (FRE 403)	Sustained. The declarant has not established personal knowledge of the subject matter of the statements and the statements are legal conclusions.

Declaration of Ermel Ray Moles, Ex. A, Doc. #68

Statement Location	Objection	Ruling
Entire Declaration	No basis for judicial notice (FRE 201)	Sustained in part. The court may take judicial notice of the existence of a filed document but does not take judicial notice of the truth or falsity of the contents of any such document for the purpose of making a finding of fact. The sole fact that the Moles declaration was signed under penalty of perjury does not render it admissible.
Entire Declaration	No Relevance (FRE 401(b))	Overruled. There are statements in the declaration that are relevant, and the court will not exclude the entire declaration as requested by Debtor. As stated above, only the filing of the document is noticed and the facts asserted in the declaration are not established.

Stay Relief

The following facts are either not in dispute or not subject to reasonable dispute and have been judicially noticed. Debtor commenced this chapter 12 case on April 6, 2021. Doc. #1. Debtor's prior chapter 12 case was dismissed on March 11, 2021, for material default by Debtor with respect to a term of the chapter 12 plan confirmed in that case (the "Third Case"). Case No. 20-10188, Bankr. E.D. Cal., Doc. ##122, 123. Debtor also had a chapter 12 case dismissed on March 29, 2019, for unreasonable delay prejudicial to creditors (the "Second Case"). Case No. 18-13055, Bankr. E.D. Cal., Doc. #59. In 2008, Debtor received a discharge pursuant to 11 U.S.C. § 1228 after completion of a chapter 12 plan in yet another chapter 12 bankruptcy case (the "First Case"). Case No. 03-13305, Bankr. E.D. Cal., Doc. #98.

Debtor owns the Property located at 11921 South De Wolf Avenue, Selma, California 93662 and values the Property at $1,200,000. Decl. of Debtor ¶¶ 2-3, Doc. #122; Decl. of Kari L. Ley ¶ 23, Doc. #65. Debtor's current bankruptcy case and each of Debtor's previous bankruptcy cases affected the Property. In the present case, Debtor's proposed chapter 12 plan will require Debtor to divide the Property into two separate parcels, sell a twenty-acre parcel of the Property, and use the sale proceeds to pay secured creditors through the chapter 12 plan. Plan, Doc. #30. Escrow on the sale of the twenty-acre parcel is to close no later than November 1, 2021. Doc. #30. As to the remaining parcel, Debtor will refinance that portion of the Property and use the loan proceeds to pay secured creditors through the chapter 12 plan. Doc. #30. The remaining amount to be paid under the proposed plan will be paid in monthly installments beginning December 1, 2021. Doc. #30.

Although the proposed chapter 12 plan has not yet been confirmed, Debtor has taken steps to comply with the terms of the proposed plan. Debtor has requested authority to borrow in order to refinance the parcel of the Property that will not be sold in conformance with the proposed plan. Doc. #50. The hearing on that motion has been continued to September 15, 2021. Civil Minutes, Doc. #119. The County of Fresno has approved Debtor's parcel split and Debtor is in the

process of recording the new parcel map. Debtor Decl. ¶ 10, Doc. #122. Debtor's motion to sell the twenty-acre parcel was granted, and the court authorized the sale for $850,000 with backup buyers with approved offers of $810,000 and $805,000. Civil Minutes, Doc. #118. Debtor also is seeking to avoid two judicial liens on the Property, and an evidentiary hearing on that motion has been set for October 7, 2021, to determine the value of the Property. Order, Doc. #129.

Creditor holds a claim secured by a second or third deed of trust on the Property in the amount of $190,965.83. Compare Ex. 1, Doc. #67 with Debtor Decl. ¶ 6, Doc. #122; Claim #1. According to Debtor, the claims encumbering the Property that are senior to Creditor are: (a) real property taxes in the amount of $48,466.15, and (b) a first deed of trust in the amount of $378,632.76. Debtor Decl. ¶ 6, Doc. #122. There is at least one deed of trust holder junior to Creditor, Ajit Gill, who has taken steps to sell the property under the junior deed of trust. Ley Decl. ¶¶ 19, 23, Doc. #65; Debtor Decl. ¶ 6, Doc. #122; Ex. D, Doc. #68. Under the terms of the proposed plan, Creditor is to be paid in full by the refinance deadline. Plan ¶ 2.05, Doc. #30. Prior to the current bankruptcy, Creditor took no action towards foreclosing on the Property or beginning the trustee sale process. Creditor seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1), (2), and (4) to start the trustee sale process. Doc. #136.

The Automatic Stay

"The automatic stay is self-executing, effective upon the filing of the bankruptcy petition." Gruntz v. City of Los Angeles (In re Gruntz), 202 F.3d 1074, 1081 (9th Cir. 2000). As explained by the Ninth Circuit:

> The automatic stay gives the bankruptcy court an opportunity to harmonize the interests of both debtor and creditors while preserving the debtor's assets for repayment and reorganization of his or her obligations. By halting all collection efforts, the stay affords the debtor time to propose a reorganization plan, or simply to be relieved of the financial pressures that drove him to bankruptcy. The automatic stay also assures creditors that the debtor's other creditors are not racing to various courthouses to pursue independent remedies to drain the debtor's assets.

Gruntz, 202 F.3d at 1081 (citations and punctuation omitted). Relief from the stay is made "[o]n request of a party in interest and after notice and a hearing." 11 U.S.C. § 362(d).

Before proceeding with a consideration of the arguments for stay relief arising under § 362(d)(1), (2), and (4), the court will first dispose of an argument raised by Creditor in the reply. Doc. #136. Creditor argues that Debtor's proposed chapter 12 plan is irrelevant to a determination of Creditor's motion for relief from stay and the proposed plan "does not exist." Reply 1:24, Doc. #136. This is not the case.

First, Creditor's own arguments request the court to consider the terms of the proposed chapter 12 plan. For example, Creditor argues that a scheme to delay, hinder or defraud creditors, as required by § 362(d)(4), is evidenced in part by the similarities of the proposed chapter 12 plan to the chapter 12 plan confirmed in the Third Case. Reply 6:3-6, Doc. #136.

Second, the case law Creditor relies on demonstrates the importance of considering the debtor's conduct in the context of a proposed plan. In Merritt v. Derham-Burk (In re Merritt), BAP No. NC-20-1026, 2020 Bankr. LEXIS

3380, 2020 WL 7066321, at *1 (B.A.P. 9th Cir. Dec. 2, 2020), the Bankruptcy Appellate Panel ("BAP") affirmed the bankruptcy court's granting of stay relief under § 362(d)(4) in part because the debtor failed to make plan payments under the proposed plan, failed to seek to confirm the proposed plan, and repeatedly failed to file a confirmable plan. Id. at *5-7.

In Marsch v. Marsch (In re Marsch), 36 F.3d 825 (9th Cir. 1994), the Ninth Circuit stated that the test for bad faith "is whether a debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy, efficient reorganization on a feasible basis." Marsch, 36 F.3d at 828. A court determines whether a debtor is attempting to effect a speedy, efficient, and feasible reorganization by looking at the proposed plan. See Marshall v. Marshall (In re Marshall), 721 F.3d 1032, 1049 (9th Cir. 2013). Therefore, the court will consider Debtor's proposed chapter 12 plan in deciding whether to grant Creditor's motion for relief from the automatic stay.

Adequate Protection under 11 U.S.C. § 362(d)(1)

Section 362(d)(1) of the Bankruptcy Code allows the court to grant relief from the stay for cause, including the lack of adequate protection. 11 U.S.C. § 362(d)(1). "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).

Creditor contends that there is no adequate protection because Debtor has no equity in the Property. However, adequate protection is not equivalent to equity, and junior lien amounts are excluded from the equity cushion equation when evaluating adequate protection. In re Mellor, 734 F.2d 1396, 1400 (9th Cir. 1984). "An equity cushion exists where the value of the property is sufficient to fully secure the moving creditor, even if there is insufficient value to provide the debtor with equity when creditors junior to the movant are also considered." Jordan v. Kronenberger (In re Jordan), 392 B.R. 428, 447 (Bankr. D. Idaho 2008). Creditor, as holder of the second, or at most third, deed of trust securing a claim of nearly $191,000 behind real property taxes and a first deed of trust in the aggregate amount of $427,098.91 is adequately protected given the uncontested value of the Property of $1,200,000. There is no cause to grant relief from the automatic stay for lack of adequate protection.

Other Cause under 11 U.S.C. § 362(d)(1)

Creditor also argues that "cause" under § 362(d)(1) includes a lack of good faith on the part of the debtor and that Debtor in this case has acted in bad faith. Doc. #66. Debtor agrees that bad faith may be "cause" to grant relief from the automatic stay but contends that Debtor has not acted in bad faith. Doc. #121.

"The existence of good faith depends on an amalgam of factors and not upon a specific fact." In re Arnold, 806 F.2d 937, 939 (9th Cir. 1986). "Good faith is lacking only when the debtor's actions are a clear abuse of the bankruptcy process." Id. The test for bad faith "is whether a debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy, efficient reorganization on a feasible basis." Marsch, 36 F.3d at 828. There is no exclusive list of factors that governs a bad faith determination. Marshall, 721 F.3d at 1048; In re Little Creek Dev. Co., 779 F.2d 1068, 1072-73 (5th Cir. 1986).

Creditor's comparison of the facts in this case to other bankruptcy cases is unpersuasive. Arguing Debtor's bad faith, Creditor cites to Merritt, an

unreported BAP case. In Merritt, the BAP affirmed the granting of a motion under § 362(d)(4), not "cause" under § 362(d)(1). Id. at *7-8. In any event, the facts in Merritt are not analogous to the facts here. The debtors in Merritt filed multiple state and federal court lawsuits against the holder of a deed of trust and the loan servicer to avoid foreclosure, all of which were disposed of against the debtors. Id. at *3-4. In bankruptcy court, the debtors' first chapter 13 was dismissed for lack of prosecution and failure to make plan payments. Id. at *4. In the second chapter 13, which gave rise to the § 362(d)(4) motion, the debtor only filed the chapter 13 plan upon court order, made no payments, and made no effort to confirm a plan. Id at *6-7.

In In re Blas, 614 B.R. 334 (Bankr. D. Alaska 2019), the court found the debtor's bad faith constituted cause to lift the automatic stay under § 362(d)(1). Creditor argues that Blas found bad faith because the debtor breached a settlement agreement with a creditor, but that was only one fact considered by the court. Id. at 341-42. In Blas, the debtor refused to vacate the property despite the clear terms of the settlement agreement. Id. at 336-37. The debtor then commenced a state court action against the creditor seeking to prevent foreclosure proceedings. Id. at 337. The state court denied the debtor's request for a temporary restraining order and eventually granted the creditor's motion for summary judgment. Id. The debtor commenced a bankruptcy case on the same day the state court denied his request to enjoin foreclosure proceedings. Id. The creditor moved for stay relief under § 362(d)(1) and, in response, the debtor moved the bankruptcy court to order mediation. Id. This further stayed all proceedings, and no settlement was reached. Id. During that time, the debtor failed to make payments under a chapter 13 plan and converted the case to chapter 7. Id. at 342. In objecting to the creditor's proof of claim, the debtor raised the same arguments already determined in the state court proceedings. Id. at 343. The debtor continued to raise the same arguments "in every aspect" of the bankruptcy case "and the adversary proceedings." Id. In considering the amalgam of factors, the court held that the debtor's conduct demonstrated bad faith and that cause existed to lift the automatic stay under § 362(d)(1). Id. 340-43.

In Little Creek Dev. Co., the Fifth Circuit reversed the bankruptcy court's finding of bad faith because the bankruptcy court failed to develop the record sufficiently. Little Creek, 779 F.2d at 1071. The bankruptcy court had found bad faith based on statements of counsel at a hearing on a creditor's motion for stay relief. Id. at 1070-71. The debtor had been pursuing state court litigation to prevent foreclosure proceedings. Id. at 1070. In the bankruptcy case, the debtor's counsel stated at a hearing that the debtor only filed the chapter 11 bankruptcy petition to avoid paying a state court bond. Id. The Fifth Circuit reversed the bankruptcy court's bad faith determination and remanded so the bankruptcy court could properly conduct a case-specific examination of the facts. Id. at 1074.

Because the Fifth Circuit reversed and remanded the bankruptcy court's decision in Little Creek, Little Creek is not often cited for the persuasive facts but rather for the multitude of non-exclusive fact patterns that the appellate court stated often lead to findings of bad faith. Id. at 1072-73. Creditor relies on the factors listed in Little Creek, although provides little more than conclusory statements that the factors demonstrate cause. Creditor's Mem. 11:24-25, Doc. #66. Further, some of the factors on which Creditor relies do not apply or are not supported by fact. For example, citing Little Creek, Creditor argues that bad faith exists and provides cause for lifting the automatic stay because there are no employees except for the principals, but Debtor is an individual in a chapter 12 case. Creditor also argues that there are allegations of wrongdoing by the debtor or its principals, but again,

Debtor is an individual and there are no allegations of wrongdoing other than Creditor's own bad faith contentions.

The court acknowledges the decision in Little Creek often provides useful guidance in making bad faith determinations, but it is important to note that Little Creek was a chapter 11 case where the court was presented with the issue of whether a corporation engaged in state court litigation was acting in bad faith. Many of the cases that cite Little Creek are similar fact patterns that are not clearly related to the facts of this case. See Marshall v. Marshall (In re Marshall), 721 F.3d 1032 (9th Cir. 2013); Marsch v. Marsch (In re Marsch), 36 F.3d 825 (9th Cir. 1994); In re Arnold, 806 F.2d 937 (9th Cir. 1986). As the Ninth Circuit cases citing Little Creek repeatedly emphasize, "[t]he existence of good faith depends on an amalgam of factors and not upon a specific fact." Arnold, 806 F.2d at 939 (citing Little Creek, 779 F.2d at 1072).

Here, Debtor's actions in this bankruptcy case do not constitute bad faith that justify lifting the automatic stay. Although Debtor has filed multiple bankruptcies, the First Case, initiated in 2003, was a success; Debtor received a discharge in that case. The Second Case was dismissed because Debtor could not confirm a chapter 12 plan, but in the Third Case Debtor made payments under the confirmed chapter 12 plan for six months before failing to make an $879,664.54 balloon payment required under the confirmed chapter 12 plan, resulting in dismissal. See Decl. of Michael H. Meyer, Third Case Doc. #120.

In this bankruptcy, Debtor has taken substantial steps to pay creditors and to confirm a chapter 12 plan. The Property is in the process of being divided into two parcels, and the court has authorized the sale of one of the new parcels. The County of Fresno has approved Debtor's application to divide the Property into two separate parcels. Debtor is using the Property to repay creditors while the automatic stay is in place. Likewise, Debtor's other creditors are relying on the automatic stay to protect their interests. Preventing foreclosure is not on its own bad faith, "all debtors file for bankruptcy in order to delay creditor action." Marshall, 721 F.3d at 1049. In this case, Debtor is using the Property to pay the claims under the proposed chapter 12 plan. Debtor is attempting to effect a speedy, efficient, and feasible reorganization.

The court finds no cause to lift the automatic stay under 11 U.S.C. § 362(d)(1).

11 U.S.C. § 362(d)(2)

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have any equity in such property and such property is not necessary to an effective reorganization. The requirements of § 362(d)(2) are conjunctive. Creditor argues that the Property is not necessary to an effective reorganization and that Debtor does not have equity in the Property. Doc. #66.

As discussed above, the proposed chapter 12 plan requires the Property be divided into two parcels, one parcel is to be sold, and the remaining parcel is to be refinanced. The court has authorized the sale of one parcel, and the hearing on Debtor's motion to borrow has been continued. The court finds that the Property is necessary to an effective reorganization. Relief from the automatic stay under § 362(d)(2) is therefore inappropriate regardless of Debtor's equity in the Property.

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11 U.S.C. § 362(d)(4)

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay with respect to real property

> if the court finds that the filing of the [bankruptcy] petition was part of a scheme to delay, hinder, or defraud creditors that involved either [] a transfer of all or part ownership of, or other interest in such real property without the consent of the secured creditor or court approval; or [] multiple bankruptcy filings affecting such real property.

11 U.S.C. § 362(d)(4). To obtain relief under § 362(d)(4), the court must affirmatively find: (1) the debtor's bankruptcy filing is part of a scheme; (2) the object of the scheme is to delay, hinder, or defraud creditors; and (3) the scheme involves either (i) the transfer of some interest in real property without the secured creditor's consent or court approval or (ii) multiple bankruptcy filings affecting the property. First Yorkshire Holdings, Inc. v. Pacifica L 22 (In re First Yorkshire Holdings, Inc.), 470 B.R. 864, 870-71 (B.A.P. 9th Cir. 2011). "[T]he multiple filings thus must somehow be connected with or included in the scheme to delay, hinder and defraud creditors." In re Muhaimin, 343 B.R. 159, 168 (Bankr. D. Md. 2006).

"A scheme is an intentional construct. It does not happen by misadventure or negligence." In re Duncan & Forbes Dev., Inc., 368 B.R. 27, 32 (Bankr. C.D. Cal. 2007). Because direct evidence of a scheme is uncommon, "the court must infer the existence and contents of a scheme from circumstantial evidence. The party claiming such a scheme must present evidence sufficient for the trier of fact to infer the existence and content of the scheme." Id.; see Jimenez v. ARCPE 1, LLP (In re Jimenez), 613 B.R. 537, 545 (B.A.P. 9th Cir. 2020).

Creditor's argument for relief under § 362(d)(4) is strikingly similar to the argument for cause under § 362(d)(1). In addition to Merritt, which the court has already distinguished, Creditor cites Alakozai v. Citizens Equity First Credit Union (In re Alakozai), 499 B.R. 698 (B.A.P. 9th Cir. 2013), to demonstrate when relief from the stay under § 362(d)(4) is appropriate. However, the BAP in Alakozai refused to consider the debtor's challenge to the adequacy of the factual findings made by the bankruptcy court because the debtor failed to timely appeal. Id. at 704. Although Alakozai states the standards of § 362(d)(4), the facts were not at issue. It is worth noting, however, that the debtor in Alakozai had filed four bankruptcy cases in two years to evade a single creditor. Id. at 700-01.

In this case, the facts do not support granting relief from the stay under § 362(d)(4). It is undisputed that Debtor's bankruptcies have affected the Property. However, Creditor has not shown the existence of a scheme. The First Case was commenced in 2003, 18 years ago, and resulted in a discharge in 2005. The First Case resulted in a settlement agreement whereby Debtor would pay Creditor's predecessor-in-interest, but neither Creditor nor Creditor's predecessor-in-interest took any action against the Property after the First Case. Creditor has not shown that the First Case is in any way connected to the subsequent cases insofar as a scheme to hinder, delay, or defraud creditors is concerned.

Additionally, although Debtor has filed three bankruptcy cases in the past three years, this alone does not demonstrate a scheme. A scheme requires the multiple bankruptcies to be connected by an intentional plan against creditors. From the evidence before the court, it does not appear that Debtor's bankruptcies are so related. The worst fact for Debtor is that the Second Case

was dismissed for failure to confirm a plan in 2019. This fact could have very well set off a series of events that would warrant relief from the stay under § 362(d)(4) if Debtor had taken the path of the debtors in the cases cited by Creditor. In those cases, the debtors filed bankruptcy petitions apparently only to enjoy the benefits of the automatic stay until the bankruptcy case was dismissed for failure to confirm a plan or otherwise prosecute the bankruptcy case. E.g., Merritt, 2020 Bankr. LEXIS at *2-7. However, Debtor's conduct since 2019 evidences a change in tack.

Debtor confirmed a chapter 12 plan in the Third Case and made payments under the plan for six months before defaulting on a balloon payment. In this case, Debtor has taken substantial steps to confirm and perform under the proposed chapter 12 plan. Debtor obtained consent from the County of Fresno to divide the Property into two separate parcels, and the court has approved the sale of one of the parcels for the benefit of creditors. Debtor's proposed plan seeks to pay Creditor and all voluntary lienholders in full. Although all of Debtor's bankruptcy cases affect the Property, the court finds that there is no scheme. Relief from the automatic stay under § 362(d)(4) is therefore denied.

Conclusion

Accordingly, this motion will be DENIED.

11:00 AM

1. 21-10996-A-7 **IN RE: NORMA PONCE**

PRO SE REAFFIRMATION AGREEMENT WITH TRAVIS CREDIT UNION
7-29-2021 [15]

MONICA ROBLES/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when she entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. In re Minardi, 399 B.R. 841, 846 (Bankr. N.D. Okla. 2009). The reaffirmation agreement, in the absence of a declaration by the debtor(s)' counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. The debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

1. 20-13808-A-7 **IN RE: YULIANA TEJEDA**
JES-1

AMENDED MOTION TO COMPEL
7-23-2021 [25]

SUSAN HEMB/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on August 2, 2021. Doc. #27. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Yuliana Tejeda ("Debtor"), moves the court to compel Debtor to turn over her 2020 federal and state tax returns and any refunds. Doc. #25. Trustee contends that the refunds exceed any available exemption.

Debtor responded, stating that the 2020 federal and state tax returns were emailed to Trustee on July 29, 2021. Doc. ##27, 28. Debtor also filed an amended Schedule C fully exempting the 2020 federal tax refund and the 2020 state tax refund. Am. Schedule C, Doc. #31.

Section 542(a) of the Bankruptcy Code requires the debtor to turn over property of the estate, or its value, other than property "that the debtor may exempt" under § 522. 11 U.S.C. § 542(a). Here, Debtor has provided Trustee with the 2020 federal and state tax returns and has fully exempted the federal and state tax refunds.

Accordingly, this motion will be DENIED.

2. 20-12310-A-7 **IN RE: JOYCE FEASTER**
JES-1

MOTION TO COMPEL
7-16-2021 [35]

JAMES SALVEN/MV

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted as to the tax returns and denied as to the tax refunds.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Although the debtor acting in pro se did not file written opposition to the motion, the debtor did file an amended Schedule C on July 22, 2021 to exempt fully the tax refunds that are the subject of this motion. Doc. #39. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Joyce Feaster ("Debtor"), moves the court to compel Debtor to turn over her 2020 federal and state tax returns and any refunds. Doc. #35. Trustee contends that the refunds exceed any available exemption.

On July 22, 2021, Debtor filed an amended Schedule C fully exempting the 2020 federal tax refund and the 2020 state tax refund. Am. Schedule C, Doc. #39.

Section 542(a) of the Bankruptcy Code requires the debtor to turn over property of the estate, or its value, other than property "that the debtor may exempt." 11 U.S.C. § 542(a). Here, Debtor has fully exempted the 2020 federal and state tax refunds. However, there is no indication that Debtor's 2020 federal and state tax returns were given to Trustee.

Accordingly, this motion will be DENIED as to Debtor's 2020 federal and state tax refunds. This motion will be GRANTED as to Debtor's 2020 federal and state tax returns. Debtor shall turn over the 2020 federal and state tax returns within 10 days of the court order.

3. 20-12813-A-7 **IN RE: JESUS RODRIGUEZ AND MARIA GUADALUPE BAEZA**
JES-3

MOTION TO COMPEL
7-24-2021 [55]

JAMES SALVEN/MV
HENRY NUNEZ/ATTY. FOR DBT.
NON-OPPOSITION

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 pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). On August 10, 2021, the debtors filed written non-opposition. Doc. #59. 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.

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Jesus Buzo Rodriguez and Maria Guadalupe Rodriguez Baeza (together, "Debtors"), moves the court to compel Debtors to turn over their 2020 federal and state tax returns and any refunds. Doc. #55. Trustee contends that the tax refunds exceed any available exemption.

Debtors state that the 2020 federal and state tax returns, in addition to the state tax refund, were mailed to Trustee on March 8, 2021. Doc. ##59, 60. Debtors have not yet received the 2020 federal tax refund, but will turn over the federal tax refund upon receipt from the Internal Revenue Service. Doc. #60.

11 U.S.C. § 541(a)(1) defines property of the estate as "all legal or equitable interests of the debtor in property as of the commencement of the case." In the Ninth Circuit, "the right to receive a tax refund constitutes an interest in property[.]" Nichols v. Birdsell, 491 F.3d 987, 990 (9th Cir. 2007).

11 U.S.C. § 542(a) requires Debtors to turn over property of the estate, or its value, then in Debtors' possession, custody or control during the case. "Section 542(a) does not require the debtor to have current possession of the property which is subject to turnover. If a debtor demonstrates that he is not in possession of the property of the estate or its value at the time of the turnover action, the trustee is entitled to recovery of a money judgment for the value of the property of the estate." Newman v. Schwartzer (In re Newman), 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013) (citations and punctuation omitted).

Accordingly, this motion is GRANTED. Debtors shall turn over their 2020 federal tax refund within 10 days receipt from the Internal Revenue Service. Failure to do so may result in sanctions pursuant to 11 U.S.C. § 105(a).

4. 21-10715-A-7 **IN RE: ALAN CHAO**
JES-1

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ALAN CHAO
7-14-2021 [15]

JAMES SALVEN/MV
IRMA EDMONDS/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 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.

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Alan Jason Chao ("Debtor"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of the possible avoidance and recovery action against Debtor or Debtor's son. Doc. #15.

Trustee has investigated the assets of the bankruptcy estate and believes that among the realizable assets of the estate is a cause of action against Debtor's son due to the transfer of a vehicle within the avoidance and recovery period and not supported by adequate consideration. Decl. of Trustee, Doc. #17. At the time of the transfer the value of the vehicle was $4,500. Id. Trustee estimates the cost of the recovery to be $3,000. Id. Rather than bother Debtor's family, Debtor offered Trustee $2,000 to settle the matter, and Debtor has deposited the settlement funds with the estate. Id.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of

collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #17. Trustee will recover $2,000 for the estate and will avoid spending $3,000 in litigating the matter. The value of the vehicle at the time of the transfer was $4,500. Trustee believes that the compromise and settlement is in the best interests of the estate. Decl. of Trustee, Doc. #17. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id.

Accordingly, the motion is GRANTED, and the settlement between Trustee and Debtor is approved.

5. 21-11017-A-7 **IN RE: DAVID/DIANE EBEL**
ADE-2

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
7-20-2021 [28]

ALAN EIGHMEY/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 pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). On August 19, 2021, the chapter 7 trustee filed written non-opposition. Doc. #38. 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.

David W. Ebel and Diane L. Ebel (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 706(a) to convert this chapter 7 case to a case under chapter 13. Doc. #28.

11 U.S.C. § 706(a) authorizes a debtor to convert a case under chapter 7 to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. 11 U.S.C. § 706(a). Any waiver of the right to convert a case under this subsection is unenforceable. Id.

Debtors filed a voluntary petition under chapter 7 on April 22, 2021. Doc. #1. The chapter 7 trustee does not oppose conversion to chapter 13. Doc. #38. The United States trustee was duly, timely, and properly served with the motion to convert, and has not responded or objected to the motion.

Debtors are retired and are on a fixed income. Doc. #33. Debtors want to proceed under chapter 13 because they believe it to be a more prudent approach to protect their assets. Doc. #33. Moreover, this case has not been previously converted under §§ 1112, 1208, or 1307.

Accordingly, this motion is GRANTED.

6. 20-11934-A-7 **IN RE: CHRISO'S TREE TRIMMING, INC.**
DB-1

AMENDED MOTION FOR RELIEF FROM AUTOMATIC STAY
8-5-2021 [85]

MOUNTAIN F. ENTERPRISES, INC./MV
JAMES MILLER/ATTY. FOR DBT.
JAMIE DREHER/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.

Mountain F Enterprises, Inc. ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) to permit Movant to continue the prosecution of pre-petition state court litigation pending against Chriso's Tree Trimming, Inc. ("Debtor") and other non-debtor defendants. Doc. #85. On August 19, 2021, Navigators Insurance Company, a non-debtor defendant in the state court litigation, argued that stay relief, if granted, should be granted as to all parties. Doc. #92.

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

The court is inclined to GRANT this motion for cause shown to permit Movant to take the necessary actions to prosecute the state court action pending under the auspices of Mountain F Enterprises, Inc. vs. Hamilton Specialty Insurance Company, Case No. 34-2020-00276779-CU-MC-GDS, Superior Court of California, County of Sacramento ("State Court Action").

On March 4, 2020, Movant commenced the State Court Action by filing a complaint in the Superior Court of California, Sacramento County, seeking declaratory relief against Debtor, Hamilton Specialty Insurance Company, Wesco Insurance Company, and Navigators Insurance Company. Doc. #89; Ex. A, Doc. #88. Debtor commenced this chapter 7 case on June 5, 2020, triggering the automatic stay of 11 U.S.C. § 362(a). Doc. #1; 11 U.S.C. § 362(a). The State Court Action is currently stayed as to all defendants. Movant requests an order from the court determining that the automatic stay does not stay the State Court Action against the non-debtor defendants and for an order lifting the automatic stay to permit Movant to continue to prosecute the State Court Action against Debtor.

No Automatic Stay as to Non-debtor Defendants

Section 362(a)(1) of the Bankruptcy Code states that the filing of a voluntary chapter 7 petition operates as a stay of "the commencement or continuation, including the issuance or employment of process of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement" of the bankruptcy case, "or to recover a claim against the debtor that arose before the commencement" of the bankruptcy case. 11 U.S.C. § 362(a)(1). The automatic stay does not apply to actions taken by the debtor, such as a counterclaim or crossclaim. The automatic stay also does not apply to the non-debtor defendants in the State Court Action.

There is Cause to Lift the Stay Under § 362(d)(1)

Citing § 362(d)(1), Movant argues that cause exists to lift the automatic stay to allow Movant to continue to prosecute the State Court Action. Movant cites the Curtis factors. Doc. #85.

When a movant seeks relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court may consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in determining whether to grant relief from the automatic stay" to allow litigation in another forum. Id. The relevant 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; (5) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; (6) whether the

litigation in the other forum has progressed to the point where the parties are prepared for trial; and (7) the impact of the automatic stay and the "balance of hurt." In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984). Here, the Curtis factors support finding cause to grant relief from stay as requested in the motion.

Granting relief from stay to permit the State Court Action to proceed will further the final resolution of the issues. In this bankruptcy case, Debtor is a chapter 7 corporate debtor and will not receive a discharge. There is no risk of relitigating the issues in a non-dischargeability hearing. Moreover, the state court has the expertise to hear the state law causes of action. The State Court Action has no connection with the bankruptcy case and will not interfere with the bankruptcy case. On March 24, 2021, the chapter 7 trustee filed his final report for this bankruptcy case, setting forth the funds received by the chapter 7 trustee in this case and the proposed distribution to creditors. Doc. #62. On April 21, 2021, the chapter 7 trustee turned over unclaimed funds to the court. Doc. #69. It is in the interests of judicial economy and more expeditious and economical to lift the automatic stay to permit the State Court Action to continue because the State Court Action has been pending since March 2020 and the state court can exercise jurisdiction over all parties. There are multiple non-debtor defendants and Movant has been unable to proceed with the State Court Action since Debtor filed the bankruptcy petition. The continued adverse impact to Movant and other interested parties weighs in favor of lifting the automatic stay.

Accordingly, the court finds that cause exists to lift the stay and this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant continue to prosecute the State Court Action against all parties.

7. 19-11236-A-7 **IN RE: ROBERT GARFIAS**
RWR-4

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION TO PAY
7-23-2021 [80]

JAMES SALVEN/MV
PETER BUNTING/ATTY. FOR DBT.
RUSSELL REYNOLDS/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. This matter will proceed as scheduled for higher and better offers.

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Robert S. Garfias ("Debtor"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of real property located at 1474 Hayden Avenue, Hanford, Kings County, California 93230 (the "Property") to Tom Carr and Scott Wilson (collectively, "Buyers") for the purchase price of $150,000.00, subject to higher and better bids at the hearing. Doc. #80. Trustee states that a preliminary title report shows that there are no liens or encumbrances attaching to the Property. Doc. #82; Decl. of Trustee, Doc. #83. Trustee also seeks authorization to pay a commission for the sale to Berkshire Hathaway Homeservices California Realty ("Broker"). Doc. #80.

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 approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Doc. #83. The Property was appraised by a probate referee who valued the Property at $150,000. Decl. of Trustee, Doc. #83. Buyers tendered an offer of $150,000, which Trustee has accepted conditioned upon the court's approval and better and higher offers at the hearing. Id. The sale is "as is, where is" with no warranties or representations of any nature. Id. Buyers have made an initial deposit of $4,500. Id. Based upon estimates obtained from the preliminary title report, the sales contract, and charges common in the industry, Trustee estimates a benefit to the estate of $140,000. Id. Property taxes are current, and there are no liens or encumbrances. Id. Trustee expects to pay a $9,000 commission to Broker and $1,000 in costs of sale. Id.

The Property will be sold at a price greater than the aggregate value of all liens on the Property and it appears that the sale of the estate's interest in the Property is in the best interests of the estate, the Property will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith.

Accordingly, subject to overbid offers made at the hearing, the court will GRANT Trustee's motion and authorize the sale of the Property pursuant to 11 U.S.C. § 363(b)(1). The motion does not specifically request, nor will the court authorize, the sale free and clear of any liens or interests. Trustee indicates that there are no liens or encumbrances on the Property.

Compensation to Broker

Trustee also seeks authorization to pay Broker a commission for the sale of the Property. This court has determined that employment of Broker is in the best

interests of the estate and has previously authorized a percentage commission payment structure pursuant to 11 U.S.C. § 328. Order, Doc. #79.

Trustee seeks to pay Broker a 6% commission on the sale of the Property as the real estate broker for the sale, with the commission to be shared with any participating buyer's agent pursuant to custom and any cooperating broker's agreement. Decl. of Trustee, Doc. #83. The 6% fee is the industry standard commission for sales of single family residences. Id. A 5% fee would be paid if Broker represents the bankruptcy estate and the buyer. Id. Trustee estimates that Broker's commission for the sale of the Property will equal $9,000. Id. The court finds the compensation sought is reasonable, actual, and necessary.

Conclusion

Accordingly, subject to overbid offers made at the hearing, the court will GRANT Trustee's motion and authorize the sale of the Property pursuant to 11 U.S.C. § 363(b)(1). Trustee is authorized to pay Broker for services as set forth in the motion.

8. 20-12940-A-7 **IN RE: STEPHANIE BAIZA**
JES-1

MOTION TO COMPEL
7-21-2021 [17]

JAMES SALVEN/MV
MARIO LANGONE/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on July 28, 2021. Doc. #21.

9. 20-13850-A-7 **IN RE: JASON CAMPBELL**
JES-1

MOTION TO COMPEL
7-21-2021 [15]

JAMES SALVEN/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on August 6, 2021. Doc. #19.

10. 13-15962-A-7 **IN RE: DUANE/BRIDGETT THOMPSON**
DRJ-3

MOTION TO AVOID LIEN OF MIDLAND FUNDING LLC
7-6-2021 [38]

BRIDGETT THOMPSON/MV
DAVID JENKINS/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 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.

Duane C. Thompson and Bridgett L. Thompson (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid two judicial liens of Midland Funding LLC ("Creditor") on their residential real property commonly referred to as 2315 San Jose Ave., Clovis, CA 93611 (the "Property"). Doc. #38; Am. Schedule C, Doc. #45.

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 debtors' 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)).

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." Meyer, 373 B.R. at 88. "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtors filed their bankruptcy petition on September 3, 2013. Doc. #1. A judgment was entered against Duane Thompson in the amount of $6,490.07 in favor of Creditor on September 22, 2011. Ex. A, Doc. #41. The abstract of judgment was recorded pre-petition in Fresno County on January 11, 2012. Ex. A, Doc. #41. A judgment was entered against Bridgett Thompson in the amount of $5,105.28 in favor of Creditor on January 22, 2013. Ex. B, Doc. #41. The abstract of judgment was recorded pre-petition in Fresno County on February 28, 2013. Ex. B, Doc. #41. The liens attached to Debtors' interest in the Property located in Fresno County. Doc. #40. The Property is also encumbered by a lien in favor of Ocwen Loan in the amount of $305,000. Am. Schedule D, Doc. #45. Debtors claimed an exemption of $10.00 in the Property under California Code of Civil Procedure § 703.140(b)(5). Am. Schedule C, Doc. #45. Debtors assert a market value for the Property as of the petition date at $177,500.00. Am. Schedule A, Doc. #45.

Applying the statutory formula to the most junior judicial lien first:

Amount of Creditor's judicial lien recorded February 28, 2013		$5,105.28
Total amount of all other liens on the Property (excluding junior judicial liens)	+	311,490.07
Amount of Debtors' claim of exemption in the Property	+	10.00
		$316,605.35
Value of Debtors' interest in the Property absent liens	-	177,500.00
Amount Creditor's lien impairs Debtors' exemption		$139,105.35

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's most junior judicial lien.

Continuing in reverse order of priority, applying the statutory formula:

Amount of Creditor's judicial lien recorded January 11, 2012		$6,490.07
Total amount of all other liens on the Property (excluding junior judicial liens)	+	305,000.00
Amount of Debtors' claim of exemption in the Property	+	10.00
		$311,500.07
Value of Debtors' interest in the Property absent liens	-	177,500.00
Amount Creditor's lien impairs Debtors' exemption		$134,000.07

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support either of Creditor's judicial liens. Therefore, the fixing of Creditor's judicial liens impairs Debtors' exemptions in the Property and the fixing of both liens will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, the motion is GRANTED.

11. 21-11067-A-7 **IN RE: HOWARD YOUNG**
VC-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-16-2021 [14]

FLAGSHIP CREDIT ACCEPTANCE/MV
STEPHEN LABIAK/ATTY. FOR DBT.
MICHAEL VANLOCHEM/ATTY. FOR MV.
DISCHARGED 8/17/21

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

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

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

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

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on August 17, 2021. Doc. #20. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Flagship Credit Acceptance ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2015 Dodge Dart ("Vehicle"). Doc. #14.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least eight complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least $2,559.68. Doc. #16.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. Id. The Vehicle is valued at $5,200.00 wholesale and $7,427.00 retail, and the debtor owes $10,832.09. Doc. #16.

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

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

12. 20-11877-A-7 **IN RE: ANA VENTURA DE PAREDES**
ADJ-2

MOTION TO SELL
7-22-2021 [42]

JAMES SALVEN/MV
LE'ROY ROBERSON/ATTY. FOR DBT.
ANTHONY JOHNSTON/ATTY. FOR MV.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on July 26, 2021. Doc. #48.

13. 20-12488-A-7 **IN RE: MICHAEL/MEREDITH SICARD**
JES-2

MOTION TO COMPEL
7-19-2021 [34]

JAMES SALVEN/MV
PETER BUNTING/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 pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtors, 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.

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Michael Andre Sicard and Meredith Margaret Sicard (together, "Debtors"), moves the court to compel Debtors to turn over their 2020 federal and state tax returns and any refunds. Doc. #34. Alternatively, Trustee requires the data necessary to complete the tax returns.

11 U.S.C. § 541(a)(1) defines property of the estate as "all legal or equitable interests of the debtor in property as of the commencement of the case." In the Ninth Circuit, "the right to receive a tax refund constitutes an interest in property[.]" Nichols v. Birdsell, 491 F.3d 987, 990 (9th Cir. 2007).

11 U.S.C. § 542(a) requires Debtors to turn over property of the estate, or its value, then in Debtors' possession, custody or control during the case. "Section 542(a) does not require the debtor to have current possession of the property which is subject to turnover. If a debtor demonstrates that he is not in possession of the property of the estate or its value at the time of the turnover action, the trustee is entitled to recovery of a money judgment for the value of the property of the estate." Newman v. Schwartzer (In re Newman), 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013) (citations and punctuation omitted).

Accordingly, this motion is GRANTED. Debtors shall turn over their 2020 federal and state tax returns and any refunds within 10 days of the court order. If Debtors have not yet completed their 2020 federal and state tax returns, Debtors shall turn over the information necessary for Trustee to complete those tax returns. Failure to do so may result in sanctions pursuant to 11 U.S.C. § 105(a).