



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
HONORABLE RENÉ LASTRETO II  
Department B – Courtroom #13  
Fresno, California**

**Hearing Date: Thursday, September 7, 2023**

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

Parties in interest and members of the public may connect to ZoomGov, free of charge, using the information provided:

**Video web address:** <https://www.zoomgov.com/j/1607229975?pwd=Uk5NdXN6akdxaWJIMmlpUldabkpgQT09>  
**Meeting ID:** 160 722 9975  
**Password:** 150487  
**ZoomGov Telephone:** (669) 254-5252 (Toll-Free)

Please join at least 10 minutes before the start of your hearing. You are required to give the court 24 hours advance notice on [Court Calendar](#).

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

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Review the court's [Zoom Procedures and Guidelines](#) for these and additional instructions.
3. Parties appearing through CourtCall are encouraged to review the [CourtCall Appearance Information](#).

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

## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[WLF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-7-2023    [\[771\]](#)

JON SAENZ/MV  
RILEY WALTER/ATTY. FOR DBT.  
CRAIG WALKON/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

Movant Jon Saenz ("Movant") seeks relief from the automatic stay under § 362(d)(2) for purposes of allowing a medical negligence action in which Debtor Madera Community Hospital ("Debtor") is one of the defendants to proceed in the Madera County Superior Court ("the State Court Action"). Doc. #771. The Movant proposes that the stay be lifted and that the State Court Action allowed to proceed against Debtor but with any financial recovery and/or enforcement of any judgment being limited to Debtor's insurance policy/proceeds that are available to Debtor in a malpractice action and not enforcement of any judgment directly against Debtor. *Id.* No parties filed a timely response in opposition to the motion, and Debtor has, in fact, entered a joint stipulation with Movant in support of the instant motion. Doc. #775. Pursuant to that stipulation, Debtor consents to the stay being lifted to allow the State Court Action to proceed subject to the provisos that (1) any recovery by Movant will be limited to Debtor's applicable insurance, if any and (2) recovery will further be limited by Movant's waiver of rights to collect on the first \$10,000.00 of any settlement or judgment against Debtor (a figure that represents Debtor's applicable insurance deductible and/or self-insured retention cost incurred). *Id.*

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual

hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

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

When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court must consider the "Curtis factors" in making its decision. *In re Kronemyer*, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). The relevant factors in this case include:

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

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

Movant identifies these factors as the *Sonnax* factors citing *in re Sonnax Indus., Inc.*, 907 F.2d 1280, 1286 (2<sup>nd</sup> Cir. 1990), which are identical to the *Curtis* factors. Doc. #771. The motion addresses each of the twelve factors and presents arguments for why each factor either weighs in favor of lifting the stay or else is a

nonfactor. *Id.* The court is satisfied that Movant has presented a prima facie case for lifting the stay. Furthermore, Debtor has entered into a joint stipulation with Movant to allow the State Court Action to proceed subject to the limitations on recovery alluded to previously.

Accordingly, this motion will be GRANTED only for the limited purpose of continuing with the state court action to liquidate the claim and to seek relief against the insurance policy, only. Debtor's counsel to approve the order.

1:30 PM

1. [23-11628](#)-B-7     **IN RE: BRENT PENTECOST AND VICTORIA CASTANEDA**  
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-9-2023    [\[13\]](#)

MECHANICS BANK/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
SHERYL ITH/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

Mechanics Bank ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2015 Chevrolet Silverado ("Vehicle"). Doc. #13. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). *Id.* Brent Pentecost and Victoria Castaneda ("Debtors") did not oppose.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the 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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtors have missed 1.56 pre-

petition payments, late fees in the amount of \$361.65 and NSF fees in the amount of \$45.00 totaling \$1,332.80. Doc. #17.

The court declines finding that Debtors do not have any equity in the Vehicle. Although this is a chapter 7 case and the Property is not necessary for an effective reorganization, the moving papers indicate that Debtor has approximately \$6,436.71 in equity. Doc. #18. Although costs of sale may entirely shrink that remaining equity, Movant has not established a basis for asserting "Other Fees." In the absence of those fees and after subtracting costs of sale, Debtor may have some equity in the Property. Regardless, relief under § 362(d)(2) is moot because there is "cause" to grant the motion under § 362(d)(1).

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. Debtors' statement of intention indicates that debtors intend to surrender the property. Doc. #1.

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

2. [14-10045](#)-B-7     **IN RE: MARIO NUNEZ**  
[TMO-2](#)

CONTINUED MOTION TO AVOID LIEN OF BH FINANCIAL SERVICES, LLC  
8-16-2023    [\[32\]](#)

MARIO NUNEZ/MV  
T. O'TOOLE/ATTY. FOR DBT.  
T. O'TOOLE/ATTY. FOR MV.

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

DISPOSITION:        DENIED WITHOUT PREJUDICE.

ORDER:                The court will enter the order.

Debtor Mario Nunez ("Debtor") filed the instant Motion to Avoid Lien of BH Financial Services, LLC ("BHF") on August 16, 2023. Doc. #32. On that same day, Debtor amended his Schedule C. to add a claimed exemption for the real property which is the subject of the aforementioned motion. Doc. #38. LRB 4003(b)(1) gives all parties 30 days after the filing of an Amended Schedule in which to file any objections. LRB 4003(b)(1). As the deadline for objecting to Debtor's Amended Schedule C has not yet run, the instant motion will be DENIED WITHOUT PREJUDICE.

Debtor is reminded that any subsequent Motion to Avoid this lien that is filed after the running of the 4003(b)(1) deadline must be filed as a new document with a new DCN and must comply with all Local Rules regarding proper notice and service.