



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

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Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at, Courtroom #11 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>. Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

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

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

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## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 AM

1. [24-11422](#)-A-12     **IN RE: IGNACIO/CASAMIRA SANCHEZ**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION  
5-27-2024     [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

2. [23-12784](#)-A-11     **IN RE: KODIAK TRUCKING INC.**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION  
12-15-2023     [[1](#)]

PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING:             This matter will proceed as scheduled.

DISPOSITION:                     Continue to October 30, 2024 at 9:30 a.m.

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

Because the debtor's monthly operating reports are current and because the court intends to continue the hearing to confirm the debtor's subchapter V plan of reorganization to October 30, 2024 at 9:30 a.m. (matter #4, below), the court intends to continue this status conference to October 30, 2024 at 9:30 a.m.

3. [23-12784](#)-A-11     **IN RE: KODIAK TRUCKING INC.**  
[FW-16](#)

MOTION TO ENTER INTO COMMERCIAL INSURANCE PREMIUM FINANCE AND SECURITY  
AGREEMENT  
8-28-2024     [[330](#)]

KODIAK TRUCKING INC./MV  
PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING:             This matter will proceed as scheduled.

DISPOSITION:                     Granted.

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

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

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

Kodiak Trucking, Inc. ("Debtor" or "DIP"), the chapter 11 debtor and debtor-in-possession in this subchapter V chapter 11 bankruptcy case, moves the court for an order authorizing DIP to enter into a commercial insurance premium finance and security agreement. Doc. #330.

Section 364(d)(1) of the Bankruptcy Code permits the court to authorize the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if the chapter 11 debtor in possession is unable to obtain such credit otherwise; and there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior lien is proposed to be granted. The debtor bears the burden of proof on the issue of adequate protection. 11 U.S.C. § 364(d)(2). "The determination of adequate protection is a fact-specific inquiry." In re Mosello, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996). The purpose of § 364(d) is to "facilitate a plan that will inure to the benefit of all creditors and the estate." In re Stoney Creek Techs., LLC, 364 B.R. 882, 895 (Bankr. E.D. Pa. 2007).

Courts generally give debtors in possession considerable deference to determine, in their business judgment, the terms under which they obtain post-petition secured credit. See, e.g., In re Los Angeles Dodgers LLC, 457 B.R. 308, 313 (Bankr. D. Del. 2011); In re Ames Dep't Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990). To determine whether a debtor in possession has met this business judgment standard, a court need only "examine whether a reasonable business person would make a similar decision under similar circumstances." In re Exide Techs., 340 B.R. 222, 239 (Bankr. D. Del. 2006); see also In re Curlew Valley Assocs., 14 B.R. 506, 513-14 (Bankr. D. Utah 1981).

Debtor operates a company that provides construction trucking services, primarily for highway construction. Decl. of Marco Arambula, Doc. #332. Debtor has approximately 50 trucks that are used to haul dirt, bring in base, haul concrete, remove refuse, haul equipment, and perform other tasks that are supportive of highway construction. Id. Debtor is required to maintain various lines and policies of insurance in order to operate. Id.

Cypress Premium Funding, Inc. ("Cypress") has agreed to finance the premium for 12 months of insurance coverage effective August 1, 2024. Arambula Decl., Doc. #332. DIP moves the court for an order authorizing DIP to enter into a commercial insurance premium financing agreement with Cypress, similar to the agreement filed as Ex. A, Doc. #333. The total premium for the 12-month period is \$1,261,013.41 plus a finance charge of \$36,802.57. Arambula Decl., Doc. #332. Under the proposed agreement, DIP will make a down payment of \$261,254.21, with nine monthly payments of \$115,173.53 each. Id. The annual percentage rate for the financing is 8.75%. Id.

In order for Cypress to provide the proposed financing, Cypress requires that DIP provide a security interest to Cypress in "any and all unearned premiums or dividends which may become payable under the insurance policies and loss payments which reduce the unearned premiums, subject to any mortgagee or loss payee interest [(collectively, the "Insurance-Related Future Assets")." Ex. A, Doc. #333. DIP believes that no other party would have a lien on these potential Insurance-Related Future Assets and that Cypress would have a first position lien on these particular assets. Motion, Doc. #330. The only possible exception would be the post-petition lien created by the prior cash collateral

order to compensate secured creditors for DIP's use of cash collateral. Id. Due to the importance of securing insurance coverage to DIP's business operations as well as the fact that the potential insurance asset is being created by the insurance contract, DIP requests that Cypress be given a first-position lien pursuant to 11 U.S.C. § 364(d). Id.

Based on the evidence before this court, DIP requires insurance to operate its business. DIP is unable to obtain the necessary credit to obtain insurance coverage without granting Cypress a first-priority security interest in the Insurance-Related Future Assets. Thus, DIP has met its required showing under 11 U.S.C. § 364(d) (1) (A).

With respect to the requirement of showing adequate protection under 11 U.S.C. § 364(d) (1) (B), the court finds that, to the extent that there are senior secured creditors with respect to the Insurance-Related Future Assets, those creditors are adequately protected for the placement of a priority lien by the purchase of insurance for DIP's operations because the post-petition accounts receivable that currently secure the use of cash collateral (Doc. ##28, 82, 227) are more than sufficient to provide the necessary adequate protection for the Cypress senior lien.

Accordingly, the motion will be GRANTED on a final basis.

4. [23-12784](#)-A-11     **IN RE: KODIAK TRUCKING INC.**  
[FW-9](#)

CONTINUED CONFIRMATION HEARING RE: CHAPTER 11 SMALL BUSINESS PLAN  
3-14-2024    [\[191\]](#)

PETER FEAR/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Continue to October 30, 2024 at 9:30 a.m.

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

Based on the status conference statement filed by the debtor on September 5, 2024 (Doc. #335), the court intends to continue the hearing to confirm the debtor's subchapter V plan of reorganization to October 30, 2024 at 9:30 a.m.

The court will modify paragraph 4 of the order setting this confirmation hearing (Doc. #192) ("Order") to extend the deadline to October 16, 2024 for eCapital Freight Factoring Corp. to file and serve any objection to confirmation of the Plan.

The deadlines set forth in paragraphs 6 and 7 of the Order shall be calculated from the October 30, 2024 hearing date.

All other provisions of the Order shall remain the same except as previously agreed to by the debtor.

FINAL HEARING RE: MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR  
ADEQUATE PROTECTION  
8-13-2024 [[22](#)]

BURT ELECTRIC & COMMUNICATIONS, INC./MV  
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted on a final basis through January 31, 2025.

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 final hearing on September 11, 2024 pursuant to the initial motion papers and an interim order authorizing use of cash collateral ("Interim Order"). Doc. #57. The final hearing was set on at least 14 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 4001(b)(2) and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Because the request authorizing final use of cash collateral through January 31, 2025 was set on less than 28 days' notice, opposition to the continued use of cash collateral may be raised at the hearing. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant continued use of cash collateral on a final basis through January 31, 2025. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper. The court will issue an order if a further hearing is necessary.

Burt Electric & Communications, Inc. ("Debtor" or "DIP"), the chapter 11 debtor and debtor-in-possession, moves the court for an order authorizing DIP to use the cash collateral of Citizen Business Bank ("Bank") and Kapitus, LLC ("Kapitus") on a monthly basis subject to a budget. Motion, Doc. #22; Interim Order, Doc. #57. Debtor asserts Bank holds a duly perfected security interest in Debtor's bank accounts as well as Debtor's accounts receivable. Motion, Doc. #22. Based on Debtor's Schedule D, Bank is owed \$147,776.97 as of petition date, and the value of its collateral that forms the cash collateral was \$137,351.61 as of the petition date. Schedule D, Doc. #1. While Kapitus may assert a security interest in Debtor's bank accounts as well as Debtor's accounts receivable that comprise the cash collateral that is the subject of this motion, Debtor contends that Kapitus holds a junior security interest to the undersecured Bank and, thus, is unsecured with respect to the collateral that comprises cash collateral. Motion, Doc. #22.

Pursuant to 11 U.S.C. § 363, a debtor in possession can use property of the estate that is cash collateral by obtaining either the consent of each entity that has an interest in such cash collateral or court authorization after notice and a hearing. 11 U.S.C. § 363(c)(2). "The primary concern of the court in determining whether cash collateral may be used is whether the secured creditors are adequately protected." In re Plaza Family P'ship, 95 B.R. 166 (E.D. Cal. 1989) (citing 11 U.S.C. § 363(e)). Pursuant to 11 U.S.C. § 363(o), DIP carries the burden of proof on the issue of adequate protection. DIP seeks court authorization to use cash collateral to pay expenses incurred by DIP in the normal course of its business. Ex. C, Doc. #27. As adequate protection for DIP's use of Bank's and, to the extent it exists, Kapitus' cash collateral, DIP will grant Bank and Kapitus a replacement lien against DIP's

post-petition bank accounts and accounts receivable to the extent cash collateral is actually used, as well as provide a monthly adequate protection payment to Bank of \$2,565.00. Motion, Doc. #22; Interim Order, Doc. #57.

Bankruptcy Code § 361 requires DIP to provide adequate protection to the secured creditors for DIP's use of cash collateral for any decrease in the value of the secured creditors' interest in the accounts receivable due to DIP's use of cash collateral. While the evidence filed with the motion does not state the projected value of new accounts receivable to be generated as a result of DIP's use of cash collateral, based on the cash collateral budget, DIP will generate more income than the total cash collateral to be used between the petition date and January 31, 2025. Ex. C, Doc. #27.

The court finds DIP has met its burden of showing that Bank and Kapitus are adequately protected for DIP's use of their cash collateral, to the extent any cash collateral exists for Kapitus, by the replacement liens provided in the proposed cash collateral order and the monthly adequate protection payment to Bank of \$2,565.00. Moreover, DIP needs to use Bank's and Kapitus' cash collateral to continue its post-petition operations. Am. Decl. of Paul Burt, Doc. #45.

Accordingly, pending any opposition at the hearing, the court is inclined to GRANT DIP's request to use cash collateral on a final basis through January 31, 2025 on the terms set forth in the motion and consistent with the budget attached as Exhibit C to Doc. #27. At the hearing, counsel for DIP should be prepared to set a new hearing date for the further use of cash collateral and a date to file and serve supplemental pleadings in case Debtor's chapter 11 plan is not confirmed by January 31, 2025.

6. [24-12295](#)-A-11     **IN RE: BURT ELECTRIC & COMMUNICATIONS, INC.**  
[YW-3](#)

MOTION TO VALUE COLLATERAL OF KAPITUS, LLC  
8-14-2024    [\[31\]](#)

BURT ELECTRIC & COMMUNICATIONS, INC./MV  
LEONARD WELSH/ATTY. FOR DBT.  
CONTINUED TO 9/25/2024 PER ORDER DOC. NO. 60

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED.

The motion was continued to September 25, 2024 pursuant to stipulation and order filed on August 28, 2024. Doc. #60.

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-30-2024    [\[224\]](#)

TRAILS END UNITED FOR CHANGE/MV  
GREGORY TAYLOR/ATTY. FOR DBT.  
MARC LEVINSON/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

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

La Hacienda Mobile Estates, LLC ("Debtor") filed a chapter 11 bankruptcy case on May 9, 2024. Doc. #1. Debtor operates a mobilehome park located at 104 E. Sierra Avenue, Fresno, California (the "Park"). Decl. of Matt Davies, Doc. #2. Post-petition, on July 1, 2024, Debtor issued a rent increase notice to its tenants announcing that Debtor would be increasing monthly rent at the Park by approximately 100% effective on October 1, 2024 ("Proposed Rent Increase"). Exs. 1 & 10 to Decl. of Mariah Thompson, Doc. #228. Debtor has indicated that it intends to proceed with the Proposed Rent Increase and evict residents who refuse to pay the new rate. Transcript of the Deposition of Matthew Davies, Ex. A to Decl. of Michael Trentin, Doc. #229.

Trails End United for Change ("Movant") represents 20 of the approximately 25 remaining resident-occupied spaces in the 60-space Park. 2nd Am. Rule 2019 Stmt., Doc. #240. Movant alleges that the unilateral Proposed Rent Increase violates the City of Fresno's mobilehome rent stabilization ordinance (the "Ordinance"). Decl. of Mariah Thompson, Doc. #227. Movant intends to file litigation in the Fresno County Superior Court ("State Court") seeking injunctive and declaratory relief that would prevent Debtor from enforcing the Proposed Rent Increase (the "Proposed Lawsuit"). Id.

Movant requests a determination that the automatic stay does not apply to Movant filing and prosecuting the Proposed Lawsuit. Doc. #224. In the alternative, should the court determine that the automatic stay does apply, Movant requests relief from the automatic stay under 11 U.S.C. § 362(d)(1) to permit Movant to take the necessary actions to file and prosecute the Proposed Lawsuit. Id.

#### **SCOPE OF THE AUTOMATIC STAY**

Movant asserts that the Proposed Lawsuit does not implicate the automatic stay because the Proposed Rent Increase is a post-petition action, so the only possible subsection of 11 U.S.C. § 362(a) that might apply is 11 U.S.C. § 362(a)(3). Doc. #224. The court agrees. First, 11 U.S.C. §§ 362(a)(1),



(a)(2), (a)(6), (a)(7) and (a)(8) apply to actions with respect to claims or judgments that arose prior to the commencement of the case. Here, the Proposed Rent Increase was initiated by Debtor post-petition, and the Proposed Lawsuit is based on post-petition actions of Debtor. Second, 11 U.S.C. §§ 362(a)(4) and (a)(5) apply to situations in which there is a lien, which is not the case here. Thus, the only possible subsection of 11 U.S.C. § 362(a) that might apply is 11 U.S.C. § 362(a)(3).

11 U.S.C. § 362(a)(3) provides that the filing of a voluntary bankruptcy petition operates as an automatic stay of "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate[.]" 11 U.S.C. § 362(a)(3). Whether 11 U.S.C. § 362(a)(3) applies in this instance depends on (1) the nexus between the conduct at issue and the property interests of the bankruptcy estate, (2) the degree of impact on the bankruptcy estate, and (3) the competing legal interests of the non-debtor parties. In re Korean W. Presbyterian Church of Los Angeles, 619 B.R. 282, 286 (Bankr. C.D. Cal. 2020) (citing Allentown Ambassadors, Inc. v. Northeast Am. Baseball, LLC (In re Allentown Ambassadors, Inc.), 361 B.R. 422 (Bankr. E.D. Pa. 2007)).

Movant cites to Liberty Bank and Trust Co. Successor v. Danley (in re Danley), 552 B.R. 871, 883 (Bankr. M.D. Ala. 2016), for the proposition that only a property interest supported by state law falls within property of the estate and, because there is a dispute as to whether Debtor has the legal authority to enforce the Proposed Rent Increase, Debtor currently has no property interest in the additional rent that would result from the Proposed Rent Increase. However, the court finds Danley is distinguishable.

In Danley, the debtors had forfeited their statutory right of redemption under Alabama law when the debtors failed to vacate their foreclosed residence within the time demanded by the foreclosing lender. Danley, 552 B.R. at 883. Thus, the debtors held "nothing more than bare, wrongful possession of the Residence, and the bankruptcy estate has no interest in the Residence." Id. Such is not the case here. There has been no determination that Debtor cannot enforce the Proposed Rent Increase – that is the reason Movant wants to file and prosecute the Proposed Lawsuit. Because there has not yet been a determination that Debtor cannot impose the Proposed Rent Increase, the future rental income to be received by Debtor under the Proposed Rent Increase remains property of Debtor's bankruptcy estate. Taub v. Taub (In re Taub), 427 B.R. 208, 221 (Bankr. E.D.N.Y. 2010) (property of the estate includes future rental income to be paid by tenants of the debtor's real property).

Accordingly, the court holds that future rental income based on the Proposed Rent Increase currently remains property of Debtor's bankruptcy estate and is subject to 11 U.S.C. § 362(a)(3).

#### **RELIEF FROM THE AUTOMATIC STAY**

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

When a movant 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. Kronmyer v. Am. Contrs. Indem. Co. (In re Kronmyer), 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in deciding 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; and (6) 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.

Here, granting relief from stay to permit Movant to take the necessary actions to file and prosecute the Proposed Lawsuit in State Court will permit Debtor and Movant to resolve whether the Proposed Rent Increase violates the Ordinance and Debtor's ability to impose the Proposed Rent Increase. The State Court has the experience with interpretation of the Ordinance and the expertise to resolve the Proposed Lawsuit. Litigating the Proposed Lawsuit in State Court will not prejudice the interests of other creditors since Debtor's legal authority to impose the Proposed Rent Increase will be resolved prior to Debtor possibly incurring any liability for improperly imposing the Proposed Rent Increase. Moreover, it is in the interests of judicial economy and more expeditious and economical to lift the automatic stay to permit the State Court to hear the Proposed Lawsuit because the State Court is more familiar with the Ordinance than this court. Finally, should the Proposed Rent Increase be prohibited under state law, it is more prejudicial to the tenants represented by Movant who may be evicted from their residences through the enforcement of the possibly unauthorized Proposed Rent Increase than to Debtor who may be delayed in enforcing the Proposed Rent Increase if permitted under state law.

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 to take the necessary actions to file and prosecute the Proposed Lawsuit. No other relief is awarded.

In the request for relief as part of the motion, Movant requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) to allow the Proposed Lawsuit to be filed as quickly as possible so Movant can seek a temporary restraining order and preliminary injunction to prevent Debtor from evicting Park residents before the legality of the rent increase that takes effect on October 1, 2024 has been determined by a court. Because the filing of the Proposed Lawsuit needs to happen as soon as possible, the court finds cause to waive the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3).

1. [21-11103](#)-A-7     **IN RE: ANDERSON LAND SERVICES, INC.**  
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG, ACCOUNTANT(S)  
7-29-2024     [\[28\]](#)

RATZLAFF TAMBERI & WONG/MV  
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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 moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Ratzlaff Tamberi & Wong ("Movant"), accountants for chapter 7 trustee Jeffrey M. Vetter ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from January 16, 2024 through July 23, 2024. Order, Doc. #27; Doc. #28. Movant provided accounting services valued at \$3,289.00, and requests compensation for that amount. Doc. #28. Movant does not request reimbursement for expenses. Doc. #28. This is Movant's first and final fee application.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) reviewing information regarding tax matters of debtor; (2) corresponding with Trustee; (3) preparing federal and state income tax returns; and (4) preparing the employment and fee applications. Decl. of Christopher A. Ratzlaff, Doc. #32; Ex. A, Doc. #31. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$3,289.00. Trustee is authorized to make a payment of \$3,289.00

to Movant from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

2. [23-12030](#)-A-7     **IN RE: CALIFORNIA'S CUSTOM CONCESSION TRAILERS, LLC**  
[JES-3](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)  
8-7-2024    [\[55\]](#)

JAMES SALVEN/MV  
JONATHAN DOAN/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted if sufficient additional explanation placed on the record with respect to one expense request.

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 prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Creditor Brian Pitman ("Creditor") timely filed written opposition on August 28, 2024. Doc. #61. The failure of other 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). Therefore, the defaults of the non-responding parties in interest are entered. This matter will proceed as scheduled.

As a procedural matter, the opposition filed by Creditor does not comply with LBR 9014-1(e)(3), which requires that proof of service of all pleadings be filed with the court not more than three days after the pleading is filed with the court. Here, there is no proof of service filed with the court showing when and on whom the opposition was served.

James E. Salven, ("Movant"), certified public accountant for chapter 7 trustee Irma Edmonds ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from June 27, 2024 through September 11, 2024. Order, Doc. #49; Doc. #55. Movant provided accounting services valued at \$2,772.00, and requests compensation for that amount. Doc. #55. Movant's services included, without limitation: (1) preparing employment application and conflict review; (2) researching shareholder 2024 requirements of Schedule C and Forms 4797; (3) preparing and finalizing tax returns; and (4) preparing and filing fee application. Decl. of James E. Salven, Doc. #57; Ex. A, Doc. #58. Movant requests reimbursement for expenses in the amount of \$233.98. Doc. #55. This is Movant's first and final fee application.

Creditor opposes Movant's application on the grounds that the fees requested appear to be excessive and the application lacks sufficient documentation to justify the claimed expenses. Doc. #61. Trustee has no objection to Movant's application and believes the fees and costs are reasonable and necessary. Doc. #59.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

The court has reviewed the time records filed in support of the fee application and finds that the application contains sufficient documentation to support the fees requested. Ex. A, Doc. #58. Specifically, the billing records show that Movant spent 2.2 hours becoming employed by the estate, which is a requirement under the Bankruptcy Code and a permitted charge. Id. The billing records also show that Movant spent 6.1 hours researching shareholder 2024 requirements of Schedule C and Forms 4797 and preparing and finalizing tax returns, the main task for which Movant was employed, and 1.6 hours preparing, filing and serving this fee application, another requirement under the Bankruptcy Code and again a permitted charge. Id. The court finds that the compensation sought is reasonable, actual, and necessary, and is not excessive. Creditor's opposition to the amount of compensation requested is overruled.

With respect to the request for reimbursement for expenses in the amount of \$233.98, Movant requests reimbursement of: (a) \$34.00 for 136 copies at \$0.25 per copy; (b) \$0.80 for 4 envelopes at \$0.20 per envelope; (c) \$132.00 for LACERTE TAX PROC: debtor; (d) \$5.86 for postage to mail returns; and (e) \$61.32 for postage to serve the fee application. Ex. B, Doc. #58. The court has reviewed the evidence filed in support of the fee application and finds that the application contains sufficient documentation to justify reimbursement for the claimed expenses other than the \$132.00 for LACERTE TAX PROC: debtor. The court is inclined to grant this expense if Movant places on the record at the hearing sufficient additional information to support the requested expense in light of Creditor's opposition.

Accordingly, subject to a sufficient explanation to be provided at the hearing with respect to one expense item, Creditor's opposition will be overruled, and this motion will be GRANTED on a final basis. The court will allow final compensation in the amount of \$2,772.00 and reimbursement for expenses in the amount of \$233.98. Trustee will be authorized to make a combined payment of \$3,005.98, representing compensation and reimbursement, to Movant. Trustee will be authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

3. [24-12043](#)-A-7      **IN RE: MARICELA SANCHEZ**  
[GT-1](#)

MOTION TO COMPEL ABANDONMENT  
8-27-2024    [\[13\]](#)

MARICELA SANCHEZ/MV  
GRISELDA TORRES/ATTY. FOR DBT.

TENTATIVE RULING:      This matter will proceed as scheduled.

DISPOSITION:              Granted.

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

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 a further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Maricela Sanchez ("Debtor"), the chapter 7 debtor in this case, moves the court to compel the chapter 7 trustee to abandon business equipment and inventory Debtor uses in her housecleaning business (collectively, the "Property") that is claimed as fully exempt. Doc. #13. Debtor asserts that there is not enough non-exempt equity in the Property and the Property therefore has no value to the bankruptcy estate. Id.

11 U.S.C. § 554(b) permits the court, on request of a party in interest and after notice and a hearing, to order the trustee to abandon property that is burdensome to the estate or of inconsequential value and benefit to the estate. Vu v. Kendall (In re Vu), 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). To grant a motion to abandon property, the bankruptcy court must find either that the property is (1) burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. Id. (citing Morgan v. K.C. Mach. & Tool Co. (In re K.C. Mach. & Tool Co.), 816 F.2d 238, 245 (6th Cir. 1987)). However, "an order compelling abandonment [under § 554(b)] is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset. . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." Id. (quoting K.C. Mach. & Tool Co., 816 F.2d at 246).

Here, Debtor does not allege that the Property is burdensome to the estate. Motion, Doc. #13. Therefore, Debtor must establish that the Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Amongst Debtor's Property is a cellphone, cleaning agents, protective equipment, cleaning tools, vacuum cleaner and cleaning supplies collectively valued at \$1,310.00 and is not encumbered by any lien. Am. Schedule A/B, Doc. #17; Schedule D, Doc. #1. Under California Civil Procedure Code § 704.060, Debtor claims a \$1,310.00 exemption in the Property. Am. Schedule C, Doc. #17; Decl. of Maricela Sanchez, Doc. #15. Further, the only non-exempt asset of the housecleaning business is the goodwill, which Debtor states has no value because Debtor has no employees and the business is completed entirely by Debtor's manual labor. Doc. #13; Sanchez Decl., Doc. #15. The court finds that Debtor has met her burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate.

Accordingly, subject to opposition being raised at the hearing, this motion will be GRANTED. The order shall specifically identify the property abandoned.

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-2-2024     [\[85\]](#)

LAKEVIEW LOAN SERVICING, LLC/MV  
PHILLIP GILLET/ATTY. FOR DBT.  
WENDY LOCKE/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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 movant, Lakeview Loan Servicing, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property located at 12447 E. Herndon Ave., Clovis, CA ("Property"). Doc. #85.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least 17 complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$63,760.24 and the entire balance of \$564,214.54 is due. Decl. of Linda Brown, Doc. #88.

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

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least 17 complete pre- and post-petition payments to Movant.

5. [24-10868](#)-A-7      **IN RE: JASDEEP SANDHU**  
[CAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-30-2024    [\[76\]](#)

BMW BANK OF NORTH AMERICA/MV  
PHILLIP GILLET/ATTY. FOR DBT.  
CHERYL SKIGIN/ATTY. FOR MV.

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

DISPOSITION:      Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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 movant, BMW Bank of North America ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2022 BMW M4 Competition xDrive Convertible Coupe 2D, VIN: WBS33BA09NCL05817 ("Vehicle"). Doc. #76.

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 eleven complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$21,271.42. Decl. of Christopher Dick, Doc. #79.



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. The Vehicle is valued at \$73,190.00 and the debtor owes \$97,648.77. Dick Decl., Doc. #79

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.

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 eleven pre- and post-petition payments to Movant and the Vehicle is a depreciating asset.

6. [24-10868](#)-A-7     **IN RE: JASDEEP SANDHU**  
[MJ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-24-2024    [[69](#)]

ACAR LEASING LTD/MV  
PHILLIP GILLET/ATTY. FOR DBT.  
MEHRDAUD JAFARNIA/ATTY. FOR MV.

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

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

The certificate of service filed in connection with this motion shows that the chapter 7 trustee was only served electronically pursuant to Federal Rule of Civil Procedure 5 and Federal Rules of Bankruptcy Procedure ("Rule") 7005 and 9036 Service. Doc. #75. However, Rules 4001(a)(1) and 9014(b) require service of a motion for relief from stay to be made pursuant to Rule 7004. Rule 9036(e) does not permit electronic service when any paper is required to be served in accordance with Rule 7004.

Because the chapter 7 trustee was not served by mail as required by Rule 7004(b)(1), the motion was not served properly on the chapter 7 trustee.

As a procedural matter, the notice of hearing filed in connection with this motion does not comply with Local Rule of Practice 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

Accordingly, this motion is DENIED WITHOUT PREJUDICE for improper service.

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG, ACCOUNTANT(S)  
7-17-2024    [\[72\]](#)

RATZLAFF TAMBERI & WONG/MV  
D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION:      Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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 moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Ratzlaff Tamberi & Wong ("Movant"), accountants for chapter 7 trustee Jeffrey M. Vetter ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from February 3, 2024 through July 11, 2024. Order, Doc. #44; Doc. #72. Movant provided accounting services valued at \$3,849.48, and requests compensation for that amount. Doc. #72. Movant does not request reimbursement for expenses. Doc. #72. This is Movant's first and final fee application.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) reviewing information regarding tax matters of debtor; (2) corresponding with Trustee; (3) preparing federal and state income tax returns; and (4) preparing the employment and fee applications. Decl. of Christopher A. Ratzlaff, Doc. #74; Ex. A, Doc. #76. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$3,849.48. Trustee is authorized to make a payment of \$3,849.48 to Movant from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

8. [23-12875](#)-A-7     **IN RE: ANTONIO HERREJON**  
[GAL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-12-2024    [\[32\]](#)

CONSUMERS CREDIT UNION/MV  
NEIL SCHWARTZ/ATTY. FOR DBT.  
GARRY MASTERSON/ATTY. FOR MV.  
DISCHARGED 08/09/2024 WITHDRAWN

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion for relief from the automatic stay on August 22, 2024. Doc. #39.

9. [24-12076](#)-A-7     **IN RE: BRANDON MORAN**  
[JRL-2](#)

MOTION TO DISMISS CASE  
8-8-2024    [\[14\]](#)

BRANDON MORAN/MV  
JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION:                    Granted.

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

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

Brandon Lee Moran ("Debtor") moves to dismiss this duplicative chapter 7 case on the grounds that Debtor's counsel inadvertently filed two duplicative chapter 7 bankruptcy petitions commencing Case No. 24-11999-B-7 ("Initial Case") and this instant case, Case No. 24-12076-A-7 ("Duplicate Case"). Doc. #14.

A debtor does not have an absolute right to dismiss a voluntary Chapter 7 case. Bartee v. Ainsworth (In re Bartee), 317 B.R. 362, 366 (B.A.P. 9th Cir. 2004). Section 707 of the Bankruptcy Code governs dismissal of a chapter 7 case, whereby the court "may dismiss a case under this chapter only after notice and a hearing and only for cause." 11 U.S.C. § 707(a); In re Kaur, 510 B.R. 281, 285 (Bankr. E.D. Cal. 2014). Regarding cause, a voluntary chapter 7 debtor is entitled to dismissal so long as such dismissal will cause no legal prejudice to interested parties. Kaur, 510 B.R. at 286 (citations omitted).

The court finds that dismissing the Duplicate Case will cause no legal prejudice to interested parties because Debtor is active in his Initial Case. A review of the docket in the Initial Case shows that the Initial Case was filed on July 18, 2024, and Debtor appeared at the 341 Meeting in the Initial Case. Case No. 24-11999-B-7, Doc. #1-13. The Duplicate Case was inadvertently filed on July 25, 2024. The court finds cause exists to dismiss Debtor's Duplicate Case, Case No. 24-12076-A-7.

Accordingly, this motion is GRANTED.

10. [24-12278](#)-A-7 **IN RE: RENEE MIRELES**  
[THL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-28-2024 [\[22\]](#)

CALIFORNIA LIVING PROPERTIES, LLC/MV  
TYLER LESTER/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 a further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The movant, California Living Properties, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to real property located at APN number 428-090-09 (the "Property"). Doc. ##22, 25. Pre-petition, Movant filed an unlawful detainer action in state court against Renee Lynn Mireles ("Debtor") and others as case number 24CECL06037. Decl. of Glenn Hammerburg, Doc. #24. Debtor filed this chapter 7 bankruptcy case on August 7, 2024. Doc. #1. Movant requests relief from the automatic stay to continue the unlawful detainer action in state court against Debtor and to proceed under applicable non-bankruptcy law to enforce Movant's remedies to gain possession of the Property. Doc. ##22, 25.

Movant is the owner of the Property. Hammerburg Decl., Doc. #24. Movant's predecessor rented the Property to Debtor for a one-year term beginning on June 7, 2023 for \$1,000.00 per month. Id. Movant claims Debtor has not paid any

rent as of May 2024 and thereafter. Id. Currently, Debtor owes pre-petition rent in the amount of \$1,100.00 and post-petition rent in the amount of \$2,900.00. Ex. 1, Doc. #27; Hammerburg Decl., Doc. #24.

With the bankruptcy petition, Debtor filed an initial statement about an eviction judgment and indicated that all the rent will be paid in full within 30 days from the filing of the initial statement. Doc. #8. However, there currently is no eviction judgment as the unlawful detainer case is on hold due to the automatic stay. Hammerburg Decl., Doc. #24. Also, Debtor has failed to tender any rent payments post-petition. Id.

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

11 U.S.C. § 362(d) (1) allows the court to grant relief from the stay for cause. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985). When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court may consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in determining whether to grant relief from the automatic stay" to allow litigation in another forum. Id. The Curtis factors include: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the non-bankruptcy forum has the expertise to hear such cases; (4) whether litigation in another forum would prejudice the interests of other creditors; and (5) the interest of judicial economy and the expeditious and economical determination of litigation for the parties. In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984).

Here, granting Movant's relief from the stay will completely resolve the issue of Debtor's unlawful possession of the Property. Movant owns the Property, and Debtor failed to pay rent in May 2024 and thereafter. On May 24, 2024, Movant initiated an unlawful detainer action in Superior Court, County of Fresno, ("State Court") to enforce its interests in the Property against Debtor and others who claim an interest in the Property. Hammerburg Decl., Doc. #24.

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

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

#### **11 U.S.C. § 362(d) (2) Analysis**

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

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

## Conclusion

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

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

11. [24-11785](#)-A-7     **IN RE: MARIA LEYVA**  
[MJ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-24-2024    [\[17\]](#)

ACAR LEASING LTD/MV  
MEHRDAUD JAFARNIA/ATTY. FOR MV.

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

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

The certificate of service filed in connection with this motion shows that the chapter 7 trustee was only served electronically pursuant to Federal Rule of Civil Procedure 5 and Federal Rules of Bankruptcy Procedure ("Rule") 7005 and 9036 Service. Doc. #23. However, Rules 4001(a)(1) and 9014(b) require service of a motion for relief from stay to be made pursuant to Rule 7004. Rule 9036(e) does not permit electronic service when any paper is required to be served in accordance with Rule 7004.

Because the chapter 7 trustee was not served by mail as required by Rule 7004(b)(1), the motion was not served properly on the chapter 7 trustee.

As a procedural matter, the notice of hearing filed in connection with this motion does not comply with Local Rule of Practice 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

Accordingly, this motion is DENIED WITHOUT PREJUDICE for improper service.

12. [24-11891](#)-A-7     **IN RE: DUNCAN CHAVEZ AND SELENA MENZIE**  
[LR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-23-2024    [\[36\]](#)

DALE E. FOWLER AS TRUSTEE OF THE D AND S FOWLER REVOCABLE  
LARRY ROTHMAN/ATTY. FOR MV.

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

DISPOSITION:     Denied without prejudice.

ORDER:            The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

There is no attachment to the certificates of service filed with the motion (Doc. ##41, 44-45) showing the parties on which the motion and supporting documents were served. Federal Rules of Bankruptcy Procedure ("Rules") 4001(a)(1) and 9014(b) require service of a motion for relief from stay to be made pursuant to Rule 7004 on both the debtor as well as the chapter 7 trustee. Because the certificate of service does not have an attachment, the court cannot determine whether the debtor and the chapter 7 trustee were served by first-class mail as required by Rule 7004(b)(1).

Even if proper certificates of service had been filed, the court would still deny this motion without prejudice for improper notice of how to oppose the motion. Notice by mail of this motion was initially sent August 23, 2024, with a hearing date set for September 11, 2024. The motion was set for hearing on less than 28 days' notice and is governed by Local Rule of Practice ("LBR") 9014-1(f)(2). Pursuant to LBR 9014-1(f)(2), written opposition was not required, and any opposition may be raised at the hearing. However, the notice of hearing filed with the motion stated that opposition must be filed before the hearing and that failure to file written response may result in the court granting the motion prior to the hearing. Further, the notice of hearing states that without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to this motion has not been filed. The notice of hearing does not comply with LBR 9014-1(f)(2).

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

The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.