



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

Hearing Date: Thursday, September 28, 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.

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1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
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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.

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. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**
NON-PROFIT CORPORATION
[WJH-2](#)

CONTINUED MOTION TO USE CASH COLLATERAL
6-23-2023 [\[18\]](#)

TWILIGHT HAVEN, A CALIFORNIA
NON-PROFIT CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

2. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**
NON-PROFIT CORPORATION
[WJH-3](#)

CONTINUED MOTION FOR ORDER AUTHORIZING MAINTENANCE OF
EXISTING BANK ACCOUNT
6-23-2023 [\[24\]](#)

TWILIGHT HAVEN, A CALIFORNIA
NON-PROFIT CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

3. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[HRR-1](#)

CONTINUED MOTION FOR EXAMINATION AND FOR PRODUCTION OF
DOCUMENTS
8-28-2023 [\[878\]](#)

AMERICAN ADVANCED MANAGEMENT,
INC./MV
RILEY WALTER/ATTY. FOR DBT.
HAMID RAFATJOO/ATTY. FOR MV.

NO RULING

4. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[MB-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF MCCORMICK,
BARSTOW, SHEPPARD, WAYTE & CARRUTH LLP FOR DANIEL L
WAINWRIGHT, SPECIAL COUNSEL(S)
8-25-2023 [[846](#)]

RILEY WALTER/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.

Daniel L. Wainwright ("Wainwright"), on behalf of the law firm of McCormick Bairstow LLP ("Applicant"), special counsel for the Debtor In Possession ("DIP") in the above-styled Chapter 11 case, comes before the court on Applicant's First Application for Fees And Expenses Pursuant to 11 U.S.C. § 329. Doc. #846. The court notes that, while Applicant styles this as a First Application, it is one of two Applications filed simultaneously by this Applicant for work down on behalf of the DIP, albeit in different matters and presumably subject to different retainer agreements. (*See Matter #5, infra*). The Application requests attorney fees in the amount of \$6,370.00 and expenses in the amount of \$2,664.26, for a total application of \$8,934.26. *Id.*

In his Declaration, Wainwright avers that Applicant was retained by Madera Community Hospital ("MCH") prior to the commencement of these Chapter 11 proceedings to represent it in a medical malpractice action brought against it by Plaintiffs Jon Saenz ("Saenz") ("the Saenz Litigation"). Doc. #850. Applicant was the recipient of a \$10,000.00 retainer to apply towards legal fees in the Saenz Litigation. *Id.* In due course, MCH filed for Chapter 11, the Saenz Litigation was stayed, and this court approved Applicant as "special counsel" in the Saenz Litigation. *ID.* Applicant now seeks permission to distribute to itself \$8,934.26 out of the funds already placed into its trust account as payment for all fees and costs incurred from the date of Applicant's retention through July 31, 2023. *Id.* Included with the Application is a document signed by the DIP stating her opinion that the fees and expenses are reasonable and that she does not object to the Application. Doc. #848.

No party in interest timely filed written opposition. For the reasons outlined below, this Application is GRANTED.

This Application was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1), pursuant to which the failure of the creditors, the chapter 13 trustee, 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 may be unnecessary

in the absence of opposition. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

Exhibits accompanying the Application include (A) a narrative summary, (B) itemized time entries, (C) and Costs/Expenses Details. Doc. #846. A Declaration evincing the DIP's consent to this Application is attached as a separate filing. Doc. #840.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." 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, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

The services provided by the Applicant described above and the expenses incurred were fully detailed in the exhibits accompanying the Application and have been reviewed by the court, which finds them to be reasonable, actual, and necessary. Accordingly, this motion will be GRANTED on an interim basis. Applicant will be awarded \$8,934.26 in attorney's fees and \$2,664.76 in expenses, for a total award of \$8,934.26, to be paid out of the \$10,000.00 retainer which Applicant is presently hold in trust.

5. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[MB-2](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF MCCORMICK,
BARSTOW, SHEPPARD, WAYTE & CARRUTH LLP FOR DANIEL L
WAINWRIGHT, SPECIAL COUNSEL(S)
8-25-2023 [\[852\]](#)

RILEY WALTER/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.

Daniel L. Wainwright ("Wainwright"), on behalf of the law firm of McCormick Bairstow LLP ("Applicant"), special counsel for the Debtor In Possession ("DIP") in the above-styled Chapter 11 case, comes before the court on Applicant's Application for Fees And Expenses Pursuant to 11 U.S.C. § 329. Doc. #852. The court notes that, while Applicant styles this as a First Application, it is one of two Applications filed simultaneously by this Applicant for work down on behalf of the DIP, albeit it in different matters and presumably subject to different retainer agreements. (See *Matter #4, supra*). The Application requests attorney fees in the amount of \$3,300.00 and no expenses, for a total application of \$3,300.00. *Id.*

In his Declaration, Wainwright avers that Applicant was retained by Madera Community Hospital ("MCH") prior to the commencement of these Chapter 11 proceedings to represent it in anticipation of possible legal proceedings which MCH expected at the time to be brought against it by Plaintiff Esther Mendoza ("Mendoza") ('the Mendoza Pre-Litigation"). Doc. #856. Applicant was the recipient of a \$10,000.00 retainer to apply towards legal fees in the Mendoza Pre-Litigation. *Id.* On March 10, 2023, before the Mendoza Pre-Litigation developed into actual litigation, MCH filed for Chapter 11. *Id.* Wainwright avers that, at this time, he is "optimistic" that the Mendoza Pre-Litigation will soon come to an end without any formal litigation developing. *Id.*

Applicant now seeks permission to distribute to itself \$3,300.00 out of the funds already placed into its trust account as payment for all fees and costs incurred from the date of Applicant's retention through August 3, 2023. *Id.* Included with the Application is a document signed by the DIP stating her opinion that the fees and expenses are reasonable and that she does not object to the Application. Doc. #854.

No party in interest timely filed written opposition. For the reasons outlined below, this Application is GRANTED.

This Application was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1), pursuant to which the failure of the creditors, the chapter 13 trustee, 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 may be unnecessary in the absence of opposition. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

Exhibits accompanying the Application include (A) a narrative summary, and (B) itemized time entries. Doc. #855. A Declaration evincing the DIP's consent to this Application is attached as a separate filing. Doc. #854.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." 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, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

The services provided by the Applicant described above and the expenses incurred were fully detailed in the exhibits accompanying the Application and have been reviewed by the court, which finds them to be reasonable, actual, and necessary. Accordingly, this motion will be GRANTED on an interim basis. Applicant will be awarded \$8,934.26 in attorney's fees and \$2,664.76 in expenses, for a total award of \$8,934.26, to be paid out of the \$10,000.00 retainer which Applicant is presently hold in trust.

6. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-19](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-6-2023 [[204](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

7. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-21](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-6-2023 [[218](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

8. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-22](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-7-2023 [[230](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

9. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-3](#)

CONTINUED MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR
ADEQUATE PROTECTION
3-13-2023 [[18](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

10. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-40](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-26-2023 [\[301\]](#)

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

11. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-42](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
5-2-2023 [\[334\]](#)

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

12. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-64](#)

MOTION FOR COMPENSATION FOR WARD LEGAL, INC., SPECIAL
COUNSEL(S)
8-22-2023 [\[827\]](#)

RILEY WALTER/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.

Robert Ward ("Ward"), on behalf of Ward Legal, Inc., ("Applicant"), special counsel for the Debtor In Possession ("DIP") for Madera Community Hospital ("MCH"), Debtor in the above-styled Chapter 11 case, comes before the court on Applicant's First Application for Fees And Expenses Pursuant to 11 U.S.C. § 329. Doc. #827. The Application requests attorney fees in the amount of \$7,880.00 and no expenses for a total application of \$7,880.00. *Id.*

In his Declaration, Ward avers he performed services for the DIP and MCH including "assisting the Debtor with matters relating to corporate procedural guidance, business transaction advice, and conflict of interest issues." Doc. #831. It appears that no prepetition retainer was given. Ward also submitted exhibits in the form of itemized time entries and a Declaration by the DIP indicating that she approved of Application. Doc. ##829, 830.

No party in interest timely filed written opposition. For the reasons outlined below, this Application is GRANTED.

This Application was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1), pursuant to which the failure of the creditors, the chapter 13 trustee, 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 may be unnecessary in the absence of opposition. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." 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, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

The services provided by the Applicant described above and the expenses incurred were fully detailed in the exhibits accompanying the Application and have been reviewed by the court, which finds them to be reasonable, actual, and necessary. Accordingly, this motion will be GRANTED on an interim basis. Applicant will be awarded \$7,880.00 in attorney's fees and \$0.00 in expenses, for a total award of \$7,880.00 to be paid by the Debtor.

13. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-67](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
9-8-2023 [\[934\]](#)

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

14. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-18](#)

CONTINUED SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF
TULARE HOSPITALIST GROUP, CLAIM NUMBER 231
1-8-2020 [[1784](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
CONTINUED TO 11/30/23 PER ORDER NO. 2608

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

DISPOSITION: Continued to November 30, 2023.

ORDER: The court will enter the order.

15. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-19](#)

CONTINUED SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF
GUPTA-KUMAR MEDICAL PRACTICE, CLAIM NUMBER 232
1-8-2020 [[1789](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
CONTINUED TO 11/30/23 PER ORDER NO. 2609

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

DISPOSITION: Continued to November 30, 2023.

ORDER: The court will enter the order.

16. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-25](#)

CONTINUED SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF
INPATIENT HOSPITAL GROUP, INC., CLAIM NUMBER 230
1-10-2020 [[1834](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
CONTINUED TO 11/30/23 PER ORDER NO. 2610

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

DISPOSITION: Continued to November 30, 2023.

ORDER: The court will enter the order.

11:00 AM

1. [23-11516](#)-B-7 **IN RE: WADE/LORRIE REIBOLDT**

REAFFIRMATION AGREEMENT WITH SNAP-ON CREDIT
8-29-2023 [[16](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

NO RULING

2. [23-11516](#)-B-7 **IN RE: WADE/LORRIE REIBOLDT**

REAFFIRMATION AGREEMENT WITH BMO HARRIS BANK N.A.
8-29-2023 [[18](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

NO RULING

3. [23-11189](#)-B-7 **IN RE: CORINA JOSEPHSON**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
8-21-2023 [[14](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

NO RULING

1:30 PM

1. [23-11608](#)-B-7 **IN RE: ASHAM GILL**
[CAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-23-2023 [\[13\]](#)

BMW BANK OF NORTH AMERICA/MV
PETER BUNTING/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.
RESPONSIVE PLEADING

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.

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 2109 BMW X7 ("Vehicle"). Doc. #13. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). Id.

On September 11, 2023, Asham Gill ("Debtor") filed a response indicating his non-opposition to the motion. Doc. #21. Debtor's Statement of Intention indicates that the Vehicle would be surrendered. No other 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).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an 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 Debtor has failed to make at least three complete pre-petition payments and one post-petition payment. The Movant has produced evidence that debtor is delinquent at least \$5,584.78. Docs. ##15, 17.

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 debtor is in chapter 7. *Id.* The Vehicle is valued at \$43,272.00 and debtor owes \$63,240.34. Doc. #17.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) 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. According to the Debtor's Statement of Intention, the Vehicle will be surrendered.

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 post-petition payment to Movant and the Vehicle is a depreciating asset.

2. [23-11433](#)-B-7 **IN RE: COURTNEY ALVARADO**
[TLB-1](#)

MOTION TO DISMISS DUPLICATE CASE
8-30-2023 [\[12\]](#)

COURTNEY ALVARADO/MV
TRISTAN BROWN/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

ORDER: The court will issue an order.

Courtney Y. Alvarado ("Debtor") moves this court to dismiss this voluntary Chapter 7 case on the grounds that she had accidentally filed two identical voluntary Chapter 7 cases on July 1, 2023: case number 2023-11432 ("the Main Case") and case number 2023-11433 ("the Duplicate Case"). Doc. #12. Debtor avers and the docket reflects that the 341 meeting has already been conducted in the Main Case. *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.)

No party in interest filed an objection. Accordingly, this motion will be GRANTED.

3. [23-11038](#)-B-7 **IN RE: CLAUDIA ANDRADE**
[RS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-31-2023 [\[48\]](#)

COBRA 28 NO. 8 LP/MV
RICHARD STURDEVANT/ATTY. FOR MV.
COBRA 28 NO. 8 LP VS.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will enter the order.

Cobra 28 No. 8 ("Movant") moves this court for relief from the automatic stay to evict Claudia Andrade ("Debtor") from her residence at the property commonly known as 3708 Sue Lin Way, Bakersfield, California ("the Property") pursuant to a judgment of Unlawful Detainer obtained against Debtor in Real Property Case No. BCL-23-011164 ("the Unlawful Detainer Case") which was tried in the Kern County Superior Court on or about May 16, 2023. Doc. #48. The Debtor filed her bankruptcy petition that same day, though the record is unclear as to whether she did so before or after the trial. Doc. #1. Regardless, the judgment was clearly entered on June 13, 2023, well after the filing of the petition. Doc. #50 (*Judgement*). However, any issue about when the automatic stay came into effect relative to the judgment in the Unlawful Detainer Case is irrelevant for the reasons outlined below.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered

Electronic Filing System Users to document service using the *Official Certificate of Service Form*, EDC 007-005 ("Official Form").

Here, Movant did not use the official form. While the court might be more forgiving of this procedural deficiency if the Debtor had filed a response, she did not do so. Moreover, the Debtor in this bankruptcy is pro se. Consequently, the court will be less tolerant of procedural errors where proper noticing to a pro se debtor is concerned.

4. [23-11250](#)-B-7 **IN RE: CRYSTAL BALDERAMA**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-22-2023 [\[14\]](#)

WELLS FARGO BANK, N.A./MV
NEIL SCHWARTZ/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

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.

The movant, Wells Fargo Bank dba Wells Fargo Auto ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2016 Ford Fusion ("Vehicle"). Doc. #14.

Crystal Marie Balderama ("Debtor") did not file an opposition. Debtor's Statement of Intention indicated that the Vehicle would be surrendered. 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 debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo 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(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The Debtor's discharge was entered on September 12, 2023. Doc. #20. Therefore, the automatic stay terminated with respect to the Debtor on September 12, 2023. This motion will be DENIED AS MOOT IN PART as to the Debtor's interest and will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

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 an 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 with respect to the chapter 7 trustee because Debtor has failed to make two pre-petition payments of \$572.26 and two post-petition payments plus interest and costs of \$271.87 totaling \$1,416.39. Movant has produced evidence that Debtor owes \$13,164.60 to Movant. Docs. #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 this is a chapter 7 case. Movant values the Vehicle at \$58,000.00 and Debtor owes \$69,142.01, which leaves Movant under secured. Doc. #17

Accordingly, the motion will be GRANTED IN PART as to the trustee's interest pursuant to § 362(d)(1) and (d)(2) and DENIED AS MOOT IN PART as to the Debtor's interest under § 362(c)(2)(C).

5. [23-11756](#)-B-7 **IN RE: GEORGE DICOCHEA AND MARIAN COLLINS**
[EAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-24-2023 [\[23\]](#)

SIWELL INC./MV
CASSANDRA RICHEY/ATTY. FOR MV.
DISMISSED 8/29/23

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.

Siwell Inc. d/b/a Capital Mortgage of Texas ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(4) concerning real property located at 443 West 99th Street, Los Angeles, CA 90003 ("the Property"). Doc. #23. George Dicochea and Marian Collins ("the Debtors") filed their chapter 7 petition *pro se* on August 11, 2023. Doc. #1. They are repeat filers, having previously filed a case in the Northern District of California (Case No. 23-50610) on June 9, 2023, that was dismissed on Jun 26, 2023, for failure to file information. See *Docket Entry on August 14, 2023*. No schedules were ever filed before the instant case was dismissed on August 29, 2023, for failure to timely file documents. Doc. #30.

To the extent the Movant seeks relief under 11 U.S.C. § 362(d)(1), it is denied as moot due to the dismissal of the case. However, Movant also requests relief under § 362(d)(4) which, if granted by the court, would lift the stay as to the property in a manner binding on other courts for up to two years. 11 U.S.C. § 362(d)(4). Because the requested (d)(4) relief requires judicial findings and because it will potentially have a preclusive effect in future bankruptcy proceedings before sister courts, the court will address that issue on the merits.

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 amounts 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.

An order entered under § 362(d)(4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order.

To obtain relief under § 362(d)(4), Movant must show and the court must affirmatively find the following three elements: (1) the debtor's' bankruptcy filing must have been part of a scheme; (2) the object of the scheme must have been to delay, hinder, or defraud creditors, and (3) the scheme must have involved either the transfer of some interest in the real property without the secured creditor's consent or court approval, or multiple bankruptcy filings affecting the property. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (B.A.P. 9th Cir. 2012).

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). A § 362(d)(4)(A) scheme is an "intentional artful plot or plan to delay, hinder or defraud creditors." *Id.* It is not common to have direct evidence of an artful plot or plan to deceive others - the court must infer the existence and contents of a scheme from circumstantial evidence. *Id.* Movant must present evidence sufficient for the trier of fact to infer the existence and content of the scheme. *Id.*

According to the documents submitted by Movant as exhibits, the Property was previously owned solely by one Gonzalo Ciau Torres ("Torres"). Doc. #25. On July 3, 2023, on the eve of foreclosure proceedings, Torres filed a Chapter 13 petition in the Central District of California that was subsequently dismissed on August 11, 2023, for failure to appear at the 341 meeting of creditors. *Id.* On August 10, 2023, the day before dismissal of Torres' bankruptcy, Torres conveyed his fee simple interest in the Property to a joint tenancy held by himself and Debtor George Dicochea, who, along with his wife, filed the instant Chapter 7 case the next day. *Id.*

After review of the included evidence and in the absence of any response from Debtors, the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of all or part ownership of the subject real property without the consent of the secured creditor or court approval.

The Court having rendered findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, as incorporated by Federal Rule of Bankruptcy Procedure 7052:

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is vacated concerning real property located at 443 West 99th Street, Los Angeles, CA 90003; and

IT IS FURTHER ORDERED, pursuant to 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval; or multiple bankruptcy filing affecting such real property. The order shall be binding in any other case under Title 11 of the United States Code purporting to affect the real property described in the motion not later than two years after the date of entry of the order. A debtor in a subsequent case under Title 11 may move for relief from this order based on changed circumstances or for good cause shown after notice and a hearing.

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. 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.

6. [21-12473](#)-B-7 **IN RE: BLAIN FARMING CO., INC.**
[FW-16](#)

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION FOR
COMPENSATION FOR BERKSHIRE HATHAWAY HOMESERVICE CALIFORNIA
REALTY, BROKER(S)
8-31-2023 [\[254\]](#)

JAMES SALVEN/MV
RILEY WALTER/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed for higher and better
bids, only.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order
after hearing.

Chapter 7 trustee James Salven ("Trustee") seeks authorization to sell the estate's interest in real property commonly known as 1047 East Arlen Avenue, Visalia, California ("the Property") to Henry Gatewood ("Gatewood" or "the Proposed Buyer") for \$95,000.00 pursuant to 11 U.S.C. § 363, and subject to higher and better bids at the hearing. Doc. #254. Trustee also requests to pay a six percent (6%) commission to the real estate brokers, split evenly between the estate's broker and Proposed Buyer's broker. *Id.* Trustee further requests authorization to disburse the net proceeds from the sale pursuant to the approved stipulation with the bankruptcy estate of Atlas World Food & Ag., Inc. ("Atlas") *Id.*

No party in interest timely filed written opposition. This motion will be GRANTED, and the hearing will proceed for bid solicitations only.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(2) and (a)(6). 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). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. Upon default, 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). 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.

BACKGROUND

The debtor is Blair Farming Co., Inc. ("BFC") which filed this Chapter 7 case on October 22, 2021. Doc. #1. The Trustee was appointed as interim trustee that same day. Doc. #4. At the time of

filing, the Property was titled to Brody and Sheridyn Blain ("the Blains") by virtue of a prepetition transfer subsequently avoided by Trustee. Doc. #254. As a result, the Property reverted to ownership by BFC instead of the Blains, who are the owners of BFC. *Id.* On Jun 29, 2023, the court granted Trustee's Application to Employ Berkshire Hathaway HomeServices California Realty ("Berkshire Hathaway") as real estate broker to market and sell the property. *Id.*

On August 31, 2023, Trustee filed the instant motion to sell the Property. Doc. #254. Incorporated into the motion was an Application to authorize Berkshire Hathaway's commission which was to be split with buyer's broker. *Id.* The motion also asked that the Property be sold free and clear of any lien or interest claimed by (a) Citizens Business Bank, (b) the State of California, (c) Mechanics Bank, and (d) the bankruptcy estate of Atlas World Food & Ag., Inc. *Id.* Finally, the motion asked for authorization to disburse the net proceeds from the sale to Atlas. *Id.*

Trustee has secured an offer from and executed a Purchase Agreement with Gatewood to sell Property to Gatewood for \$95,000.00, and now requests approval under 11 U.S.C. § 363(b) to complete the sale. *Id.*

DISCUSSION

Sale of Property

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 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 v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer, 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). There is nothing in the record suggesting that Proposed Buyer is an insider with respect to Debtor. Proposed Buyer is neither listed in the schedules nor the master address list. Docs. #1; #3.

The Property was not originally listed in BFC's *Schedule A/B*, as it had been transferred prepetition to the Blains. See *Salven v. Blain et al*, 22-01014 ("the Adversary"), Doc. #1. On August 10, 2022, Trustee filed the Adversary against the Blains, arguing that the conveyance was subject to avoidance. *Id.* On June 8, 2023, a stipulated judgment was entered that determined the ownership of the Property and avoided the transfer. Adversary Doc. #34. On August 31, 2023, Trustee filed the instant motion to sell the Property for \$95,000.00 pursuant to a contract ("Purchase Agreement") with Proposed Buyer to sell Property for \$95,000.00, subject to a number of relevant terms and conditions: The sale is as-is where-is with limited disclosures, and seller will not supply any environmental survey, government point of sale requirements, or maintain the property or remove any remaining debris. *Id.*

Trustee included a copy of the preliminary title report as an exhibit, which is incorporated by reference in his declaration. See Doc. #259. Property is subject to multiple liens which Trustee proposes to pay through escrow: (a) taxes currently owed or in default, (b) a lien for abatement services in favor of the City of Visalia Fire Department, (c) a notice of pendency of action recorded by Trustee in seeking to recover the Property on behalf of the estate, (d) an entitlement of the Blains to payment of \$2,000.00 out of the escrow from the sale. Doc. #254, Doc. #259 (Exhibit C). Trustee seeks approval to sell the Property free and clear of all other interests, including: (a) two writs of attachment recorded by Citizens Business Bank which are disputed, (b) a potential tax claim in the amount of \$306,661.55 owed to the State of California, which is disputed, (c) an abstract of judgment recorded by Mechanics Bank which is disputed, and (d) a claim of beneficial ownership of the property by the bankruptcy estate of Atlas, which consents to the sale. Doc. #254.

If sold at the proposed sale price, the proceeds from the proposed sale could be illustrated as follows:

Sale price		\$95,000.00
Estimated Taxes	-	\$131.02
Estimated Abatement Services Lien Payoff	-	\$271.95
Estimated costs of sale	-	\$1,900.00
Estimated broker fee (5%)	-	\$5,700.00
Settlement Amt to the Blains	-	\$2,000.00
Net to be distributed per Stipulation with Atlas	=	\$84,997.03

Doc. #254.

The sale under these circumstances should maximize potential recovery for the estate. The sale of the Property appears to be in the best interests of the estate because it will pay off the debt owed to Atlas pursuant to the Stipulation with that entity. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

The sale will be approved with the net proceeds to be held in a blocked account and not distributed absent a court order and after the disputed interests are resolved.

Real Estate Brokers' Compensation

This motion affects the proposed disposition of estate assets and the Broker. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion to add Broker as a party.

LBR 9014-1(d) (5) (B) (ii) permits joinder of claims for authorization for the sale of real property and allowance of fees and expenses for such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rule 6004.

On August 31, 2023, as part of the Motion to Sell Free and Clear, Trustee moved to employ Broker to assist the trustee in carrying out the trustee's duties by selling property of the estate. Doc. #254. The court authorized Broker's employment on June 9, 2023, under 11 U.S.C. §§ 327 and 328. Doc. #243.

Pursuant to the employment order, Trustee requests to compensate Broker with a commission of 6%, which will be split equally between Broker and the buyer's real estate broker. Doc. #254. Broker and the buyers' broker would each receive 3% commission, or \$2,850.00 each, if there are no overbidders and Property is sold at the proposed sale price. The court will authorize Trustee to pay broker commissions as prayed.

Overbid Procedure

Any party wishing to overbid shall, prior to the hearing, comply with the following overbid procedures:

1. Deposit with counsel for Trustee certified monies in the amount of \$5,000.00 prior to the time of the sale motion hearing. Any unsuccessful bidder's deposit shall be returned at the conclusion of the hearing.
2. Provide proof in the form of a letter of credit, or some other written pre-qualification for any financing that may be required to complete the purchase of the Property sufficient to cover the necessary overbid amount.
3. Provide proof that any successful overbidder can and will close the sale within 15 days of delivery of a certified copy of the court's order approving the sale and execute a Purchase Agreement for the Property.
4. Any successful overbid shall have the \$5,000.00 deposit applied to the successful overbid price.
5. In the event a successful overbidder fails to close the sale within 15 days of delivery of a certified copy of the court's order approving the sale and execute a Purchase Agreement for the Property, the \$5,000.00 deposit shall become non-refundable, and the next highest bidder shall become the buyer.

6. Any party wishing to overbid may do so by making an appearance at the hearing or having an authorized representative with written proof of authority to bid on behalf of the prospective overbidder.
7. All overbids shall be in the minimum amount of \$1,000.00 such that the first of any overbid shall be in the minimum amount of \$96,000.00.
8. The sale is as-is where-is with limited disclosures, and seller will not supply any environmental survey, government point of sale requirements, or maintain the property or remove any remaining debris.

Waiver of 14-day Stay

Trustee does not request waiver of the 14-day stay of Rule 6004(h).

Conclusion

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be authorized: (1) to sell the Property to the prevailing bidder at the hearing, as determined at the hearing; (2) to execute all documents necessary to effectuate the sale of the Property; (3) to pay broker commission in the amount of 6% of the total sale price to be split evenly between Broker and the buyer's broker, as determined at the hearing; and (4) to pay all costs, commissions, and real property taxes directly from escrow.

Remaining proceeds are to be held in a blocked account and not distributed absent a court order and after the disputed interests are resolved.

7. [18-10475](#)-B-7 **IN RE: GREGORY/DEBORAH SMITH**
[LNH-6](#)

MOTION FOR COMPENSATION FOR LISA HOLDER, TRUSTEES
ATTORNEY(S)
9-7-2023 [[119](#)]

PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: GRANTED

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

Lisa Noxon Holder ("Applicant"), general counsel for James E. Salven, trustee ("Trustee") of the Chapter 7 case filed by Gregory Howard Smith and Deborah Cherie Smith ("Debtors"), comes before the court on Applicant's First and Final Application for Fees And Expenses Pursuant to 11 U.S.C. § 330. Doc. #119. The Application requests attorney fees in the amount of \$6,600.00 and expenses in the amount of \$130.00 (both fees and expenses are discounted from the fees and costs documented in the Application) for a total

application of \$6,730.00. *Id.* Applicant brings this request pursuant to LBR 2016-1, 11 U.S.C. § 329 and 330, and Fed. R. Bankr. P, 2002, 2006, and 2017.

This is the First and Final Application brought by this Applicant, and it covers services rendered and actual, necessary expenses incurred from July 20, 2028, through August 23, 2023. Doc. #119. Included with the Application is a document signed by the Trustee reflecting his opinion that the fees and expenses are reasonable and that he does not object to the Application. Doc. #121. The Trustee further declares that the estate has \$180,000.00 on hand, which is more than adequate to pay Applicant's fees and expenses upon approval by the court. *Id.*

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was filed and served 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.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." 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, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Exhibits accompanying the Application include billing statements from Applicant in chronological order, along with a task code summary, and an expense detail. Doc. #123. The services provided by the Applicant described above and the expenses incurred were fully detailed in the exhibits accompanying the Application and have been reviewed by the court, which finds them to be reasonable, actual, and necessary. Accordingly, this motion will be GRANTED. Applicant will be awarded \$6,600.00 in attorney's fees and \$130.00 in expenses, for a total award of \$6,730.00. The Trustee is authorized to pay the allowed fees and expenses as an administrative expense out of the estate funds on hand.

8. [23-10487](#)-B-7 **IN RE: CHERYLANNE FARLEY**
[CJK-1](#)

AMENDED CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
7-17-2023 [\[41\]](#)

LAKEVIEW LOAN SERVICING,
LLC/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.

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

DISPOSITION: Continued to October 25, 2023.

ORDER: The court will issue the order.

Lakeview Loan Servicing, LLC ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and termination of the co-debtor stay of § 1301 with respect to 605 Winchester Street, Bakersfield, California 93309 ("Property"). Doc. #41. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). *Id.* Cherylanne Lee Farley ("Debtor") did not file any response to the motion, nor did any party in interest timely filed written opposition.

However, during the pendency of the motion, Debtor converted this case from one under Chapter 13 to one under Chapter 7, and it appears that at no point was the Chapter 7 Trustee served with notice of the instant motion. For that reason, the court will CONTINUE this matter to October 25, 2023, at 1:30 p.m. At least 14 days prior to that date, the Movant shall serve the Chapter 7 Trustee with proper notice of this motion and file a Certificate of service with the court evincing same.

9. [22-10698](#)-B-7 **IN RE: AGRIGENIX LLC**
[DMG-3](#)

MOTION FOR COMPENSATION FOR D. MAX GARDNER, TRUSTEES
ATTORNEY(S)
8-22-2023 [\[53\]](#)

STEPHEN LABIAK/ATTY. FOR DBT.
D. GARDNER/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.

D. Max Gardner ("Applicant"), general counsel for Irma Edmonds, trustee ("Trustee") of the Chapter 7 case filed by Agrigenix LLC ("Debtor"), comes before the court on Applicant's First and Final Application for Fees And Expenses Pursuant to 11 U.S.C. § 330. Doc. #53. The Application requests attorney fees in the amount of \$3,696.00 and expenses in the amount of \$134.40 for a total application of \$3,839.40. *Id.* Applicant brings this request pursuant to LBR 2016-1, 11 U.S.C. § 329 and 330, and Fed. R. Bankr. P., 2002, 2006, and 2017.

This is the First and Final Application brought by this Applicant, and it covers services rendered and actual, necessary expenses incurred from June 21, 2022, through August 21, 2023. Doc. #53. Included with the Application is a Consent form signed by the Trustee. Doc. #58. Applicant has also included a Declaration outline the nature of the work performed during his retention, which included providing counsel to the Trustee as to the administration of the case, including the resolution of Debtor's litigation claims against an entity known as Deerpoint Group, Inc. Doc. #55. *See also* Doc. #52 (*Order on Motion Approve Settlement*) and Doc. #53 (*Order on Motion to Sell*).

No party in interest timely filed written opposition. For the reasons outlined below, this Application is GRANTED.

This Application was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1), pursuant to which the failure of the creditors, the chapter 13 trustee, 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 may be unnecessary in the absence of opposition. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

As noted, no responses to the Application were filed, and so the defaults of the above-mentioned parties in interest are entered and the matter may be resolved without oral argument. Upon default, 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). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." 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, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

The Application is accompanied by an Exhibit containing Applicant's Billing Statement. Doc. #56. The services provided by the Applicant described above and the expenses incurred were fully detailed in the

exhibits accompanying the Application and have been reviewed by the court, which finds them to be reasonable, actual, and necessary. Accordingly, this motion will be GRANTED. Applicant will be awarded \$3,696.00 and expenses in the amount of \$134.40 for a total application of \$3,839.40. The Trustee is authorized to pay the allowed fees and expenses as an administrative expense out of the estate funds on hand.