



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

Hearing Date: Tuesday, October 31, 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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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. [23-12041](#)-B-11 **IN RE: BALJINDER/RITU SINGH**
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY
PETITION
9-13-2023 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

2. [23-12041](#)-B-11 **IN RE: BALJINDER/RITU SINGH**
[LKW-3](#)

MOTION FOR ORDER AUTHORIZING ASSUMPTION OF UNEXPIRED REAL
PROPERTY LEASE
9-26-2023 [[31](#)]

RITU SINGH/MV
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall prepare the Order.

Debtors Baljinder and Ritu Singh ("Debtors") in this Chapter 11, Subchapter V case move for an order authorizing Debtors to assume an unexpired lease agreement (The Lease") with the following relevant terms:

Lessors:	Sergio Andrade, Patricia Andrade, Jose Medina, and Carmen Medina
Description of lease property:	16 acres of farmland located at 31355 Cottonwood Road, Gustine, CA ("the Property").
Terms:	20-year lease beginning on January 1, 2016, and ending on December 31, 2035. \$6,750.00 per year for years 4-20 of the Lease.
Beginning Date:	January 1, 2016

Doc. #31.

This motion was brought pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014. The motion was supported by an exhibit in the form of a copy of the Lease and a declaration by Baljinder Singh. Doc. ##33, 34.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest has responded to the motion, and the defaults of those parties will be entered.

Debtors filed their chapter 11 (Subchapter V) bankruptcy on September 13, 2023. Doc. #1. Prior to filing bankruptcy, Debtors and Lessors executed the Lease on January 31, 2016, though the commencement date was January 1, 2016. Doc. #31, 33. Baljinder Singh declares that he and his wife use the Property for farming operations, and they desire to continue doing so. Doc. #34. Singh further declares that the Lease is not in default and that it would be neither economical nor advisable to reject the Lease. *Id.*

11 U.S.C. § 1107 gives a chapter 11 debtor in possession all rights and powers of a trustee, other than the right to compensation under § 330, and requires the debtor in possession to perform all the functions and duties of a trustee, except those specified in § 1106(a)(2), (3), and (4).

11 U.S.C. § 365(a) allows a trustee [or debtor in possession] to assume or reject an executory contract or unexpired lease of the debtor. The Code further provides that an unexpired lease of nonresidential real property will be deemed rejected in a Chapter 11 case if the trustee or DIP does not assume or reject by the earlier of (1) 120 days after the date of the Order for Relief or (b) the date of an entry of an order confirming the Chapter 11 Plan. 11 U.S.C. § 365(d)(4). The instant Motion was filed within those proscribed time limits.

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

Here, assumption of the Lease appears to be a reasonable exercise of Debtor's business judgment because Debtors have been using the

Property for their farming operations since 2016 and are entitled (assuming there is no default) to continue doing so through 2035. The Lease is not in default, and the Debtors state that the terms are reasonable and comparable to similar properties. Rejecting the lease will necessitate Debtors finding new farmland and relocating their operations.

Accordingly, this motion shall be GRANTED.

3. [23-12041](#)-B-11 **IN RE: BALJINDER/RITU SINGH**
[LKW-4](#)

MOTION FOR ORDER AUTHORIZING ASSUMPTION OF UNEXPIRED REAL
PROPERTY LEASE
9-26-2023 [\[36\]](#)

RITU SINGH/MV
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall prepare the Order.

Debtors Baljinder and Ritu Singh ("Debtors") in this Chapter 11, Subchapter V case move for an order authorizing Debtors to assume an unexpired lease agreement ("the Lease") with the following relevant terms:

Lessors:	William Leiker ("Lessor")
Description of lease property:	59.56 acres of farmland located along Cottonwood Road, Gustine, CA
Terms:	21-year lease beginning on January 1, 2019, and ending on December 31, 2039. \$35,000.00 per year for years 5-21 of the Lease.
Beginning Date:	January 1, 2019

Doc. #36.

This motion was brought pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014. The motion was supported by an exhibit in the form of a copy of the Lease and a declaration by Baljinder Singh. Doc. ##38,39.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*,

46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest has responded to the motion, and the defaults of those parties will be entered.

Debtors filed their chapter 11 (Subchapter V) bankruptcy on September 13, 2023. Doc. #1. Prior to filing bankruptcy, Debtors and Lessor executed the Lease on February 27, 2018, though the commencement date was January 1, 2019. Doc. ##36, 38. Baljinder Singh declares that he and his wife use the Property for farming operations, and they desire to continue doing so. Doc. #39. Singh further declares that the Lease is not in default and that it would be neither economical nor advisable to reject the Lease. *Id.*

11 U.S.C. § 1107 gives a chapter 11 debtor in possession all rights and powers of a trustee, other than the right to compensation under § 330, and requires the debtor in possession to perform all the functions and duties of a trustee, except those specified in § 1106(a)(2), (3), and (4).

11 U.S.C. § 365(a) allows a trustee [or debtor in possession] to assume or reject an executory contract or unexpired lease of the debtor. The Code further provides that an unexpired lease of nonresidential real property will be deemed rejected in a Chapter 11 case if the trustee or DIP does not assume or reject by the earlier of (1) 120 days after the date of the Order for Relief or (b) the date of an entry of an order confirming the Chapter 11 Plan. 11 U.S.C. § 365(d)(4). The instant Motion was filed within those proscribed time limits.

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

Here, assumption of the Lease appears to be a reasonable exercise of Debtor's business judgment because Debtors have been using the Property for their farming operations since 2019 and are entitled (assuming there is no default) to continue doing so through 2039. The Lease is not in default, and the Debtors state that the terms are reasonable and comparable to similar properties. Rejecting the lease will necessitate Debtors finding new farmland and relocating their operations.

Accordingly, this motion shall be GRANTED.

4. [23-12041](#)-B-11 **IN RE: BALJINDER/RITU SINGH**
[LKW-5](#)

MOTION FOR ORDER AUTHORIZING ASSUMPTION OF UNEXPIRED REAL
PROPERTY LEASE
9-26-2023 [\[41\]](#)

RITU SINGH/MV
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall prepare the Order.

Debtors Baljinder and Ritu Singh ("Debtors") in this Chapter 11, Subchapter V case move for an order authorizing Debtors to assume an unexpired lease agreement (The Lease") with the following relevant terms:

Lessors:	Alan Tang and Kanokwan Kittijaru Wong as Co-Trustees of the Tang Family Revocable Trust Dated March 25, 2015 ("Lessor")
Description of lease property:	45.33 acres of farmland located a 31485 Cottonwood Road, Gustine, CA
Terms:	20-year lease beginning on June 1, 2017, and ending on May 31, 2018. \$34,000.00 per year for 2023-2029 and \$16,000.00 per year for 2030-2036.
Beginning Date:	June 1, 2017

Doc. #41.

This motion was brought pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014. The motion was supported by an exhibit in the form of a copy of the Lease and a declaration by Baljinder Singh. Doc. ##43,44.

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

relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest has responded to the motion, and the defaults of those parties will be entered.

Debtors filed their chapter 11 (Subchapter V) bankruptcy on September 13, 2023. Doc. #1. Prior to filing bankruptcy, Debtors and Lessors executed the Lease on August 30, 2017, though the commencement date was June 1, 2016. Doc. ##41,44. Baljinder Singh declares that he and his wife use the Property for farming operations, and they desire to continue doing so. Doc. #44. Singh further declares that the Lease is not in default and that it would be neither economical nor advisable to reject the Lease. *Id.*

11 U.S.C. § 1107 gives a chapter 11 debtor in possession all rights and powers of a trustee, other than the right to compensation under § 330, and requires the debtor in possession to perform all the functions and duties of a trustee, except those specified in § 1106(a)(2), (3), and (4).

11 U.S.C. § 365(a) allows a trustee [or debtor in possession] to assume or reject an executory contract or unexpired lease of the debtor. The Code further provides that an unexpired lease of nonresidential real property will be deemed rejected in a Chapter 11 case if the trustee or DIP does not assume or reject by the earlier of (1) 120 days after the date of the Order for Relief or (b) the date of an entry of an order confirming the Chapter 11 Plan. 11 U.S.C. § 365(d)(4). The instant Motion was filed within those proscribed time limits.

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

Here, assumption of the Lease appears to be a reasonable exercise of Debtor's business judgment because Debtors have been using the Property for their farming operations since 2017 and are entitled (assuming there is no default) to continue doing so through 2036. The Lease is not in default, and the Debtors state that the terms are reasonable and comparable to similar properties. Rejecting the lease will necessitate Debtors finding new farmland and relocating their operations.

Accordingly, this motion shall be GRANTED.

5. [23-12041](#)-B-11 **IN RE: BALJINDER/RITU SINGH**
[LKW-6](#)

MOTION FOR ORDER AUTHORIZING ASSUMPTION OF UNEXPIRED REAL
PROPERTY LEASE
9-26-2023 [\[46\]](#)

RITU SINGH/MV
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall prepare the Order.

Debtors Baljinder and Ritu Singh ("Debtors") in this Chapter 11, Subchapter V case move for an order authorizing Debtors to assume an unexpired lease agreement (The Lease") with the following relevant terms:

Lessors:	Gonzalo Sotelo ("Lessor")
Description of lease property:	38 acres of farmland located a 31005 Cottonwood Road, Gustine, CA
Terms:	20-year lease beginning on January 1, 2016, and ending on December 31, 2035. \$14,445 per year for years 4-20.
Beginning Date:	January 1, 2016

Doc. #48.

This motion was brought pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014. The motion was supported by an exhibit in the form of a copy of the Lease and a declaration by Baljinder Singh. Doc. ##43,44.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest has responded to the motion, and the defaults of those parties will be entered.

Debtors filed their chapter 11 (Subchapter V) bankruptcy on September 13, 2023. Doc. #1. Prior to filing bankruptcy, Debtors and Lessors executed the Lease on March 12, 2016, though the commencement date was January 1, 2016. Doc. ##8, 49. Baljinder Singh declares that he and his wife use the Property for farming operations, and they desire to continue doing so. Doc. #49. Singh further declares that the Lease is not in default and that it would be neither economical nor advisable to reject the Lease. *Id.*

11 U.S.C. § 1107 gives a chapter 11 debtor in possession all rights and powers of a trustee, other than the right to compensation under § 330, and requires the debtor in possession to perform all the functions and duties of a trustee, except those specified in § 1106(a)(2), (3), and (4).

11 U.S.C. § 365(a) allows a trustee [or debtor in possession] to assume or reject an executory contract or unexpired lease of the debtor. The Code further provides that an unexpired lease of nonresidential real property will be deemed rejected in a Chapter 11 case if the trustee or DIP does not assume or reject by the earlier of (1) 120 days after the date of the Order for Relief or (b) the date of an entry of an order confirming the Chapter 11 Plan. 11 U.S.C. § 365(d)(4). The instant Motion was filed within those proscribed time limits.

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

Here, assumption of the Lease appears to be a reasonable exercise of Debtor's business judgment because Debtors have been using the Property for their farming operations since 2016 and are entitled (assuming there is no default) to continue doing so through 2035. The Lease is not in default, and the Debtors state that the terms are reasonable and comparable to similar properties. Rejecting the lease will necessitate Debtors finding new farmland and relocating their operations.

Accordingly, this motion shall be GRANTED.

11:00 AM

1. [23-12037](#)-B-7 **IN RE: DANIEL REGALADO**

PRO SE REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
10-10-2023 [[18](#)]

NO RULING.

1:30 PM

1. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[CAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-22-2023 [\[1153\]](#)

ALLY BANK/MV
LEONARD WELSH/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.

Ally Bank ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2020 Freightliner PT126SLP Tractor ("Vehicle"). Doc. #1153. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). Id.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") filed a Notice of Abandonment on April 13, 2023, abandoning the estate's interest in all of Debtor's trucks and trailers. Doc. #1038. Freon Logistics ("Debtor") did not oppose.

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 two pre-petition payments and ten complete post-petition payments totaling \$43,031.03 plus \$400.00 in repossession charges and other charges in the amount of 4,784.24. The movant has produced evidence that debtor is delinquent at least \$48,215.27. Docs. ##1155, 1157.

The court declines finding that Debtor does not have any equity in the Property. Although this is a chapter 7 case and the Property is not necessary for an effective reorganization, the moving papers indicate that Debtor has approximately \$51,203.31 in equity. Doc. #1157, ¶ 5. Although costs of sale may entirely shrink that remaining equity, Movant has not established a basis for asserting "Other Fees." In the absence of those fees and after subtracting costs of sale, Debtor may have some equity in the Property. Regardless, relief under § 362(d)(2) is moot because there is "cause" to grant the motion under § 362(d)(1).

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) 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.

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

2. [23-11038](#)-B-7 **IN RE: CLAUDIA ANDRADE**
[RS-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-3-2023 [\[71\]](#)

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

TENTATIVE RULING: This hearing will proceed as schedule.

DISPOSITION: Grant

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

Cobra 28 No. 8 LP ("Movant") moves the court for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2) as it pertains to the real property commonly known as 3708 Sue Lin Way, Bakersfield, California 93309 ("the Property") which is presently occupied by Claudia Andrade, the debtor in this Chapter 7 proceeding ("Debtor").

Doc. #71. Debtor timely filed an opposition to which Movant replied.
Doc. ##79, 82.

The motion is ambiguous in that the prayer asks for relief under § 362 (d) (2) and the introduction asks for relief under §362 (d) (4). Since movant is not a creditor with a claim secured by real property, (d) (4) relief is unavailable. The court construes the motion as asking for relief under § 362 (d) (1) and (d) (2).

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.

As a preliminary matter, the Motion does not comply with the Local Rules. LBR 9004-2(c) (1) states that motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents. LBR 9004-2(c) (1). However, LBR 9014-1(d) (4) permits the motion and points and authorities to be filed as a single document provided they do not exceed six pages in length including the caption page. LBR 9014-1(d) (4).

Movant here filed both the *Motion* and the accompanying *Memorandum of Points and Authorities* as a single document. Doc. #71. The Movant also filed the *Declaration of Fredy Trujillo* and a list of *Exhibits* as a single document. Doc. #74. The combined motion and memorandum exceed the 6-page limit, but only by one line on page 7. Doc. #71. The combined Declaration and Exhibits are a more serious breach of the local rules.

That said, Movant filed an earlier iteration of this motion which was denied without prejudice for failure to comply with the Local Rules pertaining to Docket Control Numbers. In this instance, the court chooses to overlook the procedural deficiencies but encourages counsel for Movant to familiarize himself with the Local Bankruptcy Rules in the future, as future infractions may result in denial of the motion without hearing.

Turning to the substantive issues, for the reasons outlined below, the court is inclined to GRANT the motion lifting the automatic stay as to Debtor for cause.

BACKGROUND

The moving papers indicate the following facts which have not been rebutted by Debtor.

Movant acquired the Property on or about December 14, 2022, through foreclosure. Doc. #74. At that time and continuously since, Debtor and another individual named Alan L. Babb ("Babb") have occupied the Property as renters. *Id.* On March 2, 2023, Movant filed an unlawful detainer complaint against Debtor and Babb in the Kern County Superior Court (the "Unlawful Detainer Case"). *Id.* The Unlawful Detainer Case was tried on May 16, 2023, with both Debtor and Babb in attendance, and resulted in a ruling in favor of Movant. *Id.* The Judgment was not entered until June 13, 2023.

On May 16, 2023, the day of trial, Debtor filed this case originally as a Chapter 13. *Id.*; Doc. #1. There is no time-stamp on the petition, but the Notice of Bankruptcy Case Filing which was mailed to Debtor by Clerk of the Court Wayne Blackwelder and submitted as an exhibit accompanying Debtor's Reply indicates that the petition was filed on May 16, 2023, at 11:45 a.m., hours before the trial began. See Doc. #79, *Exh. 1*. Movant asserts that Debtor did not advise the Superior Court about the filing of the bankruptcy. Doc. #74. Movant did not learn of the bankruptcy and the associated automatic stay against enforcement of Movant's writ of possession until July 7, 2023, when the Kern County Sheriff's Office attempted to execute the writ of possession earlier that day. *Id.*

Debtor (who is *pro se*), for the most part, does not contradict any of these facts. Doc. #79. Rather, her Response is a two-paragraph document which simply avers that she lives at the Property, that she needs a place to live, and that her home is therefore necessary for an effective reorganization. *Id.* Debtor asserts without citation to any authority that, because the judgment in the Unlawful Detainer Case was entered after the filing date, it violated the automatic stay and should be vacated. *Id.* In her Declaration, Debtor does assert that "the court" (presumably referring to the Superior Court) denied her request to stay the Unlawful Detainer Case due to the bankruptcy, but she does not offer any documentary evidence supporting that assertion. *Id.* Debtor further argues that Movant's attempted eviction of her from the Property was also a violation of the automatic stay. *Id.* In conclusion, Debtor asks the court to deny the instant motion or, if the motion is granted, that the court not waive the 14-day period specified in FRBP 4001(a)(3). *Id.*

An interesting wrinkle in this case arises from the fact that Debtor's Exhibits include: (1) a copy of an Official Form 101A in which Debtor claims to have given the bankruptcy court clerk a deposit for the rent that would be due during the thirty days after the filing of the petition; (2) a copy of her Official Form 101B in which Debtor claims to have paid her landlord the entire amount owed as stated in the eviction judgment within thirty days of filing; and (3) a receipt for a money order made out to the bankruptcy court by Debtor in the amount of \$500.00, ostensibly for that purpose. Doc. #79. This is supported to some extent by an unnumbered docket entry dated August 11, 2023, reflecting that "[a]s per 11 U.S.C. Sec. 362(l)(1)(B), debtor deposited with the clerk any rent that would become due during the 30-day period after the filing of the petition." See *unnumbered Docket entry at 8/11/2023*. Notably, that date is nearly three months after the petition was filed and hence untimely.

The purported rent deposit is curious since the Trujillo declaration (Doc. #74) and the exhibits submitted by Movant show that rent was not at issue in the Unlawful Detainer Case. Movant purchased the property at foreclosure and sought possession as permitted under California law. Unpaid rent was not a ground for eviction.

The state court judgment included a *per diem* rental accrual but no lease or other facts suggesting the breach of a rental agreement was noted as a ground for the judgment.

DISCUSSION

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until the case is closed, dismissed, or discharge is granted or denied, whichever is earliest. None of those three has happened thus far, and so the automatic stay remains in effect.

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, as of the date Movant filed this motion, Debtor has occupied property purchased by Movant at a foreclosure sale ten (10) months ago. Debtor has occupied the property over eight (8) months since the Notice to Quit was served on Babb and "all occupants in possession." (Doc. # 74). There is no dispute that the Notice to Quit was received and indeed Debtor and Babb participated in the trial of the Unlawful Detainer Case. (Doc. # 74).

Additionally, the court finds that Debtor does not have any equity in the Property and is only in possession. The Property is not necessary to an effective reorganization because this is a chapter 7 case.

Though "cause" exists to prospectively lift the stay, Movant here seeks to retroactively annul the automatic stay effective as of the petition date.

The Ninth Circuit Court of Appeals has warned that retroactive relief should only be "applied in extreme circumstances." *In re Aheong*, 276 B.R. 233, 250 (B.A.P. 9th Cir. 2002) (citations omitted). When deciding a motion to annul the automatic stay, the court may consider the "*Fjeldsted*" factors:

1. Number of filings;

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

In re Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 24-25 (B.A.P. 9th Cir. 2003). One factor alone may be dispositive. *Id.*

An analysis of the *Fjeldsted* factors supports annulment of the stay for the reasons outlined below:

1. Number of filings: This appears to be Debtor's first bankruptcy filing in this district. But there is evidence that another occupant of the property, Babb filed a previous bankruptcy case which was dismissed. This fact slightly militates in favor of relief.

2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors: For the above reasons, this factor militates slightly in favor of relief.

3. Extent of prejudice to creditors or third parties if the stay relief is not made retroactive: Movant argues that because the Superior Court entered a judgment in Movant's favor, Movant is entitled as a matter of law to take possession of the Property, but for the automatic stay. Movant argues that Debtor has no legal authority to remain in possession of the Property, and that Movant will be prejudiced if the stay is not modified, and Movant is prevented from exercising its property rights.

The court agrees that Movant will be prejudiced if the stay is not made retroactive. Movant went through the legal steps to obtain possession of the property. Debtor waited until the day of trial to file this case and failed to advise the state court or Movant of the impending bankruptcy case. There is no evidence Debtor or Babb occupied the property under any authority binding on Movant. Without relief, Movant would need to start over since the judgment Movant has obtained would otherwise likely be rendered void because of the filing of this bankruptcy case.

4. Debtor's overall good faith (totality of the circumstances): Movant alleges that Debtor has not acted in good faith stating "[w]hile this is not a repeat filing, the Debtor originally filed this case as a Chapter 13 before converting to Chapter 7, thus making clear that she is not seeking a reorganization." Combined with the fact that Debtor has no interest in the Property, Movant argues that this is evidence of a lack of good faith. Movant also complains of Debtor's alleged failure to inform Movant or the Superior Court of the bankruptcy filing, but there appears to be a factual dispute as to that. The court agrees that the Debtor's conduct during this bankruptcy proceeding is suggestive of a bad faith filing made solely to prevent eviction from the Property.

Independently this is the second bankruptcy filing affecting this property. Thus, this factor slightly favors annulment.

5. Whether creditors knew of the stay but nonetheless took action, thus compounding the problem: Movant maintains that it did not know of the bankruptcy until the Sheriff attempted to serve the eviction notice on Debtor. Movant avers that it took no further actions against Debtor since learning of the filing before filing the instant motion to annul the stay. Since Movant has not taken any subsequent actions to compound any stay violations, this factor supports annulment.

6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules: While the court is cognizant of the fact that this is a pro se Debtor and that some latitude is required vis a vis her compliance with the Code, the record reflects that this case was filed on May 16, 2023. Doc. #1. The Chapter 13 Trustee filed a motion to dismiss on June 28, 2023, due to Debtor's failure to attend the § 341 meeting of creditors. Doc. #23. A hearing on that motion was set for August 9, 2023, but on August 2, 2023, Debtor converted to Chapter 7, and that motion to dismiss was denied as moot. Doc. #35. Then, on September 29, 2023, *the Chapter 7 Trustee* filed a motion to dismiss, also for failure to attend the § 341 meeting of creditors. Doc. #62. That motion is still pending. The timing of the conversion combined with the two missed § 341 meetings evidences a failure to comply with the Code and the Rules and is suggestive of a desire to use this bankruptcy merely to frustrate creditors, specifically Movant. This factor weighs in favor of annulment.

7. The relative ease of restoring parties to the status quo ante: The parties appear to presently be at the *status quo ante*. Movant successfully prosecuted the Unlawful Detainer Action and obtained a

favorable judgment. Annulment of the stay would simply allow Movant to lawfully possess its property, which, as the court has already noted, is not necessary to the Debtor's reorganization because this is no longer a reorganization case. This factor supports annulment.

8. The costs of annulment to the debtor and creditors: Movant argues that there are no costs to annulment for Debtor because Debtor has no right to the Property which she has unlawfully detained. Furthermore, Movant has already expended thousands of dollars in this matter, and declining to annul will add further costs and delay.

Debtor will be faced with moving costs. But practically, Debtor has had 10 months (eight months since the Notice to Quit) to arrange to move. This factor supports annulment.

9. How quickly creditors moved for annulment, or how quickly the debtor moved to set aside the sale or contract: The petition was filed on May 16, 2023. Doc. #1. Movant avers that it did not learn of the bankruptcy until July 7, 2023, and Debtor has not provided persuasive evidence to the contrary. Doc. #71. The instant motion was filed on October 3, 2023, less than five months after the petition was filed and less than three months after the Movant learned of the bankruptcy. Movant's delay in filing the motion can be explained by Debtor's failure to timely notify Movant of the bankruptcy. There was also a previous motion that was denied for procedural reasons. This factor supports annulment.

10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved to expeditious gain relief: After learning of the bankruptcy, Movant does not appear to have taken any steps in continued violation of the stay and expeditiously filed this motion for annulment. This factor supports annulment.

11. Whether annulment of the stay will cause irreparable injury to the debtor: Movant argues that annulment of the stay will not cause irreparable injury to the Debtor because she is currently occupying Property unlawfully. As mentioned above, Debtor knew she was going to need to move for many months. Debtor has had opportunity to minimize any prejudice she may face. This factor supports annulment.

12. Whether stay relief will promote judicial economy or other efficiencies: The interests of judicial economy and efficiency are served by annulling the automatic stay because if the stay is not annulled, Movant will have to spend additional time and effort first filing a motion to lift the stay for cause (which, based on the facts presented thus far, the court is inclined to grant) and then pursue another unlawful detainer case even though one trial has already been conducted and a judgment entered. This factor supports annulling the stay.

In sum, the *Fjeldsted* factors support annulling the automatic stay because Movant did not timely receive notice of the bankruptcy. Upon receiving notice, Movant promptly filed this motion. Meanwhile, Debtor did not promptly notify all parties in interest of this

bankruptcy. Debtor has no property interest in the Property, which is not necessary for an effective reorganization in this Chapter 7 case.

CONCLUSION

For the reasons stated above, the court finds that "cause" exists to grant relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) because Debtor has no legal interest in the Property, which she has occupied unlawfully since at least December 14, 2022.

Further, the motion will be retroactively GRANTED as to Debtor, the chapter 7 trustee, and the estate because the *Fjeldsted* factors support annulment. The automatic stay will be annulled as to Movant as of the petition date, May 16, 2023.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has had many months to make moving arrangements.

If there is any rental deposit remaining with the Clerk of the Court from Debtor, that deposit can be released to the Debtor.

3. [23-12142](#)-B-7 **IN RE: DOMINGO PLASENCIA AND BLANCA NAJERA LOPEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-10-2023 [\[12\]](#)

GRISELDA TORRES/ATTY. FOR DBT.
\$338.00 FILING FEE PAID 10/10/23

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the \$338.00 filing fee was paid on October 20, 2023. Accordingly, this order to show cause will be VACATED.

4. [23-11469](#)-B-7 **IN RE: EDWIN PORTILLO**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-26-2023 [\[17\]](#)

TOYOTA MOTOR CREDIT
CORPORATION/MV
TRAVIS POTEAT/ATTY. FOR DBT.
KIRSTEN MARTINEZ/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.

Toyota Motor Credit ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2022 Toyota Camry ("Vehicle"). Doc. #17.

Edwin Portillo ("Debtor") filed no opposition. 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 three pre-

petition and two post-petition payments. The Movant has produced evidence that debtor is delinquent at least \$2,911.65 (\$582.33 x 5). Doc. #21.

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. The Vehicle is valued at \$30,100.00 and debtor owes \$33,792.43. Doc. #19. Debtor has failed to maintain insurance coverage, and the Vehicle is a depreciating asset.

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.