



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Wednesday, November 2, 2022
Department B – 510 19th Street
Bakersfield, California**

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be as instructed below.

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) via **ZOOMGOV VIDEO**, (2) via **ZOOMGOV TELEPHONE**, and (3) 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.

9:00 AM

1. [22-11533](#)-B-13 **IN RE: ALEXANDER GUZZARDO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-6-2022 [[30](#)]

PATRICK KAVANAGH/ATTY. FOR DBT.
\$156.00 INSTALLMENT PAYMENT ON 10/6/22

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 installment fees now due have been paid.

The order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

2. [22-11551](#)-B-13 **IN RE: JASMINE SIMPSON**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-27-2022 [[14](#)]

MICHAEL MEYER/MV
DANIEL KING/ATTY. FOR DBT.

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Jasmine Genyea Simpson's ("Debtor") claim of exemptions under New York law. Doc. #14. According to the petition, Debtor currently lives in Bakersfield, California, but previously resided in Winston-Salem, North Carolina from April 2020 to April 2022. Doc. #1. Since Debtor has not resided in a single state during the 730 days prior to filing the petition, Trustee argues that 11 U.S.C. § 522(b)(3) requires the court to examine Debtor's domicile during the 180 days prior to 730 days before the petition date. Doc. #14.

Debtor did not file opposition. On October 17, 2022, Debtor filed an *Amended Schedule C*, which changed the claim of exemptions to those under North Carolina law. Doc. #22. The Debtor's *Statement of Financial Affairs* confirms her residence in North Carolina during the 180 days preceding the 730 days preceding the petition date. Doc. #1. That amendment moots Trustee's objection.

Accordingly, Trustee's objection will be OVERRULED AS MOOT due to Debtor's *Amended Schedule C*.

3. [19-10980](#)-B-13 **IN RE: GARY OCHOA**
[RSW-1](#)

MOTION TO MODIFY PLAN
9-15-2022 [[22](#)]

GARY OCHOA/MV
WILLIAM OLCOTT/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.

Gary Lonnie Ochoa ("Debtor") moves for an order confirming the *First Modified Chapter 13 Plan* dated September 15, 2022. Doc. #22. The 60-month plan proposes that Debtor shall pay \$11,275.00 in plan payments through August 2022, and beginning September 2022, the monthly plan payment is \$216.00 with a 2% dividend to allowed, non-priority unsecured claims. Doc. #26. Debtor's *Amended Schedules I and J* indicate that Debtor receives \$216.00 in monthly net income. Doc. #30.

In contrast, the *Chapter 13 Plan* dated March 15, 2019, confirmed June 17, 2019, provides that Debtor will make 60 monthly payments of \$275.00 with a 2% dividend to allowed, non-priority unsecured claims. Docs. #2; #17. No party in interest timely filed written opposition.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). 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 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 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.

This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

4. [22-11494](#)-B-13 **IN RE: JERRY GRIDER**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
10-3-2022 [[33](#)]

\$79.00 INSTALLMENT PAYMENT ON 10/6/22

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 installment fees now due have been paid.

The order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

5. [22-11494](#)-B-13 **IN RE: JERRY GRIDER**
[APN-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK
MELLON
9-20-2022 [[20](#)]

THE BANK OF NEW YORK MELLON/MV
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Overruled without prejudice to filing an amended objection within 7 days after the 341 Meeting is concluded and not further continued.

ORDER: The court will issue an order.

The Bank of New York Mellon f/k/a the Bank of New York, as Trustee for the Certificate Holders of CWALT, Inc., Alternative Loan Trust 2005-46CB, Mortgage Pass Through Certificates P, Series 2005-46CB, as serviced by NewRez, LLC, d/b/a Shellpoint Mortgage Servicing ("Creditor") objects to confirmation of the *Chapter 13 Plan* filed by Jerry K. Grider, Sr. ("Debtor"), on September 12, 2022. Doc. #20.

The notice of hearing for this objection does not comply with the Local Rules of Practice ("LBR"). Doc. #21. LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

Notably, Creditor's objections are that the Plan understates the arrearage and that the Plan would not fund if Creditor's actual claimed arrearage is allowed. Section 3.02 of the Plan provides the claim amount as stated on the proof of claim controls absent an objection. So, Creditor's timely filed proof of claim will control.

The feasibility issue cannot be determined anyway since the debtor did not appear at the first scheduled meeting of creditors. So, the Trustee cannot recommend confirmation. The re-scheduled creditor's meeting is November 29, 2022. Accordingly, this objection will be OVERRULED WITHOUT PREJUDICE to the filing of an amended objection within seven (7) days after the continued 341 Meeting of Creditors currently set for November 29, 2022 is concluded and not continued to a further date.

6. [22-11494](#)-B-13 **IN RE: JERRY GRIDER**
[MHM-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-27-2022 [[26](#)]

MICHAEL MEYER/MV

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

DISPOSITION: Sustained.

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

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to the claim of exemptions of Jerry K. Grider, Sr. ("Debtor"). Doc. #26. Debtor has exempted a vacant lot in the amount of \$75,000.00 under "11 U.S.C.522

of (B)(2)[,]" which is not a valid exemption code. Doc. #15. Further, pursuant to 11 U.S.C. § 522(b)(2) and Cal. Code Civ. Proc. ("CCP") § 703.130, California has opted out of the federal exemption scheme. Since Debtor's *Statement of Financial Affairs* indicates that he has not lived anywhere other than California in the last three years, Trustee contends that Debtor must elect to use California exemptions. Doc. #15, *Stmt. Fin. Affairs*, No. 2; 11 U.S.C. § 522(b)(3).

Debtor did not oppose.

This objection will be SUSTAINED. However, because Debtor is *pro se* and is not represented by counsel, this objection will be called and proceed as scheduled.

This objection 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 sustaining of the objection. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. 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 objecting party has done here.

Federal Rule of Bankruptcy Procedure 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 Meeting of Creditors is held or within 30 days after any amendment to *Schedule C* is filed, whichever is later. Here, the 341 Meeting was originally scheduled to occur on October 11, 2022 at 9:00 a.m. See docket generally. Debtor did not appear at the hearing, so the 341 Meeting was continued to November 29, 2022. *Id.*

The Eastern District of California Bankruptcy Court in *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [relevant California law] and the extent to which that exemption applies."

Trustee objects because Debtor attempted to claim an objection under 11 U.S.C. § 522(b)(2), but such objection is not applicable if "the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize." § 522(b)(2). Meanwhile, paragraph (b)(3)(A) limits property exemptions under federal, state, or local law as applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located for the 730 days

immediately preceding the petition date, unless Debtor's domicile has not been located in a single state. § 522(b)(3)(A).

Here, Debtor's *Statement of Financial Affairs* indicates that Debtor has lived in California during the three years preceding the petition date. Doc. #15, *Stmt. Fin. Affairs*, at No. 2. Under § 522(b)(2) and (b)(3), California is Debtor's domicile for the purposes of exemption claims.

California law provides, pursuant to 11 U.S.C. § 522(b)(2), that the exemptions set out in § 522(d) are not authorized in this state. CCP § 703.130.

Accordingly, the court intends to SUSTAIN this objection because Debtor has been domiciled in California for the 730 days prior to the petition date. Debtor will be required to file an *Amended Schedule C* if Debtor intends to claim exemptions.

10:00 AM

1. [22-11564](#)-B-7 **IN RE: TAYLOR LARSUEL**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-21-2022 [[10](#)]

CREDIT ACCEPTANCE
CORPORATION/MV
D. GARDNER/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

The movant, Credit Acceptance Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2015 Dodge Charger ("Vehicle"). Doc. #13. The 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 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.

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 nine complete post-petition payments. The Movant has produced evidence that debtor is delinquent at least \$4,897.43. Docs. ##12-13; #15, *Ex. C*. Further, the Movant repossessed the vehicle pre-petition. Doc. #1, *Stmt. Fin. Affairs*, No. 10.

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 \$17,300.00 and debtor owes \$23,922.99. Docs. ##12-13.

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 nine post-petition payments to Movant, the Vehicle is a depreciating asset, and Movant repossessed the Vehicle pre-petition.

2. [22-11587](#)-B-7 **IN RE: CARY SHAKESPEARE**
[LNH-2](#)

FURTHER PRELIMINARY HEARING RE: MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-29-2022 [\[19\]](#)

JAN SHAKESPEARE/MV
LEONARD WELSH/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Modify automatic stay as set forth below.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order to be signed and approved as to form by Debtor's bankruptcy counsel.

This motion was originally heard on October 13, 2022. Doc. #45.

Jan Shakespeare ("Movant") sought (1) confirmation that the stay does not stay a state court marital dissolution proceeding's ability to set

spousal support or terminate marital status and (2) relief from the automatic stay or abstention to complete a state court marital dissolution case, including determining the division of community property, but not to enforce any orders regarding the community property division. Doc. #19. Movant also requested waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3). *Id.*

Cary Scott Shakespeare ("Debtor") filed a response on October 11, 2022, requesting an opportunity to brief the issues raised in the motion, and asking for the motion to be continued. Doc. #38.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") filed a response on October 12, 2022, opposing stay relief at this time until Trustee has an opportunity to examine Debtor at the first meeting of creditors on October 21, 2022. Doc. #40. Trustee indicated that it may further oppose stay relief if more than dissolution and support issues are sought by Movant and requested further time to brief the matter with a further response. *Id.*

Movant's attorney, Lisa Holder, subsequently filed a supportive declaration with exhibits on October 13, 2022. Docs. ##42-43.

At the hearing, this matter was deemed to be a contested matter in which the federal rules of discovery apply. Fed. R. Bankr. P. 9014(c). Based on the record, the court identified the following legal issues:

1. Whether the *Tucson Estates* factors support this court's abstention from exercising jurisdiction in favor of the family law court.
2. Whether the *Curtis* factors support this court modifying the automatic stay to allow the family law court to proceed with litigation.

Doc. #45. The court issued an interim order continuing the motion to November 2, 2022 and ruling as follows:

1. The motion was denied as moot in part as to Movant's request for relief from the automatic stay to establish or modify an order for domestic support obligations, or to dissolve the marriage because the stay never arose and did not apply under 11 U.S.C. § 362(b)(2)(A)(ii) and (b)(2)(A)(iv). For these reasons, the automatic stay does not prevent, never did prevent, and did not arise to prevent the continuation of this civil action in Kern County Superior Court for the purposes of establishing marital status, or of establishing or modifying a domestic support order.
2. The motion was continued in part as to whether or not this court should abstain or otherwise modify the automatic stay to permit the Kern County Superior Court to proceed with property division. Debtor and Trustee were permitted to file further briefing not

later than October 28, 2022. Debtor's attorney represented on the record that Debtor did not need time to file a reply, and any reply would be presented at the continued hearing.

Debtor filed a supplemental brief on October 25, 2022. Doc. #50.

Trustee filed a supplemental response on October 28, 2022. Doc. #54.

BACKGROUND

Debtor filed a petition to dissolve his marriage with Movant on September 19, 2017, Case No. BFL-17-003918 ("State Court Action"). Doc. #21, *Ex. A*. At the time of filing this chapter 7 petition on September 13, 2022, trial dates to complete the State Court Action were set for the end of October and beginning of November 2022. *Id.*, *Ex. B*. Outstanding issues for trial included dissolving marital status, temporary and permanent spousal support, spousal support arrearages, attorney's fees, sanctions, and the division of community property. Doc. #19. Upon filing the bankruptcy, the State Court Action became subject to the automatic stay of 11 U.S.C. § 362(a). Movant now seeks relief from the stay. *Id.* Debtor opposes. Doc. #50.

DISCUSSION

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).

Tucson Estates Factors

Movant seeks relief from the stay for cause based on factors affecting whether the bankruptcy court should abstain under 11 U.S.C. § 1334(c)(1). "Where a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues, cause may exist for lifting the stay as to the state court trial." *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990).

The Ninth Circuit in *Tucson Estates* set forth the following factors to consider when deciding whether to abstain from exercising jurisdiction:

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,
- (2) the extent to which state law issues predominate over bankruptcy issues,
- (3) the difficulty or unsettled nature of the applicable law,
- (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court,
- (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,
- (6) the degree of relatedness or remoteness of the proceeding to the main

bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of the bankruptcy court's docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

Id., at 1167 quoting *In re Republic Reader's Serv., Inc.*, 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987).

The Movant and Debtor argue that the *Tucson Estates* factors weigh as follows:

1. Effect on administration of the estate if the court abstains:

Movant contends this factor supports abstention because the most efficient way for this bankruptcy case to proceed is to allow trial to occur in the State Court Action in early November on all issues so that Movant can file an accurate and essentially completed creditor claim on December 21, 2022. Doc. #22. Further, granting relief from the stay to permit the state court to complete the marriage dissolution will permit a final resolution to the parties' marriage, including the equitable division of community assets.

After continuing this motion, the Trustee has indicated that the family law court has vacated all trial dates set in early November while awaiting the ruling on this motion. Doc. #54.

Meanwhile, Debtor argues that the Bankruptcy Court should decide issues pending in the State Court Action, specifically the division of the parties' community and separate property, because both community and separate property are part of Debtor's chapter 7 estate and subject to bankruptcy court jurisdiction under 11 U.S.C. § 541(a)(1) and (a)(2). Doc. #50. Further, Debtor contends that administration of the estate would be disrupted by forcing the Trustee to litigate issues relevant to the chapter 7 case in two forums, the Kern County Superior Court, and the Bankruptcy Court. Thus, the court should permit all relevant issues to be decided by one court – the Bankruptcy Court – to protect the bankruptcy estate. *Id.*

The Trustee questions whether it can depend on Debtor to fight on behalf of the chapter 7 estate in the State Court Action. Doc. #54. To the extent Trustee is excluded from asserting an interest in property of the estate because it is being classified and/or quantified in the State Court Action, Trustee contends that this court should not abstain, but does not object to the amount of Movant's claim being liquidated in the State Court Action. *Id.*

By allowing the family law court to divide separate and community property without permitting collection or enforcement of any judgments, efficient administration of the estate may continue while Movant's claim is reduced to judgment. Such limitation could permit administration of the estate to continue unencumbered while the State Court Action continues uninhibited except as the bankruptcy court orders. This factor weighs in favor of abstaining in favor of the family law court.

2. Extent to which state law issues predominate: While federal bankruptcy law will continue to be applicable for community property assets prior to division of community assets, the marriage dissolution, spousal support determination, attorney's fees, sanctions, and Movant's share of community property are all family law issues that will be governed by California state law. See *In re Mantle*, 153 F.3d at 1086. (9th Cir. 1998) ("Although [spouse] retains her § 2640 right to reimbursement for her separate property contribution to the community property, this separate property interest does not render the sale proceeds her separate property prior to division by the superior court."). This factor weighs in favor of abstention.

3. Difficulty or unsettled nature of the applicable law: Whether and when the dissolution is final is settled under California law, but division of assets is best determined by the state court. Family law is highly specialized, and the State Court Action would be more efficiently adjudicated in the family law court. This factor weighs in favor of abstention.

4. Presence of a related proceeding commenced in state court: The State Court Action is pending in Kern County Superior Court and could be resolved if the automatic stay is modified. This factor weighs in favor of abstention.

5. Jurisdictional basis other than 28 U.S.C. § 1334: 28 U.S.C. § 1334 appears to be the only basis for jurisdiction here. This factor weighs in favor of abstention.

6. Degree of relatedness or remoteness to the bankruptcy case: The division of Debtor's community property would directly impact the administration of Debtor's bankruptcy case. However, administration of Debtor's bankruptcy case would be facilitated by the issuance of a final dissolution order in the state court dissolution litigation. This factor weighs in favor of abstention.

7. Substance rather than form of the asserted "core" proceeding: Administration of Property is a core proceeding, but this determination would be facilitated by the issuance of a final dissolution order in the state court dissolution litigation. This factor weighs in favor of abstention.

8. Feasibility of severing state law claims from core bankruptcy matters: Although it is possible to administer Debtor's bankruptcy prior to division of community assets, much of Debtor's property consists of community assets. If the dissolution were to be finalized, administration of the estate could proceed unencumbered by this pending state court action. This factor weighs in favor of abstention.

9. Burden on the bankruptcy court's docket: Lifting the automatic stay to permit Movant to finalize the state court dissolution action would likely eliminate the need for this court to adjudicate any ongoing dispute between Movant and Debtor. This factor weighs in favor of abstention.

10. Likelihood of forum shopping: Because Debtor filed bankruptcy on the eve of the state court's trial, Movant suspects that Debtor may be forum shopping. Doc. #22. The court declines to make any finding of forum shopping now, but this factor weighs in favor of abstention.

11. Existence of a right to a jury trial: The right to a jury trial is not implicated in the underlying marriage dissolution action. This factor weighs against abstention.

12. Presence of non-debtor parties in related proceedings: Movant is a non-debtor party in the related state court dissolution proceeding. This factor weighs in favor of abstention.

Notwithstanding Debtor's contentions, the *Tucson Estates* factors weigh in favor of this court abstaining from exercising jurisdiction over the claim between Movant and Debtor, which has been subject to the State Court Action since September 2017. The court finds that cause exists to modify the automatic stay to permit Movant to take necessary actions adjudicating those issues that are not stayed and to adjudicate but not enforce the property division issues.

Curtis Factors

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

1. Whether the relief will result in a partial or complete resolution of the issues;
2. The lack of any connection with or interference with the bankruptcy case;
3. Whether the foreign proceeding involves the debtor as a fiduciary;
4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;

5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee, and other interested parties;
8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
12. The impact of the stay on the parties and the "balance of hurt."

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

The parties argue the weight of the *Curtis* factors as follows:

1. Partial or complete resolution of the issues: Movant contends that if stay relief is granted, approximately five years of litigation can be all be resolved in the State Court Action in the first three weeks of November 2022. Doc. #22. However, these trial dates have been vacated because the family law court did not want to try the State Court Action on a "piecemeal" basis. Doc. #54. Still, modifying the automatic stay would permit the State Court Action, which was in progress before the bankruptcy case was filed, to proceed with the dissolution, and permit the reduction of Movant's claim to a judgment. This factor weighs in favor of stay relief.

2. Lack of connection with or interference with the bankruptcy case: The State Court Action is connected with the bankruptcy case. Much of Debtor's property is community property that will be subject to equitable division. This militates in favor of granting the motion because a court with appropriate jurisdiction is handling marital property division, which will settle the extent of estate property for this bankruptcy case. Additionally, it will spur a quicker resolution of the bankruptcy case because Movant's creditor claim will be determined prior to her filing a Proof of Claim by December 21, 2022, which will involve a significant Domestic Support Obligation including temporary and permanent spousal support, spousal support arrearages, attorney's fees, and sanctions, as well as claims to her share of community property not subject to his separate property debts incurred by Debtor after the date of separation. Movant acknowledges that

realization of any division of community property will occur through the bankruptcy estate. *Id.*

In response, Debtor argues that the State Court Action will greatly disrupt of the administration of the estate by forcing the Trustee to litigate relevant issues in two forums. Doc. #50. Thus, the court should protect the bankruptcy estate by allowing all relevant issues to be decided in one forum: the Bankruptcy Court.

The Trustee will not be forced to litigate in multiple courts. If the state court is permitted to adjudicate the community and separate property interests, the bankruptcy court retains jurisdiction so that enforcement of those interests cannot be ordered without further relief from the bankruptcy court. The Trustee can choose to litigate if he wants. But an order precluding enforcement of any property division without returning to bankruptcy court allows the Trustee the necessary flexibility and protects the estate's creditors.

3. Debtor as a fiduciary: Debtor and Movant are husband and wife and therefore owe each other fiduciary duties. See, e.g., Cal. Fam. Code § 1101 (remedies for breach of fiduciary duty between spouses). Cal. Fam. Code §§ 721(b) and 1100(e) extend the general rules governing fiduciary duty relationships to actions between spouses. This factor weighs in favor of stay relief.

4. Specialized tribunal: Kern County Superior Court has specialized expertise in marital dissolutions and equitable division of community property assets. This factor supports stay relief.

5. Insurance carrier's assumption of responsibility in defending litigation: This factor appears to be inapplicable here.

6. Whether the action involves third parties and debtor functions only as a bailee for goods or proceeds: The State Court Action is marriage dissolution. The only non-debtor party involved appears to be Movant, but Debtor is not functioning as a bailee for goods or proceeds. So, this factor is inapplicable here, or slightly favors modification.

7. Prejudice to other creditors and interested parties: Movant states that there is no prejudice to other interested parties since Movant's significant creditor claim for Domestic Support Obligations are to be paid either by non-estate assets, or through a proof of claim filed in this case. Doc. #22.

Debtor implies that Trustee will be prejudiced if forced to litigate relevant issues in two forums. Doc. #50. Thus, Debtor requests the court not abstain from deciding the nature and character of property of the estate.

Trustee acknowledges that bankruptcy courts should avoid incursions into family law matters and defer to family courts, but questions

whether Debtor will fight on behalf of the chapter 7 estate in family court. Doc. #54, citing *Mac Donald*, 755 F.2d at 717.

Modifying the automatic stay to allow the family law court to divide separate and community property without permitting collection or enforcement of any judgments, the interests of creditors and interested parties should be protected while ensuring efficient administration of the estate by reducing Movant's claim to judgment.

8. Equitable subordination: Equitable subordination is inapplicable here.

9. Whether the outcome in the foreign proceeding would result in an avoidable judicial lien: The outcome of the dissolution would not result in an avoidable judicial lien. 11 U.S.C. § 522(f)(1)(A) allows the debtor to avoid the fixing of a lien on the debtor's interest of property such that the lien impairs an exemption to which the debtor would have been entitled if such lien is a judicial lien, except the kind specified in § 523(a)(5). 11 U.S.C. § 523(a)(5) pertains to domestic support obligations. Domestic support obligations are defined in § 101(14A) as a debt recoverable by a spouse or former spouse in the nature of alimony, maintenance, or support and established on or after the petition date through a separation agreement, divorce decree, property settlement agreement, order of a court of record, or a determination made in accordance with non-bankruptcy law by a governmental unit. This factor is therefore inapplicable.

10. Interests of judicial economy and expeditious and economical determination of litigation for the parties: Movant says that judicial economy would be served because the state court has jurisdiction over the dissolution. Doc. #22. The parties were on the eve of trial, mostly done with discovery, and are ready to proceed to trial on all issues the first three weeks of November. Resources have been expended to get ready for trial, and this bankruptcy court needs resolution of the dissolution issues before it can finish the bankruptcy case. It would be a waste of the bankruptcy court's time, and unnecessarily increase costs and effort to re-litigate the family law matter in bankruptcy court when the family court is on the precipice of completing the case, has specialized expertise in the issues, and is familiar with the case's issues.

Further, the Supreme Court has also cautioned against involvement of the federal courts in family law affairs:

One of the principal areas in which this Court has customarily declined to intervene is the realm of domestic relations. Long ago we observed that "[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not the laws of the United States." *In re Burrus*, 136 U.S. 586, 593, 34 L. Ed. 500, 10 S. Ct. 850 (1890). See also *Mansell v. Mansell*, 490 U.S. 581, 587, 104 L. Ed. 2d 675, 109 S. Ct. 2023 (1989) ("[D]omestic relations

are preeminently matters of state law"); *Moore v. Sims*, 442 U.S. 415, 435, 60 L. Ed. 2d 994, 99 S. Ct. 2371 (1979) ("Family relations are a traditional area of state concern"). So strong is our deference to state law in this area that we have recognized a "domestic relations exception" that "divests the federal courts of power to issue divorce, alimony, and child custody decrees." *Ankenbrandt v. Richards*, 504 U.S. 689, 703, 119 L. Ed. 2d 468, 112 S. Ct. 2206 (1992).

Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 12-13, 124 S. Ct. 2301 (2004).

In response, Debtor argues that judicial economy is promoted by only having one court (the Bankruptcy Court) determine the character of property of the estate and how that property should be administered in Debtor's case, and that forcing Trustee to litigate relevant issues in two forums would disrupt the administration of the estate. Doc. #50.

As noted above, Trustee acknowledges that bankruptcy courts should avoid incursions into family law matters and defer to family law courts, but questions whether Debtor will fight to maximize the value of estate property in the State Court Action. Doc. #54. To the extent that Trustee is excluded from asserting interests in property of the estate because it is being classified and/or quantified in family law court, Trustee contends that the court should not abstain. Trustee does, however, not object to the amount of Movant's claim being liquidated in the State Court Action.

This factor heavily weighs in favor of stay relief.

11. Progressed to the point of trial: The State Court Action had trial dates set for October 31, 2022, November 1-2, 2022, November 7-9, 2022, and November 14-16, 2022. Doc. #21, *Ex. B*. The State Court Action was pending for five years before Debtor filed this bankruptcy.

However, Trustee has recently indicated that these trial dates have all been vacated because the family law court does not want to try the State Court Action in a "piecemeal" fashion. Doc. #54.

If this court modifies the automatic stay, the parties were still on the eve of trial, and a new trial date would be set shortly. This factor weighs in favor of stay relief.

12. Impact of the stay and the "balance of hurt": Movant argues that five years have passed since Debtor filed the Petition for Dissolution and Movant is almost prepared for trial, with only minimal discovery outstanding. It would be an emotional and economic hardship to Movant if she is not allowed to complete her divorce case on schedule after incurring the steep costs to prepare for trial. There will be unnecessary duplication of costs that she will have to incur if the trial gets continued and she has to pay again to get her attorneys and

witnesses ready for trial. It is also in Debtor's own best interest to proceed to trial given that his own trial preparation is fresh.

In response, Debtor argues that this court has exclusive jurisdiction of all property of the estate, and the ability and power to apply principals of state law in deciding pending bankruptcy court issues. Doc. #50. Debtor further suggests that the Trustee will be harmed by having to litigate in two forums.

Though Debtor argues the Bankruptcy Court has jurisdiction, the cases relied upon to urge retention of the property division issue in bankruptcy court are not supportive. *Robbins v. Robbins (In re Robbins)*, 964 F. 2d 342, 344 (4th Cir. 1992) (affirming bankruptcy court order removing automatic stay allowing state court to determine equitable property division between a debtor and non-debtor in part because of "the deference that bankruptcy courts owed state courts in domestic matters"); *Slay Warehousing Inc, v. Modern Boats, Inc. (In re Modern Boats Inc.)*, 775 F. 2d 619 (5th Cir. 1985) (Bankruptcy Court has jurisdiction over pending admiralty court determination of maritime lien and sale); *In re Louisiana Ship Management, Inc.*, 761 F. 2d 1025 (5th Cir. 1985) (same).

Trustee acknowledges that the State Court Action is the appropriate forum for determining family law issues, but questions whether Debtor will maximize value of the estate in the State Court Action. Doc. #54.

Although the trial dates have recently been vacated, modification of the automatic stay would permit the family law court to set new trial dates shortly and reduce Movant's claim to judgment. This factor heavily weighs in favor of stay relief.

The *Curtis* factors weigh in favor of modifying the automatic stay to allow the state family law court to continue with the ongoing marital dissolution proceedings.

The court is persuaded cause exists to modify the automatic stay. Debtor did not carry the burden of persuasion that cause does not exist. See, *In re 15375 Memorial Corp.*, 382 B.R. 652, 686 (Bankr. D. Del. 2008).

Accordingly, this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1). The automatic stay will be modified to permit the Kern County Superior Court to adjudicate the dissolution action, including any marital property division issues. Any judgment of the State Court dividing community property cannot be enforced absent further relief from this court. Nothing in this ruling is permitting the collection or enforcement of any judgments from property of the estate.

The request for waiver of the 14-day stay of Rule 4001(a)(3) will be DENIED because the trial set for the end of October and early November 2022 has been vacated, so there does not appear any factual or legal bases supporting such waiver. Doc. #54.

11:00 AM

1. [22-11127](#)-B-7 **IN RE: SCOTT FINSTEIN**
[22-1017](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT
8-19-2022 [[1](#)]

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURG V. FINSTEIN
KAREL ROCHA/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to November 9, 2022 at 11:00 a.m.

ORDER: The court will issue an order.

National Union Fire Insurance Company of Pittsburgh ("Plaintiff") filed an adversary complaint against debtor Scott Allen Finstein ("Defendant") on August 19, 2022. Doc. #1. The clerk of the court issued a summons on that same day, which set this status conference for hearing. Doc. #3.

Plaintiff has neither served the complaint nor served the summons. Under Federal Rule of Bankruptcy Procedure ("Rule") 7004(e), service made under Fed. R. Civ. P. ("Civ. Rule") 4(e), (g), (h), (i), or (j)(2) shall be by delivery of the summons and complaint within seven days after the summons is issued. If service is by mail, the summons and complaint shall be deposited in the mail within seven days after the summons is issued. Since the summons issued on August 19, 2022 was neither timely delivered nor mailed within seven days, another would ordinarily need to be reissued and served with the complaint.

However, Defendant filed an answer to the complaint on August 26, 2022. Doc. #7. The answer did not raise a service defect, so Defendant has waived that defect. Rule 7004. Civ. Rule 12(b)(5) & (h)(1).

Plaintiff has a pending motion to strike Defendant's answer set for hearing on November 9, 2022. Doc. #8; KR-1. Accordingly, this status conference will be CONTINUED to November 9, 2022 to be heard in connection with Plaintiff's motion to strike Defendant's answer.

2. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**
[18-1006](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-5-2018 [\[1\]](#)

PACE DIVERSIFIED CORPORATION ET AL V. MACPHERSON OIL
T. BELDEN/ATTY. FOR PL.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to January 4, 2023 at 11:00 a.m.

ORDER: The court will issue an order.

The court is in receipt of the parties' Corporate Ownership Statements and proposed findings of fact and conclusions of law. This adversary proceeding is now under submission. This status conference will be CONTINUED to January 4, 2023 at 11:00 a.m. to await the court's issuance of findings of fact and conclusions of law.

11:30 AM

1. [22-11149](#)-B-7 **IN RE: PAULO VILLAREAL-SALINAS**

REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA INC.
9-27-2022 [\[18\]](#)

R. BELL/ATTY. FOR DBT.

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

DISPOSITION: Dropped; taken off calendar.

ORDER: The court will issue an order.

Debtor's counsel shall notify the debtor that no appearance is necessary.

A Reaffirmation between debtor Paulo Villareal-Salinas and Santander Consumer USA, Inc. for a 2014 Mercedes CLA-Class was filed on 9/27/22. Doc. #18.

The form of the Reaffirmation Agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the debtor's attorney with the appropriate attestations. Pursuant to 11 U.S.C. § 524(d), the court need not approve the agreement.

2. [22-11462](#)-B-7 **IN RE: DERICK/REBEKAH THOMAS**

REAFFIRMATION AGREEMENT WITH AMERICREDIT FINANCIAL SERVICES, INC.
10-7-2022 [\[16\]](#)

RABIN POURNAZARIAN/ATTY. FOR DBT.

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

DISPOSITION: Dropped; taken off calendar.

ORDER: The court will issue an order.

Debtor's counsel shall notify the debtor that no appearance is necessary.

A Reaffirmation between debtors Derrick Ray Thomas and Rebekah Ann Thomas and Americredit Financial Services, Inc./DBA GM Financial for a 2021 Chevrolet Silverado 1500 was filed on October 7, 2022. Doc. #16.

The form of the Reaffirmation Agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the debtor's attorney with the appropriate attestations. Pursuant to 11 U.S.C. § 524(d), the court need not approve the agreement.

3. [22-11495](#)-B-7 **IN RE: MARIA FRANCO DE NUNEZ**

PRO SE REAFFIRMATION AGREEMENT WITH AMERICREDIT FINANCIAL
SERVICES, INC.
9-27-2022 [[11](#)]

OSCAR SWINTON/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Counsel shall inform his clients that no appearance is necessary at this hearing.

Debtor was represented by counsel when she entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), "'if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney' attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok. 2009) (emphasis in original). In this case, the debtor's attorney affirmatively represented that the agreement established a presumption of undue hardship and that his opinion the debtor is not able to make the required payments. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.