



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, November 13, 2024
Department A – Courtroom #11
Fresno, California

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

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

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

Please also note the following:

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

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

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

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [24-12709](#)-A-11 **IN RE: KEWEL MUNGER**
[WJH-8](#)

MOTION TO EMPLOY PRESTIGE PROPERTIES TEAM TIPTON AS REALTOR(S)
10-25-2024 [\[77\]](#)

KEWEL MUNGER/MV
RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

Debtor in possession Kewel K. Munger dba Munger Investments ("DIP") moves pursuant to 11 U.S.C. §§ 327(a) and 328 for authorization to employ Prestige Properties Team Tipton ("Broker") to serve as a real estate broker in connection with the sale of real property located at 2606 Eagle Crest Drive, Bakersfield, California 93311 (the "Property"). Doc. #77.

Section 1107 of the Bankruptcy Code gives DIP all the rights and powers of a trustee and requires DIP perform all the functions and duties of a trustee, subject to certain exceptions not applicable here. 11 U.S.C. § 1107. Section 327(a) of the Bankruptcy Code permits DIP to employ, with court approval, professionals "that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist" DIP in carrying out DIP's duties under the Bankruptcy Code. 11 U.S.C. § 327(a). DIP may, with the court's approval, employ a real estate broker on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. 11 U.S.C. § 328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

DIP has selected Broker for employment because of Broker's experience and knowledge in selling high-end residential properties, which the Property is. Doc. #77. DIP needs to employ Broker because DIP seeks to sell the Property to generate revenue to retire debt and eliminate future expenses. Id. DIP and Broker have a proposed listing agreement (the "Agreement"), which establish, *inter alia*, Broker's engagement for an approximately 3-month listing period ending January 15, 2025, and Broker's fee of up to 4.5% of the sale price at closing. Ex. A, Doc. #80. DIP proposes to pay Broker from proceeds received from the sale of the Property and will be subject to approval by the bankruptcy court. Id.; Decl. of Bart Tipton, Doc. #79.

Broker has verified that it has no connection with DIP, his creditors, attorneys, accountants, any other party in interest, or the United States Trustee. Tipton Decl., Doc. #79. The court finds that Broker is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. The motion does not include a declaration of DIP testifying as to the need for DIP to employ Broker. Ideally, the motion would include a declaration of DIP testifying as to the need for the estate to employ Broker in addition to the declaration of Broker.

After review of the evidence, the court finds that Broker does not represent or hold an adverse interest to DIP or to the estate with respect to the matter on which Broker is to be employed. DIP requests payment to Broker pursuant to § 328. Doc. #77.

Accordingly, pending opposition being raised at the hearing, the court is inclined to GRANT DIP's motion to employ Broker in connection with the sale of the Property. The order authorizing employment of Broker shall specifically state that employment of Broker has been approved pursuant to 11 U.S.C. § 328.

2. [24-12709](#)-A-11 **IN RE: KEWEL MUNGER**
[WJH-9](#)

MOTION TO EMPLOY BACHECKI, CROM & CO., LLP AS ACCOUNTANT(S)
10-24-2024 [\[69\]](#)

KEWEL MUNGER/MV
RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

Debtor in possession Kewel K. Munger dba Munger Investments (or "DIP") moves for authorization to employ Bachecki, Crom & Co., LLP ("Accountant") as DIP's accountant pursuant to 11 U.S.C. § 327(a). Doc. #69.

Section 1107 of the Bankruptcy Code gives DIP all the rights and powers of a trustee and requires DIP perform all the functions and duties of a trustee, subject to certain exceptions not applicable here. 11 U.S.C. § 1107. Section 327(a) of the Bankruptcy Code permits DIP to employ, with court approval, professionals "that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist" DIP in carrying out DIP's duties under the Bankruptcy Code. 11 U.S.C. § 327(a).

DIP has selected Accountant because of Accountant's extensive experience bankruptcy tax consulting, bankruptcy accounts, fraud investigations, and

bankruptcy preparation. Doc. #69. DIP requires Accountant's services to (a) assist DIP with plan development and preparation of monthly operating reports, (b) perform cash flow, financial and tax analysis, (c) perform business valuation services, if necessary, (d) evaluate claims and assist with investigation of debt secured by multiple properties with differing related party ownership, (e) prepare income tax returns and advise regarding tax payment requirements, (f) serve as DIP's general accountant, and (g) consult with DIP's counsel for this estate. Doc. #69; Decl. of Jay D. Crom, Doc. #71.

Accountant has verified that Accountant has no connection with DIP, his creditors, attorneys, any other party in interest, or the United States Trustee, except for Accountant's previous work for United States Trustee. Crom Decl., Doc. #71. The court finds that Accountant is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. The motion does not include a declaration of DIP testifying as to the need for DIP to employ Accountant. Ideally, the motion would include a declaration of DIP testifying as to the need for the estate to employ Accountant in addition to the declaration of Accountant.

After review of the evidence, the court finds that Accountant does not represent or hold an adverse interest to DIP or to the estate with respect to the matter on which Accountant is to be employed.

Accordingly, pending opposition being raised at the hearing, the court is inclined to GRANT DIP's motion to employ Accountant pursuant to 11 U.S.C. § 327(a). The effective date of such employment shall be October 21, 2024. The order authorizing employment of Accountant shall specify that any compensation or reimbursement from the estate is subject to the court's approval pursuant to 11 U.S.C. § 330(a).

3. [24-11545](#)-A-11 **IN RE: RIDGELINE CAPITAL INVESTMENTS, LLC**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
6-4-2024 [[1](#)]

MICHAEL BERGER/ATTY. FOR DBT.

NO RULING.

4. [24-11545](#)-A-11 **IN RE: RIDGELINE CAPITAL INVESTMENTS, LLC**
[MJB-8](#)

MOTION BY MICHAEL JAY BERGER TO WITHDRAW AS ATTORNEY
10-7-2024 [[132](#)]

MICHAEL BERGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if record sufficiently supplemented.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered. Because the court requires additional information before granting the motion, the matter will proceed as scheduled.

The Law Offices of Michael Jay Berger ("Movant"), counsel for Ridgeline Capital Investments, LLC ("DIP"), the debtor and debtor-in-possession in this chapter 11 case, moves to withdraw as DIP's attorney of record in DIP's bankruptcy case pending before this court as Case No. 24-11545. Doc. #132. Movant's withdrawal will leave DIP unrepresented by counsel. Because DIP is a limited liability corporation, DIP must appear in court through an attorney in this bankruptcy case. D-Beam, Ltd. P'ship v. Roller Derby Skates, Inc., 366 F.3d 972, 973-74 (9th Cir. 2004) ("It is a longstanding rule that 'corporations and other unincorporated associations must appear in court through an attorney.'" (Citations omitted).) Thus, if the motion to withdraw is granted, DIP will not be able to appear in court until DIP retains new legal counsel.

LBR 2017-1(e) states that "an attorney who has appeared may not withdraw leaving the client *in propria persona* without leave of court upon noticed motion and notice to the client and all other parties who have appeared." The local rule goes on to require the attorney seeking withdrawal to "provide an affidavit stating the current or last known address" of the client and "the efforts made to notify the client of the motion to withdraw." LBR 2017-1(e).

Movant has not conformed with LBR 2017-1(e). Specifically, Movant's motion provides the current or last known address of DIP, but Movant's declaration does not provide the current or last known address of DIP. Decl. of Michael Jay Berger, Doc. #132, 134. In addition, Movant's declaration does not state the efforts Movant made to notify DIP of Movant's intentions to withdraw as DIP's attorney. Berger Decl., Doc. #134. At the hearing, the court will permit Movant to confirm on the record that the address in the motion is the current or last known address of DIP as well as supplement the record with respect to Movant's efforts to notify DIP of Movant's intentions to withdraw as DIP's attorney before determining whether such efforts are sufficient to grant the motion. The certificate of service filed with this motion shows that DIP received notice via U.S. mail. Doc. #135. Service was also made upon the United States Trustee. Id.

Withdrawal is governed by the California Rules of Professional Conduct. LBR 2017-1(e). Pursuant to California Rules of Professional Conduct Rule 1.16, formerly Rule 3-700, a lawyer may withdraw from representing a client if the client breaches a material term of an agreement with the lawyer and the lawyer has given the client reasonable warning of withdrawal, if a continuation of the representation is likely to result in a violation of the rules, if the client renders it unreasonably difficult for the lawyer to carry out the representation effectively, or if other good cause for withdrawal exists. Rules Prof. Conduct 1.16(b), <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules>.

Movant submits that DIP has failed to cooperate with Movant in the prosecution of this case and has failed to follow Movant's advice on material matters. Berger Decl., Doc. #134. Movant further states that the failure of DIP's cooperation has led to the attorney-client relationship between Movant and DIP

being irreparably broken down. Id. It appears that Movant has demonstrated cause for withdrawal.

Accordingly, subject to Movant sufficiently supplementing the record at the hearing, this motion will be GRANTED.

11:00 AM

1. [24-12893](#)-A-7 **IN RE: SHAWN TORRES**

PRO SE REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
10-18-2024 [[29](#)]

NO RULING.

1. [24-11112](#)-A-7 **IN RE: JOSHUA O'BANNON**
[AP-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-10-2024 [\[35\]](#)

JPMORGAN CHASE BANK, N.A./MV
HAGOP BEDOYAN/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.
DISCHARGED 08/05/2024

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

DISPOSITION: Granted in part and denied as moot in part.

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

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

As a procedural matter, the attachment to the certificate of service filed with the motion (Doc. #41) shows the debtor was served at a P.O. Box. Federal Rules of Bankruptcy Procedure ("Rule") 4001(a)(1) and 9014(b) require service of a motion for relief from the automatic stay to be made pursuant to Rule 7004. Rule 7004(b)(1) provides that service upon an individual be made "by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession." Because the moving party did not serve the debtor at his dwelling house with this motion by first class mail as required by Rule 7004(b)(1), the motion was not served properly on the debtor. However, because the debtor's discharge has already been entered in this case rendering relief from stay as to the debtor moot, the court will not deny the motion for improper service on the debtor.

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on August 5, 2024. Doc. #20. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, JPMorgan Chase Bank, N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2021 Land Rover RR Evoque, VIN: SALZJ2FX1MH141776 ("Vehicle").

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least seven complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$4,644.05. Decl. of Vanessa Ruesga, Doc. #38.

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

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

2. [14-13549](#)-A-7 **IN RE: JULIO MEMBRENO AND YOLANDA BARRERA**

MOTION FOR PAYMENT OF UNCLAIMED FUNDS IN THE AMOUNT OF \$4,644.50 WITH
SYNCHRONY FINANCIAL
9-25-2024 [[35](#)]

THOMAS GILLIS/ATTY. FOR DBT.
CLOSED 12/07/2015

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Synchrony Financial ("Movant") has filed an application for payment of unclaimed funds and seeks to recoup the sum of \$4,644.50 from the unclaimed dividends paid into the court in the underlying chapter 7 bankruptcy case of Julio Membreno and Yolanda Barrera (together, "Debtors"). Doc. #35.

Debtors filed their chapter 13 bankruptcy case on July 15, 2014. Doc. #1. On September 8, 2015, Robert A. Hawkins, the chapter 7 trustee assigned to Debtors' case ("Trustee"), filed a Turnover of Unclaimed Funds advising the court that \$4,644.50 in unclaimed money relating to proof of claim number 1 filed by Care Credit/GEMB in Debtors' bankruptcy case had been deposited into the Treasury Registry. Doc. #24.

On May 21, May 24, and September 25, 2024, Movant filed its applications for payment of unclaimed funds and supplemental pleadings accompanied by, among other things, proof of the identity of the authorized individual filing the application on behalf of Movant, evidence showing that GE Money Bank ("GEMB") is a prior name of Movant and Care Credit is a subsidiary of Movant, a completed Request for Taxpayer Identification Number and Certification, and a certificate of service indicating that the United States Attorney's Office was properly served. Doc. ##31, 32, 35.

The court is satisfied that Movant has demonstrated the entitlement to the unclaimed funds.

Consistent with its internal procedures, the Clerk's Office generated a Notice of Hearing on Application for Payment of Unclaimed Funds on October 8, 2024. Doc. #37. Although this matter was set on at least 28 days' notice prior to the hearing, the notice contains none of the language pertaining to the requirement of a written response when a matter is set for hearing under LBR 9014-1(f)(1). In light of Movant's reliance on court-generated documents in its filing, the court is inclined to overlook any procedural defects. The moving papers include a court-generated certificate of service which indicates that Movant properly served the U.S. Attorney's Office as required by 28 U.S.C. § 2042. Doc. #35. Accordingly, this matter will proceed as scheduled, and any opposition may be presented at the hearing. In the absence of any such opposition, the court intends to enter the respondents' defaults and this motion will be GRANTED.

3. [24-12764](#)-A-7 **IN RE: FILEMON AVALOS NUNEZ**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-14-2024 [\[14\]](#)

TD BANK, N.A./MV
MELODY MORRIS/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.

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

The movant, TD Bank, N.A., successor in interest to TD Auto Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2019 Kia Stinger, VIN: KNAE45LC7K6043163 ("Vehicle"). Doc. #14.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must

be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least 67 complete pre-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$66,021.24, which includes late fees and attorney fees. Decl. of Kelisha Glass, Doc. #17. According to the debtor's Schedule D, the Vehicle is inoperable from a crash and will be surrendered. Doc. #1.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. The Vehicle is valued at \$31,575.00 and the debtor owes \$76,697.13. Decl. of John Eng, Doc. #16; Glass Decl., Doc. #17.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least 67 pre-petition payments to Movant and the Vehicle is a depreciating asset.

4. [24-10868](#)-A-7 **IN RE: JASDEEP SANDHU**
[MJ-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-25-2024 [\[106\]](#)

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

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

DISPOSITION: Granted.

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

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

requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, ACAR Leasing LTD d/b/a GM Financial Leasing ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2020 Chevrolet Bolt EV, VIN: 1G1FZ6S04L4138582 ("Vehicle"). Doc. #106.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the lease provided the option to purchase the Vehicle at the end of the lease term on March 2, 2024 for \$21,464.45. The Vehicle was returned to a dealership on or about April 27, 2024 with an outstanding balance of \$5,723.64 due under the contract. Decl. of Phillip Ford, Doc. #109. Movant obtained possession of the Vehicle on or about May 1, 2024. Id.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. The debtor's possession of the Vehicle stems from a lease agreement with Movant that matured on March 2, 2024, according to which the debtor does not own the Vehicle. Ford Decl., Doc. #109.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to gain immediate possession of the Vehicle pursuant to applicable law. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to pay the outstanding balance to Movant in accordance with the lease agreement and has returned the Vehicle to Movant.

5. [24-12968](#)-A-7 **IN RE: MARC MARINO AND ANA CORTEZ**
[KTS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-30-2024 [\[16\]](#)

ELEMENTS 1B LLC/MV
CALVIN CLEMENTS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether 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 procedural matter, the notice of hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

As a further procedural matter, the exhibits filed in connection with this motion do not comply with LBR 9004-2(c)(1) and (d)(1), which require declarations and exhibits to be filed as separate documents. Here, the declaration was filed as a single document that included the movant's exhibits. E.g., Doc. #19.

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

The movant, Elements 1b LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to proceed with an unlawful detainer action in Orange County Superior Court Case No. 30-2024-01420091-CL-UD-CJC (the "Unlawful Detainer Action") against co-debtor Ana Cortez ("Co-Debtor"). Doc. #16. The Unlawful Detainer Action is in reference to real property located at 2143 Elements Way, Irvine, California 92612 ("Property"). Id.

Debtors Marc Marino and Ana Cortez (together, "Debtors") filed this chapter 7 bankruptcy case on October 15, 2024. Doc. #1. Movant owns the Property. Decl. of Robin Duma, Doc. #19. On June 10, 2024, Movant entered into a written residential lease agreement with non-debtor Jevon Bragg ("Co-Defendant"). Ex. 1, Doc. #19. On August 7, 2024, Movant served Co-Defendant with a three day notice to pay rent or quit. Ex. 2, Doc. #19. On August 16, 2024, Movant filed the Unlawful Detainer Action against Co-Defendant. Ex. 3, Doc. #19. On August 29, 2024, Co-Debtor Ana Cortez filed a prejudgment claim of right to possession with the Orange County Superior Court to add herself to the Unlawful Detainer Action. Duma Decl., Doc. #19. On August 29, 2024, Ms. Cortez filed an answer to the unlawful detainer complaint. Id. Subsequently, on October 15, 2024, Debtors filed the instant bankruptcy petition on the same day as the trial for the Unlawful Detainer Action. Id. At the time of trial on the Unlawful Detainer Action, Movant was unaware that Ms. Cortez had filed the instant bankruptcy and actions were taken in the Unlawful Detainer Action such as the state court signing and entering a judgment at the conclusion of trial. Id. On October 22, 2024, Movant received notice of Debtors' bankruptcy case. Id.

11 U.S.C. § 362(d)(1) Analysis

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

the expertise to hear such cases; (4) whether litigation in another forum would prejudice the interests of other creditors; and (5) the interest of judicial economy and the expeditious and economical determination of litigation for the parties. In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984).

Here, granting Movant's relief from the automatic stay will allow Movant to employ the state court remedies to continue to seek relief through the Unlawful Detainer Action. Further, the interests of judicial economy favor granting relief from the automatic stay so that Movant can regain possession of the Property. Finally, permitting Movant to pursue a judgment in state court will not prejudice the interests of Debtors as Debtors have no interest in the Property either through ownership or a lease agreement with Movant. Debtors will suffer no legally cognizable harm by being forced to continue to resolve the Unlawful Detainer Action in state court.

For these reasons, the court finds that cause exists to lift the stay to permit Movant to proceed with the Unlawful Detainer Action in state court and enforce any resulting judgment.

11 U.S.C. § 362(d) (2) Analysis

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

Here, the court finds that Debtors do not own the Property and do not have any equity in the Property. Further, the Property is not necessary to an effective reorganization because Debtors are in chapter 7, are not tenants of Movant, and have no legal right to occupy the Property either through ownership or a lease agreement.

Conclusion

Accordingly, the court is inclined to grant the motion pursuant to 11 U.S.C. § 362(d) (1) and (d) (2) to permit Movant to proceed under applicable nonbankruptcy law to prosecute the Unlawful Detainer Action in state court and to enforce any resulting judgment for unlawful detainer, including all necessary steps to obtain possession of the Property from Debtors. No other relief is awarded.

Because Debtors have no legal right to occupy the Property either through ownership or a lease agreement and trial on the Unlawful Detainer Action proceeded on the same day that Debtors filed their bankruptcy petition, the 14-day stay of Fed. R. Bankr. P. 4001(a) (3) will be ordered waived to permit Movant to continue prosecuting the Unlawful Detainer Action in state court.

CONTINUED RE: MOTION FOR RELIEF FROM AUTOMATIC STAY
9-13-2024 [\[31\]](#)

ACAR LEASING LTD/MV
MEHRDAUD JAFARNIA/ATTY. FOR MV.
DISCHARGED: 10/15/2024

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

DISPOSITION: Granted in part and denied as moot in part.

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

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

The movant, ACAR Leasing LTD d/b/a GM Financial Leasing ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2018 Cadillac Escalade, VIN: 1GYS4BKJ4JR284903 ("Vehicle"). Doc. #31.

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on October 15, 2024. Doc. #41. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least one post-petition payment. Movant has produced evidence that the debtor is delinquent by at least \$1,082.50. Decl. of Adriana Arredondo, Doc. #34. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to gain immediate possession of the Vehicle pursuant to applicable law. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least one post-petition payment to Movant in accordance with the lease agreement.

7. [24-12591](#)-A-7 **IN RE: JUAN/MARIA ANAYA**
[CJK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-14-2024 [\[15\]](#)

U.S. BANK NATIONAL ASSOCIATION/MV
PETER BUNTING/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, U.S. Bank National Association ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to real property located at 1205 Majestic Court, Madera, California 93637 ("Property"). Doc. #15.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least 16 complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$20,583.56. Decl. of Mary Gracia, Doc. #17. According to the debtors' Statement of Intention, the Property will be surrendered. Doc. #1.

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

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtors have failed to make at least 16 payments, both pre- and post-petition, to Movant.

8. [24-10960](#)-A-7 **IN RE: CRISTIAN GOMEZ HERNANDEZ**
[ICE-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
10-9-2024 [\[20\]](#)

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtor shall attend the meeting of creditors rescheduled for November 18, 2024 at 1:30 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Federal Rules of Bankruptcy Procedure 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge or file motions for abuse, other than presumed abuse, under 11 U.S.C. § 707, is extended to 60 days after the conclusion of the meeting of creditors.