



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, November 29, 2023
Department A – Courtroom #11
Fresno, California**

Unless otherwise ordered, all hearings before Judge Niemann are simultaneously: (1) **IN PERSON** in 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.

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [21-11814](#)-A-11 **IN RE: MARK FORREST**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
7-22-2021 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

2. [21-11814](#)-A-11 **IN RE: MARK FORREST**
[NCK-9](#)

MOTION TO EMPLOY NOEL KNIGHT AS ATTORNEY(S)
10-31-2023 [[556](#)]

MARK FORREST/MV
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

The notice of hearing filed in connection with this motion (Doc. #557) does not comply with Local Rule of Practice ("LBR") 9014-1(d)(3)(B)(i)-(iii). LBR 9014-1(d)(3)(B)(i) requires the notice to advise potential respondents whether written opposition is required and, if written opposition is required, the deadline for filing written opposition and the names and addresses of the persons who must be served with any opposition. LBR 9014-1(d)(3)(B)(ii) further provides "[i]f written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition." LBR 9014-1(d)(3)(B)(iii) 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. Here, the notice of hearing does not provide any of the information required by LBR 9014-1(d)(3)(B)(i)-(iii). Notably, the notice of hearing states that a party who opposes the relief requested must do three things, then lists only one thing that party must do. In addition, the notice of hearing lists the incorrect time for the hearing in the body of the notice.

Further, notice of the motion is improper based on the relief requested. The motion requests that the court authorize employment of counsel to be retroactive to the petition date. Doc. #556. However, in addition to not providing any legal authority or analysis for that requested relief, the motion

was not served on all creditors of the debtor, which the court requires before the court will grant retroactive employment of chapter 11 counsel.

As an informative matter, the movant did not attach a copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice applicable to this case with the court's mandatory Certificate of Service form filed in connection with the motion. Doc. #563. Instead of using a copy of the court's Request for Special Notice List as required when service is made on parties who request special notice by U.S. Mail under Rule 5 and Rules 7005, 9036 Service, the movant attached another generated list of names and addresses served. In the future, the movant should attach a copy of the Clerk of the Court's matrix of creditors who have filed a Request for Special Notice applicable to this case instead of another generated list of names and addresses served.

3. [23-10325](#)-A-11 **IN RE: ROBERT CHAMPAGNE**
[FW-7](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C. FOR
PETER A. SAUER, DEBTORS ATTORNEY(S)
10-31-2023 [[180](#)]

PETER SAUER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Fear Waddell, P.C. ("Movant"), counsel for the debtor and debtor in possession Robert Thomas Champagne ("DIP"), requests allowance of interim compensation in the amount of \$129,433.00 and reimbursement for expenses in the amount of \$3,740.29 for services rendered from February 24, 2023 through September 1, 2023. Doc. #180. This is Movant's first fee application in this case.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a professional person. 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to counsel, the

court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing general case administration; (2) preparing bankruptcy schedules and related documents; (3) preparing and prosecuting various motion, including motions for use of cash collateral and to pay wages; (4) preparing for and attending meeting of creditors; (5) analyzing filed proof of claim; (6) communicating extensively with the Internal Revenue Service that held several liens on DIP's property; (7) corresponding extensively with other creditors, including merchant cash advance creditors and secured creditors seeking to repossess DIP's real property, vehicles and equipment, to enforce DIP's rights and compel creditors' adherence to the Bankruptcy Code; (8) assisting DIP in regaining control of DIP's business; (9) preparing, filing and confirming DIP's Subchapter V plan of reorganization; and (10) preparing and filing fee and employment applications. Decl. of Peter A. Sauer, Doc. #182; Exs. A, B & C, Doc. #184. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$129,433.00 and reimbursement of expenses in the amount of \$3,740.29. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds consistent with the confirmed Subchapter V plan of reorganization.

1. [23-11106](#)-A-7 **IN RE: SONIA OLIVERA**
[ICE-2](#)

MOTION TO AVOID LIEN OF CITIBANK, N.A.
10-25-2023 [\[36\]](#)

SONIA OLIVERA/MV
IRMA EDMONDS/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE for improper notice.

Service of this motion does not comply with the Federal Rules of Bankruptcy Procedure ("Rule"). Rule 9014(b) requires a motion to avoid a lien under 11 U.S.C. § 522(f) be served "in the manner provided for service of a summons and complaint by Rule 7004." Service of the motion on Citibank, N.A. ("Creditor") does not satisfy Rule 7004.

Rule 7004(h) provides that service on an insured depository institution, such as Creditor, "shall be made by certified mail addressed to an officer of the institution unless" an appearance by an attorney of the institution has been entered, the court orders otherwise, or the institution waives its entitlement to service by designating an officer to receive service. Fed. R. Bankr. P. 7004(h). The certificate of service filed in connection with this motion does not show that Creditor, which is an insured depository institution, was served to the attention of anyone in the institution. See Doc. #40. Moreover, service of the notice of hearing and moving papers on Creditor's counsel that filed the abstract of judgment pre-petition does not satisfy Rule 7004. Doc. #40. A review of the docket shows no attorney has appeared on behalf of Creditor in this bankruptcy case, and Creditor has not waived in writing Creditor's entitlement to receive service by certified mail. Based on the pleadings filed with this court, Creditor was not served properly with this motion pursuant to Rule 7004(h).

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

MOTION FOR COMPENSATION FOR LISA NOXON HOLDER, TRUSTEES ATTORNEY(S)
11-8-2023 [\[813\]](#)

PHILLIP GILLET/ATTY. FOR DBT.
LISA HOLDER/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 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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.

Lisa Noxon Holder, PC ("Movant"), attorney for chapter 7 trustee Peter L. Fear ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from June 1, 2018 through May 31, 2023. Doc. #813. Movant provided legal services valued at \$14,280.00; however, Movant requests compensation in the amount of \$10,000.00. Doc. #813. Movant requests no reimbursement for expenses. Doc. #813. This is Movant's first and final fee application.

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

Movant's services included, without limitation: (1) providing counsel to Trustee as to the administration of the chapter 7 case; (2) providing legal assistance in negotiating a settlement with one of the debtors; (3) preparing and filing two motions to compromise and sell claims; (4) preparing for and attending hearings on various motions; and (5) preparing and filing employment and fee applications. Decl. of Lisa Holder, Doc. #815; Decl. of Peter L. Fear, Doc. #817; Ex. A, Doc. #816. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$10,000.00 and no reimbursement for expenses. Trustee is authorized to make a payment of \$10,000.00, representing compensation, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

3. [23-10637](#)-A-7 **IN RE: RICKY/KAELA GONZALES**
[SL-2](#)

MOTION TO AVOID LIEN OF ABC SUPPLY CO., INC.
10-25-2023 [\[33\]](#)

KAELA GONZALES/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE for improper notice.

Service of this motion does not comply with the Federal Rules of Bankruptcy Procedure ("Rule"). Rule 9014(b) requires a motion to avoid a lien under 11 U.S.C. § 522(f) be served "in the manner provided for service of a summons and complaint by Rule 7004." Service of the motion on ABC Supply Co., Inc. ("Creditor") does not satisfy Rule 7004.

Rule 7004(b) (3) provides that service upon a domestic corporation be mailed "to the attention of an officer, managing or general agent, or to any other agent authorized by appointment or law to receive service of process[.]" Fed. R. Bankr. P. 7004(b) (3). The certificate of service filed in connection with this motion does not show that Creditor, which is a corporation, was served to the attention of anyone in the corporation. See Doc. #37. Further, a review of the docket shows no attorney for Creditor has appeared for Creditor in this bankruptcy case, so service of the notice of hearing and moving papers only on Creditor's counsel that filed the abstract of judgment pre-petition does not satisfy Rule 7004. Based on the pleadings filed with this court, Creditor was not served properly with this motion pursuant to Rule 7004(b) (3).

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

4. [23-10637](#)-A-7 **IN RE: RICKY/KAELA GONZALES**
[SL-3](#)

MOTION TO AVOID LIEN OF PACIFIC WESTERN BANK
10-25-2023 [\[38\]](#)

KAELA GONZALES/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f) (1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition on at

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

Ricky Jesus Gonzales and Kaela Suzanne Gonzales (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Pacific Western Bank ("Creditor") on the residential real property commonly referred to as 34009 Road 144, Visalia, CA 93292 (the "Property"). Doc. #38; Schedule C, Doc. #1; Am. Schedule D, Doc. #31. Debtor Ricky Jesus Gonzales is a 50% co-owner of the Property with Mr. Gonzales' brother, David H. Gonzalez. Am. Schedule A/B, Doc. #28; Decl. of Ricky Jesus Gonzales, Doc. #40.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtors filed their bankruptcy petition on March 30, 2023. Doc. #1. A judgment was entered against Ricky Jesus Gonzales in the amount of \$59,997.63 in favor of Creditor on October 30, 2020. Ex. C, Doc. #41. The abstract of judgment was recorded pre-petition in Tulare County on December 16, 2020, as document number 2020-0082039. Id. The lien attached to Debtors' interest in the Property located in Tulare County. Id. Debtors estimate the judicial lien to be \$59,997.63 as of the petition date. Gonzales Decl., Doc. #40. Debtors assert the market value for the Property as of the petition date at \$544,100.00. Am. Schedule A/B, Doc. #28. The Property is encumbered by a first deed of trust in favor of Right Start Mt/dovenmu in the amount of \$316,667.00. Gonzales Decl., Doc. #40. Debtors claimed an exemption of \$339,189.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1.

In the case of fractionally-owned property, all consensual encumbrances on the co-owned property must be deducted from the total value of the property before a debtor's fractional interest is determined. All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007). Once the debtor's fractional interest is determined, the consensual encumbrances on the co-owned property are excluded from the calculation of "all other liens on the property" under § 522(f)(2)(A)(ii). Id. at 90.

Here, the value of the encumbrance against the entire Property held by Right Start Mt/dovenmu is \$316,667.00, and the Property is valued at \$533,100.00. See Am. Schedule A/B, Doc. #28; Am. Schedule D, Doc. #31. Applying the Meyer formula requires deducting the \$316,667.00 encumbrance on the co-owned Property from the total value of the Property, \$533,100.00. This amount totals \$216,433. Dividing this value of the Property by Debtors' 50% ownership interest in the Property establishes that Debtors' interest in the Property for purposes of § 522(f) is \$108,216.50.

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C.

§ 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." Meyer, 373 B.R. at 88. "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

There appears to be one senior judicial lien on the Property. A senior judicial lien was recorded in Tulare County on December 10, 2020 with respect to a judgment filed in favor of SRS Distribution Group, Inc. for \$50,502.66. Ex. C, Doc. #45. Debtors estimate the first senior judicial lien to be \$50,502.66 as of the petition date. Gonzales Decl., Doc. #46.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$59,997.63
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$50,502.66
Amount of Debtors' claim of exemption in the Property	+	\$339,189.00
		\$449,689.29
Value of Debtors' interest in the Property absent liens	-	\$108,216.50
Amount Creditor's lien impairs Debtors' exemption		\$341,472.79

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

5. [23-10637](#)-A-7 **IN RE: RICKY/KAELA GONZALES**
[SL-4](#)

MOTION TO AVOID LIEN OF SRS DISTRIBUTION GROUP, INC.
10-25-2023 [\[43\]](#)

KAELA GONZALES/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE for improper notice.

Service of this motion does not comply with the Federal Rules of Bankruptcy Procedure ("Rule"). Rule 9014(b) requires a motion to avoid a lien under 11 U.S.C. § 522(f) be served "in the manner provided for service of a summons and complaint by Rule 7004." Service of the motion on SRS Distribution Group, Inc. ("Creditor") does not satisfy Rule 7004.

Rule 7004(b)(3) provides that service upon a domestic corporation be mailed "to the attention of an officer, managing or general agent, or to any other agent authorized by appointment or law to receive service of process[.]" Fed. R. Bankr. P. 7004(b)(3). The certificate of service filed in connection with this motion does not show that Creditor, which is a corporation, was served to the attention of anyone in the corporation. See Doc. #47. Further, a review of the docket shows no attorney for Creditor has appeared for Creditor in this bankruptcy case, so service of the notice of hearing and moving papers only on Creditor's counsel that filed the abstract of judgment pre-petition does not satisfy Rule 7004. Based on the pleadings filed with this court, Creditor was not served properly with this motion pursuant to Rule 7004(b)(3).

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

6. [23-12248](#)-A-7 **IN RE: DILWAR SINGH**
[HRH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-9-2023 [[11](#)]

CROSSROADS EQUIPMENT LEASE AND FINANCE, LLC/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
RAFFI KHATCHADOURIAN/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 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.

The movant, Crossroads Equipment Lease and Finance, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2019 Freightliner Cascadia PT126SLP Tractor Truck, VIN: 3AKJHHDR2KSKF5246 (the "Vehicle"). Doc. #11.

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).

Based on the evidence filed with the motion, neither the debtor nor the bankruptcy estate hold title to the Vehicle or have any interest in the Vehicle. Doc. #11; Decl. of Michael Cohen, Doc. #13. Thus, it appears that the automatic stay does not apply to the Vehicle. To the extent that the automatic stay does apply to the Vehicle, the court finds that "cause" exists to lift the

stay because neither the debtor nor the estate hold title to the Vehicle or have any interest in the Vehicle.

Accordingly, to the extent that the automatic stay applies to the Vehicle, 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 neither the debtor nor the estate hold title to the Vehicle or have any interest in the Vehicle and the Vehicle is a depreciating asset.

7. [23-12087](#)-A-7 **IN RE: MATHEW MORRIS**
[RDW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION/APPLICATION
FOR ADEQUATE PROTECTION
11-9-2023 [\[20\]](#)

LOGIX FEDERAL CREDIT UNION/MV
REILLY WILKINSON/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.

The movant, LOGIX Federal Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2021 Keystone Hideout 176BH, VIN: 4YDTH1G17NW240416 (the "Vehicle"). Doc. #20.

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 one pre-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$298.58. Decl. of Sihumara Rivera, Doc. #23.

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 \$18,855.00 and the debtor owes \$25,250.10. Rivera Decl., Doc. #23.

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 Vehicle was voluntarily surrendered to Movant. Doc. #20.

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 pre-petition payments to Movant, the Vehicle is a depreciating asset, and the debtor has already voluntarily surrendered the Vehicle to Movant.