



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

Hearing Date: Thursday, November 30, 2023

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

Post-Publication Changes: The court endeavors to publish its rulings as soon as possible. However, calendar preparation is ongoing, and these rulings may be revised or updated at any time prior to 4:00 p.m. the day before the scheduled hearings. Please check at that time for any possible updates.

9:30 AM

1. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**
NON-PROFIT CORPORATION
[WJH-23](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
10-20-2023 [[246](#)]

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

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

DISPOSITION: Granted.

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

Twilight Haven, debtor-in-possession in the above-styled Chapter 11 case ("Debtor" or "DIP"), moves the court for authorization to assume certain executory contracts (as outlined in Exhibits A and B accompanying the motion) and assign them to Jericho Care Group, LLC ("Jericho") in anticipation of effecting a sale of substantially all of Debtor's real property assets ("the Transaction") to Jericho. Doc. ##246, 249 (*Exhibits*). The executory contracts at issue are telecommunication and internet service provider contracts between DIP and Comcast of Fresno, Inc. ("the Comcast contracts"). Doc. *Id.*

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

Here, no party in interest has timely responded, and so the defaults of all parties in interest are entered.

Section 365(a) of the Code allows a debtor in possession, subject to court approval, to reject, assume, or assume and assign any of the debtor's executory contract or unexpired leases. 11 U.S.C. § 365(a). In the Ninth Circuit, a court evaluating a decision to reject,

assign, or assign and assume an executory contract or unexpired lease "should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted). The analysis under the "business judgment rule" is the same whether the motion is for assumption or rejection, as "courts are no more equipped to make subjective business decisions for...businesses..." *Id.*

Here, the presumption has not been rebutted, and therefore the court finds that the debtor-in-possession's decision to assume is consistent with the business judgment rule and Ninth Circuit precedent. The debtor-in-possession is authorized to assume and assign the Comcast Contracts identified in the motion and the exhibits to Jericho, consisting of internet and telecommunications services contracts. Doc. #248. The 14-day stay under Federal Rule of Bankruptcy Procedure 6006(d) is waived. Debtor avers that there are no cure amounts to be paid, but if any exist, Debtor is authorized to pay the cure amounts, at the Closing Date.

2. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA
NON-PROFIT CORPORATION**
[WJH-24](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
10-30-2023 [[271](#)]

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

After posting the original pre-hearing dispositions, the court has supplemented its intended ruling on this matter.

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

DISPOSITION: Granted as to the contracts specified below.
Continued to January 9, 2024, at 9:30 a.m. as to the six contracts for which Debtors requested an additional 30 days for review.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below. The order shall provide for the continued hearing on those contracts not rejected at this time.

Twilight Haven, debtor-in-possession in the above-styled Chapter 11 case ("Debtor" or "DIP"), moves the court for authorization to reject certain executory contracts as identified in the motion and the accompanying exhibit ("the Designated Contracts"). Doc. ##271, 275 (*Exhibits*). There are twenty-nine contracts at issue which include the following:

A. Ability Network, Inc., Service and Business Associate Agreement;
 B. All American HealthCare Services, Inc., Healthcare Staffing Agreement;
 C. Briner & Son, Agreement;
 D. California Business Machines, Maintenance Agreement;
 E. Dickman Weston Group d/b/a TLC Consulting Associates, all contracts with Twilight Haven still in effect as of June 22, 2023;
 F. DirectTV, LLC, Institutions Agreement;
 G. Ecolab, Keystone Rental Agreement;
 H. EMO, Business Associate Agreement;
 I. Golden Valley Vending, Vending Account Service Agreement;
 J. Hoffman Security, Agreement;
 K. Iron Mountain, Property Storage Management Receipt and Agreement;
 L. Jethro Medical, LLC, Agreement;
 M. Jorgensen, Agreement;
 N. Live Scan Fresno, Agreement for Independent Contracting;
 O. L&J Telesmanic Rehab Systems, Inc.,
 P. McKesson Medical-Surgical Minnesota Supply Inc., Product Supply Agreement;
 Q. Model Drug, Inc, Pharmacy Services Agreement;
 R. Netchex, all contracts with Twilight Haven still in effect as of June 22, 2023 Agreement;
 S. Nutritional Therapy Essentials, all contracts with Twilight Haven still in effect as of June 22, 2023;
 T. Pacific Shredding, Shredding Service Agreement;
 U. Patton, Preventative Maintenance Agreement;
 V. Pitney Bowes, all contracts with Twilight Haven still in effect as of June 22, 2023;
 W. PointClickCare, all contracts with Twilight Haven still in effect as of June 22, 2023;
 X. Purchase Power, all contracts with Twilight Haven still in effect as of June 22, 2023;
 Case Number: 2023-11332 Filed: 10/30/2023 2:01:46 PM Doc # 275
 Y. Reis RxCare Consulting, Twilight Haven Consultant Pharmacist Services Agreement;
 Z. Right Wave Pumping Technology, Grease Trap & Drain Line Maintenance Agreement;
 AA. Stephen M. Grossman, M.D., all contracts with Twilight Haven still in effect as of June 22, 2023 Agreement
 BB. T-Mobile, Retail Installment Contract; and
 CC. Trilogy Medical Waste, Service Agreement.

Doc. #275.

Subsequently, on November 29, 2023, DIP through its CEO Kristine Williams ("Williams") submitted a Supplemental Declaration stating that, notwithstanding the averments in the motion indicating a desire to reject all twenty-nine contracts, DIP now desired to continue this matter as to six of the contracts (hereinafter "the Six Contracts") because DIP has determined that those contracts may either be beneficial to Debtor or valuable for assumption purposes.

Doc. #277. Specifically, the DIP wishes to continue the motion as to the following contracts to January 9, 2024, at 9:30 a.m.:

1. Ability Network, Inc. (A, supra);
2. Dickman Weston Group d/b/a LTC Consulting Associates (E, supra);
3. EMD (erroneously listed as "EMO" at H, supra);
4. Iron Mountain (K, supra);
5. Netchex (R, supra); and
6. PointClickCare (W, supra).

Doc. #277.

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

Here, no party in interest has timely responded, and so the defaults of all parties in interest are entered.

Section 365(a) of the Code allows a debtor in possession, subject to court approval, to reject, assume, or assume and assign any of the debtor's executory contracts or unexpired leases. 11 U.S.C. § 365(a). In the Ninth Circuit, a court evaluating a decision to reject, assign, or assign and assume an executory contract or unexpired lease "should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted). The analysis under the "business judgment rule" is the same whether the motion is for assumption or rejection, as "courts are no more equipped to make subjective business decisions for...businesses..." *Id.*

Here, the presumption has not been rebutted, and therefore the court finds that the debtor-in-possession's decision to reject the Designated Contracts (or to have this matter continued as to the Six Contracts) is consistent with the business judgment rule and Ninth Circuit precedent. The debtor-in-possession is authorized to reject the Designated Contracts listed above and in the exhibit that accompanies the motion, except for the Six Contracts. The 14-day

stay under Federal Rule of Bankruptcy Procedure 6006(d) is waived as to those contracts being rejected. Consideration of the Six Contracts will be continued to a hearing set to be set for January 9, 2024, at 9:30 a.m.

Any claim based on the rejection of those specified contracts rejected here shall be filed on or before February 28, 2024, provided notice of this order is served on all parties to the rejected contracts within seven (7) days after entry of this order. Debtor to file a completed Certificate of Service of the Order for each contract rejected.

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

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
3-10-2023 [[1](#)]

RILEY WALTER/ATTY. FOR DBT.

NO RULING.

4. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-18](#)

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

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 27, 2024, at 9:30 a.m.

ORDER: The court will enter the order.

Pursuant to the Joint Stipulation (Doc. #2617) entered by Debtor Tulare Local Healthcare District and Creditor Tulare Hospitalist Group, this matter will be continued to February 27, 2024, at 9:30 a.m. as a scheduling conference while the parties continue settlement discussions. Debtor's counsel shall submit a status report no later than seven (7) days before the rescheduled hearing date.

5. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-19](#)

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

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 27, 2024, at 9:30 a.m.

ORDER: The court will enter the order.

Pursuant to the Joint Stipulation (Doc. #2619) entered by Debtor
Tulare Local Healthcare District and Creditor Gupta-Kumar Practice
Associates, Inc., this matter will be continued to February 27,
2024, at 9:30 a.m. as a status conference while the parties continue
settlement discussions, with a status report to be filed by Debtor's
counsel no later than seven (7) days prior to the rescheduled
hearing date.

6. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-25](#)

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

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 27, 2024, at 9:30 a.m.

ORDER: The court will enter the order.

Pursuant to the Joint Stipulation (Doc. #2621) entered by Debtor
Tulare Local Healthcare District and Creditor Inpatient Hospitalist
Group, this matter will be continued to February 27, 2024, at 9:30
a.m. as a status conference while the parties continue settlement
discussions, with a status report to be filed by Debtor's counsel no
later than seven (7) days prior to the rescheduled hearing date.

7. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**
NON-PROFIT CORPORATION
[WJH-19](#)

CONTINUED MOTION FOR AUTHORITY TO ENTER INTO TRANSACTION
10-20-2023 [[252](#)]

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

NO RULING.

11:00 AM

1. [23-11829](#)-B-7 **IN RE: ARENA PHAPHILOM**

REAFFIRMATION AGREEMENT WITH WELLS FARGO BANK N.A.
11-13-2023 [[18](#)]

JERRY LOWE/ATTY. FOR DBT.

NO RULING.

2. [23-11656](#)-B-7 **IN RE: KARLA ROBLES**

PRO SE REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
11-7-2023 [[15](#)]

NO RULING.

1:30 PM

1. [22-11614](#)-B-7 **IN RE: NANCY JERKOVICH**
[ADJ-3](#)

MOTION FOR CONTEMPT
10-24-2023 [\[40\]](#)

IRMA EDMONDS/MV
LAYNE HAYDEN/ATTY. FOR DBT.
ANTHONY JOHNSTON/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Movant will prepare an Order in conformity with
the ruling below.

Irma C. Edmonds ("Trustee") moves this court for an order to show cause why Nancy Jerkovich ("Debtor") should not be adjudged in civil contempt for failing to comply with the court's July 14, 2023, order (Doc. #37; "the July Order") that Debtor turn over information to the Trustee. Doc. #40. Pursuant to the July Order, Debtor was ordered to immediately turn over to Trustee various documents related to the Super Suds Laundry:

- a. Federal tax returns for the time period of January 1, 2019 through December 31, 2022;
- b. Any real property lease;
- c. Any equipment lease;
- d. Any partnership or similar agreement;
- e. All payroll tax returns for the time period of January 1, 2019 through
 1. December 3, 2022;
- f. Schedule showing owner salaries, including benefits, for the time period
 2. of January 1, 2019 through December 31, 2022;
- g. Annual income statements for the time period of 2019 through 2022;
- h. Balance sheet for the first day of January for 2019 through 2023; and
- i. All bank statements for the time period of January 1, 2019 through December 31, 2022.

Doc. #40. Trustee avers that after being served with notice and a copy of the July Order, Debtor did not comply and provide the requested documents. *Id.* Since there was no response, the court cannot find that, as of now, Debtor is unable to comply with the July order. Accordingly, Trustee now seeks a judgment from the court finding Debtor in contempt and requiring her to purge herself of contempt by (1) providing the requested information, (2) paying all cost, expenses, and attorney's fees incurred by Trustee to enforce the July Order in an amount to be determined later by the court, and (3) finding that this matter constitutes "appropriate circumstances"

to impose sanctions and punitive damages against Debtor for any continued willful violation of the July Order. *Id.*

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

Neither Debtor nor any other party has responded to the motion, and the defaults of all parties in interest are entered.

The court finds that this motion should be GRANTED. Movant will prepare an order to show cause ("OSC") why the court should not adjudge Debtor Nancy Jerkovich in contempt for failure to comply with an order of the court. The OSC shall provide Debtor and Debtor's counsel with at least 28 days' notice of the hearing on the OSC, shall specify the orders allegedly violated, and shall provide that opposition is to be filed and served at least fourteen (14) days before the hearing date with any reply to be filed and served at least seven (7) days before the hearing date.

2. [23-11625](#)-B-7 **IN RE: THOMAS STINER**
[SL-1](#)

AMENDED MOTION TO AVOID LIEN OF WILMINGTON SAVINGS FUND
SOCIETY, FSB
10-26-2023 [\[24\]](#)

THOMAS STINER/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Withdrawn by Movant.

No order is necessary.

This motion has been withdrawn from the calendar pursuant to a notice of withdrawal filed by Debtor on November 20, 2023. Doc. #30.

3. [23-12230](#)-B-7 **IN RE: PALWINDER GHARU**
[HRH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-13-2023 [\[15\]](#)

BMO BANK N.A./MV
SUNITA SOOD/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 hearing.

BMO Bank N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to two 2023 Freightliner Cascadia tractor trucks ("the Vehicles") listed in the schedules and filings of Palwinder Singh Gharu, debtor in the above-styled Chapter 7 case ("Debtor"). Doc. #15. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). *Id.*

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

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

11 U.S.C. § 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.

Disposition of this matter has been somewhat complicated since the Vehicles are apparently not titled in Debtor's name but in the name of his corporation: Taj Transport, Inc. ("TTI"). Doc. #19. Without wading into the thicket of who legally owns the Vehicles and whether the automatic stay even applies here, the court finds for the reasons outlined below that the automatic stay as it applies here should be lifted as to the Vehicles.

While Movant presents arguments for lifting the stay premised on both § 362(d)(1) and (d)(2), Doc. #15, the court finds (d)(1) to be dispositive, as

"cause" clearly exists to lift the stay. Accordingly, the court will not address the issues of whether Debtor has any equity in the Vehicles and whether they are necessary for an effective reorganization because any consideration of § 362(d)(2) would be moot.

Cause to lift the stay is established for two reasons. First, the record reflects that Debtor is, as of the filing of the motion, one payment past due in post-petition payments in the amount of \$6,561.32. Doc. #20. Second, and perhaps more importantly, on October 27, 2023, Debtor filed his Form 108 Statement of Intentions evincing his intent to surrender the Vehicles. Doc. #11.

Section 521(a)(2)(A) requires the debtor to file a statement of intention within thirty (30) days from the petition date. Section 521(a)(2)(B) requires that the debtor perform the stated intention within thirty (30) days after the meeting of creditors, further stating that "except nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title, except as provided in section 362(h)." 11 U.S.C. § 521(2)(B). Section 362(h) terminates the automatic with respect to the personal property at issue, rendering the property no longer property of the estate, if debtor fails to comply with either sections 521(a)(2)(A) or (B).

In re Nejic, 2017 Bankr. LEXIS 1392, *4-5 (Bankr. C.D. Cal., May 17, 2017). See also *In re Weir*, 173 B.R. 682, 690 (Bankr. E.D. Cal. 1994) (citations omitted) ("Relief from the automatic stay for cause is plainly permitted. Indeed, automatic termination of the automatic stay was the remedy intended by the proponents of the statement of intention. Elimination of the proposed automatic termination feature did not undermine the applicability of the basic provisions relating to relief from stay.")

Debtor's § 341 Meeting of Creditors was conducted on October 30, 2023. Doc. #4. Thus, Debtor's deadline to either amend his Form 108 or to surrender the Vehicles in accordance with stated intentions ran on November 29, 2023, without Debtor doing either. A stated intention here via Form 108 to surrender a secured asset to the creditor which is not timely withdrawn represents cause for lifting the automatic stay.

Accordingly, absent opposition, the motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. Adequate protection is unnecessary considering the relief granted herein.

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 and the Vehicles are a depreciating asset.

4. [23-12440](#)-B-7 **IN RE: KENNETH GONZALES AND TERRI
HALEY-GONZALES
[MAZ-1](#)**

MOTION TO COMPEL ABANDONMENT
11-13-2023 [\[13\]](#)

TERRI HALEY-GONZALES/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted unless hearing is continued.

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

Kenneth R. Gonzales and Terri Haley-Gonzales ("Debtors") move for an order compelling chapter 7 trustee Peter L. Fear ("Trustee") to abandon the estate's interest in real property located at 156 N. Oakview Avenue, Farmersville, California 93223 ("the Property"). Doc. #13.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion. If opposition is presented, the court may set the matter for further hearing and change this Tentative Ruling at the continued hearing.

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

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate."

To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary

consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). *In re Galloway*, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at *16-17 (B.A.P. 9th Cir. 2014).

Debtors reside at the Property and seek to compel Trustee to abandon the Property, for which Debtors aver they have found a buyer. Doc. #13, 16. The Property is described in Debtors' schedules thusly:

Asset	Value	Exempt	Lien	Net
156 N. Oakview Avenue, Farmersville, CA	\$60,000.00	\$300,000.00	\$26,995.00	\$0.00

Id.; Doc. #1 (*Sched. A/B, C, D*). The property is encumbered by a mortgage held by Glen R. Quinn and Edna M. Renfro ("Mortgagees") in the amount of \$26,995.00. Doc. #1 (*Sched. D*). The mortgage lien and the Debtors' exemption combined greatly exceed the value of the Property, to the extent that there is no remaining equity to provide any benefit to the estate. *Sched. D, id.*

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court will find that the Property is of inconsequential value and benefit to the estate. The Property was accurately scheduled and is encumbered or exempted in its entirety. Therefore, the court intends to GRANT this motion.

The order shall specifically include the property to be abandoned.

5. [23-12249](#)-B-7 **IN RE: RAVINDER DHALIWAL**
[HRH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-9-2023 [\[16\]](#)

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, unless hearing continued.

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

Crossroads Equipment Lease and 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 Freightliner Cascadia tractor truck ("Vehicle"). Doc. #16. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). *Id.*

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

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

11 U.S.C. § 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 reviewing the declaration and exhibits, the court finds that both §362(d)(1) and (d)(2) each provide grounds for lifting the stay.

Cause to lift the stay under § 362(d)(1) is established for the below reasons. First, the exhibits provided by Movant indicates that Debtor is delinquent in the amount of amount of \$45,993.04 in prepetition payments and \$5,746.63 in post-petition payments. Doc. #20. Second, the Debtor's schedules and filings indicate that the Vehicles are not a part of the bankruptcy estate, as neither Vehicle is listed on Debtor's Schedule A/B. Doc. #12. Rather, Debtor holds possession of the Vehicles by virtue of a lease agreement, one which, according to Debtor's Form 108 Statement of Intentions, Debtor does not plan to assume. *Id.*

Section 521(a)(2)(A) requires the debtor to file a statement of intention within thirty (30) days from the petition date. Section 521(a)(2)(B) requires that the debtor perform the stated intention within thirty (30) days after the meeting of creditors, further stating that "except nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title, except as provided in section 362(h)." 11 U.S.C. § 521(2)(B). Section 362(h) terminates the automatic with respect to the personal property at issue, rendering the property no longer property of the estate, if debtor fails to comply with either sections 521(a)(2)(A) or (B).

In re Nejic, 2017 Bankr. LEXIS 1392, *4-5 (Bankr. C.D. Cal., May 17, 2017). See also *In re Weir*, 173 B.R. 682, 690 (Bankr. E.D. Cal. 1994) (citations omitted) ("Relief from the automatic stay for cause is plainly permitted. Indeed, automatic termination of the automatic stay was the remedy intended by the proponents of the statement of intention. Elimination of the proposed automatic termination feature

did not undermine the applicability of the basic provisions relating to relief from stay.”)

Debtor’s § 341 Meeting of Creditors was conducted on October 30, 2023. Doc. #4. Thus, Debtor’s deadline to either amend his Form 108 or to surrender the Vehicles in accordance with stated intentions ran on November 29, 2023, without Debtor doing either. A stated intention via Form 108 to not assume the lease of a vehicle implicitly evinces an intent to surrender that vehicle, and if the Form 108 is not timely withdrawn, this represents cause for lifting the automatic stay.

Furthermore, it is appropriate to lift the automatic stay pursuant to §362(d)(2) as to the Vehicles because they are not part of the estate and are not listed on Debtor’s *Amended Schedule A/B*. Doc. #12. Because the Vehicle is leased rather than owned, it is impossible for Debtor to have any equity in the vehicle, and as this is a Chapter 7 case in which no reorganization is contemplated, the requirements of (d)(2) are satisfied.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to lift the stay and permit Movant to exercise its rights as to the Vehicles. No other relief is awarded. Adequate protection is unnecessary considering the relief granted herein.

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 and the Vehicles are a depreciating asset.

6. [23-12159](#)-B-7 **IN RE: MIKE SALAZAR AND MORGAN STEEL**

AMENDED MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
10-11-2023 [\[21\]](#)

NO RULING.

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

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

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

NO RULING.

The court notes the Trustee has filed an application to employ a real estate broker (Docs. #97-100). The Debtor has also filed amended exemptions which no longer include the property located at 605 Winchester, Bakersfield, California. Also, this motion was originally filed and served under LBR 9014-1 (f) (2), so the time limits of § 362 (e) are inapplicable. LBR 4001-1 (a) (1).