UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Department B – Courtroom #13
Fresno, California
Hearing Date: Tuesday, December 10, 2024

Unless otherwise ordered, all matters before the Honorable René Lastreto II, shall be simultaneously: (1) **In Person** at, Courtroom #13 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties or their attorneys 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/attorney 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 and their attorneys who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest and/or their attorneys 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 who wish to attend by ZoomGov may only listen in to the hearing using the Zoom telephone number. Video participation or observing are not permitted.

- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may attend in person unless otherwise ordered.

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.

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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. 20-10809-B-11 **IN RE: STEPHEN SLOAN**
WF-26

MOTION TO EMPLOY ADVANCED AG REALTY & APPRAISAL AS APPRAISER(S)
11-18-2024 [790]

TERRENCE LONG/MV
PETER FEAR/ATTY. FOR DBT.
DANIEL EGAN/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 will submit a proposed order after hearing.

Terence J. Long, Plan Administrator ("Plan Administrator") under the Debtor's Fourth Amended Plan of Reorganization dated December 21, 2021 ("the Plan"), requests authority to employ Advanced Ag Realty and Appraisal ("Appraiser") pursuant to 11 U.S.C. § 327(a) and § 328. Doc. #790. The Debtor is Stephen Sloan ("Debtor").

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. § 327 allows the trustee, with the court's approval, to employ one or more attorneys, accountants, auctioneers, or other professional persons to represent or assist the trustee in carrying out the trustee's duties. The professional is required to be a disinterested person and neither hold nor represent interests adverse to the estate. § 327(a).

11 U.S.C. § 328(a) permits employment of "a professional person under section 327" 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." Section 328(a) further "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such

terms and conditions and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.'" *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002).

The Plan Administrator avers in the motion that, pursuant to various sections of the Plan, he is directed to sell certain real property owned by Debtor. Doc. #790. Relevant to this motion, Section 4.01.03 directs the Plan Administrator to sell the assets held in Merced Falls, LLC consisting of two separate parcels ("the North Parcel" and the "South Parcel"; collectively "the Property"). *Id.* Plan Administrator wishes to use the services of Appraiser to appraise the Property in order to assist him in marketing and selling the Property for the highest possible return. *Id.*

Matthew Pennebaker ("Pennebaker"), the president of Appraiser, declares that, pursuant to his agreement with Plan Administrator, he is prepared to render an appraisal of the Property, and provide services including but not limited to:

A. Establish the current market value of the Property;
B. Assess whether the Property can be used for a different use than the current one;
C. Assess water supplies and restrictions to the Property, if any, and;
D. Research and advise Plan Administrator on any restricting governing, easements, or encumbrances.

Doc. #792. Pennebaker further declares that he directed his office to review all the creditors identified in the creditor matrix to determine whether Appraiser has any connections with debtor or any other parties in interest, and no connections which would preclude employment were found. *Id.*; Doc. #790. The Plan Administrator avers that Appraiser is a "disinterested person" within the meaning of § 101(14) of the Bankruptcy Code. Doc. #790.

Based on the Application, the record before the court, and the Pennebaker Declaration as required by Bankruptcy Rule 2014(a), it appears that Appraiser is eligible to be employed. Accordingly, in the absence of any opposition at the hearing, the Court is inclined to GRANT the application, and permit the employment of Appraiser. Though unclear in the motion, Plan Administrator appears to request Appraiser's employment be approved with the flat fee of $6,500.00 (divided over both parcels). Section 328(a) permits this but the court has the authority to award different compensation after the conclusion of the employment if the terms and conditions "prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions."

At this moment and in the absence of an objection at the hearing, the court finds that the flat fee for the proposed appraisal services to

be reasonable. But no fees will be awarded or approved absent further court order on the appropriate motion.

In the absence of opposition at the hearing this motion is GRANTED.

2. 20-10809-B-11 **IN RE: STEPHEN SLOAN**
WJH-7

CONTINUED MOTION TO COMPEL
10-17-2024 [768]

SANDTON CREDIT SOLUTIONS MASTER FUND IV, LP/MV
PETER FEAR/ATTY. FOR DBT.
KURT VOTE/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING. This matter will proceed as scheduled.

DISPOSITION: Default of nonresponding parties entered.
Continued to February 11, 2025, at 9:30 a.m.

ORDER: The court will issue the order.

Sandton Credit Solutions Master Fund IV, LP ("Sandton") asks the court to order Terence J. Long, Chapter 11 Plan Administrator ("PA") to sell real property known as the Merced Falls Ranch ("Property") now. The Property was to be sold within six months of the effective date of the confirmed Plan (March 15, 2022, approximately 27 months ago). PA opposes Sandton's request as procedurally improper but nevertheless asks for a 60-day continuance of the motion so a listing price and market strategy can be determined.

The court is inclined to grant the continuance to February 11, 2025, at 9:30 a.m. Though the court may agree that PA has no discretion to refuse to sell Property, the Confirmed Plan compels the payment of administrative expenses associated with the sale including capital gains taxes. Further, Sandton's contentions that a six-month delay would be harmful to Sandton and the creditors are both speculative and not supported by competent evidence.

In its motion, Sandton contends that PA has no authority or discretion to delay the sale of Property regardless of whether Sandton and Sloan, the debtor, have a difference of opinion as to value of the Property. Sandton claims there is an interest accrual that may decrease the likelihood of Sandton being paid in full to the detriment of other creditors and there is a risk of market downturns.

PA responds by contending that the delays are explained not only by a potential issue of capital gains taxes, but a substantial difference of opinion as to value of Property, and until recently (see above matter), no appraisers have agreed to evaluate Property. PA also

argues that the relief Sandton requests should be the subject of an adversary proceeding and not this contested matter. PA urges that a 60-day continuance of this motion will allow PA to evaluate tax consequences and obtain an appraised value for Property. PA generally does not dispute the facts asserted by Sandton.

In reply, Sandton disagrees with PA's procedural arguments, noting that the relief requested is authorized by the Bankruptcy Code under 11 U.S.C. § 1142(a), and (b). Sandton also urges that it has already agreed to one continuance to permit the PA to consult with tax professionals. Sandton also notes in reply that there is no reason to delay the sale because Sloan has not opposed this motion.

I.

Though neither party has raised the issue, the court is constrained to evaluate its jurisdiction to deal with this post-confirmation issue. In the Ninth Circuit, post-confirmation jurisdiction requires a "close nexus" between the disputed issue and the confirmed plan. *In Re Pegasus Gold Corp.*, 394 F.3d 1189, 1194 (9th Cir. 2005); *In Re Wilshire Courtyard*, 729 F.3d 1279, 1287 (9th Cir. 2013). Matters affecting the interpretation, implementation, consummation, execution, or administration of a confirmed plan have the requisite close nexus. *Id.*

Here, the sale of a debtor's real property by an entity created under the plan to effectuate that sale and the sale being the express purpose of disposing of the debtor's assets under the plan both create a "close nexus" to the plan under any reasonable interpretation. See *Rev. Op. Grp. v. ML Manager LLC*, 2:11-cv-00853-RCJ; 2012 U.S. Dist. Lexis 193141 (D. Ariz. January 20, 2012) (Sale of real property under plan by appointed agent.) The plan here contemplates that Sloan would initially have the opportunity to sell assets. When the sales did not timely materialize, it was a default under the plan and PA's authority to sell assets "sprung" to life. The implementation of the Plan's requirements in this context has a sufficient "close nexus." For purposes of this motion, this court has jurisdiction. 28 U.S.C. § 1334(b); 28 U.S.C. § 157(b)(2)(A),(L),(N),(O).

II.

A.

The Confirmed Plan here provides for the distribution of proceeds of the sale of any property covered by the Plan. In Section 4.01, it is stated:

> "Before any of the proceeds of the sale…are paid to creditors, all administrative expenses associated with sale (including capital gains taxes) will be paid by the bankruptcy estate."

The authority of the debtor and then the PA, as relevant here, is also outlined. In Section 4.02 the general authority of the estate representative is stated to be:

> "Do all things necessary and appropriate to fulfill the duties and obligations of the debtor…under the plan [and] the confirmation order…."

One of the obligations of the PA here is to be certain that capital gains taxes can be paid from the proceeds of the sale. It would be irresponsible for the PA not to at least analyze whether capital gains taxes can be paid from the sale proceeds. See *Holywell Corp. v. Smith*, 503 U.S. 47 (1992)(discussing duty of Chapter 11 Plan fiduciary to file tax return). Armed with that information, all parties in interest, including Sandton, will know with some assurance the net payment to Sandton and other creditors.

B.

Sandton's primary argument is that PA's reluctance here is due to Sloan's repeated assertions that Property is worth substantially more when considering its value "as a hypothetical water bank." Sandton further urges that even if the Property could be a "water bank," the pre-sale work before Property is listed as a water bank would be substantial.

The evidence supporting these assertions is based solely on Sandton's counsel's declaration (Doc. #770). That declaration, however, merely sets forth counsel's belief which is irrelevant. Furthermore, even if it was relevant, it is an impermissible opinion because it is not based on counsel's perception but rather on the perception of counsel of conversations in which declarant was not a participant. It is also not helpful to determine the fact at issue: the reason for delay in listing the Property. Fed. R. Evid. 701.

Further, counsel compares the substantial pre-sale work dealing with another property in the case, 4-S Ranch. But there is no foundation for that comparison nor any evidence establishing how Sandton's counsel would know that.

PA essentially admits that there is a substantial difference of opinion as to value, and that it was difficult to obtain an appraiser so PA would have a supportable listing price for Property. Notably, however, Sloan is not opposed to this motion and his default has been entered.

Nevertheless, at this moment, there is no range of reasonable values of Property as open land instead of a water bank. Sandton does not present one and proposes a "call for offers" marketing strategy. But without a "floor" or a range for a listing price,

this would invite further delays. Indeed, a "stalking horse" bidder may be produced but that does not guarantee participation in a vigorous bidding contest or a price that covers accompanying administrative costs, including taxes.

C.

Sandton's other concern is that a 60-day delay in ruling on this motion exposes Property to potential market downturns. After a delay of 27 months, this argument rings hollow.

Nevertheless, the evidence does not support the contention. Sandton offers the declaration of Robert Rice (Doc. #771) who is the "authorized representative" of Sandton. Mr. Rice states that Sandton owns other real property in Merced County and that he is "familiar" with the conditions of the real estate market in both Merced County and California. Mr. Rice believes that the current market conditions are favorable for the sale of Property "and any further delay may result in a diminished return on the sale due to a change in market conditions."

Sandton's ownership of other real property in the Merced County does not make Mr. Rice a qualified expert on the value of properties generally or market conditions specifically. Though an appropriate person at Sandton would be able to testify as to value of real estate if Sandton owned the Property, Sandton does not. So again, Mr. Rice's testimony offers an opinion without qualification and is not even rationally based on his perception without more foundation.

More importantly, there is nothing in Mr. Rice's declaration, even if the court accepted the opinion, indicating that 60 days would make a significant difference in the sale price or marketing of Property.

III.

PA argues that the relief requested by Sandton is a mandatory injunction and requires an adversary proceeding under Fed. R. Bankr. P. 7001-7. The court disagrees for two reasons.

First, PA is bound by the provisions of the Plan and PA's authority and responsibility "sprung" when Sloan defaulted under the Plan. 11 U.S.C. § 1142(a) mandates that PA who was installed to carry out the plan "shall carry out the plan and shall comply with any orders of the court." 11 U.S.C. § 1142(b) provides the court authority to direct the debtor and "any other necessary party…to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan." In addition, Fed. R. Bankr. P. 3020(d) provides that "the court may issue any other order necessary to administer the estate." Nothing in those provisions suggests that relief must be provided

only through an adversary proceeding. Indeed, PA has asked this court on numerous occasions to approve the sale of properties under the plan absent the filing and prosecution of an adversary proceeding relying solely on the provisions of the plan.

Second, even if an adversary proceeding would be a suitable vehicle to adjudicate the matter, the court finds there is no need for one since this motion has been filed. The only parties to this motion are Sandton and PA. The other parties, including Sloan, are in default.

Fed. R. Bankr. P. 9014(c) incorporates and applies many of the adversary proceeding rules including the rules governing discovery. Further, the court has the authority at any stage in this matter to direct that one or more of the other adversary proceeding rules apply, including Rule 7070 (incorporating Fed. R. Civ. P. 70). Either party can request that one or more of the other adversary proceeding rules including Rule 7070 apply using the appropriate motion.

If discovery is a concern of PA, the court urges PA to proceed with discovery now. Sandton can as well.

IV

In short, there is no reason based on the evidence presented why a 60-day continuance of this motion cannot be granted. Sandton has not shown prejudice. PA's need for the continuance appears reasonable under the circumstances. That said, it is time to finally implement the plan and a very strong showing or stipulation will be needed for any further continuance. To paraphrase an ag reference: "Make hay while the sun shines."

The motion will be continued to February 11, 2025, at 9:30 a.m. Defaults of all non-responding parties are entered.

3. 24-12751-B-11 **IN RE: BIKRAM SINGH AND HARSIMRAN SANDHU**
FRC-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-6-2024 [76]

FARM CREDIT SERVICES OF AMERICA, PCA/MV
PETER FEAR/ATTY. FOR DBT.
MICHAEL GOMEZ/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The Movant to prepare the order in conformity with the opinion below.

Farm Credit Services of America, PCA ("Movant" or "FCSA") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to certain farming equipment in the possession of Bikram Singh ("Singh") and Harsimran Sandhu ("Sandhu")(collectively "Debtors"). Doc. #76. The list of equipment is extensive and is described with particularity in the motion and accompanying documents. *See Doc. #76, fn. 1; Doc. #78 (Exhibits).*

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).

Other than the Debtors, no party in interest has opposed the motion, and the defaults of all non-responding parties are entered.

On November 26, 2024, the Debtors responded in opposition to the motion, raising two points: (1) that any sale of equipment should be conducted by Midland Tractor to maximize the sale value of the equipment, and (2) that some of the equipment is necessary to continue Debtors' farming operations pending confirmation and that Debtors propose to make adequate protection payments equal to the monthly depreciation of the equipment at issue. Doc. #105. The six items of farming equipment (collectively the "Equipment") which Debtors propose to retain are:

1. Two Rears GB38R 1200 Gallon Orchard Sprayers;
2. An Exact E355 Conditioner; and
3. Three T.G. Schmeiser VBL-16R Blades.

Id. On December 3, 2024, FCSA filed a reply brief arguing that Debtors have failed to submit sufficient evidence to satisfy their burden of showing that stay relief is unwarranted. Doc. #107. FCSA also argues that Debtors have failed to show that FCSA is adequately protected, and that the Equipment is, in fact, necessary for an effective reorganization. *Id.*

The court will hear from FCSA and the Debtors as scheduled. In the absence of more persuasive evidence and arguments from Debtors, the court is inclined to GRANT the motion as to all the affected collateral, including the Equipment.

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

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

As a threshold matter, the Debtors appear to concede the motion to lift stay as to all the equipment referenced in FCSA's motion except for six items identified by the Debtors ("the Equipment"). Therefore, the motion is GRANTED as to all the collateral other than the Equipment.

Turning to the remaining Equipment, the evidence presented by FCSA reflects the following salient facts which are drawn, except where otherwise noted, from FCSA's motion, exhibits, request for judicial notice, memorandum of authorities, and the Declaration of Paula Little, Movant's Litigation Officer ("Little")(*see Doc. #76, 78-81)*:

FCSA is the secured lender for Debtors as to three retail installment/security contracts for the financing of orchard equipment countersigned by Singh:

1. A contract dated April 29, 2022 ("the First Contract");
2. A contract dated May 26, 2022 ("the Second Contract"); and
3. A contract dated November 17, 2022 ("the Third Contract").

Debtor's Schedules A/B value the equipment which secures the First and Second Contracts at $1.45 million. The collateral which secures the Third Contract does not appear to be listed on Debtor's Schedules, but it consists of (1) a Jackrabbit Rodent Control System and (2) three T.G. Schmeiser Blades (collectively "the Contract 3 Collateral"). Little's Declaration asserts a value of $35,510.00 for the Contract 3 Collateral based solely on a depreciation estimate. No inspection of the Contract 3 Collateral has been undertaken by FCSA or Debtors.

Based on the evidence presented thus far, it appears Debtors have no equity in any of the collateral, including the Equipment. FCSA also avers that Debtors have made no payments under any of the three contracts since the initial downpayment, a claim unrebutted by Debtors. Finally, FCSA claims that "cause" to lift the stay exists because Debtors have not provided proof that any of the collateral is insured, because Debtors have no equity in the collateral, and because the collateral (including the Equipment) is not necessary for reorganization under the plan.

Debtors' *Response* (Doc. #105) concedes stay relief for all collateral other than the Equipment, which Debtors wish to retain for farming purposes. The court again notes that of the six pieces of Equipment, three items that are subject to the Third Contract are not listed in the schedules. Debtors assert that they will make adequate protection (AP) payments on the Equipment in an amount equal to the monthly depreciation for all the Equipment they are keeping, but Debtors offer no statement or evidence of what the proper depreciation amount is.

More importantly, Debtors give no indication of where the money will come from. Previously, this court somewhat reluctantly approved a loan arrangement whereby the Co-debtor's sister will be funding Debtors' living expenses until confirmation, so it seems unlikely that Debtors have sufficient extraneous funds to pay adequate protection in any amount. Of course, there are other parties who are also signatories on all three contracts, so, it might be possible a non-debtor co-obligor will pay the depreciation payments until confirmation, but that is entirely speculative and not supported by Debtors' Response.

In its *Reply* (Doc. #107), FCSA argues that the Debtors' Response is not supported by evidence and that, at this late juncture, it is too late for Debtors to present new evidence.

Based on the forgoing, the court is inclined to find that stay relief is warranted as to all the collateral including the Equipment.

First, if the moving papers are accurate, Debtors have not made any payments on the Equipment for quite some time. Indeed, except for the down payment, no periodic payments have been made by Debtors or the co-obligors at all.

Second, Debtors have not provided proof of insurance.

Third, FCSA has demonstrated to the court's satisfaction that there is no equity in either the collateral as a whole or in the Equipment if considered separately.

Fourth, Debtors have not provided any meaningful evidence that FCSA would be adequately protected through depreciation payments, in no small part because Debtors have given no evidence of what those payments would be or how Debtors could afford to pay them. Under 11 U.S.C. § 362(g), the Movant has the burden of demonstrating that there

is no equity in the collateral at issue, while the Debtors shoulder the burden of proof on all other issues, including the burden of showing that the proposed adequate protection payments are, in fact, *adequate*. FCSA has met its burden. The Debtors have not.

Fifth, there are co-obligors under all three contracts who are not in bankruptcy and should not be protected by the automatic stay.

In short, the court agrees with FCSA that Debtors have no equity in the Equipment and Debtors have not shown that it is necessary for an effective reorganization. Other than stating they need the Equipment for farming, Debtors provide no evidence that the Equipment is needed for an effective reorganization that is in prospect. The fact the equipment may be needed for farming is not the same as establishing its necessity for the debtor to reorganize. The Debtors' concession that virtually all the collateral can be repossessed by FCSA suggests the Equipment is not really needed for the reorganization.

The court further agrees that there is "cause" to lift the stay due to, among other facts, lack of adequate protection. Accordingly, it is appropriate to modify the automatic stay and allow FCSA to proceed against all the collateral, including the Equipment, and FCSA's motion will be GRANTED.

In their Response, Debtors also request that Midland Tractor be responsible for selling all the collateral and paying the proceeds to FCSA. They further claim that Midland Tractor will provide an inspection and valuation of the Equipment to be retained. The relief requested is beyond the scope of a motion for stay relief because, once such relief is granted, the court no longer has jurisdiction over the disposition of the affected collateral. Debtors, co-obligors, and FCSA are free to determine whether Midland Tractor is the best sale option for disposition of the collateral.

The 14-day stay of Rule 4001(a)(3) will be ordered waived because Debtors has failed to make pre- and post-petition payments to Movant and the collateral consists of depreciating assets.

4. 23-10457-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
HRR-2

CONTINUED MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT AND/OR MOTION TO PAY , MOTION FOR RELATED RELIEF
5-2-2024 [1740]

AMERICAN ADVANCED MANAGEMENT, INC./MV
RILEY WALTER/ATTY. FOR DBT.
HAMID RAFATJOO/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed As scheduled.

DISPOSITION: Granted in part. Continued to a date to be determined as to unresolved matters.

ORDER: The Movants will prepare the order.

This matter comes before the court on the Omnibus Motion to Assume Executory Contracts filed by American Advance Management ("AAM") Doc. #1740. Madera Community Hospital ("MCH"), the debtor in this Chapter 11 proceeding filed several motions to reject executory contracts which have been "tracking" this omnibus motion. On December 3, 2024, AAM and MCH jointly filed a *Third Status Report* advising the court as to the status of the various executory contracts and payments of cures still before the court. Doc. #2096.

The remaining matters under consideration are as follows:

1. **Siemens Financial Services Inc. ("Siemens"):** The parties report that Siemens' cure payment has been satisfied and an order approving a stipulation to resolve all open issues with respect to the Siemens executory contract has been entered at Doc. #2095. The motion will be GRANTED as to this executory contract.
2. **Beckman Coulter:** A stipulation was filed [Docket no. 2037] and order entered approving the stipulation [Docket no. 2042] providing for a cure payment of $212,000 paid in four installments and (subject to the cure payments being made) resolving all open issues with respect to Beckman- The final two cure payments were paid on November 1 and November 20, 2024, as required under the stipulation and order. The motion will be GRANTED as to this executory contract.
3. **Medical Information Technology, Inc. d/b/a MEDITECH:** While the parties have substantially agreed to the terms of assumption and cure in principle, and the agreed cure was paid in August, the circulation of a proposed stipulation and order resolving all terms of assumption and cure and revealed a component of the going-forward contract that remains in negotiation. Notwithstanding the open issue, MEDITECH is providing services to the hospital, and the parties anticipate that this open issue will be resolved in advance of the next status report and

hearing. The motion will be CONTINUED until a date to be determined as to this contract.

4. **Cardinal Health 110, LLC; Cardinal Health 200 LLC; and Cardinal Health 414 LLC (collectively "Cardinal Health"):** This assumption and cure matter remains unresolved. The motion will be CONTINUED until a date to be determined as to this contract.
5. **CareFusion Solutions, LLC:** This assumption and cure matter remains unresolved. The motion will be CONTINUED until a date to be determined as to this contract.

5. 23-10457-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
WJH-40

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-26-2023 [301]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: To be determined at the hearing.

ORDER: The minutes of the hearing will be the court's findings and conclusions. Preparation of the order will be determined at the hearing.

This matter comes before the court on the *Motion Authorizing Rejection of Executory Contracts* between Movant Madera Community Hospital ("MCH"), the former debtor in this Chapter 11 proceeding and counter-party Beckman Coulter. Doc. #301. On December 3, 2024, American Advanced Management, Inc. ("AAM") and MCH jointly filed a *Third Status Report* advising the court as to the status of the various executory contracts and payments of cures still before the court. Doc. #2096.

Relevant to the instant motion, the Status Report states as follows:

1. **Beckman Coulter:** A stipulation was filed [Docket no. 2037] and order entered approving the stipulation [Docket no. 2042] providing for a cure payment of $212,000 paid in four installments and (subject to the cure payments being made) resolving all open issues with respect to Beckman- The final two cure payments were paid on November 1 and November 20, 2024, as required under the stipulation and order.

Based on the approved stipulation, it appears that the motion to reject will be withdrawn. Movant shall advise the court at hearing as to the status of the motion with regard to this executory contract.

6. 23-10457-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
WJH-42

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
5-2-2023 [334]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed As scheduled.

DISPOSITION: To be continued to a date to be determined.

ORDER: The Movants will prepare the order.

This matter comes before the court on the *Motion Authorizing Rejection of Executory Contracts* between Movant Madera Community Hospital ("MCH"), the former debtor in this Chapter 11 proceeding and counter-party CareFusion Solutions LLC. Doc. #334. On December 3, 2024, American Advanced Management, Inc. ("AAM") and MCH jointly filed a *Third Status Report* advising the court as to the status of the various executory contracts and payments of cures still before the court. Doc. #2096.

Relevant to the instant motion, the Status Report states as follows:

1. **CareFusion Solutions, LLC:** This assumption and cure matter remains unresolved.

This motion will be CONTINUED until a date to be determined as to this contract.

11:00 AM

1. 24-12310-B-7 **IN RE: MATTHEW/MELINA PASCUA**

REAFFIRMATION AGREEMENT WITH VALLEY OAK CREDIT UNION
11-5-2024 [26]

SCOTT LYONS/ATTY. FOR DBT.

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

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

A Reaffirmation Agreement between Matthew and Melina Pascua ("Debtors") and Valley Oak Credit Union for a 2021 Chevrolet Tahoe (VIN 1GNSKNKD0MR353167) ("Vehicle") was filed on November 5, 2024. Doc. #26.

11 U.S.C. § 524(c)(6)(A)(ii) states "An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable non-bankruptcy law, whether or not discharge of such debt is waived, only if the court approves such agreement as in the best interest of the debtor."

Here, the Vehicle is valued at $42,550.00. The amount being reaffirmed by Debtor is $51,083.85 with a 7.45% interest rate. Debtors have negative equity of $ 8,533.85 with approximately 61 months (five years) remaining on the loan and a net monthly income of $25.15 remaining in the budget every month according to the Debtors' schedules. Though there is no presumption of undue hardship because the lender is a Credit Union, reaffirming this debt is not in the Debtors' best interest.

Nothing prevents the Debtors from continuing to make payments to the Creditor nor the creditor from accepting those payments. Approval of the reaffirmation agreement is DENIED.

2. 24-12828-B-7 **IN RE: GENARO/JACKIE CHIHUAHUA**

REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
11-4-2024 [12]

HENRY NUNEZ/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

No appearance is necessary.

A Reaffirmation Agreement between Genaro Chihuahua ("Debtor") and Golden 1 Credit Union for a 2021 Chevrolet Tahoe was filed on November 4, 2024. Doc. #12.

Rule 4008(a) states, in relevant part, that "[a] reaffirmation agreement shall be accompanied by a cover sheet, prepared as prescribed by the appropriate Official Form." Fed. R. Bankr. Pro. 4008(a). Here, no cover sheet is attached to the Reaffirmation Agreement.

The Debtor shall have 14 days to refile the Reaffirmation Agreement with a cover sheet, prepared as prescribed by the appropriate Official Form.

3. 24-12669-B-7 **IN RE: DONALD/KIMBERLY WARD**

REAFFIRMATION AGREEMENT WITH CARMAX AUTO FINANCE
11-7-2024 [14]

JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

A Reaffirmation Agreement between Donald Eugene Ward and Kimberly Linnea Ward ("Debtors") and CarMax Auto Finance for a 2018 Ford Taurus ("Vehicle") was filed on November 7, 2024. Doc. #14.

11 U.S.C. § 524(c)(6)(A)(ii) states "An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this

title is enforceable only to any extent enforceable under applicable non-bankruptcy law, whether or not discharge of such debt is waived, only if the court approves such agreement as in the best interest of the debtor."

Here, the Vehicle is valued at $10,935.00. The amount being reaffirmed by Debtors is $18,467.87 with an 16.64% interest rate. Debtors have negative equity of $7,532.87 with approximately 66 months (over five years) remaining on the loan and $0.00 remaining in the budget every month according to the Debtors' schedules. The court finds no evidence that this Reaffirmation Agreement is in the best interest of the Debtors.

Accordingly, approval of the Reaffirmation Agreement between Debtors and CarMax Auto Finance will be DENIED.

4. 24-12571-B-7 **IN RE: MARIA GONZALEZ CASTANEDA**

REAFFIRMATION AGREEMENT WITH CAPITAL ONE AUTO FINANCE
10-22-2024 [22]

ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION: Rescinded; taken off calendar.

NO ORDER REQUIRED.

Maria Magda Gonzalez Castaneda ("Debtor") has rescinded this reaffirmation agreement with Capital One Auto Finance pursuant to 11 U.S.C. 524(c)(4) on December 4, 2024. Doc. #25. Accordingly, this matter will be taken off calendar.

1:30 PM

1. 24-13002-B-7 **IN RE: RAYMOND GOOLKASIAN**
BDB-1

CONTINUED MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT, AND PRE-FILING CREDIT COUNSELING AS TO DEBTOR
10-21-2024 [10]

TAMMIE ZACZEK/MV
BENNY BARCO/ATTY. FOR DBT.

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

DISPOSITION: Granted

ORDER: The Movant will prepare the order in conformity with the opinion below.

This matter was originally heard on November 19, 2024.

Tammie Zaczek ("Movant"), Debtor's sister-in-law, moves for a waiver of the financial management course requirement and the pre-filing credit counseling requirement as to Raymond Goolkasian, the debtor in the above-styled case ("Debtor"). Doc. #10.

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

No party in interest timely filed written opposition, and the defaults of all nonresponding parties were entered on the November 19, 2024, hearing date. Nevertheless, the court continued this matter to December 10, 2024, at 1:30 p.m. for the reasons outlined below.

Movant asserts that she has power-of-attorney over Debtor's financial affairs. According to Movant's Declaration, Debtor is a "frail 79-

year-old man" debilitated by Parkinson's Disease and currently in hospice. Doc. #12. Movant further declares that Debtor cannot physically participate in pre- or post-filing credit counseling. *Id.*

The declarant is qualified to state her observations about Debtor's condition, and the court previously indicated its inclination to grant the requested relief. However, the court was reticent to do so without the admission of the power of attorney agreement into evidence and so continued the matter to give Movant an opportunity to submit the power of attorney as an exhibit, properly authenticated, in support of the motion.

On November 30, 2024, Movant supplemented this Motion with a Supplemental Declaration from Movant and an Exhibit consisting of a copy of what purports to be the Power of Attorney appointment signed by Debtor and dated June 29, 2024. Docs. ##17-18. After review of these supporting documents, the court's prior reticence is overcome. Accordingly, this motion will be GRANTED, and the financial management course requirement and the pre-filing credit counseling requirement shall be waived as to Debtor Raymond Goolkasian.

2. 24-12906-B-7 **IN RE: IRMA PADILLA**
SKI-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-4-2024 [15]

AMERICREDIT FINANCIAL SERVICES, INC. DBA GM
GIOVANNI ORANTES/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The AmeriCredit Financial Services, Inc. dba GM Financial ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2023 Chevrolet ("Vehicle"). Doc. #15.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with Rules 4001(a)(1) and 7004.

Rule 4001(a)(1) requires motions for relief from the automatic stay to be made in accordance with Rule 9014. Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. Since this motion will affect property of the estate, the Chapter 7 Trustee and the Debtor must be served in accordance with Rule 7004.

Rule 7004(b)(1) allows service in the United States by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business[.]" Furthermore, electronic service is precluded in matters brought under Rule 7004 because Rule 9036 "does not apply to any paper required to be served in accordance with Rule 7004." Rule 9036(e).

Here, the *Certificate of Service* does not indicate service by U.S. Mail on the Chapter Trustee as required by Rules 4001(a)(1) and 7004. Doc. #22. Rather, Movant only served the Debtor by mail but checked the box indicating that "Attorneys and Trustees" were served by Electronic Service upon filing the document with the Clerk of the Court pursuant to Fed. R. Bankr. 5005(a)(2)(A), 9036(b)(2)(c); LBR 9010-1, and so separate notice is not required pursuant to Fed. R. Civ. P. 5(d)(1)(B), incorp. by Fed. R. Bankr. P. 7005, 9014(c). *Id.*

As noted, because this is a contested matter, service must be in accordance with Rule 7004, and electronic service on the Chapter Trustee is precluded by Rule 9036(e) Accordingly, the Chapter Trustee was not properly served, and this motion will be DENIED WITHOUT PREJUDICE.

3. 24-13116-B-7 **IN RE: FRANCISCO ZUNIGA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-12-2024 [20]

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings and conclusions.

ORDER: The court will issue an order.

Francisco Zuniga ("Debtor") filed a *Voluntary Petition for Individuals* on October 28, 2024. Doc. #1. A fee of $338.00 is required at the time of filing that motion. A *Notice of Payment Due* was served on Debtor on November 3, 2024. Doc. #19.

On November 12, 2024, the Clerk of the court issued an *Order to Show Cause re Dismissal of Contested Matter or Imposition of Sanctions* directing Debtor to appear at the hearing and show cause why the case should not be dismissed, other sanctions ordered or other relief for failure to comply with the provisions of 28 U.S.C. § 1930(b). Doc. #20.

This matter will proceed as scheduled. If the filing fee of $338.00 is not paid prior to the hearing, the case may be dismissed, and other sanctions ordered or other relief.

The court will retain jurisdiction over Adversary Proceeding #24-01048 entitled *Tracy Hope Davis, U.S. Trustee v. Francisco Salvado Zuniga, Jr.*, filed November 14, 2024. The order dismissing the case, if entered, shall provide for the retention of such jurisdiction.

4. 24-13319-B-7 **IN RE: ARMANDO AYALA AND ANASTASIA THOMAS**
SPS-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-26-2024 [26]

WILMINGTON SAVINGS FUND SOCIETY, FSB/MV
NEIL COOPER/ATTY. FOR MV.
WILMINGTON SAVINGS FUND SOCIETY, FSB VS.

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 hearing.

Wilmington Savings Fund Society, FSB ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d) (4) concerning certain real property as described below Doc. #26 *et seq.* This is one of three such motions filed by Movant concerning multiple properties in which partial interests were transferred from non-debtor owner/borrower Brittany Dawn Debeikes ("Debeikes") and conveyed to Armando Ayala ("Armando") and Anastasia Thomas ("Anastasia")(collectively "Debtors") prior to Debtors filing of their petition as part of what Movant alleges is a scheme to delay, hinder, or defeat Debeikes' creditors *Id.* The three properties at issue are:

359 & 359 ½ Rose Ave., Venice, CA 90291	SPS-1; Item #4 (This matter)
333 Rose Ave., Venice, CA 90291	SPS-2; Item #5
355 & 355 ½ Rose Ave., Venice, CA 90291	SPS-3; Item #6

Id. Movant avers that all three properties are part of the same scheme by Debeikes, the Debtors, and others. Movant has filed substantially similar motions and memoranda of authorities in all three matters. Docs. #26, #35, #44. Movant seeks an order granting relief from the stay within *rem* relief as to all three properties pursuant to § 362(d)(4). *Id.* In all three motions, Movant also requests that the 14-day stay prescribed by FRBP 4001(a)(3) should be waived to allow Movant to record the order forthwith. *Id.*

This matter will be called and proceed as scheduled. Written opposition was not required, and opposition may be presented at the hearing. In the absence of opposition at the hearing, this motion may

be GRANTED provided that Movant has complied with the order shortening time ("OST").

This motion was set for hearing on shortened notice with an OST under the procedure specified in Local Rule of Practice ("LBR") 9014-1(f)(3). Consequently, the creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Section 362(d)(4) states in relevant part:

> (d)On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—
>
> (4)with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—
>
> (A)transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or
>
> (B)multiple bankruptcy filings affecting such real property.
>
> If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

11 U.S.C. § 362(d)(4).

To obtain relief under § 362(d)(4), Movant must show and the court must affirmatively find the following three elements: (1) the debtor's' bankruptcy filing must have been part of a scheme; (2) the object of the scheme must have been to delay, hinder, or defraud creditors, and (3) the scheme must have involved either the transfer of some interest in the real property without the secured creditor's consent or court approval, or multiple bankruptcy filings affecting the property. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (B.A.P. 9th Cir. 2012).

A scheme is an intentional construct - it does not happen by misadventure or negligence. *In re Duncan & Forbes Dev., Inc.*, 368 B.R. 27, 32 (Bankr. C.D. Cal. 2007). A § 362(d)(4)(A) scheme is an "intentional artful plot or plan to delay, hinder or defraud creditors." *Id.* It is not common to have direct evidence of an artful plot or plan to deceive others - the court must infer the existence and contents of a scheme from circumstantial evidence. *Id.* Movant must present evidence sufficient for the trier of fact to infer the existence and content of the scheme. *Id.*

In support of its three motions, Movant has asked the court to take judicial notice of the plethora of cases filed by multiple parties in which the automatic stay was applied to the subject properties after they had been fractionally conveyed to the debtors in those cases in advance of the petition dates:

1. *In re Maxwell Guerrero and Elena Petrov*, E.D. Cal. Bankr. Case No. 24-90601 ("Petrov Bankruptcy"). All three properties listed as joint tenancies on Schedule A/B. Petition filed on 10/11/24. Dismissed on 11/12/24.
2. *In re Gregory Osborne and Maya Martinez*, E.D. Cal. Bankr. Case No. 24-24801 ("Osborne Bankruptcy"). The Osborne Bankruptcy listed two properties on Rose Avenue on Schedule A/B, neither of which are among the properties at issue in this case. Petition filed on 10/25/24. Dismissed on 11/12/24.
3. *In re Jonas Cole and Abigail Romero*, E.D. Cal. Bankr. Case No. 24-25062 ("Cole Bankruptcy"). The Cole Bankruptcy listed two properties held in joint tenancy Schedule A/B, neither of which are among the properties at issue in this case. Petition filed on 11/7/24. Dismissed on 11/25/24.
4. *In re Armando Ayala and Anastasia Thomas*, E.D. Cal. Bankr. Case No. 24-13319 ("Present Bankruptcy"). Petition filed on 11/14/24. Dismissed on 11/12/24.

Docs. ##50-51 (*Movant's Exhibits*).

After review of the included evidence, the court finds that Debeikes and the Debtors have engaged in a scheme to delay, hinder, or defraud creditors by repeated transfer of interests in Debeikes' properties (both those at issue here and other properties not subject to this

bankruptcy) to Debtors and other persons who thereafter immediately filed for bankruptcy and claimed interests in those properties. The acts of fractional transfer and temporally close bankruptcy filings are not misadventure or negligence but intentional. The acts require several complex steps, and the parties did not abort the process. The court agrees with Movant that the fact that these transfers and bankruptcies repeatedly were accomplished on the eve of a foreclosure sale demonstrates that the object of the scheme is to delay and hinder Movant in the exercise of Movant's remedies. In all the cases, including this one, the bankruptcies were incomplete filings. This repetitive pattern further evidences an intentional scheme. The Petrov, Osborne, and Cole bankruptcies were swiftly dismissed, and the Present Bankruptcy seems poised for the same outcome. The Debtors' claimed an interest in the three properties, which the court considers evidence of their knowing and willful involvement in Debeikes' scheme. Relief under § 362(d)(4) is appropriate.

In the absence of any opposition, this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(4) to permit Movant to proceed with its remedies against the subject properties.

The Court having rendered findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, as incorporated by Federal Rule of Bankruptcy Procedure 7052:

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is vacated as to real property located at 359 & 359 ½ Rose Ave., Venice, CA 90291, and;

IT IS FURTHER ORDERED, pursuant to 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval; or multiple bankruptcy filing affecting such real property. The order shall be binding in any other case under Title 11 of the United States Code purporting to affect the real property described in the motion not later than two years after the date of entry of the order. A debtor in a subsequent case under Title 11 may move for relief from this order based on changed circumstances or for good cause shown after notice and a hearing.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived to allow Movant to record the order forthwith.

5. 24-13319-B-7 **IN RE: ARMANDO AYALA AND ANASTASIA THOMAS**
SPS-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-26-2024 [35]

WILMINGTON TRUST, NATIONAL ASSOCIATION/MV
NEIL COOPER/ATTY. FOR MV.
WILMINGTON TRUST, NATIONAL ASSOCIATION VS.

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 hearing.

Wilmington Savings Fund Society, FSB ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d) (4) concerning certain real property as described below Doc. #35 *et seq.* This is one of three such motions filed by Movant concerning multiple properties in which partial interests were transferred from non-debtor owner/borrower Brittany Dawn Debeikes ("Debeikes") and conveyed to Armando Ayala ("Armando") and Anastasia Thomas ("Anastasia") (collectively "Debtors") prior to Debtors filing of their petition as part of what Movant alleges is a scheme to delay, hinder, or defeat Debeikes' creditors *Id.* The three properties at issue are:

359 & 359 ½ Rose Ave., Venice, CA 90291	SPS-1; Item #4
333 Rose Ave., Venice, CA 90291	SPS-2; Item #5 (This matter)
355 & 355 ½ Rose Ave., Venice, CA 90291	SPS-3; Item #6

Id. Movant avers that all three properties are part of the same scheme by Debeikes, the Debtors, and others. Movant has filed substantially similar motions and memoranda of authorities in all three matters. Docs. #26, #35, #44. Movant seeks an order granting relief from the stay with*in rem* relief as to all three properties pursuant to § 362(d)(4). *Id.* In all three motions, Movant also requests that the 14-day stay prescribed by FRBP 4001(a)(3) should be waived to allow Movant to record the order forthwith. *Id.*

This matter will be called and proceed as scheduled. Written opposition was not required, and opposition may be presented at the hearing. In the absence of opposition at the hearing, this motion may be GRANTED provided that Movant has complied with the order shortening time ("OST").

This motion was set for hearing on shortened notice with an OST under the procedure specified in Local Rule of Practice ("LBR") 9014-1(f)(3). Consequently, the creditors, the U.S. Trustee, and any other

parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Section 362(d)(4) states in relevant part:

> (d)On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—
>
> (4)with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—
>
> (A)transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or
>
> (B)multiple bankruptcy filings affecting such real property.
>
> If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

11 U.S.C. § 362(d)(4).

To obtain relief under § 362(d)(4), Movant must show and the court must affirmatively find the following three elements: (1) the debtor's' bankruptcy filing must have been part of a scheme; (2) the object of the scheme must have been to delay, hinder, or defraud

creditors, and (3) the scheme must have involved either the transfer of some interest in the real property without the secured creditor's consent or court approval, or multiple bankruptcy filings affecting the property. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (B.A.P. 9th Cir. 2012).

A scheme is an intentional construct - it does not happen by misadventure or negligence. *In re Duncan & Forbes Dev., Inc.*, 368 B.R. 27, 32 (Bankr. C.D. Cal. 2007). A § 362(d)(4)(A) scheme is an "intentional artful plot or plan to delay, hinder or defraud creditors." *Id.* It is not common to have direct evidence of an artful plot or plan to deceive others - the court must infer the existence and contents of a scheme from circumstantial evidence. *Id.* Movant must present evidence sufficient for the trier of fact to infer the existence and content of the scheme. *Id.*

In support of its three motions, Movant has asked the court to take judicial notice of the plethora of cases filed by multiple parties in which the automatic stay was applied to the subject properties after they had been fractionally conveyed to the debtors in those cases in advance of the petition dates:

1. *In re Maxwell Guerrero and Elena Petrov*, E.D. Cal. Bankr. Case No. 24-90601 ("Petrov Bankruptcy"). All three properties listed as joint tenancies on Schedule A/B. Petition filed on 10/11/24. Dismissed on 11/12/24.
2. *In re Gregory Osborne and Maya Martinez*, E.D. Cal. Bankr. Case No. 24-24801 ("Osborne Bankruptcy"). The Osborne Bankruptcy listed two properties on Rose Avenue on Schedule A/B, neither of which are among the properties at issue in this case. Petition filed on 10/25/24. Dismissed on 11/12/24.
3. *In re Jonas Cole and Abigail Romero*, E.D. Cal. Bankr. Case No. 24-25062 ("Cole Bankruptcy"). The Cole Bankruptcy listed two properties held in joint tenancy Schedule A/B, neither of which are among the properties at issue in this case. Petition filed on 11/7/24. Dismissed on 11/25/24.
4. *In re Armando Ayala and Anastasia Thomas*, E.D. Cal. Bankr. Case No. 24-13319 ("Present Bankruptcy"). Petition filed on 11/14/24. Dismissed on 11/12/24.

Docs. ##50-51 (*Movant's Exhibits*).

After review of the included evidence, the court finds that Debeikes and the Debtors have engaged in a scheme to delay, hinder, or defraud creditors by repeated transfer of interests in Debeikes' properties (both those at issue here and other properties not subject to this bankruptcy) to Debtors and other persons who thereafter immediately filed for bankruptcy and claimed interests in those properties. The acts of fractional transfer and temporally close bankruptcy filings are not misadventure or negligence but intentional. The acts require

several complex steps, and the parties did not abort the process. The court agrees with Movant that the fact that these transfers and bankruptcies repeatedly were accomplished on the eve of a foreclosure sale demonstrates that the object of the scheme is to delay and hinder Movant in the exercise of Movant's remedies. In all the cases, including this one, the bankruptcies were incomplete filings. This repetitive pattern further evidences an intentional scheme. The Petrov, Osborne, and Cole bankruptcies were swiftly dismissed, and the Present Bankruptcy seems poised for the same outcome. The Debtors' claimed an interest in the three properties, which the court considers evidence of their knowing and willful involvement in Debeikes' scheme. Relief under § 362(d)(4) is appropriate.

In the absence of any opposition, this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(4) to permit Movant to proceed with its remedies against the subject properties.

The Court having rendered findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, as incorporated by Federal Rule of Bankruptcy Procedure 7052:

1. IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is vacated as to real property located at 333 Rose Ave., Venice, CA 90291, and;

IT IS FURTHER ORDERED, pursuant to 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval; or multiple bankruptcy filing affecting such real property. The order shall be binding in any other case under Title 11 of the United States Code purporting to affect the real property described in the motion not later than two years after the date of entry of the order. A debtor in a subsequent case under Title 11 may move for relief from this order based on changed circumstances or for good cause shown after notice and a hearing.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived to allow Movant to record the order forthwith.

6. 24-13319-B-7 **IN RE: ARMANDO AYALA AND ANASTASIA THOMAS**
SPS-3

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-26-2024 [44]

WILMINGTON TRUST, NATIONAL ASSOCIATION/MV
NEIL COOPER/ATTY. FOR MV.
WILMINGTON TRUST, NATIONAL ASSOCIATION VS.

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 hearing.

Wilmington Savings Fund Society, FSB ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d) (4) concerning certain real property as described below Doc. #44 *et seq.* This is one of three such motions filed by Movant concerning multiple properties in which partial interests were transferred from non-debtor owner/borrower Brittany Dawn Debeikes ("Debeikes") and conveyed to Armando Ayala ("Armando") and Anastasia Thomas ("Anastasia") (collectively "Debtors") prior to Debtors filing of their petition as part of what Movant alleges is a scheme to delay, hinder, or defeat Debeikes' creditors *Id.* The three properties at issue are:

359 & 359 ½ Rose Ave., Venice, CA 90291	SPS-1; Item #4
333 Rose Ave., Venice, CA 90291	SPS-2; Item #5
355 & 355 ½ Rose Ave., Venice, CA 90291	SPS-3; Item #6 (This matter)

Id. Movant avers that all three properties are part of the same scheme by Debeikes, the Debtors, and others. Movant has filed substantially similar motions and memoranda of authorities in all three matters. Docs. ##26, #35, #44. Movant seeks an order granting relief from the stay with*in rem* relief as to all three properties pursuant to § 362(d)(4). *Id.* In all three motions, Movant also requests that the 14-day stay prescribed by FRBP 4001(a)(3) should be waived to allow Movant to record the order forthwith. *Id.*

This matter will be called and proceed as scheduled. Written opposition was not required, and opposition may be presented at the hearing. In the absence of opposition at the hearing, this motion may be GRANTED provided that Movant has complied with the order shortening time ("OST").

This motion was set for hearing on shortened notice with an OST under the procedure specified in Local Rule of Practice ("LBR") 9014-1(f)(3). Consequently, the creditors, the U.S. Trustee, and any other

parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Section 362(d)(4) states in relevant part:

> (d)On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—
>
> (4)with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—
>
> (A)transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or
>
> (B)multiple bankruptcy filings affecting such real property.
>
> If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

11 U.S.C. § 362(d)(4).

To obtain relief under § 362(d)(4), Movant must show and the court must affirmatively find the following three elements: (1) the debtor's' bankruptcy filing must have been part of a scheme; (2) the object of the scheme must have been to delay, hinder, or defraud

creditors, and (3) the scheme must have involved either the transfer of some interest in the real property without the secured creditor's consent or court approval, or multiple bankruptcy filings affecting the property. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (B.A.P. 9th Cir. 2012).

A scheme is an intentional construct - it does not happen by misadventure or negligence. *In re Duncan & Forbes Dev., Inc.*, 368 B.R. 27, 32 (Bankr. C.D. Cal. 2007). A § 362(d)(4)(A) scheme is an "intentional artful plot or plan to delay, hinder or defraud creditors." *Id.* It is not common to have direct evidence of an artful plot or plan to deceive others - the court must infer the existence and contents of a scheme from circumstantial evidence. *Id.* Movant must present evidence sufficient for the trier of fact to infer the existence and content of the scheme. *Id.*

In support of its three motions, Movant has asked the court to take judicial notice of the plethora of cases filed by multiple parties in which the automatic stay was applied to the subject properties after they had been fractionally conveyed to the debtors in those cases in advance of the petition dates:

1. *In re Maxwell Guerrero and Elena Petrov*, E.D. Cal. Bankr. Case No. 24-90601 ("Petrov Bankruptcy"). All three properties listed as joint tenancies on Schedule A/B. Petition filed on 10/11/24. Dismissed on 11/12/24.
2. *In re Gregory Osborne and Maya Martinez*, E.D. Cal. Bankr. Case No. 24-24801 ("Osborne Bankruptcy"). The Osborne Bankruptcy listed two properties on Rose Avenue on Schedule A/B, neither of which are among the properties at issue in this case. Petition filed on 10/25/24. Dismissed on 11/12/24.
3. *In re Jonas Cole and Abigail Romero*, E.D. Cal. Bankr. Case No. 24-25062 ("Cole Bankruptcy"). The Cole Bankruptcy listed two properties held in joint tenancy Schedule A/B, neither of which are among the properties at issue in this case. Petition filed on 11/7/24. Dismissed on 11/25/24.
4. *In re Armando Ayala and Anastasia Thomas*, E.D. Cal. Bankr. Case No. 24-13319 ("Present Bankruptcy"). Petition filed on 11/14/24. Dismissed on 11/12/24.

Docs. ##50-51 (*Movant's Exhibits*).

After review of the included evidence, the court finds that Debeikes and the Debtors have engaged in a scheme to delay, hinder, or defraud creditors by repeated transfer of interests in Debeikes' properties (both those at issue here and other properties not subject to this bankruptcy) to Debtors and other persons who thereafter immediately filed for bankruptcy and claimed interests in those properties. The acts of fractional transfer and temporally close bankruptcy filings are not misadventure or negligence but intentional. The acts require

several complex steps, and the parties did not abort the process. The court agrees with Movant that the fact that these transfers and bankruptcies repeatedly were accomplished on the eve of a foreclosure sale demonstrates that the object of the scheme is to delay and hinder Movant in the exercise of Movant's remedies. In all the cases, including this one, the bankruptcies were incomplete filings. This repetitive pattern further evidences an intentional scheme. The Petrov, Osborne, and Cole bankruptcies were swiftly dismissed, and the Present Bankruptcy seems poised for the same outcome. The Debtors' claimed an interest in the three properties, which the court considers evidence of their knowing and willful involvement in Debeikes' scheme. Relief under § 362(d)(4) is appropriate.

In the absence of any opposition, this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(4) to permit Movant to proceed with its remedies against the subject properties.

The Court having rendered findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, as incorporated by Federal Rule of Bankruptcy Procedure 7052:

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is vacated as to real property located at 355 & 355 ½ Rose Ave., Venice, CA 90291, and;

IT IS FURTHER ORDERED, pursuant to 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval; or multiple bankruptcy filing affecting such real property. The order shall be binding in any other case under Title 11 of the United States Code purporting to affect the real property described in the motion not later than two years after the date of entry of the order. A debtor in a subsequent case under Title 11 may move for relief from this order based on changed circumstances or for good cause shown after notice and a hearing.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived to allow Movant to record the order forthwith.

7. 24-12520-B-7 **IN RE: FRIDA ORTEGA**
PPR-1

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
11-13-2024 [20]

NASA FEDERAL CREDIT UNION/MV
D. GARDNER/ATTY. FOR DBT.
LEE RAPHAEL/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion was DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

As a preliminary matter, the official form EDC 007-005 has been revised (10/30/2024). Movant must use the revised form for all future filings.

The moving papers do not include an appropriate Docket Control Number as required by LBR 9014-1(c)(3). "Example: The first Docket Control Number assigned to attorney John D. Doe would be DCN JDD-1, the second DCN JDD-2, the third DCN JDD-3, and so on." The movant has previously used Docket Control Number PPR-1 in this case.

Motion DENIED without prejudice.

8. 23-11723-B-7 **IN RE: FELIPE REYNOSO**
FW-3

OBJECTION TO CLAIM OF KINGS COUNTY TREASURER-TAX COLLECTOR, CLAIM NUMBER 3
10-15-2024 [64]

PETER FEAR/MV
PETER BUNTING/ATTY. FOR DBT.
GABRIEL WADDELL/ATTY. FOR MV.

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

DISPOSITION: Sustained.

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

Peter L. Fear, Chapter 7 Trustee in the above-styled case ("Trustee"), objects to the treatment of Claim No. 3 ("the Claim") of Kings County Treasurer-Tax Collector ("Creditor") as a priority claim and requests that the court treat the Claim as a secured claim. Doc. #64. The Objection is supported by a declaration from the Trustee, an exhibit in the form of Proof of Claim No. 3 ("POC #3") which was filed by Creditor, and a request that the court take judicial notice of the contents of POC #3. Doc. #64 *et seq.* The debtor is Felipe De Jesus Reynoso ("Debtor"). *Id.*

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the sustaining of the objection. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

Trustee's objection is straightforward. On October 15, 2024, Creditor filed POC #3, which (a) asserted a claim against Debtor in the amount of $1695.55 for "property taxes" ("the Claim"), (b) stated that the Claim was fully secured by a lien on Debtor's property, and (c) stated that the Claim was also entitled to priority under 11 U.S.C. § 507(a)(8). Doc. #67; POC #3. However, as Trustee notes, § 507(a)(8)

allows priority status for unsecured claims, and POC #3 clearly states that the claim is fully secured. *Id.* Trustee requests that the court disallow the priority status asserted by POC #3 but allow it as a secured claim in the amount of $1,695.44. The court agrees that this is proper.

No party in interest has responded to the Objection, and the defaults of all nonresponding parties in interest are entered. This Objection will be SUSTAINED.

9. 24-12828-B-7 **IN RE: GENARO/JACKIE CHIHUAHUA**
HDN-1

MOTION TO COMPEL ABANDONMENT
11-8-2024 [14]

JACKIE CHIHUAHUA/MV
HENRY NUNEZ/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.

Genaro and Jackie Chihuahua ("Debtors") move for an order compelling chapter 7 trustee Irma C. Edmonds ("Trustee") to abandon the estate's interest in the goodwill and tools of trade for Mr. Chihuahua's business as a self-employed welder. Doc. #14 *et seq.*

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).

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).

Mr. Chihuahua declares that he is self-employed as a welder. Doc. #16. Debtors seek to compel Trustee to abandon certain business assets used in his employment, which are listed in the schedules as follows:

Asset	Value	Exempt	Lien	Net
Goodwill	$0.00	$0.00	$0.00	$0.00
Tools of the Trade: Listed on Schedule A/B as "Tools"	$8,500.00	$8,500.00	$0.00	$0.00

Doc. #14 *et seq.*; Doc. #1 (*Sched. A/B, C, and D*). None of the assets are encumbered by any secured creditors, and Debtors exempted the Tools for their full value as tools of the trade under Cal. Code Civ. Proc. § 703.060. *Id.*

Mr. Chihuahua contends there is no goodwill value in the business because substantially all the income from the business is the result of his labor, and he does not have any employees. Doc. #16. Further, he certifies that Debtors were qualified and eligible to claim the exemptions under applicable law and understands that if for any reason it is determined that Debtors are not qualified to claim an exemption in the property listed, or if there is some other error in the exemption claimed, Trustee may demand that Debtors compensate the estate for any damage caused by the claimed exemption. *Id.*

No party in interest timely filed written opposition, and the defaults of all nonresponding parties will be entered. This motion will be GRANTED. The court will find that the assets described above are of inconsequential value and benefit to the estate. They were accurately scheduled and are encumbered or exempted in their entirety. Therefore, the court intends to GRANT this motion.

The order shall specifically include the property to be abandoned.

10. 24-12539-B-7 **IN RE: ALEXIS SHAMP**
AP-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-7-2024 [18]

LAKEVIEW LOAN SERVICING, LLC/MV
MICHAEL ARNOLD/ATTY. FOR DBT.
WENDY LOCKE/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.

Lakeview Loan Servicing, LLC ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to real property located at 1284 N. River View Ave, Reedley, CA 93654 ("Property"). Doc. #19. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.* Alexis Elizabeth Shamp ("Debtor") does not oppose, and Debtor's *Statement of Intentions* indicates that the Property is being surrendered. Doc. #1 (*Statement of Intentions*).

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

No party in interest timely filed written opposition, and the default of all nonresponding parties are entered.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there

is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

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

Cause to lift the stay is established for two reasons. First, the record reflects that Debtor is delinquent in mortgage payments in the amount of $14,381.63 as of September 1, 2024, plus any payments accruing subsequently. Doc. #20 (*Declaration of Jacqueline VanDerMiller*). Second, and perhaps more importantly, on August 30, 2024, Debtor filed a Form 108 Statement of Intentions evincing an intent to surrender the Property. Doc. #1.

> 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 stay 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 7, 2024. Doc. #6; *docket generally*. Thus, Debtor's deadline to either amend Form 108 or to surrender the Vehicles in accordance with Debtor's stated intentions ran on November 7, 2024, without Debtor having done 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. Furthermore, Debtor has not opposed the motion.

This 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. Because § 362(d)(1) relief is clearly appropriate based on Debtor's

Statement of Intentions and subsequent nonresponse to this motion, the court declines to address Movant's arguments in favor of § 362(d)(2) relief. Adequate protection is unnecessary in light of the relief granted herein.

The 14-day stay of Rule 4001(a)(3) will be ordered waived because Debtor's Statement of Intentions indicates a desire to surrender the Property.

11. 24-12440-B-7 **IN RE: RICHARD/DENISE GOLD**
JRL-1

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT, CONTINUE CASE ADMINISTRATION, SUBSTITUTE PARTY, AS TO DEBTOR
11-3-2024 [16]

DENISE GOLD/MV
JERRY LOWE/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.

On September 29, 2024, Richard Paul Gold, co-debtor in the above-styled case ("Decedent"), passed away. Doc. #18. Decedent is survived by joint debtor Denise Patricia Gold ("Debtor"). *Id.* Debtor seeks an order (1) appointing Debtor as the representative of Decedent; and (2) waiving the post-petition education requirements for entry of discharge as to Decedent in this chapter 13 case. Doc. #16.

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 chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Upon the death of a debtor in a bankruptcy case that has not been closed, LBR 1016-1(a) provides that a notice of death shall be filed within sixty (60) days of the death of a debtor by counsel or the person intending to be appointed as the representative for or successor to a deceased debtor pursuant to Fed. R. Civ. P. ("Civ. Rule") 25(a) (Fed. R. Bankr. P. ("Rule") 7025). The notice of death shall be served on all other parties in interest, and a redacted copy of the death certificate shall be filed as an exhibit to the notice of death.

LBR 1016-1(b) permits the notice of death and requests for the following relief to be combined into a single motion for omnibus relief under Civ. Rule 18(a) (Rules 7018, 9014(c)):

1) Substitution as the representative for or successor to the deceased debtor in the bankruptcy case pursuant to Civ. Rule 25(a);
2) Waiver of the post-petition education requirement for entry of discharge under 11 U.S.C. § 727(a)(11).

Pursuant to LBR 1016-1, Debtor filed this motion for omnibus relief with a notice of death and redacted death certificate for Decedent. Doc. #16 *et seq.*

> Death or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code [11 USCS § 701 et seq.]. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

Fed. R. Bankr. Pro. 1016. Debtor believes she is the best person qualified to represent Decedent through the duration of this case. Doc. #18. Debtor has completed a personal financial management course. Doc. #26.

11 U.S.C. 727(c)(11) states that the court shall not grant a discharge to a debtor who fails to complete a personal financial management course, except that this requirement shall not apply to a debtor who the court determines, after notice and a hearing, is not able to complete that requirement due to incapacity or disability as defined in 11 U.S.C. § 109(h).

While there does not appear to be a Ninth Circuit case addressing this issue, several courts have found in the context of Chapter 7 cases that the death of a debtor between the filing of a petition and entry of discharge represents an "incapacity" within the meaning of § 109(h). *See, e.g., In re Shorter*, 544 B.R. 654, 670 (Bankr. E.D. Ark. 2015)(assessing death as "a condition equivalent to either disability or incapacity"); *In re Thomas*, No. 07-00097, 2008 Bankr. LEXIS 4519, 2008 WL 4835911, at *1 (Bankr. D.C. Nov. 6, 2008) (waiving requirement for deceased Chapter 7 debtor to complete financial

management course because his death is an incapacity); *In re Henderson*, No. 06-52439-C, 2008 Bankr. LEXIS 1490, 2008 WL 1740529, at *1 (Bankr. W.D. Tex. Apr. 9, 2008) (determining that death is a disability under the definition in Section 109(h)(4)); *In re Robles*, No. 07-30747-C, 2007 Bankr. LEXIS 4239, 2007 WL 4410395, at *2 (Bankr. W.D. Tex. Dec. 13, 2007) (observing that Chapter 7 debtor's death was "the ultimate disability" in terms of debtor's ability to participate in an instructional course on financial management); *In re Trembulak*, 362 B.R. 205, 207 (Bankr. D.N.J. 2007) (allowing deceased debtor to be excused from financial management course under section 109(h)(4) because "clearly the Debtor . . . cannot participate" in the course nor would it aid him in the future).

No party in interest timely filed written opposition, and the defaults of all such nonresponding parties in interest are entered. This motion will be GRANTED. Debtor is authorized to act as Decedent's successor to the extent necessary to complete this Chapter 7 case, and the post-petition education requirement for entry of discharged that is required by 727(c)(11) will be waived.

12. 23-10487-B-7 **IN RE: CHERYLANNE FARLEY**
RTW-2

MOTION FOR COMPENSATION FOR RATZLAFF, TAMBERI & WONG, ACCOUNTANT(S)
10-25-2024 [139]

RATZLAFF TAMBERI & WONG/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order that conforms with the opinion below.

Ratzlaff Tamberi & Wong ("Applicant") seeks approval of a final allowance of compensation under 11 U.S.C. § 330 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as accountant for Jeffrey Vetter, Trustee in the above-styled case ("Trustee'). Doc. #139 *et seq*.

Applicant was employed to perform services under § 327 of the Code pursuant to an order of this court dated August 1, 2024, Doc. #130. This is Applicant's first and final request for compensation.

Applicant seeks **$1,690.00** in fees based on **6.5** billable hours from July 17, 2024, through October 24, 2024. Doc. #141. Based on the moving papers, it appears that Chris Ratzlaff was the only employee of Applicant to work on this case, and he billed at a rate of $260.00 per

hour. *Id.* Applicant also seeks **$13.00** as an award for expenses consisting of postage to notice creditors. *Id.* The total award sought is **$1,703.00**. *Id.*

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." 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, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3). Previous interim compensation awards under 11 U.S.C. § 331, if any, are subject to final review under § 330.

Applicant's services here included, without limitation, accounting work on behalf of the estate and preparation and filing of state and federal tax returns for the estate for the tax period ending on July 31, 2024. Doc. #141. The court finds the services and expenses reasonable, actual, and necessary. The Trustee has reviewed the Application and finds the requested fees and expenses to be reasonable. Doc. #143.

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

No party in interest has responded, and the defaults of all such parties are entered.

This Application is GRANTED. The court will approve on a final basis under 11 U.S.C. § 330 compensation in the amount of **$1,690.00** in fees and **$13.00** in expenses. The court grants the Application for a total award of **$1,703.00** as an administrative expense of the estate and an order authorizing and directing the Trustee to pay such to Applicant from the first available estate funds.

13. 24-11097-B-7 **IN RE: JAIME GONZALEZ**
SKI-1

MOTION FOR RELIEF FROM AUTOMATIC STAY , AND/OR MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
11-5-2024 [22]

PERITUS PORTFOLIO SERVICES II, LLC/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
DISCHARGED 9/9/24

FINAL RULING: There will be no hearing on this matter

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Peritus Portfolio Services II LLC ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2023 Chevrolet ("Vehicle"). Doc. #22.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with Rules 4001(a)(1) and 7004.

Rule 4001(a)(1) requires motions for relief from the automatic stay to be made in accordance with Rule 9014. Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. Since this motion will affect property of the estate, the Chapter 7 Trustee and the Debtor must be served in accordance with Rule 7004.

Rule 7004(b)(1) allows service in the United States by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business[.]" Furthermore, electronic service is precluded in matters brought under Rule 7004 because Rule 9036 "does not apply to any paper required to be served in accordance with Rule 7004." Rule 9036(e).

Here, the *Certificate of Service* does not indicate service by U.S. Mail on the Chapter Trustee as required by Rules 4001(a)(1) and 7004. Doc. #22. Rather, Movant only served the Debtor by mail but checked the box indicating that "Attorneys and Trustees" were served by Electronic Service upon filing the document with the Clerk of the Court pursuant to Fed. R. Bankr. 5005(a)(2)(A), 9036(b)(2)(c); LBR 9010-1, and so separate notice is not required pursuant to Fed. R. Civ. P. 5(d)(1)(B), incorp. by Fed. R. Bankr. P. 7005, 9014(c). *Id.*

As noted, because this is a contested matter, service must be in accordance with Rule 7004, and electronic service on the Chapter Trustee is precluded by Rule 9036(e) Accordingly, the Chapter Trustee

was not properly served, and this motion will be DENIED WITHOUT PREJUDICE.