

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, February 23, 2021
Place: Department B - Courtroom #13
Fresno, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

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. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

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

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

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

9:30 AM

1. [20-10800](#)-B-11 IN RE: 4-S RANCH PARTNERS, LLC
[MF-13](#)

MOTION TO EMPLOY DWIGHT L. SMITH AS CONSULTANT(S)
1-29-2021 [[374](#)]

4-S RANCH PARTNERS, LLC/MV
RENO FERNANDEZ/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

Debtor-in-possession 4-S Ranch Partners, LLC ("DIP"), wishes to employ Dwight L. Smith ("Consultant"), P.G., C.Hg, Principal Hydrogeologist of McGinley & Associates, Inc. ("McGinley"), as its hydrogeological consultant under 11 U.S.C. §§ 327(a), 328, and Fed. R. Bankr. P. 2014. Doc. #374. Consultant filed a declaration stating that he and McGinley are disinterested persons as defined in § 101(14) and do not hold interests adverse to the estate as required by § 327(a). Doc. #377, ¶ 11. Brett Sloan, the chief executive officer of Sloan Cattle Company, LLC ("Sloan Cattle"), a non-debtor affiliate of DIP, indicated that he had read the consulting agreement and Sloan Cattle consents to continue paying for services rendered by Consultant under the agreement. Doc. #376, ¶ 6.

In the absence of opposition, this motion will be GRANTED.

11 U.S.C. § 1107 gives the DIP all the rights and powers of a trustee and shall perform all the functions and duties, certain exceptions notwithstanding are inapplicable here.

Pursuant to 11 U.S.C. § 327(a), the DIP may employ, with the court's approval, one or more professional persons that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the DIP in carrying out its duties.

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).

DIP wishes to employ Consultant as its hydrogeological consultant under § 327(a). DIP requires a hydrogeological consultant to assist with a geochemical evaluation in support of water banking permits and agreements. Doc. #378, ¶ 5. This geochemical evaluation is necessary for permitting and licensing purposes to sell and store water, which DIP believes are vital to its reorganization efforts. *Ibid.*

Previous Consulting Agreement

On May 19, 2020, Sloan Cattle executed a consulting agreement with and paid McGinley \$8,000.00 as retainer to conduct a hydrology report necessary for certification to bottle DIP's water as mineral water. Approval of this contract was denied because the terms and conditions were not reasonable from the perspective of the estate. Doc. #319. Specifically, the court was concerned with:

- (1) references to SHS Ranch, which appeared to be a beneficiary of but not a party to the agreement;
- (2) whether Sloan Cattle agreed to pay for charges incurred by SHS Ranch, or whether some other entity would be liable;
- (3) undefined references to "CLIENT" throughout the agreement;
- (4) whether Stephen Sloan signed on behalf of 4-S Ranch, the estate of Stephen Sloan, Sloan Cattle, or some other entity;
- (5) indemnification provisions;
- (6) limits on aggregate liability and whether the estate would be bound by those terms;
- (7) potential limits on recovery for the estate if the case is voluntarily converted or a trustee is appointed; and
- (8) Nevada choice of law provisions and the implication that Nevada could be the venue if a dispute arose under the agreement. *Id.*

New Consulting Agreement

DIP filed copies of Consultant's offer to perform services and an updated consulting agreement signed by DIP and Sloan Cattle. See

Doc. #379, Ex. A. The offer provided that professional services will be billed to Sloan Cattle, who will be responsible for invoice payments on behalf of DIP. *Id.*, at 3. Sloan Cattle paid \$8,000.00 for services performed through June 2020 and made additional payments of \$10,946.02 for services performed under the prior agreement. Sloan Cattle shall continue to pay for invoiced work while having no direct input or control over the services provided for the benefit of DIP. *Ibid.* Additionally, the offer notes that SHS Ranch may receive indirect benefits from services performed on SHS Ranch wells operated by DIP but will not be responsible for any payments under the agreement nor have any direct control or input over the services performed. *Ibid.*

On January 6, 2021, the Acceptance was signed by Stephen Sloan on behalf of DIP and Brett Sloan on behalf of Sloan Cattle. *Id.*, at 5.

The attached agreement defines "CLIENT" as DIP and reiterates that Sloan Cattle will pay for all services. *Id.*, at 6. The indemnification provisions and limits on aggregate liability have been amended to limit McGinley's liability to third parties, rather than all parties as in the previous agreement. *Ibid.*; *cf.* Doc. #291, Ex. A, at 7. Third parties are defined as any individual or entity that is not the DIP, Sloan Cattle, or McGinley and their respective officers, employees, agents, affiliates, and subcontractors. Doc. #379, Ex. A, at 7. The aggregate liability to third parties for claims arising from McGinley's conduct under the agreement is not to exceed the active limits of McGinley's professional acts, errors, or omissions insurance policy. *Ibid.* Additionally, Sloan Cattle—rather than DIP—agrees to indemnify and hold harmless McGinley from and against all liabilities to third parties in excess of the insurance policy. *Ibid.*

Although the agreement provides that McGinley and 4-S Ranch will not be liable to each other under any circumstances, "[l]imitations on liability shall not apply to a debtor in possession, reorganized debtor, or duly appointed bankruptcy trustee in the CLIENT's bankruptcy case number 20-10800-B-11 currently pending in the United States Bankruptcy Court of the Eastern District of California." *Ibid.*

The choice of law provision remains unchanged, but the "DISPUTES RESOLUTION" section provides guidance as to the court's concerns regarding venue:

- (1) if the CLIENT is a debtor in an active bankruptcy case, the claim will be brought and adjudicated in the bankruptcy court with jurisdiction over the CLIENT's active bankruptcy case,
- (2) if the CLIENT is not a debtor in an active bankruptcy case, the claim will be brought and tried in judicial jurisdiction of the court of the county where CLIENT's place of business is located and COMPANY waives the right to remove the action to any other county or judicial jurisdiction, and
- (3) the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time,

court costs, attorney's fees and other claim related expenses.

Ibid. Thus, there is no risk that Nevada could be chosen as a venue while this bankruptcy case is pending. It appears that DIP has corrected all of the unreasonable terms from the previously denied agreement.

Retroactive Employment

DIP seeks to employ Consultant retroactively effective May 19, 2020. LBR 2014-1(b)(2) states that all requests for retroactive employment exceeding 30 days duration must be set for hearing, show exceptional circumstances, satisfactorily explain the applicant's failure to receive prior judicial approval and must demonstrate that the applicant's services benefited the estate in a significant manner.

"[B]ankruptcy courts . . . possess the equitable power to approve retroactively a professional's valuable but unauthorized services," but are limited "to situations in which 'exceptional circumstances' exist." *Sherman v. Harbin (In re Harbin)*, 486 F.3d 510, 522 (9th Cir. 2007) (quoting *Atkins v. Wain*, 69 F.3d 970, 973-74 (9th Cir. 1995); *Okamoto v. THC Fin. Corp. (In re THC Fin. Corp.)*, 837 F.2d 389, 392 (9th Cir. 1988); *In re Triangle Chemicals, Inc.*, 697 F.2d 1280, 1289 (5th Cir. 1983)). To establish exceptional circumstances, "professionals seeking retroactive approval must satisfy two requirements: they must (1) satisfactorily explain their failure to receive prior judicial approval; and (2) demonstrate that their services benefitted the bankrupt estate in a significant manner." *Harbin*, 486 F.3d at 522 (quoting *Atkins*, 69 F.3d at 974).

Here, DIP states that it was not immediately aware of the necessity of obtaining approval for Consultant's employment because the payment for services under the agreement were to be paid by Sloan Cattle rather than with estate funds. Doc. #378, ¶ 10. Upon becoming aware of the necessity for approval, DIP immediately sought to provide disclosure and seek approval.

Moreover, DIP contends McGinley and Consultant's services are necessary for permitting and licensing purposes central to DIP's plan of reorganization, and therefore the services have benefited the estate in a significant manner. *Id.*, ¶ 5.

This matter will be called as scheduled, but it appears that Debtor has satisfied the requirements of LBR 2014-1(b)(2).

Conclusion

The court finds that Consultant does not represent nor hold an adverse interest to the DIP or to the estate with respect to the matter on which Consultant is to be employed.

In the absence of opposition, this motion will be GRANTED. DIP will be authorized to employ Consultant for the purposes stated above and in the motion pursuant to 11 U.S.C. § 327(a). Consultant shall be retroactively employed effective May 19, 2020 under the terms and

conditions of the Hydrogeologic Consulting Services Agreement dated January 6, 2021. Since DIP and the estate are not responsible for the fees to be incurred, retroactive employment will be permitted. Compensation will be fixed under § 328 in accordance with the agreement such that services will be paid exclusively by Sloan Cattle. No compensation to be paid by DIP will be permitted.

2. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
3-2-2020 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

3. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[FW-9](#)

CHAPTER 11 DISCLOSURE STATEMENT FILED BY DEBTOR STEPHEN
WILLIAM SLOAN
1-12-2021 [[309](#)]

PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order in conformance with the ruling below.

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 U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Before the Disclosure Statement and proposed Plan may be sent to all creditors and parties in interest, the Disclosure Statement must be approved by the court. 11 U.S.C. § 1125(b). Under 11 U.S.C. § 1125, a disclosure statement accompanying a proposed chapter 11 plan must

contain adequate information "that would enable [an investor typical of holders of claims or interests of the relevant class] to make an informed judgment about the plan." "The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court." *In re Brotby*, 303 B.R. 177, 193 (B.A.P. 9th Cir. 2003) (citation omitted) (internal quotation marks omitted).

Sandton Credit Solutions Master Fund IV, LP ("Sandton"), stipulated to refrain from objecting to approval of the Disclosure Statement so long as the Plan is modified to strike the following provision from paragraph 3.01.3 on pages 7 and 16, "(1) the claim shall accrue interest on the unpaid principal balance at a rate equal to one-month London Interbank Bank Offered Rate plus 4.5% with a floor rate of 5.75% after the Effective Date of the Plan," with appropriate renumbering of the remaining provisions. Doc. #321. Otherwise, Sandton and Stephen William Sloan ("DIP") agree that the Disclosure Statement contains adequate information. *Id.*

No other party in interest timely filed written opposition. After review of the Disclosure Statement, the court finds that it contains "adequate information" as defined under 11 U.S.C. § 1125(a)(1). The court will therefore approve the Disclosure Statement. Paragraph 3.01.3 from pages 7 and 16 will be stricken.

4. [13-16954](#)-B-11 **IN RE: MADERA ROOFING, INC.**
[FW-2](#)

MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS FOR
VIOLATION OF THE DISCHARGE INJUNCTION
1-22-2021 [[864](#)]

MADERA ROOFING, INC./MV
ERIC FROMME/ATTY. FOR DBT.
CONT'D TO 3/30/21 PER ECF ORDER #874

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

DISPOSITION: Continued to March 30, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

Counsel for Lexington Insurance Company requested a continuance on February 2, 2021. Doc. #873. The next day, the court continued the matter to March 30, 2021 at 9:30 a.m. Doc. #874. Written opposition, if any, shall be filed not later than March 16, 2021.

5. [20-13855](#)-B-11 **IN RE: MOHOMMAD KHAN**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
12-15-2020 [[1](#)]

NO RULING.

6. [20-13855](#)-B-11 **IN RE: MOHOMMAD KHAN**

MOTION TO EXTEND AUTOMATIC STAY
1-15-2021 [[50](#)]

MOHOMMAD KHAN/MV
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

Chapter 11 *pro se* debtor, Mohommad Mahmood Khan ("Debtor"), filed this motion to extend the automatic stay with respect to real property located at 1810 Mora Avenue, Calistoga, CA 94515. Doc. #50.

Creditor Fay Servicing, LLC ("Fay Servicing"), authorized servicer for Wilmington Trust, N.A., as trustee for MFRA Trust 2014-2 ("Wilmington") timely opposed. Doc. #77.

This motion will be DENIED for failure to comply with the local rules and failure to make a *prima facie* showing that Debtor is entitled to the relief sought.

The Local Rules of Practice ("LBR") "are intended to supplement and shall be construed consistently with and subordinate to the Federal Rules of Bankruptcy Procedure and those portions of the Federal Rules of Civil Procedure that are incorporated by the Federal Rules of Bankruptcy Procedure." LBR 1001-1(b). The most up-to-date rules can be found at the court's website, www.caeb.uscourts.gov, towards the middle of the page under "Court Information," by selecting "Local Rules & General Orders." The newest rules became effective April 9, 2018.

First, LBR 9004-2(a)(6), (b)(5), (b)(6), & (e) and LBR 9014-1(c) & (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. Here, the motion and supporting documents did not contain a DCN. Docs. #50; #51; ##54-56.

Second, LBR 9014-1(f)(1)(B) states that motions filed on at least 28 days' notice require the movant to notify respondents that any opposition must be made in writing and filed with the court at least 14 days preceding the date or continued date of the hearing.

This motion was filed on January 15, 2021 and set for hearing on February 23, 2021. Doc. #50. February 23, 2021 is 39 days after January 15, 2021, and therefore this hearing was set on 28 days' notice under LBR 9014-1(f)(1). The notice stated that written opposition was required and must be filed by February 5, 2021, which is 18 days preceding the date of the hearing. Doc. #51. That is incorrect. Because the hearing was set on 28 days' notice, the notice should have stated that written opposition was required 14 days before the hearing, or by February 9, 2021.

The notice also contained an attachment, which appears to be General Order No. 01-03 dated April 13, 2001, which enacted LBR 7056-1 and revised LBR 9004-1 and 9014-1. These rules are outdated and inapplicable here, as the LBR were last revised on April 9, 2018 and are available on the court's website. Moreover, this attachment should not have been filed with the notice of hearing per LBR 9004-2(c)(1), which requires notices, exhibits, and other specified pleadings to be filed separately.

Third, the notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

Fourth, three seemingly duplicate proofs of service were filed. Docs. ##54-56. These certificates indicate that this motion, the motion for extending the time to extend the automatic stay (matter #7 below) and the motion for a preliminary injunction or temporary restraining order (matter #8 below) were all served on "Wright Finlay Zac for Wilmington Trust" at 4665 Macarthur Ct #200, Newport Beach, CA 92660 by United States mail and electronic mail. *Id.*

LBR 9014-1(e) requires the movant to serve all pleadings and documents filed in support of a motion on or before the day they are filed, with proof of such service in the form of a certificate of service to be filed with the Clerk concurrently with the pleadings or documents served, or not more than three days after they are filed. LBR 9014(e)(1), (e)(2). LBR 9014-1(e)(3) requires each proof of service to be filed separately, bear the DCN of the matter to which it relates, and identify the title of the pleadings and documents served.

LBR 9004-2(e)(3) provides that multiple pleadings related to papers with the same DCN may be included in one proof of service, but pleadings related to papers with a different DCN shall not be included in the same proof of service. Here, each proof of service contains pleadings related to other matters: the motion to extend time to extend the automatic stay and the motion for a preliminary

injunction. Docs. ##54-56. This is incorrect. Each of these matters should have its own certificate of service.

Additionally, the notice of hearing (Doc. #51) does not appear to have been served because it was not included in any one of the three certificates of service that were filed. Docs. #54-56. Fed. R. Bankr. P. ("Rule") 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. Rule 7004 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" and "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 7004(b) (1), (b) (3).

Here, Debtor only served one party. Docs. ##54-56. The United States Trustee ("UST") and all other creditors from the master address list were not served. See Doc. #3. Debtor must serve the UST, who may raise, appear, and be heard on any issue in any case under § 307. Debtor must also serve all other creditors whose interests will be affected by this motion as required by Rules 9014(b) and 7004. Debtor should have served UST and every other creditor that would have been affected by the automatic stay if it were to be extended.

Fifth, even if these procedural errors were addressed, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

11 U.S.C. § 362(c) (3) (A) states that the automatic stay will expire 30 days after a case is filed if that case was filed within one year of another pending case.

11 U.S.C. § 362(c) (3) (B) allows a party in interest to extend the stay upon successfully litigating a motion to extend the stay, which must be heard "**before the expiration of the 30-day period**["

This case was filed on December 15, 2020. Doc. #1. Debtor is a repeat filer with ten prior bankruptcy cases since 2011—nine of which were filed since 2016. One of those cases was filed and dismissed within the preceding year: case no. 20-12774, which was a chapter 13 case filed on August 25, 2020 and dismissed on November 19, 2020 for failure to file complete and accurate schedules, failure to set a plan for hearing, and failure to complete credit counseling timely.

Because this case was filed within one year of Debtor's previous case, a motion to extend the automatic stay must have been filed **and heard before January 14, 2021**, when the 30-day period expired. Because this hearing, February 23, 2021, is after January 14, 2021, the court is unable to grant the requested relief.

For the foregoing reasons, this motion will be DENIED.

MOTION TO EXTEND TIME TO EXTEND AUTOMATIC STAY
1-15-2021 [\[52\]](#)

MOHOMMAD KHAN/MV
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

Chapter 11 *pro se* debtor, Mohommad Mahmood Khan ("Debtor"), filed this motion to extend the time to extend the automatic stay with respect to real property located at 1810 Mora Avenue, Calistoga, CA 94515. Doc. #52.

Creditor Fay Servicing, LLC ("Fay Servicing"), authorized servicer for Wilmington Trust, N.A., as trustee for MFRA Trust 2014-2 ("Wilmington") timely opposed. Doc. #77.

This motion will be DENIED for failure to comply with the local rules and failure to make a *prima facie* showing that Debtor is entitled to the relief sought.

The Local Rules of Practice ("LBR") "are intended to supplement and shall be construed consistently with and subordinate to the Federal Rules of Bankruptcy Procedure and those portions of the Federal Rules of Civil Procedure that are incorporated by the Federal Rules of Bankruptcy Procedure." LBR 1001-1(b). The most up-to-date rules can be found at the court's website, www.caeb.uscourts.gov, towards the middle of the page under "Court Information," by selecting "Local Rules & General Orders." The newest rules became effective April 9, 2018.

First, LBR 9004-2(a)(6), (b)(5), (b)(6), & (e) and LBR 9014-1(c) & (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. Here, the motion and supporting documents did not contain a DCN. Docs. ##52-56.

Second, LBR 9014-1(f)(1)(B) states that motions filed on at least 28 days' notice require the movant to notify the respondent or respondents that any must be made in writing and filed with the court at least 14 days preceding the date or continued date of the hearing.

This motion was filed on January 15, 2021 and set for hearing on February 23, 2021. Doc. #52. February 23, 2021 is 39 days after January 15, 2021, and therefore this hearing was set on 28 days'

notice under LBR 9014-1(f) (1). The notice stated that written opposition was required and must be filed by February 5, 2021, which is 18 days preceding the date of the hearing. Doc. #53. That is incorrect. Because the hearing was set on 28 days' notice, the notice should have stated that written opposition was required 14 days before the hearing, or by February 9, 2021.

The notice also contained an attachment, which appears to be General Order No. 01-03 dated April 13, 2001, which enacted LBR 7056-1 and revised LBR 9004-1 and 9014-1. These rules are outdated and inapplicable here, as the LBR were last revised on April 9, 2018 and are available on the court's website. Moreover, this attachment should not have been filed with the notice of hearing per LBR 9004-2(c) (1), which requires notices, exhibits, and other specified pleadings to be filed separately.

Third, the notice did not contain the language required under LBR 9014-1(d) (3) (B) (iii). LBR 9014-1(d) (3) (B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

Fourth, three seemingly duplicate proofs of service were filed. Docs. ##54-56. These certificates indicate that this motion, the motion extend the automatic stay (matter #6 above) and the motion for a preliminary injunction or temporary restraining order (matter #8 below) were all served on "Wright Finlay Zac for Wilmington Trust" at 4665 Macarthur Ct #200, Newport Beach, CA 92660 by United States mail and electronic mail. *Id.*

LBR 9014-1(e) requires the movant to serve all pleadings and documents filed in support of a motion on or before the day they are filed, with proof of such service in the form of a certificate of service to be filed with the Clerk concurrently with the pleadings or documents served, or not more than three days after they are filed. LBR 9014(e) (1), (e) (2). LBR 9014-1(e) (3) requires each proof of service to be filed separately, bear the DCN of the matter to which it relates, and identify the title of the pleadings and documents served.

LBR 9004-2(e) (3) provides that multiple pleadings related to papers with the same DCN may be included in one proof of service, but pleadings related to papers with a different DCN shall not be included in the same proof of service. Here, each proof of service contains pleadings related to other matters: the motion to extend the automatic stay and the motion for a preliminary injunction. Docs. ##54-56. This is incorrect. Each of these matters should have its own certificate of service.

Additionally, the notice of hearing (Doc. #53) does not appear to have been served because it was not included in any one of the three certificates of service that were filed. Docs. #54-56. Fed. R. Bankr. P. ("Rule") 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought

pursuant to Rule 7004. Rule 7004 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" and "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 7004(b)(1), (b)(3).

Here, Debtor only served one party. Docs. ##54-56. The United States Trustee ("UST") and all other creditors on the master address list were not served. See Doc. #3. Debtor must serve the UST, who may raise, appear, and be heard on any issue in any case under § 307. Debtor must also serve all other creditors whose interests will be affected by this motion as required by Rules 9014(b) and 7004. Debtor should have served UST and every other creditor that would have been affected by the automatic stay if it were extended.

Fifth, even if these procedural errors were addressed, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

11 U.S.C. § 362(c)(3)(A) states that the automatic stay will expire 30 days after a case is filed if that case was filed within one year of another pending case.

11 U.S.C. § 362(c)(3)(B) allows a party in interest to extend the stay upon successfully litigating a motion to extend the stay, which must be heard "**before the expiration of the 30-day period**["

This case was filed on December 15, 2020. Doc. #1. Debtor is a repeat filer with ten prior bankruptcy cases since 2011—nine of which were filed since 2016. One of those cases was filed and dismissed within the preceding year: case no. 20-12774, which was a chapter 13 case filed on August 25, 2020 and dismissed on November 19, 2020 for failure to file complete and accurate schedules, failure to set a plan for hearing, and failure to complete credit counseling timely.

Because this case was filed within one year of Debtor's previous case, a motion to extend the automatic stay must have been filed **and heard before January 14, 2021**, when the 30-day period expired. Because this hearing, February 23, 2021, is after January 14, 2021, the court is unable to grant the requested relief. The court cannot retroactively extend the time. The automatic stay has already expired and cannot be reimposed.

For the foregoing reasons, this motion will be DENIED.

8. [20-13855](#)-B-11 **IN RE: MOHOMMAD KHAN**

AMENDED MOTION FOR PRELIMINARY INJUNCTION., AMENDED MOTION
FOR TEMPORARY RESTRAINING ORDER
1-22-2021 [[63](#)]

MOHOMMAD KHAN/MV
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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

Chapter 11 *pro se* debtor, Mohommad Mahmood Khan ("Debtor"), filed this motion to extend the time to extend the automatic stay with respect to real property located at 1810 Mora Avenue, Calistoga, CA 94515. Doc. #63.

Creditor Fay Servicing, LLC ("Fay Servicing"), authorized servicer for Wilmington Trust, N.A., as trustee for MFRA Trust 2014-2 ("Wilmington") timely opposed. Doc. #78.

This motion will be DENIED for failure to comply with the local rules and failure to make a *prima facie* showing that Debtor is entitled to the relief sought.

The Local Rules of Practice ("LBR") "are intended to supplement and shall be construed consistently with and subordinate to the Federal Rules of Bankruptcy Procedure and those portions of the Federal Rules of Civil Procedure that are incorporated by the Federal Rules of Bankruptcy Procedure." LBR 1001-1(b). The most up-to-date rules can be found at the court's website, www.caeb.uscourts.gov, towards the middle of the page under "Court Information," by selecting "Local Rules & General Orders." The newest rules became effective April 9, 2018.

First, LBR 9004-2(a)(6), (b)(5), (b)(6), & (e) and LBR 9014-1(c) & (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. Here, the motion and supporting documents did not contain a DCN. Docs. #49; ##54-56; #63.

Second, LBR 9014-1(f)(1)(B) states that motions filed on at least 28 days' notice require the movant to notify the respondent or respondents that any opposition must be made in writing and filed with the court at least 14 days preceding the date or continued date of the hearing.

The original motion and notice were filed on January 15, 2021 and set or hearing on February 23, 2021. Docs. #48; #49. February 23,

2021 is 39 days after January 15, 2021. The amended motion was filed on January 22, 2021, which is 32 days before the hearing, and therefore both motions were filed on 28 days' notice under LBR 9014-1(f)(1). Doc. #63. The notice stated that written opposition was required and must be filed by February 5, 2021, which is 18 days preceding the date of the hearing. Doc. #49. That is incorrect. Because the hearing was set on 28 days' notice, the notice should have stated that written opposition was required 14 days before the hearing, or February 9, 2021.

The notice also contained an attachment, which appears to be General Order No. 01-03 dated April 13, 2001, which enacted LBR 7056-1 and revised LBR 9004-1 and 9014-1. These rules are outdated and inapplicable here, as the LBR were last revised on April 9, 2018 and are available on the court's website. Moreover, this attachment should not have been filed with the notice of hearing per LBR 9004-2(c)(1), which requires notices, exhibits, and other specified pleadings to be filed separately.

Third, the notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

Fourth, three seemingly duplicate proofs of service were filed. Docs. ##54-56. These certificates indicate that the original preliminary injunction motion (Doc. #48), the motion extend the automatic stay (matter #6 above), and the motion to extend the time to extend the automatic stay (matter #7 above) were all served to "Wright Finlay Zac for Wilmington Trust" at 4665 Macarthur Ct #200, Newport Beach, CA 92660 by United States mail and electronic mail. *Id.*

LBR 9014-1(e) requires the movant to serve all pleadings and documents filed in support of a motion on or before the day they are filed, with proof of such service in the form of a certificate of service to be filed with the Clerk concurrently with the pleadings or documents served, or not more than three days after they are filed. LBR 9014(e)(1), (e)(2). LBR 9014-1(e)(3) requires each proof of service to be filed separately, bear the DCN of the matter to which it relates, and identify the title of the pleadings and documents served.

LBR 9004-2(e)(3) provides that multiple pleadings related to papers with the same DCN may be included in one proof of service, but pleadings related to papers with a different DCN shall not be included in the same proof of service. Here, each proof of service contains pleadings related to other matters: the motion to extend the automatic stay and the motion to extend the time to extend the automatic stay. Docs. ##54-56. This is incorrect. Each of these matters should have its own certificate of service.

Additionally, the notice of hearing (Doc. #49) does not appear to have been served because it was not included in any one of the three certificates of service that were filed. Docs. ##54-56.

Fifth, even if these procedural errors were addressed, the moving papers do not present "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *In re Tracht Gut, LLC*, 503 B.R. 804, 811 (B.A.P. 9th Cir. 2014) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Under Rule 7001(7), a proceeding to obtain an injunction or other equitable relief is an adversary proceeding. Here, the court is unable to grant the relief requested unless Debtor properly files an adversary proceeding. See Rule 7003; Fed. R. Civ. P. 3. The court cannot even consider the claim without jurisdiction over all parties in interest, notwithstanding Debtor's failure to discuss the legal requirements to obtain a preliminary injunction or temporary restraining order.

For the foregoing reasons, this motion will be DENIED.

9. [20-13855](#)-B-11 **IN RE: MOHOMMAD KHAN**
[UST-1](#)

MOTION TO DISMISS CASE
1-27-2021 [[68](#)]

TRACY DAVIS/MV
JUSTIN VALENCIA/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on less than 28 days' notice under Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled.

The United States Trustee ("UST") filed this motion to dismiss **with prejudice** *pro se* debtor Mohommad Mahmood Khan's ("Debtor") chapter 11 case for "cause" under 11 U.S.C. § 1112(b) and Fed. R. Bankr. P. ("Rule") 1017(f) and 9014. Doc. #68.

UST contends cause exists to dismiss because Debtor has not provided any requested financial records to UST, failed to file monthly operating reports, has not provided a picture identification and proof of a Social Security number; filed incomplete voluntary petition, schedules, and statement of financial affairs; failed to appear at the Initial Debtor Interview; failed to answer questions

related to his petition, schedules, and statement of financial affairs; and has caused unreasonable delay that is prejudicial to creditors. *Id.*

UST also filed adversary proceeding 20-01068, *U.S. Trustee v. Khan*, seeking an injunction against filing another bankruptcy case in United States Bankruptcy Court for the Eastern District of California for a period of two years without first obtaining permission from the Chief Bankruptcy Judge under 11 U.S.C. §§ 105, 349, and Rule 7001(7).

Though written opposition was not required prior to the hearing, Debtor responded on February 12, 2021. Doc. #84.

UST replied on February 16, 2021. Doc. #87.

This motion will be GRANTED.

Procedural Deficiency

First, the court must address a procedural deficiency. The notice of hearing (Doc. #69) contained the wrong notice language. LBR 9014-1(f)(2)(C) states that motions filed on less than 28 days' notice, but at least 14 days' notice, require the movant to notify respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing and if opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs.

This motion was filed on January 27, 2021 and set for hearing on February 23, 2021. Doc. #68. February 23, 2021 is 27 days after January 27, 2021, and therefore this hearing was set on less than 28 days' notice under LBR 9014-1(f)(2). The notice stated that written opposition was required and must be filed at least 14 days preceding the date of the hearing. Doc. #69. That is incorrect. Because the hearing was set on 14 days' notice, the notice should have stated that no written opposition was required and included the language of LBR 9014-1(f)(2)(C).

Typically, this error would result in the motion being denied without prejudice. However, LBR 1001-1(f) allows the court *sua sponte* to suspend provisions of the LBR not inconsistent with the Federal Rules of Bankruptcy Procedure to accommodate the needs of a particular case or proceeding.

Because Debtor's petition appears to be filed in bad faith, this is Debtor's tenth bankruptcy filing since 2011, and Debtor filed written opposition, this error will be overlooked in this instance. Future violations of the LBR in other matters may result in the motion being denied without prejudice.

Background

Debtor filed a "skeletal" chapter 11 petition on December 15, 2020. Doc. #1. Debtor is a repeat filer with ten prior bankruptcy cases

since 2011—nine of which were filed since 2016. Eight were filed in the Eastern District of California (Fresno Division) and two were filed in the Central District of California (Los Angeles Division):

- 1) **20-12774** (*Pro se*)
Type: Chapter 13 Filed: 08/25/2020
Location: Fresno Dismissed: 11/19/2020
Reason: Failure to file complete and accurate schedules, failure to set a plan for hearing, failure to complete credit counseling timely.
- 2) **19-14658** (*Pro se*)
Type: Chapter 13 Filed: 11/05/2019
Location: Fresno Dismissed: 12/09/2019
Reason: Failure to file schedules, statement of financial affairs, and a chapter 13 plan.
- 3) **19-12039** (*Pro se*)
Type: Chapter 13 Filed: 05/13/2019
Location: Fresno Dismissed: 06/19/2019
Reason: Failure to file schedules, statement of financial affairs, and a chapter 13 plan.
- 4) **19-10027** (*Pro se*)
Type: Chapter 13 Filed: 01/08/2019
Location: Fresno Dismissed: 01/31/2019
Reason: Failure to file schedules, statement of financial affairs, and a chapter 13 plan.
- 5) **18-11385** (*Pro se*)
Type: Chapter 11 Filed: 04/10/2018
Location: Fresno Dismissed: 05/31/2018
Reason: Failure to file schedules, statement of financial affairs, voluntary petition form 101, statement of current monthly income form 122B, and a chapter 11 plan.
- 6) **17-13630** (Represented by counsel)
Type: Chapter 13 Filed: 09/21/2017
Location: Fresno Dismissed: 12/01/2017
Reason: Failure to provide the chapter 13 trustee with payment advices and tax returns.
- 7) **17-10547** (Represented by counsel)
Type: Chapter 13 Filed: 02/21/2017
Location: Fresno Dismissed: 03/22/2017
Reason: Failure to file schedules, statement of financial affairs, chapter 13 plan, and attorney's disclosure statement.
- 8) **16-16109** (*Pro se*)
Type: Chapter 13 Filed: 05/09/2016
Location: Los Angeles Dismissed: 06/16/2016
Reason: Failure to file schedules, statement of financial affairs, chapter 13 plan, credit counseling certificate, statement of related cases, declaration

of debtor re: last 60 days income, verification of master address list, and voluntary petition form 101.

- 9) **16-11408** (Pro se)
Type: Chapter 13 Filed: 02/04/2016
Location: Los Angeles Dismissed: 03/11/2016
Reason: Failure to file schedules, statement of financial affairs, chapter 13 plan, credit counseling certificate, statement of related cases, declaration of debtor re: last 60 days income, verification of master address list, and voluntary petition form 101.
- 10) **11-13975** (Pro se)
Type: Chapter 13 Filed: 04/06/2011
Location: Fresno Dismissed: 04/25/2011
Reason: Failure to file schedules, statement of financial affairs, and a chapter 13 plan.

None of these prior cases were disclosed in Debtor's petition. Doc. #1, Form 101, at 3, ¶ 9; cf. #47, Am. Form 101.

The Initial Debtor Interview ("IDI") was scheduled for January 6, 2021 and the § 341 meeting of creditors was scheduled for January 13, 2021. Docs. #70, ¶ 11; #17. No Official Committee of Unsecured Creditors has been appointed by the UST.

Filing Extensions

Debtor was sent a *Notice of Incomplete Filing of Filing Outdated Forms and Notice of Intent to Dismiss Case if Documents are Not Timely Filed* on December 19, 2020, which required him to file missing schedules, a Statement of Financial Affairs, Form 122B, and List of 20 Largest Unsecured Creditors by December 29, 2020 or the case would be dismissed without further notice. Doc. #10.

On December 22, 2020, UST requested Debtor provide evidence of insurance for real and personal property, workers compensation, liability, and other insurance, along with evidence of a picture identification and proof of a Social Security number, which were to be provided to UST by December 30, 2020. Doc. #70, ¶¶ 8-10. On December 30, 2020, via FedEx scan, Debtor requested an additional three days to provide evidence of insurance and proof of identification. *Id.*, ¶ 12. This request was denied by the UST. *Ibid.*

On December 29, 2020, Debtor sought extension of time to file his missing schedules and other required documents. Doc. #20. The court granted this motion and extended the deadline to file the missing document to January 12, 2021. Doc. #23.

On January 12, 2021, Debtor again requested an extension of time to file his missing schedules and other documents. Doc. #26. This request was denied on January 14, 2021. Doc. #35. Later that same day, Debtor filed the missing schedules, which were largely incomplete, inaccurate, or erroneous. Docs. ##37-40. Debtor filed

these documents with a *Motion to not dismiss case and accept documents and missing documents*. Doc. #41.

Initial Debtor Interview

UST had not received any requested documents by the IDI date, but proceeded with an "administrative" interview on January 6, 2021 with Debtor, who appeared with his son, Mr. Shaheyer "Joe" Khan. *Id.*, ¶ 13. A substantive IDI was scheduled for January 20, 2021 with outstanding documents due not later than January 13, 2021. *Ibid.* No documents were provided by January 13, 2021, prompting UST to contact Debtor on January 14, 2021 to remind him that the IDI documents were delinquent and must be turned over prior to the January 20, 2021 interview. *Id.*, ¶ 14. On January 20, 2021, Debtor sent another FedEx scan indicating that he would not be able to appear at the IDI due to unforeseeable health concerns. *Id.*, ¶ 16. Debtor requested to reschedule the interview for the following Friday or Monday but stated that he "should have an attorney on board by then." *Ibid.*

341 Meeting

Meanwhile, the initial § 341 hearing took place on January 13, 2021. Debtor appeared, again with his son, but did not provide picture identification, proof of a Social Security number, and provided incomplete and incomprehensible answers to UST's questions. Doc. #46. Based on the transcript provided, it appears that technical difficulties—poor reception, microphone quality, or both—prevented Debtor from providing intelligible responses to many of the questions. *Id.* Some of Debtor's responses were articulatable, but these responses support the contention that Debtor failed to list in his petition: his wife, business partner, and any prior bankruptcy filed in the last eight years. Doc. #68. There were initial concerns that Debtor's business was a health care business, but these were resolved when it was made clear that it was a software business. Doc. #57. Debtor stated that he would hire an attorney by Friday, January 15, 2021. Doc. #46.

Incomplete Petition, Schedules, and Other Documents

On January 14, 2021, Debtor filed his missing schedules and related documents. As the court stated on the record at the January 26, 2021 status conference, there is a complete and total lack of candor in the petition, schedules, and other pleadings. Rule 9011(a) requires every petition, pleading, motion, and other paper to be signed by at least one attorney of record or by the party if unrepresented, as here. Presentation of these papers to the court certifies that, to the best of the person's knowledge, information, and belief, formed after a reasonable inquiry that (1) it is not being presented for any improper purpose, such as to harass or cause unnecessary delay; (2) the claims, defenses, and contentions are warranted by law or by a nonfrivolous argument; (3) the allegations and other factual contentions have evidentiary support; and (4) the denials of factual contentions are warranted on the evidence or reasonably based on a lack of information or belief. Rule 9011(b). The documents submitted in this case do not meet this standard.

List of 20 Largest Unsecured Creditors

Debtor's *List of Creditors Who Have the 20 Largest Unsecured Claims* (Form 104) provides no insight into Debtor's finances. Doc. #39. Debtor lists four creditors, but omits addresses, contact information, claim valuations, and other details about each debt. Debtor's Form 104 is effectively meaningless.

Statement of Financial Affairs

Debtor's *Statement of Financial Affairs* (Form 107) is filled with omissions and inadequate or incomplete information. Doc. #40, Form 107. Debtor states he received gross income from operating a business in the amount of \$20,000 from January 1, 2020 through December 15, 2020 when he filed bankruptcy. *Id.*, at 2, ¶ 4. Debtor also received \$30,000 from operating a business for the last calendar year and \$20,000 for the calendar year before that. The "year" line, which should bear 2019 and 2018, is left blank. Debtor also does not specify whether his 2018 gross income was from wages, commissions, bonuses, and tips or from operating a business. *Ibid.* No information about this business is provided.

Debtor failed to check either "Yes" or "No" in response to receipt of other income during this year or the previous calendar years, but then states that he received "rental" income of \$20,000 from January 1, 2020 to the date of the petition, \$30,000 in rental income for the last calendar year and \$20,000 in "rental / biz" income for the calendar year before that (leaving blank the "year" line for both). *Ibid.* No information about these rental properties is provided.

Debtor was involved in legal actions within one year before filing bankruptcy, but the information about these actions is inadequate. Debtor lists "*mohammad [sic] khan vs bank[,]*" case no. 19-cv-0046 for wrongful foreclosure, fraudulent transfer, and conspiracy in Napa County Superior Court, now pending. Debtor is also involved in "*mohammad [sic] khan appellar us bank na appelle*" for "2614 sacramento[,]" which is one of the properties in Schedule A/B, which he indicates is on appeal. *Id.*, at 5, ¶ 9. Debtor also states real property located at 1810 Mora Avenue in Calistoga, California ("Mora Property") was foreclosed by "fay loan servicing, us bank, bank of" and has a value of \$2,400,000.

Within two years of filing bankruptcy, Debtor states he has not given any gifts with a total value of more than \$600 per person, but then states, "unsure if gift or dependant payme[nt.]" *Id.*, at 6, ¶ 13. Debtor indicates he has given more than \$600 in gifts or contributions to charity within the last two years, but when prompted about the details of the charity, contribution amount, and date contributed, Debtor states "unsure of position[.]" *Id.*, at 7, ¶ 14.

Debtor claims he lost Mora Property within one year of filing on September 6, 2019—more than one year before filing—with a value of \$400,000. *Id.*, ¶ 15. When asked to describe any insurance coverage for the loss, Debtor answered "litigation[.]" *Ibid.* Debtor states "unsure" on a line to identify persons who received pre-petition

transfers outside of the ordinary course of business after previously marking that he had not made any transfers. *Id.*, at 8, ¶ 18.

Debtor indicated that he has transferred property to a self-settled trust in which he is the beneficiary within ten years of filing on "2/14[.]" *Id.*, at 9, ¶ 19. For the description and value of property transferred, Debtor wrote, "includes intellectual property and real estate[.]" *Ibid.* No additional information about Debtor's asset-protection trust.

Meanwhile, Debtor has no financial accounts or instruments, safe deposit boxes, or other depository for securities, cash, or other valuables, but does have property stored in a storage unit at "unsure of facility/business" in Los Angeles. *Id.*, at 10, ¶ 22. No information is provided about the contents. Debtor also holds control of property owned by someone else, a "health amnd [sic] living group license[.]" No location, description, or value is provided. *Id.*, ¶ 23.

Debtor is also a partner in a partnership named "real estate/ unsure of info" doing "real estate" business and also a partner in "technology/unsure of information" performing "technology" services. *Id.*, at 11, ¶ 27. Debtor states he has given a financial statement to "unsure of manager or entity" and he "will provide[.]" The attached B7 form is blank. *Id.*, at 49-59. These are not answers or responses, but statements indicating that Debtor does not know how to navigate a chapter 11 case.

Schedules

Debtor lists several properties in his schedules, including Mora Property; 7310 Plaza, Tahoe Vista, CA; 2614 Sacramento and 1554 Greenwich in San Francisco, CA 94115; and a 2008 VW Jetta. *Id.*, Schedule A/B. Debtor indicates the Mora Property is in litigation and valued at \$2,400,000, but Debtor only owns \$20 in equity. *Id.*, ¶ 1.1. The Tahoe Vista Property is valued at \$450,000, but Debtor owns \$20 in equity. *Id.*, ¶ 1.2. The properties in Sacramento are listed as "Legal and business losses" valued at \$9,000,000, of which Debtor owns "\$2.8/20" in equity. *Id.*, ¶ 1.3.

Debtor owns bonds, mutual funds, or publicly traded stocks but is "unsure of the status of this due to theft of intellectual property unsure due to theft and wrongful foreclosure of Real estate[.]" *Id.*, at 5, ¶ 18. Debtor owns non-publicly traded stock and interests, which include "Health and living group investment (unsure)" and notes that "Technology license was misappropriated and effective value[.]" *Id.*, ¶ 19. No value or percentage of ownership is provided.

Debtor also owns annuities in the amount of \$75, but states "misappropriated stock/ annuity lost to wrongful foreclosure (value?) Income from Health and Living group associated 1810 Mora (in litigation) 75k month,but [sic] dealing with virus issue and theft issue or misappropriation[.]" *Id.*, at 6, ¶ 23. Debtor also purports to own a future interest in a wrongful foreclosure lawsuit,

which "partners" are handling, valued at \$15,000,000. *Id.*, at 7, ¶ 25. Regarding intellectual property, Debtor owns \$30 in "license rights that were assigned and in fringed upon or violated" and an unspecified amount for a technology license assigned to Debtor and his partnership, which were purportedly violated. *Id.*, ¶¶ 25, 26. Debtor is apparently owed \$4,500 in family support, but does not specify from whom, and is owed an unspecified amount for "lost loans" in the Mora Property loss. *Id.*, ¶¶ 29, 30.

Debtor lists claims against third parties and contingent and unliquidated claims in an unspecified amount for Mora, Greenwich, and Sacramento Properties, along with "technology losses" and "misappropriation of license[.]" *Id.*, at 8, ¶ 33, 34. Debtor states he owns other assets in an unspecified amount but is "unsure but will add more once missing documents are located or help to review petition is uncovered[.]" *Id.*, ¶ 35. From then on, Debtor continues to list various business-related property (rental income, desks, agriculture equipment, "unsure" inventory, interests in companies and properties) and crops (wine grapes at Mora Property), but neglects to fill in any value amounts. *Id.*, Parts 5-7. The final totals are left blank. *Id.*, ¶¶ 55-63.

Schedule C is blank.

Schedule D is filled in with some secured creditors but is largely incomplete and lacking dollar amounts, addresses, and other details about each claim. Fay Loan Servicing has a claim of \$1,000,000 secured by Mora Property, Shell Point has a claim secured by 7310 Plaza Circle, Nationstar/US Bank has a claim secured by 2614 Sacramento Street in the amount of \$750,000, SLS has a claim secured by 1554 Greenwich, and Health and Living Group has a claim secured by license, technology, Mora Property, and other property. *Id.*, Schedule D. No additional information or dollar amounts are listed.

Schedule E/F is largely blank, but Health and Living Group is listed with a business lease with a nonpriority amount of \$7,500. *Id.*, Schedule E/F, ¶ 2.1. Other claims are listed in the amounts of \$10,000 and \$200, but neither creditor is identified. *Ibid.*

Schedule G has Health and Living Group listed four times and Bruce Chadbourne (Debtor's business partner per § 341 hearing; Doc. #46) once, all with respect to Mora Property. Debtor's statements regarding the purpose of the lease or contracts include multiple confusing entries that provide little insight. Doc. #40, Schedule G. From what this court can gather, it appears a lease was paid through March 31, 2021, but was affected by COVID-19 and business losses associated with Mora litigation. Then, Debtor states another business partnership "on license and contract" was given for \$1 billion dollars but is restructuring due to losses. There is also a technology license that was assigned to other individuals or entities in Los Angeles and San Francisco, and these licenses have been violated or had their copyrights infringed upon. Lastly, there is a contract related to intellectual property at the two properties in San Francisco, which are "being dealt with" through assignments and settlement of a partnership dispute. Meanwhile, Bruce Chadbourne

has a contract for "business and technology and real estate ownership[.]" *Id.*, ¶¶ 2.1-2.5.

Debtor claims to have no Co-Debtors in Schedule H.

Debtor is not employed, but his occupation is "accounting /retired/ business[.]" *Id.*, Schedule I. Large portions of Schedule I are blank, but he indicates he receives \$7,800 in gross income, \$6,800 in net income from rental income or from operating a business, \$2,500 in family support, \$1,100 in Social Security, \$75,000 in other monthly income, though Debtor states "lost/contracted forclos/biz", for a total monthly income of \$10,400 (rather than \$93,200, or \$18,200 if the \$75,000/month contract was lost). The math does not add up, so these numbers must be inaccurate, miscalculated, or perhaps arbitrarily entered.

Schedule J lists some expenses, but not others, totaling \$20,950 by the court's calculation. But then Debtor states he has total monthly expenses of \$18,000. *Id.*, Schedule J, ¶ 22c. Debtor's arithmetic is incorrect. Debtor copies his line 12 income from Schedule I—previously blank—to line 23a in the amount of \$87,000. The monthly net income is blank. *Id.*, at ¶ 23c. Debtor believes his expenses will increase if his litigation, which terminated his contracts but is currently being litigated, is resolved and he is able to "conduct contracts and business[.]" *Id.*, ¶ 24. Debtor states he will incur additional debt but will become a beneficiary of the income. *Ibid.*

Schedule J-2 is blank.

Overall, the Schedules are incomplete and betray an intent to file this case to solely obtain and extend the automatic stay. As noted in matter #6 above, the automatic stay has already expired and cannot be reimposed.

There is a complete lack of candor in the schedules. The asset valuations are unsupported, and it appears that this petition was filed in bad faith solely to acquire the benefit of the automatic stay.

11 U.S.C. § 1112(b)

UST seeks dismissal of this case under § 1112(b).

11 U.S.C. § 1112(b) (1) provides:

Except as provided in paragraph (2) and subsection (c), on request . . . the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors or the estate.

Section 1112(b) includes a non-exhaustive list of "causes," but the court should "consider other factors as they arise, and use its

equitable power to reach the appropriate result." *Pioneer Liquidating Corp. v. U.S. Trustee (In re Consol. Pioneer Mortg. Entities)*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000), *aff'd* 264 F.3d 803 (9th Cir. 2001). The court has broad discretion in determining cause. *Id.*

If reorganization or rehabilitation is unrealistic or futile, a chapter 11 case may be dismissed or converted at its outset. *In re Johnston*, 149 B.R. 158, 162 (B.A.P. 9th Cir. 1992). And if there is cause to convert or dismiss, the court must decide: (1) whether dismissal is in the best interests of creditors and the estate; and (2) identify whether there are unusual circumstances that establish dismissal or conversion is not in the best interests of creditors and the estate. *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 612 (B.A.P. 9th Cir. 2001).

Proof of Insurance

UST contends that this case should be dismissed under § 1112(b)(4)(C) for "failure to maintain appropriate insurance that poses a risk to the estate or the public." As noted above, Debtor failed to provide any proof of insurance, which presents a liability and risk to the estate.

Untimely Monthly Operating Reports and Other Documents

UST also argues that the case should be dismissed because Debtor has failed to comply with the legal reporting requirements under 11 U.S.C. § 1112(b)(4)(F), which lists "unexcused failure to satisfy timely any filing or reporting requirement established by title or by any rule applicable to a case under this chapter" as "cause" for dismissal. Under LBR 2015-1(a)(1), monthly operating and tax reports are required from a debtor in a chapter 11 case and due not later than the 14th calendar day in the month following the reporting period. LBR 2015-1(c).

Moreover, Debtor failed to timely file his Schedules, Statement of Financial Affairs, and related documents by January 13, 2021, instead filing them on January 14, 2021 after his motion to extend the time had been denied. Debtor also failed to list adequate information on the List of 20 Largest Unsecured Creditors and his Statement of Financial Affairs. This is also cause for dismissal.

Provide Information and Attend Meetings

Section 1112(b)(4)(H), which provides for dismissal or conversion for "failure to timely provide information or attend meetings reasonable requested by the United States trustee," is also applicable because Debtor has provided no financial records, or evidence of picture identification and proof of Social Security number. Debtor also failed to attend the continued IDI scheduled January 20, 2021.

Prejudicial to Creditors

Cause also exists under §§ 1112(b)(1) and (b)(4) for unreasonable delay that is prejudicial to creditors. "A debtor's failure to make meaningful and substantial progress toward the confirmation of a plan . . . is nearly always prejudicial to creditors[,] . . . a debtor cannot wallow in chapter 11." *In re Babayoff*, 445 B.R. 64 (Bankr. E.D.N.Y. 2011).

Inability or Unwillingness to Retain Counsel

Debtor has repeatedly stated that he needs to find counsel, and that he will retain counsel shortly. But Debtor never actually does retain counsel, having been given multiple occasions to do so. Each time Debtor provides an excuse for inability to find counsel, whether it be due to health problems or lack of documentation. Debtor has been given multiple extensions so that he can resolve these issues and retain counsel, which will be necessary for the prosecution of this case.

Inability to Navigate Chapter 11 Without Counsel

The court has not been presented with any evidence that Debtor can successfully navigate a successful chapter 11 case without counsel. At the meeting of creditors, Debtor stated that he has a disability and memory difficulties. Doc. #46. Debtor has filed two requests for temporary restraining orders without adversary proceedings. Docs. #48; #63. Debtor filed the motion to extend the automatic stay after the deadline lapsed (Doc. #50), and then a motion to extend the time (Doc. #52), neither of which could be granted because the automatic stay already expired. If valuations for property are provided, Debtor does not include any basis for his valuations. From the court's perspective, Debtor has no prospect of being successful in this case unless he finds counsel. Despite multiple extensions so that he could find counsel, including an explicit warning that he needed counsel at the January 26, 2021 status conference, Debtor has not yet retained counsel.

Debtor Filed Solely to Obtain the Automatic Stay

Based on what Debtor has filed and testified in this case thus far, this bankruptcy filing appears to be a launchpad for litigation in connection with the automatic stay, the outcome of which is highly speculative. Debtor did not provide any purpose for reorganization except to pay his creditors. When asked point blank which creditors, Debtor had no response. Debtor's schedules are incomplete and erroneous. Although Debtor does not have all of the information available, he should be able to include what information he has or at least make a good faith attempt to provide as much accurate information as possible. Debtor has not done any of this. What little information he provided was either incomplete, inaccurate, or clearly erroneous.

Overall, UST contends that Debtor has engaged in delay tactics by filing several motions for extensions of time to file schedules and other documents, failure to timely provide IDI documents or

financial records, failure to appear at the continued IDI, failed to provide evidence of picture identification and proof of Social Security number, failed to timely file monthly operating report, failed to answer questions under oath at the § 341 meeting, failed to obtain counsel, not provided adequate information and failed to amend documents already filed.

For these reasons, UST requests that the case be dismissed under §§ 1112(b) (1) and (b) (4) for cause. Doc. #68.

Bad Faith

UST also argues that this case was filed in bad faith. *Id.* "Although section 1112(b) does not explicitly require that a case be filed in 'good faith,' courts have overwhelmingly held that a lack of good faith in filing a Chapter 11 petition establishes cause for dismissal." *In re Marsch*, 36 F.3d 825, 828 (9th Cir. 1994). Courts may consider the following:

1. whether the debtor has only one asset;
2. whether the debtor has an ongoing business to reorganize;
3. whether there are any unsecured creditors;
4. whether the debtor has any cash flows or sources of income to sustain a plan of reorganization or to make adequate protection payments; and
5. whether the case is essentially a two party dispute capable of prompt adjudication in state court.

In re St. Paul Storage Ltd. P'ship, 185 B.R 580-83 (B.A.P. 9th Cir. 1995).

UST argues this case was filed in bad faith because Debtor has not disclosed adequate information in his filings, his prior cases, his spouse, or his business partner. As in his previous cases, Debtor either did not file schedules or filed incomplete and inadequate schedules. It does not appear that Debtor has any ongoing business to reorganize or income, nor that he has the ability to sustain a plan of reorganization or make adequate protection payments.

In light of Debtor's bad faith, UST contends that there is sufficient "cause" to impose a 180-day bar against filing another bankruptcy case. See *In re Mitchell*, 357 B.R. 142 (Bankr. C.D. Cal. 2006). UST previously moved for a 180-day bar in Debtor's previous case, no. 18-11385. This case contains the same skeletal petition filings, egregious behavior, and bad faith under the totality of the circumstances.

After "cause" is established, the burden shifts to Debtor to demonstrate that unusual circumstances preclude relief under § 1112(b) (1).

Debtor's Opposition

Debtor's "ALL CAPS" opposition filed February 12, 2021 consists of ramblings devoid of any legal argument that this case should not be dismissed. Doc. #84. To briefly summarize, Debtor states he has private documents that he needs to present to the court. This matter has been going on for five years, is unresolved, and still pending litigation. Justice has not been served because Debtor was locked out of Mora Property and therefore Debtor does not have the documents he needs, despite previously being given a 6-hour window to retrieve possessions.

Debtor also states that he has "ENGAGED WITH AN ATTORNEY" but his "ABILITY TO RETAIN THE ATTORNEYS AND GIVE THEM REQUIRED DOCUMENTS ARE BEING HAMPERED" because those documents are locked in his foreclosed property. Debtor identifies the attorney as Mr. Glaubiger, but later states that he has not heard back from him yet. *Id.* Debtor claims he needs to spend \$100,000 to get a new office and residence and that he has lost more than \$1 million dollars from his partners and the bankruptcy estate due to Wilmington's negligence.

Debtor repeats previous claims about misappropriation, which occurred at an unspecified time over the last 12 years. Apparently, an insider was conducting corporate espionage and misappropriating assets from Debtor's business. No information is provided about the corporate espionage, misappropriation, or the insider is provider. But now, Debtor alleges that the insider was apparently found dead six days after Debtor was locked out of Mora Property. With zero evidence and no identification of the supposed insider, Debtor states his belief that Wilmington was involved in the insider's death. *Id.*, at 2. Moreover, Debtor claims that Wilmington gave the Sheriff's Department a "DOCTORED DOCUMENT" to remove him from the property. No additional information about this alleged forgery is provided. Debtor also asks for an investigation because he had a partner who was being misled on several occasions over the last 12 years. *Id.*, at 4. No specific information about the partner, allegations or evidence of fraud is presented. Debtor concludes by stating that he attempted to hire counsel, but he needs a temporary restraining order to gain access to his property, work on his case, and hire an attorney. *Ibid.*

In conclusion, Debtor cannot get an attorney until he first gets the private documents located at Mora Property that allegedly implicate Wilmington in death of Debtor's anonymous insider, but Debtor cannot retrieve these documents because Wilmington used a forged eviction judgment to have the sheriff lockout Debtor from Mora Property, which he needs an attorney to resolve, and therefore Debtor cannot get an attorney.

UST's Reply

UST filed a response arguing (1) the reply was untimely, and (2) Debtor has not demonstrated why the case should not be dismissed. As noted above, because this motion was filed on less than 28 days' notice, no opposition should have been required.

The court otherwise agrees. UST is correct that Debtor bears the burden to demonstrate that the case should not be dismissed, which he has not met. 11 U.S.C. § 1112(b)(2).

Conclusion

As discussed above, there is "cause" to convert or dismiss the case. The court finds that dismissal is in the best interests of creditors and the estate. Unusual circumstances exist precluding conversion, but not dismissal. *Sullivan*, 522 B.R. at 612. Those unusual circumstances include this being Debtor's eighth repeat bankruptcy filing since 2016; failure to timely file schedules and other documents; repeatedly seeking extensions and failing to use them to make progress in or prosecute this case; failure to retain counsel; inability to prosecute this case without counsel; failure to file monthly operating reports; failure to turnover proof of insurance, proof of identification and Social Security number; and failure to attend the continued IDI. For these reasons, conversion is not in the best interests of creditors and the estate.

As discussed above, Debtor appears to have filed this case in bad faith. Debtor did not rebut this contention.

For the foregoing reasons, this motion will be GRANTED, and the case will be DISMISSED WITH PREJUDICE. Debtor will be barred from filing another bankruptcy case for 180-days after entry of this order. The court retains jurisdiction over UST's adversary proceeding entitled *U.S. Trustee v. Khan*, adversary proceeding no. 20-01068.

1:30 PM

1. [20-13702](#)-B-7 **IN RE: OFELIA AGUILAR**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-15-2021 [\[15\]](#)

FIRST TECH FEDERAL CREDIT
UNION/MV
T. O'TOOLE/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion was filed on 28 days' notice pursuant to Local Rule of Practice 9014-1(f)(1).¹ First Tech Federal Credit Union ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2019 Kia Soul ("Vehicle"). Doc. #15.

This matter will be DENIED WITHOUT PREJUDICE for failure to comply with the federal and local rules.

First, Rule 4001(a) 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. This motion could be a contested matter if any party in interest opposes.

Rule 7004 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" and "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 7004(b)(1), (b)(3). Though not applicable here, if the United States trustee is acting solely as trustee, then "by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending." Rule 7004(b)(10).

Rule 9036 does allow for electronic service but provides: "This rule does not apply to any pleading or other paper required to be served in accordance with Rule 7004." Rule 7004's service requirement is not subject to waiver under Civil Rule 4(d). See Rule 7004(a)(1).

¹ Unless otherwise indicated, references to "LBR" will be to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California; "Rule" will be to the Federal Rules of Bankruptcy Procedure; and "Civil Rule" will be to the Federal Rules of Civil Procedure.

Here, the certificate of service indicates that Debtor's counsel, T. Mark O'Toole, the Chapter 7 Trustee, David M. Sousa ("Trustee"), and the U.S. Trustee, respectively, were served by "ECF Notice." Doc. #21. No email addresses were listed. *Id.*

Debtor and Debtor's counsel must be served by mail in accordance with Rule 7004. Because this motion will affect property of the estate, the Ch. 7 Trustee must also be served in accordance with Rule 7004. Rule 7004, which is applicable for relief from stay motions under Rules 4001 and 9014, is specifically precluded from electronic service by Rule 9036. Thus, the Movant must serve the Debtor, Debtor's counsel, and the Ch. 7 Trustee in conformance with Rule 7004.

Additionally, the Movant must serve or notify the UST, who may raise, appear, and be heard on any issue in any case under § 307. Because relief is not being sought against the UST, electronic notification under Rule 7005 and LBR 7005-1 will be sufficient, as discussed below.

Second, LBR 7005-1(a) allows service by electronic means pursuant to Civil Rule 5(b)(2)(E), as made applicable to Rule 7005, which typically only applies to pleadings filed after the original complaint and other papers specified in Civil Rule 5(a)(1). LBR 7005-1(d) states, in relevant part:

1) Upon Those Parties Consenting to Service by Electronic Means. Service by electronic means pursuant to Fed. R. Civ. P. 5(b)(2)(E) shall be accomplished by transmitting an email which includes as a PDF attachment the document(s) served. The subject line of the email shall include the words "Service Pursuant to Fed. R. Civ. P. 5," and the first line of the email shall include the case or proceeding name and number and the title(s) of the document(s) served.

. . .

3) Certificate of Service. The certificate of service shall include all parties served, whether by electronic or conventional means. Where service was accomplished by electronic means, the certificate of service shall include the email addresses to which the document(s) were transmitted, and the party, if any, whom the recipient represents.

LBR 7005-1(d)(1), (d)(3). Here, the certificate of service indicates that the enumerated parties were served by "ECF Notice." Doc. #21. The certificate of service does not comply with LBR 7005-1(d)(3) because it does not include the email addresses of the parties served. As noted above, the Debtor, Debtor's counsel, and the Ch. 7 Trustee must be served as required by Rule 7004. Electronic service may be made on the UST, but that electronic service must comply with LBR 7005-1(d)(3) and include the UST's email address. The court notes that debtor was served properly by U.S. Mail.

For the foregoing reasons, this motion will be DENIED WITHOUT PREJUDICE.

2. [21-10118](#)-B-7 **IN RE: MARI CHRISTIANSEN**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-8-2021 [\[11\]](#)

MECHANICS BANK AUTO FINANCE/MV
STEVEN ALPERT/ATTY. FOR DBT.
VINCENT FROUNJIAN/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion was filed on 14 days' notice pursuant to Local Rule of Practice 9014-1(f) (2).² Mechanics Bank Auto Finance ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d) (1) and (d) (2) with respect to a 2012 Toyota Prius ("Vehicle"). Doc. #11.

This matter will be DENIED WITHOUT PREJUDICE for failure to comply with the federal and local rules.

First, Rule 4001(a) 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. This motion could be a contested matter if any party in interest opposes.

Rule 7004 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" and "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 7004(b) (1), (b) (3). Though not applicable here, if the United States trustee is acting solely as trustee, then "by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending." Rule 7004(b) (10).

Rule 9036 does allow for electronic service but provides: "This rule does not apply to any pleading or other paper required to be served in accordance with Rule 7004." Rule 7004's service requirement is not subject to waiver under Civil Rule 4(d). See Rule 7004(a) (1).

Here, the amended certificate of service indicates that Debtor's counsel, Steven A. Alpert, the Chapter 7 Trustee, Irma Edmunds

² Unless otherwise indicated, references to "LBR" will be to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California; "Rule" will be to the Federal Rules of Bankruptcy Procedure; and "Civil Rule" will be to the Federal Rules of Civil Procedure.

("Trustee"), and the U.S. Trustee, respectively, were served electronically. Doc. #17. *Id.*

Debtor and Debtor's counsel must be served by mail in accordance with Rule 7004. Because this motion will affect property of the estate, the Ch. 7 Trustee must also be served in accordance with Rule 7004. Rule 7004, which is applicable for relief from stay motions under Rules 4001 and 9014, is specifically precluded from electronic service by Rule 9036. Thus, the Movant must serve the Debtor, Debtor's counsel, and the Ch. 7 Trustee in conformance with Rule 7004.

Additionally, the Movant must serve or notify the UST, who may raise, appear, and be heard on any issue in any case under § 307. Because relief is not being sought against the UST, electronic notification under Rule 7005 and LBR 7005-1 will be sufficient, as discussed below.

Second, LBR 7005-1(a) allows service by electronic means pursuant to Civil Rule 5(b)(2)(E), as made applicable to Rule 7005, which typically only applies to pleadings filed after the original complaint and other papers specified in Civil Rule 5(a)(1). LBR 7005-1(d) states, in relevant part:

1) Upon Those Parties Consenting to Service by Electronic Means. Service by electronic means pursuant to Fed. R. Civ. P. 5(b)(2)(E) shall be accomplished by transmitting an email which includes as a PDF attachment the document(s) served. The subject line of the email shall include the words "Service Pursuant to Fed. R. Civ. P. 5," and the first line of the email shall include the case or proceeding name and number and the title(s) of the document(s) served.

. . .
3) Certificate of Service. The certificate of service shall include all parties served, whether by electronic or conventional means. Where service was accomplished by electronic means, the certificate of service shall include the email addresses to which the document(s) were transmitted, and the party, if any, whom the recipient represents.

LBR 7005-1(d)(1), (d)(3). Here, the certificate of service (Doc. #16) and amended certificate of service (Doc. #17) indicates that the enumerated parties were served electronically pursuant to Civil Rule 5(b)(2)(D). As noted above, the Debtor, Debtor's counsel, and the Ch. 7 Trustee must be served as required by Rule 7004. Electronic service may be made on the UST, but that electronic service must comply with LBR 7005-1(d)(3) and include the UST's email address. The court notes, in this instance, the UST was served in compliance with LBR 7005-1(d)(3). Debtor was also served properly by U.S. Mail.

For the foregoing reasons, this motion will be DENIED WITHOUT PREJUDICE.

3. [12-14919](#)-B-7 **IN RE: LEONILA JACOBO**

MOTION TO AVOID LIEN OF DISCOVER BANK
1-25-2021 [23]

LEONILA JACOBO/MV
OSCAR SWINTON/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Leonila Jacobo ("Debtor") filed this motion to avoid the lien of Discover Bank ("Creditor") on 28 days' notice under Local Rule of Practice 9014-1(f)(1).³ Doc. #23. This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the local rules.

First, LBR 9004-2(a)(6), (b)(5), (b)(6), & (e) and LBR 9014-1(c) & (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. Here, the motion and supporting documents did not contain a DCN. Doc. #23. Although the notice of hearing did contain DCN ORS-1 in the caption page, it does not appear to have been filed under ORS-1 and omitted from every other document supporting this motion. Doc. #25.

Second, Rule 4003(d) requires that proceedings under § 522(f) to avoid a lien "shall be commenced by motion in the manner provided by 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. This motion could be a contested matter if any party in interest opposes. Rule 7004 allows service upon a domestic or foreign corporation "by mailing a copy of the summons and complaint **to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law** to receive service of process." Rule 7004(b)(3). It is also sufficient if service is performed "by the law of the state in which service is made" or "to an agent of such defendant authorized by appointment or by law to receive service of process, at the agent's dwelling house or usual place of abode or at the place where the agent regularly carries business or professions[.]" Rule 7004(b)(7), (b)(8).

Meanwhile, California Code of Civil Procedure ("C.C.P.") § 416.10 specifies service requirements for corporations doing business in California and provides:

³ Unless otherwise indicated, references to "LBR" will be to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California; "Rule" will be to the Federal Rules of Bankruptcy Procedure; "Civil Rule" will be to the Federal Rules of Civil Procedure; and all chapter and section references will be to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

A summons may be served on a corporation by delivering a copy of the summons and the complaint by any of the following methods:

(a) To the person designated as agent for service of process as provided by any provision in Section 202, 1502, 2105, or 2107 of the Corporations Code . . .

(b) To the president, chief executive officer, or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a controller or chief financial officer, a general manager or a person authorized by the corporation to receive service of process.

(c) If the corporation is a bank, to a cashier or assistant cashier or to a person specified in subdivision (a) or (b).

(d) If authorized by any provision of Section 1701, 1702, 2110, or 2111 of the Corporations Code . . . , as provided by that provision.

Here, the proof of service indicates the following parties with respect to Creditor were served:

Discover Bank
Elizabeth A Bleier, Esq.
Bleier Cox LLP
16130 Ventura Blvd, Suite 620
Encino, A 91436-2542

Discover Bank
Martin Hoffmann, Esq.
Zwicker Associates P C
1320 Willow Pass Road, Suite 730
Concord, CA 94520-5280

Discover Fin
Attention Bankruptcy Department
Po Box 3025
New Albany, OH 43054-3025.

Doc. #23, at 26; #26, at 2. This does not appear to be sufficient. Because Creditor is a bank, Debtor needed to comply with Rule 7004(b)(3), (b)(8), or C.C.P. § 416.10(a), (b), or (c) (as incorporated by Rule 7004(b)(7)) by directing service to the attention of an officer, a managing or general agent, any other agent authorized by appointment or by law, the person designated as agent for service of process, the president, chief executive officer, or other head of the corporation, vice president, secretary or assistant secretary, treasurer or assistant treasurer, controller or chief financial officer, general manager, a person authorized to receive service of process, or a cashier or assistant cashier.

Searching "Discover Bank" on the California Secretary of State business search website (www.businesssearch.sos.ca.gov) reveals Creditor is incorporated in Delaware and uses C T Corporation System as its agent for service of process. Creditor's most recent

Statement of Information filed June 30, 2020 lists the following officers that could have been served to comply with Rule 7004 and C.C.P. § 416.10:

- (a) Chief Executive Officer: Roger C. Hochschild
2500 Lake Cook Road
Riverwoods, IL 60015
- (b) Secretary: D. Christopher Greene
2500 Lake Cook Road
Riverwoods, IL 60015
- (c) Chief Financial Officer: Timothy J. Schmidt
2500 Lake Cook Road
Riverwoods, IL 60015

Alternatively, C T Corporation System could have been served as Creditor's designated agent for service of process. C T Corporation System's agent for service of process is National Registered Agents, Inc., whose agent for service of process is C T Corporation System. Only one named officer or agent for service of process needs to be served, but at least one must be served to comply with Rule 7004 and C.C.P. § 416.10.

Third, LBR 9004-2(c)(1) requires that motions, notices, and other specified pleadings are to be filed as separate documents. Further, LBR 9004-2(e)(1) and (e)(2) require that copies of the pleadings "SHALL NOT be attached to the proof of service." Here, the motion, memorandum of points and authorities, exhibits, declaration, and proof of service were combined into one document and not filed separately. Doc. #23.

Fourth, LBR 9004-2(d) requires that exhibits shall be filed as a separate document, include an index, and contain consecutively numbered exhibit pages. Here, the exhibits were attached to the motion documents and did not contain an index or consecutively numbered pages.

Fifth, LBR 9014-1(d)(3)(B)(i) requires the notice of hearing to include the names and addresses of the persons who must be served with any opposition.

For the foregoing reasons, this motion will be DENIED WITHOUT PREJUDICE.

4. [20-13420](#)-B-7 **IN RE: CHRISTOPHER MARTENS**
[DMG-3](#)

MOTION TO SELL
1-21-2021 [[46](#)]

JEFFREY VETTER/MV
PETER FEAR/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed for higher and better bids only.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order in conformance with the ruling below.

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). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") seeks authorization to sale real property commonly known as 1751 Meadow Vale Drive, South Lake Tahoe, CA 96150 ("Property") under 11 U.S.C. § 363(b) to Patricia Naygrow and Tara Green ("Proposed Buyers") for \$750,000.00. Doc. #46. No party in interest timely filed written opposition and this matter will proceed as scheduled for higher and better bids only.

This motion will be GRANTED. 11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363,

a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference." *Id.* citing *In re Psychometric Systems, Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

It appears that the sale of Property is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith.

Christopher Robert Martens ("Debtor") filed his chapter 7 petition on October 28, 2020. Doc. #1. At the time of filing, Debtor owned a community property ownership interest in Property with his estranged ex-spouse, Irma Martens. Doc. #33, Am. Schedule A/B, ¶ 1.2. Property was valued at \$550,300.00 with \$515,637.39 owed to secured creditor PennyMac Loan Services L ("PennyMac") on the petition date. *Ibid.*; Doc. #1, Schedule D, ¶ 2.9. Debtor's community property interest is valued at approximately \$275,150.00. Debtor intends to surrender Property to PennyMac according to the *Statement of Intention*, Form 108. Doc. #39, Form 108. Property is not exempted on Amended Schedule C. Doc. #33, Am. Schedule C.

It is unclear exactly how much in proceeds will remain after completion of the proposed sale. Trustee states that PennyMac's mortgage is approximately \$515,000.00 and broker commission will be set at 6%, split 3% for each. After costs of sale, taxes, and other fees, less than \$190,000.00 will remain. The proposed sale can be illustrated as follows:

Proposed sale price of Property		\$750,000.00
Approximate mortgage payoff to PennyMac	-	\$515,000.00
Broker Commission (6% of sale price)	-	\$45,000.00
Costs of sale, taxes, and fees	-	?
Net payable to the estate	<	\$190,000.00

Trustee states that he believes PennyMac will consent to the sale and release its lien on Property in conjunction with close of escrow provided that PennyMac receive proceeds from the sale. Doc. #48. Other than PennyMac, the only other known creditor with an interest in Property is the El Dorado County Tax Collector, but real property taxes were current on the petition date. *Id.* No discussion is presented as to Ms. Martens' 50% community property interest.

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). No information is provided as to whether Proposed Buyers are insiders. The court will inquire at the hearing whether Proposed Buyers are insiders subject to heightened scrutiny.

Any party wishing to overbid must provide certified funds in the amount of \$7,500.00 plus the initial overbid prior to the close of business on February 19, 2021 to Jeffrey Vetter, PO Box 2424, Bakersfield, CA 93303. The first overbid must be at least \$5,000.00. Later overbids, if any, shall be in at least \$1,000.00 increments. Unsuccessful bidders' deposits will be returned at the end of the hearing. The successful bidder's deposit will be applied toward the purchase price. Overbidders must provide written proof of the financial ability to complete the purchase within 30 days of the delivery of a certified copy of the court's order approving this motion and ability to execute a purchase agreement for the property.

Overbidders must be present at the hearing, make overbids in the amount of \$1,000.00 except for the first overbid of \$5,000.00, be aware that their deposit will be forfeited if they do not timely close the sale, and acknowledge that no warranties or representations are included with the property; it is sold "as-is."

No party in interest timely filed written opposition. The court notes that Ms. Martens and PennyMac were both served with the notice of hearing and information about the sale. Doc. #51.

The motion does not request, nor will the court authorize, the sale free and clear of any liens or interests. Valid encumbrances will be paid through escrow.

If the above insider issue is clarified, the court is inclined to GRANT the motion. This matter will proceed as scheduled for higher and better bids only.

5. [20-13429](#)-B-7 **IN RE: FRANCISCO GLORIA**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-19-2021 [\[17\]](#)

EXETER FINANCE LLC/MV
JEFFREY ROWE/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual

hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Exeter Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2014 Chevrolet Cruze ("Vehicle"). Doc. #17.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least 3 complete post-petition payments. The movant has produced evidence that debtors are delinquent at least \$1,227.19, which includes late fees of \$20.11. Doc. #19, #22.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. *Id.* The Vehicle is valued at \$6,850.00 and debtor owes \$12,056.64. Doc. #19.

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

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

6. [17-14133](#)-B-7 **IN RE: BENJAMIN HARRIS**
[JMV-1](#)

MOTION TO SELL
2-1-2021 [\[159\]](#)

JEFFREY VETTER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue the order.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") filed this motion to sell non-exempt real property in Bakersfield, California to Benjamin Harris ("Debtor") for \$23,000.00 pursuant to 11 U.S.C. § 363(b)(1). This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, LBR 9004-2(a)(6), (b)(5), (b)(6), & (e) and LBR 9014-1(c) & (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

A Trustee's Motion to Dismiss for failure to appear at the § 341(a) meeting was previously filed on May 7, 2018 (Doc. #85) and conditionally denied on June 8, 2018. Doc. #92. The DCN for that motion was JMV-1. This motion also has a DCN of JMV-1 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

Second, 9014-1(e)(2) require proofs of service to be filed with the Clerk of the court concurrently with the pleadings or documents served, or not more than three days after papers are filed. LBR 9004-2(e)(1) and (e)(2) require proofs of service to be filed as separate documents and copies of the pleadings "SHALL NOT be attached to the proof of service filed with the court." The two amended notices of hearing filed on February 3, 2021 do not have separate proofs of service indicating that they were properly served on the necessary parties. Doc. #164; #165.

For the foregoing reasons, this motion will be DENIED WITHOUT PREJUDICE.

7. [20-13347](#)-B-7 **IN RE: RUBEN/STACY HERNANDEZ**
[JES-2](#)

MOTION TO EMPLOY BAIRD AUCTION AND APPRAISALS AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
1-25-2021 [32]

JAMES SALVEN/MV
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Chapter 7 trustee James E. Salven ("Trustee") asks the court to employ Baird Auctions & Appraisals ("Auctioneer") as auctioneer to sell property of the estate consisting of a 1979 Marlin Boat ("Property") at public auction, which is set for March 2, 2021 at Baird Auctions & Appraisals, 1328 N. Sierra Vista, Suite B, Fresno, California. Doc. #32. Trustee requests to pay 15% of gross proceeds from the sale as compensation under 11 U.S.C. §§ 327(a) and 328, along with \$400.00 for anticipated expenses. Doc. #34. Trustee and Auctioneer both filed declarations stating that Auctioneer is a disinterested person as defined in § 101(14) and does not hold interests adverse to the estate as required by § 327(a). *Id.*; Doc. #35.

This motion will be GRANTED

11 U.S.C. § 327 provides:

(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other

professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

11 U.S.C. § 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).

Trustee will be authorized to employ Auctioneer to sell Property at public auction. Trustee will also be authorized to compensate Auctioneer on a percentage collected basis, 15% of the gross proceeds from the sale, and reimbursement of up to \$400.00 for expenses. Doc. #34.

The court finds the proposed arrangement reasonable in this instance. If the arrangement proves improvident, the court may allow different compensation under § 328(a).

Sale by auction under these circumstances should maximize potential recovery for the estate. Therefore, it is an appropriate exercise of Trustee's business judgment.

This motion will be GRANTED. Trustee will be authorized to employ and pay Auctioneer for his services as outlined above, and the proposed sale at auction of the Property will be approved.

8. [20-13851](#)-B-7 **IN RE: JESSICA LEON**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
2-9-2021 [[13](#)]

MECHANICS BANK AUTO FINANCE/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
VINCENT FROUNJIAN/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion was filed on 14 days' notice pursuant to Local Rule of Practice 9014-1(f)(2).⁴ Mechanics Bank Auto Finance ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2017 Hyundai Sonata ("Vehicle"). Doc. #13. The debtor filed non-opposition on February 16, 2021. Doc. #19.

This matter will be DENIED WITHOUT PREJUDICE for failure to comply with the federal and local rules.

First, Rule 4001(a) 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. This motion could be a contested matter if any party in interest opposes. Rule 7004 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" and "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 7004(b)(1), (b)(3). Though not applicable here, if the United States trustee is acting solely as trustee, then "by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending." Rule 7004(b)(10).

Rule 9036 does allow for electronic service but provides: "This rule does not apply to any pleading or other paper required to be served in accordance with Rule 7004." Rule 7004's service requirement is not subject to waiver under Civil Rule 4(d). See Rule 7004(a)(1).

Here, the certificate of service indicates that Debtor, Debtor's counsel, the Chapter 7 Trustee ("Trustee"), and the U.S. Trustee ("UST"), respectively, were served electronically. Court notes that Debtor was also served by U.S. Mail. Doc. #18. *Id.*

Debtor and Debtor's counsel must be served by mail in accordance with Rule 7004. Because this motion will affect property of the estate, the Ch. 7 Trustee must also be served in accordance with Rule 7004. Rule 7004, which is applicable for relief from stay motions under Rules 4001 and 9014, is specifically precluded from electronic service by Rule 9036. Thus, the Movant must serve the Debtor, Debtor's counsel, and the Ch. 7 Trustee in conformance with Rule 7004.

Additionally, the Movant must serve or notify the UST, who may raise, appear, and be heard on any issue in any case under § 307. Because relief is not being sought against the UST, electronic notification under Rule 7005 and LBR 7005-1 will be sufficient, as discussed below.

⁴ Unless otherwise indicated, references to "LBR" will be to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California; "Rule" will be to the Federal Rules of Bankruptcy Procedure; and "Civil Rule" will be to the Federal Rules of Civil Procedure.

Second, LBR 7005-1(a) allows service by electronic means pursuant to Civil Rule 5(b)(2)(E), as made applicable to Rule 7005, which typically only applies to pleadings filed after the original complaint and other papers specified in Civil Rule 5(a)(1). LBR 7005-1(d) states, in relevant part:

1) Upon Those Parties Consenting to Service by Electronic Means. Service by electronic means pursuant to Fed. R. Civ. P. 5(b)(2)(E) shall be accomplished by transmitting an email which includes as a PDF attachment the document(s) served. The subject line of the email shall include the words "Service Pursuant to Fed. R. Civ. P. 5," and the first line of the email shall include the case or proceeding name and number and the title(s) of the document(s) served.

. . .
3) Certificate of Service. The certificate of service shall include all parties served, whether by electronic or conventional means. Where service was accomplished by electronic means, the certificate of service shall include the email addresses to which the document(s) were transmitted, and the party, if any, whom the recipient represents.

LBR 7005-1(d)(1), (d)(3). Here, the certificate of service indicates that the enumerated parties were served electronically pursuant to Civil Rule 5(b)(2)(D). As noted above, the Debtor, Debtor's counsel, and the Ch. 7 Trustee must be served as required by Rule 7004. Electronic service may be made on the UST, but that electronic service must comply with LBR 7005-1(d)(3) and include the UST's email address. The court notes, in this instance, the UST was served in compliance with LBR 7005-1(d)(3). Debtor was also served properly by U.S. Mail. Although Debtor filed non-opposition, Trustee was still not properly served.

For the foregoing reasons, this motion will be DENIED WITHOUT PREJUDICE.

9. [20-13854](#)-B-7 **IN RE: JUAN VELASCO**
[SLL-1](#)

MOTION TO COMPEL ABANDONMENT
1-21-2021 [13]

JUAN VELASCO/MV
STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Juan Velasco ("Debtor") asks this court to compel chapter 7 trustee Irma Edmonds ("Trustee") to abandon the estate's interest in Debtor's residential real property located at 17056 Avenue 326, Visalia, CA 93292 ("Property"). Doc. #13. No party in interest timely filed written opposition.

This motion will be GRANTED.

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).

Here, Debtor filed chapter 7 bankruptcy on December 15, 2020. Doc. #1. Debtor listed Property in the schedules with a value of \$251,000.00. *Id.*, Schedule A/B, ¶ 1.1. Property is encumbered by a deed of trust in favor of Lakeview in the amount of \$231,002.00. *Id.*, Schedule D, ¶ 2.1. Debtor exempted \$19,998.00 in equity under California Code of Civil Procedure ("C.C.P.") § 703.140(b)(1). *Id.*, Schedule C. Thus, there is no remaining equity to be liquidated for the benefit of the estate with proceeds disbursed to creditors. Therefore, Property is of inconsequential value and benefit to the

estate. Property was accurately scheduled and exempted in its entirety. *Id.*

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED.

10. [16-11959](#)-B-7 **IN RE: CYNTHIA IRVINE**
[BLF-5](#)

MOTION FOR COMPENSATION BY THE BAKKEN LAW FIRM FOR LORIS L. BAKKEN, TRUSTEES ATTORNEY(S)
1-25-2021 [\[53\]](#)

NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Loris L. Bakken of Bakken Law Firm ("Movant"), general counsel for chapter 7 trustee Irma Edmonds ("Trustee") requests fees of \$6,090.00 and costs of \$136.70 for a total of \$6,226.70 for services rendered from August 6, 2020 through February 23, 2021. Doc. #53. Trustee filed a declaration stating that she reviewed the fee application, the billings, and approves of the amount of compensation requested. Doc. #55, ¶ 2.

This motion will be GRANTED.

Cynthia Marie Irvine ("Debtor") filed a chapter 7 petition on May 31, 2016. Doc. #1. Randell Parker was appointed interim trustee on June 1, 2016 and became permanent trustee at the first meeting of creditors on August 4, 2016. Doc. #2. Debtor received a discharge on October 3, 2016 and the case was closed on October 7, 2016.

Docs. #12; #14. The case was reopened on March 6, 2020 after Debtor received a settlement in a non-disclosed personal injury/product liability lawsuit. Docs. #16; #17. Trustee was appointed as successor trustee on March 13, 2020. Doc. #19.

On August 11, 2020, Trustee filed a motion to employ Movant as general counsel. Doc. #25. This motion was granted on August 19, 2020 pursuant to 11 U.S.C. § 327. Doc. #29. The order is ambiguous with regard to the effective date of authorization. First, it authorizes services rendered on or after August 6, 2020, but later states that it is effective as of August 11, 2020. *Id.* citing LBR 2014-1(b) (1). LBR 2014-1(b) (1) states that orders approving employment under Fed. R. Bankr. P. 2014(a) shall be presumed to relate back to the later of 30 days before the filing of the application or the order for relief. Limiting fees to those incurred after August 11, 2020 would reduce this application by approximately \$560.00 (1.6 hours at \$350.00/hour). Since the order stated both August 6 and August 11, 2020, and because both dates are less than 30 days before the employment application was filed, the court will allow fees incurred on or before August 6, 2020 as authorized by LBR 2014-1(b) (1).

The order provided that no compensation was permitted except upon court order following application under 11 U.S.C. § 330. *Id.* Compensation was set at the "lodestar rate" applicable at the time services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). *Id.* Funds received in connection with this matter were deemed to be advance payment of fees and thus property of the estate to be held in a trust account maintained in an authorized depository with withdrawal only permitted after approval of an application for compensation. *Id.*

Movant's declaration states that her firm spent 17.4 billable hours at a rate of \$300.00 per hour for a total of \$6,090.00 in fees. Doc. #56, ¶ 2. However, it appears from the filed invoice that Movant billed at a rate of \$350.00 per hour, which is consistent with the request of \$6,090.00 in fees. Doc. #57, Ex. A. Movant also incurred the following expenses:

Postage	\$90.00
Copies (\$0.10/page)	\$46.70
Total Costs	\$136.70

Id., ¶ 7.

11 U.S.C. § 330(a) (1) (A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) preparing, filing, and prosecuting fee (BLF-4; BLF-5) and employment (BLF-1; BLF-2) applications; (2) communicating with special counsel regarding the status and value of the estate's interest in a multi-district product liability lawsuit; and (3) reviewing a settlement and preparing a motion to compromise the lawsuit (BLF-3), which resulted in a gross settlement of \$147,954.51 in favor of the

estate. *Id.*, ¶¶ 4-6. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED, and Movant shall be awarded \$6,090.00 in fees and \$136.70 in costs. Trustee will be authorized to pay Movant \$6,226.70.

11. [20-13766](#)-B-7 **IN RE: RANDY/MARY MAYO**
[MJM-13](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
1-20-2021 [13]

HUGHES FEDERAL CREDIT UNION/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
M. MICKLAS/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Hughes Federal Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2007 Damon Corporation Daybreak Series M-3270 Ford RV ("Vehicle"). Doc. #13.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors have failed to make 1 pre-petition payment and at least 2 complete post-petition payments. The movant has produced evidence that debtors are delinquent at least \$1,603.14. Doc. #15, 18.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtors are in chapter 7. *Id.* Debtors' Schedule D states the Vehicle is valued at \$18,300.00 and debtor owes \$20,286.08. Doc. #1, #16.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtors have failed to make at least 2 post-petition payments to Movant and the Vehicle is a depreciating asset.

12. [19-13668](#)-B-7 **IN RE: REYNALDO PEREZ**
[JES-2](#)

MOTION FOR TURNOVER OF PROPERTY
1-18-2021 [\[39\]](#)

JAMES SALVEN/MV

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

DISPOSITION: Granted.

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

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

Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Chapter 7 trustee James E. Salven ("Trustee"), filed this motion seeking to compel Reynaldo Perez ("Debtor") pursuant to 11 U.S.C. § 542(a) to turnover within seven days either: (1) 2019 Federal and State tax returns ("Tax Returns") with their 2019 Federal and State tax refunds ("Tax Refunds"); or (2) data necessary to prepare the 2019 Tax Returns. Doc. #39. Trustee estimates that the 2019 Tax Refunds may have equity over and above any available exemption in the amount of at least \$4,071.00 based on prior Tax Returns. *Id.*, ¶ 3. Debtor did not file opposition and default will be entered.

This motion will be GRANTED.

11 U.S.C. § 541 establishes Tax Returns and Tax Refunds as assets of the estate and provides, in relevant part:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c) (2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interest of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

11 U.S.C. § 541(a). 11 U.S.C. § 542(a) requires Debtors to deliver Tax Returns and Tax Refunds to Trustee as follows:

(a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

11 U.S.C. § 542(a). If Debtor has not yet filed the 2019 Tax Returns, 11 U.S.C. § 521(a) (4) requires Debtors to deliver data necessary to prepare the returns under 11 U.S.C. § 521:

- (a) The debtor shall-
- (4) if a trustee is serving in the case or an auditor is serving under section 586(f) of title 28, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title[.]

11 U.S.C. § 521(a) (4).

Trustee has demonstrated that the 2019 Tax Returns and any or all Tax Refunds exceeding Debtor's claimed exemptions are property of the estate and Trustee has the right to receipt for the benefit of the estate. Therefore, this motion will be GRANTED.

It will be ordered that Debtor shall comply with Trustee's request for turnover of documents related to his 2019 Tax Returns and refund all or part of any Tax Refunds exceeding his claimed exemptions not later than seven calendar days after an order granting this motion is issued and served on Debtor. Failure to comply may result in an order imposing sanctions, including movant's attorney's fees, upon further motion.

13. [19-14798](#)-B-7 **IN RE: DAVID/RONDA DELGADO**
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-14-2021 [\[29\]](#)

FREEDOM MORTGAGE
CORPORATION/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.
DISCHARGED 3/16/20

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

DISPOSITION: Granted.

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

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

taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Hughes Federal Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2007 Damon Corporation Daybreak Series M-3270 Ford RV ("Vehicle"). Doc. #13.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors have failed to make 1 pre-petition payment and at least 2 complete post-petition payments. The movant has produced evidence that debtors are delinquent at least \$1,603.14. Doc. #15, 18.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtors are in chapter 7. *Id.* Debtors' Schedule D states the Vehicle is valued at \$18,300.00 and debtor owes \$20,286.08. Doc. #1, #16.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtors have failed to make at least 2 post-petition payments to Movant and the Vehicle is a depreciating asset.

14. [20-13608](#)-B-7 **IN RE: DAREK CORNELL**
[ICE-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
1-21-2021 [[14](#)]

IRMA EDMONDS/ATTY. FOR MV.
DISMISSED 2/12/2021

NO RULING.

Chapter 7 trustee Irma Edmonds ("Trustee") filed a motion to dismiss this case because *pro se* debtor Derek Ernest Cornell ("Debtor") failed to appear at the § 341(a) meeting of creditors. Doc. #14. Per the notice, a hearing would be set on calendar for February 23, 2021 if opposition were filed before February 9, 2021. Doc. #15. Since no opposition was timely filed, the court issued an order dismissing the case on February 12, 2021. Doc. #19. But later that day, Debtor filed a form opposition prompting the addition of this hearing to calendar. Doc. #22. Debtor neglected to fill out the form completely and did not state any reasons this case should not be dismissed. Doc. #22.

This matter will be called as scheduled to inquire whether there are any reasons the court should not strike this untimely opposition as moot because the case has already been dismissed. If Debtor does not appear at the hearing, the existing order dismissing the case shall remain in effect.