

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, March 9, 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. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[FW-8](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL
FOR PETER L. FEAR, DEBTORS ATTORNEY(S)
2-5-2021 [[323](#)]

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) and will proceed as scheduled. 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.

Fear Waddell, P.C. ("Movant"), counsel for debtor-in-possession Stephen William Sloan ("Debtor"), requests fees of \$269,652.00 and costs of \$1,691.77 for a total of \$271,343.77 for services rendered from March 2, 2020 through December 31, 2020. Doc. #323. Debtor filed a Client Approval statement indicating that he reviewed the fee application and has no objections. Doc. #326. This is Movant's first interim fee application. Movant also filed two supplements providing explanation and correction to the fee application. Docs. #331; #342.

This motion will be GRANTED.

Debtor filed bankruptcy on March 2, 2020. Doc. #1. Debtor moved to employ Movant as bankruptcy counsel on March 30, 2020, which was approved. Doc. #44. The order authorizing employment effective March 2, 2020 was entered on April 29, 2020. Doc. #124.

The appointing order said that employment is subject to the conditions of 11 U.S.C. §§ 327, 329-331 and compensation is only permitted upon court order following application under § 330(a). No hourly rate was approved, and 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). All funds received by Movant in connection with this matter were deemed to be an advance payment of fees and property of the estate unless such funds were demonstrated to be reasonable value of pre-petition services under § 329. These funds deemed advance payment of fees were to be maintained in a separate interest-bearing account or an attorney's trust account at an authorized depository, with withdrawals only permitted after court approval. Further, monthly applications for interim compensation under § 331 were authorized provided the accrued fees and costs exceeded \$5,000 net of fees incurred in connection with prior fee applications.

Movant currently holds a \$6,694.00 retainer. Doc. #323, at 2. Debtor's Disclosure Statement was set for hearing on February 23, 2021 and was approved. Doc. #336. The Plan is set for confirmation hearing on April 27, 2021. *Id.* If approved, these fees would be payable directly by the Debtor after the Plan is confirmed.

Movant states that this was an unusual case because Debtor is an individual who is both a farmer and a businessman with varied interests. Doc. #327, Ex. A. Debtor is also the sole owner of 4-S Ranch Partners, LLC, which owns several thousand acres of real property and is a debtor-in-possession in a related chapter 11 case. In 2017, 4-S Ranch took out a loan from Sandton Credit Solutions Master Fund, IV ("Sandton"), and used 4-S Ranch Property and Debtor's individually owned property as collateral. *Ibid.* 4-S Ranch was unable to refinance the loan after several forbearances and Sandton sought foreclosure of all collateral, including Debtor's individually owned property. As a result, Debtor sought out Movant's services to restructure himself and 4-S Ranch prior to foreclosure. *Ibid.*

Movant indicates that his firm spent 883.80 billable hours totaling \$269,652.00 in fees as follows:

Requested Fee Summary

Professional	Rate	Hours	Requested Fees	Corrected Fees
Peter L. Fear	\$400.00	390.10	\$156,069.00	\$156,040.00
Gabriel J. Waddell	\$320.00	0.10	\$32.00	\$32.00
Katie Waddell	\$220.00	5.50	\$1,210.00	\$1,210.00
Peter A. Sauer	\$235.00	470.60	\$110,591.00	\$110,591.00
Kayla Schlaak	\$100.00	17.50	\$1,750.00	\$1,750.00
Totals:		883.80	\$269,652.00	\$269,623.00

Doc. #323, at 3, ¶ 5.

The court notes a \$29.00 clerical error in the arithmetic for Peter L. Fear's fees: 390.10 billable hours at an hourly rate of \$400.00 per hour results in fees of \$156,040.00, not \$156,069.00 as indicated in the motion. The total fees should instead equal **\$269,623.00** at the hours and rates specified. According to the Blended Rate Summary, it appears Mr. Fear's average hourly rate is \$400.07 per hour. Doc. #327, Ex. B, at 39. In the time records, Mr. Fear billed at a rate of \$410.00 per hour for 2.9 hours on June 15 and 16, 2020. *Id.*, at 25. The extra \$10/hour for 2.9 hours corresponds to the \$29.00 discrepancy and skewed the Blended Rate Summary's average up seven cents.

On March 2, 2021 and at the U.S. Trustee's out-of-court request, Movant filed a supplement with additional detail regarding specific time entries. Doc. #342. In addition to further explanation, the Movant voluntarily reduced fees by 3.30 hours for fees accrued on April 3, 2020 by Peter A. Sauer. *Id.*, ¶ 3. This will reduce Mr. Sauer's total hours from 470.60 to 467.30. Movant now requests \$268,876.50 in fees, but this does not account for the above-discussed \$29.00 discrepancy. The corrected estimate is therefore adjusted:

Corrected Fee Summary

Professional	Rate	Hours	Fees
Peter L. Fear	\$400.00	390.10	\$156,040.00
Gabriel J. Waddell	\$320.00	0.10	\$32.00
Katie Waddell	\$220.00	5.50	\$1,210.00
Peter A. Sauer	\$235.00	467.30	\$109,815.50
Kayla Schlaak	\$100.00	17.50	\$1,750.00
Totals:		880.50	\$268,847.50

Movant also incurred the following expenses:

Expenses

Postage	\$369.00
Copying	\$932.52
Court Fees	\$390.25
Total Costs:	\$1,691.77

Doc. #323, at 3, ¶ 7. These corrected fees and expenses total **\$270,539.27**. Because this fee application is unusually large, Movant filed a supplemental statement on February 11, 2021 with attached UST Forms for cases with over \$50 million in liabilities:

- (a) UST Form 11-330-A - Customary and Comparable Compensation Disclosures with Fee Applications;
- (b) UST Form 11-330-B - Summary of Timekeepers Included in this Fee Application;
- (c) UST Form 11-330-D - Summary of Compensation Requested by Project Category. Movant notes that this is blank because Debtor did not request an hour and fee budget; and

(d) UST Form 11-330-E - Summary Cover Sheet of Fee Application.

Doc. #331. Movant states Form 11-330-C was not included because this a non-standard case and Debtor did not request a budget. *Id.*, citing Docs. #83; #84. Movant also indicates hourly rate increases starting January 1, 2021.

11 U.S.C. § 331 allows any professional person employed under § 327 to apply to the court not more than once every 120 days for such compensation for services rendered before the date of such application as provided under § 330.

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) Advising Debtor about bankruptcy, and non-bankruptcy alternatives, including extensive negotiations with third parties regarding the sale or refinance of some or all of the collateral on Sandton's note.

(2) Performing substantial amounts of labor on Sandton's relief from stay motion, including:

- (a) strategizing to combat the stay relief motion;
- (b) preparing motions and memoranda in opposition to Sandton's motion;
- (c) communicating with 4-S Ranch's counsel to ensure both related motions accurately reflected Debtor's assertion of sufficient equity;
- (d) evaluating and responding to discovery requests and subpoenas;
- (e) advising Debtor for and attending the 2004 examination taken by Sandton;
- (f) participating in depositions taken for both Sandton and 4-S Ranch as fact witnesses;
- (g) working with 4-S Ranch counsel to evaluate expert witnesses, their testimony, and hydrology reports, which consisted of "tens of thousands of pages of reports and other matter were produced which [Movant] analyzed." Doc. #327, Ex. A, at 6;
- (h) preparing opposition to rebut anticipated motions *in limine*;
- (i) preparing alternate direct testimony and reviewing the same submitted by Sandton; and
- (j) preparing for the evidentiary hearing and settling the matter on the eve of trial. *Id.*, at 8.

(3) Preparing for and attending the § 341 meeting of creditors.

(4) Preparing and filing employment applications (FW-1; FW-3; FW-4) for various professionals required by Debtor in this case.

(5) Prosecuting a motion authorizing use of cash collateral and negotiating with Sandton as to its use (FW-2).

(6) Negotiating with creditors to extend deadlines related to non-dischargeability.

(7) Preparing and prosecuting the first chapter 11 plan and disclosure statement, along with its respective amended variants,

and responding to numerous objections from creditors (FW-6; FW-9). The current plan is set for confirmation hearing on April 27, 2021.

The court finds the services reasonable and necessary and the expenses requested actual and necessary. No party in interest timely filed written opposition.

This motion will be GRANTED. Movant shall be awarded \$268,847.50 in fees and \$1,691.77 in costs, for a total of \$270,539.27 for services rendered from March 3, 2020 through December 31, 2020. These fees will be authorized upon confirmation of Debtor's chapter 11 plan, which is currently set for hearing on April 27, 2021 at 9:30 a.m. Doc. #336.

2. [20-13855](#)-B-11 **IN RE: MOHOMMAD KHAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-18-2021 [[89](#)]

CASE DISMISSED 2/24/21

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on February 24, 2021, (Docket No. 103). The Order to Show Cause will be dropped as moot.

3. [21-10096](#)-B-7 **IN RE: BHUPINDER SINGH AND NAVNEET KAUR**

STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY
PETITION
1-15-2021 [[1](#)]

PETER FEAR/ATTY. FOR DBT.
CONVERTED TO CHAPTER 7

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Bhupinder Singh and Navneet Kaur filed a Motion to Convert Case from Chapter 11 to Chapter 7 on February 10, 2021. Doc. #22. The court granted the motion and entered an order converting the case to chapter 7 on February 11, 2021. Doc. #25. As this is now a chapter 7 case, recurring status conferences are no longer necessary. Accordingly, this status conference will be dropped from calendar since a Chapter 11 status conference is now moot.

1:30 PM

1. [20-12516](#)-B-7 **IN RE: JEFFREY/NOEMI LAWS**
[SL-2](#)

MOTION TO INCUR DEBT
2-15-2021 [\[73\]](#)

JEFFREY LAWS/MV
SCOTT LYONS/ATTY. FOR DBT.

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 the order.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. 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.

Jeffrey Richard Laws and Noemi Laws ("Debtors") ask the court for permission to refinance their existing loan from Tulare County Credit Union ("Creditor") in the amount of \$36,482.95 secured by their 2008 Bounder 35H Recreational Vehicle ("RV"). Doc. #73. Opposition was not required and may be presented at the hearing.

The court will DENY this motion.

Debtors filed chapter 7 bankruptcy on July 30, 2020. Doc. #1. Debtors filed a declaration stating that they are retired and on a fixed income, but must regularly travel to New Orleans, Louisiana for medical treatments. Doc. #76. Debtors contend that RV ownership is less expensive than other accommodations in Louisiana but acknowledge that it is still very costly and therefore state that they initially intended to surrender possession of the RV to Creditor during this bankruptcy. *Id.*, ¶ 5; But that is inconsistent with the schedules. *cf.* Doc. #1, Form 108 (*Statement of Intention* indicates intent to retain property and enter into a *Reaffirmation Agreement*). Creditor recently offered Debtors a loan modification to refinance their debt over 180 months (15 years) and reduce their monthly payment.

Under the terms of the settlement offer, Debtors' existing loan balance of \$36,482.95 will be refinanced over 180 months at an interest rate of 5.25% with estimated monthly payments to be \$293.28, down from \$767 per month. Docs. #75, Ex. B; #76. Debtors amended Schedules I and J reflected the proposed change in expenses and indicates Debtors will have \$431.31 in monthly net income even with the \$293.28 modified RV loan payment. Doc. #71. The court notes

that Amended Schedules A/B and C indicate RV had an estimated value of \$38,000.00 and was not exempted. Doc. #65. Based on this auto loan and the schedules, Debtors have approximately \$1,517.05 in non-exempt equity in RV. Thus, the RV is property of the estate until it is abandoned, or the case is closed.

This motion is very problematic.

Based on the evidence, Debtors may be able to afford the refinanced monthly payment for the RV. Debtors insist that they need the RV as alternate lodging when they visit New Orleans for medical treatments.

But there are problems. First, the debtors reference an abrogated General Order as the basis for the motion. That abrogated General Order dealt with Chapter 13 cases, not chapter 7 cases.

Second, the effect of approval of the loan is to "reaffirm" a debt with a Credit Union for 15 years. The debtors candidly state they are retired and on a fixed income. Doc. #76. The collateral is a 2008 RV (13 years old) that obviously has been and will be driven extensively. The "one way" distance from Debtors' residence in Lemoore, California to New Orleans, Louisiana is 2035.7 miles. The court takes Judicial Notice of this fact under Fed. R. Evid. 201. Depending on the frequency of medical treatments, the wear and tear on the vehicle will be significant rapidly reducing its value.

The court is not convinced debtors' valuation is accurate. No evidence supports the valuation other than the debtors' statements. Though debtors are competent to express an opinion, the court, under these circumstances, does not afford the opinion significant weight. The Credit Union provides no evidence of the value since the loan balance (without discount) is being "stretched out" under the proposed re-finance.

Third, the record shows no compliance with standard reaffirmation requirements. Debtors' have counsel who can advise of the risks involved here. There is no evidence that has occurred.

Fourth, since this is property of the estate, Trustee has standing to seek authorization for credit. § 364. That is not before the court-for obvious reasons. It makes no sense for the Trustee here to seek credit secured by a quickly depreciating asset. But the RV is an asset that is not exempted.

Finally, there is no basis for the court to approve a non-existent agreement. The evidence supporting the motion is an amortization schedule, a declaration which essentially repeats the motion and a letter of intent. That is not a commitment nor does this loan appear to be in the debtors' best interests on this record even if the debtors had standing to make this motion. They do not.

The motion will be DENIED.

2. [20-12717](#)-B-7 **IN RE: LAURA ROJAS**
[JES-2](#)

MOTION TO SELL
2-1-2021 [\[42\]](#)

JAMES SALVEN/MV

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

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). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. 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 Salven ("Trustee") seeks authorization to sell the estate's interest in a 2004 Ford Pickup ("Estate Asset") to Laura Rojas ("Debtor"), subject to higher and better bids, for \$1,450.00. Doc. #42. Trustee indicates that the estate has received the funds and is awaiting court approval. Doc. #44, ¶ 3. No party in interest timely filed written opposition.

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).

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). This sale is to the Debtor. The amended schedules state Vehicle had 188,000 miles and a value of \$1,425.00 on the petition date, which was a correction over the initial filing. Doc. #41, Am. Schedule A/B, ¶ 3.3; cf. Docs. #1; #36. Debtor did not exempt Vehicle. Docs. #36 & #41, Am. Schedule C. Debtor's previous Amended Schedule A/B included an attached National Automobile Dealers Association ("NADA") printout for Vehicle and a statement of her opinion that Vehicle is in rough condition because the sunroof does not close completely and needs to be replaced, there are "rips," presumably in the upholstery, and the brake, airbag, and anti-lock braking system ("ABS") signs are all illuminated on the car's dashboard indicating maintenance is necessary. Doc. #36, at 19. Debtor also notes that the ABS warning light "means the antilock system has been deactivated because of a malfunction[.]" *Ibid.* Because these repairs are costly, and the vehicle had 188,000.00 miles, Debtor believes the car was valued at \$1,425.00. *Ibid.* The court notes that there is no discussion about replacement value.

Trustee contends that the sale price is for the full and fair market value of the property and believes that the proposed sale is in the best interests of creditors. Doc. #44, ¶ 5. No commission will be paid to any party in connection with this sale. *Id.*, ¶ 4. Trustee has presumably conducted due diligence and concluded the sale in the best interest of creditors and the estate. Plus, the sale price is more than Debtor's purported valuation on the petition date, the car has likely continued to accumulate wear and tear, and the sale is subject to higher and better bids.

It appears that the sale of the Vehicle is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment. There are no objections or opposition to the motion.

The motion does not request, nor will the court authorize, the sale free and clear of any liens or interests. This sale is subject to Vehicle's lien and encumbrances of record. Trustee says there are none. Doc. #42, ¶ 5.

Any party wishing to overbid must appear at the hearing and acknowledge that no warranties or representations are included with the Vehicle; it is being sold "as-is."

3. [21-10118](#)-B-7 **IN RE: MARI CHRISTIANSEN**
[VVF-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-23-2021 [[20](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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.

The movant, 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. #20.

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

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have 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 modify the stay because debtor is 1 pre-petition and 2 post-petition payments past due in the amount of \$643.59, plus late fees of \$21.44. Doc. #22, #24.

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. Debtor values the Vehicle at \$2,500.00 and the amount owed to Movant is \$2,984.62. Doc. #22.

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.

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 payments and the Vehicle is a depreciating asset.

4. [20-13625](#)-B-7 **IN RE: MARIA RODRIGUEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
2-12-2021 [\[25\]](#)

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case may be dismissed on the grounds stated in the OSC.

5. [21-10148](#)-B-7 **IN RE: JOAQUIN/SARAH MURRIETA**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-5-2021 [\[13\]](#)

TD AUTO FINANCE LLC/MV
SCOTT LYONS/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 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, TD Auto Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2014 Kia Optima ("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 at least 1 pre-petition and 2 post-petition payments. The movant has produced evidence that debtors are delinquent at least \$1,243.13. Doc. #15, #18, #19.

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.* The Vehicle is valued at \$12,575.00 and debtors owe \$15,028.00. Doc. #16, #18.

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.

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

6. [20-13851](#)-B-7 **IN RE: JESSICA LEON**
[VVF-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-23-2021 [\[21\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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.

The movant, 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. #21.

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 is 1 pre-petition and 2 post-petition payments past due in the amount of \$1,095.06, plus late fees of \$18.25. Doc. #23, #25.

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. The Vehicle is valued between \$13,325.00 and \$16,600.00 and the amount owed to Movant is \$23,518.78. Doc. #23, #24.

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.

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 payments and the Movant is in possession of the Vehicle which was surrendered by Debtor on February 22, 2021.

7. [20-10357](#)-B-7 **IN RE: STEPHEN MEZA**
[FW-5](#)

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION FOR
COMPENSATION FOR BERKSHIRE HATHAWAY HOMESERVICES CALIFORNIA
REALTY, BROKER(S)
2-12-2021 [[99](#)]

PETER FEAR/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted subject to higher and better bids.

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 Fed. R. Bankr. P. 2002(a)(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.

Chapter 7 trustee Peter L. Fear ("Trustee") wants to sell residential real property commonly known as 648 Auburn Street, Tulare, CA 93274 (Property") for \$199,000.00 to Ronnie Silva ("Buyer"), subject to higher and better bids and free of certain liens. Doc. #99. Trustee also asks to pay a broker commission of six percent (6%) under § 328, split equally between the buyer and seller's brokers. *Id.*

The court previously approved a sale of this Property, but Trustee states that the buyers failed to perform, so he marketed the Property again and found a new buyer. See Doc. #72; #99, ¶ 6.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT the motion.

Under 11 U.S.C. § 363(f), Trustee may sell property of the estate outside the ordinary course of business, after notice and a hearing, free and clear of "any interest in such property of an entity other than the estate" if "such interest is in bona fide dispute." 11 U.S.C. § 363(f)(4). "Under this standard, a court need not determine the probable outcome of the dispute, but merely whether one exists." *In re Octagon Roofing*, 123 B.R. 583 (Bankr. N.D. Ill. 1991) (citing *In re Busick*, 831 F.2d 745, 750 (7th Cir. 1987)). "The parties must provide some factual grounds to show some objective basis for the dispute." *In re Kellogg-Taxe*, No. 2:12-BK-51208-RN, 2014 LEXIS 1033,

at *23 (Bankr. C.D. Cal. Mar. 17, 2014) (citing *In re Gaylord Grain L.C.C.*, 306 B.R. 614, 627 (B.A.P. 8th Cir. 2004)).

On November 11, 2015, Stephen L. Meza ("Debtor") placed the Property in the 2015 Stephen L. Meza Separate Property Trust ("Meza Trust"). Docs. #102, ¶ 4; #103, Ex. C. On May 3, 2018, the Property was transferred from the Meza Trust to Debtor's daughters, Elizabeth Meza and Nicoletta Meza, as a gift. *Id.*, Ex. D; Doc. #102, ¶ 5. Before this bankruptcy was filed, Debtor's daughters recorded a quitclaim deed that transferred Property back to Debtor. Doc. #103, Ex. E. Debtor states that they made no investment in the Property and never possessed any beneficial interest in it. Doc. #102, ¶ 5. Debtor states that on the petition date, Property was owned solely by him as an unmarried man. *Id.*, ¶¶ 6, 7.

Trustee disputes any interest claimed by the Meza Trust, Elizabeth Meza, or Nicoletta Meza, if any, and wishes to sell the Property free and clear of these interests because they are in bona fide dispute under 11 U.S.C. § 364(f)(4). Doc. # 99, ¶ 15. Trustee has provided factual grounds to show an objective basis for a bona fide dispute about these interests, and therefore may sell the property free and clear of the interests of the Meza Trust, Elizabeth Meza, and Nicoletta Meza under § 363(f)(4).

Additionally, Trustee seeks authorization to pay the real estate brokers a six percent (6%) commission on the final sale price for reasonable compensation for actual, necessary services, which will be split equally between the buyer and seller's broker at three percent (3%) each. Doc. #99, ¶ 17. This court previously authorized the employment of Berkshire Hathaway HomeServices California Realty Broker ("Broker") on July 24, 2020 pursuant to 11 U.S.C. § 327. Doc. #52. Compensation status for the broker commission is vague. The application (PFT-1) mentions § 328 once and the order on the application (Doc. #52) does reference § 328. But there are also references to other provisions dealing with compensation. For purposes of this motion, the court will allow the commission to be paid as prayed. The court finds the compensation reasonable. If there is an objection to the compensation, the court will consider the merits.

The sale of Property can be illustrated with estimated net proceeds to the estate:

Proposed sale price of Property		\$199,000.00
Debtor's homestead exemption	-	\$75,000.00
Estimated taxes	-	\$3,125.00
Estimated costs of sale	-	\$2,245.00
Broker fees (6% of sale price)	-	\$11,940.00
Estimated net proceeds to estate	=	\$106,690.00

Doc. #101, ¶ 6. The court notes that Debtor's homestead exemption of \$75,000.00 was subject to a compromise between Trustee and Debtor, which was approved by the court, wherein Debtor agreed to pay the first \$10,000 of his exemption to purchase a 2017 Harley Davidson

Road Glider from the estate. See Doc. #98. The estate will therefore recoup an additional \$10,000.00 as result of the previous compromise and sale and Debtor will receive \$65,000.00.

To protect the estate and Buyers, Trustee requests waiver of the 14-day stay of Fed. R. Bankr. P. 6004(h) on the basis that he does not anticipate anyone will appeal this motion. This request will be denied. Trustee presents no factual basis to waive the stay provided by law.

Any party wishing to overbid must deposit with Trustee's counsel certified monies in the amount of \$6,000.00 prior to the time of the hearing. 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 cover the purchase amount and that they can close the sale within 15 days of the delivery of a certified copy of the court's order approving the same and can execute a purchase agreement for the property.

Overbidders must be present at the hearing, make overbids in the amount of \$2,000.00, 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."

In the absence of opposition, this motion will be GRANTED. Because the interests of the Meza Trust, Elizabeth Meza, and Nicoletta Meza are in bona fide dispute, Trustee may sell the Property located at 648 Auburn Street, Tulare, CA 93274 to Buyer for \$199,000.00 subject to higher and better bids, and free and clear of the interests of the Meza Trust, Elizabeth Meza, and Nicoletta Meza, if any. Those interests, the homestead exemption, real property taxes, costs of sale, and the Broker's fee are transferred to the proceeds. The court makes no finding about the validity of the interests of the Meza Trust or Elizabeth or Nicoletta Meza, if any.

8. [20-13667](#)-B-7 **IN RE: JAMES MASSICOTTE**
[DMS-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
2-2-2021 [\[28\]](#)

NO RULING.

Chapter 7 trustee David M. Sousa ("Trustee") filed a motion to dismiss this case because *pro se* debtor James Edward Massicotte ("Debtor") failed to appear at the § 341(a) meeting of creditors scheduled for February 2, 2021. Doc. #28. Per the notice, a hearing would be set on calendar for March 9, 2021 if opposition were filed before February 23, 2021. Doc. #29.

Debtor filed form opposition on February 25, 2021, but it was not timely because it was two days late. Doc. #34. Debtor states that he

did not receive notice of the February 2, 2021 meeting by mail or email. *Id.* The opposition is dated February 10, 2021, but was not filed until February 25, 2021, which seems to imply that Debtor received Trustee's notice in advance of the opposition deadline.

The court notes that Debtor filed duplicate opposition on March 4, 2021, though it omitted the reasons this case should not be dismissed. Doc. #40. It is dated March 1, 2021 and is the subject of matter #11 below. *Id.*

Debtor was notified of the meeting of creditors at the mailing address listed in the petition. Doc. #13; *cf.* #1, at 2. The notice of chapter 7 bankruptcy case with information about the meeting of creditors was sent by first class mail to the Debtor on November 25, 2020. Doc. #13. There is no indication that this notice was undeliverable. See docket generally.

This matter will be called as scheduled to inquire whether there are any reasons the court should not strike this opposition as untimely. If Debtor does not appear at the hearing, the opposition will be stricken, and Trustee's motion will be GRANTED.

If Debtor does appear at the hearing and provides an adequate explanation for the late filing, the court may conditionally deny Trustee's motion so long as Debtor attends the § 341 meeting of creditors scheduled for March 11, 2021 at 2:00 p.m. If Debtor fails to do so, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 4004(a) and 1017(e)(1) for the Chapter 7 Trustee and the U.S. Trustee to object to the Debtor's discharge or to move for dismissal of the case under Section 707(b), respectively, is extended to 60 days after the conclusion of the meeting of creditors because Debtor did not attend the first scheduled meeting of creditors.

9. [19-14170](#)-B-7 **IN RE: JOHNNY GONZALES**
[FW-1](#)

MOTION TO EMPLOY FEAR WADDELL, P.C. AS ATTORNEY(S)
1-20-2021 [\[166\]](#)

PETER FEAR/MV
KELSEY SEIB/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed on 28 days' notice as required by Local Rule of Practice 9014-1(f) (1) and will proceed as scheduled.¹

Chapter 7 trustee Peter L. Fear ("Trustee") filed an *ex parte* motion to employ Fear Waddell, P.C. ("Counsel"), as general counsel. According to the application Counsel is retained as "general purpose counsel" to resolve an adversary proceeding against Trustee, *Gonzales v. Fear*, adv. proc. no. #21-01002. Doc. #166. The adversary proceeding began as an action pending in the Fresno County Superior Court. The Trustee (the defendant in the adversary proceeding) removed the civil action to this court.

Trustee previously employed Coleman & Horowitz, LLP, as general counsel, but because this is an administratively insolvent bankruptcy case and Counsel is willing to represent Trustee knowing that it is a no-asset case, Trustee wishes to employ Counsel for the purposes of defending Debtor's adversary proceeding.

Johnny Gonzales ("Debtor") timely opposed, arguing that this motion is moot because he filed a request for dismissal in the state court lawsuit on January 20, 2021. Doc. #173. A copy of a letter sent to Counsel, Trustee, and Trustee's previous counsel was filed on February 8, 2021, wherein Debtor states under penalty of perjury that his underlying case has been dismissed without prejudice. Doc. #179. Debtor separately filed the same letter on March 5, 2021, along with an additional statement that Trustee is "holding [Debtor] hostage by not discharging [his] bankruptcy" which Debtor compares to modern-day slavery. Docs. #180; #181. Debtor requests that his discharge be entered and the case closed because Mid Valley Financial has been paid in full.

However, the state court proceeding had already been removed at the time Debtor filed his notice of dismissal, so the state court no longer had jurisdiction. Trustee filed a motion to dismiss the adversary proceeding under Civil Rule 12(b)(6). Debtor did not oppose Trustee's motion to dismiss and his opposition to this motion (Doc. #173) and letter (Doc. #179) were considered when dismissing the adversary proceeding on February 25, 2021. Debtor has until March 11, 2021 to amend his complaint (or dismiss the adversary proceeding under Civil Rule 41(a)(1)) or the dismissal will be with prejudice.

Though the Superior Court entered the dismissal of the civil action January 20, 2021, the action had been removed by then and the Superior Court no longer had jurisdiction to dismiss the civil action. The dismissal entered in the Superior Court is void.

Debtor's opposition to this motion is without merit. The Trustee has stated that this case is either a no asset case or administratively

¹Unless 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.

insolvent. So, Debtor's interests in the estate property are non-existent. This is not a solvent estate and based on Trustee's declaration, no creditors will receive a dividend in this case.

That said, the granting of this motion should not be construed as a finding that any fees incurred by proposed counsel defending the adversary proceeding are necessarily compensable. Section 330(a)(4)(A)(ii) disallows compensation for services that were not "reasonably likely to benefit the debtor's estate; or necessary to the administration of the case." Whether defense of the adversary proceeding qualifies for compensation from the estate remains to be seen.

The motion will be GRANTED.

10. [20-12979](#)-B-7 **IN RE: HECTOR/ROSA SUAREZ**
[JES-1](#)

MOTION FOR TURNOVER OF PROPERTY
2-3-2021 [\[17\]](#)

JAMES SALVEN/MV
T. O'TOOLE/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") filed this motion seeking to compel Hector Flores Suarez and Rosa Maria Suarez ("Debtors") to turnover a 2011 Chevrolet Silverado ("Vehicle") pursuant to 11 U.S.C. § 542(a). Doc. #17. Debtors did not file opposition and their defaults will be entered.

This motion will be GRANTED.

First, the court notes that LBR 9004-2(c)(1) requires that motions, exhibits, and other specified pleadings are to be filed as separate documents. Here, the motion and a one-page exhibit were attached and not filed separately. Typically, this error would result in the motion being denied without prejudice. 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 Debtors did not oppose, and in the interests of a just and speedy adjudication, the court will overlook this procedural deficiency under LBR 1001-1(f). Future violations of the local rules may result in the motion being denied without prejudice.

11 U.S.C. § 541 establishes Vehicle as an asset 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 Vehicle 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).

Debtors filed bankruptcy on September 16, 2020 and received an order of discharge on January 19, 2021. Docs. #1; #15. Vehicle is listed in Schedule A/B as being in "Poor" condition with 295,000 miles and valued at \$3,186.00 on the petition date. Doc. #1, Schedule A/B,

¶ 3.1. Debtors exempted \$3,186.00 in Vehicle's equity under Cal. Code Civ. P. § 704.010. *Id.*, Schedule C. Vehicle does not appear to have any encumbrances. *Id.*, Schedule D.

Trustee filed a declaration stating his opinion liquidating Vehicle will net the estate approximately \$5,614.00. This seems to imply that Trustee believes Vehicle has an approximate value of \$8,800.00 if the estate would receive \$5,614.00 after payoff of Debtor's \$3,186.00 exemption. Trustee also indicates that he sent a demand for turnover of Vehicle to Debtors on November 24, 2020. Doc. #19, Ex. A.

Trustee has demonstrated that Vehicle's value exceeding Debtors' claimed exemptions are property of the estate. The estate benefits from the administration of this asset. Therefore, this motion will be GRANTED.

It will be ordered that Debtors shall comply with Trustee's request for turnover of Vehicle or arrange to turn over the Vehicle or its net value to the estate not later than seven calendar days after an order granting this motion is issued and served on Debtors. Failure to comply may result in an order imposing sanctions, including movant's attorney's fees, upon further motion.

11. [20-13667](#)-B-7 **IN RE: JAMES MASSICOTTE**
[DSM-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
2-2-2021 [\[28\]](#)

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

DISPOSITION: Stricken.

ORDER: The court will issue an order.

On March 4, 2021, James Edward Massicotte ("Debtor") filed a form opposition to chapter 7 trustee David M. Sousa's ("Trustee") motion to dismiss. Doc. #40.

First, this opposition is duplicative of another filed on February 25, 2021, which will be resolved in matter #8 above. See Doc. #34. The only difference between the two is that this opposition (Doc. #40) does not include any reasons the case should not be dismissed.

Second, this notice was untimely. The deadline to respond to Trustee's motion was February 23, 2021. Doc. #29. This notice was filed on March 4, 2021 and is therefore nine days late.

Accordingly, the court will STRIKE Debtor's opposition because it is duplicative and untimely.