

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, June 29, 2021
Place: Department B – Courtroom #13
Fresno, California

The court resumed in-person courtroom proceedings in Fresno ONLY on June 28, 2021. Parties may still appear telephonically provided that they comply with the court's telephonic appearance procedures. For more information click [here](#).

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. 20-10800-B-11 IN RE: 4-S RANCH PARTNERS, LLC

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

RENO FERNANDEZ/ATTY. FOR DBT.

NO RULING.

2. 20-10800-B-11 IN RE: 4-S RANCH PARTNERS, LLC
MF-15

MOTION TO EMPLOY CHRISTOPHER E. SEYMOUR AS SPECIAL COUNSEL
6-14-2021 [439]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to date determined at hearing.

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

Debtor-in-possession 4-S Ranch Partners, LLC ("DIP") filed this motion to employ Christopher E. Seymour ("Counsel") of Gilmore Magness Janisse, P.C. ("Firm") as special counsel under 11 U.S.C. § 327(a). Doc. #439. DIP withdrew part of its original request for relief under § 327(e) on June 22, 2021. Doc. #451.

DIP proposes to pre-approve Counsel's compensation under 11 U.S.C. § 328 by allowing Sloan Cattle Company, LLC ("Sloan Cattle") to pay for all services rendered by Counsel from Sloan Cattle's own assets that are not part of DIP's bankruptcy estate. Sloan Cattle has agreed to this arrangement and acknowledges that it will have no control or input as to the services provided, nor any right to reimbursement from DIP or the estate. Doc. #441.

Though not required, Sandton Credit Solutions Master Fund IV, LP ("Sandton") opposed DIP's motion. Doc. #454. Sandton argues the motion is procedurally improper because DIP already has retained

counsel to generally assist DIP under § 327(a). Second, Sandton contends the application does not describe any tangible benefit counsel's retention will be to the estate. Retention of other "special counsel" to pursue a declaratory relief action about Merced's Groundwater Ordinance has proved unbeneficial, claims Sandton. Third, Sandton questions two aspects of the proposed retention: proposed counsel's payment by Sloan Cattle—an asset of the related Stephen Sloan case—to the detriment of Sloan's creditors, and proposed counsel's firm was involved in transactions involving the Sloan family which Sandton contends are disputed and should be "unwound." Docs. #88; #286; #365.

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.

11 U.S.C. § 1107 gives the DIP all the rights and powers of a trustee and requires it to perform all functions and duties, certain exceptions notwithstanding. That includes being a fiduciary for the estate.

Under 11 U.S.C. § 327(a), a professional person, such as an attorney, may be employed by the estate with the court's approval if the proposed professional does not hold or represent an interest adverse to the estate and is "disinterested." That professional—there can be "one or more"—may represent or assist the trustee in carrying out the trustee's duties. . ." (emphasis added) Notably, objector here, Sandton, has filed and served an adversary proceeding against DIP. See Adv. Proc. No. 21-01024. Responsive pleadings are currently due July 9, 2021.

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).

Here, DIP owned real property ("4-S Property") in Merced County. 4-S Property was recently lost to foreclosure by Sandton on April 29, 2021. Doc. #420. Sandton prevailed by credit bid and is the owner of 4-S Property.

DIP contends that the abandoned flood waters underlying 4-S Property constitute personal property not included in Sandton's lien or subsequent foreclosure. Doc. #439. DIP proposes to employ Counsel to assert its rights against Sandton and determine the validity, priority, and extent of liens against the abandoned flood water.

Ultimately, DIP seeks to pursue a sale of the abandoned flood waters so that it may proceed in this chapter 11 case.

Counsel's resume lists experience in all phases of state and federal court litigation, including general commercial, real property, and agriculture litigation, creditor representation in bankruptcy, and insolvency matters. Doc. #443, Ex. A. Counsel's declaration states that neither Counsel nor the Firm hold or represent interests adverse to the estate and are disinterested persons but acknowledges that he has previously represented the Sloan Family Irrevocable Trust, of which Stephen William Sloan, DIP's owner, is trustee. Doc. #442. The trust was created by Mr. Sloan's parents and Mr. Sloan is not the beneficiary. *Id.*

Other than that connection, Counsel declares that he has no connection with the DIP, its creditors, their attorneys and accountants, the United States trustee, or any other person employed in the office of the United States trustee as required by Fed. R. Bankr. P. 2016. *Id.*

As noted above, DIP seeks pre-approval of Counsel's compensation. Sloan Cattle agreed to pay for all of Counsel's services from its own assets independent from the bankruptcy estate. Doc. #441. DIP, Sloan Cattle, and Counsel executed a legal services agreement on May 26, 2021. Doc. #443, Ex. B. In accordance with the agreement, Sloan Cattle tendered a \$50,000.00 retainer to the Firm on March 23, 2021. *Id.*, Ex. C.

One issue here is that there is no proof that the DIP gave its informed written consent to the arrangement. True enough, the DIP filed the motion and signed the agreement. But, Cal. Rules of Prof'l Conduct ("CRPC") 1.8.6(e) requires a client's "informed written consent" to the arrangement. "Informed written consent" is defined in CRPC 1.0.1(e) and requires that the client be apprised of both the material risks and relevant circumstances and client's written consent. See also, *Sharp v. Next Entertainment*, 163 Cal. App. 4th 410, 429 (2008). Though Sloan Cattle (putative payor) seems to understand the limitations required under this proposed arrangement, the same cannot be said for the potential client, the DIP. That evidence is absent, or the court is required to speculate based on the documents submitted. The court is disinclined to speculate.

Since Sandton has opposed the motion, the court will discuss the briefing and further hearing schedule at the hearing on the motion.

The motion will be CONTINUED.

3. 21-11001-B-11 **IN RE: NAVDIP BADHESHA**
RMB-2

MOTION TO EMPLOY FARID KANJI & ASSOCIATES AS ACCOUNTANT(S)
5-28-2021 [35]

NAVDIP BADHESHA/MV
MATTHEW RESNIK/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 after hearing.

Debtor-in-possession Navdip S. Badhesha ("DIP") applies to employ Farid Kanji ("Applicant") of Farid Kanji & Associates ("Firm") as tax preparer for the estate under 11 U.S.C. §§ 327(a) and 328. Doc. #35. DIP proposes to pre-approve Applicant's compensation under 11 U.S.C. § 328 in accordance with the terms of the flat fee service agreement, which provides for a fixed fee of \$1,400.00 for the preparation of DIP's 2019 and 2020 individual tax returns. Doc. #37.

This motion will be called as scheduled. In the absence of opposition, this motion will be GRANTED.

First, the court notes that the original notice of hearing had the wrong hearing date in the caption page. Doc. #36. DIP filed an amended notice of hearing that corrected the hearing date on June 2, 2021. Doc. #42. The amended notice provided that opposition must be in writing and must be filed and served at least 14 days before the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1)(B). But June 2, 2021 is 27 days before June 29, 2021, so the amended notice was filed on less than 28 days' notice. Thus, the amended notice should have included the language of LBR 9014-1(f)(2)(C), which provides that opposition is not required and may be presented at the hearing.

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 the original motion documents were filed on more than 28 days' notice, the court will overlook the procedural deficiency in the amended notice under LBR 1001-1(f) but will allow any party to present opposition at the hearing. Future violations of the local rules may result in the motion being denied without prejudice.

No party in interest timely filed written opposition. Since the amended notice of hearing was filed on less than 28 days' notice, this motion will be called as scheduled to inquire whether any parties in interest oppose. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults.

11 U.S.C. § 1107 gives the DIP all the rights and powers of a trustee and requires it to perform all functions and duties, certain exceptions notwithstanding.

Under 11 U.S.C. § 327(a), a professional person, such as an accountant, may be employed by the estate with the court's approval if the proposed professional does not hold or represent an interest adverse to the estate and is "disinterested."

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).

Here, DIP is a married individual, employed full time, and operates a grape farm that produces raisins. Doc. #37. DIP proposes to pay Applicant \$1,400.00 for preparation of the 2019 and 2020 individual tax returns, to be paid upon entry of the order authorizing Applicant's employment. DIP states that Applicant previously prepared and filed DIP's tax returns as well as the tax returns for DIP's business, BIL, Inc. *Id.* DIP declares that Applicant holds no prepetition claims against the estate. *Id.* Applicant's invoice indicates charges of \$700.00 per tax year prepared. Doc. #39, Ex. A.

Applicant is experienced in providing personalized financial guidance to local individuals and businesses including basic tax management and bookkeeping services to more in-depth services such as audits, financial statements, and financial planning. *Id.*, Ex. B. Further, the evidence establishes that neither Applicant nor the Firm hold or represent interests adverse to the estate and are disinterested persons. Doc. #38. Applicant's declaration avers that he has previously prepared taxes for DIP's business, BIL, Inc., which is now defunct. *Id.* Other than that connection, Applicant declares that he has no relationships with DIP, its creditors, their attorneys and accountants, the United States trustee, or any other person employed in the office of the United States trustee as required by Fed. R. Bankr. P. 2016. *Id.*

If opposition is presented at the hearing, the court may continue the hearing to accommodate submission of further briefing or evidence. In the absence of any further opposition, the court finds that Applicant and the Firm do not hold or represent an interest adverse to the estate and are disinterested. The conditions of § 327(a) have been met. Additionally, the court will fix Applicant's compensation under § 328 in accordance with the provided invoice and Applicant will be paid a total of \$1,400.00 for preparation of DIP's 2019 and 2020 individual tax returns.

This motion will be GRANTED. Applicant and the Firm will be retained effective April 28, 2021.

4. 20-12642-B-11 **IN RE: 3MB, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
8-11-2020 [1]

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Continued to July 27, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

The parties stipulated to continue the hearing for confirmation of the First Amended Chapter 11 Plan to July 27, 2021. Doc. #269. The court approved that stipulation on June 22, 2021. Doc. #270. This matter is CONTINUED to July 27, 2021 at 9:30 a.m.

5. 20-12642-B-11 **IN RE: 3MB, LLC**
AG-4

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
3-10-2021 [193]

U.S. BANK NATIONAL
ASSOCIATION/MV
LEONARD WELSH/ATTY. FOR DBT.
AMIR GAMLIEL/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to July 27, 2021 at 9:30 a.m.

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

U.S. Bank N.A. ("USB") moves the court for an order terminating the automatic stay of 11 U.S.C. § 362(d)(1), (2), and (3) to allow it to enforce its rights and remedies under the Loan Documents, including foreclosing on real property commonly referred to as the Village at Towne Center, 1201 24th Street, Bakersfield, CA 93301 ("Shopping Center"). Doc. #193.

Debtor-in-possession 3MB, LLC ("3MB") timely opposed. Doc. #218.

USB replied and submitted evidentiary objections. Docs. ##227-28.

This matter was originally scheduled for April 7, 2021. Doc. #194. The parties stipulated to continue the matter to April 27, 2021 due to ongoing negotiations regarding a consensual resolution to the chapter 11 case. Docs. #230; #237.

At the hearing scheduled for April 27, 2021, the court ruled on USB's evidentiary objections and continued this matter for tracking purposes. Doc. #248. The court ordered the stay continued in effect pending the conclusion of the final hearing at the continued hearing date because there is a reasonable likelihood that 3MB will prevail if it successfully confirms its First Amended Chapter 11 Plan in matter #6 below. Doc. #243.

The parties stipulated to continue the hearing for confirmation of the First Amended Chapter 11 Plan to July 27, 2021. Doc. #269. The court approved that stipulation on June 22, 2021. Doc. #270.

The court will inquire whether USB consents to extending the automatic stay under § 362(e) pending the conclusion of the continued hearing on 3MB's First Amended Chapter 11 Plan. If so, the court will CONTINUE the matter to July 27, 2021 at 9:30 a.m. and order that the stay be continued in effect pending the conclusion of the final hearing on this motion.

6. 20-12642-B-11 **IN RE: 3MB, LLC**
LKW-11

AMENDED/MODIFIED CHAPTER 11 PLAN
2-4-2021 [172]

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Continued to July 27, 2021 at 9:30 a.m.

ORDER: NO ORDER REQUIRED.

Due to ongoing negotiations regarding a possible consensual resolution to this chapter 11 case, U.S. Bank, N.A. and 3MB, LLC stipulated to continue this hearing to July 27, 2021. Doc. #269. Accordingly, the court approved the stipulation and continued this matter to July 27, 2021 at 9:30 a.m. Doc. #270.

The deadline to file objections to the plan shall be extended to July 13, 2021, and the deadline for 3MB to file replies to objections and other documents in support of confirmation, including tabulation of ballots, is extended to July 20, 2021. *Id.*

7. 20-11992-B-11 **IN RE: CHAR PHAR INVESTMENTS, LLC**
WLC-10

MOTION TO USE CASH COLLATERAL
6-21-2021 [216]

CHAR PHAR INVESTMENTS, LLC/MV
WILLIAM COWIN/ATTY. FOR DBT.
OST 6/21/21

NO RULING.

Char Phar Investments, LLC ("Debtor") filed this motion with an order shortening time on the notice required by Local Rule of Practice ("LBR") 9014-1(f) (2). Consequently, the creditors, U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Oral argument may be presented at the hearing. If any respondents appear the hearing and offer opposition to the motion, the court will consider interim authorization and set a briefing schedule and final hearing unless there is no need to develop the record further.

This matter will be called as scheduled. Debtor shall be prepared to discuss the following:

1. The reason for not filing a certificate of service for the motion, notice of hearing, cash collateral budget, or memorandum of points and authorities as required by LBR 9014-1(e). Docs. ##216-20.
2. Whether there is any legal authority for retroactive approval of previous unauthorized use of cash collateral. The court could not locate any.
3. Proposed remedies for unauthorized use of cash collateral without a court order and without the consent of creditors.

The court will also inquire whether any parties in interest oppose future authorization of cash collateral, including relief in the form of replacement liens and adequate protection payments.

The court does note that the exhibit (Doc. #213) to the Application for Order Shortening Time is the Motion For Authority For Use of Cash Collateral (Doc. #216). The motion includes the date and time of the hearing in the caption, so the parties were at least served the motion and were notified of the hearing on June 18, 2021. Rule 4001(b) (3). However, the parties did not receive the notice of hearing, or any of the other documents in support of the hearing as required by LBR 9014-1(e) (1). The court will inquire at the hearing why these documents were not served.

11:00 AM

1. 21-10624-B-7 **IN RE: RAMIRO ZARAGOZA**

REAFFIRMATION AGREEMENT WITH NISSAN MOTOR ACCEPTANCE
CORPORATION
6-8-2021 [12]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. In this case, the debtor's attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

2. 21-10640-B-7 **IN RE: RENEE DAY**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
5-28-2021 [14]

JERRY LOWE/ATTY. FOR DBT.

NO RULING.

1:30 PM

1. 21-10803-B-7 **IN RE: ASHLEY RENE WRIGHT ALVAREZ**
KR-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-4-2021 [15]

YAMAHA MOTOR FINANCE CORP./MV
VINCENT GORSKI/ATTY. FOR DBT.
KAREL ROCHA/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.

The movant, Yamaha Motor Finance Corp. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (2) with respect to a 2017 Yamaha YFZ450R ("Vehicle"). Doc. #15.

No party in interest timely filed written opposition. This motion will be GRANTED.

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

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

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have 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 11 payments past due in the amount of \$7,157.00, including late fees. Doc. #17.

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. Movant values the Vehicle at \$6,890.00 and the amount owed to Movant is \$8,483.94. Doc. #17.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) and (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.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 11 payments and the Vehicle is a depreciating asset.

2. 21-11005-B-7 **IN RE: SAUL/ROSA VELASQUEZ**
RAS-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-24-2021 [10]

U.S. BANK TRUST NATIONAL
ASSOCIATION/MV
SCOTT LYONS/ATTY. FOR DBT.
SEAN FERRY/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.

The movant, U.S. Bank National Association ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (2) with respect to a 2018 Ram 2500 ("Vehicle"). Doc. #10.

No party in interest timely filed written opposition. This motion will be GRANTED.

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.

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 13 payments. The movant has produced evidence that debtors are delinquent at least \$12,105.34, plus late charges of \$419.04. Doc. #12, #14.

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 \$55,825.00 and debtor owes \$57,288.92. Doc. #12, #14.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) and (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.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 13 payments to Movant and the Vehicle is a depreciating asset. No other relief is awarded.

3. 21-10316-B-7 **IN RE: CABLE LINKS CONSTRUCTION GROUP, INC.**
BLF-3

MOTION TO ABANDON
5-26-2021 [34]

IRMA EDMONDS/MV
HAGOP BEDOYAN/ATTY. FOR DBT.
LORIS BAKKEN/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.

Chapter 7 trustee Irma C. Edmonds ("Trustee") requests authorization to abandon the estate's interest in certain property under 11 U.S.C. § 554(a) and Fed. R. Bankr. P. 6007. Doc. #34.

No party in interest timely filed written opposition. This motion will be GRANTED.

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.

Cable Links Construction Group, Inc. ("Debtor") filed chapter 7 bankruptcy on February 9, 2021. Doc. #1. Trustee was appointed as interim trustee on that same date. Doc. #2. Trustee became permanent trustee on March 15, 2021, the date of the first § 341 meeting of creditors. Doc. #5; see docket generally.

Trustee seeks authorization to abandon the following property ("Estate Assets"):

- (1) real property located at 5940 E. Shields Ave., Suite 101, Fresno, CA ("Real Property");
- (2) all personal property located at the Real Property and located at various pre-petition job sites, including (a) Fort Hunter Liggett in Jolon, California, (b) Tripler Army Medical Center in Honolulu, Hawaii, and (c) Westside Union Elementary School located at 659 K. Street, Los Banos, CA 93635 (collectively "Personal Property");
- (3) a storage container that is the subject of a lease with Mobile Modular ("Container"), and the subject of a stay relief motion in matter #4 below (JAS-2); and
- (4) all amounts owed and/or breach of contract claims in connection with pre-petition contracts that the Debtor had with Straub Construction, Inc., with Pioneer Contracting Company, Ltd., and with Tom Worthy and the Los Banos School District (collectively "Claims").

Doc. #34. Trustee specifically excludes from this motion equipment known as the Ditchwitch that is in the possession of Ditch Witch Financial Services.

11 U.S.C. § 554(a) provides, "[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." Section 554(a) permits abandonment upon a showing that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *Johnston v. Webster (In re Johnston)*, 49 F.3d 538 (9th Cir. 1995); *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987) (discussing identical language in § 554(b)).

Real Property

Debtor lists Real Property as its principal place of business in the petition. Doc. #1, *Form 201*, ¶ 4. Notably, Debtor claims that it neither owns nor leases any real property. *Id.*, *Schedule A/B*, ¶ 59. Debtor discloses the following secured claims:

Looking Glass Funding, LLC	\$183,082.00
Pearl Beta Funding, LLC	\$80,000.00
Premier Valley Bank	\$505,073.03
Premier Valley Bank	\$243,473.30
Premier Valley Bank	\$162,315.44
Total	\$1,173,943.77

Id., *Schedule D*. The schedules do not include a description of the collateral for the secured claims. Trustee states that she received a copy of Premier Valley Bank's UCC Financing Statement recorded January 31, 2018, which provides a blanket lien. Doc. #34, ¶ 6; see also Doc. #39, Ex. A.

Loris L. Bakken ("Counsel"), Trustee's attorney, requested copies of the Revenue Purchase Agreements ("RPA") or other agreement documents in connection with these secured debts. Doc. #38. Looking Glass Funding, LLC failed to respond, but Pearl Beta Funding, LLC provided a copy of its RPA dated October 1, 2020. *Id.*; Doc. #39, Exs. B-C. Trustee noted that Pearl Beta Funding intercepted a payment of \$56,229.43 owed to Debtor and requested its return, but counsel for Pearl Beta Funding responded that under the RPA, Pearl Beta Funding had purchased Debtor's revenue and receivables. Doc. #38, ¶ 2.

Trustee does not believe Real Property is property of the estate because title remains with its landowner. Trustee obtained a copy of the lease agreement between Debtor and Old Dominion Capital. Doc. #38, ¶ 4; Doc. #39, Ex. G. Trustee wishes to abandon the estate's interest in Real Property, if any, to avoid unnecessary claims and liabilities, including administrative expenses from further monthly lease payments. Doc. #37, ¶ 6. Trustee contends that Real Property has no equity that can be sold for the benefit of the estate and unsecured creditors.

Further, this appears to be an unexpired lease of nonresidential real property under which the Debtor is the lessee. Doc. #39, Ex. G. Under 11 U.S.C. § 365(d)(4), the lease shall be deemed rejected and the trustee shall immediately surrender that nonresidential real property to the lessor if the Trustee does not assume or reject the lease by the date that is 120 days after the date of the order for relief.

This case was filed on February 9, 2021. Doc. #1. Trustee had 120 days – until June 9, 2021 – to assume or reject the lease or it would be deemed rejected. Since Trustee did not assume the lease, it was rejected.

Personal Property

Trustee learned from the Debtor that prior to filing this case, the Debtor had been working at job sites under various construction contracts. Doc. #37, ¶ 3. Trustee believes that Personal Property, including equipment and inventory, is likely remaining at those sites and at the Real Property, but that this Personal Property is encumbered as security for the above-mentioned liens. Additionally, the contractor for each of the projects likely has a secured interest in most, if not all, of the Personal Property located there under the construction contracts. *Ibid.* Trustee states that there is no equity in the Personal Property for the benefit of the estate and that it cannot be sold for the benefit of unsecured creditors. *Id.*, ¶ 5.

Container

Trustee was informed that Debtor was still in possession of a Container that it was leasing from Mobile Modular. Doc. #38, ¶ 3. Mobile Modular filed a motion requesting relief from the automatic stay, which was set for June 8, 2021. JAS-1. This motion was denied without prejudice for procedural reasons. Doc. #48. Mobile Modular filed a second motion for relief, which is set for hearing in matter #4 below.

The estate's interest in the Container is an unexpired lease of personal property. Under § 365(d)(1), Trustee has 60 days to assume or reject the lease of personal property or the lease will be deemed rejected. Pursuant to § 365(p), if a lease of personal property is rejected or not timely assumed, the leased property is no longer property of the estate and the automatic stay under § 362(d) is automatically terminated.

Claims

Trustee also learned that Debtor is likely owed for work performed on pre-petition contracts it has with contractors Straub Construction, Inc., Pioneer Contracting Company, Ltd., and Tom Worthy and the Los Banos School District. Doc. #37, ¶ 4. Such amounts are both in dispute and collateral of one or more of the secured creditors.

Specifically, Trustee states that Debtor is owed approximately \$500,000.00 from Straub Construction, but Straub Construction asserts that Debtor is liable for approximately \$447,000.00 in damages because it had to hire another electrical company to perform the work Debtor was hired to do. *Ibid.* Additionally, Debtor asserts that Pioneer Contracting Company, Ltd., owes Debtor approximately \$18,790.49 and Tom Worthy and the Los Banos School District owe Debtor approximately \$38,329.44. *Ibid.*; Doc. #39, Exs. D-F.

Since these Claims are subject to the security interests of secured creditors, they are of inconsequential value to the estate. The Claims are burdensome to the estate because they could include potential liability, including personal property tax and other potential administrative expenses.

Conclusion

The court finds that the leases for the Real Property and Container have been rejected because they were not timely assumed by Trustee. The remaining Estate Assets – the Personal Property and the Claims – are of inconsequential value and benefit to the estate. The Personal Property and Claims are fully encumbered by the security interests of secured creditors, burdensome to the estate, and of inconsequential value or benefit to the estate. Therefore, this motion will be GRANTED.

The order shall include a specific list of the property abandoned.

4. 21-10316-B-7 **IN RE: CABLE LINKS CONSTRUCTION GROUP, INC.** JAS-2

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-7-2021 [42]

MOBILE MODULAR PORTABLE
STORAGE/MV
HAGOP BEDOYAN/ATTY. FOR DBT.
JANET SHAPIRO/ATTY. FOR MV.

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

DISPOSITION: Denied as moot.

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

First, the notice (Doc. #43) did not contain the language required under LBR 9014-1(d)(3)(B), which is about noticing requirements. LBR 9014-1(d)(3)(iii) requires the movant to notify respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and can view pre-hearing dispositions by checking the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

Second, LBR 9004-2(c)(1) and (d)(1) require exhibits to be filed as a separate document from the document to which it relates. Here, the motion and exhibit were combined into one document. Doc. #42.

Third, this motion relates to an executory contract or lease of personal property. The case was filed on February 9, 2021 and the lease was not assumed by the chapter 7 trustee within the time prescribed in 11 U.S.C. § 365(d)(1). Pursuant to § 365(p)(1), the leased property is no longer property of the estate and the automatic stay under § 362(a) has already terminated by operation of law.

This motion will be DENIED AS MOOT. Movant may submit an order denying the motion and confirming that the automatic stay has

already terminated on the grounds set forth above. No other relief is granted.

5. 20-11334-B-7 **IN RE: RICK/LINDA MILLER**
RWR-2

MOTION FOR COMPENSATION BY THE LAW OFFICE OF COLEMAN & HOROWITT, LLP FOR RUSSELL W. REYNOLDS, TRUSTEES ATTORNEY(S)
5-25-2021 [92]

D. GARDNER/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.

Russell W. Reynolds of Coleman & Horowitz, LLP ("Movant"), counsel for chapter 7 trustee Peter L. Fear ("Trustee"), requests final compensation of \$10,801.00. Doc. #92. Movant asks for fees of \$10,218.00 and costs of \$583.00 for services rendered from June 6, 2020 through May 15, 2021. *Id.*

Trustee declares that he has reviewed the fee application and supporting documents. Doc. #95. Trustee believes the requested fees and expenses are reasonable and necessary for administration of the estate and has no objection to those fees. *Id.*

No party in interest timely filed opposition. This motion will be GRANTED.

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.

Rick Joe Miller and Linda Susan Miller ("Debtors") filed chapter 7 bankruptcy on April 6, 2020. Doc. #1. Jeffrey M. Vetter was appointed as interim trustee on that same day. Doc. #2. Mr. Vetter rejected the appointment on April 13, 2020. Doc. #16. Trustee was

appointed as interim trustee on April 14, 2020. Doc. #17. Trustee became permanent trustee at the first § 341 meeting of creditors, which was scheduled for March 2, 2020. Doc. #22; docket generally.

Trustee sought to employ Movant as general bankruptcy counsel on June 18, 2020. KAS-1. The court approved employment effective May 27, 2020, subject to the applicable provisions of 11 U.S.C. §§ 327, 329-331. Doc. #36. No compensation was permitted except upon court order following application under §§ 330(a) and 331. 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).

Movant now requests final compensation of \$10,801.00. Doc. #92. Movant indicates that their firm spent 35.10 billable hours totaling \$10,218.00 in fees as follows:

Professional	Rate	Hours	Fees
Partners	\$330.00	14.10	\$4,653.00
Associates	\$265.00	21.00	\$5,565.00
Total		35.10	\$10,218.00

Id., ¶ 10; Doc. #96, Ex. B. Movant also incurred the following expenses:

Photocopy charges	\$375.96
Postage charges	\$195.34
Certified copy request	\$12.50
Total Costs	\$583.80

Doc. #92, ¶ 13. These combined fees and expenses total **\$10,801.00**.

11 U.S.C. § 330(a)(1)(A) and (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 and filing a motion to sell Debtor's real property and payment of broker fees (KAS-2); (2) reviewing, analyzing, and resolving claims improperly categorized; (4) seeking authorization to pay and payment of administrative expenses (RWR-1); (5) preparing and filing employment and fee applications (KAS-1; RWR-2). Doc. #96, Ex. A. The court finds the services reasonable and necessary, and the expenses actual and necessary.

Accordingly, this motion will be GRANTED. Movant shall be awarded \$10,218.00 in fees and \$583.80 in costs on a final basis under 11 U.S.C. § 330. Trustee will be authorized to pay Movant \$10,801.00 for services rendered from September 3, 2020 through May 19, 2021.

6. 21-11040-B-7 **IN RE: MARIA VAZQUEZ**
KMM-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-26-2021 [12]

TOYOTA MOTOR CREDIT
CORPORATION/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
KIRSTEN MARTINEZ/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.

The movant, Toyota Motor Credit Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (2) with respect to a 2020 Toyota Tacoma("Vehicle"). Doc. #12.

No party in interest timely filed written opposition. This motion will be GRANTED.

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.

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 payments. The movant has produced evidence that debtor is delinquent at least \$2,127.35. Doc. #16.

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 \$29,900.00 and debtor owes \$38,920.09. Doc. #14.

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.

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 complete payments to Movant and the Vehicle is a depreciating asset. Debtor has also failed to provide proof of insurance. No other relief is awarded.

7. 20-10357-B-7 **IN RE: STEPHEN MEZA**
FW-6

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, TRUSTEES ATTORNEY(S)
5-20-2021 [118]

MARK ZIMMERMAN/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.

Gabriel J. Waddell of Fear Waddell, P.C. ("Movant"), counsel for chapter 7 trustee Peter L. Fear ("Trustee"), requests final compensation of \$11,470.00. Doc. #118. Movant asks for fees of \$10,397.00 and costs of \$1,073.00 for services rendered from September 3, 2020 through May 19, 2021. *Id.*

Trustee declares that he has reviewed the fee application and supporting documents. Doc. #121. Trustee believes the requested fees and expenses are reasonable and necessary for administration of the estate and has no objection to those fees. *Id.*

No party in interest timely filed opposition. This motion will be GRANTED.

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.

Stephen L. Mesa ("Debtor") filed chapter 7 bankruptcy on January 31, 2020. Doc. #1. Trustee was appointed as interim trustee on that same day. Doc. #5. Trustee became permanent trustee at the first § 341 meeting of creditors, which was scheduled for March 2, 2020. Doc. #11.

Trustee sought to employ Movant as general bankruptcy counsel on September 9, 2020. FW-1. The court approved employment effective August 15, 2020 subject to the applicable provisions of 11 U.S.C. §§ 327, 329-331. Doc. #59. No compensation was permitted except upon court order following application under § 330(a). 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).

Movant now requests final compensation of \$11,470.00. Doc. #118. Movant indicates that his firm spent 39.00 billable hours totaling \$10,397.00 in fees as follows:

Professional	Rate	Hours	Fees
Peter L. Fear (2020)	\$400.00	0.50	\$200.00
Peter L. Fear (2021)	\$410.00	0.40	\$164.00
Gabriel J. Waddell (2020)	\$320.00	12.80	\$4,096.00
Gabriel J. Waddell (2021)	\$330.00	2.50	\$825.00
Katie Waddell (2020)	\$220.00	13.20	\$2,904.00
Katie Waddell (2021)	\$230.00	9.60	\$2,208.00
Totals		39.00	\$10,397.00

Id., ¶ 6; #122, Ex. B. Movant also incurred the following expenses:

Copying	\$387.60
Court fees	\$496.50
Postage	\$188.90
Total Costs	\$1,073.00

Ibid.; Doc. #118, ¶ 7. These combined fees and expenses total **\$11,470.00**.

11 U.S.C. §§ 330(a)(1)(A) and (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 and filing a motion to sell Debtor's real property, which included a request to be sold free and clear of certain interests and payment of realtor fees (FW-2); (2) modifying the order to add a third buyer after the original buyers were unable to obtain a loan (FW-3); (3) seeking approval of a settlement between Debtor and Trustee so that his homestead exemption could be used to pay for non-exempt equity in his motorcycle (FW-4); (4) preparing and filing a second motion to approve a sale to a new buyer (FW-5); and (5) preparing and filing employment and fee applications (FW-6). Doc. #122, Ex. A. The court finds the services reasonable and necessary, and the expenses actual and necessary.

Accordingly, this motion will be GRANTED. Movant shall be awarded \$10,397.00 in fees and \$1,073.00 in costs on a final basis under 11 U.S.C. § 330. Trustee will be authorized to pay Movant \$11,470.00 for services rendered from September 3, 2020 through May 19, 2021.

8. 21-10368-B-7 **IN RE: SIMONA PASILLAS**
JES-2

MOTION TO EMPLOY GOULD AUCTION AND APPRAISAL, CO. AS
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
5-26-2021 [52]

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

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 two separate 2008 Washabi Reefer Trailers (collectively "Property") at public auction. Doc. #52. The auction will be held on or after July 17, 2021 at Gould Auction and Appraisal Co., 6200 Price Street, Bakersfield, California. Doc. #53.

Trustee requests to pay 15% of gross proceeds from the sale as compensation under 11 U.S.C. §§ 327(a) and 328, along with up to \$1,600.00 for anticipated preparation, advertising, and storage expenses. Doc. #52. Auctioneer also charges a buyer's premium in the amount of 10% of the purchase price. Doc. #55. 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. #54.

No party in interest timely filed written opposition. This motion will be GRANTED.

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.

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).

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).

Trustee wishes to sell Property under 11 U.S.C. § 363(b). Doc. #52. Both trailers are listed in the petition with a value of \$10,000.00 each. Doc. #1, *Schedule A/B*, ¶¶ 4.2-4.3. Property is neither encumbered nor exempted. *Id.*, *Schedules C, D*.

Trustee believes that using an auction process to sell Property will result in it being sold for the best possible price because it will be exposed to a large number of prospective purchasers. Doc. #55. [Highest bid information]

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

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 reasonable expenses of up to \$1,600.00.

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.

9. 20-12969-B-7 **IN RE: CARLOS CORTES AND BERTHA SPINDOLA**
ADJ-2

CONTINUED MOTION FOR TURNOVER OF PROPERTY
3-15-2021 [22]

IRMA EDMONDS/MV
SCOTT LYONS/ATTY. FOR DBT.
ANTHONY JOHNSTON/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

Chapter 7 trustee Irma C. Edmonds ("Trustee") seeks an order compelling the debtors to turn over property of the estate. Doc. #22.

Carlos Bravo Cortes and Bertha Esthela Spindola ("Debtors") timely responded requesting a continuance because the parties had arrived at a tentative settlement. Doc. #29.

Trustee moved to continue the matter because Trustee's counsel needed to prepare a settlement agreement and compromise motion. Doc. #31. The court continued the matter to June 29, 2021 and required any further opposition to be filed and served not later than June 15, 2021. Doc. #35.

On May 14, 2021, Debtors filed further opposition noting that the parties agreed to a global settlement that is feasible for the Debtors and acceptable to Trustee and included as exhibits their legal services agreements with their former counsel and original chapter 7 petitions. Docs. ##42-44. Debtors corrected the exhibits on June 8, 2021 to include the attorney signature page on their chapter 7 petition. Doc. #48.

No settlement agreements or motions to compromise controversy have been filed. See docket generally. This matter will be called as scheduled to inquire about the parties' intentions.

10. 18-13174-B-7 **IN RE: EFRAIN MACIAS-CHAVEZ AND NORMA MACIAS**
JSP-3

MOTION TO AVOID LIEN OF CALIFORNIA SERVICE BUREAU, INC.
5-26-2021 [38]

NORMA MACIAS/MV
JOSEPH PEARL/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.

Efrain Macias-Chavez and Norma Elizabeth Macias ("Debtor") seek to avoid a judicial lien in favor of California Service Bureau, Inc. ("Creditor"), in the amount of \$16,665.46 and encumbering residential real property located at 8817 Ponderosa Ave., Bakersfield, CA 93306 ("Property"). Doc. #38.

Debtor served Todd Dillon and David Kaminski, Creditor's respective CEO and agent for service of process by certified mail on May 27, 2021. Doc. #43. Debtor has complied with Fed. R. Bankr. P. 7004(h).

No party in interest timely filed written opposition. This motion will be GRANTED.

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.

First, the court notes that Debtor's certificate of service (Doc. #43) does not comply with LBR 9014-1(e)(2), which requires proof of 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. Here, the motion documents were filed on May 26, 2021, but the certificate of service was filed on June 12, 2021, which is more than three days after the original motion documents were filed.

However, Fed. R. Civ. P. 4(l)(3) (incorporated by Fed. R. Bankr. P. 7004(a)) states that failure to prove service does not affect validity of service, and the court may permit proof of service to be amended. Debtor included the timestamped USPS receipts, and thus has presented evidence that Creditor was properly served on May 27, 2021. Doc. #43.

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

2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd* 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$16,665.46 on May 13, 2014. Doc. #41, Ex. A. The abstract of judgment was issued on July 24, 2014 and recorded in Kern County on October 7, 2014. *Id.* That lien attached to Debtor's interest in Property. Doc. #40.

As of the petition date, Property had an approximate value of \$325,000.00. *Id.*; Doc. #1, Schedule A/B. The unavoidable liens totaled \$174,873.00 on that same date, consisting of a deed of trust in favor of Select Portfolio Servicing, Inc. *Id.*, Schedule D. Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$127.00. *Id.*, Schedule C. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property on petition date		\$175,000.00
Total amount of unavoidable liens	-	\$174,873.00
Remaining available equity	=	\$127.00
Debtor's homestead exemption	-	\$127.00
Creditor's judicial lien	-	\$16,665.46
Extent Debtor's exemption impaired	=	(\$16,665.46)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Therefore, this motion will be GRANTED.

11. 21-10594-B-7 **IN RE: GURKAMAL SINGH**
PBB-2

MOTION TO AVOID LIEN OF WELLS FARGO BANK, N.A.
5-27-2021 [28]

GURKAMAL SINGH/MV
PETER BUNTING/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to July 27, 2021 at 1:30 p.m.

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

Gurkamal Singh ("Debtor") seeks to avoid a judicial lien in favor of Wells Fargo Bank, N.A. ("Creditor"), in the amount of \$14,526.00 and encumbering residential real property located at 3056 North Hanover Avenue, Fresno, CA 93722 ("Property"). Doc. #28.

No party in interest filed written opposition. However, chapter 7 trustee Irma Edmonds ("Trustee") was not properly served. The defaults of all non-responding parties except Trustee will be entered.

This motion will be CONTINUED to July 27, 2021 at 1:30 p.m.

Here, Debtor attempted to serve Trustee by regular U.S. mail at PO Box 3608, Pinedale, CA 93650 on May 27, 2021. Doc. #32. Trustee changed her mailing address to 2501 West Shaw Avenue, Suite 124, Fresno, CA 93711 on May 18, 2021 nine days before Debtor served this motion. See docket generally. Thus, Trustee was not served as required by Rules 7004, and 9014.

Typically, this error would result in denial of the motion without prejudice, but no relief is being sought from Trustee and Debtor's discharge was entered on June 8, 2021. Doc. #44. Although Trustee did file a Report of No Distribution on April 8, 2021 and requested to be discharged from any further duties as trustee, Trustee has not yet been discharged as trustee. Trustee is still the representative of the estate, and this motion affects estate property. So, Trustee must be served in accordance with Rules 7004 and 9014.

This matter will be CONTINUED to July 27, 2021 at 1:30 p.m. Unless Debtor produces a waiver of proper service by the Trustee, Debtor shall serve Trustee the original motion documents with a notice of the continued hearing at the correct mailing address located at 2501 West Shaw Avenue, Suite 124, Fresno, CA 93711. The notice of the continued hearing shall use the procedure specified in LBR 9014-1(f)(2), comply with LBR 9014-1(d)(3)(B), and be filed and served not later than 14 days before the continued hearing date.

The court notes that Debtor properly served Charles W. Scharf, Creditor's CEO and President, by certified mail on May 27, 2021, which complies with Fed. R. Bankr. P. ("Rule") 7004(h).¹ Doc. #32.

¹ If an insured depository institution makes an appearance by its attorney, Rule 7004(h)(1) states that the attorney shall be served by first class mail. Here, Creditor filed a Request for Special Notice on March 31, 2021 requesting notices of all events relevant to the bankruptcy to be sent to Aldridge Pite, LLP. Doc. #16. Notably, the document does not specify whether it is also a notice of appearance.

Aldridge Pite was not served. But Creditor's Request for Special Notice states that "the within party does not authorize Aldridge Pite, LLP, either expressly or impliedly through Aldridge Pite, LLP's participation in the instant proceeding, to act as its agent for purposes of service under Fed. R. Bankr. P. 7004[.]" *Id.*, at 2, ¶¶ 12-14. Thus, Aldridge Pite does not appear to be authorized to receive Rule 7004 service. Accordingly, it appears that Debtor properly served Creditor's CEO and President in accordance with Rule 7004(h). See also *Citizens Bank v. Decena*, 562 B.R. 202, 209-11 (E.D.N.Y. 2016) (finding that strict compliance with Rule 7004(h)(1) requires an insured depository institution to be served by certified mail until an attorney for that institution has appeared).

12. 21-10594-B-7 IN RE: GURKAMAL SINGH
PBB-3

MOTION TO AVOID LIEN OF PACCAR FINANCIAL CORP.
5-27-2021 [33]

GURKAMAL SINGH/MV
PETER BUNTING/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to July 27, 2021 at 1:30 p.m.

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

Gurkamal Singh ("Debtor") seeks to avoid a judicial lien in favor of PACCAR Financial Corp. ("Creditor") in the amount of \$94,284.55 and encumbering residential real property located at 3056 North Hanover Avenue, Fresno, CA 93722 ("Property"). Doc. #33.

No party in interest filed written opposition. However, chapter 7 trustee Irma Edmonds ("Trustee") was not properly served. The defaults of all non-responding parties except Trustee will be entered.

This motion will be CONTINUED to July 27, 2021 at 1:30 p.m.

Here, Debtor attempted to serve Trustee by regular U.S. mail at PO Box 3608, Pinedale, CA 93650 on May 27, 2021. Doc. #37. However, Trustee changed her mailing address to 2501 West Shaw Avenue, Suite 124, Fresno, CA 93711 on May 18, 2021, which is nine days before Debtor served this motion. See docket generally. Thus, Trustee was not served as required by Rules 7004 and 9014.

Typically, this error would result in denial of the motion without prejudice, but no relief is being sought from Trustee and Debtor's discharge was entered on June 8, 2021. Doc. #44. Although Trustee did file a Report of No Distribution on April 8, 2021 and requested to be discharged from any further duties as trustee, Trustee has not yet been discharged as trustee. Trustee is still the representative of the estate, and this motion affects estate property. So, Trustee must be served in accordance with Rules 7004 and 9014.

This matter will be CONTINUED to July 27, 2021 at 1:30 p.m. Unless Debtor produces a waiver of proper service by the Trustee, Debtor shall serve Trustee the original motion documents with a notice of the continued hearing at the correct mailing address located at 2501 West Shaw Avenue, Suite 124, Fresno, CA 93711. The notice of the continued hearing shall use the procedure specified in LBR 9014-1(f) (2), comply with LBR 9014-1(d) (3) (B), and be filed and served not later than 14 days before the continued hearing date.

The court notes that Debtor properly served Creditor's agent for service of process, CEO, and attorney: The Prentice-Hall Corporation

System, Inc., Harrie C.A.M. Schippers, and Raymond A. Policar by U.S. mail on May 27, 2021. Doc. #37; *see also* Creditor's Notice of Appearance and Request for Special Notice, Doc. #9. Debtor has complied with Fed. R. Bankr. P. 7004(b) and Cal. Civ. Proc. Code § 416.10.

13. 21-10594-B-7 **IN RE: GURKAMAL SINGH**
PBB-4

MOTION TO AVOID LIEN OF BMO HARRIS BANK, N.A.
5-27-2021 [38]

GURKAMAL SINGH/MV
PETER BUNTING/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to July 27, 2021 at 1:30 p.m.

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

Gurkamal Singh ("Debtor") seeks to avoid a judicial lien in favor of BMO Harris Bank, N.A. ("Creditor"), in the amount of \$332,524.08 and encumbering residential real property located at 3056 North Hanover Avenue, Fresno, CA 93722 ("Property"). Doc. #38.

No party in interest filed written opposition. However, chapter 7 trustee Irma Edmonds ("Trustee") was not properly served. The defaults of all non-responding parties except Trustee will be entered.

This motion will be CONTINUED to July 27, 2021 at 1:30 p.m.

Here, Debtor attempted to serve Trustee by regular U.S. mail at PO Box 3608, Pinedale, CA 93650 on May 27, 2021. Doc. #32. However, Trustee changed her mailing address to 2501 West Shaw Avenue, Suite 124, Fresno, CA 93711 on May 18, 2021 nine days before Debtor served this motion. See docket generally. Thus, Trustee was not served as required by Rules 7004(b), and 9014(b).

Typically, this error would result in denial of the motion without prejudice, but no relief is being sought from Trustee, but this motion will still affect property of the estate. Although Trustee did file a Report of No Distribution on April 8, 2021 and requested to be discharged from any further duties as trustee, Trustee has not yet been discharged as trustee. So, Trustee must be served in accordance with Rules 7004 and 9014.

This matter will be CONTINUED to July 27, 2021 at 1:30 p.m. Unless Debtor produces a waiver of proper service by the Trustee, Debtor shall serve Trustee the original motion documents with a notice of the continued hearing at the correct mailing address located at 2501 West Shaw Avenue, Suite 124, Fresno, CA 93711. The notice of the

continued hearing shall use the procedure specified in LBR 9014-1(f)(2), comply with LBR 9014-1(d)(3)(B), and be filed and served not later than 14 days before the continued hearing date.

The court notes that Debtor properly served David R. Casper, BMO Harris Bank's CEO, by certified mail on May 27, 2021, which complies with Fed. R. Bankr. P. 7004(h). *Id.*

14. 20-12159-B-7 **IN RE: OGANES SHISHIKYAN**
JDW-4

MOTION TO AVOID LIEN OF DISCOVER BANK
6-15-2021 [50]

OGANES SHISHIKYAN/MV
JOEL WINTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to July 27, 2021 at 1:30 p.m.

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

Organes Shishikyan ("Debtor") seeks to avoid a judicial lien in favor of Discover Bank ("Creditor"), and encumbering residential real property located at 479 E. Ramon Ave., Fresno, CA 93710 ("Property"). Doc. #50.

Written opposition was not required and may be presented at the hearing. However, Creditor was not properly served under Fed. R. Bankr. P. ("Rule") 7004(h). Unless opposition is presented at the hearing, the defaults of all other non-responding parties except Creditor will be entered.

This motion will be CONTINUED to July 27, 2021 at 1:30 p.m.

First, Debtor attempted to serve Creditor's President and CEO by certified mail on June 15, 2021. Doc. #55. Service is addressed to David C. Hochschild, but Mr. Hochschild is no longer Creditor's President and CEO.

Rule 7004(h) requires service on an insured depository institution in a contested matter to be made by certified mail addressed to an officer of the institution. See *SunTrust Bank v. Braden (In re Braden)*, 516 B.R. 672, 676 (Bankr. S.D. Ga. 2014); *In re Franchi*, 451 B.R. 604, 607-08 (Bankr. S.D. Fla. 2011); *PNC Mortg. V. Rhiel*, No. 2:10-CV-578, 2011 U.S. Dist. LEXIS 28339 (S.D. Ohio Mar. 18, 2011).

Creditor filed a Statement of Information with the California Secretary of State on May 7, 2021, which can be located at <https://businesssearch.sos.ca.gov/>. Although Mr. Hochschild was Creditor's CEO on the Statement of Information dated June 30, 2020,

the new Statement of Information dated May 7, 2021 lists James J. Roszkowsk as the current CEO. This motion was filed and served on June 15, 2021, which is after Creditor updated its Statement of Information. Thus, Debtor has not complied with Rule 7004(h) because Mr. Hochschild is no longer Creditor's officer. James J. Roszkawsk, or another named officer, should have been served instead.

Second, the notice does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice to include the names and addresses of persons who must be served with any opposition. Here, the notice of hearing provided that any opposition shall be served on the Trustee and Debtor's attorney, but then listed Michael H. Meyer as an addressee. Doc. #51. Mr. Meyer is not the chapter 7 trustee in this case and the notice should have directed respondents to send opposition to Peter L. Fear. Counsel is advised to review the local rules to ensure procedural compliance in subsequent motions, which can be found at <http://www.caeb.uscourts.gov/LocalRules.aspx>.

Typically, these errors would result in denial of the motion 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. Here, Rule 7004(h) requires proper service on insured depository institutions by certified mail addressed to a named officer. Debtor addressed the mail to the former CEO instead of the current CEO. In the interests of a just and speedy adjudication, the court will continue this matter so that Debtor may properly effect service on Creditor.

This matter will be CONTINUED to July 27, 2021 at 1:30 p.m. Unless Debtor produces a waiver of proper service by Creditor in writing pursuant to Rule 7004(h)(3), Debtor shall serve the original motion documents with a notice of the continued hearing on a current officer of Creditor under Rule 7004(h). The notice of the continued hearing shall use the procedure specified in LBR 9014-1(f)(2), comply with LBR 9014-1(d)(3)(B), and be filed and served not later than 14 days before the continued hearing date.