

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, July 13, 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. 21-11300-B-11 IN RE: RICHARD DALE LINCOLN BUSINESS TRUST

STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
5-21-2021 [1]

RICHARD DALE LINCOLN BUSINESS TRUST/ATTY. FOR MV.
DISMISSED 6/8/21

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

DISPOSITION: Dropped from calendar.

ORDER: The court will issue an order.

This case was dismissed on December 8, 2021. Doc. #16. Accordingly, this status conference will be dropped from calendar as moot. The court will issue an order.

2. 21-11001-B-11 IN RE: NAVDIP BADHESHA
RMB-4

MOTION TO USE CASH COLLATERAL
6-14-2021 [52]

NAVDIP BADHESHA/MV
MATTHEW RESNIK/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted on preliminary basis. DIP to cure service defects.

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") seeks interim approval to use cash collateral to pay the cost of goods sold and operating expenses from July 14, 2021 through December 31, 2021 under 11 U.S.C. § 363. Doc. #52.

The United States Department of Agriculture ("USDA") Farm Services Agency ("FSA") was not properly served under in accordance with

Federal Rule of Bankruptcy Procedure ("Rule") 7004(b)(5). Docs. #56; #59.

Secured creditor CGB Agri Financial Services, Inc. as Attorney in Fact for U.S. Bank, N.A., and Custodian/Trustee for Federal Agricultural Mortgage Corporation Programs ("AFS") timely opposed because (1) the seven-month time frame is excessive for an interim order and the description of remedies for affected creditors is insufficient; (2) DIP does not define which "cash" he proposes to use is the "collateral" for creditors; and (3) the authorization to use cash collateral should include adequate protection payments. Doc. #90.

DIP replied. Doc. #96. But only DIP was served the reply and supporting exhibits. Doc. #98.

This matter will be called as scheduled. The court is inclined to GRANT the motion on a preliminary basis pending a final hearing. DIP shall serve: (1) all motion documents on USDA under Rule 7004(b)(5); and (2) the reply and exhibits to all parties in interest under Rule 7005 and LBR 7005-1. The deadline for serving these documents will be determined at the hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the U.S. Trustee, or any other party in interest except **AFS and USDA** 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 except AFS and USDA are entered.

PROCEDURAL ISSUES

Service

First, USDA was not properly served under Rule 7004. Rule 7004 is applicable under Rules 4001(b)(1)(A) and 9014(b). Improper service may result in the court lacking jurisdiction over USDA. *United States v. Levoy (In re Levoy)*, 182 B.R. 827, 832 (B.A.P. 9th Cir. 1995).

Rule 7004(b)(5) governs service upon agencies of the United States. To effect proper service under Rule 7004(b)(5), the movant must serve the motion by mail addressed to: (1) the agency; (2) the civil process clerk at the office of the U.S. attorney for the district in which the action is brought; and (3) the U.S. Attorney General in Washington, DC. *Scott v. United States (In re Scott)*, 437 B.R. 376, 379 (B.A.P. 9th Cir. 2010).

DIP made a diligent effort to comply with the service requirements of Rule 7004(b).¹ The following addresses applicable to USDA were served by certified mail:

¹ All other affected secured creditors were properly served in accordance with Rule 7004.

1. USDA Farm Service Agency
4300 Goodfellow Blvd.
Saint Louis, MO 63120
2. USDA Farm Service Agency
4625 W. Jennifer, Suite 109
Fresno, CA 93722
3. U.S. Department of Agriculture
Farm Service Agency
Public Affairs Staff
1400 Independence Ave., S.W.
STOP 0506
Washington, DC, 20250-0506
4. ATTN: Thomas J. Vilsack, Secretary
U.S. Department of Agriculture
Farm Service Agency
Public Affairs Staff
1400 Independence Ave., S.W.
STOP 0506
Washington, DC, 20250-0506

The last two addresses are not necessarily for USDA, but are applicable under Rule 7004(b)(5) and were served by U.S. mail:

5. United States Attorney
For Internal Revenue Service
2500 Tulare Street, Suite 4401
Fresno, CA 93721
6. Attorney General
United States Department of Justice
Ben Franklin Station
P.O. Box 683
Washington, DC 20044

Docs. #56; #59.

Addresses ##1-2 are the addresses from the Schedules.

Address #1 appears to have been a Farm Credit Applications Office, though it is unclear whether it still is used for those purposes. This address is designated as "OTHER" on the USDA's FSA office locator map.²

Address #2 is a Service Center Office for Fresno County.³

Address #3 is the headquarters address from USDA's website.⁴ However, "Public Affairs Staff" implies that this would be directed to a communications department, rather than to Farm Loans Programs.

² USDA's Farm Service Agency county office locator is available online at: <http://offices.sc.egov.usda.gov/locator/app?state=mo&agency=fsa>.

³ See <http://offices.sc.egov.usda.gov/locator/app?state=ca&agency=fsa>.

⁴ Available at <http://fsa.usda.gov/contact-us>.

Address #4 is to the Secretary of Agriculture. The address appears to be correct, but USDA is comprised of many different agencies. FSA has offices in every state, including Puerto Rico, Guam, American Samoa, and the Virgin Islands.⁵ But Rule 7004(b)(5) specifies to the "officer or agency." This address appears to technically comply, though the state office may have been more appropriate.

Address #5 is to the U.S. Attorney for the Eastern District of California, Fresno Division. This address is specific to the Internal Revenue Service ("IRS") but would have been correct if directed to the Department of Agriculture. This address should not be removed because it correctly pertains to the IRS, but the addition of a separate entry to the same address for USDA would be sufficient.

Address #6 is to the U.S. Attorney General in Washington, DC. This address complies with Rule 7005(b)(5).

Service on the Agency

In accordance with Rule 2002(j)(4), LBR 2002-1 was promulgated to offer guidance on listing the United States as a creditor and providing notice to federal agencies.

Under LBR 2002-1(b), the clerk maintains Form EDC 2-785, the *Roster of Governmental Agencies*, which allows certain federal and state agencies to specify particular addresses to which notice of bankruptcy proceedings shall be directed.⁶ Service should not be confused with notice. *In re Ass'n of Volleyball Prof'l's*, 256 B.R. 313, 319-20 (Bankr. C.D. Cal. 2000). Some of these addresses may be sufficient for Rule 7004 service if all other requirements are met.⁷

The USDA FSA has provided a preferred address for bankruptcy notices:

USDA Farm Service Agency
ATTN Farm Loan Programs
430 G St #4161
Davis, CA 95616-4161

EDC 2-785, at 2. Per USDA FSA's website, this address is the mailing address for FSA's state office. But as noted above, EDC 2-785 is for noticing purposes only. The DIP has technically complied with Rule 7004(b)(5) by serving the Secretary of Agriculture with FSA in the address line at the USDA headquarters, so service on the agency itself is sufficient. Notice will not be sufficient under LBR 2002-1(b) in other matters specified in Rule 2002. The Master Address List should be updated to reflect USDA FSA's preferred address in EDC 2-785 so that notices sent by the clerk under Rule 2002 are sent to the correct address under LBR 2002-1.

⁵ See <http://fsa.usda.gov/state-offices/index>.

⁶ Form EDC 2-785 (Rev. 12/07/20), *Roster of Governmental Agencies*, can be found at: <http://www.caeb.uscourts.gov/documents/Forms/EDC/EDC.002-785.pdf>.

⁷ Form EDC 2-785 expressly states that these addresses are for all notices unless otherwise specified.

Service on the Civil Process Clerk

As noted above, Address #5 comes close to compliance. This entry would be sufficient if it denoted that it was for the Department of Agriculture. See, e.g., LBR 2002-1(a) (2).

Service on Attorney General

Though the Department of Justice is separate from USDA, Rule 7004(b) (4) is incorporated into Rule 7005(b) (5), so the Attorney General must be served. Address #6 complies with this requirement.

No Proof of Claim or Interest, Notice of Appearance, or Request for Special Notice

USDA has not filed a Proof of Claim, so the court cannot obtain jurisdiction through the claim filing process. "A creditor who offers proof of his claim and demands its allowance, subjects himself to the dominion of the court, and must abide the consequences." *Levoy*, 182 B.R. at 832 quoting *Wiswall v. Campbell*, 93 U.S. 347, 351 (1876). Further, USDA has not filed any Notices of Appearance or Requests for Special Notice.

Reasonable Time to Cure

If the movant has mailed a copy of the summons and complaint either to the civil process clerk at the office of the U.S. Attorney or to the Attorney General, then the court shall allow a reasonable time for the movant to cure the failure to mail a copy of the motion documents to multiple officers or agencies. Rule 7004(b) (5).

Since DIP properly served the agency and the Attorney General, the court will allow DIP to cure the service defect.

Reply Service

DIP's reply and supporting exhibits were only served on the DIP. Doc. #98. DIP must serve the reply on the party to which he is replying. DIP shall also file an updated certificate of service for the reply. Since it is not the first pleading, it may be served electronically under Rule 7005 provided that service complies with LBR 7005-1. Both service issues will need to be corrected as ordered by the court at the hearing.

Hearing Date

The court notes that DIP's original motion documents contained the wrong hearing date. Docs. ##52-56. The motion was originally filed on June 14, 2021 and set for hearing on the chapter 13 calendar on July 14, 2021 at 9:30 a.m. Docs. #53; #57. DIP cured this defect by filing and serving an amended notice later that same day. Docs. ##58-59.

FACTS

DIP owns real property at 13570 W. McKinley Avenue, Kerman, CA 93630 ("Property"). Property is valued at \$1.2 million in Schedule A/B and is encumbered by the following deeds of trust:

Priority	Creditor	Amount
1	AgriFinancial	\$194,241.25
2	AgriFinancial	\$424,492.00
3	Premier Valley Bank	\$189,489.00
4	U.S. Dept. of Agriculture	\$45,277.00
5	Fresno First Bank	\$553,431.00

Total: \$1,406,930.25

Docs. #21, *Schedule A/B*; #50, *Schedule D*. Property is DIP's principal residence and includes a grape vineyard where DIP produces raisins and a small residential property that generates \$400 in monthly rent. Docs. #52; #54. Other than these liens, DIP owes approximately \$320,000 in general unsecured debts, most of which personally guaranteed by DIP on behalf of BIL, Inc. ("BIL").

DIP wants to use cash collateral for the next seven months to pay the cost of goods sold and operating expenses on the vineyard and raisin production located on Property. Doc. #52. DIP included a projected profit and loss statement ("Budget"). Doc. #55, Ex. A. This Budget is DIP's best estimate of necessary expenses, but he notes that expenses fluctuate heavily depending on the issues affecting the vines. Doc. #54, ¶ 28. DIP requests authority to deviate from the total expenses outlined in Budget by no more than 15% and deviate by expense category without further order. *Ibid.*

DIP declares that Property's vineyard has 60-year-old vines requiring continual maintenance to keep the vines living and the grapes growing. Doc. #54, ¶ 18. The vines must be regularly irrigated from March to August at least once per month and pruned in January. Further, DIP must continuously monitor the vines for mold, mildew, and insects, which could ruin the harvest for many years. If DIP is not able to use cash collateral, the value of Property and DIP's ability to reorganize will be negatively impacted. *Id.*, ¶ 19. Thus, DIP concludes that use of cash collateral will enhance or preserve the value of Property, which will protect the security interests of secured creditors.

As set forth in the Budget, DIP does not intend to make payments to secured creditors during this seven-month interim period so that he can accumulate funds and have "breathing room" to file a plan of reorganization. *Id.*, ¶ 20. However, DIP proposes to give affected creditors a replacement lien on the revenue generated post-petition from Property to the extent cash collateral is used. Doc. #52. DIP will also segregate all revenues that exceeds the funds needed to pay operating expenses in his cash collateral DIP account.

The affected secured creditors and their respective interests are outlined below:

1. First Deed of Trust

The first priority deed of trust is held by AFS and was recorded June 25, 2014. *Id.*, ¶ 22. DIP obtained a line of credit of \$200,000 at 5.66% interest, which is due and payable on July 1, 2039. The principal balance is approximately \$194,241.25 as of December 14, 2020. As of the petition date, DIP was current on his biannual payments of \$8,231.09 due in January and July of each year. *Ibid.*

2. Second Deed of Trust

The second priority deed of trust is also held by AFS and was recorded on June 25, 2014. *Id.*, ¶ 23. DIP obtained a promissory note of \$500,000 at 5.66% interest, which is due and payable on July 1, 2029. The principal balance is approximately \$424,491.63 as of December 14, 2020. As of the petition date, DIP was current on his biannual payments of \$18,376.97 due in January and July of each year. *Ibid.*

3. Third Deed of Trust

The third priority deed of trust is held by Premier Valley Bank and was recorded on March 29, 2016. *Id.*, ¶ 24. BIL obtained a U.S. Small Business Administration ("SBA") loan of \$283,000.00 at a variable interest rate, which is due and payable ten years from the initial disbursement. DIP personally guaranteed this loan, and it is cross collateralized on Property. The principal balance is approximately \$189,488.43 as of November 23, 2020, but BIL defaulted on the monthly payment of \$3,236.28 in April 2020. DIP has never personally made any payments on this loan. *Ibid.*

4. Fourth Deed of Trust

The fourth priority deed of trust is held by USDA and was recorded on May 3, 2019. *Id.*, ¶ 25. DIP obtained a promissory note of \$53,513.36 at 2.25% interest, which is due and payable on November 17, 2032. The principal balance is approximately \$45,276.91. As of the petition date, DIP was current on his monthly payments of \$340.42. *Ibid.*

5. Fifth Deed of Trust

The fifth priority deed of trust is held by Fresno First Bank and was recorded on May 3, 2019. *Id.*, ¶ 26. BIL obtained a U.S. SBA loan of \$600,000.00 at a variable interest rate, which is due and payable on April 1, 2029. DIP personally guaranteed this loan, and it is cross collateralized on Property. The principal balance is approximately \$553,430.70 as of January 22, 2021, but BIL defaulted on the monthly payment of \$7,359.16 in April 2020. DIP has never personally made any payments on this loan. *Ibid.*

DISCUSSION

11 U.S.C. § 1107 gives the debtor-in-possession all the rights and powers of a trustee and shall perform all the functions and duties, with certain exceptions inapplicable here.

11 U.S.C. § 363(c) provides:

- (1) If the business of the debtor is authorized to be operated under section 721, 1108, 1183, 1184, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice and a hearing.
- (2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless—
 - (A) each entity that has an interest in such cash collateral consents; or
 - (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

AFS's Opposition and DIP's Reply

As noted above, AFS timely opposed. Doc. #90. AFS is the holder of the first and second priority liens. AFS retained counsel on the date opposition was due, but counsel is out of town, so it reserves the right to raise further arguments in the future. AFS makes three primary objections:

1. The time frame of authority to use cash collateral is excessive because seven months is too long for an interim order. AFS also states that secured creditors were not advised of their remedies if DIP violates the cash collateral order.
2. DIP does not specify which "cash" he proposes to use that is the collateral of creditors.
3. AFS should be paid adequate protection.

Excessive Interim Period and Insufficient Remedies

First, AFS insists that seven months is far too long for an interim order and affected creditors were not advised of their remedies. Doc. #90. AFS argues that affected creditors should receive monthly periodic reports to determine variance tolerance limits and relief from stay to begin foreclosure proceedings and record foreclosure notices – but not sell the Property – if DIP violates the cash collateral order. The monthly reports would inform creditors whether the order was violated. And since the time period is so lengthy, DIP suggests that there will be no proceeds from the sale of raisins until January 2022. Thus, AFS claims that there should be a proposed

disposition of those proceeds with adequate protection payments to creditors whose cash collateral is used.

In reply, DIP is not opposed to reducing the interim period as long as it is effective through October 2021. Doc. #96. The reason for this date is because DIP has many operating expenses due in July and September 2021.

Regarding remedies for secured creditors, DIP quotes the motion:

If at any time the [DIP] violates any provision of the order approving this Motion, the alleged secured creditors may give written notice of such default to [DIP]'s counsel. If the [DIP] fails to cure the default within 14-days of said notice, the alleged secured creditors shall be entitled to a hearing requesting relief from the automatic stay pursuant to 11 U.S.C. § 362 on an expedited basis.

Doc. #52, at 10, ¶¶ 14-22. DIP states that he does not oppose sending periodic monthly reports to affected creditors so they can determine variance tolerance limits. Doc. #96.

Insufficient Accounting

Second, AFS complains that DIP has not specified whose cash collateral he intends to use. Doc. #90. Since the operating reports only show income from DIP's unrelated employment, rather than receipts from operations, it is unclear whether any cash collateral is to be used. Since no detailed accounting was provided, AFS equates this motion as one seeking authority to forgo mortgage payments without a compelling reason to do so. AFS also contends that this case appears to be a single asset real estate case, so DIP cannot use a cash collateral order to avoid his mortgage payments under § 362(d) (3) without a compelling reason to do so.

DIP states that the motion only relates to revenue generated from Property. DIP updated the Budget to include household income. Doc. #97, Ex. A. DIP also included evidence of past expenses and profits from raisin production in the form of DIP's 2017 and 2018 federal tax returns and statements from Lion Raisins, DIP's raisin purchaser, for 2019 and 2020. *Id.*, Exs. B, C.

DIP defines cash collateral as "revenue generated from raisin production and the rents from the rental property on the Property" as cash collateral under § 363(a). Doc. #96. DIP anticipates receiving revenue from Lion Raisins for 2020 in July 2021. The grapes are harvested in September and the raisins are sold in October, but generally DIP anticipates being paid in full in October. This payment is needed to pay all expenses for maintaining the vineyard, harvesting the grapes, and producing raisins in September. After the production costs have been paid, DIP has additional expenses to maintain the vineyard for the 2022 harvest.

DIP claims that he is not skipping payments entirely but delaying them temporarily to get his finances in order. Doc. #98. DIP intends

to cure all delinquent payments for the first and second deeds of trust held by AFS, along with the fourth deed of trust held by USDA.

DIP also contests classification as a single asset real estate case as defined in § 101(51)B. *Id.* Since DIP lives at the Property, operates a vineyard, and has full-time employment independent from the vineyard, this is not a single asset real estate case.

Adequate Protection

Third, AFS insists that it should be offered adequate protection payments. Doc. #90. DIP has only offered to use his best efforts to prevent the crop from failing from mold or inattention, which AFS contends is a promise to act in DIP's own self-interest. AFS also emphasizes that no evidence has been provided to prove that the proceeds from the raisin operation will exceed its costs because records of past expenses and profits have not been offered.

AFS does not request denial of the motion but seeks clarification on questions raised by the motion.

In reply, DIP argues that adequate protection payments are only required under § 362(d)(1) if Property is likely to diminish in value. Doc. #96. Since AFS has presented no evidence that Property is declining in value, he believes that AFS and the other secured creditors are adequately protected by uninterrupted maintenance. However, DIP offers to give creditors a replacement lien on revenue generated post-petition to the extent cash collateral is actually used and DIP will segregate all revenue exceeding operating expenses in his cash collateral DIP bank account.

CONCLUSION

This matter will proceed as scheduled. The court is inclined to GRANT the motion and authorize DIP to use cash collateral on an interim basis beginning July 14, 2021. The order should contain reasonable reporting requirements and provide for a replacement lien as minimum adequate protection. Other adequate protection may be ordered. The court will determine the duration of the cash collateral order at the time of the hearing. Any order will need to be approved as to form by AFS's counsel.

The court may approve cash collateral use on a very short-term basis to allow all parties to augment the record or reach an agreement as to cash collateral use.

DIP shall cure service on USDA under Rule 7004(b)(5) as discussed above. DIP shall serve the reply and supporting exhibits, including the updated cash collateral budget, on AFS. The reply brief and supporting exhibits may be served under Rule 7005 provided that service complies with LBR 7005-1. Both service issues will need to be corrected within the time ordered by the court at the hearing. Unless the court further orders otherwise, DIP shall not be authorized to use USDA's cash collateral.

3. 21-11001-B-11 **IN RE: NAVDIP BADHESHA**
RMB-5

MOTION TO EMPLOY REAL PROPERTY ANALYSTS AS APPRAISER(S)
6-16-2021 [63]

NAVDIP BADHESHA/MV
MATTHEW RESNIK/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Debtor-in-possession Navdip S. Badhesha ("DIP") moves to employ Kelly P. Stevens ("Applicant") to prepare a value appraisal report of real property located at 13570 W. McKinley Avenue, Kerman, CA 93630 ("Property"). Doc. #63.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Federal Rules of Bankruptcy Procedure ("Rules") and Local Rules of Practice ("LBR").

The court notes two procedural issues and one substantive issue. First, the motion documents had the wrong hearing date in the caption page. Docs. ##63-68. The motion was originally set for hearing on the chapter 13 calendar on July 14, 2021 at 9:30 a.m. Docs. #64; #75.

Second, the notice of hearing contained LBR 9014-1(f)(1)(B) notice language. This motion was filed on June 16, 2021, which is 27 days before the hearing on July 13, 2021.⁸ The notice provided that written opposition must be in writing and must be served and filed at least 14 days before the hearing. Under LBR 9014-1(f)(2)(C), the notice should have stated that no party in interest shall be required to file written opposition and opposition, if any, shall be presented at the hearing.

DIP unsuccessfully attempted to cure both of these defects. The next day, DIP filed a first amended notice to correct the hearing date, but this notice also used the wrong notice language discussed above. Doc. #80. This was filed and served 26 days before the hearing. Doc. #81.

On June 30, 2021, DIP filed and served a second amended notice. Doc. #92. This notice correctly included LBR 9014-1(f)(2)(C) notice language that no party shall be required to file written opposition. However, June 30, 2021 is 13 days before the July 13, 2021 hearing.

Although DIP corrected the notice language in the second amended notice, it was done so 13 days before the hearing. LBR 9014-1(f)(2)

⁸ If the hearing had been held on July 14, 2021 as stated in the caption, then the motion would have been filed on 28 days' notice. In this circumstance, LBR 9014-1(f)(1)(B) language would have been correct.

requires the notice to be filed at least 14 days before the hearing. No order shortening time was requested under LBR 9014-1(f) (3).

Third, DIP includes a copy of the service agreement with Applicant's firm, Real Property Analysts ("RPA"). Doc. #67, Ex. A. In Exhibit A to the service agreement entitled *Standard Terms of Appraisal*, Paragraphs 7 and 8 are troublesome.

Paragraph 7 contains a binding arbitration clause for any dispute exceeding \$5,000. *Id.*, Ex. A to Ex. A, at 5, ¶ 7. Unless this case is dismissed, any and all disputes should be resolved in this court.

Paragraph 8 limits liability to any third party who is not the "client" or intended user of the appraisal without the express written consent of RPA. *Id.*, ¶ 8. Client shall agree to hold RPA and its employees harmless in the event of a lawsuit brought by any third party or any other party as the result of this assignment. In the case of lawsuits arising from the appraisal services, client agrees to hold harmless RPA from any liability, loss, cost, or expense incurred or suffered by RPA in such action regardless of outcome.

These provisions concern the court. Should a chapter 11 trustee later be appointed in this case, or this case be converted to one under a different chapter, these paragraphs appear to limit potential recovery on behalf of the estate. The court is not denying the motion on this basis, but these provisions must be acceptable to the estate.

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

4. 21-11001-B-11 IN RE: NAVDIP BADHESHA
RMB-6

MOTION FOR ORDER FIXING BAR DATE FOR FILING OF PROOFS OF CLAIM AND/OR PROOFS OF INTEREST AGAINST THE ESTATE
6-16-2021 [69]

NAVDIP BADHESHA/MV
MATTHEW RESNIK/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Debtor-in-possession Navdip S. Badhesha ("DIP") requests an order setting October 1, 2021 as the bar date by which creditors and parties in interest must file proofs of claim or interest or be forever barred pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 3003(c) (3). Doc. #69.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Federal Rules and Local Rules of Practice ("LBR").

The court notes three procedural issues. First, the motion documents had the wrong hearing date in the caption page. Docs. ##69-73. The motion was originally set for hearing on the chapter 13 calendar on July 14, 2021 at 9:30 a.m. Doc. #70; #76.

Second, the notice of hearing contained LBR 9014-1(f) (1) (B) notice language. This motion was filed on June 16, 2021, which is 27 days before the hearing on July 13, 2021.⁹ The notice provided that written opposition must be in writing and must be filed and served at least 14 days before the hearing. Under LBR 9014-1(f) (2) (C), the notice should have stated that no party in interest shall be required to file written opposition and opposition, if any, shall be presented at the hearing.

DIP unsuccessfully attempted to cure both of these defects. The next day, DIP filed a first amended notice to correct the hearing date, but this notice also used the wrong notice language discussed above. Doc. #82. This was filed and served 26 days before the hearing. Doc. #83.

On June 30, 2021, DIP filed and served a second amended notice. Doc. #94. This notice correctly included LBR 9014-1(f) (2) (C) notice language that no party shall be required to file written opposition. However, June 30, 2021 is 13 days before the July 13, 2021 hearing.

Although DIP corrected the notice language in the second amended notice, it was done so 13 days before the hearing. LBR 9014-1(f) (2) requires the notice to be filed on at least 14 days before the hearing. No order shortening time was requested under LBR 9014-1(f) (3).

Third, this motion requests implementation of a claims bar date under Rule 3003(c). Rule 2002(a)(7) requires 21 days' notice to all creditors of the time fixed for filing proofs of claim. Rule 2002(j)(4) requires copies of all notices required to be mailed to all creditors to be mailed to the U.S. attorney for the district in which the case is pending and to the department, agency, or instrumentality of the United States to which the debtor is indebted.

In accordance with Rule 2002(j)(4), LBR 2002-1 was promulgated to offer guidance on listing the United States as a creditor and providing notice to federal agencies. Under LBR 2002-1(b), the clerk maintains Form EDC 2-785, the *Roster of Governmental Agencies*, which allows certain federal and state agencies to specify particular addresses to which notice of bankruptcy proceedings shall be directed.¹⁰

⁹ If the hearing had been held on July 14, 2021 as stated in the caption, then the motion would have been filed on 28 days' notice. In this circumstance, LBR 9014-1(f)(1)(B) language would have been correct.

¹⁰ Form EDC 2-785 (Rev. 12/07/20), *Roster of Governmental Agencies*, can be found at: <http://www.caeb.uscourts.gov/documents/Forms/EDC/EDC.002-785.pdf>.

The USDA FSA has provided a preferred address for bankruptcy notices:

USDA Farm Service Agency
ATTN Farm Loan Programs
430 G St #4161
Davis, CA 95616-4161

EDC 2-785, at 2. Thus, the Master Address List will need to be updated to include USDA FSA's preferred mailing address so that the notice of claims bar date, including all other Rule 2002 notices sent by the clerk, will be sent to addresses that comply with LBR 2002-1.

Additionally, the U.S. Attorney for the Eastern District of California, Fresno Division, is on the Master Address List, but it is specific to the Internal Revenue Service. The addition of a separate entry to the same address for USDA would be sufficient. See, e.g., LBR 2002-1(a) (2).

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

5. 20-11992-B-11 **IN RE: CHAR PHAR INVESTMENTS, LLC**

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
6-12-2020 [1]

WILLIAM COWIN/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 31, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

Debtor-in-possession Char Phar Investments, LLC ("DIP") filed a Disclosure Statement and Chapter 11 Plan of Reorganization on July 6, 2021. WLC-12. The hearing on the adequacy of the Disclosure Statement is scheduled for August 31, 2021 at 9:30 a.m. Accordingly, this status conference will be continued to August 31, 2021 at 9:30 a.m. to be heard in connection with the hearing to approve the Disclosure Statement.

6. 20-11992-B-11 **IN RE: CHAR PHAR INVESTMENTS, LLC**
WLC-6

CONTINUED MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
7-27-2020 [64]

CHAR PHAR INVESTMENTS, LLC/MV
WILLIAM COWIN/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Debtor-in-possession Char Phar Investments, LLC withdrew this motion on June 11, 2021. Doc. #207. Accordingly, this matter will be dropped from calendar.

11:00 AM

1. 21-10785-B-7 **IN RE: CLAUDIA LUCKEY**

PRO SE REAFFIRMATION AGREEMENT WITH FARM BUREAU BANK
6-22-2021 [16]

NO RULING.

1:30 PM

1. 21-11507-B-7 **IN RE: CESAR CASTILLO LEON AND GRACIELA PENA
CASTILLO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-25-2021 [12]

SCOTT LYONS/ATTY. FOR DBT.
\$338.00 FILING FEE PAID 6/25/21

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the Chapter 7 filing fee of \$338.00 was paid on June 25, 2021. Therefore, the order to show cause is vacated.

2. 21-10709-B-7 **IN RE: AMB RANCH MANAGEMENT, INC.**
JES-1

MOTION TO EMPLOY BAIRD AUCTIONS & APPRAISALS AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
6-11-2021 [13]

JAMES SALVEN/MV
JAMES MILLER/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.

Chapter 7 trustee James E. Salven ("Trustee") asks the court to employ Baird Auctions & Appraisals ("Auctioneer") as auctioneer to sell property of the estate consisting of a 2011 Chevrolet Silverado, a 2011 Ford F-150, and a 2018 CAN AM Maverick (collectively "Property") at public auction. Doc. #13. The auction will be held on or after August 3, 2021 at Baird Auctions & Appraisals, 1328 N. Sierra Vista, Suite B, Fresno, California.

Trustee requests to pay 15% of gross proceeds from the sale as compensation under 11 U.S.C. §§ 327(a) and 328, along with expenses of up to \$900.00 for anticipated preparation, advertising, and storage expenses. *Id.* Auctioneer also charges a buyer's premium in the amount of 10% of the purchase price. Doc. #16. Trustee and Jeffrey Baird, Auctioneer's owner, filed declarations attesting 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. #15.

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, Ltd. P'ship (In*

re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., 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 Sys., 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. #13. Property is listed in Amended Schedule A/B as follows:

1. 2011 Chevy Silverado K1500 - \$5,098.00 (¶ 47.1);
2. 2011 Ford F-150 - \$7,400.00 (¶ 47.7); and
3. 2018 CAN-AM Maverick X3 XRS DPS - \$17,465.00 (¶ 47.8).

Doc. #12, *Am. Schedule A/B*. Property is neither encumbered nor exempted because this is a chapter 7 business case. Doc. #6, *Schedule 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 many prospective purchasers. Doc. #15. Based on Trustee's experience, this will yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.* Trustee intends to sell Property on or after August 3, 2021. Doc. #14.

Sale by auction under these circumstances should maximize potential recovery for the estate. Therefore, this sale 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 \$900.00.

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

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

3. 21-10709-B-7 **IN RE: AMB RANCH MANAGEMENT, INC.**
SW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-24-2021 [19]

ALLY FINANCIAL/MV
JAMES MILLER/ATTY. FOR DBT.
ADAM BARASCH/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2). Ally Financial ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2018 Ford F-150 ("Vehicle"). Doc. #19.

This matter will be DENIED WITHOUT PREJUDICE for failure to comply with the Federal Rules of Bankruptcy Procedure ("Rules") and local rules.

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

Second, the record does not establish that the motion was served on the named respondents in compliance with Rule 7004. Doc. #24. Rule 4001(a) requires motions for relief from the automatic stay to be "made in accordance with Rule 9014." Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004.

LBR 9014-1(e)(1) requires service of all pleadings and documents filed in support of a motion to be made on or before the date they are filed with the court. LBR 9014-1(e)(2) requires the proof of service to identify the title of the pleadings and documents served. The other documents were properly served, but the motion is omitted from the certificate of service. The certificate of service should list the motion as having been served on all parties in interest.

Therefore, the motion will be DENIED WITHOUT PREJUDICE.

4. 17-14115-B-7 **IN RE: BORIS/ANNA SICAL**
RSW-1

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
6-29-2021 [43]

ANNA SICAL/MV
ROBERT WILLIAMS/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.

Boris Valerio Sical and Anna Maria Sical ("Debtors") seek to avoid a judicial lien in favor of Portfolio Recovery Associates, LLC ("Creditor") in the amount of \$18,370.07 and encumbering residential real property located at 5309 Plute Pass Street, Bakersfield, CA 93307 ("Property"). Doc. #43. The court notes Debtors properly served CSC-Lawyers Incorporating Service, Creditor's agent for service of process, by U.S. mail at their California office at 2710 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833 on June 28, 2021. Doc. #47. Debtors have complied with Federal Rule of Bankruptcy Procedure 7004(b)(3) and (b)(8).

In the absence of opposition at the hearing, 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.

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 joint debtor Anna Sical in favor of Creditor in the sum of \$18,370.07 on September 15, 2014. Doc. #46, Ex. 4. The abstract of judgment was issued on September 30, 2014 and recorded in Kern County on October 13, 2014. *Ibid.* That lien attached to Debtors' interest in Property. Doc. #45.

As of the petition date, Property had an approximate value of \$160,000.00. *Id.*; Doc. #41, Schedule A/B. The unavoidable liens totaled \$88,870.00 on that same date, consisting of a \$68,784.00 deed of trust in favor of Ca Housing Fin Agency and \$20,086.00 deed of trust in favor of Valley Strong Credit Union. *Id.*, Schedule D. Debtors claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$100,000.00. *Id.*, Schedule C. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property on petition date		\$160,000.00
Total amount of unavoidable liens	-	\$88,870.00
Remaining available equity	=	\$71,130.00
Debtors' homestead exemption	-	\$100,000.00
Creditor's judicial lien	-	\$18,370.07
Extent Debtors' exemption impaired	=	(\$47,240.07)

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 Debtors' exemption in the Property and its fixing will be avoided.

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

5. 19-10643-B-7 **IN RE: JOSE PEREZ**
WLG-2

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
6-4-2021 [38]

JOSE PEREZ/MV
NICHOLAS WAJDA/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Jose Trinidad Perez ("Debtor") seeks to avoid a judicial lien in favor of Capital One Bank (USA), N.A. ("Creditor") in the amount of \$3,781.98 and encumbering residential real property located at 2931 West Country Avenue, Visalia, CA 93277 ("Property"). Doc. #38.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Federal Rules of Bankruptcy Procedure ("Rules") and Local Bankruptcy Rules ("LBR").

First, the certificate of service states that chapter 7 trustee James E. Salven ("Trustee") was served by electronic mail. Doc. #41. Rule 4003(d) requires proceedings under § 522(f) to avoid a lien "shall be commenced by motion in the manner provided by Rule 9014." Rule 9014(b) requires motions in contested matters to be served upon

the parties against whom relief is being sought pursuant to Rule 7004. This motion could be a contested matter if any party in interest opposes. Electronic service under Rule 9036 is precluded here because it "does not apply to any pleading or other paper required to be served in accordance with Rule 7004."

Rule 7004 allows service upon an individual by U.S. mail by mailing a copy of motion documents to the individual's dwelling house, usual place of abode, or to the place where the individual regularly conducts a business or profession. It is also sufficient if service is performed "by the law of the state in which service is made" or "to an agent of such defendant authorized by appointment or law to receive service of process, at the agent's dwelling house or usual place of abode or at the place where the agent regularly carries on a business or profession[.]" Rule 7004(b) (8).

Since this motion will affect property of the estate, the Chapter 7 Trustee must be served in accordance with Rule 7004.

The court notes that service on the U.S. Trustee ("UST") was sufficient. Although the UST may raise, appear, and be heard on any issue in any case under § 307 and should be served or notified, no relief is being sought against the UST here. Electronic notification under Rule 7005 and LBR 7005-1 is sufficient so long as the certificate of service lists UST's email address as required by LBR 7005-1(d), which the movant did here.

Moreover, Richard D. Fairbank, Creditor's CEO, was properly served at Creditor's main address by certified mail as required by Rule 7004(h).

Second, LBR 9004-2(d) requires exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets.

In this instance, the exhibits were not filed as a separate exhibit document, did not include an index, and the exhibit pages were not consecutively numbered. Doc. #40.

Third, LBR 9014-1(d) (3) (B) (i) requires the notice of hearing to include the names and addresses who must be served with any written opposition. The notice correctly states that UST, Trustee, Debtor, and Debtor's attorney must be served a copy of any opposition, but it omits those parties' addresses and therefore does not comply with LBR 9014-1(d) (3) (B) (i).

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

6. 19-10643-B-7 **IN RE: JOSE PEREZ**
WLG-3

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
6-4-2021 [42]

JOSE PEREZ/MV
NICHOLAS WAJDA/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Jose Trinidad Perez ("Debtor") seeks to avoid a judicial lien in favor of Capital One Bank (USA), N.A. ("Creditor") in the amount of \$4,827.90 and encumbering residential real property located at 2931 West Country Avenue, Visalia, CA 93277 ("Property"). Doc. #44.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Federal Rules of Bankruptcy Procedure ("Rules") and Local Bankruptcy Rules ("LBR").

First, the certificate of service states that chapter 7 trustee James E. Salven ("Trustee") was served by electronic mail. Doc. #45. Rule 4003(d) requires proceedings under § 522(f) to avoid a lien "shall be commenced by motion in the manner provided by Rule 9014." Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. This motion could be a contested matter if any party in interest opposes. Electronic service under Rule 9036 is precluded here because it "does not apply to any pleading or other paper required to be served in accordance with Rule 7004."

Rule 7004 allows service upon an individual by U.S. mail by mailing a copy of motion documents to the individual's dwelling house, usual place of abode, or to the place where the individual regularly conducts a business or profession. It is also sufficient if service is performed "by the law of the state in which service is made" or "to an agent of such defendant authorized by appointment or law to receive service of process, at the agent's dwelling house or usual place of abode or at the place where the agent regularly carries on a business or profession[.]" Rule 7004(b) (8).

Since this motion will affect property of the estate, the Chapter 7 Trustee must be served in accordance with Rule 7004.

The court notes that service on the U.S. Trustee ("UST") was sufficient. Although the UST may raise, appear, and be heard on any issue in any case under § 307 and should be served or notified, no relief is being sought against the UST here. Electronic notification under Rule 7005 and LBR 7005-1 is sufficient so long as the certificate of service lists UST's email address as required by LBR 7005-1(d), which the movant did here.

Moreover, Richard D. Fairbank, Creditor's CEO, was properly served at Creditor's main address by certified mail as required by Rule 7004(h).

Second, LBR 9004-2(d) requires exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets.

In this instance, the exhibits were not filed as a separate exhibit document, did not include an index, and the exhibit pages were not consecutively numbered. Doc. #44.

Third, LBR 9014-1(d)(3)(B)(i) requires the notice of hearing to include the names and addresses who must be served with any written opposition. The notice correctly states that UST, Trustee, Debtor, and Debtor's attorney must be served a copy of any opposition, but it omits those parties' addresses and therefore does not comply with LBR 9014-1(d)(3)(B)(i).

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

7. 21-11151-B-7 **IN RE: ELLEN SMITH**
DVW-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-28-2021 [16]

21ST MORTGAGE CORPORATION/MV
LAYNE HAYDEN/ATTY. FOR DBT.
DIANE WEIFENBACH/ATTY. FOR MV.

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant 21st Mortgage Corporation withdrew this motion on July 7, 2021. Doc. #24. Accordingly, this matter will be dropped from calendar.

8. 18-13153-B-7 **IN RE: LUIS BRAVO**
UST-1

MOTION FOR DENIAL OF DISCHARGE OF DEBTOR UNDER 11 U.S.C.
SECTION 727 (A)
5-20-2021 [117]

TRACY DAVIS/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
BOOKER CARMICHAEL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Tracy Hope Davis, the United States Trustee for Region 17 ("UST"), moves for an order denying Luis Bravo's ("Debtor") discharge under 11 U.S.C. § 727(a)(8). Doc. #117.

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 chapter 7 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. § 727(a)(8) states that a debtor shall be granted a discharge unless "the debtor has been granted a discharge under this section . . . in a case commenced within 8 years before the date of the filing of the petition."

Fed. R. Bankr. P. ("Rule") 4004(d) allows an objection to discharge under § 727(a)(8) to be commenced by motion under Rule 9014.

Debtor previously filed for chapter 7 relief in the Eastern District of California (Fresno), Case No. 13-15590, on August 20, 2013 and received a discharge on December 27, 2013. Debtor filed this bankruptcy on July 31, 2018. Doc. #1. July 13, 2018 is four years, seven months, and four days after December 27, 2013, which is before the eight-year limitation expired. Therefore, Debtor cannot receive a discharge in this case. UST's motion will be GRANTED.