

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, October 14, 2020
Place: Department A - Courtroom #11
Fresno, California

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

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

MOTION TO INTERVENE
9-8-2020 [[213](#)]

RENO FERNANDEZ/ATTY. FOR DBT.
THOMAS ARMSTRONG/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

1. [20-11800](#)-A-7 **IN RE: SULEMA VASQUEZ**

PRO SE REAFFIRMATION AGREEMENT WITH CITIZENS BANK, N.A.
9-15-2020 [[31](#)]

NO RULING.

2. [20-12412](#)-A-7 **IN RE: JAHAIRA ANDRADE**

REAFFIRMATION AGREEMENT WITH JPMORGAN CHASE BANK, N.A.
9-21-2020 [[13](#)]

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.

3. [20-12270](#)-A-7 **IN RE: JAMES/NANCY TAYLOR**

REAFFIRMATION AGREEMENT WITH CONSUMER PORTFOLIO SERVICES
9-9-2020 [[13](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors' 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 debtors' 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.

1. [20-12759](#)-A-7 **IN RE: PHONESAVANH VONGPHACHAN**
[EPE-1](#)

MOTION TO DISMISS CASE
9-8-2020 [[16](#)]

PHONESAVANH VONGPHACHAN/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). 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. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Phonesavanh Joy Vongphachan ("Debtor"), the debtor in this Chapter 7 case, moves the court for an order dismissing Debtor's voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code. Doc. #16.

A debtor does not have an absolute right to dismiss a voluntary Chapter 7 case. Bartee v. Ainsworth (In re Bartee), 317 B.R. 362, 366 (B.A.P. 9th Cir. 2004). Section 707 of the Bankruptcy Code governs dismissal of a chapter 7 case, whereby the court "may dismiss a case under this chapter only after notice and a hearing and only for cause." 11 U.S.C. § 707(a); In re Kaur, 510 B.R. 281, 285 (Bankr. E.D. Cal. 2014). Regarding cause, a voluntary Chapter 7 debtor is entitled to dismissal so long as such dismissal will cause no legal prejudice to interested parties. Kaur, 510 B.R. at 286 (citations omitted).

Section 727(a)(8) prohibits the court from granting a discharge if "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." 11 U.S.C. § 727(a)(8). Debtor filed his current petition on August 21, 2020. Doc. #1. Debtor was granted a previous discharge under Chapter 7 on January 21, 2014. Doc. #16; Doc. #18. Debtor's prior discharge was granted within 8 years of the date of the filing of his current chapter 7 case, and, under section 727(a), the court will not be able to grant Debtor a discharge in this chapter 7 case. Because Debtor is not entitled to a discharge under Chapter 7, granting

Debtor's motion to dismiss will not prejudice interested parties, and there is cause to dismiss this chapter 7 case.

This motion is GRANTED. The court finds that dismissal of Debtor's Chapter 7 case will not result in legal prejudice to interested parties and cause exists to dismiss this case under 11 U.S.C. § 707(a).

2. [20-12372](#)-A-7 **IN RE: JOSHUA HARDMAN**
[PFT-2](#)

MOTION TO EMPLOY GOULD AUCTION AND APPRAISAL COMPANY AS
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
9-11-2020 [[17](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled to clarify the record.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought.

Peter L. Fear ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of Joshua T. Hardman ("Debtor"), moves the court for an order (1) authorizing the employment of Gould Auction & Appraisal Company ("Auctioneer"); (2) authorizing the sale of a 2013 Toyota Rav4 ("Vehicle") at public auction on or after October 24, 2020 at 6200 Price Street, Bakersfield, California; and (3) authorizing the estate to pay Auctioneer commission and expenses. Doc. #17.

LBR 9014-1(d)(3)(A) requires a motion to "set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability." Trustee's motion fails to state with particularity which statute, rule, or other authority supports the various relief sought. The court will call this matter at the hearing and permit Trustee to clarify the record.

Trustee seeks to employ Gould Auction & Appraisal Company, 30602 Imperial Street, Shafter, California 93263. Doc. #17. Trustee requires Auctioneer's services to conduct the public auction sale, which may include advertising and holding the Vehicle in inventory. Doc. #17; Doc. #20. In signed declarations, both Auctioneer and Trustee testify that Auctioneer is a "disinterested person" as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Doc. #19; Doc. #20.

Section 327(a) of the Bankruptcy Code provides, in relevant part, "the trustee, with the court's approval, may employ . . . auctioneers . . . 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). To the extent Trustee seeks authorization to employ Auctioneer pursuant to section 327, Trustee made a *prima facie* showing and is entitled to the specific relief sought.

To the extent Trustee seeks authorization to sell the Vehicle, Trustee has provided no legal grounds to support the relief sought. Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." This matter will be called to clarify on the record that Trustee seeks court approval to sell the Vehicle pursuant to section 363.

Additionally, to the extent Trustee seeks pre-authorization to pay Auctioneer's fees and expenses, an application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under section 328. See Circle K Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002). Without a specific request, the application is subject to review under section 330. Id. If Trustee is not seeking authorization under section 328, the motion is premature; if Trustee is seeking authorization under section 328, it must be clearly stated in the motion. This matter will be called to clarify on the record whether Trustee seeks approval of Auctioneer's fees and expenses pursuant to section 328.

Subject to Trustee clarifying the record, the motion will be GRANTED.

3. [20-12484](#)-A-7 **IN RE: STEVEN BRICENO**
[MMJ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-1-2020 [[13](#)]

FINANCIAL SERVICES VEHICLE
TRUST/MV
MARIO LANGONE/ATTY. FOR DBT.
MARJORIE JOHNSON/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Financial Services Vehicle Trust ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2018 BMW 3 Series 330i Sedan 4D ("Vehicle"). Doc. #13.

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

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

After review of the included evidence, the court finds that cause exists to lift the stay because the debtor failed to make at least one pre-petition payment and has made no post-petition payments. Doc. #15. Movant produced evidence that the debtor is delinquent by at least \$1,027.32. Doc. #15.

The court also finds that the debtor does not have an equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in Chapter 7. The debtor's possession of the Vehicle stems from a lease agreement with Movant that matures on September 28, 2021, according to which the debtor does not own the Vehicle. Doc. #15; Doc. 16.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to gain immediate possession of the Vehicle pursuant to applicable law. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make pre- and post-petition payments to Movant in accordance with the lease agreement.

MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEES
ATTORNEY(S)
9-15-2020 [[39](#)]

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

DISPOSITION: Granted.

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

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

Loris L. Bakken of the Bakken Law Firm ("Movant"), counsel for Chapter 7 trustee Irma C. Edmonds ("Trustee"), requests an allowance of final compensation and reimbursement for expenses for services rendered January 21, 2020 through October 14, 2020. Doc. #39. Movant provided legal services valued at \$6,390.00 but has voluntarily reduced earned fees by \$1,440.00 and therefore requests compensation in the amount of \$4,950.00. Doc. #39; Doc. #41. Movant requests reimbursement for expenses in the amount of \$43.45. Doc. #39.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) investigating prepetition transfers; (2) employing special litigation counsel with respect to a personal injury claim; (3) the negotiation and sale of estate assets; and (4) general case administrative activities, including communicating with the debtor and preparing documents to be filed with the court. Doc. #41. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$4,950.00 and reimbursement for expenses in the amount of \$43.45. Trustee is authorized to make a combined payment of \$4,993.45, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

5. [20-12493](#)-A-7 **IN RE: STEPHANIE ORTIZ**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
9-4-2020 [[10](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue an order.

The Chapter 7 trustee's motion to dismiss is **CONDITIONALLY DENIED**.

The debtor shall attend the meeting of creditors rescheduled for October 27, 2020 at 9:00 a.m. If the debtor fails to do so, the Chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing. The time prescribed in Fed. R. Bankr. P. 1017(e)(1) and 4004(a) for the Chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge under section 727 and file motions for abuse, other than presumed abuse, under section 707, is extended to 60 days after the conclusion of the meeting of creditors scheduled for October 27, 2020.

6. [20-12260](#)-A-7 **IN RE: ERIC/KELLIE ROESLER**
[JMV-1](#)

CONTINUED MOTION TO SELL
9-17-2020 [[16](#)]

JEFFREY VETTER/MV
STEVEN ALPERT/ATTY. FOR DBT.
JEFFREY VETTER/ATTY. FOR MV.

NO RULING.

This matter was continued from October 8, 2020, to permit possible overbidding.