

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Tuesday, October 16, 2018  
Place: Department B - Courtroom #13  
Fresno, California

**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. [18-13420](#)-B-7 IN RE: ERIKA PAUWELLS DE LOPEZ

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE  
8-23-2018 [[4](#)]

SCOTT LYONS

NO RULING.

2. [16-10521](#)-B-7 IN RE: ALAN ENGLE  
[FW-9](#)

MOTION TO EMPLOY DAN MORPHY AUCTIONS, LLC AS AUCTIONEER,  
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND  
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES  
9-18-2018 [[252](#)]

TRUDI MANFREDO/MV  
SUSAN HEMB  
GABRIEL WADDELL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. 11 U.S.C. § 328(a) permits employment of "professional persons" on "reasonable terms and conditions" including "contingent fee basis."

Trustee is authorized to employ Dan Morphy Auctions, LLC ("Auctioneer") as auctioneer to sell property of the estate (as listed in the motion) at a public auction, which is tentatively set for October 20, 2018 or April 19, 2018, at 4520 Arville Street, Suita A in Las Vegas, NV. Trustee is also authorized to pay Auctioneer in accordance with that sale.

The trustee proposes to compensate Auctioneer on a percentage collected basis. The percentage is 20% of the gross proceeds from the sale, which includes expenses. Doc. #255. Trustee is also authorized to reimburse Auctioneer up to \$2,000.00 for extraordinary expenses.

The court notes the potential claim trustee may have against Auctioneer, but is satisfied with the declarations of Auctioneer and trustee that the potential claim will not interfere with this auction. The court makes no finding on the auctioneer's liability on that claim related to an allegedly unauthorized sale of estate property.

The court finds the proposed arrangement reasonable in this instance. If the arrangement proves improvident, the court may allow different compensation under 11 U.S.C. § 328(a).

3. [18-12634](#)-B-7 **IN RE: HILARIO/OFELIA CANTU**  
[MAZ-1](#)

MOTION TO COMPEL ABANDONMENT  
9-13-2018 [[22](#)]

HILARIO CANTU/MV  
MARK ZIMMERMAN

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

LBR 9014-1(f)(1)(B) states that Motions filed on at least 28 days' notice require the movant to notify the respondent or respondents that any opposition to motions filed on at least 28 days' notice must be in writing and must be filed with the court at least

fourteen (14) days preceding the date or continued date of the hearing.

This motion was filed and served on September 13, 2018 and set for hearing on October 16, 2018. Doc. #23, 25. October 16, 2018 is 33 days after September 13, 2018, and therefore this hearing was set on 28 days' notice under LBR 9014-1(f)(1). The notice stated that written opposition was not required and may be presented at the hearing. Doc. #23. That is incorrect. Because the hearing was set on 28 days' notice, the notice should have stated that written opposition was required. Because this motion was filed, served, and noticed on 28 days' notice, the language of LBR 9014-1(f)(1)(B) needed to have been included in the notice.

4. [18-12036](#)-B-7     **IN RE: GUADALUPE/MARIA CERON**  
[TMT-3](#)

MOTION TO EMPLOY GOULD AUCTION & APPRAISAL COMPANY AS  
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION  
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES  
9-25-2018    [[34](#)]

TRUDI MANFREDO/MV  
MARK ZIMMERMAN  
TRUDI MANFREDO/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  
will submit a proposed order after hearing.

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

This motion is GRANTED. 11 U.S.C. § 328(a) permits employment of "professional persons" on "reasonable terms and conditions" including "contingent fee basis."

Trustee is authorized to employ Gould Auction & Appraisal Company ("Auctioneer") as auctioneer to sell property of the estate. A 2002 Chevrolet Silverado at a public auction, which is set for October 20, 2018 at 6200 Price Way in Bakersfield, CA. Trustee is also authorized to pay Auctioneer in accordance with that sale.

The trustee proposes to compensate Auctioneer on a percentage collected basis. The percentage is 15% of the gross proceeds from the sale, which includes expenses. Doc. #37. Trustee is also

authorized to reimburse Auctioneer up to \$500.00 for extraordinary expenses without further order of the court.

The court finds the proposed arrangement reasonable in this instance. If the arrangement proves improvident, the court may allow different compensation under 11 U.S.C. § 328(a).

The 14-day stay under Federal Rule of Bankruptcy Procedure 6004(h) is waived because the auction date is within two weeks of this hearing date subject to a party-in-interest's objection made at the hearing.

5. [14-11544](#)-B-7     **IN RE: CLIFFORD/ROSLYN BROOKS**  
[RTW-2](#)

MOTION FOR COMPENSATION FOR CHRISTOPHER A. RATZLAFF,  
ACCOUNTANT(S)  
9-14-2018    [[64](#)]

RATZLAFF, TAMBERI & WONG/MV  
TIMOTHY SPRINGER

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 has been 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.

The motion will be GRANTED. Trustee's accountant, Christopher A. Ratzlaff, requests fees of \$1,189.00 and costs of \$17.39 for a total of \$1,206.39 for services rendered from May 16, 2018 through September 6, 2018.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . .[a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Reviewing correspondence from the trustee, including the bankruptcy petition and other information relating to tax matters of the estate, (2) Preparing the federal and state fiduciary income tax returns for Clifford Brooks for the period ending October 31, 2018,

(3) Preparing the federal and state fiduciary income tax returns for Roslyn Brooks for the period ending October 31, 2018, and (4) Preparing this fee application. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$1,189.00 in fees and \$17.39 in costs.

6. [18-13494](#)-B-7     **IN RE: LISA/LARRY KERR**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-13-2018    [[19](#)]

SANTANDER CONSUMER USA INC./MV  
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION:        Granted.

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

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

The movant, Santander Consumer USA Inc., seeks relief from the automatic stay under § 362(d)(1) and (d)(2) with respect to a 2010 Nissan Rogue.

11 U.S.C. § 362(d)(1) allows the court to grant relief from 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 stay if the debtor does not have equity in the property and the property is not necessary to an effective reorganization.

After review of the included evidence, the court concludes that "cause" exists to lift the stay because debtor has defaulted on its obligation to movant, there is no equity in the vehicle, and no evidence exists that it is necessary to a reorganization because debtor is in chapter 7. Movant has produced evidence that the vehicle has a value of \$7,125.00 and debtor owes \$16,713.89. Doc. #21.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the debtors intend to surrender the vehicle and the vehicle is depreciating in value.

11:00 AM

1. [18-13534](#)-B-7    **IN RE: JOHN/LINDA ARNETT**

PRO SE REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION  
9-26-2018    [[13](#)]

TIMOTHY SPRINGER

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

DISPOSITION:        Dropped.

ORDER:                The court will issue an order.

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

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok. 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

The debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

2. [18-13441](#)-B-7    **IN RE: DOUGLAS/MARY MARTIN**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION  
9-24-2018    [[22](#)]

NO RULING.



3. [18-13290](#)-B-7     **IN RE: ISHAC LAZAR AND MARITZA SOLANO**

REAFFIRMATION AGREEMENT WITH CAB WEST, LLC  
9-19-2018    [[19](#)]

DAVID JENKINS

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

DISPOSITION:     Dropped.

NO ORDER REQUIRED.

Debtors' counsel will inform debtors that no appearance is necessary.

The agreement relates to a lease of personal property. The parties are directed to the provisions of 11 U.S.C. § 365(p)(2). This case was filed August 12, 2018, and the lease was not assumed by the chapter 7 trustee within 60 days, 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.

1:30 PM

1. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**  
[18-1006](#) [BBR-1](#)

CONTINUED AMENDED MOTION TO COMPEL , AMENDED MOTION FOR AN  
IN-CAMERA REVIEW  
8-30-2018 [[28](#)]

PACE DIVERSIFIED CORPORATION  
ET AL V. MACPHERSON OIL  
T. BELDEN/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.

2. [18-11166](#)-B-11 **IN RE: JOSE/MARY VALADAO**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY  
PETITION  
3-29-2018 [[1](#)]

RILEY WALTER

NO RULING.

3. [18-11166](#)-B-11 **IN RE: JOSE/MARY VALADAO**  
[WW-7](#)

FIRST AMENDED CHAPTER 11 DISCLOSURE STATEMENT  
8-30-2018 [[176](#)]

RILEY WALTER

NO RULING.