



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Tuesday, January 24, 2023
Department B – Courtroom #13
Fresno, California**

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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.

Post-Publication Changes: 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 any possible updates.

9:30 AM

1. [19-10423](#)-B-12 **IN RE: KULWINDER SINGH AND BINDER KAUR**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
11-15-2022 [[307](#)]

MICHAEL MEYER/MV
DAVID JOHNSTON/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

This matter was originally heard on December 20, 2022 and continued to January 24, 2023. Docs. ##315-16. Chapter 12 trustee Michael H. Meyer filed a status report indicating that this hearing is moot because Kulwinder Singh and Binder Kaur (collectively "Debtors") overpaid plan payments through December in the sum of \$5,494.31. Doc. #318. Debtors agree. Doc. #321. Accordingly, this motion will be DENIED AS MOOT.

2. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V
VOLUNTARY PETITION
9-1-2022 [[1](#)]

RILEY WALTER/ATTY. FOR DBT.

NO RULING.

The court is in receipt of the *Third Chapter 11 Sub V Status Conference Statement* filed by debtor-in-possession Valley Transportation, Inc. on January 13, 2023. Doc. #235. This status conference will be called and proceed as scheduled.

3. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[WJH-15](#)

MOTION FOR ESTIMATION OF DISPUTED CLAIM
12-16-2022 [\[174\]](#)

VALLEY TRANSPORTATION, INC./MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to January 31, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

Valley Transportation, Inc. ("Debtor") moves to estimate disputed Proof of Claim No. 9 filed by Deborah Simpson ("Simpson") on November 7, 2022 in the amount of \$7.8 million (the "Simpson Claim") pursuant to 11 U.S.C. § 502(c)(1). Doc. #174.

Andrew Mendoza ("Mendoza") timely opposed on grounds that the Simpson Claim cannot be estimated at this time because it is derivative of his Proof of Claim No. 8 filed on November 2, 2022 in the amount of \$7.5 million (the "Mendoza Claim"), which Debtor is seeking to estimate on January 31, 2023 (WJH-7). Doc. #220.

Debtor replied, disputing Mendoza's contentions; however, Debtor requests a continuance to January 31, 2023 to be heard at the same time as the motion to estimate the Mendoza Claim. Doc. #250.

First, Mendoza failed to include a Docket Control Number on his opposition. Future failures may result in an order striking the pleading.

Second, Mendoza's challenge to the fees incurred by general and special counsel for Debtor and Debtor's reply to that argument are irrelevant and will not be considered by the court. This motion is not the forum for challenging fee requests.

Third, though the court agrees with Debtor that § 502(c)(1) does not require a claim objection, the facts in this case suggest it is necessary for the estimation process. The basis for this claim is Cal. Labor Code § 2802. This statute provides for employer's indemnity of the employee for necessary expenditures or losses incurred "in direct consequence of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

So, there may be defenses Debtor may raise to the indemnity claim. Those defenses impact the estimation process and should be raised in an objection to the claim.

That said, this motion will be CONTINUED to January 31, 2023 at 9:30 a.m. to be heard in connection with Debtor's motion to estimate the Mendoza Claim.

4. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[WJH-16](#)

MOTION FOR ESTIMATION OF DISPUTED CLAIM PROOF OF CLAIM 10
12-21-2022 [\[191\]](#)

VALLEY TRANSPORTATION, INC./MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to January 31, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

Valley Transportation, Inc. ("Debtor") moves to estimate disputed Proof of Claim No. 10 filed by Rodney Heintz ("Heintz") on November 7, 2022 in the amount of \$7.8 million (the "Heintz Claim") pursuant to 11 U.S.C. § 502(c)(1). Doc. #191.

Andrew Mendoza ("Mendoza") timely opposed on grounds that the Heintz Claim cannot be estimated at this time because it is derivative of his Proof of Claim No. 8 filed on November 2, 2022 in the amount of \$7.5 million (the "Mendoza Claim"), which Debtor is seeking to estimate on January 31, 2023 (WJH-7). Doc. #210.

Debtor replied, disputing Mendoza's contentions; however, Debtor requests a continuance to January 31, 2023 to be heard at the same time as the motion to estimate the Mendoza Claim. Doc. #251.

First, Mendoza failed to include a Docket Control Number on his opposition. Future failures may result in an order striking the pleading.

Second, Mendoza's challenge to the fees incurred by general and special counsel for Debtor and Debtor's reply to that argument are irrelevant and will not be considered by the court. This motion is not the forum for challenging fee requests.

Third, though the court agrees with Debtor that § 502(c)(1) does not require a claim objection, the facts in this case suggest it is necessary for the estimation process. The basis for this claim is Cal. Labor Code § 2802. This statute provides for employer's indemnity of the employee for necessary expenditures or losses incurred "in direct consequence of his or her duties, or of his or her obedience to the

directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

So, there may be defenses Debtor may raise to the indemnity claim. Those defenses impact the estimation process and should be raised in an objection to the claim.

That said, this motion will be CONTINUED to January 31, 2023 at 9:30 a.m. to be heard in connection with Debtor's motion to estimate the Mendoza Claim.

5. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[WJH-19](#)

MOTION TO FIX A BAR DATE FOR FILING CERTAIN ADMINISTRATIVE
EXPENSE CLAIMS AND/OR MOTION TO APPROVE THE FORM AND MANNER
OF NOTICE OF ADMINISTRATIVE CLAIMS BAR DATE
12-21-2022 [\[186\]](#)

VALLEY TRANSPORTATION, INC./MV
RILEY WALTER/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.

Valley Transportation, Inc. ("Debtor") requests an order (1) establishing March 3, 2023 at 5:00 p.m. as the last day by which creditors and parties in interest must file requests for allowance of administrative expense claims arising under 11 U.S.C. §§ 503(b) and 507(a)(2) or be forever barred ("Administrative Claims Bar Date") pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 3003(c)(3), and (2) approving the proposed form and manner of notice of the Administrative Claims Bar Date. Doc. #186. Debtor proposes to serve notice of the Administrative Claims Bar Date no later than January 27, 2023, which is 35 days before the deadline.

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 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.

Under Rule 3003(c)(3), "[t]he court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed." If that time expires, a proof of claim may still be filed to the extent and under the conditions of Rules 3002(c)(2), (3), (4), and (6).

Debtor requests the setting of the Administrative Claims Bar Date to provide for orderly administration of the estate and to establish appropriate reserves for claims. Doc. #186. Debtor asks for the Administrative Claims Bar Date to apply to all unpaid administrative expense claims arising under §§ 503(b) and 507(a)(2) prior to January 30, 2023. However, the following types of administrative expense claims should not be subject to the Administrative Claims Bar Date, says Debtor: (i) administrative claims for professionals retained under §§ 327-28, and (ii) fees for the subchapter V trustee. Additionally, only parties served with notice shall be bound by the deadline.

Debtor included a copy of the proposed form informing parties of the Administrative Claims Bar Date. See, *Ex. A*, Doc. #189. Debtor proposes to send the proposed notice by First Class U.S. Mail to: (a) all parties who have requested notice under Rule 2002; (b) the U.S. Trustee; (c) the subchapter V trustee; and (d) all other creditors listed on the Creditor Mailing Matrix. The proposed form and manner of service appear to comply with the requirements of Rules 2002 and 3003.

No party in interest timely filed written opposition. This motion will be GRANTED. The court will set **March 3, 2023 at 5:00 p.m.** as the date in which administrative expense claims arising under §§ 503(b) and 507(a)(2) prior to January 30, 2023 must be filed or be forever barred unless a tardily filed request under § 503(a) is approved. Debtor shall notify all creditors and parties in interest of the Administrative Claims Bar Date not later than January 27, 2023 and shall file a certificate of service evidencing the same.

6. [22-11540](#)-B-11 **IN RE: VALLEY TRANSPORTATION, INC.**
[WJH-8](#)

CONFIRMATION HEARING RE: CHAPTER 11 SMALL BUSINESS
SUBCHAPTER V PLAN
11-29-2022 [\[149\]](#)

RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to February 28, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

Valley Transportation, Inc. ("Debtor"), filed an *ex parte* application to continue the confirmation hearing for the chapter 11, subchapter V plan. Doc. #247. On January 17, 2023, the court issued an order CONTINUING the confirmation hearing to February 28, 2023 at 9:30 a.m. Any additional evidence shall be filed and served by Debtor not later than February 17, 2023.

7. [22-10885](#)-B-11 **IN RE: SYNCHRONY OF VISALIA, INC.**
[LAH-1](#)

MOTION FOR COMPENSATION FOR LISA A. HOLDER, CHAPTER 11 TRUSTEE(S)
12-19-2022 [\[182\]](#)

LISA HOLDER/MV
LEONARD WELSH/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Chapter 11, subchapter V trustee Lisa Holder ("Trustee") requests final compensation in the sum of \$5,790.00. Doc. #182. This amount consists solely of fees as reasonable compensation for services rendered to the estate from July 14, 2022 through November 16, 2022, plus estimated time for final administrative matters to take place on January 31, 2023. *Id.*

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) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). 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 Sys., 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.

Debtor filed chapter 7 bankruptcy on May 25, 2022. Doc. #1. On July 11, 2022, Debtor voluntarily converted this case to chapter 11, subchapter V, and Trustee was appointed as the subchapter V trustee. Doc. #46. Debtor confirmed the *Plan of Reorganization* dated September 27, 2022, as modified, on November 17, 2022. Doc. #173.

This is Trustee's first and final fee application. Doc. #182. Trustee performed 19.30 billable hours at a rate of \$300.00 per hour, totaling **\$5,790.00** in fees. *Id.*; *Ex. A*, Doc. #185. Trustee did not incur any expenses.

11 U.S.C. § 503(b)(2) permits, after notice and a hearing, the payment of allowed administrative expenses for compensation and reimbursement under § 330(a). 11 U.S.C. § 326(b) is inapplicable here because Trustee was appointed under 11 U.S.C. § 1183(a), rather than 28 U.S.C. § 586(b). Doc. #46.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." 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, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Trustee's services included, without limitation: (1) analyzing Debtor's petition, schedules, and statement of financial affairs; (2) communicating with the U.S. trustee regarding Debtor's case; (3) analyzing documents received from Debtor and Debtor's attorney prior to the initial debtor interview and meeting of creditors; (4) participating in the initial debtor interview and analyzing the meeting of creditors; (5) reviewing status conference statements and monthly operating reports; (6) attending chapter 11 status

conferences; (6) coordinating plan preparation with Debtor, reviewing the plan, and communicating with Debtor, creditors, and the U.S. trustee regarding the same; (7) preparing monthly reports required by the U.S. trustee (at no charge); (8) preparing and filing this fee application (LAH-1); and (9) in the future, preparing the case closing papers and the Trustee's final report. *Ex. A, Docs. ##184-85.* The court finds the services reasonable and necessary. No party in interest timely filed written opposition.

Accordingly, this motion will be GRANTED. Trustee shall be awarded \$5,790.00 in fees on a final basis under 11 U.S.C. §§ 330 & 503. Debtor will be authorized to pay Trustee \$5,790.00 in fees for services rendered from July 14, 2022 through November 16, 2022, plus estimated time for final administrative matters to take place on January 31, 2023.

1:30 PM

1. [22-11403](#)-B-7 **IN RE: STANFORD CHOPPING, INC.**
[LAH-2](#)

MOTION TO SELL, AND/OR MOTION TO PAY
12-27-2022 [\[93\]](#)

LISA HOLDER/MV
DAVID JOHNSTON/ATTY. FOR DBT.
ESTELA PINO/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

Chapter 7 trustee Lisa A. Holder ("Trustee") moves for authority to (i) sell the estate's interest in certain equipment of Stanford Chopping, Inc. ("Debtor"), consisting of tools, equipment, and vehicles scheduled on Debtor's *Schedule A/B*, as well as unscheduled tools, equipment, and vehicles (collectively "Equipment"), at public auction under 11 U.S.C. § 363(b), and (ii) compensate Mulrooney Auction Company ("Auctioneer") under 11 U.S.C. §§ 328(a) and 330. Doc. #93. The public auction is scheduled on February 4, 2023, beginning at 9:35 a.m. at 21562 Jack Tone Road, Ripon, California. Pre-auction inspection will be on February 2 & 3, 2023. *Ex. C*, Doc. #96.

The Huntington National Bank ("Creditor") timely objected because it has a security interest in some of the Equipment and it cannot be paid in full from the proceeds of the sale. Doc. #104. Creditor also objects to the proposed auctioneer compensation.

Trustee replied. Doc. #108.

This motion will be called and proceed as scheduled.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(2) and (a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest except Creditor 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 except Creditor are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Between July 2016 and October 2019, Debtor executed three promissory notes, Notes 502, 504, and 506 (collectively the "Notes"), in favor of Creditor to finance the purchase of certain equipment and vehicles (collectively "Collateral"), which are part of the Equipment that Trustee is seeking to sell. Doc. #105. The Notes are cross-collateralized and perfected with recorded UCC-1 Financing Statements. Copies of the Notes, Security Agreements, and UCC Financing Statements, including amendments and continuations if applicable, are attached as exhibits. See, Kassim Decl., Doc. #83 ¶ 12; Exs. A-M, Doc. #106. The Collateral and Equipment consist of the following items:

Equipment (Collateral Equipment & Non-Collateral Equipment)	Security Interest	Scheduled Value
Collateral Equipment		
2015 Krone Big X 750C chopper & attachments	\$20,996.01 (Note 502)	\$80,000.00
2015 Krone Big X 750C forage harvester, 2015 Krone Easy Collect 603, and Krone Easy Flow	\$116,344.08 (Note 504)	\$100,000.00
2018 Krone Big X 780 forage harvester and 2019 Krone EC750-2 cornheader, 2018 Krone pickup header, Krone Big X 750C forage harvester	\$520,499.26 (Note 506)	\$300,000.00
Collateral Security Interest & Value	\$657,839.35	\$480,000.00
Non-Collateral Equipment		
Case 500 tractor	\$0.00	\$300,000.00
Tools in Shop	\$0.00	\$30,000.00
Ag Bag bagging machine	\$0.00	\$80,000.00
2009 Krone 380 1 head	\$0.00	\$10.00
Krone EF3801 pickup head	\$0.00	\$10,000.00
2014 Krone EC753 head	\$0.00	\$122,500.00
Krone 280 1 head	\$0.00	\$10,000.00
2016 Krone easy flow hay head	\$0.00	\$35,000.00
Krone 6200 Xdisc forage harvester	\$0.00	\$0.00
2015 Chevrolet Silverado, 150,000 miles	\$0.00	\$9,735.00
2011 Freightliner, 779,880 miles	\$0.00	\$18,000.00
2008 Freightliner, 80,148 miles	\$0.00	\$12,000.00
2011 Freightliner, 883,146 miles	\$0.00	\$16,500.00
2011 Freightliner, 403,704 miles	\$0.00	\$18,000.00
2009 Freightliner, 511,557 miles	\$0.00	\$12,000.00
2010 Freightliner, 700,324 miles	\$0.00	\$0.00
2007 Chevrolet Silverado, 180,620 miles	\$0.00	\$2,000.00
2015 Chevrolet 4x4, 90,560 miles	\$0.00	\$12,000.00
2002 Ford F150 pickup, 198,512 miles	\$0.00	\$0.00
2005 Ford F150, 211,409 miles	\$0.00	\$2,000.00
Non-Collateral Equipment Interest & Value	\$0.00	\$689,745.00
Total Equipment Scheduled Value		\$1,169,745.00

Ex A, Doc. #96 (Sched. A/B, Doc. #17).

Debtor filed bankruptcy on August 17, 2022 and the Equipment, including the Collateral, became property of the estate. Doc. #1.

On December 20, 2022, the court heard Creditor's motion for relief from the automatic stay to enforce its rights and remedies under the Notes with respect to the Collateral. SDN-2. Trustee opposed the relief at the hearing on the basis that the Financing Statements had either not been filed or had expired. Doc. #90. So, that motion was continued to January 31, 2023 to allow the parties to augment the record. Doc. #91.

Creditor's exhibits in opposition to this motion include updated Financing Statements from those in support of its motion for relief from the automatic stay. Creditor has perfected its security in the Collateral as follows:

1. Note 502's Financing Statement was initially filed on July 27, 2016, an amendment to update the secured party was filed on June 29, 2021, and a continuation was filed on June 30, 2021. *Exs. B-D, Doc. #106.*
- 2a. Note 504's Financing Statement, amendment, and continuation were filed on December 17, 2015, July 27, 2018, and December 6, 2020, respectively. *Exs. G-H, id.*
- 2b. A separate UCC-1 Financing Statement and separate continuation, which appear to pertain to the same collateral, were also filed on December 18, 2015 and December 6, 2020, respectively. *Exs. I-J, id.*
3. Note 506's Financing Statement was filed on October 29, 2019. *Ex. M, id.*

Proposed Sale

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).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016).

Trustee requests authority to sell Debtor's interest in the Equipment, which includes the Collateral, pursuant to 11 U.S.C. § 363(b). Doc. #95. Since the proposed sale contemplates sale of the Equipment at public auction, increased scrutiny for sales to an insider is inapplicable.

Creditor opposes the sale on grounds that its claim cannot be paid in full from the proceeds of the sale and Trustee did not move to sell the Equipment free and clear. Doc. #104. Specifically, Trustee's motion does not mention how much or how Creditor will be paid from the sale of the Equipment in satisfaction of its secured claim. Since Debtor's schedules reflect the value of collateral securing the Notes as only \$390,000.00, the sale will not provide enough proceeds to pay its \$657,839.35 claim.¹ *Id.* Creditor does not consent to the sale of the Collateral pursuant to 11 U.S.C. § 363(f)(2) and Trustee has failed to satisfy any of the conditions to sell the Equipment as a whole, free, and clear of liens pursuant to § 363(f).

In reply, Trustee contends that this motion was filed under § 363(b), not § 363(f), and if the court is satisfied that Creditor has perfected its security interest at the continued stay relief motion hearing on January 31, 2023, then Trustee will pay from the auction sale proceeds Creditor's debt on the Collateral. Doc. #108. Trustee acknowledges that Note 506 cannot be satisfied by sale of the items of Collateral securing it if Debtor's \$300,000 valuation is accurate but believes that Notes 502 and 504 can be fully paid.

Using Debtor's scheduled valuation, Trustee illustrates the prospective sale of the Note 502 Collateral as follows:

Sale Price of Note 502 Collateral	\$80,000.00
Transport/hauling	- \$400.00
Auctioneer's 10%	- \$8,000.00
Remaining Proceeds	= \$71,600.00
Creditor's lien	- \$20,996.01
Net to estate	= \$50,603.99

Id. Meanwhile, Debtor has valued the Note 504 Collateral collectively at \$100,000.00. Trustee admits that the asserted debt exceeds the scheduled value. However, Trustee can set a reserve of \$135,000.00 on the Note 504 Collateral that would pay off the Note 504 debt:

Sale Price of Note 504 Collateral	\$135,000.00
Transport/hauling	- \$400.00
Auctioneer's 10%	- \$13,500.00
Remaining Proceeds	= \$121,100.00
Creditor's lien	- \$116,344.08
Net to estate	= \$4,655.92

Id. In sum, Trustee requests the court overrule Creditor's objection because it does not request to sell free and clear of Creditor's liens if perfected, and the debt secured by valid liens will be paid.

This presents the issue of whether the Notes 502 and 504 Collateral can be sold without Creditor's consent if cross-collateralized Note 506 still encumbers the Collateral secured by Notes 502 and 504.

Auctioneer Compensation

This motion affects the proposed disposition of estate assets and the Auctioneer. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion to add Auctioneer as a party.

LBR 9014-1(d) (5) (B) (iii) permits joinder of claims for authorization to employ a professional, for the sale of estate property at public auction, and allowance of fees and expenses for such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rules 6004-05.

Trustee moved to employ Auctioneer on December 30, 2022. Doc. #98. The court approved Auctioneer's employment on January 9, 2023, effective November 30, 2022, under §§ 327, 328, 329-31. Doc. #103. The order provided that Auctioneer would be paid a 10% fee for commission provided that the commission does not prove to be improvident in light of developments not capable of being anticipated at the time of the order. Further, no compensation or expense reimbursement was permitted except upon court order following application under §§ 330(a) and/or 331. *Id.*

Pursuant to the employment order, Trustee requests to compensate Auctioneer with a 10% commission on the sale of the Equipment. Doc. #93. Auctioneer also charges a 12% buyer's premium from on-site purchasers (with a potential 2% cash discount) and a 15% buyer's premium from online buyers, which is paid directly from a buyer to Auctioneer. Doc. #95. Lastly, Trustee requests authorization to reimburse Auctioneer for expenses as follows: (a) extraordinary expenses, including cost of batteries, tires, replacement parts, and unexpected expenses, not to exceed \$5,000.00 as approved by Trustee; (b) expenses for hauling Equipment from its current location to the auction site at a rate of \$1.00 per mile (both ways), up to \$5,000.00; and (c) up to \$75.00 for DMV smog certificate requirements on vehicle sales and seller's DMV release of liability forms. *Id.*

Creditor objects to the proposed compensation terms as excessive and unjustified as it relates to the Collateral. Doc. #104.

Trustee replies, arguing that Creditor has failed to present any evidence to support its contention. Doc. #108. The court agrees with the Trustee, here. Creditor offers no evidence or analysis why the commission is excessive with respect to Creditor's collateral. There is no evidence suggesting the court's order appointing the auctioneer and approving the compensation is now improvident.

The objection to the Auctioneer's commission is OVERRULED. The court will allow Auctioneer's 10% commission and the requested expenses to be paid as prayed.

Conclusion

This matter will be called and proceed as scheduled to inquire whether Creditor consents to the sale of the Notes 502 and 504 Collateral under the terms specified above. If so, this motion may be GRANTED IN PART to authorize the sale at public auction of all Equipment except the Note 506 Collateral and DENIED IN PART with respect to the sale of Note 506 Collateral. If not, this motion may only be GRANTED IN PART to authorize the sale at public auction of the Non-Collateral Equipment.

¹ The court notes that the schedules appear to value the Collateral at approximately \$480,000.00, rather than the \$390,000.00 alleged in Creditor's opposition. Ex. A, Doc. #96 (Sched. A/B, Doc. #17).

2. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[GAL-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-20-2022 [\[332\]](#)

TRANSPORTATION ALLIANCE BANK/MV
LEONARD WELSH/ATTY. FOR DBT.
GARRY MASTERSON/ATTY. FOR MV.

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

DISPOSITION: Granted in part.

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

Transportation Alliance Bank ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to five (5) Utility Trailers ("Trailers") secured by two separate loans.

Doc. #332. Movant also requests waiver of the 14-day of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3).

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") filed non-opposition. Doc. #599.

No other parties 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 Sys., 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.

As a preliminary matter, Trustee was not properly served, and the exhibits do not procedurally comply with the local rules.

First, Rule 4001(a)(1) 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. Since this motion will affect property of the estate, Trustee must be served in accordance with Rule 7004.

Rule 7004 allows service in the United States by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business[.]" Rule 7004(b)(1). Here, Movant's certificate of service states Trustee was served "at email registered with ECF." Doc. #339. This insufficient service would have resulted in the motion being denied without prejudice, but Trustee filed non-opposition, so the service defect is waived.

Second, LBR 9004-2(d)(2) and (d)(3) require the exhibit document to 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. Here, the exhibit pages are not consecutively numbered and, although the exhibit document does

contain an index, the index does not identify the page number at which each exhibit is located. Docs. ##335-37. Counsel is advised to review the local and federal rules to ensure procedural compliance in subsequent matters. Future violations of the local rules may result in a motion being denied without prejudice without a hearing.

Pre-petition, Freon Logistics ("Debtor") entered into two contracts to purchase the Trailers. The first ("Contract 1") is secured by three (3) 2019 Utility 3004R Trailers and the second ("Contract 2") is secured by two (2) 2018 Utility VS2RA Trailers. Doc. #334. Copies of Contracts 1 and 2, as well as their certificates of title for the Trailers, are included with this motion as exhibits. See, *Exs. A-D & F-H*, Docs. ##335-37.

On Contract 1, Debtor missed three pre-petition payments of \$4,551.84 and owes \$14,894.27 to Movant, including late fees, through November 29, 2022. Doc. #334. The total payoff on Contract 1 is \$58,620.82. Movant values the Trailers securing Contract 1 at \$50,345.00 and notes that Debtor may have no equity in the Contract 1 Trailers.

On Contract 2, Debtor missed two pre-petition payments of \$3,201.59 and owes \$6,723.34 to Movant, including late fees, through November 29, 2022. *Id.* The total payoff on Contract 2 is \$35,080.60. Movant values the Trailers securing Contract 2 at \$48,735.00, so Debtor may have equity in the Contract 2 Trailers.

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, it appears that "cause" exists to lift the stay because Debtor has failed to make pre-petition payments on Contracts 1 and 2. Debtor is delinquent \$14,894.27 under Contract 1 and \$6,723.34 under Contract 2.

Since the court intends to grant this motion in part under § 362(d)(1), relief under subsection (d)(2) is moot. The court declines finding that Debtor does not have any equity in the Trailers. However, the Trailers do not appear to be necessary to an effective reorganization because this is a chapter 7 case, the Contract 1 Trailers appear to be undersecured, and the Contract 2 Trailers appear to be oversecured.

Trustee filed non-opposition to this motion and no party in interest opposed. Doc. #599.

Accordingly, this motion will be GRANTED IN PART and the automatic stay will be terminated with respect to the Trailers for cause under 11 U.S.C. § 362(d)(1). The motion will be DENIED AS MOOT IN PART with respect to § 362(d)(2).

The 14-day stay of Rule 4001(a)(3) will be ordered waived because the Trailers are depreciating assets.

3. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[LKW-8](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
1-3-2023 [[428](#)]

FREON LOGISTICS/MV
LEONARD WELSH/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.

Leonard K. Welsh ("Applicant"), general bankruptcy counsel for Freon Logistics ("Debtor"), seeks compensation in the sum of \$33,292.38 on a final basis pursuant to 11 U.S.C. § 330. Doc. #428. This amount consists of \$32,845.00 in fees as reasonable compensation for services rendered and of \$447.38 in reimbursement for actual, necessary expenses from November 8, 2022 through December 14, 2022. *Id.*

Debtor's Secretary and Authorized Representative, Amarinder Singh, executed a statement on January 3, 2023, indicating that Debtor has reviewed the fee application, has determined that it reflects the services rendered by Applicant, and has no objection to payment of the proposed fees and expenses. Doc. #430.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion may be GRANTED.

This motion was filed and served on at least 21 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Fed. R. Bankr. P. 2002(a)(6) 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.

Debtor filed chapter 11 bankruptcy on November 8, 2022. Doc. #1. Applicant's employment as general bankruptcy counsel was authorized pursuant to 11 U.S.C. §§ 327(a) and 329-31 on November 29, 2022, which was retroactively effective as of November 1, 2022. Doc. #112. Compensation was set at the "lodestar rate" applicable at the time services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). *Id.* Funds received by Applicant in connection with this case were deemed to be advanced payments of fees and property of the estate until an order authorizing payment of such funds is entered. Monthly applications for interim compensation under § 331 would be entertained. Applicant's services here were within the time periods authorized under the employment order.

Applicant was paid a retainer of \$55,000.00 from which \$5,938.00 was paid to Applicant for pre-petition fees and expenses. Doc. #428. The remaining balance of \$49,062.00 remains in trust. Applicant seeks to draw on those funds to pay this application.

On December 14, 2022, the court converted this case from chapter 11 to chapter 7 and Jeffrey M. Vetter ("Trustee") was appointed as the chapter 7 trustee. Docs. ##290-91. The application only requests fees up to and including December 14, 2022. Doc. #428.

This is Applicant's first and final fee application. Applicant's firm provided 127.3 billable hours of legal services at the following rates, totaling **\$32,845.00** in fees:

Professional	Rate	Hours	Amount
Leonard K. Welsh	\$400 ²	55.00	\$22,000.00
Trinette Lidgett	\$150 ³	72.30	\$10,845.00
Total Hours & Fees		127.30	\$32,845.00

Ex. B at 3-33, Doc. #432. Applicant also incurred **\$447.38** in expenses:

Filing Fees	\$67.60
WebPACER Charges	\$115.10
Postage	\$264.68
Total Costs	\$447.38

Id. at 34. These combined fees and expenses total **\$33,292.38**.

As noted above, Applicant is currently holding a \$49,062.00 retainer. If applied to the fees requested here, a balance of \$15,769.62 will remain. The court will inquire about the proposed disposition of the remaining retainer.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual,

necessary expenses." 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, considering all relevant factors, including those enumerated in subsections (a) (3) (A) through (E). § 330(a) (3).

Applicant's services included, without limitation: (1) advising Debtor about the administration of a chapter 11 case and its duties as "debtor-in-possession" in a chapter 11 case; (2) preparing and filing employment application (LKW-1); (3) prosecuting a motion to extend the time to file schedules, statement of financial affairs, and other required documents, and preparing and filing the same (LKW-7); (4) communicating with the U.S. Trustee and Debtor about "first day motions" and prosecuting on shortened time (LKW-2) the following motions: (a) motion to assume lease or executory contract to sell accounts receivable (LKW-3), (b) motion to pay administrative expenses (LKW-4), (c) motion to pay pre-petition wages (LKW-5), and (d) motion to maintain pre-petition bank accounts as debtor-in-possession bank accounts (LKW-6); (5) communicating with creditors regarding the automatic stay of collection actions; (6) preparing documents for and attending the Initial Debtor Interview and meeting of creditors; (7) opposing the U.S. Trustee's motion to dismiss or convert case (UST-1); (8) working with Debtor and creditors regarding location and recovery of trucks, trailers, and other stranded property owned by Debtor; (9) communicating with secured creditor about Rule 2004 Examination of Debtor's representative; (10) responding to motions for relief from automatic stay filed by ten secured creditors with respect to vehicles, and opposing one motion for relief from stay with respect to real property; (11) preparing and filing notice of stay of proceedings in state court litigation; (12) communicating with Debtor and the U.S. Trustee regarding insurance coverage; (13) reviewing proofs of claim and advising Debtor about filed claims; and (14) preparing and filing this fee application (LKW-8). Doc. #428; *Ex. B*, Doc. #432. Debtor has consented to payment of the proposed fees. Doc. #430. The court intends to find the services and expenses actual, reasonable, and necessary.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion may be GRANTED. If granted, Applicant will be awarded \$32,845.00 in fees as reasonable compensation for services rendered and \$447.38 in reimbursement of actual, necessary expenses, and Applicant will be authorized to draw \$33,292.38 from the pre-petition retainer. At the hearing, the court will also inquire about the proposed disposition of the \$15,769.62 remaining balance on the retainer.

² The fee application states that Mr. Welsh's hourly rate is \$350.00 per hour, but the time records indicate that Mr. Welsh billed at an hourly rate of \$400.00 per hour. Doc. #428; *cf. Ex. B*, Doc. #432.

³ As above, the fee application states that Ms. Lidgett's hourly rate is \$125.00 per hour, but the time records indicate that Ms. Lidgett billed at an hourly rate of \$150.00 per hour. *Id.*

4. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[MBF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-30-2022 [\[416\]](#)

AVTECH CAPITAL, LLC/MV
LEONARD WELSH/ATTY. FOR DBT.
EVAN STRASSBERG/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Avtech Capital, LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to six (6) semi-tractors. Doc. #416.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") filed two separate non-opposition statements on January 12, and 17, 2023. Docs. #491; #592.

Notwithstanding Trustee's non-opposition, this motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

For motions filed on less than 28 days' notice, LBR 9014-1(f)(2)(C) requires the movant to notify respondents written opposition is not required and any opposition to the motion must be presented at the hearing.

Here, the motion was filed and served on December 30, 2022, and set for hearing on January 24, 2023. Docs. ##416-21. December 30, 2022 is twenty-five (25) days before January 24, 2023. Therefore, this motion was set for hearing on less than 28 days' notice under LBR 9014-1(f)(2). Nevertheless, the notice stated:

This Motion is being heard on regular notice pursuant to Local Bankruptcy Rule [sic] 9014-1. If you wish to oppose this Motion, you must file a written response to this Motion with the Bankruptcy Court and serve a copy of it upon AVT [Movant] no less than fourteen (14) calendar days

before the above hearing and appear at the hearing
on this Motion.

Notice at 2:20-21, 3:1-2, Doc. #417. This is incorrect. Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to LBR 9014-1(f)(2). The notice should have informed respondents that written opposition was not required, and opposition, if any, shall be presented at the hearing. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs. Therefore, the notice was materially deficient because the respondents were told to file and serve written opposition even though it was not necessary. Thus, interested parties may be deterred from opposing at the motion, or from even appearing at the hearing.

For this reason, the motion will be DENIED WITHOUT PREJUDICE.

5. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[ZM-1](#)

MOTION FOR APPROVAL OF STIPULATION TO REJECT AND TERMINATE
DEBTOR'S INTEREST IN UNEXPIRED LEASE
1-3-2023 [\[434\]](#)

DP TOWER I LP/MV
LEONARD WELSH/ATTY. FOR DBT.
JACOB EATON/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order with a copy of the stipulation attached as an exhibit.

DP Tower I LP ("Movant") seeks an order (i) approving the *Stipulation to Reject and Terminate Debtor's Interest in Unexpired Lease* ("Stipulation") executed between Movant, chapter 7 trustee Jeffrey M. Vetter ("Trustee"), and Freon Logistics ("Debtor"), (ii) approving the Trustee's rejection of an unexpired lease concerning the non-residential real property located at 5060 California Avenue, Suite 1200, Bakersfield, California ("Property") between Movant, Debtor, and third-party tenants, and (iii) approving the termination of the Debtor's interest in the lease. Doc. #434.

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

This motion was filed and served on at least 21 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Fed. R. Bankr. P. 2002(a)(2) and (a)(3) 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.

Debtor and two individuals—Hardeep Singh and Amarinder Gorwara aka Amarinder Singh—(collectively "Tenants") entered into an agreement to lease Property from Movant as office space on or about October 21, 2021. Doc. #437. A copy of the lease is attached as an exhibit. See, *Ex. A*, Doc. #436. The Tenants defaulted under the lease pre-petition and the lease has neither expired nor terminated. Doc. #437.

After Debtor filed bankruptcy and this case was converted to chapter 7, Jeffrey M. Vetter ("Trustee") was appointed as the chapter 7 trustee. Trustee investigated and is informed that there are no assets of the estate located on the Property. Doc. #438. In exercising his business judgment, Trustee has determined that the lease should be rejected because (1) no assets of the estate are located on the Property, (2) the Property is not necessary for the administration of the estate, and (3) it is in the best interest of the estate to avoid incurring administrative rent for the premises. *Id.*

11 U.S.C. § 365(a) provides that a trustee may assume or reject any executory contract or unexpired lease of the debtor.

"Executory Contracts" have been defined as "a contract under which the obligations of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other." Countryman, *Executory Contracts in Bankruptcy*, 57 Minn. L. 439, 446 (1973); see also, *In re Robert L. Helms Constr. And Dev. Co.*, 139 F.3d 702, 705 n.7 (9th Cir. 1998).

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession [or trustee] acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted). Here, Trustee has determined that the lease is burdensome and not beneficial to the estate. Since rejection of a lease does not terminate the debtor's interest in the lease, the parties also agreed to terminate Debtor's interest. *In re Genco Shipping & Trading Ltd.*, 550 B.R. 676, 682 (N.Y.S.D. 2015).

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

this motion. If granted, any proposed order shall include an attached copy of the stipulation as an exhibit.

6. [19-10016](#)-B-7 **IN RE: QUALITY FRESH FARMS, INC.**
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF, TAMBERI & WONG, ACCOUNTANT(S)
12-19-2022 [\[135\]](#)

RATZLAFF, TAMBERI & WONG/MV
RILEY WALTER/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.

Ratzlaff Tamberi & Wong ("Applicant"), the certified public accountancy firm engaged by chapter 7 trustee James E. Salven ("Trustee"), seeks final compensation under 11 U.S.C. § 330 in the sum of \$8,656.56. Doc. #135. This amount consists of \$8,509.50 in fees as reasonable compensation for services rendered and \$147.06 in reimbursement for actual, necessary expenses from February 22, 2019 through December 6, 2022. *Id.*

Trustee has received and reviewed the application and supporting documents, opines that the requested compensation is reasonable and necessary for estate administration, and has no objection to the proposed payment. Doc. #139.

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) and Fed. R. Bankr. P. 2002(a)(6). 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 Sys., 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.

As a preliminary matter, the certificates of service filed with this motion do not comply with the local rules. Docs. ##140-41. General Order 22-04 makes LBR 7005-1 effective as of November 1, 2022. Gen. Order 22-04 (Oct. 6, 2022).

LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other pleadings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users using the *Official Certificate of Service Form*, EDC 007-005. Unless six or fewer parties in interest are served, the form shall have attached to it the Clerk of the Court's official matrix, as appropriate: (1) for the case or adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) list of Equity Security Holders. LBR 7005-1(a). The Clerk's Matrix of Creditors shall be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of download. LBR 7005-1(d).

Here, Applicant's certificates of service neither use the correct Form EDC 007-005, nor attach true and correct copies of the Clerk's Matrices of Creditors.⁴ Docs. ##140-41. The official EDC form and the Clerk's Matrices of Creditors are obligatory in contested matters and are available on the court's website and through PACER. Since Movant did not use the official form or Clerk's Matrix downloaded within seven days, the motion fails to comply with LBR 7005-1.

The court has temporarily delayed enforcement of LBR 7005-1 and Gen. Order 22-04 for a short period of time. Motions filed after January 1, 2023 will be required to use the official Form EDC 007-005 and attach a copy of the official Clerk's Matrices of Creditors downloaded within seven days of the filing of the motion. Counsel is advised to review the local rules and ensure procedural compliance in subsequent matters.

Quality Fresh Farms, Inc. ("Debtor") filed chapter 7 bankruptcy on January 4, 2019. Doc. #1. Trustee was appointed as interim trustee on January 8, 2019 and became permanent trustee at the first meeting of creditors on February 14, 2019. Doc. #5. Trustee moved to employ Applicant as the estate's accountant under 11 U.S.C. §§ 327, 330, and 331 on February 28, 2019. Doc. #22. The court approved employment on March 1, 2019, effective January 28, 2019. Doc. #25. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for accounting services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Acceptance of employment was deemed to be an irrevocable waiver by Applicant of all pre-petition claims, if any, against the bankruptcy

estate. *Id.* Applicant's services here were within the time period prescribed by the employment order.

This is Applicant's first and final fee application. Doc. #135. Applicant performed 37.5 billable hours of accounting services at the following rates, totaling **\$8,509.50** in fees:

Professional	Rate	Hours	Total
Chris Ratzlaff (2019-21)	\$225	14.1	\$3,172.50
Chris Ratzlaff (2022)	\$235	20.7	\$4,864.50
Dulce Gill (2020)	\$175	2.7	\$472.50
Total Hours & Fees		37.5	\$8,509.50

Ex. A, Doc. #138. Applicant also incurred **\$147.06** in expenses for postage to notice creditors. *Id.* These combined fees and expenses total **\$8,656.56**.

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." 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, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services included, without limitation: (1) reviewing the petition and trustee's accounting for information relating to tax matters; (2) teleconferencing with Trustee regarding background of corporation and tax related issues, and with shareholders regarding availability of accounting records (3) preparing the federal and state corporation income tax returns and underlying workpapers for the period ending in 2019, 2020, 2021, and 2022; and (4) preparing and filing the final fee application. *Ex. A*, Docs. ##137-38. The court finds the services and expenses actual, reasonable, and necessary. As noted above, Trustee has reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #139.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$8,509.50 in fees and \$147.06 in expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized to pay applicant, in Trustee's discretion, \$8,656.56 for services rendered to and costs incurred for the benefit of the estate from February 22, 2019 through December 6, 2022.

⁴ The first certificate of service did not require the official Matrix of Creditors because fewer than six parties were served.

7. [21-10316](#)-B-7 **IN RE: CABLE LINKS CONSTRUCTION GROUP, INC.**
[ADJ-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FORES MACKO
JOHNSTON, INC. FOR ANTHONY D. JOHNSTON, TRUSTEES ATTORNEY(S)
12-13-2022 [\[100\]](#)

HAGOP BEDOYAN/ATTY. FOR DBT.
ANTHONY JOHNSTON/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.

Anthony D. Johnston of Fores▪Macko▪Johnston, Inc. ("Applicant"),
general counsel for chapter 7 trustee Irma C. Edmonds ("Trustee"),
requests final compensation in the sum of \$1,967.61. Doc. #100. This
amount consists of \$1,462.50 in fees as reasonable compensation for
services rendered and \$505.11 in reimbursement for actual, necessary
expenses from August 23, 2022 through October 25, 2022. *Id.*

Trustee has reviewed the application, has no objections to the
proposed payment, and indicates that the bankruptcy estate currently
has funds on hand in the approximate amount of \$29,328.64. Doc. #102.

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) and Fed. R. Bankr. P.
("Rule") 2002(a)(6). 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 Sys., Inc. v. Heidenthal*, 826 F.2d 915,
917 (9th Cir. 1987). Constitutional due process requires that a
plaintiff make a *prima facie* showing that they are entitled to the
relief sought, which the movant has done here.

Cable Links Construction Group, Inc. ("Debtor") filed chapter 7
bankruptcy on February 9, 2021. Doc. #1. Trustee was appointed as
interim trustee on that same date and became permanent trustee at the

first § 341 meeting of creditors on March 15, 2021. Doc. #2; docket generally. Trustee moved to employ Applicant on September 2, 2022. Doc. #74. The court approved Applicant's employment September 12, 2022, effective August 23, 2022. Doc. #83. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for legal services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Applications for interim compensation under § 331 would be entertained, but no such interim applications have been filed. Applicant's services here were within the time period prescribed by the employment order.

This is Applicant's first and final fee application. Applicant's firm provided 3.9 billable hours at a rate of \$375.00 per hour, totaling **\$1,462.50** in fees. *Exs. A-B*, Docs. ##103-04. Applicant also incurred **\$505.11** in expenses for copies and postage. *Ex. C*, *id.* These combined fees and expenses total **\$1,967.61**.

11 U.S.C. § 330(a)(1)(A) and (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." 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, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services included, without limitation: (1) preparing and filing a motion (ADJ-2) and related documents to give the Trustee authority to pay the 2021 and 2022 Franchise Tax Board income taxes; and (2) preparing and filing the employment (ADJ-1) and fee (ADJ-3; ADJ-4) applications. *Exs. A-B*, Docs. ##103-04. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Trustee has reviewed the application, consents to payment of the requested fees and expenses, and indicates that the estate has approximately \$29,328.64 in funds on hand. Doc. #67.

No party in interest timely filed written opposition to this motion. Accordingly, this motion will be GRANTED. Applicant will be awarded \$1,462.50 in reasonable fees and \$505.11 in actual, necessary expenses on a final basis pursuant to § 330. Trustee will be authorized, in her discretion, to pay Applicant \$1,967.61 on the terms outlined above for services rendered and costs incurred from August 23, 2022 through October 25, 2022.

8. [22-11730](#)-B-7 **IN RE: GARY FRENCH**
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-21-2022 [\[18\]](#)

U.S. BANK NATIONAL
ASSOCIATION/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
DANE EXNOWSKI/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 is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9014-1(e)(2) requires a proof of service, in the form of a certificate of service, to be filed with the Clerk of the court concurrently with the pleadings or documents served, or not more than three days after the papers are filed.

Additionally, General Order 22-04 makes LBR 7005-1 effective as of November 1, 2022. Gen. Order 22-04 (Oct. 6, 2022).

LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other pleadings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users using the *Official Certificate of Service Form*, EDC 007-005. Unless six or fewer parties in interest are served, the form shall have attached to it the Clerk of the Court's official matrix, as appropriate: (1) for the case or adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) list of Equity Security Holders. LBR 7005-1(a). The Clerk's Matrix of Creditors shall be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of download. LBR 7005-1(d).

In this case, no proof of service was filed. Therefore, this motion is DENIED WITHOUT PREJUDICE.

9. [22-11031](#)-B-7 **IN RE: ALEJANDRO ACOSTA-ZUNIGA AND ADRIANA ACOSTA**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-14-2022 [\[29\]](#)

FORD MOTOR CREDIT COMPANY LLC/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
DISCHARGED: 9/27/22, MOTION WITHDRAWN

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

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

Movant Ford Motor Credit Corporation withdrew this motion for relief from the automatic stay on January 11, 2023. Doc. #38. Accordingly, this matter will be removed from calendar pursuant to the withdrawal.

10. [22-11041](#)-B-7 **IN RE: HARJINDER BAINS AND GURSHARAN KOUR**
[GEG-1](#)

MOTION TO AVOID LIEN OF BMO HARRIS BANK, N.A.
12-8-2022 [\[27\]](#)

GURSHARAN KOUR/MV
GLEN GATES/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.

Harjinder Singh Bains and Gursharan Kour (collectively "Debtors") seek to avoid a judicial lien in favor of BMO Harris Bank, N.A. ("Creditor") in the sum of \$53,491.81 and encumbering residential real property located at 5595 W. Farrin Avenue, Fresno, California 93722 ("Property").⁵

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 chapter 7 trustee, 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 Sys., 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.

As a preliminary matter, the exhibits filed in support of this motion do not procedurally comply with the local rules. LBR 9004-2(d)(2) and (d)(3) require the exhibit document to 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. Here, the exhibit pages are not consecutively numbered and, although the exhibit document does contain an index, the index does not identify the page number at which each exhibit is located. Doc. #29. Counsel is advised to review the local rules and ensure procedural compliance in subsequent matters. Future violations of the local rules may result in a motion being denied without prejudice without a hearing.

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 in favor of Creditor against joint debtor Harjinder Bains, an individual, dba Bains Brothers Freight, in the amount of \$53,491.81 on September 8, 2021. *Ex. A*, Doc. #29. The abstract of judgment was issued on November 12, 2021 and was recorded in Fresno County on that same day. *Id.* That lien attached to Debtors' interest in Property. Doc. #30.

As of the petition date, Property had an approximate value of \$577,700.00. *Sched. A/B*, Doc. #1. Property was encumbered by a first deed of trust in favor of Regions Bank in the approximate sum of \$355,472.00. *Sched. D*, *id.* Debtors claimed a homestead exemption in an unspecified amount for "100% of fair market value, up to any applicable statutory limit" under Cal. Code Civ. Proc. ("CCP") § 704.730. CCP § 704.730 provides for the following exemption:

(a) The amount of the homestead exemption is the greater of the following:

(1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).

(2) Three hundred thousand dollars (\$300,000).

(b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers for the prior fiscal year, published by the Department of Industrial Relations.

CCP § 704.730. On January 1, 2022, this exemption was automatically updated to increase the minimum exemption to \$312,600.00, and the maximum countywide median sale price for a single-family home exemption to \$625,200. Without further proof of the countywide median sale price for Fresno County, Debtors are permitted to exempt up to \$312,600.00 here.

Property is encumbered by two liens. The most senior judgment lien is Creditor's lien described above. Property is also encumbered by a junior lien in favor of CIT Bank, N.A., in the amount of \$97,478.77, which was recorded June 13, 2022. See *Ex. A*, Doc. #34. The court is avoiding the CIT Bank lien in matter #11 below. See, GEG-2. Property's encumbrances can be illustrated with the following priorities:

Lienholder	Amount	Recorded	Status
1. Regions Bank	\$355,472.00	11/2019	Unavoidable deed of trust
2. Creditor	\$53,491.81	11/12/21	Avoidable judicial lien
3. CIT Bank	\$97,478.77	06/13/22	Avoided (GEG-2)

When a debtor seeks to avoid multiple liens under § 522(f)(1), the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid*.

CIT Bank's lien must be avoided first because it is junior to Creditor's lien here. In matter #11 below, the court intends to grant Debtors' motion to avoid CIT Bank's junior judicial lien because it impairs Debtors' exemption. After the CIT Bank lien is avoided, Creditor's lien becomes the most junior lien subject to avoidance. Strict application of the § 522(f)(2) formula with respect to Creditor's lien is as follows:

Amount of judgment lien	\$53,491.81
Total amount of unavoidable liens	+ \$355,472.00
Debtors' claimed exemption in Property	+ \$312,600.00
<i>Sum</i>	= \$721,563.81
Debtors' claimed value of interest absent liens	- \$577,700.00
Extent lien impairs exemption	= \$143,863.81

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. The lien avoidance formula can be re-illustrated as follows:

Fair market value of Property	\$577,700.00
Total amount of unavoidable liens	- \$355,472.00
Homestead exemption	- \$312,600.00
Remaining equity for judicial liens	= (\$90,372.00)
Creditor's judicial lien	- \$53,491.81
Extent Debtors' exemption impaired	= (\$143,863.81)

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 Creditor's 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). This motion will be GRANTED. The proposed order shall state that the lien is avoided from the subject Property only and include a copy of the abstract of judgment attached as an exhibit.

⁵ Debtors complied with Fed. R. Bankr. P. 7004(h) by serving David R. Casper, Creditor's CEO, by certified mail on December 8, 2022. Doc. #31.

11. [22-11041](#)-B-7 **IN RE: HARJINDER BAINS AND GURSHARAN KOUR**
[GEG-2](#)

MOTION TO AVOID LIEN OF CIT BANK, N.A.
12-8-2022 [\[32\]](#)

GURSHARAN KOUR/MV
GLEN GATES/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.

Harjinder Singh Bains and Gursharan Kour (collectively "Debtors") seek to avoid a judicial lien in favor of CIT Bank, N.A. ("Creditor") in the sum of \$97,478.77 and encumbering residential real property located at 5595 W. Farrin Avenue, Fresno, California 93722 ("Property").⁶

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 chapter 7 trustee, 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 Sys., 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.

As a preliminary matter, the exhibits filed in support of this motion do not procedurally comply with the local rules. LBR 9004-2(d)(2) and (d)(3) require the exhibit document to 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. Here, the exhibit pages are not consecutively numbered and, although the exhibit document does contain an index, the index does not identify the page number at which each exhibit is

located. Doc. #34. Counsel is advised to review the local rules and ensure procedural compliance in subsequent matters. Future violations of the local rules may result in a motion being denied without prejudice without a hearing.

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 in favor of Creditor against joint debtor Harjinder Singh Bains aka Harjinder Singh dba Bains Brother Freight in the amount of \$97,478.77 on April 7, 2022. *Ex. A*, Doc. #34. The abstract of judgment was issued on June 6, 2022 and was recorded in Fresno County on June 13, 2022. *Id.* That lien attached to Debtors' interest in Property. Doc. #35.

As of the petition date, Property had an approximate value of \$577,700.00. *Sched. A/B*, Doc. #1. Property was encumbered by a first deed of trust in favor of Regions Bank in the approximate sum of \$355,472.00. *Sched. D*, *id.* Debtors claimed a homestead exemption in an unspecified amount for "100% of fair market value, up to any applicable statutory limit" under Cal. Code Civ. Proc. ("CCP") § 704.730. CCP § 704.730 provides for the following exemption:

(a) The amount of the homestead exemption is the greater of the following:

(1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).

(2) Three hundred thousand dollars (\$300,000).

(b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers for the prior fiscal year, published by the Department of Industrial Relations.

CCP § 704.730. On January 1, 2022, this exemption was automatically updated to increase the minimum exemption to \$312,600.00, and the maximum countywide median sale price for a single-family home exemption to \$625,200. Without further proof of the countywide median sale price for Fresno County, Debtors are permitted to exempt up to \$312,600.00 here.

Property is encumbered by two liens. The first is a senior judgment lien in favor of BMO Harris Bank, N.A., in the amount of \$53,491.81, which was recorded on November 12, 2021. *Ex. A, Doc. #29*. A motion to avoid BMO Harris Bank's lien is the subject of matter #10 above. See, GEG-1. Property's encumbrances can be illustrated with the following priorities:

Lienholder	Amount	Recorded	Status
1. Regions Bank	\$355,472.00	11/2019	Unavoidable deed of trust
2. Creditor	\$53,491.81	11/12/21	Avoidable if most junior
3. CIT Bank	\$97,478.77	06/13/22	Avoidable here

When a debtor seeks to avoid multiple liens under § 522(f)(1), the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid*.

Creditor's lien must be avoided first because it is junior to BMO Harris Bank's lien. BMO Harris Bank's lien is avoidable only after it becomes the most junior judgment lien. Strict application of the § 522 formula with respect to Creditor's lien is as follows:

Amount of judgment lien	\$97,478.77
Total amount of unavoidable liens	+ \$408,963.81
Debtors' claimed exemption in Property ⁷	+ \$312,600.00
<i>Sum</i>	= \$819,042.58
Debtor's claimed value of interest absent liens	- \$577,700.00
Extent lien impairs exemption	= \$241,342.58

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. The lien avoidance formula can be re-illustrated as follows:

Fair market value of Property	\$577,700.00
Regions Bank deed of trust	- \$355,472.00
Homestead exemption	- \$312,600.00
Remaining equity for judicial liens	= (\$90,372.00)
BMO Harris Bank's judicial lien	- \$53,491.81
Extent Debtors' exemption impaired	= (\$143,863.81)
Creditor's judicial lien	- \$97,478.77
Extent Debtors' exemption impaired by both liens	= (\$241,342.58)

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 Creditor's 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). This motion will be GRANTED. The proposed order shall state that the lien is avoided from the subject Property only and include a copy of the abstract of judgment attached as an exhibit.

⁶ Debtors complied with Fed. R. Bankr. P. 7004(h) by serving Robert C. Rubino, Creditor's President, by certified mail on December 8, 2022. Doc. #36.

⁷ This amount consists of the sum of the \$355,472 deed of trust in favor of Regions Bank and the \$53,491.81 judgment lien in favor of BMO Harris Bank, which remains unavoidable until all junior liens have been avoided.

12. [22-10060](#)-B-7 **IN RE: CURTIS/CHARTOTTE ALLEN**
[FW-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-14-2022 [\[113\]](#)

PETER FEAR/MV
GABRIEL WADDELL/ATTY. FOR MV.

TENTATIVE RULING: This matter will be called as scheduled.

DISPOSITION: Sustained.

ORDER: The Objecting Party shall submit a proposed order after hearing.

Chapter 7 trustee Peter L. Fear ("Trustee") objects to Curtis James Allen's and Charlotte⁸ Yvette Allen's (collectively "Debtors") claim of exemption in real property located at 4747 West Ashland Avenue, Visalia, CA 93277 ("Property") in the amount of \$260,857.00 pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. Doc. #113. Debtors did not file a response.

No other parties in interest timely filed written opposition. Since Debtors are *pro se*, this matter will be called and proceed as scheduled. The court intends to GRANT this motion.

This objection was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the Debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the sustaining of the objection. *Cf. Ghazali v.*

Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., 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 objector has done here.

Federal Rule of Bankruptcy Procedure 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 Meeting of Creditors is held or within 30 days after any amendment to *Schedule C* is filed, whichever is later.

Debtors filed chapter 13 bankruptcy on January 17, 2022. Doc. #1. The first § 341 meeting was held on February 1, 2022, continued to March 22, 2022, and continued again to April 27, 2022, at which time it concluded. See docket generally. The chapter 13 trustee moved to dismiss or convert the case for unreasonable delay that is prejudicial to creditors, failure to file complete and accurate schedules, and failure to disclose surplus proceeds from a pre-petition foreclosure sale totaling approximately \$130,000. Doc. #61. At the hearing, the court converted the case to chapter 7 on July 20, 2022. Doc. #63.

The same day as conversion, Trustee was appointed as interim trustee and the 341 meeting of creditors for the chapter 7 case was first set for August 29, 2022. *Id.*; Doc. #64. The 341 meeting was held on and/or continued to August 29, 2022, September 29, 2022, October 31, 2022, December 12, 2022, and January 23, 2023. The January 23, 2023 meeting will occur before the hearing on this motion, but as of this writing it has not. Trustee filed this objection on December 14, 2022, which is within the 30-day time period of the continued meeting of creditors.

Trustee objects because Property was sold at a foreclosure sale on January 7, 2022, which was prior to filing bankruptcy. Doc. #115. Trustee included a true and correct copy of the recorded *Trustee's Deed Upon Sale* as an exhibit. See *Ex. A*, Doc. #116.

Debtors claimed a \$260,857.00 exemption in Property pursuant to CCP § 704.730, which provides:

(a) The amount of the homestead exemption is the greater of the following:

(1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).

(2) Three hundred thousand dollars (\$300,000).

(b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual

California Consumer Price Index for All Urban Consumers for the prior fiscal year, published by the Department of Industrial Relations.

CCP § 704.730. On January 1, 2022, this exemption was automatically updated to increase the minimum exemption to \$312,600.00, and the maximum countywide median sale price for a single-family home exemption to \$625,200.00 based on the change in the annual Consumer Price Index (4.2%).

The Eastern District of California Bankruptcy Court in *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015), held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [relevant California law] and the extent to which that exemption applies." Debtors here did not oppose the objection and have presented no evidence to the contrary of Trustee's assertion.

CCP 704.710 (a) defines "Dwelling" as a place where a person resides. "Homestead" means "the principal dwelling in which the judgment debtor . . . resided on the date the judgment creditor's lien attached to the dwelling. . . ." CCP § 704.710 (c). For purposes of our analysis the relevant date is the petition date.

The bankruptcy court decides the merits of state exemptions, but the validity of the exemption is controlled by California law. *LaFortune v. Naval Weapons Ctr. Fed. Credit Union (In re LaFortune)*, 652 F.2d 842, 846 (9th Cir. 1981). The filing of the petition serves as both a hypothetical levy and the operative date of the exemption. See, *Wolfe v. Jacobson (In re Jacobson)*, 676 F.3d 1193, 1199 (9th Cir. 2012) ("bankruptcy exemptions are fixed at the time of the bankruptcy petition"). When exemptions are determined by state law, "'it is the entire state law applicable on the filing date that is determinative' of whether the exemption applies." *Id.* (citation omitted).

Under California law, the relevant factors for determining if a debtor resides in a property are the physical fact of occupancy of the property and the debtor's intention to live there. *Kelly v. Locke (In re Kelley)*, 300 B.R. 11, 21 (B.A.P. 9th Cir. 2003), citing *Ellsworth v. Marshall*, 196 Cal. App. 2d 471, 474 (1961).

Based on the record, it appears that Property was sold at foreclosure sale on January 7, 2022 for \$310,100.00, which is before this bankruptcy case was filed. *Ex. A*, Doc. #116. Accordingly, this objection will be SUSTAINED.

⁸ At the September 22, 2021 hearing on Debtors' motion to extend the automatic stay in their prior bankruptcy, Case No. 21-12079, Debtors' attorney indicated that the petition misspelled joint debtor Charlotte Allen's name as "Chartotte".

13. [21-10762](#)-B-7 **IN RE: STEVEN/SANDRA SLUMBERGER**
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG, ACCOUNTANT(S)
12-19-2022 [\[80\]](#)

RATZLAFF TAMBERI & WONG/MV
PETER FEAR/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.

Ratzlaff Tamberi & Wong ("Applicant"), the certified public accountancy firm engaged by chapter 7 trustee James E. Salven ("Trustee"), seeks final compensation under 11 U.S.C. § 330 in the sum of \$7,980.80. Doc. #80. This amount consists of \$7,872.50 in fees as reasonable compensation for services rendered and \$108.30 in reimbursement for actual, necessary expenses from April 2, 2021 through November 30, 2022. *Id.*

Trustee has received and reviewed the application and supporting documents, opines that the requested compensation is reasonable and necessary for estate administration, and has no objection to the proposed payment. Doc. #83.

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) and Fed. R. Bankr. P. 2002(a)(6). 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 Sys., 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.

As a preliminary matter, the certificates of service filed with this motion do not comply with the local rules. Docs. ##85-86. General

Order 22-04 makes LBR 7005-1 effective as of November 1, 2022. Gen. Order 22-04 (Oct. 6, 2022).

LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other pleadings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users using the *Official Certificate of Service Form*, EDC 007-005. Unless six or fewer parties in interest are served, the form shall have attached to it the Clerk of the Court's official matrix, as appropriate: (1) for the case or adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed Requests for Special Notice; and/or (4) list of Equity Security Holders. LBR 7005-1(a). The Clerk's Matrix of Creditors shall be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of download. LBR 7005-1(d).

Here, Applicant's certificates of service neither use the correct Form EDC 007-005, nor attach true and correct copies of the Clerk's Matrices of Creditors.⁹ Docs. ##85-86. The official EDC form and the Clerk's Matrices of Creditors are obligatory in contested matters and are available on the court's website and through PACER. Since Movant did not use the official form or Clerk's Matrix downloaded within seven days, the motion fails to comply with LBR 7005-1.

The court has temporarily delayed enforcement of LBR 7005-1 and Gen. Order 22-04 for a short period of time. Motions filed after January 1, 2023 will be required to use the official Form EDC 007-005 and attach a copy of the official Clerk's Matrices of Creditors downloaded within seven days of the filing of the motion. Counsel is advised to review the local rules and ensure procedural compliance in subsequent matters.

Steven Norman Slumberger and Sandra Sims Slumberger (collectively "Debtors") filed chapter 7 bankruptcy on March 20, 2021. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first meeting of creditors on April 22, 2021. Doc. #3. Trustee moved to employ Applicant as the estate's accountant under 11 U.S.C. §§ 327, 330, and 331 on April 2, 2021. Doc. #7. The court approved employment on April 20, 2021, effective March 2, 2021. Doc. #16. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for accounting services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Acceptance of employment was deemed to be an irrevocable waiver by Applicant of all pre-petition claims, if any, against the bankruptcy estate. *Id.* Applicant's services here were within the time period prescribed by the employment order.

This is Applicant's first and final fee application. Doc. #80. Applicant performed 33.5 billable hours of accounting services at a rate of \$235.00 per hour, totaling **\$7,872.50** in fees. *Ex. A*, Doc. #84.

Applicant also incurred **\$108.30** in expenses for postage to notice creditors. *Id.* These combined fees and expenses total **\$7,980.80**.

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." 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, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services included, without limitation: (1) reviewing the petition and trustee's accounting for information relating to tax matters; (2) meeting with Trustee regarding investment interests and property interests held by estate and reviewing prior tax returns; (3) preparing the federal and state fiduciary income tax returns and underlying workpapers for the period ending in 2021 and 2022; and (4) preparing and filing the final fee application. Doc. #82; *Ex. A*, Doc. #84. The court finds the services and expenses actual, reasonable, and necessary. As noted above, Trustee has reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #83.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$7,872.50 in fees and \$108.30 in expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized to pay applicant, in Trustee's discretion, \$7,980.80 for services rendered to and costs incurred for the benefit of the estate from April 2, 2021 through November 30, 2022.

⁹ The first certificate of service did not require the official Matrix of Creditors because fewer than six parties were serviced.

14. [22-11170](#)-B-7 **IN RE: DOUA YANG**
[APN-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-16-2022 [\[84\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
AUSTIN NAGEL/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.

Toyota Motor Credit ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2021 Toyota Camry H ("Vehicle"). Doc. #84. Doua Yang ("Debtor") did not oppose.

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 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 Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has failed to make at least three (3) post-payments totaling \$1,485.77. Movant has produced evidence that Debtor owes an outstanding balance of \$25,272.01. Docs. ##86-87.

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

15. [22-11999](#)-B-7 **IN RE: CHARITY PEREZ**
[MMJ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-15-2022 [\[13\]](#)

CAPITAL ONE AUTO FINANCE/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
MARJORIE JOHNSON/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Capital One Auto Finance ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2021 Mitsubishi Outlander Sport S. Sport Utility 4D. Doc. #13. Movant also requests waiver of the 14-day of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3).

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR") and Rules 4001, 9014, and 7004.

First, chapter 7 trustee Jeffrey M. Vetter ("Trustee") was not properly served.

Rule 4001(a)(1) 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. Since this motion will affect property of the estate, Trustee must be served in accordance with Rule 7004.

Rule 7004 allows service in the United States by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business[.]" Rule 7004(b)(1). Electronic service is precluded here because Rule 9036 "does not apply to any paper required to be served in accordance with Rule 7004." Rule 9036(e).

Here, the certificate of service states that the trustee was served by "Electronic Service" under Federal Rule of Civil Procedure ("Civ. Rule") 5(b)(2)(E), *as incorporated by* Rules 7005 and 9036. Doc. #19 at 5. Trustee received electronic service only and should have been served by mail as the representative of the estate's interest, which would be impaired if the relief sought is granted.

On page 4 of the certificate of service, the "U.S. Mail" box is checked at 6B2 but not 6B1 Electronic Service on Registered e-Filers. Movant's Attachment 6B2a includes a list of electronic service email addresses.

Second, 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 of hearing omitted such required names and addresses. Doc. #14.

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