

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, January 26, 2021
Place: Department B - Courtroom #13
Fresno, California

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

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

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

RENO FERNANDEZ/ATTY. FOR DBT.

NO RULING.

2. [20-10800](#)-B-11 **IN RE: 4-S RANCH PARTNERS, LLC**
[MF-9](#)

CONFIRMATION HEARING RE: CHAPTER 11 PLAN
8-28-2020 [[181](#)]

RENO FERNANDEZ/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Debtor-in-possession 4-S Ranch Partners, LLC ("DIP"), filed its Plan of Reorganization and Disclosure Statement on August 28, 2020. Doc. #181; #182. The Disclosure Statement was approved on October 22, 2020. Doc. #314.

On December 8, 2020, DIP and secured creditor Sandton Credit Solutions Master Fund IV ("Sandton") stipulated regarding Sandton's motions for relief from the automatic stay. Doc. #344. The stipulation was approved on December 9, 2020 and provided Sandton with stay relief effective April 1, 2021 unless it is paid in full prior to that date. Doc. #344; #346.

The stipulation modified statements presented in the plan and thus, on December 22, 2020, DIP withdrew the plan and anticipates filing an amended plan and disclosure statement promptly. Doc. #359. Accordingly, this matter will be dropped from calendar and the confirmation hearing will be dismissed.

3. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**

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

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Continued to February 23, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

Debtor-in-possession Stephen William Sloan ("DIP") filed an amended plan and disclosure statement on January 12, 2021. See FW-9. The hearing to approve the amended disclosure statement is scheduled for February 23, 2021 at 9:30 a.m. Doc. #308. Accordingly, this status conference will be continued to February 23, 2021 at 9:30 a.m. to be heard in conjunction with the amended disclosure statement.

4. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[FW-6](#)

CONTINUED AMENDED CHAPTER 11 DISCLOSURE STATEMENT FILED BY
DEBTOR STEPHEN WILLIAM SLOAN
8-28-2020 [[222](#)]

PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Debtor-in-possession Stephen William Sloan ("DIP") filed his plan and disclosure statement on August 28, 2020. Doc. #220; #222.

On December 8, 2020, DIP and secured creditor Sandton Credit Solutions Master Fund IV ("Sandton") stipulated to grant relief from the automatic stay, effective April 1, 2021 unless Sandton is paid in full prior to that date.

The stipulation modified assumptions on which the plan and disclosure statement are based and thus, on December 18, 2020, DIP withdrew the plan. Doc. #305. On January 12, 2021, DIP filed an amended plan and disclosure statement. See FW-9. The amended disclosure statement is set to be heard on February 23, 2021 at 9:30 a.m. Doc. #308. Accordingly, this matter will be dropped from calendar and the hearing will be dismissed.

5. [20-13855](#)-B-11 **IN RE: MOHOMMAD KHAN**

STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
12-15-2020 [[1](#)]

NO RULING.

6. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[GL-1](#)

CONTINUED MOTION TO FILE AMENDED PROOF OF CLAIM
8-25-2020 [[2258](#)]

DEPARTMENT OF HEALTH CARE
SERVICES/MV
RILEY WALTER/ATTY. FOR DBT.
GRANT LIEN/ATTY. FOR MV.
CONT'D TO 3/30/21 PER ECF ORDER #2371

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

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

NO ORDER REQUIRED.

Per this court's previous order, this motion was continued to January 26, 2021, the discovery completion deadline was set for December 31, 2020, further response by Tulare Local Healthcare District (the "District") was due not later than January 12, 2021, and a reply by the Department of Health Care Services ("DHCS") was due not later than January 19, 2021. Doc. #2320. The District's related objection to proof of claim #197 is also scheduled for January 26, 2021 in matter #12 below. See WJH-4.

After locating additional documents too voluminous to review and produce by the discovery completion deadline, the District and DHCS stipulated to a two-month continuance of the discovery completion date to February 26, 2021. Doc. #2371. Moreover, the parties stipulated to continue the hearing on this matter to March 30, 2021 at 9:30 a.m., with the District's further response due fourteen days before the hearing, and DHCS' reply due seven days before the hearing. *Id.*

Accordingly, on January 5, 2021, this court issued an order continuing the matter to March 30, 2021 at 9:30 a.m. *Id.* The District's further response shall be due not later than March 16, 2021 and DHCS' reply shall be due not later than March 23, 2021. *Id.*

7. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-18](#)

CONTINUED SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF
TULARE HOSPITALIST GROUP, CLAIM NUMBER 231
1-8-2020 [[1784](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 3/30/21 PER EF ORDER #2365. RESPONSIVE PLEADING.

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

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

NO ORDER REQUIRED.

Due to ongoing discussions between counsel, Tulare Local Healthcare District (the "District") and Tulare Hospitalist Group ("THG") stipulated to continue the hearing on this objection to March 30, 2021 at 9:30 a.m. Doc. #2365.

On December 21, 2020, this court issued an order continuing the objection to March 30, 2021 at 9:30 a.m. *Id.* Per the stipulation, the District's counsel shall file a status report not later than March 23, 2021. *Id.*

8. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-19](#)

CONTINUED SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF
GUPTA-KUMAR MEDICAL PRACTICE, CLAIM NUMBER 232
1-8-2020 [[1789](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 3/30/21 PER EF ORDER #2366. RESPONSIVE PLEADING.

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

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

NO ORDER REQUIRED.

Due to ongoing discussions between counsel, Tulare Local Healthcare District (the "District") and Gupta-Kumar Practice Associates, Inc. ("Gupta"), stipulated to continue the hearing on this objection to March 30, 2021 at 9:30 a.m. Doc. #2366.

On December 21, 2020, this court issued an order continuing the objection to March 30, 2021 at 9:30 a.m. *Id.* Per the stipulation, the District's counsel shall file a status report not later than March 23, 2021. *Id.*

9. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-25](#)

CONTINUED SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF
INPATIENT HOSPITAL GROUP, INC., CLAIM NUMBER 230
1-10-2020 [[1834](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 3/30/21 PER EF ORDER #2367. RESPONSIVE PLEADING.

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

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

NO ORDER REQUIRED.

Due to ongoing discussions between counsel, Tulare Local Healthcare District (the "District") and Inpatient Hospital Group, Inc. ("Inpatient"), stipulated to continue the hearing on this objection to March 30, 2021 at 9:30 a.m. Doc. #2367.

On December 21, 2020, this court issued an order continuing the objection to March 30, 2021 at 9:30 a.m. *Id.* Per the stipulation, the District's counsel shall file a status report not later than March 23, 2021. *Id.*

10. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-4](#)

CONTINUED OBJECTION TO CLAIM OF DEPARTMENT OF HEALTH CARE
SERVICES, CLAIM NUMBER 197
7-1-2019 [[1512](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
CONT'D TO 3/30/21 PER ECF ORDER #2371. RESPONSIVE PLEADING.

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

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

NO ORDER REQUIRED.

Tulare Local Healthcare District's (the "District") objection to the Department of Health Care Services' ("DHCS") proof of claim #197 was previously continued to January 26, 2021. Doc. #2342. DHCS filed a related motion for leave to amend proof of claim #197, which is also scheduled for January 26, 2021 in matter #6 above. See GL-1.

As mentioned in our ruling above, the parties located additional documents too voluminous to review and produce by the discovery

completion deadline. Consequently, the parties stipulated to continue the following with respect to the related motion: (1) the discovery completion date to February 26, 2021, (2) the hearing to March 30, 2021, and (3) the District's response and DHCS' reply deadlines. Doc. #2371.

The parties likewise stipulated to continue the hearing on this objection to March 30, 2021 at 9:30 a.m. to be heard in conjunction with the motion for leave to file an amended proof of claim. *Id.* On January 5, 2021, this court issued an order continuing this objection to March 30, 2021 at 9:30 a.m. *Id.*

11. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-43](#)

OBJECTION TO CLAIM OF ANN MILLER, CLAIM NUMBER 274
12-9-2020 [[2359](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

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

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(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 amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

Tulare Local Healthcare District (the "District") objects to proof of claim #274 in the amount of \$15,342.76 for unpaid wages and penalties filed by Ann Miller ("Claimant") on November 23, 2020. Doc. #2359. Claimant did not timely file opposition.

This objection will be SUSTAINED.

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under section 501, is deemed allowed, unless a party in interest objects.

Federal Rule of Bankruptcy Procedure 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute *prima facie* evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000).

Here, the District objects to claim #274 on the basis that Claimant has not ever been employed by the District because it does not have any employees, and Claimant was instead an employee of Healthcare Conglomerate Associates, LLC ("HCCA"), a company that has engaged in business with the District. Doc. #2359. Previously, this court granted the District's motion to reject its Management Services Agreement with HCCA on November 1, 2017. Doc. #174. Moreover, this court entered an order on January 26, 2018 that set April 10, 2018 as the claims bar date in this case. See Doc. #377. Claimant filed her claim on November 23, 2020, which is more than a year and a half late. Claim #274.

Therefore, for the foregoing reasons claim #274 filed by Ann Miller will be disallowed in its entirety.

11:00 AM

1. [20-13588](#)-B-7 **IN RE: RIGOBERTO/GUADALUPE BERNAL**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION
1-5-2021 [[14](#)]

NO RULING.

1:30 PM

1. [20-12404](#)-B-7 IN RE: WILLIAM LOPEZ
[IF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-16-2020 [\[31\]](#)

MIKEIAH HARGRETT/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
IGOR FRADKIN/ATTY. FOR MV.
DISCHARGED 10/22/20

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion was filed on 28 days' notice pursuant to Local Rule of Practice 9014-1(f)(1).¹ Mikeiah Dshae Hargrett and Eryka Cohen ("Movants") seek relief from the automatic stay to pursue a non-bankruptcy lawsuit involving William Lopez ("Debtor") and his insurer in Merced Superior Court. Doc. #31.

This matter will be DENIED WITHOUT PREJUDICE for failure to comply with the local rules.

First, Rule 4001(a) requires motions for relief from the automatic stay to be "made in accordance with Rule 9014[.]" Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. Meanwhile, Rule 9036 governs notice and service generally, and provides:

Whenever these rules require or permit sending a notice or serving a paper by mail, the clerk, or some other person as the court or these rules may direct, may send the notice to—or serve the paper on—a registered user by filing it with the court's electronic-filing system. Or it may be sent to any person by other electronic means that the person consented to in writing. In either of these events, service or notice is complete upon filing or sending but it is not effective if the filer or sender receives notice that it did not reach the person to be served. ***This rule does not apply to any pleading or other paper required to be served in accordance with Rule 7004.***

Rule 9036 (emphasis added). Rule 7004 allows service in the United States by first class mail by "mailing a copy of the summons and

¹ Unless otherwise indicated, references to "LBR" will be to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District of California; "Rules" will be to the Federal Rules of Bankruptcy Procedure; and "Civil Rule" will be to the Federal Rules of Civil Procedure.

complaint to . . . the place where the individual regularly conducts a business" and "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 7004(b)(1), (b)(3). Though not applicable here, if the United States trustee is acting solely as trustee, then "by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending." Rule 7004(b)(10). And if the United States trustee is sued or otherwise a party to litigation unrelated to its capacity as trustee, then the requirements of 7004(b)(5) also apply. 10 Collier on Bankruptcy App. 7004[3] (16th 2020).

Here, the certificate of service indicates that chapter 7 trustee David Souza ("Trustee") and Debtor's bankruptcy and state court attorneys, Eric P. Escamilla and Larry H. Shapazian, respectively, were served electronically. Doc. #26. No email addresses were listed. Debtor and the United States Trustee ("UST") were not served. *Id.*

Debtor and his attorneys must be served by mail in accordance with Rule 7004. Because this motion will affect property of the estate, Trustee must also be served in accordance with Rule 7004. Rule 7004, which is applicable for relief from stay motions under Rules 4001 and 9014, is specifically precluded from electronic service by Rule 9036. This service requirement is not subject to waiver under Civil Rule 4(d). See Rule 7004(a)(1). Thus, the Movants must serve the Debtor, his attorneys, and the chapter 7 Trustee in conformance with Rule 7004.

Additionally, the Movants must serve or notify the UST, who may raise, appear, and be heard on any issue in any case under 11 U.S.C. § 307. Because relief is not being sought against the UST, electronic notification under Rule 7005 and LBR 7005-1 will be sufficient, as discussed below.

Second, LBR 7005-1(a) allows service by electronic means pursuant to Civil Rule 5(b)(2)(E), as made applicable to Rule 7005, which typically only applies to pleadings filed after the original complaint and other papers specified in Civil Rule 5(a)(1). LBR 7005-1(d) states, in relevant part:

1) Upon Those Parties Consenting to Service by Electronic Means. Service by electronic means pursuant to Fed. R. Civ. P. 5(b)(2)(E) shall be accomplished by transmitting an email which includes as a PDF attachment the document(s) served. The subject line of the email shall include the words "Service Pursuant to Fed. R. Civ. P. 5," and the first line of the email shall include the case or proceeding name and number and the title(s) of the document(s) served.

. . .

3) Certificate of Service. The certificate of service shall include all parties served, whether by electronic or conventional means. Where service was accomplished by

electronic means, the certificate of service shall include the email addresses to which the document(s) were transmitted, and the party, if any, whom the recipient represents.

LBR 7005-1(d)(1), (d)(3). Here, the certificate of service indicates that the enumerated parties were served by email. The certificate of service stated:

BY EMAIL: Pursuant to Rule 12(b) of the California Rules of Court, Appendix I, Emergency Rules Related to COVID-19, I served true and correct copies of the above-listed documents via electronic mail to each email address listed above, and served the documents from my electronic service address[.]

Doc. #36. This does not comply with LBR 7005-1(a)(3) because it does not include the email addresses of the parties served. As noted above, the Debtor, his attorneys, and the Trustee must be served as required by Rule 7004. Electronic service may be made on the UST, but that electronic service must comply with LBR 7005-1(d)(3) and include the UST's email address.

Third, the amended notice was filed concurrently with the certificate of service. LBR 9004-2(c)(1) and (e)(1) requires that notices, proofs of service, *inter alia*, to be filed as separate documents. LBR 9004-2(e)(2) specifically requires that copies of the pleadings and documents served "SHALL NOT be attached to the proof of service filed with the court." Here, the amended notice contained its proof of service. Both should have been filed separately.

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

2. [20-13936](#)-B-7 **IN RE: SANDY WILLIAMS**
[DAT-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-8-2021 [[14](#)]

SUSAN BARRIE/MV
ANH TRINH/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion was filed on less than 28 days' notice pursuant to Local Rule of Practice 9014-1(f)(2).² Susan Barrie and Chris Grossman

² Unless otherwise indicated, references to "LBR" will be to the Local Rules of Practice for the United States Bankruptcy Court, Eastern District

("Movants") seek relief from the automatic stay to pursue an unlawful detainer action to evict Sandy Williams ("Debtor") from 105 Willow Hill Ct., Los Gatos, CA 95032 ("Property"). Doc. #14.

This matter will be DENIED WITHOUT PREJUDICE for failure to comply with the local rules.

First, Rule 4001(a) requires motions for relief from the automatic stay to be "made in accordance with Rule 9014[.]" Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. Meanwhile, Rule 9036 governs notice and service generally, and provides:

Whenever these rules require or permit sending a notice or serving a paper by mail, the clerk, or some other person as the court or these rules may direct, may send the notice to—or serve the paper on—a registered user by filing it with the court's electronic-filing system. Or it may be sent to any person by other electronic means that the person consented to in writing. In either of these events, service or notice is complete upon filing or sending but it is not effective if the filer or sender receives notice that it did not reach the person to be served. ***This rule does not apply to any pleading or other paper required to be served in accordance with Rule 7004.***

Rule 9036 (emphasis added). 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" and "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 7004(b)(1), (b)(3). Though not applicable here, if the United States trustee is acting solely as trustee, then "by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending." Rule 7004(b)(10). And if the United States trustee is sued or otherwise a party to litigation unrelated to its capacity as trustee, then the requirements of 7004(b)(5) also apply. 10 Collier on Bankruptcy App. 7004[3] (16th 2020).

Here, the certificate of service indicates that chapter 7 trustee Jeffrey M. Vetter ("Trustee") and the United States Trustee ("UST") were served "BY ELECTRONIC FILING[.]" Doc. #19.

Because this motion will affect property of the estate, Trustee must be served in accordance with Rule 7004. Rule 7004, which is applicable for relief from stay motions under Rules 4001 and 9014, is specifically precluded from electronic service by Rule 9036. This service requirement is not subject to waiver under Civil Rule 4(d).

of California; "Rules" will be to the Federal Rules of Bankruptcy Procedure; and "Civil Rule" will be to the Federal Rules of Civil Procedure.

See Rule 7004(a)(1). Thus, the Movants must serve the chapter 7 Trustee in conformance with Rule 7004.

UST was also served electronically. Doc. #19. Because relief is not being sought against the UST, electronic service under Rule 7005 is sufficient if it complies with LBR 7005-1 as discussed below.

Second, LBR 7005-1(a) allows service by electronic means pursuant to Civil Rule 5(b)(2)(E), as made applicable by Rule 7005, which typically only applies to pleadings filed after the original complaint and other papers described in Civil Rule 5(a)(1). LBR 7005-1(d) states, in relevant part:

1) Upon Those Parties Consenting to Service by Electronic Means. Service by electronic means pursuant to Fed. R. Civ. P. 5(b)(2)(E) shall be accomplished by transmitting an email which includes as a PDF attachment the document(s) served. The subject line of the email shall include the words "Service Pursuant to Fed. R. Civ. P. 5," and the first line of the email shall include the case or proceeding name and number and the title(s) of the document(s) served.

. . .

3) Certificate of Service. The certificate of service shall include all parties served, whether by electronic or conventional means. Where service was accomplished by electronic means, the certificate of service shall include the email addresses to which the document(s) were transmitted, and the party, if any, whom the recipient represents.

LBR 7005-1(d)(1), (d)(3). Here, the certificate of service indicates that UST was served by email. Doc. #19. This does not comply with LBR 7005-1(a)(3) because it does not include UST's email address. Debtor, Trustee, and any other parties against whom relief is being sought must be served as required by Rule 7004. Electronic service may be made on the UST, but that electronic service must comply with LBR 7005-1(d)(3) and include the UST's email address in the certificate of service.

Third, LBR 9004-2(d) requires that exhibits shall be filed as a separate document, contain an exhibit index, and include exhibit pages that are consecutively numbered. Here, although the exhibits were properly filed as a separate document, the exhibits did not contain an exhibit index and were not consecutively numbered. Doc. #17.

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

The court notes that even if the procedural defects are ignored, relief under § 362(d)(4) may not be available because Movants do not appear to be creditors whose claim is secured by an interest in such real property with respect to the Debtor. Debtor lists Property as her mailing address and does not appear to claim any interest in Property. Doc. #1, ¶ 5; # Relief is still available under

§§ 362(d)(1) and (d)(2), but it will not be binding and effective in any bankruptcy filing in any other case purporting to affect such property for two years after the date of the entry of such order.

3. [20-13347](#)-B-7 **IN RE: RUBEN/STACY HERNANDEZ**
[JES-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-14-2020 [\[28\]](#)

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

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection was set for hearing on 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1).

Chapter 7 trustee James Salven ("Trustee") objects to a \$1,570.00 exemption applied to a 1979 Marlin 15 ft. boat ("Property") under California Code of Civil Procedure ("C.C.P.") § 704.010 and claimed by Ruben Hernandez Jr. and Stacy Hernandez ("Debtors"). Doc. #28.

This objection will be OVERRULED AS MOOT.

Federal Rule of Bankruptcy Procedure 4003(b) allows a party in interest to file an objection to a claimed 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. Here, the § 341 meeting was concluded on November 19, 2020 and this objection was filed on December 14, 2020, which is within the 30-day timeframe.

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 [property] claimed as exempt in Schedule C is exempt under [California law] and the extent to which that exemption applies."

Trustee objects on the basis that only "motor vehicles" may be exempted under C.C.P. § 704.010. Doc. #28. Boats, Trustee contends, are not motor vehicles for the purposes of that section. In support, Trustee quotes § 704.010(c): "For purposes of determining equity, the fair market value of a motor vehicle shall be determined by reference to used car price guides customarily used by California automobile dealers unless the motor vehicle is not listed in such price guides." *Id.*

However, on the same day Trustee filed this objection, Debtors modified Schedules A/B and C. *See* Doc. #26. Schedule C now omits Property entirely from Debtors' exempted property. *Id.*

Therefore, this objection will be OVERRULED AS MOOT.

4. [20-13754](#)-B-7 **IN RE: RUBEN QUINTERO HERRERA AND MARIA QUINTERO**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-18-2020 [\[15\]](#)

TD AUTO FINANCE LLC/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtors filed non-opposition on December 28, 2020. Doc. #24. 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 amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, TD Auto Finance LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2019 Dodge Durango ("Vehicle"). Doc. #15.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors have failed to make five pre-petition payments and at least one post-petition payment. The movant has produced evidence that debtors are delinquent at least \$5,140.02, plus late fees of \$214.15 and recovery fees of \$400.00, for a total of \$5,754.17. Doc. #18, #20.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtors are in chapter 7. *Id.* The Vehicle is valued at \$28,525.00 and debtor owes \$53,496.72.00. Doc. #18, #19.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtors have failed to make five pre-petition payments and at least one post-petition payment to Movant and Movant recovered Vehicle pre-petition on November 18, 2020.

5. [20-13178](#)-B-7 **IN RE: JOHN/WINONA VINCENT**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-4-2020 [\[18\]](#)

NISSAN MOTOR ACCEPTANCE
CORPORATION/MV
SCOTT LYONS/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
CONT'D TO 2/9/21 WITHOUT ORDER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice unless the moving party appears and orally requests a continuance to February 9, 2021 at 1:30 p.m.

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

The movant's notice of hearing on the motion for relief from the automatic stay was filed on December 4, 2020 (Doc. #19), in compliance with LBR 9014-1(f)(1), setting the matter for hearing on January 26, 2021 at 1:30 p.m. On January 7, 2021, the movant filed an amended notice of hearing, continuing the matter to February 9, 2021 at 1:30 p.m.

As required by LBR 9014-1(j), continuances of hearings must be approved by the Court. Upon review of the docket prior to the hearing, the court made note that no written application to continue the matter had been filed. A request for continuance may be made orally at the hearing. If the movant fails to appear at the scheduled hearing on January 26, 2021 at 1:30 a.m., the motion will be DENIED WITHOUT PREJUDICE.