

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Thursday, April 28, 2022  
Place: Department B – Courtroom #13  
Fresno, California

*The court resumed in-person courtroom proceedings in Fresno ONLY on June 28, 2021. Parties may still appear telephonically provided that they comply with the court's telephonic appearance procedures. For more information click [here](#).*

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

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

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

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

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

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

11:00 AM

1. [22-10207](#)-B-7      **IN RE: ALEJANDRA JIMENEZ-MAGALLON**

PRO SE REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION  
4-6-2022    [[20](#)]

NO RULING.

1:30 PM

1. [22-10407](#)-B-7     **IN RE: LISA HARROLD**  
[JHK-1](#)

RESCHEDULED MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-23-2022    [[12](#)]

AMERICREDIT FINANCIAL  
SERVICES, INC./MV  
JOEL WINTER/ATTY. FOR DBT.  
JOHN KIM/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.

Americredit Financial Services, Inc. DBA GM Financial ("Movant"),  
seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and  
(d)(2) with respect to a 2018 Ford Focus ("Vehicle"). Doc. #12.

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 court rescheduled the  
hearing by notice filed on April 5, 2022. Doc. #21. 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).

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least four (4) payments. The movant has produced evidence that debtor is delinquent at least \$1,729.43. Doc. #18.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. *Id.* The Vehicle is valued at \$15,550.00 and debtor owes \$18,208.18. Docs. #14, #18.

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.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least four (4) payments to Movant and the Vehicle is a depreciating asset. No other relief is awarded.

2. [22-10411](#)-B-7     **IN RE: JEFFREY ROPER**  
[LKW-1](#)

RESCHEDULED MOTION TO AVOID LIEN OF LENDMARK FINANCIAL  
SERVICES, LLC  
3-23-2022     [\[10\]](#)

JEFFREY ROPER/MV  
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION:     Denied without prejudice.

ORDER:     The court will issue an order.

Jeffrey Glenn Roper ("Debtor") seeks to avoid a non-possessory, non-purchase money security interest ("PMSI") in favor of Lendmark Financial Services, LLC ("Creditor") in the amount of \$9,036.50 and encumbering a 1999 Dodge Dakota motor vehicle ("Vehicle").<sup>1</sup> Doc. #10.

This motion will be DENIED WITHOUT PREJUDICE because the deadline for creditors to object to Debtor's exemptions under Federal Rule of Bankruptcy Procedure ("Rule") 4003(b)(1) has not expired, and the movant has failed to make a *prima facie* showing of entitlement to the relief sought.

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-PMSI lien 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)).

First, Rule 4003(b)(1) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 meeting of creditors is concluded, or within 30 days after any amendment to *Schedule C* is filed, whichever is later. Here, the § 341 meeting concluded on April 22, 2022, so the deadline for any party in interest to object to Debtor's exemptions is May 22, 2022. Therefore, Debtor has not established entitlement to the exemption that Debtor claims is impaired by the lien. This motion is premature and not yet ripe for hearing because the Debtor cannot establish all of the elements required under § 522(f)(1).

Second, 11 U.S.C. § 522(f)(1)(B) permits a debtor to avoid a non-possessory, non-PMSI lien in household furnishing, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, jewelry held for personal, family, or household use, tools of the trade, and professionally prescribed health aids. Though the term "household goods" includes the items specified in § 522(f)(4)(A), motor vehicles are expressly excluded from the definition under § 522(f)(4)(B)(v). Debtor must establish that the vehicle is a "tool of the trade" to qualify for lien avoidance. § 522(f)(1)(B)(ii). *Garcia v. Orange County's Credit Union (In re Garcia)*, 451 B.R. 909, 917-18 (C.D. Cal. 2011), *aff'd*, 709 F.3d 861 (9th Cir. 2013).

To classify as a tool of the trade, "the proper inquiry is whether or not the vehicle is used by and is necessary to a debtor for his or her work, trade or occupation. . . . A vehicle may be necessary to and used by the debtor regardless of whether or not it is specifically outfitted for the debtor's trade." *Ibid.*, quoting *In re McNutt* 87 B.R. 84, 87 (B.A.P. 9th Cir. 1988); *In re Goosey*, 10 B.R. 285, 286 (Bankr. D. Neb. 1981). Pertinent here is that generally lien avoidance on a vehicle under § 522(f)(1)(B) requires the vehicle to be necessary to the debtor's trade and the state has opted out of the laundry list of federal exemptions. *Rainer Equipment Finance, Inc. v. Taylor (In re Taylor)*, 861 F.2d 550, 552 (9th Cir. 1988)

Here, the motion does not allege that Vehicle is a tool of trade, or that it is used by and necessary to his work, trade, or occupation. Rather, Debtor declares that Vehicle is used by him for personal use. Doc. #13. Per *Schedule I*, Debtor is a Driver for Barnes Welding Supply. Doc. #1. Based on the record, it appears that Debtor uses

Vehicle only for personal use, and a different vehicle when conducting business on behalf of his employer. Thus, Debtor has not established that Vehicle is a tool of the trade, and therefore does not appear able to avoid this non-possessory, non-PMSI lien in favor of Creditor.

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

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<sup>1</sup> Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving on March 23, 2022: (i) Robert Aiken, Creditor's CEO, at 1735 North Brown Road, Lawrenceville, GA 30043; and (ii) CT Corporation System, Creditor's registered agent for service of process, at 330 North Brand Boulevard, Suite 700, Glendale, CA 91203. Doc. #16.

3. [22-10443](#)-B-7      **IN RE: MOISES/LETICIA MEDINA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
4-6-2022    [\[23\]](#)

GRISelda TORRES/ATTY. FOR DBT.  
\$188.00 FILING FEE PAID 4/7/22

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

DISPOSITION:      The OSC will be vacated.

ORDER:              The court will issue an order.

The record shows that the fee required for filing a Motion/Application to Compel Abandonment in the amount of \$188.00 was paid on April 7, 2022. Therefore, the Order to Show Cause will be VACATED.

4. [21-10867](#)-B-7      **IN RE: GREGORY AMARO AND MIA NAVARRO**  
[PBB-1](#)

RESCHEDULED MOTION TO AVOID LIEN OF UNIFUND CCR, LLC  
3-28-2022    [\[24\]](#)

MIA NAVARRO/MV  
PETER BUNTING/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.

Gregory Amaro and Mia Maria Felix Navarro ("Debtors") seek to avoid a judicial lien in favor of Unifund CCR, LLC ("Creditor") in the amount of \$4,485.00 and encumbering residential real property located at 2208 7th Street, Sanger, CA 93657 ("Property").<sup>2</sup> Doc. #24.

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on April 26, 2022 with 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Doc. #25. The court issued a *Notice of Rescheduled Hearing* on April 5, 2022, which rescheduled the hearing to April 28, 2022 at 1:30 p.m. Doc. #29. 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 notice of hearing does not comply with the local rules. Doc. #25. LBR 9014-1(d)(3)(B)(i) requires the notice to include the names and addresses of persons who must be served with any opposition. Counsel is advised to review the local rules to ensure procedural compliance in subsequent matters.<sup>3</sup> Future violations of the local rules may result in a motion being denied without prejudice.

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 lien was entered against joint debtor Gregory Amaro in favor of Creditor in the sum of \$4,485.00 on April 27, 2020. Doc. #27, *Ex. D*. The abstract of judgment was issued on July 29, 2020 and recorded in Fresno County on August 18, 2020. *Id.* That lien attached to Debtors' interest in Property and appears to be the only

non-consensual judgment lien encumbering Property. Docs. #26; #1, Sched. D.

As of the petition date, Property had an approximate value of \$349,000.00. *Id.*, Sched. A/B. Property is encumbered by a single \$152,081.97 deed of trust in favor of Caliber Home Loans. *Id.*, Sched. D. Debtors claimed a "homestead" exemption in Property pursuant to Cal. Code Civ. Proc. § 704.730 in the amount of \$300,000.00. *Id.*, Sched. C.

Strict application of the § 522(f)(2) formula is as follows:

Amount of Creditor's judicial lien	\$4,485.00
Total amount of unavoidable liens	+ \$152,081.97
Amount of Debtors' claimed exemption in Property	+ \$300,000.00
Sum	= \$456,566.97
Debtors' claimed value of interest absent liens	- \$349,000.00
Amount Creditor's lien impairs Debtors' exemption	= \$107,566.97

*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. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property	\$349,000.00
Total amount of unavoidable liens	- \$152,081.97
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$103,081.97)
Creditor's original judicial lien	- \$4,485.00
Extent Debtors' exemption impaired	= (\$107,566.97)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under § 522(f)(1). This motion will be GRANTED. The proposed order shall include a copy of the abstract of judgment attached as an exhibit.

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<sup>2</sup> Debtors complied with Fed. R. Bankr. P. 7004(b)(3) by serving on March 28, 2022: (i) Corporation Service Company doing business in California as CSC-Lawyers Incorporating Service, Creditor's registered agent for service of



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process at 2710 Gateway Oaks Dr., Ste. 150N, Sacramento, CA 95833-3505; and  
(ii) Creditor at 10625 Techwoods Circle, Cincinnati, OH 45242. Doc. #28.

<sup>3</sup> See LBR (eff. Apr. 12, 2021), <http://www.caeb.uscourts.gov/LocalRules.aspx>.

5. [22-10167](#)-B-7     **IN RE: SAMANTHA MENA**  
[JES-1](#)

RESCHEDULED OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR  
FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
3-18-2022    [\[17\]](#)

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

DISPOSITION:     Conditionally denied.

ORDER:             The court will issue an order.

Chapter 7 trustee James E. Salven ("Trustee") seeks dismissal of this case for the debtor's failure to appear and testify at the § 341(a) meeting of creditors held on March 17, 2022. Doc. #17. This motion was originally set for April 26, 2022. Doc. #16. On April 11, 2022, the court rescheduled the hearing to April 28, 2022. Doc. #20.

Samantha C. Mena ("Debtor") timely filed written opposition. Doc. #19. Debtor declares that she failed to appear at the meeting due to an unexpected death in the family. *Id.*

This motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for May 26, 2022 at 1:00 p.m. See Doc. #16. If Debtor fails to appear and testify at the rescheduling meeting, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The times prescribed in Fed. R. Bankr. P. 1017(e)(1) and 4004(a) for the Chapter 7 Trustee and U.S. trustee to object to Debtor's discharge or file motions for abuse, other than presumed abuse under § 707, are extended to 60 days after the conclusion of the meeting of creditors.

6. [19-11269](#)-B-7     **IN RE: SING SEECHAN**  
[MAZ-2](#)

RESCHEDULED MOTION TO AVOID LIEN OF DISCOVER BANK  
3-25-2022    [\[26\]](#)

SING SEECHAN/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION:        Denied without prejudice.

ORDER:                The court will issue an order.

Sing Seechan ("Debtor") seeks to avoid a judicial lien in favor of Discover Bank ("Creditor") in the amount of \$16,596.09 and encumbering residential real property located at 1780 Eaton St., Tulare, CA 93274 ("Property"). Doc. #26.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with Federal Rule of Bankruptcy Procedure ("Rule") 7004(h).

Rule 4003(d) requires proceedings to avoid a lien under 11 U.S.C. § 522(f) "shall be commenced by motion in the manner provided in 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.

Creditor is a bank insured by the Federal Deposit Insurance Corporation ("FDIC"), so it is an insured depository institution under 11 U.S.C. § 101(35)(A) and 12 U.S.C. § 1813(c)(2) (an "insured depository institution" is any bank insured by the FDIC).<sup>4</sup>

Service on insured depository institutions is governed by Rule 7004(h), which requires service to be made by certified mail and addressed to a named officer, unless one of three exceptions specified in subsections (h)(1) to (3) have been met. There is no indication that any of these exceptions apply.

The Ninth Circuit interprets Rule 7004 to require service upon a named officer, rather than to just the title of the office. *In re Schoon*, 153 B.R. 48, 49 (Bankr. N.D. Cal. 1993) ("By addressing the envelope 'Attn: President' the debtors did not serve an officer, they served an office.") (emphasis in original); see also *Beneficial Cal. Inc. v. Villar (In re Villar)*, 317 B.R. 88, 94 (B.A.P. 9th Cir. 2004) (strictly construing the named officer requirement with respect to Rule 7004(b)(3)), citing *Addison v. Gibson Equip. Co. (In re Pittman Mech. Contractors)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995).

Here, Debtor attempted to serve Creditor at the following addresses:

1. BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
ATTN: OFFICER  
DISCOVER BANK  
502 E. MARKET STREET  
GREENWOOD, DE 19950
2. BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
AGENT FOR SERVICE OF PROCESS FOR  
CT CORPORATION SYSTEM  
330 N. BRAND BLVD STE 700  
GLENDALE, CA 91203
3. BY FIRST CLASS MAIL  
JANET L. BROWN, ESQ.  
ZWICKER AND ASSOCIATES PC  
1320 WILLOW PASS RD. STE 730  
CONCORD, CA 94520

Doc. #30. The first service attempt uses the correct address per the FDIC, but no *named* officer was listed.

The second attempt is to Creditor's registered agent for service of process, CT Corporation System. This is the correct registered agent and correct registered agent address. However, Rule 7004(h), unlike Rule 7004(b)(3), does not permit service on an insured depository institution by serving a registered agent for service of process.

The third attempt is to Janet L. Brown of Zwicker & Associates, P.C., Creditor's state court attorney. However, neither Janet L. Brown nor Zwicker & Associates can be presumed to be authorized to accept Rule 7004 service on behalf of Creditor without evidence of an express or implied agency. "An implied agency to receive service is not established by representing a client in an earlier action." *Villar*, 317 B.R. at 93; *Rubin v. Pringle (In re Focus Media, Inc.)*, 387 F.3d 1077, 1083 (9th Cir. 2004) (finding that former attorney must have express or implied authority from client to accept service under Rule 7004(b)).

As result, none of the three service attempts on Creditor were sufficient under Rule 7004(h). Per the business search website of the California Secretary of State and Creditor's *Statement of Information* filed May 7, 2021, Creditor's CEO is James J. Roszkowsk at 502 E. Market Street, Greenwood, Delaware 19950.<sup>5</sup>

For the above reason, the motion will be DENIED WITHOUT PREJUDICE for failure to serve a named officer as required by Rule 7004(h).

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<sup>4</sup> See FDIC Cert. #5649. BankFind Suite, <https://banks.data.fdic.gov/bankfind-suite/bankfind> (visited Apr. 25, 2022). The court may take judicial notice *sua sponte* of information published on government websites. Fed. R. Evid.

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201(c)(1); *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010).

<sup>5</sup> See *Statement of Information* (May 7, 2021), File No. C3395853, available at California Business Search, <https://bizfileonline.sos.ca.gov/search/business> (visited Apr. 25, 2022).

7. [22-10094](#)-B-7      **IN RE: POWERTECH ENGINES, INC.**  
[PFT-1](#)

RESCHEDULED MOTION TO EMPLOY GOULD AUCTION AND APPRAISAL  
COMPANY AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT  
PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES  
AND EXPENSES  
3-29-2022    [[20](#)]

PETER FEAR/MV  
HAGOP BEDOYAN/ATTY. FOR DBT.  
GABRIEL WADDELL/ATTY. FOR MV.

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

DISPOSITION:      Granted.

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

Chapter 7 trustee Peter L. Fear ("Trustee") seeks authorization to  
(a) employ Gould Auction & Appraisal Company ("Auctioneer"); and (b)  
sell the estate's interest in certain assets of the estate ("Estate  
Assets") at public auction under 11 U.S.C. § 363(b)(1). Doc. #20. The  
auction will be held on April 30, 2022 at 9:00 a.m. at Gould Auction &  
Appraisal Company, 6200 Price Street, Bakersfield, California.<sup>6</sup>  
Doc. #29. Trustee also requests to compensate Auctioneer under 11  
U.S.C. §§ 327(a) and 328. Doc. #20.

No party in interest timely filed written opposition. This motion will  
be GRANTED.

This motion was set for hearing on April 26, 2022 with 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). Doc. #21. The court issued a  
*Notice of Rescheduled Hearing* on April 5, 2022, which rescheduled the  
hearing to April 28, 2022 at 1:30 p.m. Doc. #26. 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). 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 movant has done here.

As a preliminary matter, the notice of hearing does not comply with the local rules. Doc. #21. LBR 9014-1(d)(3)(B)(i) requires the notice to include the names and addresses of persons who must be served with any opposition. Counsel is advised to review the local rules to ensure procedural compliance in subsequent matters.<sup>7</sup> Future violations of the local rules may result in a motion being denied without prejudice.

This motion affects the proposed disposition 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 and allow the relief requested by movant here as to the proposed auctioneer and use the court's discretion to add a party under Civ. Rule 21.

Compensation is separate from the sale. Since this relief and appointing the Auctioneer are separate claims, the court will allow their joinder in this motion under Civ. Rule 18 (Rule 7018) because it is economical to handle this motion in this manner absent an objection. This rule is not incorporated in contested matters absent court order under Rule 9014(c) and affected parties are entitled to notice. Movant, having requested this relief, is deemed to have notice. Since no party timely filed written opposition, defaulted parties are deemed to have consented to application of this rule.

#### Estate Assets

Powertech Engines, Inc. ("Debtor") filed chapter 7 bankruptcy on January 25, 2022. Doc. #1. Trustee was appointed as interim trustee that same date and became permanent trustee at the \$ 341 meeting held February 28, 2022. Doc. #4.

In the course of administering the estate, Trustee intends to sell the following Estate Assets:

Description
2009 Mercury Grand Marquis LS, 4 Door
1999 Ford F350 Utility
1991 Ford F150 Pickup
1986 Ford Van Econoline 350
1991 Isuzu Box Truck
Hyster S25A Forklift
Caterpillar 422S Forklift
Ford Industrial Engines with LP, some with Generators
Magnaplug Dyna Generator Model 284 SL 1508-2 3 Phase
V-8 Engine with Radiator on Stand
Lombardini Diesel Generator
Ford Flat Head V-8 Engine on Stand

Kohler Model KDW1003 Diesel Engine on Stand with Stamford Generator
Ford 8 Cylinder Gas Engine on stand
Pto Shaft & Generator
Engine on stand with Magnaplug 36 KW Generator
Ford Engine 274 CI, 148 HP
Refrigerator
Scales
Engine shipping crates
Pallet Dolly
Cut Off Saw
IVECO Engine
4 Stools
5 Folding Chairs
Payton Pedestal Drill
Dayton Twin Cylinder Powered Air Compressor
Miller CP302 Electric Wire Feed Welder
Torch Cart with Oxy & Act
Simplx Electric Drive Unit
SS Propane Tank
Snap on Tire Machine
Demcord 15 HP New Engine
ESAB Welder
Centech Battery Charger
Dewalt Cut Off Saw
Blade Machinery Chop Saw
Motorcraft Parts Cabinet
28 Sections 2 shelf Pallet racking
Parts cleaner
Craftsman toolbox with contents, cordless drills, shop vac, speaker, work benches
Battery powered scooter
Radio Flyer Red Wagon
Table saw
Portable lights
Hand tools, drills, saws, staple guns
Miller Matic 150 welder
Vise
Hydraulic floor jack
Honda Trail Bike
Yamaha motor bike
Pallet with Radiator Screens
New 4 Cylinder Engine Block
New V-6 Engine Block, Engine Complete in Shipping Container
6 Cylinder Engine Block New
LRG 425 Engine in Shipping Crate
Five (5x) new engines in yellow container
Two (2x) crates with engine parts
LP Fuel regulators
Starter drives
Carburetors, gaskets, spark plugs, exhaust pumps, electric switch boxes, pulleys, engine blocks, transmissions, dip sticks, oil filters, seals, fan pulleys, oil pans, valve covers, water pumps, scales, engine stand, steering parts

Engine cages, fly wheel adapters, large air filters, intake manifolds, exhaust manifolds
Ram cleaning system with absorbent pads
Seats
Two (2x) used transmissions
New flywheels and pressure plates
VW fenders
Yamaha motor bike, missing parts
Ford signs
Power products
Ten (10x) new radiators
New transmission, wrapped
Little giant ladder
Battery powered chair
Two (2x) banding machines
Pallet engine brackets
Pallet of new radiators
Six (6x) pallets of large mufflers
Pallet engine wiring harnesses
Scrap metal to be picked up by auction winner at Powertech Engines, Inc., 2933 Hamilton Ave. Fresno, California by May 5, 2022

Doc. #22.

#### Employment and Compensation

11 U.S.C. § 327 allows the trustee, with the court's approval, to employ one or more attorneys, accountants, auctioneers, or other professional persons to represent or assist the trustee in carrying out trustee's duties. The professional is required to be a disinterested person and neither hold nor represent interests adverse to the estate. § 327(a).

11 U.S.C. § 328(a) permits employment of "a professional person under section 327" on "any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." Section 328(a) further "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.'" *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002).

Under these sections, Trustee requests to compensate Auctioneer by paying: (i) a 15% commission on the gross proceeds from the sale; (ii) \$12,725.00 in reimbursement for expenses incurred hauling the Estate Assets to the location of the auction; and (iii) up to \$2,000.00 for anticipated repairs, battery, smog, and other extraordinary expenses. Doc. #20. In addition to those fees and expenses, Auctioneer charges buyers an additional 10% premium on the purchase price. *Id.* Auctioneer

is also responsible for collecting and paying any and all sales tax. *Id.*

Trustee and Jerry Gould, the owner and operator of Auctioneer, filed declarations attesting that Auctioneer is a disinterested person as defined in § 101(14) and does not hold any interests adverse to the estate in accordance with § 327(a). Docs. ##22-23. Trustee and Gould declare that Auctioneer, with respect to Debtor, is not a creditor, equity security holder, insider, investment banker for a security of the debtor within the three years before the petition date, or an attorney for such investment banker, and within two years of the petition date was not a director, officer, or employee of the debtor or an investment banker. *Id.* Auctioneer does not have an interest materially adverse to the interest of the estate, creditors, Debtor, equity security holders, an investment banker for a security of the debtor, or any other party in interest. *Id.*

Trustee declares that it is necessary to employ Auctioneer to liquidate the Estate Assets. Doc. #22. Trustee believes that the proposed fees and expenses for services are reasonable and customary for the services to be rendered by Auctioneer. *Id.* Auctioneer will assist Trustee by (1) advertising the sale of the property; (2) transporting the property to the auction, which required multiple trips with truck trailers; (3) conducting the public auction sale; and (4) performing other tasks that are customarily done and performed by Auctioneer in connection with the sale of property. *Id.*

Further, Auctioneer holds a \$150,000.00 bond as required by the U.S. Trustee, the original of which is in the U.S. Trustee's possession. Doc. #23. This amount is greater than the value of all assets that Auctioneer is liquidating for all chapter 7 bankruptcy trustees. *Id.* No agreement exists between Auctioneer or any other person for the sharing of compensation received by Auctioneer in connection with the services rendered. *Id.*

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. §§ 327(a), 328 and authorize Trustee to pay the 15% commission and reimbursement of \$12,725.00 for hauling expenses and up to \$2,000.00 for anticipated repairs, battery, smog, and other extraordinary expenses as prayed.

#### Sale of the Estate Assets

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir.



1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Trustee wishes to sell the above-listed Estate Assets under § 363(b). Doc. #20. Debtor listed certain values, but many are combined into general categories and/or contain unknown valuations. Doc. #1, *Sched. A/B*. In summary, Debtor claims to have \$0.00 in inventory, \$15,715.00 in office furniture, fixtures, and equipment, and \$15,718.70 in machinery, equipment, and vehicles. *Id.*, ¶¶ 84, 86-87. The schedules indicate that Debtor does not have any secured creditors. *Id.*, *Sched. D*. The combined scheduled value of these assets is approximately \$31,433.70, but the gross sale price should exceed this amount due to the large number of assets with unknown values that are effectively listed at \$0.00.

Notably, the inventory consists of industrial engines and engine parts with an unknown liquidation value, some of which may be in the list of Estate Assets to be sold. *Id.*, *Sched. A/B*, ¶ 22. Further, the machinery, equipment, and vehicles include multiple vehicles, forklifts, engine hoists, rows of engine racks, and rows powder coated racks/shelving that also is listed with an unknown value. *Id.*, ¶¶ 47, 50.

Trustee believes that using the auction process to sell the Estate Assets will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #22. Based on Trustee's experience, this will yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.*

Sale by auction under these circumstances should maximize potential recovery for the estate. The sale of the Estate Assets appears to be in the best interests of the estate because it will provide liquidity to the estate that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be authorized to employ Auctioneer, sell the Estate Assets at public auction on April 30, 2022, and pay Auctioneer for its services as outlined above. Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross

proceeds from the sale, and reimbursement of \$12,725.00 for hauling costs, and up to \$2,000.00 for extraordinary expenses including repairs, smog tests, and batteries.

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<sup>6</sup> Trustee filed a notice of errata on April 8, 2022 to correct the date of the public auction stated in the notice of hearing. Doc. #29.

<sup>7</sup> See LBR (eff. Apr. 12, 2021), <http://www.caeb.uscourts.gov/LocalRules.aspx>.