

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, May 12, 2020
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 617, no persons are permitted to appear in court unless authorized by order of the court until June 1, 2020. 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. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[FW-2](#)

CONTINUED MOTION TO USE CASH COLLATERAL
4-21-2020 [\[100\]](#)

STEPHEN SLOAN/MV
PETER FEAR/ATTY. FOR DBT.

NO RULING.

2. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[FW-3](#)

MOTION TO EMPLOY GEORGE RODARAKIS AS SPECIAL COUNSEL
4-2-2020 [\[57\]](#)

STEPHEN SLOAN/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.

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

prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED.

The Debtor-in-Possession ("DIP") wishes to employ George Rodarakis of Rodarakis & Sousa, APC ("Counsel") to serve as counsel for the specified purpose of continuing representation for two pre-petition state court lawsuits: Mother Lode Bank v. Sloan, et al., case no.: 12-CV57470 and Sloan v. Panoche Water District, et al., case no.: 18-CECG-00511. Doc. #61.

Prior to filing for bankruptcy, the debtor was sued in Tuolumne County Superior Court by Mother Lode Bank. Doc. #57. The debtor asserted a cross-complaint that was dismissed and is currently pending appeal. Id. Debtor also sued Panoche Water District in Fresno County Superior Court pre-petition, seeking damages in excess of two million dollars for breach of contract. Id. Counsel represented the debtor in both pre-petition cases and the DIP now moves to employ it again to resume litigating.

Pursuant to 11 U.S.C. § 327(e) (made applicable by 11 U.S.C. § 1107(a)), the DIP may employ, with the court's approval and for a specified special purpose, an attorney that has represented the debtor if it is in the best interest of the estate and if the attorney does not represent nor hold an adverse interest to the debtor or to the estate with respect to the matter on which such attorney is to be employed. The requirements of § 327(e) are less restrictive than § 327(a) in that there is no disinterestedness requirement. In re Fondiller, 15 B.R. 890, 892 (B.A.P. 9th Cir. 1981), appeal dismissed, 707 F.2d 441 (9th Cir. 1983).

Here, DIP argues that Counsel's employment is in the best interests of the estate and that it does not hold an adverse interest to the debtor with respect to the matters for which employment is sought. Doc. #57.

Although Counsel is a creditor of the debtor because it is owed money for legal fees and expenses in the two pre-petition lawsuits, it is not an insider, was not an employee of the debtor within the last two years, and it does not hold or represent an interest adverse to the estate, and has no interests materially adverse to the debtor or any class of creditors. Doc. #61. Additionally, since Counsel is already familiar with both lawsuits, its employment will avoid duplication of costs and legal fees which would otherwise be incurred with new counsel. See In re Film Ventures International, Inc., 75 B.R. 250 (B.A.P. 9th Cir. 1987) (citing In re Iorizzo, 35 B.R. 465, 469 (Bankr. E.D.N.Y. 1983)).

Counsel has compared the debtor's list of creditors, creditors' attorneys, and employees of the United States Trustee's Fresno Office to its client database to verify that there are no interests adverse to the debtor. Doc. #61.

After review of the evidence, the court finds that the DIP's proposed special counsel, George Rodarakis of Rodarakis & Sousa,

APC, does not represent nor hold an adverse interest to the debtor or to the estate with respect to the matter on which it is to be employed. The reason for Counsel's employment is specifically to resume representation of the debtor in possession in two pre-petition lawsuits.

The DIP is authorized to employ Counsel for the purposes stated above and in the motion; the effective date of employment shall be May 12, 2020 and the payment, if any, to which Counsel is entitled to shall be, upon court approval, its usual hourly rate for attorney fees and will be reimbursed for actual expenses incurred as reflected in Exhibit "C." Doc. #60 at 15.

3. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[FW-4](#)

MOTION TO EMPLOY MARSHALL WHITNEY AS SPECIAL COUNSEL
4-28-2020 [\[117\]](#)

STEPHEN SLOAN/MV
PETER FEAR/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 will submit a proposed order after hearing.

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

This motion is GRANTED.

The Debtor-in-Possession ("DIP") wishes to employ Marshall Whitney of Whitney Thompson & Jeffcoach, LLP ("Counsel") to serve as co-counsel for the specified purpose of continuing to prosecute a pre-petition lawsuit against Panoche Water District, Sloan v. Panoche Water District, et al., case no.: 18-CECG-00511. Doc. #119.

Prior to filing for bankruptcy, the debtor sued Panoche Water District in Fresno County Superior Court seeking damages in excess of two million dollars for breach of contract. Id. The debtor retained Counsel along with Rodarakis & Sousa, APC. Id.

Pursuant to 11 U.S.C. § 327(e) (made applicable by 11 U.S.C. § 1107(a)), the DIP may employ, with the court's approval and for a specified special purpose, an attorney that has represented the debtor if it is in the best interest of the estate and if the

attorney does not represent nor hold an adverse interest to the debtor or to the estate with respect to the matter on which such attorney is to be employed. The requirements of § 327(e) are less restrictive than § 327(a) in that there is no disinterestedness requirement. In re Fondiller, 15 B.R. 890, 892 (B.A.P. 9th Cir. 1981), appeal dismissed, 707 F.2d 441 (9th Cir. 1983).

Here, the DIP contends that Counsel's employment is in the best interests of the estate and that it does not hold an adverse interest to the debtor with respect to the matters for which employment is sought. Doc. #117.

Although Counsel is a creditor of the debtor because it is owed money for legal fees and expenses in the pre-petition lawsuit, it is not an insider, was not an employee of the debtor within the last two years, and it does not hold an interest adverse to the estate, and has no interests materially adverse to the debtor or any class of creditors. Doc. #119. Additionally, since Counsel is already familiar with the lawsuit, its employment will avoid duplication of costs and legal fees which would otherwise be incurred with new counsel. See In re Film Ventures International, Inc., 75 B.R. 250 (B.A.P. 9th Cir. 1987) (citing In re Iorizzo, 35 B.R. 465, 469 (Bankr. E.D.N.Y. 1983)).

Counsel has compared the debtor's list of creditors, creditors' attorneys, and employees of the United States Trustee's Fresno Office to its client database to verify that there are no interests adverse to the debtor. Doc. #119.

After review of the evidence, and unless any opposition is given at the hearing, the court finds that the DIP's proposed special co-counsel, Marshall Whitney of Whitney Thompson Jeffcoach, LLP, does not represent nor hold an adverse interest to the debtor or to the estate with respect to the matter on which it is to be employed. The reason for Counsel's employment is specifically to resume representation of the debtor in possession in the pre-petition lawsuit for breach of contract.

The DIP is authorized to employ Counsel for the purposes stated above and in the motion; the effective date of employment shall be May 12, 2020 and the payment, if any, to which Counsel is entitled to shall be, upon court approval, its usual hourly rate for attorney fees and will be reimbursed for actual expenses incurred as reflected in Exhibit "A." Doc. #121 at p. 7.

4. [11-10912](#)-B-11 **IN RE: JAMIE/JAMES THOMAS**
[MB-3](#)

MOTION FOR ENTRY OF DISCHARGE
4-13-2020 [\[263\]](#)

JAMIE THOMAS/MV
KIRK BRENNAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. 11 U.S.C. § 1141(d)(5) states

The confirmation of a plan for an individual in chapter 11 does not automatically discharge them of their debtors. The court must hold a properly noticed hearing and find that

there is no reasonable cause to believe that section 522(q)(1) may be applicable to the debtor and there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B); and if the requirements of subparagraph (A) and (B) are met.

The chapter 11 plan was confirmed on December 12, 2011. Doc. #212. Article VIII, section 8.2 requires completion of "all payments of Class3(a) and Class 4 claims" before the discharge can be entered. Doc. #107.

There has been no opposition to this motion and the included evidence supports debtor's contention that all payments to Class3(a) and Class 4 claims have been completed. The court finds as such, and

additionally finds that there is no reasonable cause to believe that section 522(q) (1) may be applicable to the debtor, and; there is not pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q) (1) (A) or liable for a debt of the kind described in section 522(q) (1) (B). Debtors discharge shall be entered.

5. [19-15277](#)-B-11 **IN RE: SVENHARD'S SWEDISH BAKERY**
[MB-2](#)

MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7
4-7-2020 [\[111\]](#)

DERRICK TALERICO/ATTY. FOR DBT.
HAGOP BEDOYAN/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling conference.

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

The hearing on this motion will be called as scheduled and will proceed as a scheduling conference.

This matter is now deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

Based on the record, the factual issues appear to include: whether "cause" exists for conversion to chapter 7; whether there is a substantial or continuing loss or diminution of the estate; whether there is a reasonable likelihood of rehabilitation.

6. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-13](#)

CONTINUED OMNIBUS OBJECTION TO CLAIMS
11-22-2019 [\[1718\]](#)

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
CONTINUED TO 6/9/20 PER ECF STIPULATION AND ORDER #2151

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

DISPOSITION: Continued to June 9, 2020 at 9:30 a.m.

NO ORDER REQUIRED: The court already issued an order. Doc. #2151.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Leatham, has accepted a post-clerkship position at Wanger, Jones, Helsley ("WJH"). As long as Mr. Leatham remains employed by the court, he will be screened from any matters where WJH is counsel of record. Mr. Leatham was screened from this matter. Nevertheless, the court advises the parties to discuss with their clients whether they wish to ask the court to recuse itself on this or future matters.

Pursuant to the parties' stipulation and this court's previous order, this matter is continued to June 9, 2020 at 9:30 a.m. Doc. #2151. Additional supplemental authority by Locum is due May 26, 2020 and the debtor's reply is due June 2, 2020.

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

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

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
CONTINUED TO 6/9/20 PER ECF STIPULATION AND ORDER #2156

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

DISPOSITION: Continued to June 9, 2020 at 9:30 a.m.

NO ORDER REQUIRED: The court already issued an order. Doc. #2156.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Leatham, has accepted a post-clerkship position at Wanger, Jones, Helsley ("WJH"). As long as Mr. Leatham remains employed by the court, he will be screened from any matters where WJH is counsel of record. Mr. Leatham was screened from this matter. Nevertheless, the court advises the parties to discuss with their clients whether they wish to ask the court to recuse itself on this

or future matters.

Pursuant to the parties' stipulation and this court's previous order, this matter is continued to June 9, 2020 at 9:30 a.m. Doc. #2156. Opposition, if any, is due by at least May 26, 2020.

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

CONTINUED 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.

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.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Leatham, has accepted a post-clerkship position at Wanger, Jones, Helsley ("WJH"). As long as Mr. Leatham remains employed by the court, he will be screened from any matters where WJH is counsel of record. Mr. Leatham was screened from this matter. Nevertheless, the court advises the parties to discuss with their clients whether they wish to ask the court to recuse itself on this or future matters.

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). This matter was previously continued and opposition, if any, was due by at least April 28, 2020. Doc. #2083. 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 sustaining of the objection. 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 ("Movant") objects to claim no. 232 of Gupta-Kumar Medical Practice ("Claimant") for medical healthcare

services in the amount of \$285,136.00. Doc. #1789; see also claim #232. Claimant did not oppose.

This objection is 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 (9th Cir. BAP 2000).

Here, the movant has established that the claim is inconsistent with the debtor's books and records and appears to duplicate an amount claimed in Claim no. 231, which was filed by a related entity on the same day. Doc. #1791.

Therefore, claim no. 232 filed by Gupta-Kumar Medical Practice is disallowed in its entirety.

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

CONTINUED 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.
CONTINUED TO 6/9/20 PER ECF STIPULATION AND ORDER #2157

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

DISPOSITION: Continued to June 9, 2020 at 9:30 a.m.

NO ORDER REQUIRED: The court already issued an order. Doc. #2157.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Leatham, has accepted a post-clerkship position at Wanger, Jones, Helsley ("WJH"). As long as Mr. Leatham remains employed by the court, he will be screened from any matters where WJH is counsel of record. Mr. Leatham was screened from this matter. Nevertheless, the court advises the parties to discuss with their clients whether they wish to ask the court to recuse itself on this or future matters.

Pursuant to the parties' stipulation and this court's previous order, this matter is continued to June 9, 2020 at 9:30 a.m. Doc. #2157. Opposition, if any, is due by at least May 26, 2020.

10. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-33](#)

CONTINUED OBJECTION TO CLAIM OF MED ONE CAPITAL FUNDING, LLC,
CLAIM NUMBER 203
1-13-2020 [[1886](#)]

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

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

DISPOSITION: Continued to June 9, 2020 at 9:30 a.m.

NO ORDER REQUIRED: The court already issued an order. Doc. #2158.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Leatham, has accepted a post-clerkship position at Wanger, Jones, Helsley ("WJH"). As long as Mr. Leatham remains employed by the court, he will be screened from any matters where WJH is counsel of record. Mr. Leatham was screened from this matter. Nevertheless, the court advises the parties to discuss with their clients whether they wish to ask the court to recuse itself on this or future matters.

Pursuant to the parties' stipulation and this court's previous order, this matter is continued to June 9, 2020 at 9:30 a.m. Doc. #2158. Opposition, if any, is due by at least May 26, 2020.

11. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-36](#)

CONTINUED OBJECTION TO CLAIM OF RUTHERFORD CO., INC., CLAIM
NUMBER 191
1-13-2020 [[1896](#)]

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

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

DISPOSITION: Dropped from the calendar.

NO ORDER REQUIRED: Movant withdrew the objection. Doc. #2143.

The parties are advised that the Judicial Law Clerk for this Department, Garrett Leatham, has accepted a post-clerkship position at Wanger, Jones, Helsley ("WJH"). As long as Mr. Leatham remains employed by the court, he will be screened from any matters where WJH is counsel of record. Mr. Leatham was screened from this matter. Nevertheless, the court advises the parties to discuss with their clients whether they wish to ask the court to recuse itself on this or future matters.

11:00 AM

1. [20-10604](#)-B-7 **IN RE: PETER/DIANA KONOVALOV**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
4-13-2020 [\[12\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Although the debtor's attorney executed the agreement, the attorney could not affirm that, (a) the agreement was not a hardship and, (b) the debtor would be able to make the payments.

2. [20-10408](#)-B-7 **IN RE: CARLOS HERNANDEZ**

REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION
3-28-2020 [\[16\]](#)

MARK HANNON/ATTY. FOR DBT.

NO RULING.

3. [20-10323](#)-B-7 **IN RE: STACY LOPEZ**

REAFFIRMATION AGREEMENT WITH TD AUTO FINANCE LLC
4-9-2020 [\[18\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel shall notify the debtor that no appearance is necessary.

No hearing or order is required. The form of the Reaffirmation Agreement complies with 11 U.S.C. §524(c) and 524(k), and it was signed by the debtor's attorney with the appropriate attestations. Pursuant to 11 U.S.C. §524(d), the court need not approve the agreement.

4. [20-11064](#)-B-7 **IN RE: JOSE FELIX**

PRO SE REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
4-20-2020 [[14](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

Debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), "'if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney' attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok. 2009) (emphasis in original). In this case, the debtors' attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

5. [20-10874](#)-B-7 **IN RE: OLGA FLORES**

PRO SE REAFFIRMATION AGREEMENT WITH RELIANT FINANCIAL CORP.
4-20-2020 [[33](#)]

NO RULING.

6. [20-10291](#)-B-7 **IN RE: STEVENS/CONSTANCE RYAN**

PRO SE REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT
CORPORATION
4-14-2020 [[29](#)]

NO RULING.

1:30 PM

1. [20-11109](#)-B-7 **IN RE: AHARON/GRANUSH GASPARIAN**
[KMM-1](#)

MOTION TO COMPEL ABANDONMENT
3-30-2020 [\[20\]](#)

AHARON GASPARIAN/MV
KARNEY MEKHITARIAN/ATTY. FOR DBT.

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").

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

2. [19-10529](#)-B-7 **IN RE: BRENT/CHRISTINA KUTZBACH**
[FW-5](#)

MOTION TO SELL AND/OR MOTION TO PAY
4-16-2020 [\[78\]](#)

JAMES SALVEN/MV
PETER BUNTING/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 2002(a)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and

whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The chapter 7 trustee ("Trustee") asks this court for authorization to sell a parcel of residential real property commonly known as 1883 N. Douglas Avenue, Clovis, CA ("Property") to Joseph Howard Heagerty II and Laura Jeanette Heagerty ("Buyers") for \$499,000, subject to higher and better bids at the hearing. Doc. #78. Trustee further requests authorization to pay broker commissions of 6%, lifting of the 14-day stay as permitted under Fed. R. Bankr. P. 6004(h), and to pay from escrow the customary closing costs, property and capital gains taxes, and payoff the underlying deed of trust to the mortgagor. Id. Mortgagor PennyMac Loan Services, LLC ("PennyMac") filed non-opposition. Doc. #85.

This motion is GRANTED. 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, No. 16-00327-GS, 2018 WL 6584772, at *2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, 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, 2018 WL 6584772, at *4, 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 Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Here, the current balance of the mortgage is \$336,454.32. Doc. #1. The debtors initially valued the Property at \$568,000.00 and claimed \$100,000.00 exempt under C.C.P. § 704.730. Id., Schedule C. Trustee and the debtors agreed to reduce that exemption by \$20,000 as part of a purchase agreement for the debtors' business entity's bicycle shop. See docs. #16, 24. Trustee retained CMT Properties to market and sell the Property, with court approval, and compensation was set at 6% of the purchase price, to be split equally with the buyer's broker. Doc. #34.

Trustee estimates that administrative costs will be approximately 8% of the purchase price. The net proceeds of the sale, after administrative costs of 8%, costs of sale of 6%, trustee fees, and taxes, will be used to pay off the mortgage to PennyMac, and the remaining balance of not less than \$20,000 will go to the estate.

It appears that the sale of the Property is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith.

Any party wishing to overbid must deposit with Trustee's counsel certified monies in the amount of \$10,000.00 prior to or at the time of the hearing. Unsuccessful bidders' deposits will be returned at the end of the hearing. The successful bidder's deposit will be applied toward the purchase price. Overbidders must provide written proof of the financial ability to cover the purchase amount and that they can close the sale within 15 days of the delivery of a certified copy of the court's order approving this motion and can execute a purchase agreement for the property. Overbidders must be present at the hearing, make overbids in \$5,000.00 increments, be aware that their deposit will be forfeited if they do not timely close the sale, and acknowledge that no warranties or representations are included with the property; it is sold "as-is."

Additionally, Trustee requested for authorization to pay commissions to CMT Properties and Iron Key Real Estate in the amount of 6% of the sale price, split equally, which would be \$29,940 (\$14,970 each) if there is no overbid. Doc. #78. In the event of an overbid buyer, the 6% commission will be split equally between CMT Properties and the overbid buyer's broker.

Trustee may pay customary and usual closing costs, including applicable property and capital gains taxes, and pay off the remaining deed of trust to PennyMac.

The 14-day stay under Fed. R. Bankr. P. 6004(h) is deemed inapplicable. No party opposes this sale and since the debtors have resolved any dispute with the Trustee before there is no reason to delay the closing of the sale.

3. [19-12631](#)-B-7 **IN RE: JOEL SALAZAR**
[FW-2](#)

MOTION TO SELL AND/OR MOTION TO PAY
4-13-2020 [\[27\]](#)

JAMES SALVEN/MV
MARIO LANGONE/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed for higher and better bids only.

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in

interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. 11 U.S.C. § 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, No. 16-00327-GS, 2018 WL 6584772, at *2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, 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, 2018 WL 6584772, at *4, 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 Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

The chapter 7 trustee ("Trustee") asks this court for authorization to sell real property located at 3737 Westgate Drive in Madera, CA ("Property") to Octavio Torres Campos, subject to higher and better bids at the hearing, for \$268,000.00. Doc. #27. There has been no opposition to this motion. The 6% commission shall be split with CMT Properties and its agent, Nikki J. Thomas, and the buyer's broker.

It appears that the sale of the Property is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith.

Any party wishing to overbid must (1) deposit with the Trustee's counsel certified monies in the amount \$10,000 prior to, or at the time of the hearing on this motion as set forth in the Notice of Hearing filed herewith. An unsuccessful bidder's deposit will be returned at the conclusion of the hearing. A successful overbidder's deposit will be applied toward that overbidder's purchase price; (2) provide written proof of financial ability to cover the necessary overbid amount; (3) provide written proof that the successful overbidder can close the sale within 15 days of the

delivery of a certified copy of the Court's order approving the sale and can execute a purchase agreement for the Property; (4) be aware that in the event the successful overbidder fails to close the sale and execute a purchase agreement within 15 days of the delivery of a certified copy of the Court's order approving the sale for any reason, the deposit above becomes non-refundable; (5) be present at the sale hearing; (6) make all overbids in the amount of \$5,000. Thus, the first overbid shall be \$273,000.00, and; (6) acknowledge that sale of the Property shall be "as-is" with no warranty or representations expressed or implied by the Trustee or his representatives.

The motion is GRANTED. The 14 day stay under Federal Rule of Bankruptcy Procedure 6004(h) is waived.

4. [10-18132](#)-B-7 **IN RE: DEBRA WATERS**
[MHR-1](#)

MOTION TO COMPEL ABANDONMENT
4-1-2020 [\[22\]](#)

DEBRA WATERS/MV
MICHAEL RAICHELSON/ATTY. FOR DBT.

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").

First, the notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

Second, this motion was continued without a court order. See LBR 9014-1(j). This motion was originally scheduled for hearing on May 5, 2020 at 10:00 a.m. Doc. #23. Two days later an amended notice of hearing was filed and served, setting the hearing for May 12, 2020 at 1:30 p.m. Doc. #31.

The court normally calls matters with this specific and singular deficiency to allow an oral request to continue the matter pursuant to LBR 9014-1(j). However, the additional absence of the 9014-1(d)(3)(B)(iii) language requires that this motion be denied without prejudice.

5. [20-11043](#)-B-7 **IN RE: LOUIS/ESPERANZA CRUZ**
[AYV-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-20-2020 [\[10\]](#)

PARTNERS FEDERAL CREDIT UNION/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
YURI VORONIN/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").

First, LBR 9004-2(c)(1) requires that motions, notices, *inter alia*, to be filed as separate documents. Here, the motion and notice were combined into one document and not filed separately. Doc. #11.

Second, the notice of hearing is void of any of the necessary language as outlined in LBR 9014-1(d)(3)(B).

The court urges movant to review the LBR before filing another motion.

6. [20-10646](#)-B-7 **IN RE: JESSICA TORRES**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-8-2020 [\[18\]](#)

OCEANSIDE MORTGAGE COMPANY/MV
KIRSTEN MARTINEZ/ATTY. FOR MV.

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

DISPOSITION: Granted in part and denied in part.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-

mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The movant, Oceanside Mortgage Company ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to real property located at 1613 Cherry Avenue, Sanger, California 93657 ("Property"). Doc. #22.

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 19 complete pre- and post-petition payments. The movant has produced evidence that the debtor is delinquent at least \$23,334.48 and an additional payment of \$1,208.03 came due on April 1, 2020. Doc. #20.

The court also finds that the debtor does not have any equity in the Property and the Property is not necessary to an effective reorganization because the debtor is in chapter 7. The property is valued at \$150,000.00 and debtor owes \$169,645.41. Id.

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 order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 19 payments, both pre- and post-petition to Movant.

The request of the Moving Party, at its option, to provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement as allowed by state law will be denied. The court is granting stay relief to movant to exercise its rights and remedies under applicable bankruptcy law. No more, no less.

7. [20-10165](#)-B-7 **IN RE: SALVADOR/VICTORIA SUAREZ**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-30-2020 [\[17\]](#)

GLOBAL LENDING SERVICES LLC/MV
R. BELL/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.
DISMISSED 4/10/20

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

DISPOSITION: Denied as moot.

NO ORDER REQUIRED. The case has already been dismissed. Doc. #25.

8. [18-13678](#)-B-7 **IN RE: VERSA MARKETING, INC.**
[SSA-2](#)

CONTINUED MOTION TO SELL
3-9-2020 [\[552\]](#)

IRMA EDMONDS/MV
RILEY WALTER/ATTY. FOR DBT.
STEVEN ALTMAN/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted. WLF's objections are OVERRULED.

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

This motion is GRANTED. The chapter 7 trustee ("Trustee") asks the court for an order authorizing her to sell to debtor Versa Marketing, Inc.'s ("Debtor") principal, Mr. Al Goularte ("Goularte") the estate's interest in an adversary proceeding ("Claim") against creditor West Liberty Food, LLC ("WLF") for \$10,000.00. Doc. #552. The pre-petition co-manufacturing agreement ("Agreement") between Debtor and WLF was for the use of manufacturing and cold storage facilities, among other things.

WLF opposed the motion. Doc. #564. WLF contends that the sale of Debtor's claims would be inequitable and prejudicial to WLF, the terms of the Agreement between Debtor and WLF prohibit assignment of the obligations under the Agreement to a third party, and the sale would frustrate the purpose and reasonable expectations of the parties to the Agreement. Id.

Trustee responded. Doc. #566. Trustee contends that the sale of the Claim may be prejudicial or inequitable is "a necessary corollary to any case or controversy." Id. Trustee also argues that the Agreement

only contemplates the assignment of the obligations under the Agreement, not the claims arising from a breach of the Agreement, and that the imposition of adequate protection provisions proposed by WLF are not warranted. Id.

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, No. 16-00327-GS, 2018 WL 6584772, at *2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, 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, 2018 WL 6584772, at *4, 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 Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing 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, 2018 WL 6584772, at *2, citing Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC), 558 B.R. 500, 516 (1st Cir. BAP 2016).

Goularte is an insider pursuant to 11 U.S.C. § 101(31)(B)(ii). Goularte is a principal of the debtor. At the very least the court must be satisfied that an insider transaction is the result of bonafide arm's length transactions and not driven by other factors. See generally In re General Bearing Corp., 136 B.R. 361 (Bankr. S.D.N.Y. 1992).

WLF provided no evidence that the sale to Goularte does not meet this heightened scrutiny. The court finds that the evidence submitted by Trustee, and in the absence of any other creditor's opposition, shows that the sale to Goularte is the result of bonafide arm's length transactions and not driven by other factors. In fact, this hearing was continued to accommodate the Trustee's request which was not supported by Goularte.

When the sale of litigation claims will involve the termination of those claims the court must consider proposed sale offers not only under § 363(b) but also as a settlement of such claims under Fed. R. Bankr. P. 9019. Simantob v. Claims Prosecutor, LLC (In re Lahijani), 325 B.R. 282, 290 (9th Cir. BAP 2005); Goodwin v. Mickey Thompson Entertainment Group, Inc., 292 B.R. 415, 420 (9th Cir. BAP 2003).

Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the

difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

Trustee has met the burden of proof under the A & C Properties and Woodson factors. The probability of success is not certain - Trustee has stated that the lawsuit is "problematic"; collection of the purchase price is due within 10 days of the date the court enters the order granting this motion; the litigation is factually intense and moving forward would decrease the net to the estate due to the legal fees, of which the estate has no money to pay; and the sale will generate \$10,000.00 to the estate; the settlement is equitable and fair.

Trustee is attempting to sell a claim. In order to determine if the price is adequate, the court must evaluate the Claim. Without considering the Claim's settlement value, the court is unable to evaluate the Claim.

WLF's argument that the sale would be prejudicial and inequitable is not persuasive. The bankruptcy process itself can be disruptive of pre-petition rights. WLF asserts that it is inequitable and prejudicial because it may cause WLF to incur over \$100,000.00 in legal fees, without any ability of WLF to recover on its own claims relating to the same subject matter and arising out of the same agreement. But those are not issues the court may rule on in this motion. The motion is for the sale of the claim. The issues arising under the claim may be extrapolated and wrestled with in the litigation itself, under the relevant rules of procedure.

If WLF is qualified it can bid on the claim as well. If the winning bidder, WLF could then control the expense of the litigation. But currently the only proposed purchaser is the debtor's principal. If the principal is the successful bidder, he will take the claim with all its' defenses and risks.

The argument by WLF that assignment is not permitted under the Agreement is not persuasive. The Agreement forbids assignment of the obligations for each party under the Agreement - not the claims arising under an alleged breach of the Agreement.

Lastly, WLF's request for adequate protection is unpersuasive. WLF has not met its burden of proof.

11 U.S.C. § 363(e) requires the trustee in a proposed sale of estate property to condition the sale "as is necessary to provide adequate protection" for an interest-holder in the property. WLF claims that their claim (claim #39) is secured by a "warehousman's lien." WLF asks for adequate protection in the preservation of WLF's counterclaims and right to offset any recovery, and; the proceeds from the sale should be required to held in a separate, blocked account until the arbitration is resolved. Doc. #564.

11 U.S.C. § 363(p) states in any hearing under § 363 that "the entity asserting an interest in property has the burden of proof on the issue of the validity, priority, or extent of such interest."

The court sees no evidence showing the perfection of the warehouseman's lien or even what "collateral" is attached by the warehouseman's lien. Though the claim is not part of the record, even if the court were to take judicial notice of it, there is nothing attached to the claim to show perfection. Even if perfection of the lien were proven, this motion concerns the sale of litigation claims which are separate and distinct from the property to which the lien attaches-if we even knew what was allegedly subject to the lien. WLF has not established the extent of its' interest in the litigation claims being sold. The court is not persuaded that any "interest" of WLF warrants adequate protection in a sale of these litigation claims.

WLF's objections to the sale are OVERRULED.

Any party wishing to overbid must evidence proof of funds in the form of a bank account statement, letter of credit, cashier's check or money order or cash and approve the same terms and conditions of the present sale agreement advanced with the current buyer, save and except a higher sale price. In consideration for the conveyance and assignment of the claims, causes of actions, and demands, the purchaser shall tender to the estate the sum of \$10,000, or the higher sale price, in negotiable funds within ten (10) days to the chapter 7 trustee. Overbidders must be present at the hearing, make overbids in increments of \$1,000.00 and acknowledge that no warranties or representations are included with the property; it is sold "as-is."

9. [18-13678](#)-B-7 **IN RE: VERSA MARKETING, INC.**
[19-1032](#)

CONTINUED ORDER TO SHOW CAUSE REGARDING DISMISSAL OF ADVERSARY
PROCEEDING FOR FAILURE TO PROSECUTE
1-7-2020 [\[52\]](#)

VERSA MARKETING, INC. V. WEST LIBERTY FOODS, LLC
RESPONSIVE PLEADING

NO RULING.

10. [20-10183](#)-B-7 **IN RE: HARBANS VERMA AND GURPREET KAUR**
[JHK-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-9-2020 [\[40\]](#)

MERCEDES-BENZ FINANCIAL SERVICES USA LLC/MV
MARIO LANGONE/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.

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

DISPOSITION: Granted in part and denied as moot in part.

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

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

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on May 5, 2020. Doc. #48. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Mercedes-Benz Financial Services USA LLC DBA Daimler Truck Financial ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2017 Freightliner ("Vehicle"). Doc. #45.

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 at least five post-petition payments. The movant has produced evidence that debtors are delinquent at least \$16,232.29. Doc. #43.

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. The Vehicle is valued at \$16,000.00 and debtors owe \$58,173.24. Id.

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. According to the debtors' statement of Intention, the Vehicle will be surrendered.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtors have failed to make at least five post-petition payments to Movant and the Vehicle is a depreciating asset.

11. [20-10291](#)-B-7 **IN RE: STEVENS/CONSTANCE RYAN**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-8-2020 [\[22\]](#)

SELECT PORTFOLIO SERVICING, INC./MV
WENDY LOCKE/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

The movant, Select Portfolio Servicing Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to real property located at 41345 Lilley Mountain Dr., Coarsegold, California 93614 ("Property"). Doc. #23.

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 debtors have failed to make at least 2 pre- and post-petition payments. The movant has produced evidence that the debtor is delinquent at least \$4,093.52. Doc. #26.

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.

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The request of the Moving Party, at its option, to provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement as allowed by state law will be denied. The court is granting stay relief to movant to exercise its rights and remedies under applicable bankruptcy law. No more, no less.

12. [20-11295](#)-B-7 **IN RE: MAURIN CONSTRUCTION CORP**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-7-2020 [\[8\]](#)

FORD MOTOR CREDIT COMPANY/MV
PETER FEAR/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

The motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR") 4001-1(a)(3). The movant failed to file Form EDC 3-468, Relief from Stay Summary Sheet.

The LBR "are intended to supplement and shall be construed consistently with and subordinate to the Federal Rules of Bankruptcy Procedure and those portions of the Federal Rules of Civil Procedure that are incorporated by the Federal Rules of Bankruptcy Procedure." LBR 1001-1(b). The most up-to-date rules can be found at the court's website, www.caeb.uscourts.gov, towards the middle of the page under "COURT INFORMATION," "Local Rules & General Orders." The newest rules came into effect on April 9, 2018.

13. [16-14128](#)-B-7 **IN RE: DANIELA HAVLICEK**
[PWG-6](#)

MOTION FOR COMPENSATION FOR PHILLIP W. GILLET, JR., TRUSTEES
ATTORNEY(S)
4-22-2020 [\[58\]](#)

LEONARD WELSH/ATTY. FOR DBT.
OST 5/6/20

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3) and an order shortening time (doc. #72) 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.

The motion will be GRANTED. Trustee's counsel, Phillip W. Gillet, Jr., requests fees of \$12,132.00 and costs of \$412.52 for a total of \$12,544.52 for services rendered from March 28, 2017 through April 14, 2020.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) Preparation of employment applications for various professionals, (2) Selling real property in Hawaii, (3) Analysis of estate property to determine the worth, and (4) provided general legal counsel to the trustee. The court finds the services reasonable and necessary and the expenses requested actual and necessary.

Movant shall be awarded \$12,132.00 in fees and \$412.52 in costs.