

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Wednesday, September 15, 2021  
Place: Department A – Courtroom #11  
Fresno, California

*Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.*

**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.**

1. [21-10853](#)-A-12     **IN RE: MIKE WEBER**

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION  
4-6-2021    [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

2. [21-10853](#)-A-12     **IN RE: MIKE WEBER**  
[FW-2](#)

CONTINUED MOTION TO CONFIRM CHAPTER 12 PLAN  
7-6-2021    [[28](#)]

MIKE WEBER/MV  
PETER FEAR/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

3. [21-10853](#)-A-12     **IN RE: MIKE WEBER**  
[FW-6](#)

CONTINUED MOTION TO BORROW  
7-14-2021    [[50](#)]

MIKE WEBER/MV  
PETER FEAR/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

1. [21-11701](#)-A-7     **IN RE: JESSE MENDEZ**  
[SDN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-16-2021    [\[12\]](#)

STATE FARM FEDERAL CREDIT UNION/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
SHERYL NOEL/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 at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, State Farm Federal Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2019 Toyota Avalon ("Vehicle"). Doc. #12.

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 any 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 three complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$1,408.65. Doc. #17.

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 the debtor is in chapter 7. The Vehicle is valued at \$23,050.00 and the debtor owes \$24,278.37. Doc. #14.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit 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 debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1. The Vehicle was repossessed prior to the debtor filing the immediate bankruptcy case. Doc. #14.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least three pre- and post-petition payments to Movant, the Vehicle is a depreciating asset and the movant has possession of the Vehicle.

2. [19-12511](#)-A-7     **IN RE: FAULKNER TRUCKING, INC.**

TRUSTEE'S FINAL REPORT  
7-19-2021     [\[142\]](#)

RILEY WALTER/ATTY. FOR DBT.  
THOMAS ARMSTRONG/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 at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Peter L. Fear ("Trustee"), the chapter 7 trustee in this bankruptcy case, requests allowance of final compensation and reimbursement for expenses for services rendered. Doc. #149; Doc. #144. Movant requests compensation of \$16,118.57 and reimbursement for expenses in the amount of \$290.68. Doc. #144. Since being appointed to this case on November 29, 2018, Trustee administered the estate for the benefit of creditors, disposed of estate property, reviewed and reconciled financial records, and prepared final filings. Doc. #144.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a Chapter 7 trustee. 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded a chapter 7 trustee, the court shall treat such compensation as a commission, based on § 326 of the Bankruptcy Code. 11 U.S.C. § 330(a)(7). Here, Trustee demonstrates reasonable compensation in accordance with the statutory framework of § 326.

Doc. #144. Further, the court finds Trustee's services and requested expenses were actual and necessary to the administration of this estate.

This motion is GRANTED. The court allows statutory compensation in the amount of \$16,118.57 and reimbursement for expenses in the amount of \$290.68.

3. [18-14920](#)-A-7      **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA  
BMJ-21                      GENERAL PARTNERSHIP**

MOTION FOR COMPENSATION FOR SOUSA AND COMPANY, LLP, ACCOUNTANT(S)  
8-30-2021    [[381](#)]

SOUSA AND COMPANY, LLP/MV  
JACOB EATON/ATTY. FOR DBT.

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

DISPOSITION:      Denied without prejudice.

ORDER:              The court will issue an order.

Local Rule of Practice 9014-1(f)(2) allows a moving party to file and serve a motion on at least 14 days' notice "unless additional notice is required by the Federal Rules of Bankruptcy Procedure."

Federal Rule of Bankruptcy Procedure ("Rule") 2002(a) requires at least 21 days' notice by mail of "the hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds \$1,000." Rule 2002(a)(6).

By the motion, the moving party seeks compensation in excess of \$1,000. Notice by mail of this motion was sent August 30, 2021, with a hearing date set for September 15, 2021. Because this motion was set for hearing on less than 21 days' notice this motion is DENIED WITHOUT PREJUDICE for improper notice under Rule 2002.

4. [18-14920](#)-A-7      **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA  
RAC-16                      GENERAL PARTNERSHIP**

MOTION FOR COMPENSATION BY THE LAW OFFICE OF R. CLIFFORD & ASSOCIATES  
FOR RONALD A. CLIFFORD, SPECIAL COUNSEL(S)  
8-17-2021    [[375](#)]

RONALD CLIFFORD/MV  
JACOB EATON/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 at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

R. Clifford & Associates ("Movant"), special counsel for chapter 7 trustee David M. Sousa ("Trustee"), requests allowance of interim compensation and reimbursement for expenses for services rendered from April 1, 2021 through August 12, 2021. Doc. #375. Movant provided legal services valued at \$89,531.50, and requests compensation for that amount. Doc. #375. Movant requests reimbursement for expenses in the amount of \$3,424.28. Doc. #375.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) preparing for and attending multiple depositions; (2) responding to and preparing written discovery and requests for production; (3) propounding discovery; (4) communicating with Trustee regarding status of litigation; (5) communicating with opposing counsel regarding litigation and discovery; and (6) preparing and filing fee and employment applications. Ex. 3, Doc. #377; Decl. of Ronald A. Clifford, Doc. #379. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on an interim basis. The court allows interim compensation in the amount of \$89,531.50 and reimbursement for expenses in the amount of \$3,424.28. Trustee is authorized to make a combined payment of \$92,955.78, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-10-2021    [\[11\]](#)

AMERICREDIT FINANCIAL SERVICES, INC./MV  
ROSALINA NUNEZ/ATTY. FOR DBT.  
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, 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 2016 Chevrolet Cruze ("Vehicle"). Doc. #11.

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 any 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 one complete and one partial pre-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$750.88, which includes late fees of \$35.76. Doc. #13.

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 the debtors are in chapter 7. Id. The Vehicle is valued at \$7,525.00 and the debtor owes \$7,750.44. Doc. #13.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit 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 debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least one complete and one partial pre-petition payments to Movant and the Vehicle is a depreciating asset.

6. [21-11332](#)-A-7      **IN RE: TANYA SPRADLIN**  
[MMJ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-3-2021    [\[23\]](#)

BMW BANK OF NORTH AMERICA/MV  
DEAN FELDMAN/ATTY. FOR DBT.  
MARJORIE JOHNSON/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 at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The court encourages counsel for the moving party to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

The movant, BMW Bank of North America ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2019 BMW 3 Series 330i ("Vehicle"). 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 any 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 three complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$2,035.20. Doc. #25.

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 the debtor is in chapter 7. Id. The Vehicle is valued at \$37,123.00 and the debtor owes \$37,174.05. Doc. #25.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit 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 debtor's statement of intention does not include the vehicle, and the Vehicle is not included in the debtor's schedules. Doc. #1. The Vehicle was repossessed pre-petition. Doc. #23; Doc. #1.

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

7. [20-11934](#)-A-7     **IN RE: CHRISO'S TREE TRIMMING, INC.**  
[TPHS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-1-2021    [\[97\]](#)

NAVIGATORS INSURANCE COMPANY/MV  
JAMES MILLER/ATTY. FOR DBT.  
JAMES HAZLEHURST/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date 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.

As a procedural matter, the exhibits filed in connection with this motion do not comply with LBR 9004-2(c)(1) and (d)(1), which requires declarations and exhibits to be filed as separate documents. The declaration was filed as a

single document that included the movant's exhibits. Doc. #100. Additionally, the motion and memorandum of points and authorities may only be combined as a single document if six pages or less. LBR 9014-1(d)(4). The court encourages counsel for the moving party to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

Navigators Insurance Company ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) to permit Movant to proceed with a declaratory relief cross-complaint against Chriso's Tree Trimming, Inc. ("Debtor") in pre-petition state court litigation. Doc. #97. On August 27, 2021, the court granted Mountain F. Enterprises, Inc. ("State Court Plaintiff") relief from the automatic stay to proceed with prosecuting claims against all defendants, including Movant and Debtor. Order, Doc. #96.

The court is inclined to GRANT this motion for cause shown to permit Movant to take the necessary actions to proceed with claims against Debtor in the state court action pending as Mountain F Enterprises, Inc. v. Hamilton Specialty Insurance Company, Case No. 34-2020-00276779-CU-MC-GDS, Superior Court of California, County of Sacramento ("State Court Action").

On March 4, 2020, State Court Plaintiff commenced the State Court Action by filing a complaint in the Superior Court of California, Sacramento County, seeking declaratory relief against Movant, Debtor, Hamilton Specialty Insurance Company, and Wesco Insurance Company. Doc. #100; Ex. A, Doc. #101. Debtor commenced this chapter 7 case on June 5, 2020, triggering the automatic stay of 11 U.S.C. § 362(a). Doc. #1; 11 U.S.C. § 362(a). Movant requests an order from the court lifting the automatic stay to permit Movant to prosecute a cross-complaint in the State Court Action.

#### There is Cause to Lift the Stay Under § 362(d)(1)

Citing § 362(d)(1), Movant argues that cause exists to lift the automatic stay to allow Movant to continue to prosecute the State Court Action. Movant cites the Curtis factors. Doc. #97.

When a movant seeks relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court may consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). "[T]he Curtis factors are appropriate, nonexclusive, factors to consider in determining whether to grant relief from the automatic stay" to allow litigation in another forum. Id. The relevant Curtis factors include: (1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the non-bankruptcy forum has the expertise to hear such cases; (4) whether litigation in another forum would prejudice the interests of other creditors; (5) the interest of judicial economy and the expeditious and economical determination of litigation for the parties; (6) whether the litigation in the other forum has progressed to the point where the parties are prepared for trial; and (7) the impact of the automatic stay and the "balance of hurt." In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984). Here, the Curtis factors support finding cause to grant relief from stay as requested in the motion.

Granting relief from stay to permit Movant to prosecute the cross-complaint in the State Court Action will further the final resolution of the issues. State Court Plaintiff obtained relief from the automatic stay to pursue claims against Movant and Debtor, and Movant seeks similar relief to assert a cross-complaint in the same action. There is no risk of relitigating the issues in a

non-dischargeability hearing because Debtor is a chapter 7 corporate debtor and will not receive a discharge. Moreover, the state court has the expertise to hear the state law causes of action. The State Court Action has no connection with the bankruptcy case and will not interfere with the bankruptcy case because Movant is not seeking monetary relief from Debtor and the chapter 7 trustee filed the final account and distribution report stating that the estate has been fully administered. Doc. #104. It is in the interests of judicial economy and more expeditious and economical to lift the automatic stay to permit Movant take actions necessary to fully resolve the issues in the State Court Action because the state court can exercise jurisdiction over all parties and granting relief from the stay will avoid piecemeal litigation of all issues. There are non-debtor cross-defendants and Movant has been unable to proceed with the cross-complaint in the State Court Action because Debtor filed its bankruptcy petition. The continued adverse impact to Movant and other interested parties weighs in favor of lifting the automatic stay.

Accordingly, the court finds that cause exists to lift the stay and this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to prosecute the cross-complaint in the State Court Action.

8. [21-11034](#)-A-7     **IN RE: ESPERANZA GONZALEZ**  
[JES-1](#)

MOTION TO EMPLOY BAIRD AUCTIONS & APPRAISALS AS AUCTIONEER,  
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND  
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES  
8-9-2021    [\[43\]](#)

JAMES SALVEN/MV  
JUSTIN HARRIS/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 at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the 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 Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Esperanza Hansen Gonzalez ("Debtor"), moves the court for an order (1) authorizing the employment of Baird Auctions & Appraisals ("Auctioneer"); (2) authorizing the sale of a 2015 Dodge Ram Pickup VIN 3C6UR5CL8FG520582

(the "Property") at public auction on or after October 5, 2021 at Auctioneer's location at 1328 N. Sierra Vista, Suite B, Fresno, California; and  
(3) authorizing the estate to pay Auctioneer commission and expenses. Tr.'s Mot., Doc. #43.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 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 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 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. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Decl. of James E. Salven, Doc. #46. Trustee's experience indicates that a sale of the Property at public auction will yield the highest net recovery to the estate. Doc. #46. The proposed sale is made in good faith.

Section 327(a) of the Bankruptcy Code provides, in relevant part, "the trustee, with the court's approval, may employ . . . auctioneers . . . that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a). The trustee may, with the court's approval, employ an auctioneer 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. 11 U.S.C. § 328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

The court finds that Auctioneer is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Decl. of Jeffrey Baird, Doc. #45. Trustee requires Auctioneer's services to advertise the sale of the Property, assist in storing the Property until sold, and assist in other matters related to the auction sale of the Property. Doc. #46. Trustee has agreed to pay Auctioneer a commission of 15% of the gross sale price and estimated expenses of \$600.00. Doc. #46. Trustee unambiguously requests pre-approval of payment to Auctioneer pursuant to § 328. Doc. #43; Doc. #46.

Accordingly, this motion is GRANTED. Trustee's business judgment is reasonable and the proposed sale of the Property at public auction is in the best interests of creditors and the estate. The arrangement between Trustee and Auctioneer is reasonable in this instance. Trustee is authorized to sell the Property on the terms set forth in the motion. Trustee is authorized to employ and pay Auctioneer for services as set forth in the motion. Trustee shall submit a form of order that specifically states that employment of Auctioneer has been approved pursuant to 11 U.S.C. § 328.

9. [21-11658](#)-A-7     **IN RE: LORI MAYNE**  
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
8-6-2021    [\[11\]](#)

PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION:     Conditionally denied.

ORDER:             The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtor shall attend the meeting of creditors rescheduled for  
September 16, 2021, at 1:00 p.m. If the debtor fails to do so, the chapter 7  
trustee may file a declaration with a proposed order and the case may be  
dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee  
and the U.S. Trustee to object to the debtors' discharge or file motions for  
abuse, other than presumed abuse, under § 707, is extended to 60 days after the  
conclusion of the meeting of creditors.

10. [20-11877](#)-A-7     **IN RE: ANA VENTURA DE PAREDES**  
[ADJ-3](#)

MOTION TO SELL  
8-12-2021    [\[50\]](#)

LE'ROY ROBERSON/ATTY. FOR DBT.  
ANTHONY JOHNSTON/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:     This matter will proceed as scheduled for higher and  
better offers.

DISPOSITION:     Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local  
Rule of Practice ("LBR") 9014-1(f)(1). On August 18, 2021, secured creditor  
Newrez LLC d/b/a Shellpoint Mortgage Servicing ("Creditor") filed written non-  
opposition. Doc. #56. The failure of 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). Therefore, the defaults of the above-mentioned parties in  
interest are entered. This matter will proceed as scheduled for higher and  
better offers.

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Ana Isabel Ventura De Paredes ("Debtor"), moves the court pursuant to 11 U.S.C. § 363 and Federal Rule of Bankruptcy Procedure 6004(a) for an order authorizing the sale of real property located at 2050 Loma Vista Court, Livingston, California APN 023-042-023 (the "Property") to Yesenia Ramirez ("Buyer") for the purchase price of \$310,000.00, subject to higher and better bids at the hearing. Doc. #50. Trustee also seeks authorization to pay a commission for the sale to Coldwell Banker Commercial Gonella Realty ("Broker"). Doc. #50.

Per its written non-opposition, Creditor does not oppose the sale of the Property provided that the sale is completed within six months from the date of the order granting the motion and Creditor is paid in full out of escrow pursuant to an updated payoff demand. Doc. #56.

#### Selling Property of Estate under 11 U.S.C. § 363(b)(1) Permitted

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 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 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 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. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee has entered into an agreement with Buyer whereby Buyer will purchase the Property for \$310,000. Decl. of Trustee, Doc. #52. Buyer is an unrelated third party. Id. Buyer and Trustee are represented by real estate brokers who will be paid a commission from the gross sale price. Id. Buyer is to pay \$5,000 as a down payment applied to the purchase price at close of escrow, \$4,300 cash payment, and \$300,700 paid in cash at close of escrow to Trustee through a secured loan obtained by Buyer from a third-party lender. Id. The sale is subject to higher offers made at the hearing. Id. Trustee recommends minimum overbids of \$1,000. Id.

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

Accordingly, subject to overbid offers made at the hearing, the court is inclined to GRANT Trustee's motion and authorize the sale of the Property pursuant to 11 U.S.C. § 363(b)(1).

#### Compensation to Broker

Trustee also seeks authority to pay Broker and Buyer's agent a commission for the sale of the Property. This court has determined that employment of Broker is in the best interests of the estate and has previously authorized employment of Broker based on a 6% commission. Order, Doc. #30.

Trustee seeks to pay a total commission equal to 6% of the gross sale price, to be split between Broker and Buyer's agent. A 6% commission for the sale of the Property will equally approximately \$18,600. The court finds the 6% commission, is reasonable, actual, and necessary.

#### Conclusion

Accordingly, subject to overbid offers made at the hearing, the court will GRANT Trustee's motion and authorize the sale of the Property pursuant to 11 U.S.C. § 363(b)(1). Trustee is authorized to pay the real estate commissions as set forth in the motion.