UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, April 28, 2021
Place: Department A – Courtroom #11
Fresno, California

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, 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.

9:30 AM

1. 20-10010-A-11 **IN RE: EDUARDO/AMALIA GARCIA**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
1-2-2020 [1]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

2. 20-10010-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
LKW-21

CONFIRMATION HEARING RE: AMENDED CHAPTER 11 PLAN
2-18-2021 [520]

LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

3. 20-12258-A-11 **IN RE: JARED/SARAH WATTS**
LKW-12

MOTION TO BORROW
3-24-2021 [231]

SARAH WATTS/MV
LEONARD WELSH/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 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.

Jared Allen Watts and Sarah Danielle Watts (collectively, "DIP"), the debtors in possession in this Subchapter V Chapter 11 case, move the court pursuant to 11 U.S.C. § 364(c)(2) or (3) for an order authorizing DIP to borrow an unspecified amount of money from the Small Business Administration (the "SBA"), through the Economic Injury Disaster Loan ("EIDL") program, provided the SBA determines that DIP qualify for an EIDL (the "Motion"). Doc. #231.

DIP own and operate a hay brokerage and commercial transportation business located in Kern County, California. Doc. ##231, 234. DIP's business has been injured by the COVID-19 pandemic by restricting markets and limiting DIP's ability to expand their business. Doc. #234. DIP contend they need more working capital to expand their business and that such expansion will make their business more profitable and increase the money available to fund their confirmed plan of reorganization. Id.

Section 364(c) provides:

> If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—
> . . .
>
> (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
>
> (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c). In a Subchapter V Chapter 11 case, the debtor in possession has the rights and powers of a trustee. 11 U.S.C. § 1184. Debtors in possession must obtain the approval of the bankruptcy court when they wish to incur secured debt. 11 U.S.C. § 364(c)(2) and (3); In re Harbin, 486 F.3d 510, 521 (9th Cir. 2007). Section 364(c)(2) and (3) provide exceptions to the general prohibition against creating post-petition encumbrances on property of the bankruptcy estate. Harbin, 486 F.3d at 521.

Courts generally give debtors in possession considerable deference to determine, in their business judgment, the terms under which they obtain post-petition secured credit. See, e.g., In re Los Angeles Dodgers LLC, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender."); In re Ames Dep't Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.").

To determine whether a debtor in possession has met this business judgment standard, a court need only "examine whether a reasonable business person would make a similar decision under similar circumstances." In re Exide Techs., 340 B.R. 222, 239 (Bankr. D. Del. 2006); see also In re Curlew Valley Assocs., 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (recognizing the court should not entertain objections to a trustee's business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the [Bankruptcy] Code").

In this case, DIP submitted an application to the SBA for an EIDL but the SBA denied that application after the SBA determined that DIP's credit reports show an open bankruptcy. Decl. of Jared Allen Watts ¶ 3, Doc. #234. The SBA will reconsider the EIDL application after the bankruptcy court approves additional debt outside of the confirmed chapter 11 plan. Watts. Decl. ¶ 3, Doc. #234.

DIP assert that the COVID-19 pandemic has hurt their business by restricting the market and limiting their ability to expand the business. Doc. #234. DIP believe it is necessary to expand their business to increase profitability and increase the money available to fund a reorganization plan, and DIP intend to use the loan proceeds as working capital to expand their business. Id. The amount of the EIDL is unknown to DIP at this time, though the loan will be repaid over a period of thirty years from the date a note is given to the SBA beginning twelve months from the date of the note. Doc. #231. DIP project an interest rate of 2.75% to 3.75% per annum for the EIDL. Doc. #231.

If approved, the loan will be secured by all tangible and intangible property of the estate, including, but not limited to:

> (a) inventory, (b) equipment, (c) instruments, including promissory notes[,] (d) chattel paper, including tangible chattel paper and electronic chattel paper, (e) documents, (f) letter of credit rights, (g) accounts, including health-care insurance receivables and credit card receivables, (h) deposit accounts, (i) commercial tort claims, (j) general intangibles, including payment intangibles and software[,] and (k) as-extracted collateral as such terms may from time to time be defined in the Uniform Commercial Code. The security interest [DIP] grants includes all accessions, attachments, accessories, parts, supplies and replacements for the Collateral, all products, proceeds and collections thereof and all records and data relating thereto (collectively, the "Collateral").

Doc. #233, Ex. A. DIP state that the personal property described as the Collateral is subject to liens held by other creditors including a "blanket lien" held by Farm Credit West against DIP's business assets. Decl., Doc. #234. Therefore, the SBA's lien will be junior and subordinate to any existing liens encumbering the Collateral, including the lien held by Farm Credit West. Doc. #231.

On April 27, 2021, counsel for DIP filed a supplemental declaration in support of the Motion ("Supplemental Declaration") testifying as to the efforts DIP made to obtain unsecured credit from elsewhere on other terms, and such credit was not available, as is required under 11 U.S.C. § 364(c)(2) and (3). Doc. #238. In the Supplemental Declaration, counsel for DIP also testifies as to the range of money DIP expect to be borrowed through the EIDL, how DIP anticipate that the money borrowed through the EIDL will be repaid, and how repayment of the money borrowed through the EIDL will impact DIP's ability to perform under their confirmed plan. Id.

The court does not believe the terms of the EIDL are unreasonable considering the relative circumstances of DIP and the potential lender. See, e.g., In re Farmland Indus., Inc., 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003) ("[T]aken in context, and considering the relative circumstances of the parties, the Court does not believe that the terms are unreasonable."). The purpose of the EIDL program is to extend low-interest credit to small businesses that are impacted by disasters. Rather than presenting DIP with a hard bargain to acquire funds for their reorganization, the SBA has limited the program to agricultural businesses and established eligibility criteria for applicants. The approval of

DIP's EIDL depends on whether the bankruptcy court will approve additional debt to DIP outside of their confirmed chapter 11 plan. Doc. ##231, 234.

LBR 4001-1(c)(3) requires that post-petition financing agreements that contain any of the following provisions identify and provide substantial justification for such any such provision:

1. Cross-collateralization clauses, i.e., clauses that secure pre-petition debt by post-petition assets in which the secured party would not otherwise have a security interest by virtue of its pre-petition security agreement. See 11 U.S.C. § 552.

2. Provisions or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection, or amount of the secured party's lien or debt.

3. Provisions or findings of fact that bind the estate or all parties in interest with respect to the relative priorities of the secured party's lien and liens held by persons who are not parties to the stipulation. (This would include, for example, an order approving a stipulation providing that the secured party's lien is a "first priority" lien.)

4. Waivers of 11 U.S.C. § 506(c), unless the waiver is effective only during the period in which the debtor is authorized to use cash collateral or borrow funds.

5. Provisions that operate to divest the debtor-in-possession of any discretion in the formulation of a plan or administration of the estate or limit access to the court to seek any relief under other applicable provisions of law.

6. Releases of liability for the creditor's alleged pre-petition torts or breaches of contract.

7. Waivers of avoidance actions arising under the Bankruptcy Code.

8. Automatic relief from the automatic stay upon default, conversion to chapter 7, or appointment of a trustee.

DIP state the EIDL does not contain any of the provisions listed above, and the court does not find any. Doc. #231.

Based on the evidence before the court and for good cause shown, the Motion is granted.

4. 20-11367-A-11 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**
LKW-18

MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7
3-26-2021 [305]

LEONARD WELSH/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 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.

Temblor Petroleum Company ("Debtor") moves the court for an order converting Debtor's chapter 11 case to chapter 7 pursuant to 11 U.S.C. § 1112(a). Doc. #305.

Bankruptcy Code § 1112(a) permits the debtor to convert a chapter 11 case to chapter 7 so long as three conditions are met. Conversion to chapter 7 is allowed unless: (1) the debtor is not a debtor in possession; (2) the case originally was commenced as an involuntary case under this chapter; or (3) the case was converted to a case under this chapter other than on the debtor's request. 11 U.S.C. § 1112(a).

Here, Debtor initiated this chapter 11 case by filing a voluntary petition on April 9, 2020, and Debtor is conducting its business as a debtor in possession. Decl. of Philip F. Bell, Doc. #307. A review of the docket in this bankruptcy case shows that this case has not been converted previously. Therefore, the Bankruptcy Code does not preclude Debtor from voluntarily converting to chapter 7.

Accordingly, this motion is GRANTED.

5. 20-13293-A-11 **IN RE: PATRICK JAMES, INC.**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
10-9-2020 [1]

HAGOP BEDOYAN/ATTY. FOR DBT.

NO RULING.

6. 20-13293-A-11 **IN RE: PATRICK JAMES, INC.**
MB-20

CONFIRMATION HEARING RE: CHAPTER 11 SMALL BUSINESS SUBCHAPTER V PLAN
2-12-2021 [235]

HAGOP BEDOYAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Confirm if (i) the plan can be and is modified to permit confirmation under 11 U.S.C. § 1191(a) or (ii) Debtor requests confirmation under 11 U.S.C. § 1191(b) at the hearing and can meet the requirements of 11 U.S.C. §§ 1191(c)(2) and (c)(3).

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.

Patrick James, Inc. ("Debtor"), the Subchapter V Chapter 11 debtor in this case, moves the court for confirmation of its Plan of Reorganization dated February 12, 2021 (the "Plan"). Doc. ##235-240, 261-262, 282-289. The hearing to confirm the Plan was set by order of the court filed on February 17, 2021 ("Order"). Doc. #237. In the Order, the court ordered transmission of the Plan, Order, ballots, and notice of the confirmation hearing by March 5, 2021; acceptances or rejections of the Plan, and objections to confirmation by April 14, 2021; and responses to objections, tabulation of ballots, and brief by April 21, 2021. The court finds notice and service of the Plan and related documents were proper. Doc. ##240, 262.

The court finds that the Plan meets the requirements of 11 U.S.C. § 1190. Specifically, the Plan includes a brief history of the business operations of Debtor, a liquidation analysis, and projections with respect to the ability of Debtor to make payments under the proposed Plan of reorganization as required by § 1190(1). The Plan also provides for the submission of all or such portion of Debtor's future earnings or other future income to the supervision and control of the Subchapter V Trustee as is necessary for the execution of the Plan as required by § 1190(2). The court finds § 1190(3) does not apply to the Plan.

11 U.S.C. § 1191 governs plan confirmation in Subchapter V. In its memorandum of points and authorities in support of confirmation of the Plan, Debtor seeks confirmation as a consensual plan under 11 U.S.C. § 1191(a) and does not seek or discuss confirmation "on a non-consensual basis as set forth in 11 U.S.C.

§§ 1129(b) and 1191(b)[.]" Debtor's Mem., Doc. #283, 10:16-20. However, while Class 3B voted to accept the Plan, because Class 3B is not receiving any distribution under the Plan, such vote does not count and is irrelevant under 11 U.S.C. § 1126(g), which provides:

> Notwithstanding any other provision of this section, a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests.

11 U.S.C. § 1126(g). Accord In re Real Wilson Enters., No. 11-15697-B-11, 2013 Bankr. LEXIS 3997, at *12 (Bankr. E.D. Cal. Sept. 23, 2013) (Lee, J.) (holding court cannot count accepting vote of class receiving nothing under plan "as the entire class is conclusively deemed to have rejected the Plan"); In re Egan, 142 B.R. 730, 732 (Bankr. E.D. Pa. 1992) (disregarding acceptance vote from class receiving nothing under plan); In re Waterways Barge P'Ship, 104 B.R. 776, 783 (Bankr. N.D. Miss. 1989) (similar). Section 1126(g) applies to Subchapter V cases because it is not one of the sections of the Bankruptcy Code listed in 11 U.S.C. § 1181(a) that are deemed not to apply in Subchapter V cases. Thus, because Class 3B is deemed not to have accepted the Plan, 11 U.S.C. § 1129(a)(8), which provides that a class is either not impaired or has accepted the plan, is not satisfied and confirmation of the Plan must proceed under 11 U.S.C. § 1191(b).

Section 1191(b) provides in relevant part:

> [I]f all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1191(b). For a plan to be fair and equitable with respect to a class of unsecured creditors that is impaired and that has not accepted the Plan, the Plan must meet the requirements of § 1191(c)(2) and § 1191(c)(3). 11 U.S.C. § 1191(b), (c)(2)-(3).

With respect to § 1129(a)(1), the Plan complies with the applicable provisions of Chapter 11 and meets the applicable mandatory provisions of 11 U.S.C. § 1123(a). The Plan:

(1) Designates classes of claims other than claims of a kind specified in Bankruptcy Code sections 507(a)(2), 507(a)(3), or 507(a)(8) as required by § 1123(a)(1). Claims are classified as Class 1A (Priority Employee Wage and Vacation Pay (§ 507(a)(4)), Class 1B (Customer Deposits (§ 507(a)(7)), Class 2A (UMB Bank, N.A.), Class 2B (Ally Financial), Class 3A (Non-Insider Non-Priority Unsecured Claims), Class 3B (Subordinated Insider Non-Priority Claims), and Class 4 (Equity Interests).

(2) Specifies the classes that are not impaired under the Plan as required by § 1123(a)(2).

(3) Specifies the treatment of any class of claims or class of interest which is impaired under the Plan as required by § 1123(a)(3).

(4) Provides for the same treatment for each claim or interest of a particular class as required by § 1123(a)(4).

(5) Provides adequate means for the implementation and execution of the Plan as required by § 1123(a)(5).

(6) Prohibits Debtor from the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends as required by § 1123(a)(6).

(7) Contains no provisions inconsistent with the interests of creditors and equity security holders and public policy with respect to the manner of selection of any officer, director, or trustee under the Plan and any successor to such officer, director, or trustee as required by § 1123(a)(7).

(8) The provisions of § 1123(a)(8) do not apply in a Subchapter V case. 11 U.S.C. § 1181.

(9) Provides for the rejection of all executory contracts not previously or expressly assumed by Debtor in accordance with Debtor's sound business judgment as required by § 1123(b)(2).

Debtor, as proponent of the Plan, provided adequate disclosure regarding the Plan to all creditors and interest holders in good faith, and complied with the applicable provisions of Chapter 11 as required by § 1129(a)(2).

The Plan has been proposed in good faith and not by any means forbidden by law as required by § 1129(a)(3).

Pursuant to § 1129(a)(4), the Plan provides that payments made or to be made to Debtor's attorneys and other professionals in connection with the case or the Plan are subject to approval of the court.

Pursuant to § 1129(a)(5)(A), the Plan discloses the identity and affiliations of Debtor's officers and directors who will manage Debtor during the term of the Plan. The court finds that the continuance of such individuals in such office is consistent with the interests of creditors and equity security holders and with public policy. Pursuant to § 1129(a)(5)(B), Debtor has disclosed the identity of any insider that will be employed or retained by the reorganized debtor and the nature of the compensation for such insider.

Section 1129(a)(6) is inapplicable and no changes in regulatory rates are provided for in the Plan.

Pursuant to § 1129(a)(7), each holder of a claim or interest in an impaired class has either accepted the Plan or will receive an amount equal to or greater than the amount such holder of a claim or interest would receive in a Chapter 7 case.

Section 1129(a)(8) need not be satisfied if the subchapter V Plan is confirmed, as here, under § 1191(b). However, Class 3A accepted the Plan by 95.45% in number and 98.3% in dollar amount. Ballot Summary, Ex. A, Doc. #288. Class 3B also accepted the Plan by 100% in number and 100% in dollar amount, although

11 U.S.C. § 1126(g) precludes this court from accepting that vote because Class 3B "will receive no distributions under the Plan." Plan at § 4.01. See Real Wilson Enters., 2013 Bankr. LEXIS 3997, at *12.

Pursuant to § 1129(a)(9), the Plan provides for treatment of claims under Bankruptcy Code §§ 507(a)(4), 507(a)(7), and 507(a)(8). Debtor does not have any claims under Bankruptcy Code §§ 507(a)(1), 507(a)(2), 507(a)(3), 507(a)(5), or 507(a)(6). Decl. of Patrick M. Mon Pere ¶ 19, Doc. #285.

Section 1129(a)(10) need not be satisfied if the subchapter V Plan is confirmed, as here, under § 1191(b). However, the Plan has been accepted by one impaired class who are not insiders (Class 3A).

Regarding § 1129(a)(11), the court finds, based on the evidence submitted by Debtor, that the Plan is feasible and confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of Debtor or any successor to Debtor under the Plan.

Section 1129(a)(12) has been satisfied because all fees due under 28 U.S.C. § 1930 have been paid.

Sections 1129(a)(13)-(16) are not applicable to this case.

Class 3B is receiving no distributions under the Plan and is deemed not to have accepted the plan under 11 U.S.C. § 1126(g). Because Class 3B is a class of unsecured claims, the Plan must comply with § 1191(c)(2) and (c)(3). Section 1191(c)(2) requires that all projected disposable income received in the three to five years of the plan be applied to make payments under the plan. Here, the Income Summary Statement attached to the Plan shows net income of $514,718 for Year 1, $565,970 for Year 2, $557,147 for Year 3, $801,131 for Year 4 and $968,038 for Year 5. It is unclear to the court whether all projected disposable income Debtor will receive during first three years of the Plan, or such longer time as the court may fix not to exceed five years, is being applied to make payments under the Plan. Unless all such projected disposable income is being used to make payments under the Plan, the Plan does not comply with § 1191(c)(2).

With respect to § 1191(c)(3)(A), the court will consider Debtor's responses to whether all projected disposable income is being used to make Plan payments to determine whether there is a reasonable likelihood Debtor will be able to make all payments under the Plan.

With respect to § 1191(c)(3)(B), the Plan does not provide any remedies to protect the holders of claims or interest in the event payments due under the Plan are not made. Accordingly, § 1191(c)(3)(B) is not satisfied.

The court is inclined to confirm the Plan if the Plan can be and is modified to permit confirmation under 11 U.S.C. § 1191(a). Alternatively, if Debtor seeks confirmation of the Plan under 11 U.S.C. § 1191(b) at the confirmation hearing, the court is inclined to confirm the Plan if Debtor can (i) verify that all projected disposable income Debtor will receive during first three years of the Plan, or such longer time as the court may fix not to exceed five year, is being applied to make payments under the Plan as required by § 1191(c)(2), and (ii) modify the Plan to comply with 11 U.S.C. § 1191(c)(3)(B).

11:00 AM

1. 21-10548-A-7 **IN RE: RICHARD/ASHLEY BRAZIL**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION
4-6-2021 [23]

NO RULING.

1:30 PM

1. 20-12519-A-7 **IN RE: ISIDRO RAMOS**
JES-5

MOTION TO EMPLOY BAIRD AUCTIONS & APPRAISALS AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
3-29-2021 [57]

JAMES SALVEN/MV
JERRY LOWE/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 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 Isidro Ramos ("Debtor"), moves the court for an order (1) authorizing the employment of Baird Auctions & Appraisals ("Auctioneer"); (2) authorizing the sale of five firearms: (a) a Ruger rifle, serial no. 690372969; (b) a Ruger .22 caliber, serial no. 0012-60545; (c) a Remington .308 rifle with scope, serial no. RA46041B; (d) a Remington 20 gauge shotgun, serial no. CC5634K; and (e) a .45 caliber handgun, serial no. RIA955628 (together, the "Property") at public auction on or after May 4, 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 pursuant to 11 U.S.C. § 328. Tr.'s Mot., Doc. #57.

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. #59. Trustee's experience indicates that a sale of the Property at public auction will yield the highest net recovery to the estate. Doc. #59. 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. #60. 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. #59. Trustee has agreed to pay Auctioneer a commission of 15% of the gross sale price of each item of Property and up to $100.00 for storage fees and preparation for sale. Doc. #59. Trustee unambiguously requests pre-approval of payment to Auctioneer pursuant to § 328. Doc. #57; Doc. #59.

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.

2. 19-14953-A-7 **IN RE: STARLENE VEGA**
JES-5

MOTION FOR COMPENSATION FOR JAMES EDWARD SALVEN, CHAPTER 7 TRUSTEE(S)
3-29-2021 [82]

JAMES SALVEN/MV
BENNY BARCO/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.

James E. Salven ("Trustee"), the Chapter 7 trustee in this bankruptcy case, requests an allowance of final compensation and reimbursement for expenses for services rendered November 26, 2019 through the close of this case or Trustee's replacement. Doc. #82. Trustee provided services as trustee and requests compensation of $17,176.44. Doc. #82. Trustee requests reimbursement for expenses in the amount of $323.79. Doc. #82. Since being appointed to this case on November 26, 2019, Trustee has performed all statutory duties required of a trustee in this matter and this case is ready to be closed. Decl., Doc. #84.

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). Absent extraordinary circumstances, chapter 7 trustee fees should be presumed reasonable if they are requested at the statutory rate. Hopkins v. Asset Acceptance LLC (In re Salgado-Nava), 473 B.R. 911, 921 (B.A.P. 9th Cir. 2012). Here, Trustee demonstrates reasonable compensation in accordance with the statutory framework of § 326. Ex. A, Doc. #85.

This motion is GRANTED. The court allows statutory compensation in the amount of $17,176.44 and reimbursement for expenses in the amount of $323.79.

3. 20-13970-A-7 **IN RE: IDA GLEASON**
SAH-2

MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE
3-22-2021 [17]

IDA GLEASON/MV
SUSAN HEMB/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 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 debtor asks the court to exempt the debtor from the financial management course required by 11 U.S.C. § 727(a)(11) pursuant to 11 U.S.C. § 109(h)(4). Doc. #17. The debtor recently passed away and was unable to complete a financial management course prior to the debtor's passing. No opposition to this motion has been filed.

Federal Rule of Bankruptcy Procedure 1016 states that the "[d]eath or incompetency of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." 11 U.S.C. § 109(h)(4) excuses the debtor from completing the financial management requirements if the court determines, after notice and hearing, that the debtor is unable to complete those requirements because of incapacity or disability. The court finds that the debtor's medical condition and subsequent death prevented the debtor from completing the financial management requirements.

Accordingly, this motion is GRANTED. The debtor is excused from completing and filing a certificate of completion of the financial management course required by § 727(a)(11).

4. 20-13479-A-7 **IN RE: MARIA RUIZ DE VERA AND GERMAN VERA**
EPE-1

MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA) N.A.
3-26-2021 [24]

GERMAN VERA/MV
ERIC ESCAMILLA/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 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.

Maria Yolanda Ruiz de Vera and German Rodolfo Vera (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Citibank (South Dakota) N.A. ("Creditor") on their residential real property commonly referred to as 9051 E. Dinuba Ave, Selma, CA 93662 (the "Property"). Doc. #24; Schedules C and D, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under section 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in section 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtors filed their bankruptcy petition on October 30, 2020. A judgment was entered against Maria Y. Ruiz a/k/a Maria Yolanda Ruiz de Vera in the amount of $5,113.38 in favor of Creditor on December 29, 2009. Ex. 3, Doc. #27. The abstract of judgment was recorded pre-petition in Fresno County on February 8, 2010. Ex. 4, Doc. #27. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #27. The Property also is encumbered by a lien in favor of LoanCare LLC in the amount $94,870.00. Schedule D, Doc. #1. Debtors claimed an exemption of $89,664.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at $184,534.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		$5,113.38
Total amount of all other liens on the Property (excluding junior judicial liens)	+	$94,870.00
Amount of Debtors' claim of exemption in the Property	+	$89,664.00
	sum	$189,647.38
Value of Debtors' interest in the Property absent liens	-	$184,534.00
Amount Creditor's lien impairs Debtors' exemption	=	$5,113.38

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

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

5. 21-10682-A-7 **IN RE: JOHN/IRMA ESPINOZA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-7-2021 [16]

$3.00 FILING FEE PAID 4/9/21

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fees due were paid in full. The case shall remain pending.