UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

November 19, 2020 at 10:30 a.m.

1.	**18-90600-E-7** **BSH-4**	**CORAZON HERNANDEZ** **Brian Haddix**	**CONTINUED MOTION TO COMPEL ABANDONMENT** **10-13-20 [111]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Trustee's Attorney, and creditors on October 13, 2020. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Compel Abandonment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The Motion to Compel Abandonment is xxxxxxx .

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The court has entered an order abandoning the requested personal property. Order, Dckt. 130.

There remains pending the abandonment of the real property commonly known as 2721 E Orangeburg Ave, Modesto, California. The Parties have entered into a stipulation for the granting of a deed of trust on property to protect the estate's interests, and then for the property to be abandoned to the Debtor so she may refinance or sell the property. *See* Order Approving Compromise, Dckt. 123.

At the hearing, **XXXXXXX**

2.	**19-90110-E-7** **SHA-2**	**CAMPBELL WINGS, INC.** **Reno Fernandez**	**CONTINUED MOTION FOR ADMINISTRATIVE EXPENSES** **6-26-19 [40]**

TELEPHONIC APPEARANCES OF STANFORD ATWOOD, ESQ, AND ANTHONY JOHNSTON, ESQ. REQUIRED FOR THE NOVEMBER 19, 2020 HEARING

The Motion for Administrative Expenses is xxxxxxx.

NOVEMBER 19, 2020 HEARING

The Parties filed their updated Status Report on October 30, 2020. In it they advise the court of continuing absence from the United States of the Managing Member of Hamilton and Bascom, LLC, and the restrictions on his ability to return to the United States due to COVID-19. Dckt. 115. The Parties state that it is not expected for him to return until Spring or Summer 2021.

This Motion for Allowance of Administrative Expenses (Dckt. 40) was filed on June 26, 2019. The hearing on this Motion was continued pursuant to a Stipulation of the Parties, in which they advised the court:

> Good cause exists for the continuance in that the parties are engaged in a global compromise of all matters including the potential sale of the estate's liquor license to the landlord and settlement of the state court litigation between the Debtor and landlord.

Stipulation, p. 2:1-3. The Parties requested a modest continuance from August 29, 2019 to October 17, 2019.

Then, on October 3, 2019, the Parties filed a Second Stipulation to Continue (Dckt. 63), requesting a modest continuance from the October 17, 2019 hearing date to December 19, 2019. The stated reason was that counsel for Hamilton and Bascom, LLC had a conflict that arose for the October 17, 2019 date they previously picked.

Then, on November 15, 2019, the Parties filed their Third Stipulation to Continue (Dckt. 73), advising the court that counsel for Hamilton and Bascom, LLC another conflict arose for the December 19, 2019 date they had picked. However, for the Third Stipulation, rather than a short continuance, the Parties requested that the court push it out to April 23, 2020.

Then, on March 11, 2020, the Parties filed a Joint Motion and Fourth Stipulation to further continue the hearing. Dckt. 87. For a third time, the stated grounds were that counsel for Hamilton and Bascom, LLC had a scheduling conflict for the April 23, 2020 hearing date the Parties had selected. The Parties requested that it be continued to August 6, 2020.

The court, as it had for the prior three requests, continued the hearing, this time to August 6, 2020.

Then, on July 21, 2020, the Parties filed a Joint Motion and Fifth Stipulation to Continue the hearing that was set for August 6, 2020. Dckt. 109. The Joint Motion states:

> Good cause exists for the continuance in that counsel for the Trustee intends to take the deposition of Barton C. Dorsa, Managing Member of Hamilton and Bascom, LLC, who is currently out of the country with no clear idea of when he may be permitted to return, given current COVID-19 concerns and travel restrictions, but who is not expected to return until 2021, at the earliest. In addition, counsel for Hamilton and Bascom, LLC seeks to conduct several depositions in connection with this hearing and said extension will allow for such depositions and other discovery to be conducted prior to the hearing.

Id., p. 2:6-12.

Now, with this Sixth Request to Continue, the Parties are basing it on the Managing Member's absence from the Country. No evidence has been provided as to the reason for his absence, his inability to return, or the lack of ability of Hamilton and Bascom, LLC to diligently prosecute this Motion. These proceeding have been delayed for multiple times, first with Hamilton and Bascom, LLC's counsel being unable to attend the continued hearing dates, and now the extended absence from the Country by the Managing Member.

The court, believing that the Parties and their counsel were attempting to prosecute this Contested Matter in good faith, has granted their requests. At this juncture, they will now have to establish that they are prosecuting this Contested Matter in good faith and provide evidence of the Managing Member's inability to return to this Country and prosecute the Contested Matter that he had commenced.

Additionally, the Parties will have to show why they have not been able to proceed with discovery. Why depositions can not be conducted using Zoom or other virtual conferencing technology. They need to show why document productions, whether physically or electronically, cannot be pursued.

November 19, 2020 Hearing

At the hearing, **xxxxxxx**

3. 19-91122-E-7 MARIBEL SOTO RIVERA MOTION TO SELL
BLF-4 Thomas Sands 10-12-20 [93]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 12, 2020. By the court's calculation, 38 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is granted.

The Bankruptcy Code permits Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the nonexempt interest in real property commonly known as 6225 Howard Avenue, Riverbank, California ("Property").

The proposed purchaser of the Property is Maribel Soto Rivera ("Debtor-Buyer"), and the terms of the sale as summarized by the court are (the complete terms are found on Exhibit A, the Sale Agreement, Dckt. 97):

A. The purchase price is $37,000.00, with Debtor-Buyer providing a $10,000 deposit.

B. Buyer shall deliver a cashier's check in the amount of $37,000.00 made payable to *"Michael D. McGranahan, Chapter 7 Trustee, In re Maribel Soto Rivera"* on or before the close of business on October 13, 2020.

C. The sale will not be conducted through escrow and there will be no transfer of title.

D. Debtor-Buyer fully assumes all responsibility and liability for any taxes or assessments incurred at any time before or after the Agreement is entered into.

E. Debtor-Buyer is buying the Property in "as is" condition.

F. Each party shall bear its own attorney's fees and costs in connection with this Agreement. In the event of a breach of this Agreement, the breaching party will pay reasonable attorney's fees and costs of the non-breaching party incurred by reason of such breach.

G. The Agreement shall be void and Chapter 7 Trustee shall return the purchase amount to Debtor-Buyer if (1) the court does not approve the proposed Sale, (2) the court approves the proposed sale but the such approval is reversed on appeal, or (3) the court orders a bid accepted that exceeds the purchase amount.

Proposed Overbidding Procedures

Movant proposes the following overbidding procedures:

1. Bids shall be submitted in increments of at least $1,000.00 more than the previous bid, with the first overbid required amount of $140,000.00 or higher.

2. Within seven days of the hearing on this motion, the proposed overbidder must qualify to bid by demonstrating to the Chapter 7 Trustee that the overbidder has the financial ability to close the transaction according to the Agreement.

3. Any party overbidding must agree to purchase the Property on the identical terms as the proposed Agreement, with the exception of the increased price.

4. The successful overbidder must deliver to the Chapter 7 Trustee a deposit of $10,000.00 within seven days of the hearing on this motion. If the overbidder timely completes the purchase, the deposit will apply to the purchase price. However, if the overbidder defaults, the deposit will be non-refundable.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale of the estate's nonexempt interest in the Property will allow the

Chapter 7 Trustee to collect $37,000.00 for the estate without the unnecessary expense, uncertainty, or delay in selling the Property on the market.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Michael D. McGranahan, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Maribel Soto Rivera or nominee ("Buyer"), the nonexempt interest in the Property commonly known as 6225 Howard Avenue, Riverbank, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $37,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 97, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
>
> C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

4. 20-90524-E-7 SDM-1 KOSHABA/LEADA YACO Scott Mitchell MOTION TO DISMISS CASE 10-16-20 [15]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 16, 2020. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Dismiss Case is xxxxxxx .

The Chapter 7 debtors, Koshaba Yaco and Leada Yaco ("Debtors"), seek dismissal of the case on the basis that Debtors will work directly with creditors in an effort to resolve their debt issues pursuant to 11 U.S.C. § 707(a).

APPLICABLE LAW

Pursuant to 11 U.S.C. § 707(a), "the court may dismiss a case under this chapter only after notice and a hearing and only for cause." The court has substantial discretion in ruling on a motion to dismiss under section 707(a), and in exercising that discretion must consider any extenuating circumstances, as well as the interests of the various parties. *In re Atlas Supply Corp*., 857 F.2d 1061 (5th Cir. 1988); *In re Green*, 64 B.R. 530 (B.A.P. 9th Cir. 1986).

Cause is determined using a two step analysis:

(1) First, we must consider whether the circumstances asserted to constitute "cause" are "contemplated by any specific Code provision applicable to Chapter 7 petitions."

> Id. If the asserted "cause" is contemplated by a specific Code provision, then it does not constitute "cause" under § 707(a). See id. at 1194. If, however, the asserted "cause" is not contemplated by a specific Code provision, then we must further consider whether the circumstances asserted otherwise meet the criteria for "cause" for discharge under § 707(a).

Sherman v. SEC (In re Sherman), 491 F.3d 948, 970 (9th Cir. 2007); quoting *Neary v. Padilla (In re Padilla)*, 222 F.3d 1184 (9th Cir. 2000).

A chapter 7 debtor that seeks to voluntarily dismiss their chapter 7 case has the burden to show "that there would be no legal prejudice resulting from the dismissal." *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 841 (B.A.P. 9th Cir. 2008). "The law in the Ninth Circuit is clear: a voluntary Chapter 7 debtor is entitled to dismissal of his case so long as such dismissal will cause no legal prejudice to interested parties." *Leach v. United Sates (In re Leach)*, 130 B.R. 855 (9th Cir. BAP 1991). The court will evaluate legal prejudice to interested parties utilizing both legal and equitable considerations. *Id*. at 856. The Ninth Circuit has "affirmed a refusal to dismiss when the bankruptcy court perceived legal prejudice." *Hickman*, 384 B.R. at 840.

DISCUSSION

Debtors assert that creditors will not be prejudiced by the dismissal of this Chapter 7 case. Dckt. 15. The chapter 7 debtor that seeks to voluntarily dismiss their chapter 7 case has the burden to show "that there would be no legal prejudice resulting from the dismissal." *Hickman*, 384 B.R. at 841. Debtors assert that creditors will not be prejudiced by the dismissal for the following reasons:

A. Debtors have relocated to Nevada and their expenses have decreased.

B. There are no assets listed in debtors' petition that would be subject to sale and distribution for the benefit of creditors.

C. Debtors have not received any post-petition assets or claims that would be subject to the bankruptcy estate.

D. The voluntary filling of Debtors' petition did not interrupt any foreclosure, wage assignment, or levy on any real or personal property.

No opposition has been filed to this Motion. Debtor has not filed a recent case. At the hearing, **XXXXXXX**

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 7 case filed by the Chapter 7 Debtor, Koshaba Adonia Yaco and Leada Betty Yaco ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the case is dismissed.

5. 18-90237-E-7 HSM-10 | **JOANN MERENDA** **Pro Se** | **MOTION TO ENTER SUPPLEMENTAL ORDER AND/OR MOTION TO AMEND 11-4-20 [175]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on November 4, 2020. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Enter Supplemental Order or Amend Order Approving the Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Enter Supplemental Order regarding the prior Settlement Agreement approved by this court is granted.

The Chapter 7 Trustee, Gary Farrar ("Trustee"), requests the court enter a supplemental order or amend the order approving a motion to compromise heard on May 21, 2020 and approved by order (Dckt. 135) of this court on May 22, 2020.

Trustee seeks such supplement or amendment on the basis that the United States Trustee has requested the Trustee obtain authorization of certain variations from the Agreement subject of the May 22, 2020 Order:

A. As part of the Agreement, $6,081.62 was held to pay off an American Express account related to one of the parties. American Express did not file a proof of claim. Debtor and Mr. Lewis, one of the parties to the Agreement, jointly agreed Trustee should instead remit the funds to the Internal Revenue Service in connection with taxes owed by Mr. Lewis. Trustee complied with this change.

B. Trustee aided in the transfer of an additional $3,200 remitted by Mr. Lewis which was sent to the same Internal Revenue Service debt referred to above. These funds were not property of the estate or addressed by the Agreement.

The variations listed above did not result in diminution of the net proceeds to the estate, and were taken in order to help Debtor and Mr. Lewis solve their dispute and allow the Agreement to be consummated under time constraints.

The court's order approving the compromise was entered on May 22, 2020. Order, Dckt. 135. The Order first approves and authorizes the Settlement on the terms specified in the Settlement Agreement filed as Exhibit A (Dckt. 128) in support of the Motion to Approve Compromise. The Order then provides for the Trustee to sell real property commonly known as 6728 Eucalyptus Ave, Winton, California to Tony Lewis, and from the sales proceeds to pay specified liens recorded against such property.

The Order further authorized the sale of specified personal property to Tony Lewis for $18,200.00.

The parties to the Settlement Agreement are the Chapter 7 Trustee, the Debtor, Tony Lewis, and TJL Trucking, LLC. Settlement Agreement, Dckt. 128 at 2-9. American Express is not a party to the Settlement Agreement.

Paragraph 13 of the Settlement Agreement provides for payment of an American Express Credit Card Account:

> 13. American Express Credit Card Account. From the funds the Trustee receives from funds received pursuant to the Combined Purchase Price, the Estate will pay up to $6,081.62 on the American Express Account ending in 1006 (collectively "Credit Card Payment"). The Parties agree that payment of the Credit Card Payment will resolve all disputes between them as to the financial responsibility for the balances on that credit card accounts.

There is no requirement for the filing of a proof of claim, and the Settlement Agreement states that "The Parties agree . . ." that the payment will "resolve all disputes between them as to the financial responsibility for the balances on the credit card accounts." Thus, payment of this amount was agreed to by Debtor, Mr. Lewis, and the Trustee.

What this Motion appears to request is not for the court to amend its prior order, but to amend the Agreement between the Debtor, Mr. Lewis, and the Trustee. The persons requesting such judicial

amendment is the Trustee. The Motion states that both the Debtor and Tony Lewis now agree that instead of the monies being paid to American Express for the credit card obligation of the TJL business, they should be paid to the Internal Revenue Service for TJL business related tax obligations owed by Mr. Lewis.

The Trustee's Declaration is provided in support of the Motion. Dckt. 177. The Trustee testifies that both the Debtor and Tony Lewis agree that the monies should be paid to the Internal Revenue Service for the TJL business related obligations rather than American Express. Declaration, ¶6.a. This indicates that the Trustee has spoken directly to each of the two parties, and that his testimony under penalty of perjury is within the hearsay exception provided in Federal Rule of Evidence 801(d)(2) [opposing party statement].

The Trustee also testifies that Tony Lewis provided an additional $3,200.00 for the Trustee to transmit with the $6,081.62 to the Internal Revenue Service.

The court grants this request of the Parties - the Trustee directly through the Motion and indirectly for the Debtor and Tony Lewis as communicated by the Trustee - and issues a Supplemental Order authorizing the Parties to amend the Settlement Agreement to allow for the payment of the $6,081.62 that was originally provided for American Express to be paid to the Internal Revenue Service for TJL business related taxes.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Gary Farrar, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Enter Supplemental Order or Amend Order Approving the Compromise is granted, and the court authorizes the amendment of the Settlement Agreement approved on May 22, 2020 by Gary Farrar, the Chapter 7 Trustee, Joann Merenda, the Debtor, and Tony Lewis, who are all of the parties to the Settlement Agreement, for the Trustee to pay up to $6,081.62 of the monies originally provided for in the Settlement Agreement (¶ 13, Dckt. 128) to American Express Credit Card Account, to the Internal Revenue Service for TJL Trucking, LLC business-related taxes as asserted to be owed by Tony Lewis.

6.	**10-90281-E-7** **MLP-5**	**LORRAINE/GARY ERWIN** **Martha Passalaqua**	**OBJECTION TO CLAIM OF SAXON MORTGAGE SERVICES, INC., CLAIM NUMBER 21-1** **10-1-20 [226]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 3007-1 Objection to Claim—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Debtor, Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, parties requesting special notice, and Office of the United States Trustee on October 1, 2020. By the court's calculation, 49 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 21-1 of Saxon Mortgage Services, Inc. as Servicer on behalf of U.S. Bank National Association is xxxxx.

The Chapter 7 debtors, Lorraine Dennise Erwin and Gary Richard Erwin ("Objector"), request that the court disallow the amended claim of Saxon Mortgage Services, Inc. as servicer on behalf of U.S. Bank National Association ("Creditor"), Proof of Claim No. 21-1 ("Claim"). The Claim is asserted to be unsecured in the amount of $121,274.24.

Pursuant to a stipulation between Creditor and Objector filed with the court on April 12, 2010, if the case was dismissed or converted, Creditor was to retain its lien for the full amount remaining due under the Note but allowed as a non-priority general unsecured claim. Dckt. 46. Creditor filed an Amended Proof of Claim on September 17, 2010 amending the claim as unsecured claim in the amount of $121,274.24.

Objector now wishes the objection to the Amended Claim be sustained and for the Original claim to be allowed so that the check dispersed to the Servicer on behalf of Creditor pursuant to the order for dispersal in the amount of $47,805.58 that was never cashed and has gone stale, be applied to the outstanding balance as a secured claim.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin,* 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

Once a party has objected to a proof of claim, the creditor asserting the claim may not withdraw the claim except on order of the court. FED. R. BANKR. P. 3006.

BACKGROUND

Debtor filed for Chapter 13 bankruptcy. Dckt. 1. Creditor filed an original claim that was secured in the amount of $121,274.24. Proof of Claim No. 3. Debtors filed a Motion to Value Collateral. The motion was resolved through a stipulation.

In August of 2010, the case was converted from a Chapter 13 case to a Chapter 7 case. The Creditor amended the claim to be an unsecured claim in September of 2010. In 2011, Debtor received a Chapter 7 discharge because it was a no asset case.

Later, in 2017 the case was reopened by request of the U.S. Trustee because of a possibility of settlement in a medical liability action.

In 2019, Chapter 7 Trustee objected to the amended proof of claim arguing that since the case had been converted, the claim should be denied and converted back to the original claim. The court overruled the objection, without prejudice. Civil Minutes and Order; Dckts. 194, 196.

While properly filed as an Objection to Claim, the "objection" is not to the substance of the obligation but to how it was conditionally modified by the confirmed Chapter 13 Plan and the 11 U.S.C. § 506(a) valuation. Since the Plan was not completed, the "modified contract" created by the confirmed Chapter 13 Plan was not final and becomes ineffective upon the failure to complete the Plan.

The Stipulation, upon which the plan was confirmed and the Amended Unsecured Claim filed expressly states the law, that if the plan is not completed, Creditor retains its lien and such lien continues to secure the obligation.

Creditor is to receive payment of $47,805.58 to be applied to the claim owed by the Debtor. However, the check for the disbursement of the $47,805.58 was never cashed and then turned over to Debtor by the Trustee upon the Trustee's Final Report being filed.

What is interesting at this point is why the Debtor and Debtor's counsel could not contact the Creditor, tell Creditor that there is $47,805.58 in monies that were paid on the claim (whether secured or unsecured, it is the same debt) and that Debtor has that amount in a cashier's check for Creditor, and ask to whom should it be paid so the check is cashed and Creditor gets almost $50,000 in one lump sum.

A look at Debtor's personal knowledge testimony provided in a Declaration appears to merely be a cut and paste, with some subtle changes, of the Motion filed by Counsel for the Debtor. Declaration, 228. Debtor does not address how Debtor and Debtor's counsel could not make a $47,805.58 payment to Creditor.

At the hearing, **xxxxxxx**

~~Based on the evidence before the court, Debtor's Objection to Proof of Claim No. 21-1, which is an amendment to the secured Proof of Claim No. 3-1 filed by Creditor, is sustained and Creditor's claim is a secured claim as set forth in Proof of Claim No. 3-1.~~

~~The court shall issue a minute order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Objection filed in this case by Lorraine Dennise Erwin and Gary Richard Erwin, the Debtors, ("Objector") to Proof of Claim No. 21-1 filed by Saxon Mortgage Services, Inc. Servicer on behalf of U.S. Bank National Association ("Creditor") as an amend unsecured claim for the secured claim stated in Proof of Claim 3-1 filed for Creditor having been presented to the court, Amended Proof of Claim No. 21-1 filed based on the conditional 11 U.S.C. § 506(a) valuation of the secured claim and confirmation of Debtor's Chapter 13 Plan, the Chapter 13 Plan not having been completed and the case converted to one under Chapter 7, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Objection to Proof of Claim Number 21-1 of Creditor is sustained, and that Proof of Claim No. 3-1 stating a secured claim for Creditor is given full force and effect as a secured claim in this case.~~

7. 18-90029-E-11 DW-2 7 thru 11 **JEFFERY ARAMBEL** **MOTION BY MATTHEW J. OLSON TO WITHDRAW AS ATTORNEY O.S.T. 11-16-20 [1262]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on November 16, 2020. By the court's calculation, 3 days' notice was provided. The court set the hearing for November 19, 2020. Dckt. 1273.

The Motion to Withdraw as Attorney was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing ----------.

The Motion to Withdraw as Attorney is xxxxx.

Dorsey & Whitney LLP ("Movant"), counsel of record for Jeffery Edward Arambel ("Debtor"), filed a Motion to Withdraw as Attorney as Debtor's counsel in the bankruptcy case. Movant states the following:

A. The Motion is brought pursuant to Local Bankruptcy Rule 2017-1(e) and California Rule of Professional Conduct 1.16(b)(4).

B. Over the past several days, irreconcilable differences between Dorsey and the Reorganizing Debtor arose.

C. From the communications with the Reorganizing Debtor, it is clear that the Reorganizing Debtor wish to take the within case in a direction that Dorsey

cannot follow, and Dorsey should withdraw and allow the Reorganizing Debtor to proceed as he wishes.

Motion, Dckt. 1262.

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3- 700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(1) The client

> (d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively.

CAL. R. PROF'L. CONDUCT 1.16(b)(4)(d).

DISCUSSION

As a ground for the Motion to Withdraw as Attorney, Movant states Reorganizing Debtor wishes to take this case in a direction that Dorsey cannot follow. Movant states in his declaration:

> Over the past several days, irreconcilable differences between Dorsey and Mr. Arambel arose. I am reluctant to discuss the details of such differences out of concern for attorney-client confidences, but emphasize that the breakdown in the attorney-client relationship is clear and unambiguous despite efforts to repair and maintain the attorney-client relationship.

Declaration, Dckt. 1263.

Furthermore, under California Rule of Professional Conduct 3-700(C)(1)(d), Debtor's conduct, such as wishing to take the case in a direction that Dorsey cannot follow is hindering Movant's ability to carry out their employment and duties effectively. Those are sufficient reasons for permissive withdrawal.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Withdraw as Attorney filed by Dorsey & Whitney LLP ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Withdraw as Attorney is granted, and Movant is permitted to withdraw as counsel for Jeffery Edward Arambel ("Debtor").

8. **18-90029-E-11** **JEFFERY ARAMBEL** **MOTION TO SELL FREE AND CLEAR OF LIENS**
FWP-3 **Matt Olson** **10-15-20 [1203]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on October 15, 2020. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is granted.

The Bankruptcy Code permits Focus Management Group USA, Inc., the Plan Administrator, ("Movant") to sell property of the estate or under the confirmed plan after a noticed hearing. 11 U.S.C. § 363 Here, Movant proposes to sell the following real property in Stanislaus County, California:

Needham Ranch

± 265.4 acres of land	APN 021-015-002, APN 021-015-023, APN 021-015-024, APN 021-015-025, APN 021-015-026, and APN 021-013-018

("Property").

The proposed purchaser of the Property is Tyler C. Angle, and the terms of the sale are:

A. The Purchase Sale Agreement proposes the sale of 265.4 acres for $4,379,100.00.

B. The sale of the Property is on an "As-Is" basis, subject to environmental disclosures set forth in the Purchase Sale Agreement.

C. Upon acceptance of the Purchase Sale Agreement, buyer shall have a 45 day due diligence period to inspect the property.

D. Buyer shall provide a $200,000.00 deposit seven (7) days after acceptance of the offer, which shall be fully refundable during the 45 day due diligence period.

E. Close of Escrow shall occur 90 days after acceptance of the offer.

Bidding Procedures

Sale of the Property is subject to Overbidding and an Auction at the Bankruptcy Hearing with the following summarized Bidding Procedures:

A. An initial overbid must be at least $100,000 higher than the $4,379,100.00 proposed gross sale price and each successive bid thereafter must be at least $10,000 more than the previous highest qualified overbid.

B. Prior to the date of the hearing and before being permitted to bid, any overbidder must submit to the Plan Administrator a deposit by cashier's check payable to Focus Management Group USA, Inc. in the amount of $2000,000, non refundable if the overbid is successful.

C. Prior to the date of the hearing and before being permitted to bid, any overbidder must identify their source of capital or other financial ability to complete the contemplated transaction.

D. Any overbid must be on the same terms and conditions provide by the Purchase Sale Agreement.

E. Any overbidder seeking to appear at the hearing must make arrangements to appear by telephone, with instructions provided from counsel for the Plan Administrator.

F. Purchase Sale Agreement is subject to a 75,000.00 Breakup Fee, payable to buyer Tyler C. Angle if the Property is sold to a third party overbidder.

G. Approval by the court of the second highest bid as a back-up buyer on the same terms and conditions.

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the liens of Stanislaus County Tax Collector, Brighthouse Life Insurance Co., SBN V Ag I LLC ("Summit"), and Del Puerto Water District.

Priority	Claim Holder	Satisfaction and Release
Tax	Stanislaus County Tax Collector	The Plan Administrator seeks authority to pay the Stanislaus County Tax Collector from the proceeds of the sale. Therefore, their liens shall be satisfied and released as paid in full.
1st	Brighthouse	Brighthouse holds a secured claim against the Property allowed by the Plan. The Plan Administrator has sought and will continue to seek the consent of Brighthouse to release its lien, to the extent not paid in full, on the Property. The Plan Administrator expects that Brighthouse will so consent to the sale of the Property free and clear of their lien.
2nd 3rd	Summit	Summit holds a secured claim against the Property allowed by the Plan. The Plan Administrator has sought and will continue to seek the consent of Summit to release its lien, to the extent not paid in full, on the Property. The Plan Administrator expects that Summit will so consent to the sale of the Property free and clear of their liens.
Utility	Del Puerto Water District	The Plan Administrator seeks authority to pay the Del Puerto Water District from the proceeds of the sale. Therefore, their liens shall be satisfied and released as paid in full.

The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

> (f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

The Motion proposes the full satisfaction of the liens held by Stanislaus County Tax Collector and Del Puerto Water District, as well as the withholding of $1,105,926.00 for the anticipated income tax liability created from the sale.

For this Motion, Movant has established that the Plan Administrator expects Summit and Brighthouse will consent to the sale of the Property free and clear of their liens. The declaration of Juanita Schwartzkopt, Senior Managing Director at Focus Management Group USA, Inc, the duly appointed Plan Administrator, provides that the Plan administrator has sought and will continue to seek consent of Brighthouse and Summit to release their respective liens and expects they will so consent. Dckt. 1205.

On November 4, 2020, Brighthouse Life Insurance Co. filed a Response consenting to the sale and the proposed payment of net proceeds of the sale to Brighthouse. Dckt. 1226. Though not opposing the sale, Brighthouse requests that Plan Administrator provide a preliminary and final closing statement for Brighthouse to review; for all undisputed amounts to be paid; and that any remaining amounts of their claim, to the extent Brighthouse's claim is not paid in full through this transaction, be paid from other sales of Brighthouse's collateral.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the Property has been marketed for more than two years and the Plan Administrator projects that the sale will generate significant proceeds for payment of secured claims. In addition, the Property is currently not generating revenue but continues to accrue expenses such as property taxes and insurance.

Movant has estimated that a five (5) percent broker's commission from the sale of the Property will equal approximately $218,955. The five (5) percent commission shall be paid 2.5 percent to the Plan Administrator's broker, Pearson Realty, and 2.5 percent to the Buyer's broker, West Coast Marketing Group. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than five (5) percent commission.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Focus Management Group USA, Inc., the Plan Administrator, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Focus Management Group USA, Inc., the Plan Administrator, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f) to Tyler C. Angle or nominee ("Buyer"), the real property in Stanislaus County, California, bearing Assessor's Parcel Nos. 021-015-002, 021-015-023, 021-015-024, 021-015-025, 021-015-026, and 021-013-018 ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $4,379,100.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 1207, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

C. The Property is sold free and clear of the liens of Stanislaus County Tax Collector, Del Puerto Water District, and Brighthouse Life Insurance Co. and SBN V Ag I LLC ("Summit"), Creditors asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(2) and (5), with the lien of such creditor attaching to the proceeds. The Plan Administrator shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.

Priority	Claim Holder	Estimated Claim
Tax	Stanislaus County Tax Collector	$46,439 (est.)
1st	Brighthouse	$6,655,067.15
2nd	Summit	$45,491,296.74
Utility	Del Puerto Water District	$32,312.00 (est.)
3rd	Summit	$1,000,000.00

D. The Plan Administrator is authorized to execute any and all documents reasonably necessary to effectuate the sale.

E. The Plan Administrator is authorized to pay a real estate broker's commission in an amount not more than five (5) percent of the actual purchase price upon consummation of the sale. The five (5) percent commission shall be paid 2.5 percent to the Plan Administrator's broker, Pearson Realty, and 2.5 percent to the Buyer's broker, West Coast Marketing Group.

9. 18-90029-E-11 FWP-4 JEFFERY ARAMBEL

FURTHER HEARING RE: MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION APPROVING FORM OF ASSET PURCHASE AGREEMENT, MOTION APPROVING AUCTION SALE FORMAT AND BIDDING PROCEDURES, MOTION SCHEDULING A COURT HEARING FOR APPROVAL OF THE SALE OF REAL ESTATE
10-22-20 [1215]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on October 22, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

In light of the specific facts and circumstances relating to this Motion and the input of the Parties in Interest, the court shortens the notice period to the fourteen days provided.

The Motion Approving Auction Sale Format and Bidding Procedures was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. No opposition was stated at the hearing.

The Motion Approving the Sale and the Auction Sale Format and Bidding Procedures is xxxxx.

Pursuant to the terms of the confirmed Chapter 11 Plan in this case, Focus Management Group USA, Inc., the Plan Administrator, ("Movant") has filed a Motion requesting the following relief from the court:

A. A "Bidding Procedures Order" that:

1. Approves the bidding procedures for the sale of the Property (identified below).

B. A "Sale Order" that

1. Approves the sale of the Real Property to Greenlaw Acquisitions, LLC a California limited liability company and Lewis Land Developers, LLC, a Delaware limited liability company (collectively the "Buyer") for $30,539,399;

2. The above approved sale is subject to overbids as provided in the bidding procedures, and includes a breakup fee for Buyer if there is a successful overbidder;

3. The sale is approve pursuant to 11 U.S.C. § 363(b) and § 363(f) [free and clear of liens and encumbrances]; and

4. Authorizes the Movant to pay or reserve from the sales proceeds costs, expenses, commissions, and the net proceeds from the sale.

The real property that is the subject of the sale is identified as:

± 343.25 acres of land: APN: 021-022-332, APN: 021-022-034
APN: 021-022-041, APN: 021-022-042
APN: 021-022-055, APN: 021-022-059
APN: 021-022-061, APN: 021-022-062

("Property").

The proposed purchaser of the Property is Greenlaw Acquisitions, LLC a California limited liability company and Lewis Land Developers, LLC, a Delaware limited liability company, and a summary of terms of the sale are (the complete terms of the Purchase and Sale Agreement ("PSA") are Exhibit 1, Dckt. 1219):

A. Buyer has agreed to purchase the Property for the sum of $30,539,399,

B. The sale is based upon an "all cash" offer that is scheduled to close on or before the date that is thirty (30) days after the date Buyer delivers its Notice of Feasibility Approval.

C. Proposed sale of the Property is on an As-Is/Where-Is basis.

D. A Break-Up Fee of 2% of the original gross purchase price of $30,539,399 (which would total $610,787,98) shall be paid to the Buyer, intended to compensate the Buyer

for its significant costs incurred and time and energies expended in completing its due diligence and related investigations concerning the Property, in negotiating and drafting the PSA, and otherwise to bring the sale of the Property before the Court.

E. The Estate's listing agreement with Cushman provides for the Estate to pay a broker's commission of 5% of the gross purchase price (the "Commission"), with 2.5% of the commission to be shared with a broker for an overbidding buyer.

F. The Movant Administrator estimates that closing costs and transfer taxes will not exceed 0.5% of the gross purchase price.

G. The Movant estimates the taxes attributable to this transaction based upon the Buyer's purchase price to be $8,982,086. Furthermore, the transaction is also subject to a 1% U.S. Trustee fee, or $305,394. The Movant requests authority to reserve the income tax and pay the U.S. Trustee fees from the sale proceeds.

H. The auction for presentation of overbids will be conducted via Zoom on December 16, 2020.

Bidding Procedures

November 5, 2020	Deadline for Brighthouse and Summit Consents to Sale of the Property
December 3, 2020	Deadline for Objections to the proposed sale of the Property
December 9, 2020	Deadline for parties to submit Proposed Agreement and Financial Bona Fides Submission Deadline
December 9, 2020	Bid Deadline, Including Required Deposit
December 14, 2020	Notification of Qualified Bid Status:
December 16, 2020	Auction (by Zoom)
December 17, 2020	Sale Hearing
TBD	Closing Date – By January 14, 2021

The proposed overbidding procedures are (the complete Bidding Procedures are Exhibit 2, Dckt. 1219):

A. Auction For Presentation of Overbids. The Movant proposes to conduct the Auction of the Property by Zoom on December 16, 2020.

B. Bidder Qualification. A Potential Bidder must deliver to the Movant, at least eight days prior to the Auction, a cashier's check or wire transfer (with

evidence of confirmation and acceptance into escrow), payable the Plan Administrator's counsel's for deposit into its trust account, in the amount of $710,800 towards the Potential Bidder's purchase of the Property, to be returned to such bidder in the event that such bidder is not the Successful Bidder or Back-Up Bidder at the Auction, and to constitute the bidder's nonrefundable deposit under the terms of the respective Proposed Agreement if the bidder is the successful bidder at the Auction. Potential Bidders must provide evidence of prospective buyer's source of capital or other financial ability to complete the contemplated transactions, the adequacy of which the Plan Administrator will determine in its sole discretion, with the consultation of the Reorganizing Debtor, and with the consultation with the Notice Parties.

C. Written Bids Conforming to Proposed Agreement and Bidding Procedures. All initial bids must be at least $710,800 higher than the purchase price agreed upon with the Buyer. Provided, however, that the Proposed Agreement shall not include a Break-Up Fee. Qualified Bids shall not be conditioned on (i) the outcome of unperformed due diligence by the bidder (ii) obtaining financing, or (iii) any other conditions other than (a) being selected as the Successful Bidder or Back-Up Bidder, (b) Plan Administrator Approval, (c) the consent of the Secured Consent Parties for the sale, and (d) Bankruptcy Court Approval.

D. Overbidding. Qualified Bidders may submit overbids at the Auction. The first initial Subsequent Bid must be at least $710,800 higher than the purchase price agreed upon with the Buyer. Each incremental Subsequent bid shall be at least $100,000 over the Starting Bid or the Leading Bid.

E. Prompt Closing. The Successful Bidder must be able to close the sale on or before the later of January 14, 2021, or 15 days after the entry of an order approving the sale.

F. Successful Bid. The Plan Administrator shall select the highest and best overbid as the Successful Bid and the Back-Up Bid, if any, based upon its reasonable judgment in consultation with the Reorganizing Debtor.

G. Backup Buyer. The bidder with the second highest or otherwise best bid (as determined by the Plan Administrator in the exercise of its business judgment) at the Auction the Property shall be required to serve as a back-up bidder (the "Back-Up Bidder") and keep such bid open and irrevocable until closing with the Successful Bidder or as otherwise provided in the Bidding Procedures.

H. Break-Up Fee. The Plan Administrator seeks approval of a break-up fee of an amount equal to two percent (2%) of the Purchase Price that is to be paid to Buyer from the proceeds of the sale to the successful bidder as a condition precedent to close of that sale. This fee was negotiated and required by the Buyer to compensate the Buyer for its costs incurred and

time and energies expended in completing its due diligence and related investigations relating to the Property.

I. Reservation of Rights. The Plan Administrator, after consultation with the Reorganizing Debtor (a) may determine after each round of bidding at the Auction which Qualified Bid, if any, is the highest or otherwise best offer and the value thereof, (b) may reject, at any time, any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the Transaction, or (iii) contrary to the best interests of the Reorganizing Debtor's estate, and stakeholders as determined by the Plan Administrator in consultation with the Reorganizing Debtor, and (c) except as otherwise specifically set forth herein, may modify the Bidding Procedures or impose, at or prior to the Auction, additional customary terms and conditions on the Transaction.

J. As Is, Where Is, With all Faults. The sale of the Property will be on an "as is, where is, with all faults" basis and without surviving representations or warranties of any kind, nature, or description except to the extent expressly set forth in the PSA or Proposed Agreement, as applicable, and the schedules thereto, with respect to the Successful Bidder.

K. Bifurcated Relief. The Plan Administrator proposes bifurcated relief, such that the PSA and Bidding Procedures be approved, and the Secured Consent Parties consent be delivered, in advance of the Sales Procedure Hearing, and that the final sale terms and buyer be approved at the Sale Hearing.

Requested Sale Free and Clear of Liens

The Reorganizing Debtor and Movant seek to sell the Property free and clear of any liens, claims, interests, or other encumbrances as follows:

Priority of Lien	Claim Holder	Satisfaction and Release
Tax	Stanislaus County Tax Collector	The Plan Administrator seeks authority to pay Stanislaus County Tax Collector from the proceeds of the sale. Therefore, the property tax liens shall be satisfied and released as paid in full.
1st	Brighthouse	Brighthouse holds a secured claim against the Property allowed by the Plan pursuant to a deed of trust recorded November 9, 2012 as Instrument No. 2012-0100449-00. The Plan Administrator seeks authority to pay Brighthouse's remaining allowed claim from the proceeds of the sale. Therefore, Brighthouse's liens shall be satisfied and released as paid in full.
2nd 3rd	Summit	Summit also holds secured claims against the Property: (i) as beneficiary by assignment pursuant to a deed of trust recorded February 28, 2014 as Document No. 2014- 0012421, (ii) as original beneficiary pursuant to a deed of trust recorded April 19, 2017 as Document No. 2017-028232, and (iii) as original beneficiary pursuant to a deed of trust recorded March 27, 2020 as Document No. 2020-022079. The Plan Administrator has sought and will continue to seek the consent of Summit to Summit's release of its liens on the Property to the extent not paid in full. The Plan Administrator expects that Summit will so consent to the sale of the Property free and clear of their liens provided that the net sale proceeds remaining after paying the closing costs, Commissions, real property taxes, U.S. Trustee Fees, and income tax reserve are paid to Summit subject to the allocation provisions of Section 6.6 of the Plan.

The Motion also seeks to sell the Property free and clear of the lien of the following creditors for who Movant asserts their secured claims have already been paid in full:

Disputed Liens or Other Interests As To Certain Portions of the Property	**Basis for Disputes according to Plan Administrator and Reorganized Debtor**
(i) Mid Valley Services, Inc., (ii) Lou Telesmanic and Joanne Telesmanic, husband and wife as joint tenants; Christopher L. Telesmanic (iii) Sam A Borno and Ranna A. Borno, husband and wife, as joint tenants (iv) Sudeep Singh FLLLP (v) Kevin and Janice Delaney Holdings, LLC, a California limited liability company (vi) Golden Gulch Dairy, LLC, a California limited liability company (vii) Lehman Family Farms, Inc., a California corporation (viii) Jesse J. Spain and Bonnie D. Spain, husband and wife as joint tenants (ix) Pensco Trust Company Custodian FBO Sudeep Singh IRA (The above collectively, (i) through (ix) are referred to herein as the "Mid Valley Parties #1") (x) Mid Valley Services, Inc. Retirement Trust Account (xi) Russell Spain (xii) Mid Valley Services, Inc. 401(k) plan (xiii) Gregory A. Kilgore and (xiv) Megan K. Kilgore, husband and wife as joint tenants (xv) Kevin Kummerfield and Sally Kummerfield, husband and wife as joint tenants (The above collectively, (x) through (xv) are referred to herein as the "Mid Valley Parties #2")	The obligations secured by interests of the Mid Valley Parties #1 and #2 have been paid in full. Mid Valley Parties #1 and #2 did not file a proof of claim in this case or otherwise assert an interest in the Property. Therefore, the Reorganizing Debtor contends that the Mid Valley Parties #1 and #2 Deeds of Trust are void and should be reconveyed. If full reconveyances by the Mid Valley Parties #1 and #2 are not promptly recorded for the Mid Valley Parties #1 and #2 Deeds of Trust, the Reorganizing Debtor and/or Plan Administrator intends to formally demand a reconveyance of the Mid Valley Parties #1 and #2 Deeds of Trust. The Plan Administrator seeks entry of an order authorizing the sale of the Property free and clear of the Mid Valley Parties #1 and #2 Deeds of Trust pursuant to Bankruptcy Code section 363(f)(4) with $0.00 reserved for the Mid Valley DOT #1 and #2.

Disputed Liens or Other Interests As To Certain Portions of the Property	Basis for Disputes according to Plan Administrator and Reorganized Debtor
(xvi) Del Puerto Water District as Lessor ("DPW")	The Reorganizing Debtor asserts that this lease has expired and terminated according to its own terms and/or is otherwise unenforceable. The property was detached from the water district after the 2014 Annexation into the City of Patterson. The Plan Administrator seeks entry of an order authorizing the sale of the Property free and clear of the DPW Lease pursuant to Bankruptcy Code section 363(f)(4) with $0.00 reserved for the DPW Lease.
(xvii) Del Puerto Water District	The Reorganizing Debtor asserts that DPW Supply Contract is unenforceable as expired and terminated according to its own terms and/or is otherwise unenforceable. The property was detached from the water district after the 2014 Annexation into the City of Patterson. The Plan Administrator seeks entry of an order authorizing the sale of the Property free and clear of the DPW Supply Contract pursuant to Bankruptcy Code section 363(f)(4) with $0.00 reserved for the DPW Supply Contract.
(xviii) Odell Hale and Lynee Hale as Lessor and Communication Systems Development, Inc. ("CSD") as Lessee	The Reorganizing Debtor asserts that this lease has expired and terminated according to its own terms and/or is otherwise unenforceable as having been made a prior owner or someone outside the title to the Property. The Plan Administrator seeks entry of an order authorizing the sale of the Property free and clear of the CSD Lease pursuant to Bankruptcy Code section 363(f)(4) with $0.00 reserved for the CSD Lease.
(xix) American Tower Systems as lessor and VIA Wireless LLC as Lessee	The Reorganizing Debtor asserts that this lease has expired and terminated according to its own terms and/or is otherwise unenforceable as having been made a prior owner or someone outside the title to the Property. The Plan Administrator seeks entry of an order authorizing the sale of the Property free and clear of the VIA Lease pursuant to Bankruptcy Code section 363(f)(4) with $0.00 reserved for the VIA Lease.

(xx) LBA Realty LLC, a Delaware limited liability company, as assigned to LBA RV-Company XXVII, LP, a Delaware limited partnership	A certain Purchase and Sale Agreement between the Reorganizing Debtor as seller and LBA Realty LLC, a Delaware limited liability company, as assigned to LBA RV-Company XXVII, LP, a Delaware limited partnership ("LBA"), provides for issuance of a right of first refusal letter to LBA ("ROFR Notice"). On October 5, LBA's counsel responded that it contends the ROFR Period set forth in the Purchase and Sale Agreement expired and that the Reorganizing Debtor and the Plan Administrator are free to proceed as they see fit with the Buyer's offer and any future offers. Moreover, more than seven business days have passed since issuance of the ROFR Notice and LBA has not elected to exercise its right to purchase the Property. Therefore, the sale of the Property shall proceed based upon LBA's ROFR opportunity having been satisfied; and the Plan Administrator seeks entry of an order authorizing the sale of the Property free and clear of the ROFR Memorandum pursuant to Bankruptcy Code section 363(f)(4) with $0.00 reserved.

The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

> (f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established grounds based on 11 U.S.C. § 363(f)(5) for the Stanislaus County Tax Collector and Brighthouse Life Insurance, Co. by paying those secured claim in full from the sale proceeds through escrow.

For the Summit secured claims, Movant states that the consent of Summit will be provided, thus allowing the court to order the sale free and clear as provided in 11 U.S.C. § 363(f)(2).

For the remaining claims, Movant has stated grounds showing that each lien, encumbrance, or interest is in *bona fide* dispute, providing a basis for a sale free and clear, with the liens, encumbrances, and interests attaching to the sale proceeds to the same extent, validity, and priority as they existed in the Property sold pursuant to order of the court.

DISCUSSION

At the hearing, the Plan Administrator reported that the buyer has taken the sale seriously, will get Brighthouse paid in full and Summit reduced substantially. Once Summit gets paid $2,000,000, then further monies subject to Summit's lien are split with the creditors holding general unsecured claims.

Mid-Valley has prepared and will be recording reconveyances, so need not make free and clear, resolving the dispute as to that party.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the Property has been extensively exposed to the market (for over three years) along with the rest of the Arambel Business Park and this is the best offer the estate has received. Moreover, the Plan Administrator projects that the sale will generate significant proceeds for payment of secured claims. The Property is not generating any revenue for the Estate but continues to accrue expenses such as property taxes, insurance, etc.

Movant has estimated that a five (5) percent broker's commission from the sale of the Property, with 2.5% of the commission to be shared with a broker for a buyer. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than five (5) percent commission.

The court grants the Motion and authorizes the sale of the Property to Greenlaw Acquisitions, LLC a California limited liability company and Lewis Land Developers, LLC, a Delaware limited liability company or nominee ("Buyer") for $30,539,399, on the terms and conditions set forth in the Purchase and Sale Agreement, Exhibit 1, Dckt. 1219, and as further provided below.

The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

The Property is sold free and clear of the lien of the following creditors asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(2), (4), and 5, of the following interests, with the lien of such creditor, if the creditor is not paid in full through the sale escrow, attaching to the proceeds of the sale in the same amount, extent, validity, and priority as it exists in the Property sold:

11 U.S.C. § 363(f)(5) - Compelled to Release Under Non-Bankruptcy Law

The liens of Stanislaus County Tax Collector and Brighthouse Life Insurance, Co., whose claims shall be paid in full from the sale proceeds through escrow.

For the Brighthouse Life Insurance Company liens, it has filed a response stating consent to the sale, as follows:

> Brighthouse consents to the Motion including the form of Bidding Procedures and proposed sale, subject to entry of an order authorizing payment of net proceeds of the sale (after reasonable and authorized expenses) to Brighthouse as requested in the Motion and updated in preliminary closing statements received by Brighthouse. Brighthouse does not intend to credit bid at the Auction.
>
> At the time of this filing, Brighthouse's claim is no less than $6,312,089.57. However, the amount of Brighthouse's claim cannot be finally fixed at the sale hearing because: (a) interest, fees, and expenses (including attorneys' fees) continue to accrue; (b) Brighthouse has made and continues to make Plan Funding Loans as provided the Plan of Reorganization confirmed in this case; (c) the closing date has not been finally determined; and (d) other sales of Brighthouse's collateral are pending and each closing will impact the amount of Brighthouse's remaining claim.

Response, Dckt. 1227.

11 U.S.C. § 363(f)(2) - Consent

The liens of Summit for which consent will be provided. Summit filed a Response, stating it's consent as follows:

> Summit consents to the Transaction; provided that the Bidding Procedures and the Bidding Procedures Order (a) are entered by the Court in substantially the same form and substance as the proposed Bidding Procedures and Bidding Procedures Order submitted with the Motion; and (b) provide that Summit's right to credit bid at the auction shall be limited solely to the right to submit a credit bid as a Back-Up Bid behind the Successful Bid and all other Back-Up Bids. Summit's consent to the Transaction has been made with the assurances of the Plan Administrator that the Auction will not proceed without a Stalking Horse Bid.

Response, Dckt. 1228.

11 U.S.C. § 363(f)(4) - Interest Subject to Bona Fide Dispute

The Motion requests that the following liens and interests be stripped from the Property sold because Movant states they are in *bona fide* dispute:

> (i) Mid Valley Services, Inc.,
>
> (ii) Lou Telesmanic and Joanne Telesmanic, husband and wife as joint tenants; Christopher L. Telesmanic
>
> (iii) Sam A Borno and Ranna A. Borno, husband and wife, as joint tenants
>
> (iv) Sudeep Singh FLLLP
>
> (v) Kevin and Janice Delaney Holdings, LLC, a California limited liability company

(vi) Golden Gulch Dairy, LLC, a California limited liability company

(vii) Lehman Family Farms, Inc., a California corporation

(viii) Jesse J. Spain and Bonnie D. Spain, husband and wife as joint tenants

(ix) Pensco Trust Company Custodian FBO Sudeep Singh IRA

(x) Mid Valley Services, Inc. Retirement Trust Account

(xi) Russell Spain

(xii) Mid Valley Services, Inc. 401(k) plan

(xiii) Gregory A. Kilgore and

(xiv) Megan K. Kilgore, husband and wife as joint tenants

(xv) Kevin Kummerfield and Sally Kummerfield, husband and wife as joint tenants

(xviii) Odell Hale and Lynee Hale as Lessor and Communication Systems Development, Inc. ("CSD") as Lessee

(xx) LBA Realty LLC, a Delaware limited liability company, as assigned to LBA RV-Company XXVII, LP, a Delaware limited partnership

Once stripped off, the Movant requests that they not be attached to the sales proceeds, and that $0.00 be allocated to each of these disputed liens and interests. The evidence presented for these bona fide disputes is the declaration of Juanita Schwartzkopf, a Senior Managing Director at Movant and the declaration of Jeffery Arambel, the Reorganized Debtor. Dckts. 1217 and 1218, respectively.

In his Declaration, the Reorganized Debtor provides factual testimony, and his legal conclusions why he has determined various asserted interests in the Property are void. He makes references to an "unrecorded lease" that somehow has shown up on a title report because a Memorandum of Lease was recorded. The Reorganized Debtor then states his legal conclusion that the lease had either expired or terminated, or is somehow otherwise unenforceable.

The Reorganized Debtor proceeds to dictate to the court his legal conclusions and findings that the various interests identified of record have either "expired and terminated according to its own terms and/or is otherwise unenforceable."

A sale authorized free and clear of liens and interests is not an adjudication of the rights and interests in the property being sold. It is not a shortcut deprivation of a persons property on a 28 day noticed motion. As discussed in Collier on Bankruptcy:

¶ 363.06 Sale Free of Liens or Interests; § 363(f)

Section 363(f) permits a sale of property of the estate free and clear of an interest in the property, including a lien, under a number of circumstances. It has long been recognized that the bankruptcy court has the power to authorize the sale of property free of liens with the liens attaching to the proceeds, with or without the consent of the lienholder. [1] Absent consent of the lienholder, the well-established rule was that the sale should not be held if it would not produce a surplus [2] unless there was a bona fide dispute concerning the validity of the lien. [3] This limitation was not likely of constitutional dimension. The creditor's only constitutional claim would be to the value of the collateral, [4] because any so-called right to control the collateral and to conduct a sale were remedies that bankruptcy might stay or abrogate. [5]

The Code makes no material change to the cases decided under the Bankruptcy Act on sales free and clear of liens but clarifies that other grounds for a sale free and clear may also exist.. . .

. . .

[5] Sale When Interest in Bona Fide Dispute; § 363(f)(4)

A sale may proceed free and clear of liens or interests if they are in bona fide dispute. [53] The trustee has the burden of demonstrating that a bona fide dispute exists. [54] To meet this burden the trustee must establish that there is an objective basis for either a factual or legal dispute as to the validity of the debt. [55] The court is not required to resolve the underlying dispute as a condition to authorizing the sale under this provision, but must determine that it exists. [56] In one case, however, the court held that a bona fide dispute did exist because the adverse interest holders disputed whether the sale could have been free and clear of their interests under a rent stabilization law. [57] Such post-hoc application of this paragraph could raise due process concerns.

1. *See Ray v. Norseworthy*, 90 U.S. (23 Wall.) 128 (128) (1875); *Van Huffel v. Harkelrode*, 284 U.S. 225, 52 S. Ct. 115, 76 L. Ed. 256 (1931); *Wright v. Union Central Life Ins. Co.*, 304 U.S. 502, 58 S. Ct. 1025, 82 L. Ed. 1490 (1938), *reh'g denied*, *Wright v. Union Cent. L. Ins. Co.*, 305 U.S. 668, 59 S. Ct. 56, 82 L. Ed. 1490 (1938); *Allebach v. Thomas*, 16 F.2d 853 (4th Cir. 1927), *cert. denied*, 274 U.S. 744, 47 S. Ct. 590, 71 L. Ed. 1325 (1927).

2. *Reconstruction Fin. Corp. v. Cohen*, 179 F.2d 773 (10th Cir. 1950); *Hoehn v. McIntosh*, 110 F.2d 199 (6th Cir. 1940); *In re Miller*, 95 F.2d 441 (7th Cir. 1938).

3. *Coulter v. Blieden*, 104 F.2d 29 (8th Cir. 1939), cert. denied, 308 U.S. 583, 60 S. Ct. 106, 84 L. Ed. 488 (1939); *In re National Grain Corp.*, 9 F.2d 802 (2d Cir. 1926).

4. *Wright v. Union Central Life Ins. Co.*, 311 U.S. 273, 61 S. Ct. 196, 85 L. Ed. 184 (1940), *reh'g denied*, 312 U.S. 711, 61 S. Ct. 445, 85 L. Ed. 1142 (1941).

5. *Continental Ill. Nat'l Bank & Trust Co. v. Chicago, Rock Island & Pacific Ry. Co.*, 294 U.S. 648, 55 S. Ct. 595, 79 L. Ed. 1110 (1935).

. . .

53. 11 U.S.C. § 363(f)(4).

54. *See Scherer v. Federal Nat'l Mortgage Ass'n (In re Terrace Chalet Apartments, Ltd.)*, 159 B.R. 821, 828 (N.D. Ill. 1993) (citing *Octagon Roofing*, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991)). In some situations it may be a third party that raises the issue of bona fide dispute. *See In re Gerwer*, 898 F.2d 730, 733 (9th Cir. 1990); *Scherer v. Federal Nat'l Mortgage Ass'n (In re Terrace Chalet Apartments, Ltd.),* 159 B.R. 821, 828 (N.D. Ill. 1993).

55. *See In re Daufuskie Island Props*., LLC, 431 B.R. 626 (Bankr. D.S.C. 2010) (substantial history of significant litigation over validity of creditor's asserted interest); *In re Octagon Roofing*, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991); In re Collins, 180 B.R. 447, 452 (Bankr. E.D. Va. 1995).

56. *See In re Octagon Roofing*, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991).

57. *Cheslock-Bakker & Assocs. v. Kremer (In re Downtown Athletic Club of New York City, Inc.)*, 44 C.B.C.2d 342, 2000 U.S. Dist. LEXIS 7917 (S.D.N.Y. June 9, 2000).

3 Collier on Bankruptcy P 363.06 (16th 2020)

For the determination of the actual extent, validity, and priority of a lien or interest in property, an adversary proceeding is required to determine such title rights and interests. Fed. R. Bankr. P. 7001.

At the hearing, Movant addressed the propriety of the court ordering the sale free and clear of liens and interests, and then not providing adequate protection for such disputed liens and interests by having them attach to the sale proceeds until released or adjudicated as being invalid clouds on title (and awarding such damages, attorney's fees and costs, and statutory penalties (if any) as appropriate for the Plan Administrator or the Reorganized Debtor).

For the non-consenting interests, if not paid through escrow, such interests shall attach to the proceeds of the sale.

The Plan Administrator is authorized to pay a real estate broker's commission in an amount not more than five (5) percent of the actual purchase price upon consummation of the sale. The five (5) percent commission shall be paid to the broker, Blake Rasmussen of Cushman & Wakefield. If the Property is sold to an Overbidder and the successful overbidder is represented by another broker or the Buyer is represented by a broker, the 5.0% Commission will be split 50/50 by Cushman and the broker for the buyer.

The bidding procedures as set in Exhibit 2, Dckt. 1219, are approved, including:

1. Sale by Auction. The Plan Administrator proposes to conduct the Auction of the Property by Zoom on December 16, 2020.

2. Bidder Qualification. A Potential Bidder must deliver to the Plan Administrator, at least eight days prior to the Auction, a cashier's check or wire transfer (with evidence of confirmation and acceptance into escrow), payable the Plan Administrator's counsel's for deposit into its trust account, in the amount of $710,800 towards the Potential Bidder's purchase of the Property, to be returned to such bidder in the event that such

bidder is not the Successful Bidder or Back-Up Bidder at the Auction, and to constitute the bidder's nonrefundable deposit under the terms of the respective Proposed Agreement if the bidder is the successful bidder at the Auction. Potential Bidders must provide evidence of prospective buyer's source of capital or other financial ability to complete the contemplated transactions, the adequacy of which the Plan Administrator will determine in its sole discretion, with the consultation of the Reorganizing Debtor, and with the consultation with the Notice Parties.

3. Written Bids Conforming to Proposed Agreement and Bidding Procedures. All initial bids must be at least $710,800 higher than the purchase price agreed upon with the Buyer. Provided, however, that the Proposed Agreement shall not include a Break-Up Fee. Qualified Bids shall not be conditioned on (i) the outcome of unperformed due diligence by the bidder (ii) obtaining financing, or (iii) any other conditions other than (a) being selected as the Successful Bidder or Back-Up Bidder, (b) Plan Administrator Approval, (c) the consent of the Secured Consent Parties for the sale, and (d) Bankruptcy Court Approval.

4. Overbidding. Qualified Bidders may submit overbids at the Auction. The first initial Subsequent Bid must be at least $710,800 higher than the purchase price agreed upon with the Buyer. Each incremental Subsequent bid shall be at least $100,000 over the Starting Bid or the Leading Bid.

5. Prompt Closing. The Successful Bidder must be able to close the sale on or before the later of January 14, 2021, or 15 days after the entry of an order approving the sale.

6. Successful Bid. The Plan Administrator shall select the highest and best overbid as the Successful Bid and the Back-Up Bid, if any, based upon its reasonable judgment in consultation with the Reorganizing Debtor.

7. Backup Buyer. The bidder with the second highest or otherwise best bid (as determined by the Plan Administrator in the exercise of its business judgment) at the Auction the Property shall be required to serve as a back-up bidder (the "Back-Up Bidder") and keep such bid open and irrevocable until closing with the Successful Bidder or as otherwise provided in the Bidding Procedures.

8. Breakup Fee discussed below.

9. Reservation of Rights. The Plan Administrator, after consultation with the Reorganizing Debtor (a) may determine after each round of bidding at the Auction which Qualified Bid, if any, is the highest or otherwise best offer and the value thereof, (b) may reject, at any time, any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the Transaction, or (iii) contrary to the best interests of the Reorganizing Debtor's estate, and stakeholders as determined by the Plan Administrator in consultation with the Reorganizing Debtor, and (c) except as otherwise specifically set forth herein, may modify the Bidding Procedures or impose, at or prior to the Auction, additional customary terms and conditions on the Transaction.

10. As-Is, Where Is, With all Faults. The sale of the Property will be on an "as-is, where is, with all faults" basis and without surviving representations or warranties of any kind, nature, or description except to the extent expressly set forth in the PSA or Proposed Agreement, as applicable, and the schedules thereto, with respect to the Successful Bidder.

11. Bifurcated Relief. The Plan Administrator proposes bifurcated relief, such that the PSA and Bidding Procedures be approved, and the Secured Consent Parties consent be delivered, in advance of the Sales Procedure Hearing, and that the final sale terms and buyer be approved at the Sale Hearing.

Break-Up Fee

Movant seeks approval of a break-up fee of in an amount equal to two percent (2%) of the Purchase Price that is to be paid to Buyer from the proceeds of the sale to the successful bidder as a condition precedent to close of that sale. This fee is stated to have been negotiated and required by the Buyer to compensate the Buyer for its costs incurred and time and energies expended in completing its due diligence and related investigations relating to the Property.

While this is a surplus estate and the break-up fee amount will come out of the Reorganized Debtor's pocket at the end of the day, a 2% break-up fee for the actual costs and expenses of Buyer in good faith entering into this Agreement to purchase the Property equals more than Six Hundred Thousand Dollars ($600,000). That seem like a substantial amount of "reasonable costs and expenses" relating to this Agreement.

The Motion offers little insight into what these more than $600,000 of reasonable costs are, but Movant does affirmatively state:

> This fee is intended to compensate the Buyer for its significant costs incurred and time and energies expended in completing its due diligence and related investigations concerning the Property, in negotiating and drafting the PSA, and otherwise to bring the sale of the Property before the Court. Arambel Decl. at ¶ 6; Schwartzkopf Decl. at ¶ 6.

Motion, ¶ 5; Dckt. 1215.

The Reorganized Debtor provides his recitation of the above statement from the Motion in paragraph 6 of his Declaration, apparently doing little more than reading the Motion. Declaration, ¶ 6; Dckt. 1217.

Juanita Schwartzkopf, a Senior Managing Director at Movant, also provides her recitation of the above statement from the Motion in paragraph 6 of her Declaration, apparently doing little more than reading the Motion. Declaration, ¶ 6; Dckt. 1218.

Seeing these verbatim recitations of these two witnesses in their declaration causes the court pause, and to wonder whether anything in either of their declaration is their actual testimony, or merely legal argument prepared by counsel.

At the hearing, the Plan Administrator explained that this was warranted due to the expedited review that the Buyer would have to do. This is because of the Plan Administrator's demand that escrow close quickly due to certain rights of the Plan estate expiring in early January 2021.

It appears unlikely that any other good faith bidder could show up at the auction and bid $35,000,000 or more without having conducted such review, so it does not appear likely that the breakup fee will be at issue.

However, if other buyers show up and no such "expedited review" is actually necessary, the court will revisit the testimony under penalty of perjury purporting of such, and the conduct of persons in creating such a transfer of more than $600,000 to buyer.

Supplemental Pleadings

The Plan administrator seeks a further hearing on the Motion for the court to amend its rulings at the November 5, 2020 hearing to include the proposed modifications to the PSA described below and affirm its rulings regarding the proposed sale to the Buyer as amended. Dckt. 1266. The PSA shall be amended to provide:

> 1. An increase in the purchase price by $1,607,336 from $30,539,399 to $32,146,735 based upon a price per square foot increase from $2.04 to $2.15 per square foot (the "Price Adjustment");
>
> 2. Confirmation that the breakup fee of 2% of the original purchase price shall not be increased as a result of this Price Adjustment;
>
> 3. Additional terms and clarifications to address the changes necessitated by the matters discussed in this Supplement and some transactional matters that have arisen since the PSA was executed.

The Plan Administrator provides the following updates for the court in her Declaration (Dckt. 1268):

> A. The Buyer has agreed to amend the purchase price of the Property to the sum of $32,146,735, subject to Bankruptcy Court approval and overbidding pursuant to the Bidding Procedures set forth in the Motion.
>
> B. The Buyer's present agreement to pay $32,146,735 based upon a price per square foot of $2.15 remains the best current firm offer the Reorganizing Debtor's estate has received.
>
> C. The Price Adjustment has been made because the Plan Administrator recently learned on November 13, 2020 that, unbeknownst to the Plan Administrator, the Buyer had submitted a letter of intent dated September 24, 2020 to purchase the Property for $32,146.735 based upon a price per square foot of $2.15 (the "Prior Offer").

D. The Buyer reduced the purchase price by 5% to $30,539,399 for a reduced price per square foot of $2.04 based upon the Buyer's understanding that the Reorganizing Debtor had accepted the Prior Offer with the caveat that the purchase price be reduced and in consideration for paying 5% of the amount of the Prior Offer to the Reorganizing Debtor's consultant, Joe Hollowell. The Buyer has provided the Plan Administrator with a copy of a contemporaneous email from the Buyer's Broker confirming this account as well as copies of the Prior Offer and other documents related to the proposed payment to Mr. Hollowell.

E. The Prior Offer and its terms were not disclosed to the Plan Administrator. Likewise, neither the price reduction nor the 5% payment to Joe Hollowell were disclosed to the Plan Administrator. Instead, the Reorganizing Debtor only provided the Plan Administrator with a copy of the Final LOI as if it were the first LOI received. The Final LOI does not reference the price reduction or payment to Joe Hollowell. And the Final LOI was the basis for the Plan Administrator's negotiation and acceptance of the PSA believing that the Final LOI was the highest and best terms offered by the Buyer to the estate.

F. The Plan Administrator recently learned that Mr. Hollowell's 5% fees of the purchase price had been denied by the court. See Civil Minutes, Dckt. 373.

G. Before November 13, 2020, neither Plan Administrator nor anyone else on behalf of the Plan Administrator was aware of the Prior Offer, its terms, or the proposed payment to Mr. Hollowell.

H. The Plan Administrator testifies that she is extremely troubled by the new developments, but requests, nonetheless, that the court reaffirm its ruling approving the proposed sale of the Property to the Buyer pursuant to the PSA as amended. The amendments increase the cash consideration from the sale by $1,607,336. This will increase the funds available to pay down Summit's secured claim by over $1 million and the estate's share pursuant to Section 6.6 of the Plan by over $100,000.

I. The Plan Administrator submits that it will be evaluating and pursuing further actions as appropriate regarding the new developments surrounding Reorganized Debtor's conduct.

Movant also provides the Declaration of Wilbur H. Smith, III, principal of Greenlaw Acquisitions, LLC, a California Limited Liability Company. Dckt. 1269. Mr. Smith testifies that he assumed the Plan Administrator had been informed regarding the side agreement for the payment by Buyer of a consultant fee to a consultant of Seller. He further testifies that negotiations concerning the potential purchase of the Property were communicated through the brokers: Cushman & Wakefield Blake Rasmussen, represented the Seller, and Kevin Dal Porto represented the Buyer. Once Mr. Smith received direct communications from Mr. Hollowell indicating that he was the Seller's consultant and was to be paid the 5% consultant fee, Mr. Smith consulted with his attorneys about the consultant fees being approved by the court. After the fee agreement was sent, Mr. Hollowell responded by telling Mr. Smith that Buyer was to

disregard the request for payment of the 5% fee. The communications between Mr. Hollowell and Mr. Smith were filed with the court as Exhibits 8 thru 11 and properly authenticated. See Dckt. 1270.

November 19, 2020 Hearing

At the hearing, xxxxxxxxxxxxxx

10. 18-90029-E-11 FWP-5

JEFFERY ARAMBEL
Matt Olson

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION APPROVING FORM OF ASSET PURCHASE AGREEMENT, MOTION APPROVING AUCTION SALE FORMAT AND BIDDING PROCEDURES, MOTION APPROVING FORM OF NOTICE TO BE PROVIDED TO INTERESTED PARTIES, MOTION/APPLICATION SCHEDULING A COURT HEARING FOR APPROVAL OF THE SALE(S) TO THE HIGHEST AND BEST BIDDERS [1232]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on November 5, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion Approving the Form of Asset Purchase Agreement and Auction Sale Format and Bidding Procedures was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

~~The Motion Approving the Form of Asset Purchase Agreement and Auction Sale Format and Bidding Procedures is granted.~~

~~Final hearing on the Motion and presentation of overbids shall be conducted at 10:30 a.m. on December 17, 2020.~~

REQUEST TO WITHDRAW MOTION

On November 17, 2020, the Plan Administrator filed a pleading in this Contested Matter titled: Request to Withdraw Plan Administrator's Motion [description of present Motion]." Dckt. 1277. While stated as a "withdrawal," it is not clear if this is a dismissal without prejudice of the Motion pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rule of Bankruptcy Procedure 7041, 9014, there being no responsive pleadings filed, or a motion to dismiss pursuant to Federal Rule of Civil Procedure 41(a)(1) and Federal Rule of Bankruptcy Procedure 7041, 9014.

The Request states that the grounds for which the Plan Administrator is seeking to "withdraw" the present motion and seeking future relief as appropriate and in the best interests of the Plan estate are:

> The Plan Administrator has discovered new facts since the filing of this motion that the Plan Administrator is continuing to evaluate but which bear upon the Plan Administrator's determinations regarding the sale process for these properties and the best interests of the estate. Therefore, the Plan Administrator requests that the Motion be withdrawn without prejudice to refiling the Motion at a later date.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

Pursuant to the terms of the confirmed Chapter 11 Plan in this case, Focus Management Group USA, Inc., the Plan Administrator, ("Movant") has filed a Motion requesting the following relief from the court:

A. The court authorize the sale of the below identified real property by auction.

B. A "Bidding Procedures Order" that:

1. Approves the bidding procedures for sale of the following Properties by auction (identified below).

C. A "Sale Order" that:

1. Approves the sale of the Properties to buyer at the auction for price to be determined at auction subject to the Vacant Land Purchase Agreement and Joint Escrow Instructions (Exhibit C) [FN.1];

FN.1. Movant refers to this Agreement as Exhibit C; however, no such exhibit was submitted to the court. *See* Dckt. 1235.

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2. The above approved sale is subject to overbids as provided in the bidding procedures, and includes a breakup fee for Buyer if there is a successful overbidder;

3. The sale is approve pursuant to 11 U.S.C. § 363(b) and § 363(f) [free and clear of liens and encumbrances]; and

4. Authorizes the Movant to pay or reserve from the sales proceeds costs, expenses, commissions, and the net proceeds from the sale.

The real properties that are the subject of the sale are identified as:

Begun Ranch

± 1,109.41 acres of land:	APN: 021-012-024, APN: 021-012-025 APN: 021-012-026, APN: 021-012-027 APN: 021-012-028, APN: 021-012-029 APN: 021-012-033, APN: 021-012-034 APN: 021-024-013

Murphy Rangeland

± 240.54 acres of land:	APN: 021-010-025-0001, APN: 021-010-026-000 APN: 021-010-027-000, APN: 021-010-028-000

Carlilie Ranch

± 160 acres of land:	APN: 021-007-002-000

("Properties").

Bidding Procedures

December 11, 2020	**Deadline for parties to sign Purchase and Proposed Agreement Financial Bona Fides Submission Deadline**
December 11, 2020	**Deadline for objections to Biding Procedures and Sale Motion Bid Deadline**
December 14, 2020	**Notification of Qualified Bid Status**
December 15, 2020	**Identification of Starting Bid**
December 16, 2020 at 1:00 p.m. Pacific	**Auction**
December 17, 2020	**Sale Hearing**
TBD	**Closing Date - By 16 days after entry of Bankruptcy Court order approving the sale unless mutually extended by written agreement.**

The proposed overbidding procedures are (the complete Bidding Procedures are Exhibit A, Dckt 1235):

A. Sale by Auction. Movant proposes to conduct the Auction of the Properties by Zoom on December 16, 2020.

B. Bidder Qualification. A Potential Bidder must deliver to the Plan Administrator, at least five days prior to the Auction, a cashier's check or wire transfer (with evidence of confirmation and acceptance into escrow) payable to the order of the Plan Administrator's counsel for deposit in trust (or such other party as the Plan Administrator may determine) in the amount of 10% of the purchase offer for each Auction Property that the Potential Bidder seeks to bid, to be returned to such bidder in the event that such bidder is not the Successful Bidder or Back-Up Bidder at the Auction, and to constitute the bidder's nonrefundable deposit under the terms of the respective Proposed Agreement if the bidder is the successful bidder at the Auction. Potential Bidders must provide evidence of the prospective buyer's source of capital or other financial ability to complete the contemplated transactions, the adequacy of which the Plan Administrator will determine in its sole discretion, with the consultation of the Notice Parties.

C. Written Bids Conforming to Proposed Agreement and Bidding Procedures. All initial bids submitted for qualification must be in the form of the Proposed Agreement and conform to the Bidding Procedures with modifications only as to the identification of the buyer, the amount of the

purchase price, and such other changes as the Plan Administrator in its sole discretion may permit. Qualified Bids shall not be conditioned on (I) the outcome of unperformed due diligence by the bidder (ii) obtaining financing, or (iii) any other conditions other than being selected as the Successful Bidder or Back-Up Bidder, Plan Administrator Approval, the consent of the Secured Consent Parties for the respective Auction Property or Bankruptcy Court Approval.

D. Overbidding. Qualified Bidders may submit overbids at the Auction. Each incremental bid at the Auction shall provide net value to the estate of at least $15,000 over the Starting Bid or the Leading Bid, provided that the Plan Administrator in consultation with the Reorganizing Debtor shall retain the right to modify the increment requirements at the Auction after informing each participating Qualified Bidder.

E. Assurance of Prompt Closing. The winning bidder must be able to close the sale on or before 16 days after the entry of an order approving the sale.

F. Successful Bid. The Plan Administrator shall select the highest and best overbid as the Successful Bid and the Back-Up Bid, if any, based upon its reasonable judgment in consultation with the Reorganizing Debtor and Summit for purposes of confirming its consent.

G. Credit Bids. Summit shall be deemed a Qualified Bidder for the Auction. In accordance with Section 7.6 of the Plan, unless the Bankruptcy Court orders otherwise, Summit may exercise its credit bid rights provided that its Qualified Bid shall include a cash portion in the amount necessary, if any, to pay in full (a) all Allowed Secured Claims against the same collateral having priority over such Creditor's Allowed Secured Claim and (b) any Plan Expenses, as defined by the Plan including income taxes, directly related to the consummation of such transaction.

H. Backup Buyer. The bidder with the second highest or otherwise best bid (as determined by the Plan Administrator in the exercise of its business judgment) at the Auction the Property shall be required to serve as a back-up bidder (the "Back-Up Bidder") and keep such bid open and irrevocable until closing with the Successful Bidder or as otherwise provided in the Bidding Procedures.

I. Break-Up Fee. The Plan Administrator does not seek approval of a break up fee for any sales of the Auction Properties.

J. Reservation of Rights. The Plan Administrator reserves the right to withdraw any and all of the Auction Properties from sale at its sole discretion at any time prior to the Court's entry of an order confirming the sale of the Auction Properties after the Auction, even if the bidder has qualified to bid, and even after conducting an auction of the Auction Properties with the identification of the highest bidder.

K. As-Is, Where Is, With all Faults. The sale of the Auction Properties and any sale of the Auction Properties will be on an "as-is, where is, with all faults" basis and without surviving representations or warranties of any kind, nature, or description by the Plan Administrator or his agents, advisors or representatives, except to the extent expressly set forth in the Proposed Agreement or modified Proposed Agreement, as applicable, and the schedules thereto, with respect to the Successful Bidder.

L. Bifurcated Relief. The Plan Administrator proposes bifurcated relief, such that the Proposed Agreement and Bidding Procedures be approved in advance of the Sales Procedure Hearing, and that the final sale terms and buyer be approved at the Sale Hearing.

Requested Sale Free and Clear of Liens

The Plan Administrator seeks to sell the following Property free and clear of any liens, claims, interests, or other encumbrances as follows:

Begun Ranch

Priority	**Claim Holder**	**Satisfaction and Release**
Tax	Stanislaus County Collector	The Plan Administrator seeks authority to pay Stanislaus County Tax Collector from the proceeds of the sale. Therefore, their liens shall be satisfied and released as paid in full.
1st DOT 2nd DOT	Summit	Summit asserts a lien pursuant to an unrecorded deed of trust relating to the Begun Ranch Property. The Plan Administrator has sought and will continue to seek the consent of Summit to release its liens on the Murphy Rangeland Property, to the extent not paid in full. The Plan Administrator expects that Summit will so consent to the sale of the Murphy Rangeland free and clear of its liens.

Disputed Lien as to Property	**Basis for Disputes according to Plan Administrator and Reorganized Debtor**
(I) Summit	The Plan Administrator disputes the validity of an unrecorded deed of trust Summit asserts was delivered to it (the "Wild Deed"). It has not been recorded on title or asserted as an interest in the Debtor's estate prior to confirmation of the Plan. Therefore, if the Summit Wild Deed actually exists and is not released by Summit, the Plan Administrator seeks entry of an order authorizing the sale of the Property free and clear of the Summit Wild Deed pursuant to Bankruptcy Code section 363(f)(4) with $0.00 reserved for the Summit Wild Deed.

At the hearing, **XXXXXXX**

Murphy Rangeland

Priority	Claim Holder	Satisfaction and Release
Tax	Stanislaus County Tax Collector	The Plan Administrator seeks authority to pay Stanislaus County Tax Collector from the proceeds of the sale. Therefore, their liens shall be satisfied and released as paid in full.
1st DOT 2nd DOT	Summit	Summit holds secured claims against the Carlilie Ranch Property allowed by the Plan. The Plan Administrator has sought and will continue to seek the consent of Summit to release its liens on the Carlilie Ranch Property, to the extent not paid in full. The Plan Administrator expects that Summit will so consent to the sale of the Carlilie Ranch free and clear of its liens.

Carlilie Ranch

Priority	Claim Holder	Satisfaction and Release
Tax	Stanislaus County Tax Collector	The Plan Administrator seeks authority to pay Stanislaus County Tax Collector from the proceeds of the sale.
1st DOT	Summit	Summit holds secured claims against the Carlilie Ranch Property allowed by the Plan. The Plan Administrator has sought and will continue to seek the consent of Summit to release its liens on the Carlilie Ranch Property, to the extent not paid in full. The Plan Administrator expects that Summit will so consent to the sale of the Carlilie Ranch free and clear of its liens.

Sale Subject to Short Term Leases and Non-Monetary Interests

The Plan Administrator seeks to complete the proposed sales of the Auction Properties subject to certain short-term leases:

(1) Cammy Wells as tenant for the Murphy Ranch until September 30, 2021,

(2) Cammy Wells and/or Matt Owens, and Adam Owens dba M+ A Livestock as tenants for the Begun and Carlilie ranches until September 30, 2021

Rent for the entire lease term through September 30, 2021 has been paid in advance and shall be retained by the estate. A separate motion to assign the foregoing leases to the Successful or Back-Up

Bidder for each respective Auction Property shall be noticed for hearing at the same time as the Transaction Approval Hearing.

Any sale of the Auction Properties shall also be subject to easements, rights of way, covenants, codes and restrictions, patents, or other non-monetary matters of record.

The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

> (f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established grounds based on 11 U.S.C. § 363(f)(5) for the Stanislaus County Tax Collector by paying those secured claims in full from the sale proceeds through escrow.

For the Summit secured claims, excluding the "Summit Wild Deed," Movant states that the consent of Summit will be provided, thus allowing the court to order the sale free and clear as provided in 11 U.S.C. § 363(f)(2).

For the remaining Summit unrecorded deed of trust, Movant has stated a *bona fide* dispute, providing a basis for a sale free and clear, with the liens, encumbrances, and interests attaching to the sale proceeds to the same extent, validity, and priority as they existed in the Property sold pursuant to order of the court.

DISCUSSION

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the Property has been extensively (for two years) exposed to the market. Moreover, the Plan Administrator projects that the sale will generate significant proceeds for payment of secured claims. The Property is not generating any revenue for the Estate but continues to accrue expenses such as property taxes and insurance.

The court grants the Motion and authorizes the sale of the Property via auction on the terms and conditions set forth in the Purchase and Sale Agreement to be provided by Movant Plan Administrator (purported to have been filed as Exhibit C) and as further provided below.

The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

The Property is sold free and clear of the lien of the following creditors asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(2), (4), and (5), of the following interests, with the lien of such creditor, if the creditor is not paid in full through the sale escrow, attaching to the proceeds of the sale in the same amount, extent, validity, and priority as it exists in the Property sold:

11 U.S.C. § 363(f)(5) - Compelled to Release Under Non-Bankruptcy Law

The liens of Stanislaus County Tax Collector whose claims shall be paid in full from the sale proceeds through escrow.

11 U.S.C. § 363(f)(2) - Consent

The liens of Summit for which consent will be provided.

At the hearing, xxxxxxxxx

11 U.S.C. § 363(f)(4) - Interest Subject to Bona Fide Dispute

The Motion requests that the following liens and interests be stripped from the Property sold because Movant states they are in *bona fide* dispute:

(I) Summit Wild Deed

Once stripped off, the Movant requests that they not be attached to the sales proceeds, and that $0.00 be allocated to each of these disputed liens and interests. Movant provides the declaration of Juanita Schwartzkopf, a Senior Managing Director at Movant, stating that the deed is in dispute. Dckt. 1234. Plan Administrator "understands from Summit" that an unrecorded deed relating to Begun Ranch was delivered to Summit pre-petition as a potential deed in lieu of foreclosure that was cut off by the Debtor's bankruptcy filing. *Id*. In order to clearly comply with Federal Rules of Evidence regarding her communication with Summit, Declarant must state with greater clarity what is meant by "understands from Summit." *See* FED. R. EVID. 602.

At the hearing, **xxxxxxxxx**

A sale authorized free and clear of liens and interests is not an adjudication of the rights and interests in the property being sold. It is not a shortcut deprivation of a persons property on a 28-day noticed motion. As discussed in Collier on Bankruptcy:

¶ 363.06 Sale Free of Liens or Interests; § 363(f)

Section 363(f) permits a sale of property of the estate free and clear of an interest in the property, including a lien, under a number of circumstances. It has long been recognized that the bankruptcy court has the power to authorize the sale of property free of liens with the liens attaching to the proceeds, with or without the consent of the lienholder. [1] Absent consent of the lienholder, the well-established rule was that the sale should not be held if it would not produce a surplus [2] unless there was a bona fide dispute concerning the validity of the lien. [3] This limitation was not likely of constitutional dimension. The creditor's only constitutional claim would be to the value of the collateral, [4] because any so-called right to control the collateral and to conduct a sale were remedies that bankruptcy might stay or abrogate. [5]

The Code makes no material change to the cases decided under the Bankruptcy Act on sales free and clear of liens but clarifies that other grounds for a sale free and clear may also exist.. . .

. . .

[5] Sale When Interest in Bona Fide Dispute; § 363(f)(4)

A sale may proceed free and clear of liens or interests if they are in bona fide dispute.[53] The trustee has the burden of demonstrating that a bona fide dispute exists. [54] To meet this burden the trustee must establish that there is an objective basis for either a factual or legal dispute as to the validity of the debt. [55] The court is not required to resolve the underlying dispute as a condition to authorizing the sale under this provision, but must determine that it exists. [56] In one case, however, the court held that a bona fide dispute did exist because the adverse interest holders disputed whether the sale could have been free and clear of their interests under a rent stabilization law. [57] Such post-hoc application of this paragraph could raise due process concerns.

1. *See Ray v. Norseworthy*, 90 U.S. (23 Wall.) 128 (128) (1875); *Van Huffel v. Harkelrode*, 284 U.S. 225, 52 S. Ct. 115, 76 L. Ed. 256 (1931); *Wright v. Union Central Life Ins. Co.*, 304 U.S. 502, 58 S. Ct. 1025, 82 L. Ed. 1490 (1938), *reh'g denied*, *Wright v. Union Cent. L. Ins. Co.*, 305 U.S. 668, 59 S. Ct. 56, 82 L. Ed. 1490 (1938); *Allebach v. Thomas*, 16 F.2d 853 (4th Cir. 1927), *cert. denied*, 274 U.S. 744, 47 S. Ct. 590, 71 L. Ed. 1325 (1927).

2. *Reconstruction Fin. Corp. v. Cohen*, 179 F.2d 773 (10th Cir. 1950); *Hoehn v. McIntosh*, 110 F.2d 199 (6th Cir. 1940); *In re Miller*, 95 F.2d 441 (7th Cir. 1938).

3. *Coulter v. Blieden*, 104 F.2d 29 (8th Cir. 1939), cert. denied, 308 U.S. 583, 60 S. Ct. 106, 84 L. Ed. 488 (1939); *In re National Grain Corp.*, 9 F.2d 802 (2d Cir. 1926).

4. *Wright v. Union Central Life Ins. Co.*, 311 U.S. 273, 61 S. Ct. 196, 85 L. Ed. 184 (1940), *reh'g denied*, 312 U.S. 711, 61 S. Ct. 445, 85 L. Ed. 1142 (1941).

5. *Continental Ill. Nat'l Bank & Trust Co. v. Chicago, Rock Island & Pacific Ry. Co.*, 294 U.S. 648, 55 S. Ct. 595, 79 L. Ed. 1110 (1935).

. . .

53. 11 U.S.C. § 363(f)(4).

54. *See Scherer v. Federal Nat'l Mortgage Ass'n (In re Terrace Chalet Apartments, Ltd.)*, 159 B.R. 821, 828 (N.D. Ill. 1993) (citing *Octagon Roofing*, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991)). In some situations it may be a third party that raises the issue of bona fide dispute. *See In re Gerwer*, 898 F.2d 730, 733 (9th Cir. 1990); *Scherer v. Federal Nat'l Mortgage Ass'n (In re Terrace Chalet Apartments, Ltd.),* 159 B.R. 821, 828 (N.D. Ill. 1993).

55. *See In re Daufuskie Island Props*., LLC, 431 B.R. 626 (Bankr. D.S.C. 2010) (substantial history of significant litigation over validity of creditor's asserted interest); *In re Octagon Roofing*, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991); In re Collins, 180 B.R. 447, 452 (Bankr. E.D. Va. 1995).

56. *See In re Octagon Roofing*, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991).

57. *Cheslock-Bakker & Assocs. v. Kremer (In re Downtown Athletic Club of New York City, Inc.)*, 44 C.B.C.2d 342, 2000 U.S. Dist. LEXIS 7917 (S.D.N.Y. June 9, 2000).

3 Collier on Bankruptcy P 363.06 (16th 2020)

For the determination of the actual extent, validity, and priority of a lien or interest in property, an adversary proceeding is required to determine such title rights and interests. Fed. R. Bankr. P. 7001.

At the hearing, **xxxxxxxx**

For the non-consenting interests, if not paid through escrow, such interests shall attach to the proceeds of the sale.

The Plan Administrator is authorized to pay a real estate broker's commission in an amount not more than five (5) percent of the actual purchase price upon consummation of the sale. The five (5) percent commission shall be paid to the broker, Pearson Realty, with 2.5% percent of the commission to be shared with a broker for a buyer. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than five (5) percent commission. In the event Pearson Realty represents both the estate and the Buyer, the commission payable to Pearson Realty shall be 3.5% of the sales price, due at the close of escrow.

The bidding procedures as set in Exhibit A, Dckt. 1235, are approved, including:

A. Sale by Auction. Movant proposes to conduct the Auction of the Property by Zoom on December 16, 2020.

B. Bidder Qualification. A Potential Bidder must deliver to the Plan Administrator, at least five days prior to the Auction, a cashier's check or wire transfer (with evidence of confirmation and acceptance into escrow) payable to the order of the Plan Administrator's counsel for deposit in trust (or such other party as the Plan Administrator may determine) in the amount of 10% of the purchase offer for each Auction Property that the Potential

Bidder seeks to bid, to be returned to such bidder in the event that such bidder is not the Successful Bidder or Back-Up Bidder at the Auction, and to constitute the bidder's nonrefundable deposit under the terms of the respective Proposed Agreement if the bidder is the successful bidder at the Auction. Potential Bidders must provide evidence of the prospective buyer's source of capital or other financial ability to complete the contemplated transactions, the adequacy of which the Plan Administrator will determine in its sole discretion, with the consultation of the Notice Parties.

C. Written Bids Conforming to Proposed Agreement and Bidding Procedures. All initial bids submitted for qualification must be in the form of the Proposed Agreement and conform to the Bidding Procedures with modifications only as to the identification of the buyer, the amount of the purchase price, and such other changes as the Plan Administrator in its sole discretion may permit. Qualified Bids shall not be conditioned on (I) the outcome of unperformed due diligence by the bidder (ii) obtaining financing, or (iii) any other conditions other than being selected as the Successful Bidder or Back-Up Bidder, Plan Administrator Approval, the consent of the Secured Consent Parties for the respective Auction Property or Bankruptcy Court Approval.

D. Overbidding. Qualified Bidders may submit overbids at the Auction. Each incremental bid at the Auction shall provide net value to the estate of at least $15,000 over the Starting Bid or the Leading Bid, provided that the Plan Administrator in consultation with the Reorganizing Debtor shall retain the right to modify the increment requirements at the Auction after informing each participating Qualified Bidder.

E. Assurance of Prompt Closing. The winning bidder must be able to close the sale on or before 16 days after the entry of an order approving the sale.

F. Successful Bid. The Plan Administrator shall select the highest and best overbid as the Successful Bid and the Back-Up Bid, if any, based upon its reasonable judgment in consultation with the Reorganizing Debtor and Summit for purposes of confirming its consent.

G. Credit Bids. Summit shall be deemed a Qualified Bidder for the Auction. In accordance with Section 7.6 of the Plan, unless the Bankruptcy Court orders otherwise, Summit may exercise its credit bid rights provided that its Qualified Bid shall include a cash portion in the amount necessary, if any, to pay in full (a) all Allowed Secured Claims against the same collateral having priority over such Creditor's Allowed Secured Claim and (b) any Plan Expenses, as defined by the Plan including income taxes, directly related to the consummation of such transaction.

H. Backup Buyer. The bidder with the second highest or otherwise best bid (as determined by the Plan Administrator in the exercise of its business

judgment) at the Auction the Property shall be required to serve as a back-up bidder (the "Back-Up Bidder") and keep such bid open and irrevocable until closing with the Successful Bidder or as otherwise provided in the Bidding Procedures.

I. Break-Up Fee. The Plan Administrator does not seek approval of a break up fee for any sales of the Auction Properties.

J. Reservation of Rights. The Plan Administrator reserves the right to withdraw any and all of the Auction Properties from sale at its sole discretion at any time prior to the Court's entry of an order confirming the sale of the Auction Properties after the Auction, even if the bidder has qualified to bid, and even after conducting an auction of the Auction Properties with the identification of the highest bidder.

K. As Is, Where Is, With all Faults. The sale of the Auction Properties and any sale of the Auction Properties will be on an "as is, where is, with all faults" basis and without surviving representations or warranties of any kind, nature, or description by the Plan Administrator or his agents, advisors or representatives, except to the extent expressly set forth in the Proposed Agreement or modified Proposed Agreement, as applicable, and the schedules thereto, with respect to the Successful Bidder.

L. Bifurcated Relief. The Plan Administrator proposes bifurcated relief, such that the Proposed Agreement and Bidding Procedures be approved in advance of the Sales Procedure Hearing, and that the final sale terms and buyer be approved at the Sale Hearing.

At the hearing, **xxxxxxxxxx**

11. 18-90029-E-11 FWP-6 | **JEFFERY ARAMBEL** / **Matt Olson** | **MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION APPROVING FORM OF ASSET PURCHASE AGREEMENT, MOTION APPROVING AUCTION SALE FORMAT AND BIDDING PROCEDURES, MOTION APPROVING FORM OF NOTICE TO BE PROVIDED TO INTERESTED PARTIES, MOTION/APPLICATION SCHEDULING A COURT HEARING FOR APPROVAL OF THE SALE(S) TO THE HIGHEST AND BEST BIDDERS [1238]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)©.

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on November 5, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion Approving the Form of Asset Purchase Agreement and Auction Sale Format and Bidding Procedures was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

~~The Motion Approving the Form of Asset Purchase Agreement and Auction Sale Format and Bidding Procedures is granted.~~

REQUEST TO WITHDRAW MOTION

On November 17, 2020, the Plan Administrator filed a pleading in this Contested Matter titled: Request to Withdraw Plan Administrator's Motion [description of present Motion]." Dckt. 1278. While

stated as a "withdrawal," it is not clear if this is a dismissal without prejudice of the Motion pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rule of Bankruptcy Procedure 7041, 9014, there being no responsive pleadings filed, or a motion to dismiss pursuant to Federal Rule of Civil Procedure 41(a)(1) and Federal Rule of Bankruptcy Procedure 7041, 9014.

The Request states that the grounds for which the Plan Administrator is seeking to "withdraw" the present motion and seeking future relief as appropriate and in the best interests of the Plan estate are:

> The Plan Administrator has discovered new facts since the filing of this motion that the Plan Administrator is continuing to evaluate but which bear upon the Plan Administrator's determinations regarding the sale process for these properties and the best interests of the estate. Therefore, the Plan Administrator requests that the Motion be withdrawn without prejudice to refiling the Motion at a later date.

At the hearing, **xxxxxxx**

REVIEW OF MOTION

Pursuant to the terms of the confirmed Chapter 11 Plan in this case, Focus Management Group USA, Inc., the Plan Administrator, ("Movant") has filed a Motion requesting the following relief from the court:

A. A "Bidding Procedures Order" that:

1. Approves the bidding procedures for sale of the following Properties by auction (identified below).

B. A "Sale Order" that:

1. Approves the sale of the Properties to buyer at the auction for price to be determined at auction subject to the Vacant Land Purchase Agreement and Joint Escrow Instructions (Exhibit C) [FN.1];

FN.1. Movant refers to this Agreement as Exhibit C; however, no such exhibit was submitted to the court. *See* Dckt. 1241.

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2. The above approved sale is subject to overbids as provided in the bidding procedures, and includes a breakup fee for Buyer if there is a successful overbidder;

3. The sale is approve pursuant to 11 U.S.C. § 363(b) and § 363(f) [free and clear of liens and encumbrances]; and

4. Authorizes the Movant to pay or reserve from the sales proceeds costs, expenses, commissions, and the net proceeds from the sale.

The real properties that are the subject of the sale are identified as:

Lismer Ranch

± 400 acres of land:	APN: 021-021-004, APN: 021-021-005 APN: 021-021-006, APN: 021-022-001 APN: 021-022-051, APN: 021-022-052

Rogers Ranch

± 284.44 acres of land:	APN: 021-024-012, APN: 021-024-011 APN: 021-024-010, APN: 021-024-009 APN: 021-024-008, APN: 021-022-047

("Properties").

Bidding Procedures

December 11, 2020	**Deadline for parties to sign Purchase and Proposed Agreement Financial Bona Fides Submission Deadline**
December 11, 2020	**Deadline for objections to Biding Procedures and Sale Motion Bid Deadline**
December 14, 2020	**Notification of Qualified Bid Status**
December 15, 2020	**Identification of Starting Bid**
December 16, 2020 at 2:00 p.m. Pacific	**Auction**
December 17, 2020	**Sale Hearing**
TBD	**Closing Date - By 16 days after entry of Bankruptcy Court order approving the sale unless mutually extended by written agreement.**

The proposed overbidding procedures are (the complete Bidding Procedures are Exhibit A, Dckt 1241):

A. Sale by Auction. Movant proposes to conduct the Auction of the Properties by Zoom on December 16, 2020.

B. Bidder Qualification. A Potential Bidder must deliver to the Plan Administrator, at least five days prior to the Auction, a cashier's check or wire transfer (with evidence of confirmation and acceptance into escrow) payable to the order of the Plan Administrator's counsel for deposit in trust

(or such other party as the Plan Administrator may determine) in the amount of 10% of the purchase offer for each Auction Property that the Potential Bidder seeks to bid, to be returned to such bidder in the event that such bidder is not the Successful Bidder or Back-Up Bidder at the Auction, and to constitute the bidder's nonrefundable deposit under the terms of the respective Proposed Agreement if the bidder is the successful bidder at the Auction. Potential Bidders must provide evidence of the prospective buyer's source of capital or other financial ability to complete the contemplated transactions, the adequacy of which the Plan Administrator will determine in its sole discretion, with the consultation of the Notice Parties.

C. Written Bids Conforming to Proposed Agreement and Bidding Procedures. All initial bids submitted for qualification must be in the form of the Proposed Agreement and conform to the Bidding Procedures with modifications only as to the identification of the buyer, the amount of the purchase price, and such other changes as the Plan Administrator in its sole discretion may permit. Qualified Bids shall not be conditioned on (I) the outcome of unperformed due diligence by the bidder (ii) obtaining financing, or (iii) any other conditions other than being selected as the Successful Bidder or Back-Up Bidder, Plan Administrator Approval, the consent of the Secured Consent Parties for the respective Auction Property or Bankruptcy Court Approval.

D. Overbidding. Qualified Bidders may submit overbids at the Auction. Each incremental bid at the Auction shall provide net value to the estate of at least $15,000 over the Starting Bid or the Leading Bid, provided that the Plan Administrator in consultation with the Reorganizing Debtor shall retain the right to modify the increment requirements at the Auction after informing each participating Qualified Bidder.

E. Assurance of Prompt Closing. The winning bidder must be able to close the sale on or before 16 days after the entry of an order approving the sale.

F. Successful Bid. The Plan Administrator shall select the highest and best overbid as the Successful Bid and the Back-Up Bid, if any, based upon its reasonable judgment in consultation with the Reorganizing Debtor and Summit for purposes of confirming its consent.

G. Credit Bids. Summit shall be deemed a Qualified Bidder for the Auction. In accordance with Section 7.6 of the Plan, unless the Bankruptcy Court orders otherwise, Summit may exercise its credit bid rights provided that its Qualified Bid shall include a cash portion in the amount necessary, if any, to pay in full (a) all Allowed Secured Claims against the same collateral having priority over such Creditor's Allowed Secured Claim and (b) any Plan Expenses, as defined by the Plan including income taxes, directly related to the consummation of such transaction.

H. Backup Buyer. The bidder with the second highest or otherwise best bid (as determined by the Plan Administrator in the exercise of its business judgment) at the Auction the Property shall be required to serve as a back-up bidder (the "Back-Up Bidder") and keep such bid open and irrevocable until closing with the Successful Bidder or as otherwise provided in the Bidding Procedures.

I. Break-Up Fee. The Plan Administrator does not seek approval of a break up fee for any sales of the Auction Properties.

J. Reservation of Rights. The Plan Administrator reserves the right to withdraw any and all of the Auction Properties from sale at its sole discretion at any time prior to the Court's entry of an order confirming the sale of the Auction Properties after the Auction, even if the bidder has qualified to bid, and even after conducting an auction of the Auction Properties with the identification of the highest bidder.

K. As Is, Where Is, With all Faults. The sale of the Auction Properties and any sale of the Auction Properties will be on an "as is, where is, with all faults" basis and without surviving representations or warranties of any kind, nature, or description by the Plan Administrator or his agents, advisors or representatives, except to the extent expressly set forth in the Proposed Agreement or modified Proposed Agreement, as applicable, and the schedules thereto, with respect to the Successful Bidder.

L. Bifurcated Relief. The Plan Administrator proposes bifurcated relief, such that the Proposed Agreement and Bidding Procedures be approved in advance of the Sales Procedure Hearing, and that the final sale terms and buyer be approved at the Sale Hearing.

Requested Sale Free and Clear of Liens

The Plan Administrator seeks to sell the following Property free and clear of any liens, claims, interests, or other encumbrances as follows:

Lismer Ranch

Priority	Claim Holder	Satisfaction and Release
Tax	Stanislaus County Collector	The Plan Administrator seeks authority to pay Stanislaus County Tax Collector from the proceeds of the sale. Therefore, their liens shall be satisfied and released as paid in full.

1st DOT 2nd DOT	Summit	Summit holds secured claims against the Lismer Property allowed by the Plan. The Plan Administrator has sought and will continue to seek the consent of Summit to release its liens on the Lismer Property, to the extent not paid in full. The Plan Administrator expects that Summit will so consent to the sale of the Lismer free and clear of its liens.

Disputed Lien as to Property	**Basis for Disputes according to Plan Administrator and Reorganized Debtor**
(I) Peter Lismer, Successor Trustee	The preliminary title report for the Lismer Property identifies a deed of trust in favor of Peter W. Lismer, Successor Trustee of the Sidney W. Lismer Trust initially created on January 21, 1996 as beneficiary recorded December 18, 2006. The preliminary title report further identifies a reconveyance recorded May 6, 2016, Instrument No. 2016-0033277, of Official Records, which purports to release, satisfy or reconvey the above-mentioned mortgage or deed of trust. Said reconveyance was executed by an agent for First American Title Company. However, the title company has yet been unable to determine the validity and authority of the agent signature. The Plan Administrator disputes the Lismer DOT as it has been satisfied and reconveyed. The Plan Administrator seeks entry of an order selling the Lismer Property free and clear of the Lister DOT pursuant to Bankruptcy Code section 363(f)(4) with $0.00 reserved for the Lismer DOT.

Rogers Ranch

Priority	**Claim Holder**	**Satisfaction and Release**
Tax	Stanislaus County Tax Collector	The Plan Administrator seeks authority to pay Stanislaus County Tax Collector from the proceeds of the sale. Therefore, their liens shall be satisfied and released as paid in full.
1st DOT	Brighthouse Life Insurance Co.	Brighthouse holds secured claims against the Rogers Ranch Property allowed by the Plan. The Plan Administrator has sought and will continue to seek the consent of Brighthouse to release its liens on the Rogers Ranch Property, to the extent not paid in full. The Plan Administrator expects that Brighthouse will so consent to the sale of the Rogers Ranch Property free and clear of its liens.

2nd DOT 3rd DOT	Summit	Summit holds secured claims against the Rogers Ranch Property allowed by the Plan. The Plan Administrator has sought and will continue to seek the consent of Summit to release its liens on the Rogers Ranch Property, to the extent not paid in full. The Plan Administrator expects that Summit will so consent to the sale of the Rogers Ranch free and clear of its liens.

Sale Subject to Short Term Leases and Non-Monetary Interests

The Plan Administrator seeks to complete the proposed sales of the Auction Properties subject to certain short-term leases:

(1) Matt Owens, and Adam Owens dba M+ A Livestock as tenants for the Lismer and Rogers ranches until September 30, 2021.

Rent for the entire lease term through September 30, 2021 has been paid in advance and shall be retained by the estate. A separate motion to assign the foregoing leases to the Successful or Back-Up Bidder for each respective Auction Property shall be noticed for hearing at the same time as the Transaction Approval Hearing.

Any sale of the Auction Properties shall also be subject to easements, rights of way, covenants, codes and restrictions, patents, or other non-monetary matters of record.

The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

> (f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established grounds based on 11 U.S.C. § 363(f)(5) for the Stanislaus County Tax Collector by paying those secured claims in full from the sale proceeds through escrow.

For the Summit secured claims, excluding the "Lismer DOT," Movant states that the consent of Summit and Brighthouse Life Insurance Co. will be provided, thus allowing the court to order the sale free and clear as provided in 11 U.S.C. § 363(f)(2).

For the remaining Lismer DOT claim, Movant has stated grounds showing that each lien, encumbrance, or interest is in *bona fide* dispute, providing a basis for a sale free and clear, with the liens, encumbrances, and interests attaching to the sale proceeds to the same extent, validity, and priority as they existed in the Property sold pursuant to order of the court.

DISCUSSION

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the Property has been extensively (for over two years) exposed to the market. Moreover, the Plan Administrator projects that the sale will generate significant proceeds for payment of secured claims. The Property is not generating any revenue for the Estate but continues to accrue expenses such as property taxes, insurance, etc.

The court grants the Motion and authorizes the sale of the Property via auction on the terms and conditions set forth in the Purchase and Sale Agreement to be provided by Movant Plan Administrator (purported to have been filed as Exhibit C) and as further provided below.

The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

The Property is sold free and clear of the lien of the following creditors asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(2), (4), and 5, of the following interests, with the lien of such creditor, if the creditor is not paid in full through the sale escrow, attaching to the proceeds of the sale in the same amount, extent, validity, and priority as it exists in the Property sold:

11 U.S.C. § 363(f)(5) - Compelled to Release Under Non-Bankruptcy Law

The liens of Stanislaus County Tax Collector whose claims shall be paid in full from the sale proceeds through escrow.

11 U.S.C. § 363(f)(2) - Consent

The liens of Summit for which consent will be provided.

At the hearing, **XXXXXXX**

11 U.S.C. § 363(f)(4) - Interest Subject to Bona Fide Dispute

The Motion requests that the following liens and interests be stripped from the Property sold because Movant states they are in *bona fide* dispute:

(I) Lismer DOT

Once stripped off, the Movant requests that they not be attached to the sales proceeds, and that $0.00 be allocated to each of these disputed liens and interests. The evidence presented for these bona fide disputes is the declaration of Juanita Schwartzkopf, a Senior Managing Director at Movant . Dckt. 1234. Declarant testifies that a preliminary title report for the Lismer Property identifies a reconveyance recorded in 2016, purporting to release, satisfy or reconvey the Lismer DOT. However, First American Title Company, responsible for executing the reconveyance, has been unable to determine the validity and authority of its agent's signature. The Plan Administrator proceeds to dictate to the court his legal conclusions and findings that the various interests identified of record have.

At the hearing, the Plan Administrator addressed the legal basis by which the court can order the sale free and clear by this Motion, and then allow the proceeds to be transferred away from the disputed lien. Counsel for the Plan Administrator cited **xxxxxxx**

A sale authorized free and clear of liens and interests is not an adjudication of the rights and interests in the property being sold. It is not a shortcut deprivation of a persons property on a 28 day noticed motion. As discussed in Collier on Bankruptcy:

> ¶ 363.06 Sale Free of Liens or Interests; § 363(f)
>
> Section 363(f) permits a sale of property of the estate free and clear of an interest in the property, including a lien, under a number of circumstances. It has long been recognized that the bankruptcy court has the power to authorize the sale of property free of liens with the liens attaching to the proceeds, with or without the consent of the lienholder. [1] Absent consent of the lienholder, the well-established rule was that the sale should not be held if it would not produce a surplus [2] unless there was a bona fide dispute concerning the validity of the lien. [3] This limitation was not likely of constitutional dimension. The creditor's only constitutional claim would be to the value of the collateral, [4] because any so-called right to control the collateral and to conduct a sale were remedies that bankruptcy might stay or abrogate. [5]
>
> The Code makes no material change to the cases decided under the Bankruptcy Act on sales free and clear of liens but clarifies that other grounds for a sale free and clear may also exist.. . .
>
> . . .
>
> [5] Sale When Interest in Bona Fide Dispute; § 363(f)(4)
>
> A sale may proceed free and clear of liens or interests if they are in bona fide dispute. [53] The trustee has the burden of demonstrating that a bona fide dispute exists. [54] To meet this burden the trustee must establish that there is an objective basis for either a factual or legal dispute as to the validity of the debt. [55] The court is not required to resolve the underlying dispute as a condition to authorizing the sale under this provision, but must determine that it exists. [56] In one case, however, the court held that a bona fide dispute did exist because the adverse interest holders disputed

whether the sale could have been free and clear of their interests under a rent stabilization law. [57] Such post-hoc application of this paragraph could raise due process concerns.

1. *See Ray v. Norseworthy*, 90 U.S. (23 Wall.) 128 (128) (1875); *Van Huffel v. Harkelrode*, 284 U.S. 225, 52 S. Ct. 115, 76 L. Ed. 256 (1931); *Wright v. Union Central Life Ins. Co.*, 304 U.S. 502, 58 S. Ct. 1025, 82 L. Ed. 1490 (1938), *reh'g denied*, *Wright v. Union Cent. L. Ins. Co.*, 305 U.S. 668, 59 S. Ct. 56, 82 L. Ed. 1490 (1938); *Allebach v. Thomas*, 16 F.2d 853 (4th Cir. 1927), *cert. denied*, 274 U.S. 744, 47 S. Ct. 590, 71 L. Ed. 1325 (1927).

2. *Reconstruction Fin. Corp. v. Cohen*, 179 F.2d 773 (10th Cir. 1950); *Hoehn v. McIntosh*, 110 F.2d 199 (6th Cir. 1940); *In re Miller*, 95 F.2d 441 (7th Cir. 1938).

3. *Coulter v. Blieden*, 104 F.2d 29 (8th Cir. 1939), cert. denied, 308 U.S. 583, 60 S. Ct. 106, 84 L. Ed. 488 (1939); *In re National Grain Corp*., 9 F.2d 802 (2d Cir. 1926).

4. *Wright v. Union Central Life Ins. Co.*, 311 U.S. 273, 61 S. Ct. 196, 85 L. Ed. 184 (1940), *reh'g denied*, 312 U.S. 711, 61 S. Ct. 445, 85 L. Ed. 1142 (1941).

5. *Continental Ill. Nat'l Bank & Trust Co. v. Chicago, Rock Island & Pacific Ry. Co.*, 294 U.S. 648, 55 S. Ct. 595, 79 L. Ed. 1110 (1935).

. . .

53. 11 U.S.C. § 363(f)(4).

54. *See Scherer v. Federal Nat'l Mortgage Ass'n (In re Terrace Chalet Apartments, Ltd.)*, 159 B.R. 821, 828 (N.D. Ill. 1993) (citing *Octagon Roofing*, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991)). In some situations it may be a third party that raises the issue of bona fide dispute. *See In re Gerwer*, 898 F.2d 730, 733 (9th Cir. 1990); *Scherer v. Federal Nat'l Mortgage Ass'n (In re Terrace Chalet Apartments, Ltd.),* 159 B.R. 821, 828 (N.D. Ill. 1993).

55. *See In re Daufuskie Island Props*., LLC, 431 B.R. 626 (Bankr. D.S.C. 2010) (substantial history of significant litigation over validity of creditor's asserted interest); *In re Octagon Roofing*, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991); In re Collins, 180 B.R. 447, 452 (Bankr. E.D. Va. 1995).

56. *See In re Octagon Roofing*, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991).

57. *Cheslock-Bakker & Assocs. v. Kremer (In re Downtown Athletic Club of New York City, Inc.)*, 44 C.B.C.2d 342, 2000 U.S. Dist. LEXIS 7917 (S.D.N.Y. June 9, 2000).

3 Collier on Bankruptcy P 363.06 (16th 2020)

For the determination of the actual extent, validity, and priority of a lien or interest in property, an adversary proceeding is required to determine such title rights and interests. Fed. R. Bankr. P. 7001.

For the non-consenting interests, if not paid through escrow, such interests shall attach to the proceeds of the sale, including any obligations secured by the Lismer DOT .

The Plan Administrator is authorized to pay a real estate broker's commission in an amount not more than five (5) percent of the actual purchase price upon consummation of the sale. The five (5) percent commission shall be paid to the broker, Pearson Realty. In the event Pearson Realty represents both the estate and the Buyer, the commission payable to Pearson Realty shall be 3.5% of the sales price, due at the close of escrow.

The bidding procedures as set in Exhibit A, Dckt. 1235, are approved, including:

A. Sale by Auction. Movant proposes to conduct the Auction of the Property by Zoom on December 16, 2020.

B. Bidder Qualification. A Potential Bidder must deliver to the Plan Administrator, at least five days prior to the Auction, a cashier's check or wire transfer (with evidence of confirmation and acceptance into escrow) payable to the order of the Plan Administrator's counsel for deposit in trust (or such other party as the Plan Administrator may determine) in the amount of 10% of the purchase offer for each Auction Property that the Potential Bidder seeks to bid, to be returned to such bidder in the event that such bidder is not the Successful Bidder or Back-Up Bidder at the Auction, and to constitute the bidder's nonrefundable deposit under the terms of the respective Proposed Agreement if the bidder is the successful bidder at the Auction. Potential Bidders must provide evidence of the prospective buyer's source of capital or other financial ability to complete the contemplated transactions, the adequacy of which the Plan Administrator will determine in its sole discretion, with the consultation of the Notice Parties.

C. Written Bids Conforming to Proposed Agreement and Bidding Procedures. All initial bids submitted for qualification must be in the form of the Proposed Agreement and conform to the Bidding Procedures with modifications only as to the identification of the buyer, the amount of the purchase price, and such other changes as the Plan Administrator in its sole discretion may permit. Qualified Bids shall not be conditioned on (I) the outcome of unperformed due diligence by the bidder (ii) obtaining financing, or (iii) any other conditions other than being selected as the Successful Bidder or Back-Up Bidder, Plan Administrator Approval, the consent of the Secured Consent Parties for the respective Auction Property or Bankruptcy Court Approval.

D. Overbidding. Qualified Bidders may submit overbids at the Auction. Each incremental bid at the Auction shall provide net value to the estate of at least $15,000 over the Starting Bid or the Leading Bid, provided that the Plan Administrator in consultation with the Reorganizing Debtor shall retain the right to modify the increment requirements at the Auction after informing each participating Qualified Bidder.

E. Assurance of Prompt Closing. The winning bidder must be able to close the sale on or before 16 days after the entry of an order approving the sale.

F. Successful Bid. The Plan Administrator shall select the highest and best overbid as the Successful Bid and the Back-Up Bid, if any, based upon its reasonable judgment in consultation with the Reorganizing Debtor and Summit for purposes of confirming its consent.

G. Credit Bids. Summit shall be deemed a Qualified Bidder for the Auction. In accordance with Section 7.6 of the Plan, unless the Bankruptcy Court orders otherwise, Summit may exercise its credit bid rights provided that its Qualified Bid shall include a cash portion in the amount necessary, if any, to pay in full (a) all Allowed Secured Claims against the same collateral having priority over such Creditor's Allowed Secured Claim and (b) any Plan Expenses, as defined by the Plan including income taxes, directly related to the consummation of such transaction.

H. Back-up Buyer. The bidder with the second highest or otherwise best bid (as determined by the Plan Administrator in the exercise of its business judgment) at the Auction the Property shall be required to serve as a back-up bidder (the "Back-Up Bidder") and keep such bid open and irrevocable until closing with the Successful Bidder or as otherwise provided in the Bidding Procedures.

I. Break-Up Fee. The Plan Administrator does not seek approval of a break up fee for any sales of the Auction Properties.

J. Reservation of Rights. The Plan Administrator reserves the right to withdraw any and all of the Auction Properties from sale at its sole discretion at any time prior to the Court's entry of an order confirming the sale of the Auction Properties after the Auction, even if the bidder has qualified to bid, and even after conducting an auction of the Auction Properties with the identification of the highest bidder.

K. As Is, Where Is, With all Faults. The sale of the Auction Properties and any sale of the Auction Properties will be on an "as is, where is, with all faults" basis and without surviving representations or warranties of any kind, nature, or description by the Plan Administrator or his agents, advisors or representatives, except to the extent expressly set forth in the Proposed Agreement or modified Proposed Agreement, as applicable, and the schedules thereto, with respect to the Successful Bidder.

L. Bifurcated Relief. The Plan Administrator proposes bifurcated relief, such that the Proposed Agreement and Bidding Procedures be approved in advance of the Sales Procedure Hearing, and that the final sale terms and buyer be approved at the Sale Hearing.

At the hearing, xxxxxxxx

FINAL RULINGS

12. 18-90764-E-7 DAWN CHRISTENSEN MOTION IN LIMINE
19-9002 RK-2 10-14-20 [78]
JONES V. CHRISTENSEN

Final Ruling: No appearance at the November 19, 2020 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff (*pro se*) on October 14, 2020. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion *In Limine* has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The hearing on the Motion *In Limine* is continued to 2:00 p.m. on December 17, 2020 to be heard in conjunction with the Settlement Status Conference**.**

Dawn Christensen, Defendant-Debtor, filed a motion in limine arguing that documents and witness testimony submitted by Plaintiff Cynthia Jones do not meet the minimum evidentiary standards for the upcoming trial.

Specifically, Defendant-Debtor objects to the following witnesses not identified by name:

1. Custodian of Records at Chicago Title Company
2. City of Stockton
3. Hacienda Office Complex
4. Divorce with Dignity Network

Defendant-Debtor argues she is entitled to know so that she may properly prepare for trial.

Moreover, Defendant-Debtor objects to the following documents on the grounds that they have not been properly authenticated as required by Federal Rule of Evidence 901 and are hearsay pursuant to Federal Rule of Evidence 802:

1. Affordable Legal Documents Letterhead
2. A-1 Affordable Aid website page
3. Legalshield business listing on the Ripon Chamber of Commerce Website
4. Divorce with Dignity License Agreement
5. Printout of A-1 Affordable Aid Facebook Page
6. Printout of Dawn Christensen's voiceamerica.com website page
7. Printout of A-1 Affordable Aid Yelp review page

Housekeeping Matters

Defendant-Debtor filed an Amended Notice of Hearing on October 18, 2020. Dckt. 87. Defendant-Debtor sought to change the already noticed November 12, 2020 hearing to November 19, 2020 at 10:30 a.m. A second Amended Notice was filed on October 21, 2020. Dckt. 89. The court has not entered an order continuing the hearing. Pursuant to Local Rule 9014-1(j),

> (j) Continuances. Continuances of hearings **must be approved by the Court**. A request for a continuance may be made orally at the scheduled hearing or in advance of it if made by written application. A written application shall disclose whether all other parties in interest oppose or support the request for a continuance. Failure to comply with this provision may be grounds for denial of the motion without prejudice.

Counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

Stipulation

On October 30, 2020, Counsel for Defendant-Debtor lodged with the court a proposed Judgment of Nondischargeability, to which a copy of a Settlement Agreement is attached. The stipulation not having been filed in the Adversary Proceeding and no order having been sought from the court by the Plaintiff to dismiss or amend the causes of action objecting to discharge in exchange for giving Plaintiff a nondischargeable judgment, the court ordered a Settlement Status Conference for December 17, 2020 at 2:00 p.m.

The court continues the hearing on this Motion to December 17, 2020 at 2:00 p.m. so that it may be heard in conjunction with the Settlement Status Conference.

The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion *In Limine* filed by Defendant-Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion *In Limine* is continued to 2:00 p.m. on December 17, 2020 to be heard in conjunction with the Settlement Status Conference.

13. 20-90550-E-7 **CONSUELO MENDOZA** **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Wilber Salgado **10-20-20 [27]**

Final Ruling: No appearance at the November 19, 2020 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, creditors, and Chapter 7 Trustee as stated on the Certificate of Service on October 22, 2020. The court computes that 28 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $31.00 due on October 6, 2020.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

14. 20-90151-E-7 BLF-3

RONALD HART
James Knopf

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BAKKEN LAW FIRM FOR LORIS L. BAKKEN, TRUSTEES ATTORNEY(S)
10-12-20 [40]

Final Ruling: No appearance at the November 19, 2020 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on October 12, 2020. By the court's calculation, 38 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.

Loris Bakken, the Attorney ("Applicant") for Michael D. McGranahan, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period May 21, 2020, through November 19, 2020. The order of the court approving employment of Applicant was entered on June 22, 2020. Dckt. 27. Applicant requests fees in the amount of $3,720.00 and costs in the amount of $52.40.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include investigating the ownership and value of property of the estate, and selling the estate's right, title, and interest in a promissory note. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 3.7 hours in this category. Applicant prepared the fee agreement, employment applicant, and fee application. Applicant did not bill for any time on general case administration.

Investigate Ownership and Value of Property of the Estate: Applicant spent 1.3 hours in this category. Applicant contacted Debtor's counsel and discussed Debtor's claims regarding the ownership of a 2010 Toyota Matrix. Applicant did not bill for any time in connection with these tasks.

Sale of Property of the Estate: Applicant spent 14.9 hours in this category. Applicant communicated with Debtor's counsel regarding amounts that Debtor collected on the Promissory Note post petition and regarding the Chapter 7 Trustee's intent to market the Promissory Note for sale. Applicant reviewed the offer to purchase the Promissory Note made by the maker, discussed the terms of the sale with the Chapter 7 Trustee and with the proposed buyer, and prepared a sale agreement and motion for court approval of the sale. Applicant had communications with interested overbidders and prepared an overbidder agreement. Applicant did not bill for 2.5 hours in this category.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Lori L. Bakken	19.90	$300.00	$5,970.00
	0	$0.00	$0.00
Total Fees for Period of Application			$5,970.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $52.40 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Postage		$27.00
Copying	$0.10 per page	$25.40
		$0.00
Total Costs Requested in Application		$52.40

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

Applicant seeks to be paid the reduced amount of $3,720.00 for its fees incurred for Client. First and Final Fees in the amount of $3,720.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $52.40 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$3,720.00
Costs and Expenses	$52.40

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Loris L. Bakken ("Applicant"), Attorney for Michael D. McGranahan, the Chapter 7 Trustee,

("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Loris L. Bakken is allowed the following fees and expenses as a professional of the Estate:

Loris L. Bakken, Professional employed by the Chapter 7 Trustee

Fees in the amount of $3,720.00
Expenses in the amount of $52.40,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

15. 20-90607-E-7 **BIMLESH SINGH**
Pro Se

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
11-3-20 [42]

Final Ruling: No appearance at the November 19, 2020 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), Creditors, and Chapter 7 Trustee as stated on the Certificate of Service on November 5, 2020. The court computes that 14 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: $31.00 due on September 16, 2020.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

16.	**19-90122-E-11 MF-4**	**MIKE TAMANA FREIGHT LINES, LLC Reno Fernandez**	**CONTINUED MOTION TO USE CASH COLLATERAL 2-12-19 [21]**

CASE CLOSED: 8/24/20

Final Ruling: No appearance at the November 19, 2020 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

The case having previously been dismissed, the Motion is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Use Cash Collateral having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

17. 20-24123-E-11 FWP-12

RUSSELL LESTER
Thomas Willoughby

CONTINUED MOTION TO ASSUME AND MODIFY FARM LEASE AND APPROVE PROCEDURE FOR SIMILAR ORDINARY COURSE FARM LEASES
10-26-20 [226]

Final Ruling: No appearance at the November 19, 2020 hearing is required.

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Receiver, creditors holding the twenty largest unsecured claims], creditors, parties requesting special notice, and Office of the United States Trustee on October 26, 2020. By the court's calculation, 3 days' notice was provided.

The Motion to Shorten Time was granted by the court on October 26, 2020. Dckt. 221. The court set the hearing for October 29, 2020. *Id*.

The Motion to Assume and Modify Farm Lease and Approve Procedure for Similar Ordinary Course Farm Lease was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing conditional opposition was stated.

The hearing on the Motion to Assume and Modify Farm Lease and Approve Procedure is removed from the Calendar, the court having entered an order granting the Motion on November 16, 2020 (Dckt. 252).