

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge

Modesto, California

January 30, 2025 at 10:30 a.m.

1. [24-90324-E-7](#)  
[KMT-5](#)

ENRIQUE OLMOS  
Gary Fraley

**MOTION TO EMPLOY TMC AUCTION,  
INC. AS AUCTIONEER, AUTHORIZING  
SALE OF PROPERTY AT PUBLIC  
AUCTION AND AUTHORIZING PAYMENT  
OF AUCTIONEER FEES AND EXPENSES  
1-2-25 [80]**

**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).**

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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, Chapter 7 Trustee, and Office of the United States Trustee on January 2, 2025. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Employ Auctioneer and for Authorization of Auctioneer's Fees and Expenses 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 Employ Auctioneer and Sell Property at auction, and the Motion for Authorization of Auctioneer's Fees and Expenses are granted.**

The Chapter 7 Trustee, Nikki B. Farris ("Trustee"), seeks to employ Lonny Papp of TMC Auction ("Auctioneer") pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 327,

328(a), 330, and 363. Trustee seeks the employment of Auctioneer to sell the following items of personal property from the Estate of Enrique Martinez Olmos (“Debtor”):

Ref	Description	Notes	Qty
2	1995 Toyota 4Runner, 197324 miles, no keys	fair condition	1
3	2001 Chevy Silverado 1500, 354968 miles, Needs Battery	fair condition	1
4	2007 Nissan Sentra, Salvaged Title, No Key	Poor Condition	1
5	2021 Big Tex Trailer, model 60PI-16BK4RG	Good Condition	1
6	Olimpic K360 Edge Bander	Good Condition	1
7	ingersall Rand Compressor, model unknown	Poor Condition	1
8	Kellog 80 Gallon Compressor, model unknown, tied into building	fair condition	1
9	Crown Electric Picker, model unknown	fair condition	1
10	Ridgid and Skil 10in Table Saws	fair condition	2
11	Jet Table Saws	Poor Condition	2
12	Transpower 1in Wood Shaper, model unknown	Poor Condition	1
13	Virutex EB 25, Edgebander	fair condition	1
14	Amerock Basica Mini Boring Machine, model unknown	fair condition	1
15	DeWalt Radial Arm Saw, OLD	Poor Condition	1
16	Router Table, Model Unknown 10ft, 4 head	fair condition	1
17	DeWalt 12in Miter Saws, (1) Sliding, (2) Compound	fair condition	1
18	Delta Jointer, OLD	fair condition	1
19	Castle Router/Pocket Cutter, model Unknown	fair condition	1
20	Assorted Nailers and Hand Tools	fair condition	lot
21	Powermatic Table Saw	fair condition	1
22	SCMI T130 Spindle Shaper	fair condition	1
23	Delta Industrial Jointer, Model Unknown	fair condition	1
24	Lobo Spindle Shaper, model Unknown	fair condition	1
25	Pacco Belt Sander, Model Unknown	fair condition	1
26	General 90-100m1 14in Band Saw	fair condition	1
27	Delta Unisaw Table Saw, model Unknown	fair condition	1
28	Adwood Detel M-2H Vertical Drilling machine	fair condition	1
29	Jet Thickness Planer, model Unknown	fair condition	1
30	Jet Drill Press, model Unknown	fair condition	1
31	Delta Dust Collectors	fair condition	2
32	Safety Speed Cut Wide Belt Sander, 43in, model unknown	fair condition	1
33	JLT Cabinet door Clamp, model 717a-26v-62h-l	fair condition	1
34	Woodtek Shaper, model unknown	fair condition	1
35	Blum MiniPress P Deluxe Boring and Insertion Machine	Good Condition	1
36	Assorted Raw Materials, Wood Work Tables and support items	fair condition	1

(“Personal Property”). Mot.2:1-3, Docket 80. The Personal Property is listed in the Amended Schedule A / B filed by Debtor. Docket 28. Trustee argues that Auctioneer’s appointment and retention is necessary to facilitate a liquidation of the Personal Property and produce the highest and best return to the estate. Mot. 3:14-20, Docket 80.

The essential terms of the Employment Agreement are as follows:

- (a) A commission of 20% will be charged to the estate and will be deducted from the gross sale proceeds.
- (b) The Auctioneer will be entitled to reimbursement of any expenses incurred in preparing for and conducting the auction in an amount not to exceed \$4,000.
- (c) Within 30 business days of the auction, the Auctioneer will remit payment to the Trustee the net sale proceeds.
- (d) All gross proceeds of the sale shall be maintained separate from the Auctioneer's personal or general funds and accounts pursuant to California Civil Code § 1812.607(j).

*Id.* at 3:6-13.

Lonny Papp, owner of TMC Auction, testifies that TMC Auction is a full-service auction company providing auctions and accelerated marketing services, as well as liquidations of business and other financial assets for corporations, financial institutions, trustees, individuals, and estates. The Auctioneer has extensive experience in assisting bankruptcy trustees similar to the Trustee. Decl. ¶ 2, Docket 89. Mr. Papp testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.* at ¶¶ 7-9.

## **DISCUSSION**

### **Motion to Employ and Authorization to Sell**

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer, considering the declaration demonstrating that Auctioneer does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Lonny Papp of TMC Auction as Auctioneer for the Chapter 7 Estate on the terms and conditions set forth in the Auction Agreement filed as Exhibit A, Dckt. 83. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

Auctioneer is authorized to sell the items of Personal Property listed in the Amended Schedule A / B filed by Debtor, Docket 28, and as further provided in this ruling and Order.

### **Motion for Authorization of Fees and Expenses**

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional'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 professional 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)).

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)).

Here, Trustee has estimated that a twenty percent broker’s commission from the sale of the Personal Property would be reasonable and appropriate in this type of employment. Trustee also states that expenses incurred in preparing for and conducting the auction in an amount not to exceed \$4,000 are reasonable and appropriate. As part of the sale in the best interest of the Estate, the court approves a twenty percent commission fee. The court further approves the requested expenses, not to exceed \$4,000, in connection with the auction.

The allowance of the fees and expenses is subject to the provisions of 11 U.S.C. § 328.

### **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because Trustee does not anticipate opposition to the Motion, and Trustee requests the sale be allowed to move forward as soon as possible. Mot. 4:23-25, Docket 80.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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 to Employ Auctioneer and Sell Property at Auction, and for Allowance of Fees and Expenses filed by the Chapter 7 Trustee, Nikki B. Farris (“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 Employ Auctioneer and to Sell Property at Auction is granted, effective January 30, 2025, and Trustee is authorized to employ Lonny Papp as Auctioneer for Trustee on the terms and conditions as set forth in the Auction Agreement filed as Exhibit A, Dckt. 83.

**IT IS FURTHER ORDERED** that Auctioneer is authorized to sell the following items of personal Property at the auction as listed in Amended Schedule A / B filed by Debtor, Docket 28:



Ref	Description	Notes	Qty
2	1995 Toyota 4Runner, 197324 miles, no keys	fair condition	1
3	2001 Chevy Silverado 1500, 354968 miles, Needs Battery	fair condition	1
4	2007 Nissan Sentra, Salvaged Title, No Key	Poor Condition	1
5	2021 Big Tex Trailer, model 60PI-16BK4RG	Good Condition	1
6	Olimpic K360 Edge Bander	Good Condition	1
7	ingersall Rand Compressor, model unknown	Poor Condition	1
8	Kellog 80 Gallon Compressor, model unknown, tied into building	fair condition	1
9	Crown Electric Picker, model unknown	fair condition	1
10	Ridgid and Skil 10in Table Saws	fair condition	2
11	Jet Table Saws	Poor Condition	2
12	Transpower 1in Wood Shaper, model unknown	Poor Condition	1
13	Virutex EB 25, Edgebander	fair condition	1
14	Amerock Basica Mini Boring Machine, model unknown	fair condition	1
15	DeWalt Radial Arm Saw, OLD	Poor Condition	1
16	Router Table, Model Unknown 10ft, 4 head	fair condition	1
17	DeWalt 12in Miter Saws, (1) Sliding, (2) Compound	fair condition	1
18	Delta Jointer, OLD	fair condition	1
19	Castle Router/Pocket Cutter, model Unknown	fair condition	1
20	Assorted Nailers and Hand Tools	fair condition	lot
21	Powermatic Table Saw	fair condition	1
22	SCMI T130 Spindle Shaper	fair condition	1
23	Delta Industrial Jointer, Model Unknown	fair condition	1
24	Lobo Spindle Shaper, model Unknown	fair condition	1
25	Pacco Belt Sander, Model Unknown	fair condition	1
26	General 90-100m1 14in Band Saw	fair condition	1
27	Delta Unisaw Table Saw, model Unknown	fair condition	1
28	Adwood Detel M-2H Vertical Drilling machine	fair condition	1
29	Jet Thickness Planer, model Unknown	fair condition	1
30	Jet Drill Press, model Unknown	fair condition	1
31	Delta Dust Collectors	fair condition	2
32	Safety Speed Cut Wide Belt Sander, 43in, model unknown	fair condition	1
33	JLT Cabinet door Clamp, model 717a-26v-62h-l	fair condition	1
34	Woodtek Shaper, model unknown	fair condition	1
35	Blum MiniPress P Deluxe Boring and Insertion Machine	Good Condition	1
36	Assorted Raw Materials, Wood Work Tables and support items	fair condition	1

**IT IS FURTHER ORDERED** that Auctioneer is authorized to receive a commission of twenty percent (20%) of the gross sales proceeds and expenses not to exceed \$4,000.00 and that the Trustee is authorized to pay such fees and expenses from the sales proceeds. The allowance of such fees and expenses is subject to the provisions of 11 U.S.C. § 328.

**IT IS FURTHER ORDERED** that the 14-day stay period imposed by Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

2. [24-90528-E-11](#)  
[BSH-3](#)

HERITAGE HOME  
FURNISHINGS, LLC  
Brian Haddix

CONTINUED MOTION TO USE CASH  
COLLATERAL AND/OR MOTION TO  
GRANT REPLACEMENT LIENS ,  
MOTION TO SCHEDULE FINAL  
HEARING PURSUANT TO BANKRUPTCY  
RULE 4001  
11-1-24 [\[41\]](#)

Item 2 thru 3

**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).**

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

Sufficient Notice Provided. Movant has complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

The Certificate of Service, Dckt. 49, documents service having been made on parties in interest on November 1, 2024. At least fourteen days notice is required (L.B.R. 9014-1(f)(2)), and twenty days notice was given.

The Motion for Authority to Use Cash Collateral was set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, 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.

<b>The Motion for Authority to Use Cash Collateral is <span style="color: red;">xxxxxxx</span>.</b>
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**January 30, 2025 Hearing**

The court continued the hearing on this Motion, having granted the use of cash collateral through February 14, 2025. Order, Docket 54. A review of the Docket on January 27, 2025 reveals that Debtor in

Possession has filed a proposed Plan. Docket 56. On or before January 21, 2025, Debtor in Possession was to file and serve supplemental pleadings for the further use of cash collateral and notice of the January 30, 2025 hearing.

Debtor in Possession has not filed supplemental pleadings as of the court's January 29, 2025, review of the Docket.

On December 9, 2024, a Subchapter V Plan was filed. Dckt. 56. No order setting a hearing on confirmation has been entered. <sup>Fn.1.</sup>

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FN. 1. The voluminous text in the Order Setting Subchapter V Chapter 11 Status Conference Date (Dckt. 6), paragraph 4 is titled "Filing of Plan and Lodging of Confirmation Hearing Order." In that paragraph it states that the plan proponent shall lodge with the court the proposed order setting the hearing for confirmation.  
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At the hearing, **XXXXXXX**

## **REVIEW OF THE MOTION**

Heritage Home Furnishings, LLC ("Debtor in Possession") moves for an order approving the use of cash collateral from generated from the business, a family-owned California limited liability company created in 2009 which operates as a commercial furniture retailer with a showroom and separate warehouse located in Turlock, CA. Debtor in Possession requests the use of cash collateral to continue the Debtor's operations and to reorganize.

Debtor in Possession proposes to use cash collateral to be allocated to critical business expenses necessary to sustain operations, including payment of rent to maintain the premises, payroll to retain essential employees, inventory purchases to meet customer demand, and adequate protection payments to secured creditors. Mot. 3:14-21, Docket 41.

In the Motion the Debtor in Possession requests that replacement liens be granted creditors in the new cash proceeds generated from the operation of the business. While not expressly stating such, the regular practice is to grant such replacement liens in the same priority as the original lien and to the extent that the creditor's collateral was reduced through the use of cash collateral (thus, a creditor's collateral is not increased).

Debtor in Possession proposes that the cash collateral be approved with a 10% variance in each category and that remaining funds be retained by Debtor in Possession.

In the prayer, Debtor/Debtor in Possession requests that a super-priority claim be granted pursuant to 11 U.S.C. § 503(b) and § 507(b) to the extent that there has been a diminution in the amount of Creditor's collateral, notwithstanding the replacement lien. Motion, p. 7:18-21; Dckt. 41.



Debtor in Possession has submitted a proposed Stipulation with the court between it and the Small Business Administration (“SBA”). Exhibit A; Dckt. 43. The Stipulation calls for providing the SBA with superpriority claim pursuant to 11 U.S.C. §§ 503(b), 507(b), to the extent that the use of cash collateral results in a diminution of the SBA cash collateral notwithstanding the replacement lien.

The Debtor/Debtor in Possession also seeks authorization to make adequate protection payment in the amount of \$731 monthly.

With respect to the “super priority claim,” Congress provides for a super priority administrative expense in 11 U.S.C. § 507(b), stating:

(b) If the trustee, under section 362, 363, or 364 of this title, **provides adequate protection of the interest of a holder of a claim secured by a lien on property** of the debtor and if, notwithstanding such protection, such creditor has a claim allowable under subsection (a)(2) [unsecured administrative expense] of this section arising from the stay of action against such property under section 362 of this title, from the use, sale, or lease of such property under section 363 of this title, or from the granting of a lien under section 364(d) of this title, then such creditor’s claim under such subsection shall have priority over every other claim allowable under such subsection.

Collier’s Treatise on Bankruptcy states:

A creditor seeking to assert a claim under section 507(b) must meet three criteria. First, the trustee must have, under section 362, 363 or 364(d), provided adequate protection of the interest of the holder of a claim secured by a lien on property.<sup>1</sup> Second, such creditor must have a claim allowable under section 507(a)(2). Third, the claim must have arisen from either the stay of action against property under section 362, from the use, sale or lease of property under section 363, or from the granting of a lien under section 364(d).

4 COLLIER ON BANKRUPTCY ¶ 507.14[1].

This priority administrative expense arises statutorily when the adequate protection lien provided.

## **APPLICABLE LAW**

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

**(b)(2) Hearing**

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

**DISCUSSION**

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for making expenses to continue operating the business and reorganize in Chapter 11. The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period September 9, 2024 (the commencement of this Case), through February 14, 2025, including required adequate protection payments of \$731 to the SBA. The court does not pre-judge and authorize the use of any monies for “plan payments” or use of any “profit” by Debtor in Possession. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Debtor in Possession.

The Stipulation between Debtor in Possession and the SBA is not approved at this time, the court finding a noticed motion is required.

The court continues the hearing to 10:30 a.m. on January 30, 2025, for Debtor in Possession to file a Supplement to the Motion to extend authorization. That Supplement is due by January 21, 2025, with any opposition to be presented orally at the continued hearing.

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 Authority to Use Cash Collateral filed by Heritage Home Furnishings, LLC (“Debtor in Possession”) 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 ~~is granted on an interim basis, pursuant to this order, for the period February 14, 2025, through **XXXXXXX**, and the cash collateral may be used to pay the following expenses, granting Debtor in Possession a variance of 10% in any individual line item expense as long as the total amount used does not exceed five percent of the monthly total budget:~~

Income	Sales	\$ 70,000.00
	Capital Contributions	\$ 10,000.00
	Total	\$ 80,000.00
Expenses	Rent	\$ 19,000.00
	insurance	\$ 2,780.00
	Payroll/Payroll-Tax	\$ 3,800.00
	Workers Comp-employers	\$ 530.00
	TID	\$ 2,400.00
	PG&E	\$ 98.00
	City of Turlock	\$ 440.00
	JoeGomes-Fuel	\$ 380.00
	Chrysler Capital	\$ 1,288.00
	Issuzu Finance	\$ 1,140.00
	Phones	\$ 500.00
	Internet	\$ 156.00
	quickbooks software	\$ 178.00
	SBA Adequate Assurance	\$ 731.00
	Inventory	\$ 45,000.00
	Total	\$ 78,421.00
	Net Income	\$ 1,579.00

**IT IS FURTHER ORDERED** that the creditors having an interest in the cash collateral are given replacement liens in the post-petition proceeds in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim.

**IT IS FURTHER ORDERED** that the replacement lien granted the Small Business Administration is to provide adequate protection for the use of its cash collateral and prevent a diminution thereof from the pre-cash collateral use amount, as that term is used in 11 U.S.C. §§ 503(b) and 507(b)

**IT IS FURTHER ORDERED** that Debtor in Possession shall make monthly adequate protection payments of \$731 to the Small Business Administration.

**IT IS FURTHER ORDERED** that the use of cash collateral is authorized on the Terms and Conditions stated in the Stipulation between the Debtor/Debtor in Possession and the Small Business Administration that is filed as Exhibit A, Dckt. 43.

**IT IS FURTHER ORDERED** that the hearing on the Motion is continued to **XXXXXXX**, to consider a Supplement to the Motion to extend the authorization to use cash collateral.

**SUBCHAPTER V**

Debtor's Atty: Brian S. Haddix

Notes:

Continued from 10/31/24 to be heard on conjunction with the continued Motion to Use Cash Collateral.

Operating Report filed: 11/14/24

Chapter 11 Small Business Plan filed 12/9/24

**The Status Conference is XXXXXXX**

**JANUARY 30, 2025 STATUS CONFERENCE**

No updated Status Report has been filed by the Debtor/Debtor in Possession. The terms of the Subchapter V Plan, as summarized by the court, provides for amortizing the payment of secured claims over 60 months, under the terms of the underlying obligation, or a percentage of the secured claim.

At the Status Conference, XXXXXXX

**OCTOBER 31, 2024 STATUS CONFERENCE**

Heritage Home Furnishing, LLC commenced this voluntary Subchapter V Case on September 10, 2024. As of the filing of this Bankruptcy Case the Debtor's major assets were its inventory of furniture and two vehicles. Schedule A/B; Dckt. 18. Looking at Schedule D, the vehicles appear to be fully encumbered and the SBA is the creditor encumbering the inventory. *Id.* There also appears to be a substantial unsecured priority claim. *Id.*; Schedule E/F. The Statement of Financial Affairs indicates that the Debtor had robust gross income in 2022, 2023, and 2024 prior to the filing of this Bankruptcy Case.

At the Status Conference, counsel the Debtor/Debtor in Possession reported that there is a cash collateral issue, with the SBA. The assets of the estate do not exceed in value the secured claim of the SBA. The Plan in this case is likely to be a liquidating Plan. The Subchapter V Trustee concurred with the counsel for the Debtor/Debtor in Possession.

The Status Conference is continued to 2:00 p.m. on January 30, 2025.

4. [24-90628-E-7](#)  
[PFT-1](#)

VINCENT JONES  
Jennifer Reichhoff

TRUSTEE'S MOTION TO DISMISS FOR  
FAILURE TO APPEAR AT SEC.  
341(A) MEETING OF CREDITORS  
12-10-24 [\[10\]](#)

**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.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 10, 2024. By the court's calculation, 51 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is ~~denied~~ without prejudice.**

The Chapter 7 Trustee, Peter L. Fear ("Trustee"), seeks dismissal of the case on the grounds that Vincent Tyrone Jones ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 3:00 p.m. on February 6, 2025. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 13, 2025. Dckt. 13. Debtor states he appeared at the 341 Meeting but was unable to hear or see people due to issues with Zoom. Debtor states he will be prepared with Zoom for the continued Meeting and will practice with his attorney.

## DISCUSSION

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

At the hearing, **XXXXXXX**.



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 to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Peter L. Fear (“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 denied without prejudice.~~

**IT IS FURTHER ORDERED** that the deadlines to file objections to discharge by Trustee and the U.S. Trustee pursuant to 11 U.S.C. § 707(b) and § 727 are extended through and including April 7, 2025.

5. [18-90029-E-11](#)      **JEFFERY ARAMBEL**  
[CAE-1](#)

**CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
1-17-18 [1]**

Item 5 thru 6

Debtor’s Atty: Pro se

Notes:

Continued from 1/16/25 to be conducted in conjunction with the continued Motion to Use Cash Collateral.

<b>The Status Conference is <span style="color: red;">XXXXXXX</span></b>
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#### **JANUARY 30, 2025 STATUS CONFERENCE**

At the Status Conference, XXXXXXX

#### **JANUARY 16, 2025 STATUS CONFERENCE**

On January 13, 2025, the Plan Administrator filed a Status Report. Dckt. 2069. The court has continued the hearing on the continued hearing on the Motion to Use Cash Collateral as requested by the Plan Administrator. As of the January 16, 2025 Status Conference the Plan Administrator reported that the documentation for the further use of cash collateral had not completed.

The Status Conference is continued to 10:30 a.m. on January 30, 2025.

**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 Objection. 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*), creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, other parties in interest, and Office of the United States Trustee on October 20, 2023. By the court's calculation, 20 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days' notice).

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, 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.

**The Motion for Authority to Use Cash Collateral is granted and the use of cash collateral is authorized through March 31, 2025.**

**The hearing on the Motion is continued to ~~XXXXXXX~~. Supplemental Pleadings shall be filed and served on or before ~~XXXXXXX~~.**

#### **January 30, 2025 Hearing**

The court continued the hearing on this Motion, having previously granted the use of cash collateral through December 31, 2024. Order, Docket 2026. On January 15, 2025, Plan Administrator filed a Stipulation to extend the use of cash collateral. Docket 2073. Under the extension provision of the previous stipulation (Stipulation ¶ 3, Docket 2019) between Plan Administrator and Summit, the terms surrounding the use of cash collateral have been extended by the terms of the new stipulation through March 31, 2025. Stipulation ¶ 3, Docket 2073.

At the hearing, ~~XXXXXXX~~

## REVIEW OF THE MOTION

Focus Management Group, Inc., the duly appointed Plan Administrator (“Plan Administrator”), moves for an order approving the use of cash collateral pursuant to its stipulation with SBN V AG I LLC (“Summit”) for the period of October 1, 2023 through December 31, 2023. Plan Administrator requests the use of cash collateral to fund the plan budget, which is a budget setting forth the anticipated expenses of administration of the Plan for a period of time that is prepared by the Plan Administrator and approved by the Oversight Committee. Exhibit 1, Dckt. 1930, p. 2. Summit’s cash collateral constitutes the sole source of funds to operate Debtor’s business under the Plan.

Plan Administrator proposes to use cash collateral in accordance with the plan budget, which is as follows as set forth in the Budget filed as Exhibit A, Dckt. 1930.

### Proposed Stipulation

Summit entered into a stipulation with the Plan Administrator detailing how Summit’s cash collateral may be used to fund the Plan. The stipulation is filed as Exhibit 1, Docket 1930. The stipulation proposes the Plan will be funded by Summit’s cash collateral, and Summit is willing to consent to the Plan Administrator’s use of the cash collateral to fund the plan budget. Stipulation, Exhibit 1, Dckt. 1930, p. 3. The stipulation shall automatically terminate on December 31, 2023, unless Summit agrees to an extension in writing. *Id.*

### APPLICABLE LAW

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. When a debtor is not qualified to operate as a debtor in possession, the court may appoint a trustee pursuant to 11 U.S.C. § 1104. 11 U.S.C. § 1108 gives the trustee authority to operate the business. In operating the business, the trustee can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

**(b)(2) Hearing**

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

**DISCUSSION**

Plan Administrator has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for administering the Plan, including paying employees, taxes, professional fees, and other business expenses. The Motion is granted, and Plan Administrator is authorized to use the cash collateral for the period October 1, 2023 through December 31, 2023, in accordance with the plan budget and stipulation. The court does not pre-judge and authorize the use of any monies for “plan payments” or use of any “profit” by Plan Administrator. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Plan Administrator.

The court continued the hearing to 10:30 a.m. on January 11, 2024, for Plan Administrator to file a Supplement to the Motion to extend authorization. That Supplemental pleadings shall be filed and served on or before December 21, 2023, with any opposition to be presented orally at the continued hearing.

**January 11, 2024 Hearing**

A review of the Docket on January 8, 2024 reveals that the Plan Administrator (Focus Management Group, Inc.) uploaded a new stipulation to extend the use of cash collateral. Docket 1947, DCN. FWP-29. Under the extension provision of the previous stipulation (Exhibit 1, Docket 1930 at ¶ 3) between Plan Administrator and Summit, the terms surrounding the use of cash collateral have been extended by the terms of the new stipulation through March 31, 2024. Docket 1947 at ¶ 3.

At the hearing, the court grants the Motion and sets a continued hearing on March 28, 2024, with supplemental pleadings filed by Movant two weeks prior thereto.

**March 28, 2024 Hearing**

A review of the Docket on March 25, 2024 reveals that the Plan Administrator (Focus Management Group, Inc.) and SBN V Ag I LLC uploaded a new Stipulation and proposed budget to extend the use of cash collateral. Docket 1968.

In the Stipulation the Plan Administrator and SBV address the use of cash collateral, but there is no outline of how the cash collateral will be used to complete the confirmed plan (confirmation order entered September 15, 2019; Dckt. 970). As reflected in the Civil Minutes from the last Post-Confirmation Status Conference conducted on January 25, 2024:

At the Status Conference, counsel for the Plan Administrator reported that not a lot new to report at this point. The parties need to regroup on the Filbin Land and Cattle matters, with there being no resolution at this point in time.

Counsel for the Plan Administrator requested the that the Status Conference be continued 6 months. Counsel for Creditor Summit and the continuance of the Status Conference.

Civ. Minutes; Dckt. 1961.

There were prior disputes concerning the asserted dissolution of the related entity Filbin Land and Cattle Co. (Though it does not appear to be in dispute as to who owns 100% of the member interest in Filbin Land and Cattle Co.)

As this Case is now in its Seventh (7th) Year of Existence and this Plan is now in its Sixth (6th) Year of Performance, it could well be that the court's attempts to insure that all parties prosecuting cases in good faith were not deprived of such opportunity (in Chapter 11, 12,13, and even 7 cases), created the appearance that the *status quo* would be the norm and that actually litigating disputes was not expected.

Under the extension provision of the previous stipulation (Docket 1947 at ¶ 3) between Plan Administrator and Summit, the terms surrounding the use of cash collateral have been extended by the terms of the new stipulation through June 30, 2024. Docket 1968 at ¶ 3.

The Motion for Authority to Use Cash Collateral was granted, and continued to 10:30 a.m. on June 27, 2024, to consider a Supplement to the Motion to extend the authorization to use cash collateral.

Supplemental Pleadings shall be filed by Movant two weeks prior to the continued hearing date.

### **June 27, 2024 Hearing**

The court granted Focus Management Group, Inc., the duly appointed Plan Administrator ("Plan Administrator") authority to use cash collateral up and through June 30, 2024, in accordance with the proposed budget attached as Exhibit A to that Order. Order, Docket 1978. The court expressed concerns at the March 28, 2024 Hearing that the cash collateral was not being properly used in this case to move the case forward, the case now being in its seventh year of existence. Plan Administrator filed a Status Report with the court on June 13, 2024. Docket 1988. Plan Administrator requests the court continue the hearing on this Motion to July 18, 2024, as the parties are working on a proposed stipulation.

On June 20, 2024, Plan Administrator filed with the court its proposed Stipulation. Docket 1994. The Stipulation includes a new budget of Other Cash Collateral, defined in the Plan as "cash collateral (as defined by Section 363(a) of the Code) made available to the Reorganizing Debtor by Summit prior to or after the Effective Date, pursuant to a written cash collateral stipulation agreed to by Summit, which cash

collateral is subject to the Allowed Secured Claim of Summit” (Plan 8:3-6, Docket 860). Stipulation for Use of Cash Collateral; Dckt. 1994.

The proposed budget would be extended through September 30, 2024, including authorizing a property sale disbursement of \$1,500,000 to SBN V AG I LLC (“Summit”), being heard in conjunction with this Motion.

### **July 18, 2024 Hearing**

The court continued this hearing from June 27, 2024, to consider a Supplement to the Motion to extend the authorization to use cash collateral. The Cash Collateral Budget, for the period through September 30, 2024, was filed on was filed June 20, 2024, attached to the Stipulation for Use of Cash Collateral. Dckt. 1994. The court issued an order continuing the Stipulated Use of Cash Collateral to July 18, 2024.

At the July 18, 2024, the parties confirmed that they stipulated to the use of cash collateral through September 30, 2024, the end of the current budget, and requested a continued hearing so pleadings may be filed for further use of cash collateral.

Counsel for the Plan Administrator stated that while the budget provides for a \$1.5 Million payment to Creditor, such payment shall be authorized by a separate order of the court. The order authorizing the used of cash collateral through September 30, 2024, shall include the statement of such further order being required.

The Motion for Authority to Use Cash Collateral is granted and the use of cash collateral is authorized as provided in the budget attached to the Stipulation for Use of Cash Collateral (Dckt. 1994) through September 30, 2024.

The hearing on the Motion is continued to 10:30 a.m. on September 19, 2024. Supplemental Pleadings shall be filed and served on or before September 12, 2024.

### **September 19, 2024 Hearing**

The court continued this hearing from July 18, 2024, to consider a Supplement to the Motion to extend the authorization to use cash collateral. The Cash Collateral Budget, for the period through December 30, 2024, was filed on was filed September 12, 2024, attached to the Stipulation for Use of Cash Collateral. Dckt. 2019. The court issued an order continuing the Stipulated Use of Cash Collateral to September 30, 2024. Order, Docket 2014.

In reviewing the proposed Budget for September through December 2024, it appears that the vast majority of the expenses to be paid are the fees for the Plan Administrator, Plan Administrator’s Attorney, the Plan Administrator’s Accountant, and U.S. Trustee Fees. Exhibit A, Budget; Dckt. 2019.

There is no income or “cash-in” being generated for the Plan Estate, other than a \$200,000 carve out for distribution to creditors holding general unsecured claim from a \$1,500,000 payment made to Summit on its secured claim.



The proposed Budget running through December 2024, has an additional column after December, which is titled “Funeral Expense 13th Month.” *Id.* These have been previously identified final expenses to be paid in the month the Plan is concluded.

The Motion for Authority to Use Cash Collateral is granted and the use of cash collateral is authorized as provided in the budget attached to the Stipulation for Use of Cash Collateral (Dckt. 2019) through December 31, 2024.

The hearing on the Motion is continued to 10:30 a.m. on January 16, 2025. Supplemental Pleadings shall be filed and served on or before January 7, 2025.

**Counsel for the Plan Administrator shall prepare a proposed order authorize the use of cash collateral and setting the continued hearing dates as provided in this Ruling, and lodge such proposed order with the court.**

7. <a href="#">24-90639-E-7</a> <a href="#">PFT-1</a>	SUE JUAREZ Pro Se	<b>TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 12-10-24 <a href="#">[15]</a></b>
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**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.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on December 10, 2024. By the court’s calculation, 51 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b><del>The Motion to Dismiss is denied without prejudice.</del></b>
--

The Chapter 7 Trustee, Peter L. Fear (“Trustee”), seeks dismissal of the case on the grounds that Sue Josephine Juarez (“Debtor”) did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor’s case is not dismissed, Trustee requests that the deadline to object to Debtor’s discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor’s next scheduled Meeting of Creditors, which is set for 3:00 p.m. on

February 6, 2025. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on December 26, 2024. Dckt. 18. Debtor's daughter, Julie Bright, wrote a letter explaining why Debtor missed the Meeting. Ms. Bright explains her mother is elderly and somewhat isolated, and she was unaware of the time and place of the Meeting. Ms. Bright also explains why Debtor was forced to file bankruptcy. Ms. Bright states it is important the case continues.

## **DISCUSSION**

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

At the hearing, **XXXXXXX** .

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 to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Peter L. Fear ("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 denied without prejudice.~~

**IT IS FURTHER ORDERED** that the deadlines to file objections to discharge by Trustee and the U.S. Trustee pursuant to 11 U.S.C. § 707(b) and § 727 are extended through and including April 7, 2025.

**THE COURT WILL HEAR THE STATUS CONFERENCE SCHEDULED FOR  
2:00 P.M. IN CONJUNCTION WITH THIS MOTION**

**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).**

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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 all creditors and parties i interest on January 17, 2025. By the court's calculation, 13 days' notice was provided. The court set the hearing for January 30, 2025. Dckt. 98.

The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 Subchapter V 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, -----

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**The Motion for Approval of Stipulation is granted.**

Martinez Pallet Services, Inc. ("Debtor in Possession") requests that the court approve a stipulation with Creditor California Medical Evaluators ("Creditor") which provides that Creditor's claim, POC 27-1, will be allowed as timely.

**STIPULATION**

Debtor and Creditor stipulate to an order regarding allowing the claim as timely, subject to approval by the court upon the following facts (the full terms of the Stipulation are set forth in the Stipulation filed in support of the Motion, Dckt. 96):

1. In accordance with the provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules, the Creditor shall be allowed to file and assert a claim in the Debtor's bankruptcy case in the amounts of \$3,000.00 for unpaid work by the Creditor.
2. The Debtor agrees that the Claim is timely asserted and filed.
3. The Debtor shall not object the Claim on the ground that the Claim violates the Claims Bar Date or that the Claim is otherwise filed or asserted late or untimely.
4. This Stipulation does not negate the Debtor from filing an objection to the claim based on any other reason other than the timeliness.

Stipulation 5:1-9, Docket 96.

## **DISCUSSION**

Debtor in Possession explains that it was unaware of Creditor's outstanding obligation and did not list or disclose Creditor in its filings and therefore Creditor was did not receive notice of the 341 Notice and applicable deadlines to timely file a proof of claim in the Chapter 11 Case. As such, Creditor did not timely file its claim. This Stipulation resolves that issue, claim 27-1 being deemed timely filed.

The Motion is granted.

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 Stipulation filed by Martinez Pallet Services, Inc. ("Debtor in Possession") 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 for Approval of Stipulation between Debtor in Possession and California Medical Evaluators ("Creditor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Stipulation filed as Exhibit A in support of the Motion (Dckt. 96). The essential terms of the stipulation are as follows:

1. In accordance with the provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules, the Creditor shall be allowed to file and assert a claim in the Debtor's bankruptcy case in the amounts of \$3,000.00 for unpaid work by the Creditor.
2. The Debtor agrees that the Claim is timely asserted and filed.

3. The Debtor shall not object the Claim on the ground that the Claim violates the Claims Bar Date or that the Claim is otherwise filed or asserted late or untimely.
4. This Stipulation does not negate the Debtor from filing an objection to the claim based on any other reason other than the timeliness.

9. [24-90597-E-7](#)  
[NF-2](#)

**CRISTINA CUEVAS CRUZ AND  
EUSTAQUIO AMAYA RETANA**  
Pro Se

**TRUSTEE'S MOTION TO DISMISS FOR  
FAILURE TO APPEAR AT SEC.  
341(A) MEETING OF CREDITORS  
12-23-24 [\[19\]](#)**

**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.

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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on December 23, 2024. By the court's calculation, 24 days' notice was provided. 28 days' notice is required. However, the court set the hearing on an expedited basis for January 16, 2025. Order, Docket 23.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Dismiss is <span style="color: red;">xxxxxxx</span>.</b>
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### **January 30, 2025 Hearing**

The court continued the hearing on this Motion as Debtor had appeared at the continued 341 Meeting held on December 17, 2024, and that the Meeting was continued to December 23, 2024, and Debtor did not appear at the continued Meeting. It appeared the Debtor was confused whether their case was still ongoing or dismissed. The court issued an Order setting this hearing and ordering Debtor to appear. Order, Docket 31.

The Trustee's Report for the 341 Meeting continued to January 29, 2025, is that the Debtors did not appear at such meeting. Docket Entry Report, January 29, 2025. The 341 Meeting was further continued to 8:00 a.m. on February 11, 2025.

At the hearing, xxxxxxx

### **REVIEW OF MOTION**

The Chapter 7 Trustee, Nikki B. Farris (“Trustee”), seeks dismissal of the case on the grounds that Cristina Cuevas Cruz and Eustaquio Amaya Retana (“Debtor”) did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor’s case is not dismissed, Trustee requests that the deadline to object to Debtor’s discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor’s next scheduled Meeting of Creditors, which is set for 8:00 a.m. on January 29, 2025. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on December 27, 2024, and January 3, 2025. Dckts. 22, 28. The Oppositions both state that Debtor was present at the 341 Meeting, but there was a zoom malfunction where the other people in the Zoom meeting could not see Debtor.

## **DISCUSSION**

Debtor did not appear at the Meeting of Creditor’s. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

However, Debtor has filed an Opposition stating they have attempted to appear and be examined.

No appearances were made by the Debtor or the Trustee at the hearing. In light of Debtor having attended a prior 341 Meeting, the reasons stated for missing the continued 341 Meeting, and a further continued 341 Meeting set for January 31, 2025, the court continues the hearing on the Motion to Dismiss to 10:30 a.m. on February 20, 2025.

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 to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Nikki B. Farris (“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 **XXXXXXX**.



**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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on December 23, 2024. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The Motion to Dismiss is ~~denied without prejudice.~~**

The Chapter 7 Trustee, Peter L. Fear ("Trustee"), seeks dismissal of the case on the grounds that Hannah Christine Smith ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor's case is not dismissed, Trustee requests that the deadline to object to Debtor's discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor's next scheduled Meeting of Creditors, which is set for 10:00 a.m. on February 7, 2025. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 22, 2025. Dckt. 24. Debtor states she was unaware of the previous 341 Meeting but pledges to attend the continued Meeting and this court date.

## DISCUSSION

Debtor did not appear at the Meeting of Creditor's. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

At the hearing, **XXXXXXX**.

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 to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Peter L. Fear (“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 ~~denied without prejudice.~~

**IT IS FURTHER ORDERED** that the deadlines to file objections to discharge by Trustee and the U.S. Trustee pursuant to 11 U.S.C. § 707(b) and § 727 are extended through and including April 8, 2025.

11. [24-90597](#)-E-7  
NF-[1](#)

**CRISTINA CUEVAS CRUZ AND  
EUSTAQUIO AMAYA RETANA**  
Pro Se

**TRUSTEE'S MOTION TO DISMISS FOR  
FAILURE TO APPEAR AT SEC.  
341(A) MEETING OF CREDITORS  
11-12-24 [\[15\]](#)**

**The Motion to Dismiss is xxxxxxx**

Debtors Cristina Cuevas Cruz and Eustaquio Amaya Retana commenced this Chapter 7 Bankruptcy Case on October 11, 2024. The court’s records do not reflect any prior bankruptcy cases having been filed by either of these Debtors in the Eastern District of California. The Debtors filed and are prosecuting this Case in *pro se*.

The Debtors did not attend the initial 341 Meeting of Creditors on November 12, 2024, and the Trustee filed a Motion to Dismiss based on the failure to attend. Dckt. 15. The 341 Meeting was continued to December 17, 2024.

The Debtor filed an untimely Opposition to the Trustee’s Motion to Dismiss on December 16, 2024 (the hearing date for such Motion stated in the Opposition to be December 12, 2024).

Though the Debtors did not file a timely response to the Trustee’s Motion to Dismiss, the court’s practice is to hold ruling on such motion until the continued 341 Meeting is conducted. The Trustee reported that both Debtors appeared at the continued 341 Meeting on December 17, 2024, and the meeting was continued to December 23, 2024. Trustee’s December 20, 2024 Docket Entry Report.

On December 23, 2024, the Trustee filed a Motion to Dismiss, Debtors failing to attend the December 23, 2024 continued 341 Meeting. The Motion includes the standard provisions requesting the extension of the dischargeability deadlines due to the delay in completing the 341 Meeting.

It appears that some confusion for the Debtors may have arisen in the court holding the proposed order dismissing the case to allow Debtors to attend and conclude their 341 Meeting.

In reviewing the Schedules, the court notes that information provided is incomplete, including the exemptions Debtors seek to claim. Debtors do not list any creditors having secured claims, list ownership of residential property (which they state is of unknown value) on Schedules A/B, and on Schedule J list a monthly mortgage expense.

The Chapter 7 Trustee reports that Debtors did not appear at the continued 341 Meeting on January 29, 2025, and that it has been further continued to 8:00 a.m. on February 11, 2025. Trustee's Docket Entry Report; January 29, 2025.

At the Hearing, **XXXXXXX**

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 to Dismiss the Bankruptcy Case filed by Chapter 7 Trustee Nikki Farris 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 is **XXXXXXX**

# FINAL RULINGS

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| 12. <a href="#">22-90415</a> -E-7<br><a href="#">24-9004</a><br>CJM-1<br>FARRAR V. MENDOZA ET AL | JOHN MENDOZA<br>Peter Macaluso | MOTION BY CALVIN JOHN MASSEY TO<br>WITHDRAW AS ATTORNEY<br>1-10-25 [ <a href="#">85</a> ] |
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Item 12 thru 13

**Final Ruling:** No appearance at the January 30, 2025 hearing is required.  
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**The Motion to Withdraw has been continued to February 20, 2025 at 2:00 p.m. by prior Order of the court. Docket 96.** No appearance at the January 30, 2025 hearing is required.

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| 13. <a href="#">22-90415</a> -E-7<br><a href="#">24-9004</a><br>CJM-2<br>FARRAR V. MENDOZA ET AL | JOHN MENDOZA<br>Peter Macaluso | MOTION BY CALVIN JOHN MASSEY TO<br>WITHDRAW AS ATTORNEY<br>1-10-25 [ <a href="#">89</a> ] |
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**Final Ruling:** No appearance at the January 30, 2025 hearing is required.  
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**The Motion to Withdraw has been continued to February 20, 2025 at 2:00 p.m. by prior Order of the court. Docket 97.** No appearance at the January 30, 2025 hearing is required.

**Final Ruling:** No appearance at the January 30, 2025 hearing is required.

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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, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on November 25, 2024. By the court’s calculation, 66 days’ notice was provided. 28 days’ notice is required.

The Motion to Avoid Judicial Lien 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 to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Citibank, N.A. (“Creditor”) against property of the debtor, Jose De Jesus Blanco (“Debtor”) commonly known as 1434 Oakwood Dr. Modesto, CA 95350 (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$13,303.82. Exhibit 1, Dckt. 25. An abstract of judgment was recorded with Stanislaus County on July 3, 2023, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$480,000 as of the petition date. Schedule A at 1, Docket 16. The unavoidable consensual liens that total \$314,428 as of the commencement of this case are stated on Debtor’s Schedule D. Schedule D at 14, Docket 16. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$127,040 on Schedule C. Schedule C at 12, Docket 16.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor’s exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

#### **ISSUANCE OF A COURT-DRAFTED ORDER**

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Name of Debtor (“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 judgment lien of Citibank, N.A., California Superior Court for Stanislaus County Case No. CV-23-000181, recorded on July 3, 2023, Document No. 2023-0030467, with the Stanislaus County Recorder, against the real property commonly known as 1434 Oakwood Dr. Modesto, CA 95350, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.