UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, February 9, 2022
Place: Department A – Courtroom #11
Fresno, California

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 AM

1. 21-10445-A-11 **IN RE: HARDEEP KAUR**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
2-23-2021 [1]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

1. 21-12446-A-7 **IN RE: JOHN EVERSOLE**

REAFFIRMATION AGREEMENT WITH LENDMARK FINANCIAL SERVICES, LLC
1-12-2022 [13]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship, which has not been rebutted in the reaffirmation agreement. In this case, the debtor's attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

2. 21-12767-A-7 **IN RE: MARCOS/MARIA ZARATE**

PRO SE REAFFIRMATION AGREEMENT WITH NISSAN MOTOR ACCEPTANCE CORPORATION
1-14-2022 [26]

NO RULING.

1. 17-10106-A-7 **IN RE: RANDEEP SINGH**
DJP-4

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WILD CARTER & TIPTON, APC FOR DON J. POOL, SPECIAL COUNSEL, FOR COMPENSATION BY THE LAW OFFICE OF DOWLING AARON INCORPORATED FOR SPECIAL COUNSEL, FOR COMPENSATION BY THE LAW OFFICE OF FENNEMORE DOWLING AARON, LLP FOR SPECIAL COUNSEL
1-12-2022 [154]

DON POOL/MV
PATRICK GREENWELL/ATTY. FOR DBT.
DON POOL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Don J. Pool ("Movant"), special counsel for chapter 7 trustee Peter L. Fear ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from May 7, 2017 through June 30, 2021. Doc. ##154, 157. At the time the court first authorized Movant's employment, he was associated with the law firm Wild, Carter & Tipton. Order, Doc. #40. Movant's employment was later authorized after the appointment of Trustee as successor trustee, at which time Movant was associated with the law firm Dowling Aaron Incorporated. Order, Doc. #139. Currently, Movant is associated with the law firm Fennemore Dowling Arron LLP. Exs., Doc. #158. This is Movant's first and final fee application.

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

Movant provided legal services for the estate as special counsel regarding recovery of a preference paid to insiders of the debtor and third parties.

Ex. A, Doc. #158. After pursuing state court litigation, a settlement of the dispute was authorized by this court on December 3, 2020. Doc. #151. While with Wild, Carter & Tipton, Movant provided legal services valued at $4,555.25 and incurred expenses of $93.77. Ex. B, Doc. #158. While with Dowling Aaron Incorporated, Movant provided legal services valued at $23,666 and incurred expenses of $1,416.79, but has agreed to accept compensation and reimbursement of $5,350.98. Ex. C, Doc. #158; Decl. of Trustee, Doc. #156. While with Fennemore Dowling Aaron LLP, Movant provided legal services valued at $2,130, and incurred no expenses, but Movant has agreed to write-off the entire amount of services rendered while associated with Fennemore Dowling Aaron LLP. Ex. D, Doc. #158; Decl. of Trustee, Doc. #156. In total, Movant requests $10,000.00 in full satisfaction of services rendered, to be paid $4,649.02 for services rendered with Wild, Carter & Tipton and $5,350.98 for services rendered with Dowling Aaron Incorporated. Doc. #154; Decl. of Movant, Doc. #157. Trustee has no objection to the reduced fee award. Doc. #156. The court finds the compensation and reimbursement sought in the reduced amount as stated in the motion and supported by Trustee's declaration are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation and reimbursement for expenses in the amount of $10,000.00. Trustee is authorized to distribute the compensation award in a manner consistent with the terms of the motion. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

2. 21-12810-A-7 **IN RE: RENEWABLE LEGACY LLC**
FW-3

NOTICE OF INCOMPLETE FILING AND NOTICE OF INTENT TO DISMISS CASE
12-16-2021 [3]

JUSTIN HARRIS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

This objection is OVERRULED AS MOOT. On December 20, 2021, the clerk filed a Notice of Incomplete Filing and Intent to Dismiss (the "Notice") due to the debtor's failure to submit the following documents: Attorney's disclosure statement; Schedule A/B; Schedule D; Schedule E/F; Schedule G; Schedule H; Statement of Financial Affairs; and Summary of Assets and Liabilities. Doc. #9. The Notice stated that the documents must be received by January 3, 2022, or else the bankruptcy case would be dismissed. Doc. #9. The documents required by the Notice were filed on December 30, 2021, before the deadline set forth in the Notice. Doc. #14.

3. 18-14546-A-7 **IN RE: LANE ANDERSON**
PFT-2

MOTION TO SELL
12-22-2021 [116]

PETER FEAR/MV
SCOTT LYONS/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled for higher and better offers. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Peter L. Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Lane Arnold Anderson ("Debtor"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the bankruptcy estate's interest in a 2015 GMC Arcadia (the "Vehicle") to Diann Anderson ("Anderson"), Debtor's estranged wife, for the purchase price of $7,500.00, subject to higher and better bids at the hearing. Doc. #116.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Doc. #118. Trustee's

proposed sale to Anderson is made in consideration of the full and fair market value of the Vehicle. Doc. #118. Anderson is Debtor's estranged wife, who is to take ownership of the Vehicle once the divorce between Debtor and Anderson is final according to the terms of a proposed marriage settlement. Doc. #118. The sale is subject to the lien on the Vehicle and is only for the non-exempt equity in the Vehicle. Doc. #118. Trustee estimates the value of the Vehicle at $13,770, subject to liens of $3,220 and an exemption of $3,050. Doc. #118. Anderson offered to buy the Vehicle for $7,500.00, subject to overbid at the hearing. Doc. #118. Anderson has agreed to pay $2,500 up front and will pay the remaining $5,000 upon court approval. Doc. #118.

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

Accordingly, subject to overbid offers made at the hearing, the court is inclined to GRANT Trustee's motion and authorize the sale of the estate's interest in the Vehicle to Anderson on the terms set forth in the motion.

The 14-day say of Fed. R. Bankr. P. 6004(h) will be ordered waive because the sale is subject to higher and better offers at the hearing and will be sold for a fair and reasonable price at hearing.

4. 21-12247-A-7 **IN RE: JEANNIE ADAMS**
JES -1

MOTION TO EMPLOY BAIRD AUCTION AND APPRAISALS AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
1-12-2022 [15]

JAMES SALVEN/MV
BENNY BARCO/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Jeannie R. Adams ("Debtor"), moves the court for an order (1) authorizing the employment of Baird Auctions & Appraisals ("Auctioneer"); (2) authorizing the sale of a 2016 Chevrolet Traverse (the "Vehicle") at public auction on or after March 1, 2022 at Auctioneer's location at 1328 N. Sierra Vista, Suite B, Fresno, California; and (3) authorizing the estate to pay Auctioneer commission and expenses. Tr.'s Mot., Doc. #15.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Decl. of James E. Salven, Doc. #17. Trustee's experience indicates that a sale of the Vehicle at public auction will yield the highest net recovery to the estate. Doc. #17. The proposed sale is made in good faith.

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

The court finds that Auctioneer is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Decl. of Jeffrey Baird, Doc. #18. Trustee requires Auctioneer's services to advertise the sale of the Vehicle, assist in storing the Vehicle until sold, and assist in other matters related to the auction sale of the Vehicle. Doc. #17. Trustee has agreed to pay Auctioneer a commission of 15% of the gross sale price and estimated expenses not to exceed $400.00. Doc. #17. Trustee unambiguously requests pre-approval of payment to Auctioneer pursuant to § 328. Doc. #15.

Accordingly, this motion is GRANTED. Trustee's business judgment is reasonable and the proposed sale of the Vehicle at public auction is in the best interests of creditors and the estate. The arrangement between Trustee and Auctioneer is reasonable in this instance. Trustee is authorized to sell the Vehicle on the terms set forth in the motion. Trustee is authorized to employ and pay

Auctioneer for services as set forth in the motion. Trustee shall submit a form of order that specifically states that employment of Auctioneer has been approved pursuant to 11 U.S.C. § 328.

5. 21-12548-A-7 **IN RE: MARK FEATHERSTONE**
PFT-2

MOTION TO SELL
12-21-2021 [17]

PETER FEAR/MV
GRISELDA TORRES/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled for higher and better offers. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Peter L. Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Mark Turney Featherstone ("Debtor"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the bankruptcy estate's interest in a 2011 GMC Sierra (the "Vehicle") to Debtor for the purchase price of $7,500.00, subject to higher and better bids at the hearing. Doc. #17.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference."

Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Doc. #19. Trustee's proposed sale to Debtor is made in consideration of the full and fair market value of the Vehicle. Doc. #19. Trustee estimates the value of the Vehicle to be $10,825, unencumbered by any liens, but subject to a scheduled exemption of $3,325. Doc. #19. Debtor offered to buy the Vehicle for $7,500.00, subject to overbid at the hearing. Doc. #19. Trustee has received $7,500 from Debtor. Doc. #19. The sale is as-is, where-is. Doc. #17.

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

Accordingly, subject to overbid offers made at the hearing, the court is inclined to GRANT Trustee's motion and authorize the sale of the estate's interest in the Vehicle to Debtor on the terms set forth in the motion.

6. 21-12249-A-7 **IN RE: J MENDOZA AND ANA RAMIREZ**
JES-1

MOTION TO EMPLOY BAIRD AUCTION AND APPRAISALS AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
1-12-2022 [42]

JAMES SALVEN/MV
MONICA ROBLES/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of J. Loreto Mendoza and Ana M. Ramirez (together, "Debtors"), moves the court for an order (1) authorizing the employment of Baird Auctions & Appraisals

("Auctioneer"); (2) authorizing the sale of a 2011 Dodge Charger (the "Vehicle") at public auction on or after March 1, 2022 at Auctioneer's location at 1328 N. Sierra Vista, Suite B, Fresno, California; and (3) authorizing the estate to pay Auctioneer commission and expenses. Tr.'s Mot., Doc. #42.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Decl. of James E. Salven, Doc. #44. Trustee's experience indicates that a sale of the Vehicle at public auction will yield the highest net recovery to the estate. Doc. #44. The proposed sale is made in good faith.

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

The court finds that Auctioneer is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Decl. of Jeffrey Baird, Doc. #45. Trustee requires Auctioneer's services to advertise the sale of the Vehicle, assist in storing the Vehicle until sold, and assist in other matters related to the auction sale of the Vehicle. Doc. #44. Trustee has agreed to pay Auctioneer a commission of 15% of the gross sale price and estimated expenses not to exceed $400.00. Doc. #44. Trustee unambiguously requests pre-approval of payment to Auctioneer pursuant to § 328. Doc. #42.

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

7. 09-11355-A-7 **IN RE: LONA CRAMER**
FW-3

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH MULTI-DISTRICT LITIGATION CIVIL CLAIM, FOR COMPENSATION BY THE LAW OFFICE OF MOSTYN LAW FIRM, FOR COMPENSATION BY THE LAW OFFICE OF ARNOLD & ITKIN, LLP, FOR COMPENSATION BY THE LAW OFFICE OF MEYER BLAIR, LLP
1-6-2022 [41]

JAMES SALVEN/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Lona Mae Cramer ("Debtor"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019 approving the compromise of all claims and disputes arising out of Debtor's participation in a multi-district litigation against the manufacturer of a medical device (the "MDL"). Doc. #41. Debtor retained the law firms Meyer Blair LLP, Mostyn Law Firm, and Arnold & Itkin (together, "Special Purpose Counsel") to represent Debtor in the MDL. Doc. #41. The court authorized the retroactive employment of Special Purpose Counsel on July 8, 2021. Order, Doc. #40. Trustee also requests authorization of final compensation for Special Purpose Counsel pursuant to 11 U.S.C. § 328 as required by the Order. Doc. #41; Order, Doc. #40.

Settlement Agreement

Among the assets of the estate is a claim against a drug manufacturer for injuries to Debtor, which is now settled in the MDL against the manufacturer. Decl. of Caroline L, Maida, Doc. #44. Special Purpose Counsel submitted Debtor's claim and received a settlement offer of $55,000. Decl., Doc. #44. Deducted from the gross award are MDL fees and costs, which are taxed against the gross proceeds. Decl., Doc. #44. There is also an outstanding Medicare lien of $3,809.35 that will be paid with settlement proceeds. Doc. #44. The court has previously authorized the employment of Special Purpose Counsel pursuant to

a contingency fee agreement. See Order, Doc. #40. The projected amount to the bankruptcy estate is $24,236.29. Doc. #41.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #41. Special Purpose Counsel represent that the resolution of claims in the MDL is complicated, time consuming, and may be prohibitively expensive if pursued individually. Maida Decl., Doc. #44. Special Purpose Counsel estimates that trying Debtor's case individually would far exceed an amount recovered and would require the resolution of complicated factual issues. Decl., Doc. #44. Trustee states the settlement will result in a cash payment to the estate that should be sufficient to pay all claims in full, including administrative expenses. Decl. of Trustee, Doc. #43. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, Trustee's request to authorize the compromise is GRANTED, and the settlement is approved.

Final Compensation

Trustee requests an allowance of final compensation and reimbursement for expenses payable to Special Purpose Counsel for services rendered in connection with the MDL. Doc. #41. Trustee was authorized to employ Special Purpose Counsel on a contingency basis whereby Special Purpose Counsel would receive 40% of settlement, exclusive of costs, apportioned 15% to Meyer Blair LLP, 42.5% to Mostyn Law Firm, and 42.5% to Arnold & Itkins. Order, Doc. #40. The total fees to be awarded Special Purpose Counsel is $20,900. Doc. #43. Special Purpose Counsel incurred costs of $3,304.36. Doc. #43.

The trustee may, with the court's approval, employ a professional person on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. 11 U.S.C. § 328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

Here, the court previously authorized the employment of Special Counsel expressly under 11 U.S.C. §§ 327(e) and 328. Order, Doc. #40. The Order authorized Trustee to pay Special Purpose Counsel subject to final review by

the court. Order, Doc. #40. The court finds the compensation and reimbursement sought is reasonable, actual, and necessary.

Trustee is authorized to pay Special Counsel in a manner consistent with Trustee's motion and the court's Order Granting Trustee's Motion for Order Authorizing Retroactive Employment of Special Counsel to the Estate Pursuant to 11 U.S.C. § 328(a), Doc. #40.

Accordingly, Trustee's motion is GRANTED. The settlement is approved, Trustee is authorized to enter into, execute, and deliver any releases and other documents as may be required to effectuate the settlement, payment to Special Purpose Counsel is authorized, and Trustee is authorized to pay the MDL deductions as required by the settlement.

8. 21-10365-A-7 **IN RE: ROBERT GRAHAM**
JES-2

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
12-20-2021 [62]

JAMES SALVEN/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

James E. Salven ("Movant"), certified public accountant for chapter 7 trustee James E. Salven ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from November 15, 2021 through December 6, 2021. Doc. #62; Order, Doc. #54. Movant provided accounting services valued at $1,120.00, and requests compensation for that amount. Doc. #62. Movant requests reimbursement for expenses in the amount of $202.80. Doc. #62. This is Movant's first and final fee application.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a

professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) conflict review and prepare employment application; (2) telephone call to debtor regarding date plane acquired and cost; (3) prepare determination letters; and (4) prepare, file and serve fee application. Decl. of Movant, Doc. #64; Ex. A, Doc. #65. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of $1,120.00 and reimbursement for expenses in the amount of $202.80. Trustee is authorized to make a combined payment of $1,322.80, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

9. 17-12070-A-7 **IN RE: THOMAS RICE**
JES-2

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
12-30-2021 [40]

JAMES SALVEN/MV
PETER BUNTING/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

James E. Salven ("Movant"), certified public accountant for chapter 7 trustee Peter L. Fear ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from November 1, 2021 through December 1, 2021. Doc. #40; Order, Doc. #32. Movant provided accounting services valued at $1,512.00, and requests compensation for that amount. Doc. #40. Movant requests reimbursement for expenses in the amount of $254.17. Doc. #40. This is Movant's first and final fee application.

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

Movant's services included, without limitation: (1) conflict review and prepare employment application; (2) review case regarding recovery action to determine status; and (3) communicating with Trustee regarding tax calculations and fees. Decl. of Movant, Doc. #42; Ex. A, Doc. #43. Trustee reviewed Movant's application and has no objection. Doc. #44. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of $1,512.00 and reimbursement for expenses in the amount of $254.17. Trustee is authorized to make a combined payment of $1,766.17, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

10. 20-13970-A-7 **IN RE: IDA GLEASON**
JES-2

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
12-20-2021 [41]

JAMES SALVEN/MV
SUSAN HEMB/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

James E. Salven ("Movant"), certified public accountant for chapter 7 trustee Peter L. Fear ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered from November 7, 2021 through December 1, 2021. Doc. #41. Movant provided accounting services valued at

$1,456.00, and requests compensation for that amount. Doc. #41. Movant requests reimbursement for expenses in the amount of $240.58. Doc. #41. This is Movant's first and final fee application.

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

Movant's services included, without limitation: (1) conflict review and employment application; (2) review case and adversary dockets in recovery action; (3) determine tax basis and attributes, process tax returns and clearance letters; and (4) prepare and file fee application. Decl. of Movant, Doc. #43; Ex. A, Doc. #44. Trustee reviewed Movant's application and has no objection. Doc. #45. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of $1,456.00 and reimbursement for expenses in the amount of $240.58. Trustee is authorized to make a combined payment of $1,696.58, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

11. 20-13970-A-7 **IN RE: IDA GLEASON**
THA-3

MOTION FOR COMPENSATION BY THE LAW OFFICE OF COLEMAN AND HOROWITT, LLP FOR THOMAS H. ARMSTRONG, TRUSTEES ATTORNEY(S)
12-30-2021 [50]

SUSAN HEMB/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted, the objection will be overruled.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on January 26, 2022. Doc. #56. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

Coleman & Horowitt LLP ("Movant"), attorney for chapter 7 trustee Peter L. Fear ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered July 20, 2021 through February 9, 2022.

Doc. #50. Movant provided legal services valued at $10,779.00, and requests compensation for that amount. Doc. #50; Ex. A, Doc. #53. Movant requests reimbursement for expenses in the amount of $1,114.61. Doc. #50; Ex. A, Doc. #53. This is Movant's first and final fee application.

On January 26, 2022, Susan Hemb ("Hemb"), attorney of record for the debtor, opposed Movant's fee application. Doc. #56. Hemb argued that Movant's compensation should be reduced for a greater distribution the bankruptcy estate creditors. Doc. #56. The thrust of Hemb's argument seems to be that Movant's requested compensation, relative to the amount to be paid to unsecured creditors, is too high. On February 2, 2022, Movant replied to Hemb's opposition, generally stating that the opposition is unfounded and then requesting sanctions against Hemb. Doc. #60.

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

Movant's services included, without limitation: (1) providing counsel to Trustee as to the administration of the chapter 7 case; (2) providing legal assistance in commencing two adversary proceedings and negotiating settlements with the defendants; (3) preparing and prosecuting compromise motions in the bankruptcy case; and (4) preparing and filing employment and fee applications. Decl. of Thomas H. Armstrong, Doc. #52; Ex. A, Doc. #45.

The court is inclined to overrule Hemb's objection and grant compensation in the amount requested because the objection does not indicate how the fees and expenses requested are not reasonable, actual, and necessary. The court has reviewed the motion and supporting pleadings and finds the compensation and reimbursement sought are reasonable, actual, and necessary.

Also, the court will not sanction Hemb as requested by Movant in the reply for two reasons. First, Federal Rule of Bankruptcy Procedure 9011 requires a motion for sanctions to "be made separately from other motions or requests," not raised in a reply. Fed. R. Bankr. P. 9011(c)(1). There is no shortcut to filing a separate motion for sanctions by requesting the court impose sanctions "on its own initiative." Second, Hemb's opposition names Hemb, not the debtor, as the party objecting, though the opposition, perhaps unusually, defines Hemb as "Debtor." Doc. #56. The court understands this to be an oversight or typographical error, not a fraud on the court as Movant suggests.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of $10,779.00 and reimbursement for expenses in the amount of $1,114.61. Trustee is authorized to make a combined payment of $11,893.61, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

12. 17-12272-A-7 **IN RE: LEONARD/SONYA HUTCHINSON**
JES-5

CONTINUED MOTION FOR COMPENSATION FOR JAMES SALVEN, CHAPTER 7 TRUSTEE(S)
12-1-2021 [140]

JAMES SALVEN/MV
DAVID JENKINS/ATTY. FOR DBT.
RUSSELL REYNOLDS/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

James Salven ("Trustee"), the chapter 7 trustee, filed and served this final application for approval and payment of Trustee's commission and expenses on December 1, 2021. Doc. #140. This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The United States filed an opposition on December 28, 2021. Doc. #157. After the initial hearing on January 12, 2022, the court continued this matter to February 9, 2022, and requested additional briefing and responses be filed prior to the continued hearing date. Doc. #173. Having received the additional briefing and responses of the United States and Trustee, the failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

Trustee requests an allowance of final compensation and reimbursement for expenses for services rendered as trustee in this case. Doc. #140. Trustee provided services as chapter 7 trustee valued at $13,312.50, and requests compensation for that amount. Doc. #140. Trustee requests reimbursement for expenses in the amount of $433.10. Doc. #140. Since being appointed to this case on June 12, 2017, Trustee has completed all statutory duties, save this fee application and the final distribution of funds. Doc. #142. Trustee has not received any prior compensation or reimbursement in this matter. Doc. #142.

The United States of America ("United States") opposes Movant's application to the extent that Trustee will pay this administrative expense from otherwise exempt property, or at a minimum, before paying the unavoidable portion of a valid tax lien. Doc. #157. The United States does not oppose Trustee's calculation of the requested compensation or the amount of reimbursement.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a chapter 7 trustee. 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded a chapter 7 trustee, the court shall treat such compensation as a commission, based on § 326 of the Bankruptcy Code. 11 U.S.C. § 330(a)(7). Here, Trustee demonstrates reasonable compensation in accordance with the statutory framework of § 326. Doc. #142; Trustee's Final Report, Doc. #151. Further, the court finds

Trustee's services and requested expenses were actual and necessary to the administration of this estate.

The objection by the United States raises the specific issue of Trustee's ability to pay this administrative expense from funds on hand, and that objection will be addressed in the court's ruling on the United States' objection to Trustee's final report, matter number 14, below. See DCN US-3. In this ruling, the court is only determining whether the commission and expenses sought by Trustee are reasonable and necessary under the Bankruptcy Code, which the court finds they are. The court is making no determination regarding Trustee's ability to pay this administrative expense from proceeds currently held by Trustee.

Accordingly, this motion is GRANTED.

13. 17-12272-A-7 **IN RE: LEONARD/SONYA HUTCHINSON**
RWR-4

CONTINUED MOTION FOR COMPENSATION FOR RUSSELL W. REYNOLDS, TRUSTEES ATTORNEY(S)
12-7-2021 [145]

DAVID JENKINS/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Russell W. Reynolds ("Movant"), attorney for the chapter 7 trustee ("Trustee"), filed and served this final application for approval and payment of Movant's fees and expenses on December 7, 2021. Doc. #145. This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The United States filed an opposition on December 28, 2021. Doc. #158. After the initial hearing on January 12, 2022, the court continued this matter to February 9, 2022 and requested additional briefing and responses be filed prior to the continued hearing date. Doc. #174. Having received the additional briefing and responses of the United States and Trustee, the failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

Movant requests an allowance of final compensation and reimbursement for expenses for services rendered as legal counsel to Trustee in this case and related adversary proceeding from July 17, 2017 through January 12, 2022. Doc. #145. Movant provided legal services valued at $72,654, and requests compensation for that amount. Doc. #145; Ex. B, Doc. #149. Movant requests reimbursement for expenses in the amount of $922.56. Doc. #145. This is Movant's first and final fee application.

The United States of America ("United States") opposes Movant's application to the extent that Trustee will pay this administrative expense from otherwise exempt property, or at a minimum, before paying the unavoidable portion of a valid tax lien. Doc. #158. The United States does not oppose Movant's application on the basis that the compensation and reimbursement sought are unreasonable or unnecessary.

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

Movant's services included, without limitation: (1) providing counsel to Trustee as to the administration of the chapter 7 case; (2) prosecuting motions to sell real property and pay brokers' commissions; (3) defending against an adversary proceeding initiated by the debtors; (4) filing a cross-claim in the adversary proceeding; (5) litigating the cross-claim after dismissal of the debtor's complaint; (6) litigating the adversary proceeding through appeals to the Bankruptcy Appellate Panel and the Ninth Circuit Court of Appeals; (7) defending against a motion to compel abandonment of real property and subsequent appeals; and (8) preparing and filing employment and fee applications. Exs. A & B, Doc. #149. Trustee has no objection. Doc. #148. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

The objection by the United States raises the specific issue of Trustee's ability to pay this administrative expense from funds on hand, and that objection will be addressed in the court's ruling on the United States' objection to Trustee's final report, matter number 14, below. See DCN US-3. In this ruling, the court is only determining whether the compensation and reimbursement sought by Movant are reasonable and necessary under the Bankruptcy Code, which the court finds they are. The court is making no determination regarding Trustee's ability to pay this administrative expense from proceeds currently held by Trustee.

Accordingly, this motion is GRANTED.

14. 17-12272-A-7 **IN RE: LEONARD/SONYA HUTCHINSON**
US-3

MOTION OBJECTING TO TRUSTEE'S FINAL REPORT (ECF NO. 151)
1-6-2022 [165]

UNITED STATES OF AMERICA/MV
DAVID JENKINS/ATTY. FOR DBT.
JONATHAN HAUCK/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Objection will be sustained.

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

Notice of the final report of James E. Salven ("Trustee"), the chapter 7 trustee for the bankruptcy estate of Leonard E. Hutchinson and Sonya C. Hutchinson (together, "Debtors"), was issued by the court on December 17, 2021 and served on December 19, 2021. Doc. ##154-155. The United States of America ("United States") filed a timely objection on January 6, 2022. Doc. #165. After additional briefing and responses of the United States and Trustee, the failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition within 21 days of the date of the notice may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

INTRODUCTION

In three related matters currently before this court, matter numbers 12-14, the United States and Trustee disagree over the proper distribution of the remaining proceeds from the sale of Debtors' residence. Trustee seeks to use the remaining sale proceeds to satisfy approximately $89,400 in administrative expense claims before paying any funds to the Internal Revenue Service of the United States of America ("IRS") on account of the IRS's secured tax lien. The United States opposes and contends that the remaining sale proceeds are subject to Debtors' allowed homestead exemption and cannot be used to pay administrative expenses under either 11 U.S.C. § 724(b), 11 U.S.C. § 522(k) or 11 U.S.C. § 522(c). In recent filings, Trustee has asked this court to distribute the remaining sale proceeds between the IRS and the estate on a pro rata basis based on the tax, interest on tax, and penalty allocations of the partially avoided tax lien. The United States opposes this request also.

In a recent decision in this case, Hutchinson v. United States (In re Hutchinson), 15 F.4th 1229, 2021 U.S. App. LEXIS 38052 (9th Cir. Dec. 23, 2021), the Ninth Circuit did not decide how the remaining proceeds from the sale of Debtors' residence should be distributed. Hutchinson, 15 F.4th at 1236 n.3 ("No issue concerning the proper distribution of the proceeds of sale of the Orosi residence has been presented to us."). Rather, Hutchinson stated that, in the context of a chapter 7 case, only a trustee can avoid the penalty portion of a federal tax lien, and when so avoided the lien is preserved for the benefit of the estate. Hutchinson, 15 F.4th at 1235-36.

As discussed in more detail below, the court determines that:

(1) The first $87,157.73 in sale proceeds are allocated to the tax and interest on tax portions of the IRS's most senior tax lien and should be paid to the United States pursuant to 11 U.S.C. § 522(c)(2)(B).

(2) The remaining $5,494.98 in sale proceeds are allocated to the avoided penalty portion of the IRS's most senior tax lien and, while they remain subject to Debtors' homestead exemption, are payable to the estate. However, these funds may not be used to pay administrative expenses pursuant to 11 U.S.C. § 522(k) or § 522(c).

RELEVANT FACTS

The following facts are relevant to the matter at hand. Debtors commenced this bankruptcy case under chapter 7 of the Bankruptcy Code on June 11, 2017. Doc. #1. Trustee was appointed as the chapter 7 trustee. Doc. #2. At the time the bankruptcy case was filed, Debtors resided at 41727 Rd. 125, Orosi, Tulare County, California ("Orosi") and claimed a $100,000 homestead exemption in the

property. Schedules A/B & C, Doc. #1. No objections to the claimed exemption were raised.

Prior to the filing of the bankruptcy petition, IRS recorded multiple liens for unpaid taxes, interest, and penalties that attached to Orosi. On August 17, 2017, the IRS filed a proof of claim asserting a secured claim amount of $412,067.44 and an unsecured amount of $179,316.18. Claim 5.

On August 8, 2017, Debtors initiated an adversary proceeding by filing a complaint asserting two causes of action. Adv. Proc. No. 17-01076, Doc. #1. The first cause of action sought to avoid the penalty portions of the IRS's liens under 11 U.S.C. § 724(a) to the extent of Debtors' asserted homestead exemption. Id. The second cause of action sought to preserve the avoided amount for the benefit of Debtors. Id. Debtors, the United States, and Trustee engaged in vigorous debate in both the bankruptcy case and the adversary proceeding regarding the rights of these three parties in Orosi, which generated multiple published opinions, including the recent panel decision of the Ninth Circuit.

During the bankruptcy case, on August 20, 2018, the United States moved to compel Trustee to abandon Orosi for being of inconsequential value and benefit to the estate. Doc. #53. The United States argued that the IRS was entitled to collect on all of the tax and interest on tax portions of the liens represented in Claim 5 (roughly $206,000) prior to the payment on account of any penalty portion of its tax liens and, therefore, Orosi was significantly overencumbered and there would be no payment to Trustee from the sale of Orosi. Doc. #53; Doc. #55. Trustee opposed the motion, arguing that the IRS's claim was actually comprised of multiple liens recorded on three separate dates so the tax, interest on tax, and penalty portions of the IRS's liens should be determined on a lien by lien basis. In his opposition, Trustee stated that, using this approach and based on the most senior tax lien recorded on May 23, 2011, which secured taxes, interest on taxes and penalties owed for two separate tax years, the first $87,158.73 in proceeds from the sale of Orosi (after payment of the broker's fee, costs of sale and a senior consensual lien) would go to the United States for tax and interest on tax, and the next $132,099.54, representing the penalty portions of the most senior IRS tax lien, would go to the estate for the benefit of creditors, assuming all of the interest allocation of the tax lien is attributable to the tax. Doc. #62 at 3:12-19. Trustee made similar statements in a Joint Statement filed in the adversary proceeding, where Trustee agreed with the United States that the IRS would collect on the tax and interest on tax portions of a tax lien before Trustee would be entitled to collect any amount for penalties on a lien by lien basis. See Adv. Proc. No. 17-01076, Doc. #79.

In ruling on the motion to compel abandonment, the court agreed with Trustee's position and determined that the lien by lien approach was the appropriate analysis. Doc. #71 Transcript. The court denied the motion to compel abandonment after explaining that Trustee could realize money for the benefit of the estate after paying the United States on the tax and interest on tax portions of a tax lien on a lien by lien basis. Under relevant authority, the tax and interest on tax portion of the most senior secured IRS lien that were not avoidable, totaling $87,157.73, would be paid and then the avoidable penalty portion of the most senior IRS tax lien, in the amount of $132,099.54, would be paid before any sale proceeds would be allocated with respect to the next senior IRS tax lien. Doc. #157; Doc. #163.

Trustee eventually sold Orosi for a gross sales price of $201,250. Ex. B, Doc. #151. After deducting the approved real estate commission, paying the first deed of trust and other costs of sale in full, there remained $94,767.41.

Id. As of the filing of Trustee's Final Report, $92,652.71 remained in the estate's account from the sale of Orosi. Exs. B & D, Doc. #151.

During this bankruptcy case, Trustee and the professionals employed by Trustee have accumulated fees and expenses totaling approximately $89,400. Trustee's proposed distribution provides for $89,400.08 to be used to pay trustee fees and other administrative expenses, primarily fees to professionals employed by Trustee, a $3,232.03 payment to the IRS on account of its most senior tax lien, and a $20.60 payment on the secured claim of Capital One Auto Finance, leaving no remaining balance. Id.

LEGAL ANALYSIS

A. Allocation of the Remaining Sale Proceeds

The first step in the court's analysis is to allocate between the United States and the Trustee the $92,652.71 of remaining sale proceeds because how those proceeds are allocated determines what, if any, rights Trustee may have to use the remaining sale proceeds to pay outstanding administrative expenses.

As an initial matter, to the extent Trustee seeks to pay administrative expenses ahead of paying the tax and interest on tax portions of the IRS's most senior tax lien under 11 U.S.C. § 724(b), the court rejects that argument. By its express terms, the special distribution scheme set forth in 11 U.S.C. § 724(b) does not apply when an avoidable tax lien, such as the most senior IRS tax lien at issue in the matters before the court, is involved. Section 724(b) applies to "[p]roperty in which the estate has an interest and that is subject to a lien **that is not avoidable** under this title . . . ." 11 U.S.C. § 724(b) (emphasis added); IRS v. Baldiga (In re Hannon), 619 B.R. 524, 534 (D. Mass. 2020) ("By avoiding the penalty and interest on penalty portions of the IRS liens, those funds are no longer 'not avoidable' and, therefore, not subject to § 724(b).").

Trustee used the avoidance powers under § 724(a) to avoid the penalty portions of the IRS's tax liens against Orosi. Thus, Orosi is subject to tax liens that are avoidable and § 724(b), which only applies to property that is subject to a lien that is **not** avoidable under the Bankruptcy Code, does not apply to the facts of this case. Accordingly, the court holds that by the express language of the statute, the priority distribution scheme of 11 U.S.C. § 724(b) does not apply to the tax lien at issue and Trustee cannot use the distribution scheme under 11 U.S.C. § 724(b) to pay administrative expenses ahead of the tax and interest on tax portions of the most senior IRS tax lien. The court need not decide the extent to which the estate has an interest in Orosi for purposes of applying 11 U.S.C. § 724(b).

1. Judicial Estoppel

Turning to what portion of the remaining proceeds should be allocated to tax, interest on tax, and penalties and the order in which those allocated portions should be paid, the court determines that judicial estoppel applies based on Trustee's arguments made in his opposition to the United States' motion to compel abandonment as well as representations made in the adversary proceeding involving Trustee and the United States. Accordingly, the tax and interest on tax will be allocated first to the United States, totaling $87,157.73, and the remaining $5,494.98 will be allocated to penalties. The court rejects a pro rata or any other allocation between the United States and Trustee of the tax, interest on tax, and penalties portions of the most senior tax lien.

The doctrine of judicial estoppel, sometimes referred to as the doctrine of preclusion of inconsistent positions, is invoked to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment. New Hampshire v. Maine, 532 U.S. 742, 749-50 (2001); Rissetto v. Plumbers and Steamfitters Local 343, 94 F.3d 597, 600 (9th Cir. 1996). "Courts have observed that the circumstances under which judicial estoppel may appropriately be invoked are probably not reducible to any general formulation of principle." New Hampshire, 532 U.S. at 750. Judicial estoppel is an equitable doctrine invoked by a court at its discretion. Id. (quoting Russell v. Rolfs, 893 F.2d 1033, 1037 (9th Cir. 1990)).

As stated by the Supreme Court in New Hampshire v. Maine, one of the primary factors considered by courts applying judicial estoppel is whether a party's later position is clearly inconsistent with its earlier position. New Hampshire, 532 U.S. at 750. Here, after supplemental briefing, Trustee's current position is that the approximately $93,000 currently held by Trustee should be divided between Trustee and the United States according to a pro rata apportionment of tax, interest on tax, and penalties within the most senior tax lien. The tax lien at issue was recorded on May 23, 2011. Of a total tax lien of $219,257.27, $62,913.27 is attributable to tax, $24,244.46 is attributable to interest on tax, and $132,099.54 is attributable to penalties. If the lien is paid first to the tax and interest on tax portions of the lien, $87,157.73 would be paid to the United States and $5,494.98 will be paid to Trustee. Under a pro rata distribution, the United States would receive 39.75% of $92,652.71, or $36,829.45, and Trustee would receive 60.25%, or $55,823.26.

In Trustee's supplemental reply brief, Trustee states that no inconsistent position is being taken because, as Trustee explains, the issue at the time of the motion to compel abandonment was whether the United States could collect tax and interest on tax from a junior tax lien before Trustee could collect an avoided penalty portion from a senior tax lien. Doc. #185. The court disagrees with that characterization of the issues and prior statements.

In the motion to compel abandonment, the court was asked to decide whether Orosi had any value to the estate such that the property should remain in the bankruptcy estate or whether Orosi should be abandoned. The United States argued that it was entitled to collect the tax and interest on tax portions of all of its liens, roughly $206,000, prior to payment on any penalty portion of its tax liens; therefore, there would be no payment to Trustee from the sale of Orosi and Orosi should be abandoned. Doc. #53; Doc. #55. In opposing the motion, Trustee stated that the tax liens should be paid according to recording date, with distributions on the most senior lien paid first, applied first to the portion of that lien allocated for tax, then to interest on tax, and finally to the portion of that lien allocated to penalties, before repeating the same allocation procedure to the more junior liens by recording date, until funds from the sale of Orosi were exhausted. See Tr.'s Opp'n to U.S. Mot. to Compel Abandonment, Doc. #62. Trustee specifically stated in his opposition that, based on this approach, the first $87,158.73 of allocable proceeds from the sale of Orosi would go to the United States for tax and interest on tax, and the next $132,099.54 would go to the estate for the benefit of creditors. Doc. #62.

The issue before the court on the motion to compel abandonment was not whether the United States could collect tax and interest on tax from a "junior" lien before Trustee could collect on a "senior" lien, because the court had not yet decided that there was a "junior" tax lien. The issue in front of the court was whether any equity could be recovered by Trustee for the benefit of the estate. Trustee's argument was that Orosi did have value to the estate on a lien by

lien approach because, after paying the IRS for the tax portions of its most senior lien, then the interest on tax portions of that same lien, Trustee would then be entitled to be paid on the penalties portion of the senior lien. Doc. #62. This is the same lien for which Trustee now seeks to pay the estate $89,400.08 before making any payments to the IRS. As an alternative, Trustee seeks to have the remaining sale proceeds with respect to the senior tax lien allocated on a pro rata basis. Both of these positions – paying the estate $89,400.08 before making any payments to the IRS as well as seeking to allocate the distribution with respect to the most senior IRS tax lien on a pro rata basis – are clearly inconsistent with the tax first to the IRS, interest on tax next to the IRS, and penalties last to Trustee allocation that Trustee previously argued to the court in his opposition to the motion to compel abandonment.

Additionally, "the doctrine of judicial estoppel is not confined to inconsistent positions taken in the same litigation." Rissetto v. Plumbers and Steamfitters Local 343, 94 F.3d 597, 605 (9th Cir. 1996). Trustee's prior statements discussed so far occurred in the main bankruptcy case. In a related adversary proceeding, Adv. Proc. No. 17-01076, Trustee made similar statements that the United States is entitled to receive payment in full on the tax and interest on tax portions of its tax lien before the Trustee may receive payments for the penalty portion of the same lien. In the pre-trial statement in the adversary proceeding, Trustee repeatedly stated that "the parties agree" that United States would receive payments for tax and interest on tax before Trustee would receive any distribution for the penalty portion of the same tax lien. Adv. Proc. Doc. #79.

Next in the judicial estoppel analysis, courts will ask whether the inconsistent statement resulted in the party succeeding. New Hampshire, 532 U.S. at 750. Absent success in a prior proceeding, there is little threat to judicial integrity. Id. In this case, the bankruptcy court adopted Trustee's lien by lien and allocation scheme of payment with respect to the tax first to the IRS, interest on tax next to the IRS, and penalties last to Trustee, and denied United States' motion to compel abandonment. This clearly equals success.

In the adversary proceeding, Trustee also can be said to have succeeded based on Trustee's representations regarding the proper allocation of Orosi proceeds. Although not directly on point, the Ninth Circuit in Rissetto stated that obtaining a favorable settlement agreement is equivalent to winning a judgment for purposes of applying judicial estoppel. Rissetto v. Plumbers and Steamfitters Local 343, 94 F.3d 597, 604-05 (9th Cir. 1996). The Rissetto court adopted the reasoning of the Seventh Circuit, which stated that "persons who triumph by inducing their opponents to surrender have 'prevailed' as surely as persons who induce the judge to grant summary judgment." Rissetto, 94 F.3d at 605. Although the adversary proceeding did not result in a settlement agreement, it did result in a stipulated judgment allowing Trustee to avoid the penalty portion of the May 23, 2011 tax lien. Adv. Proc. Doc. #99. Before the stipulated judgment was entered, Trustee and United States submitted a Joint Status Report stating that "[a]s stated earlier, there are no facts in dispute[.]" Doc. #89. Prior to the parties' joint statement that a stipulated judgment would be submitted, the parties submitted a Joint Statement clearly stating that "[t]he issue is how the sale proceeds of the Trustee's sale of [Orosi] should be applied to the liens, and the avoidable secured penalties of the IRS." Adv. Proc. Doc. #79. The parties then went through a number of hypotheticals, and in each one Trustee stated that the amount allocated to penalties would be paid on a particular lien only after the portions allocated to tax and interest on tax of the same lien were paid. Doc. #79. Although the court is left to speculate as to the exact sequence of events leading to the

stipulated judgment in the adversary proceeding, it would go against all reasoned experience to believe Trustee's proposed allocation of sale proceeds whereby the penalties portion of a particular tax lien would be paid only after the allocated tax and interest on tax portions of the same lien, before applying the same allocation to the next junior tax lien, had no impact on the United States' willingness to enter into a stipulated judgment, particularly after the parties so clearly identified the issue between the parties at that time.

A final primary consideration in the judicial estoppel analysis is "whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped." New Hampshire, 532 U.S. at 751. Here, if the IRS's most senior tax lien is paid first to the tax and interest on tax portions of that lien, $87,157.73 would be paid to the United States and $5,494.98 will be paid to Trustee. Under a pro rata distribution, the United States would receive 39.75% of $92,652.71, or $36,829.45, and Trustee would receive 60.25%, or $55,823.26. Clearly, Trustee would derive an unfair advantage over the United States by receiving in excess of $50,000 if judicial estoppel is not applied.

In addition to the traditional judicial estoppel analysis, the court will not adopt a pro rata distribution on other equitable grounds. Trustee repeatedly states that a pro rata distribution is the most equitable approach. Doc. ##179, 185. To the extent Trustee's argument asks the court to mull considerations of equity, the foregoing analysis considers an equitable doctrine to be invoked by a court at its discretion. New Hampshire, 532 U.S. at 750 (quoting Russell v. Rolfs, 893 F.2d 1033, 1037 (9th Cir. 1990)).

Accordingly, the court will not adopt a pro rata distribution requested by Trustee. The senior lien recorded in May 2011 will be paid first, with tax and interest on tax paid first to the United States, totaling $87,157.73. The remaining $5,494.98 of sale proceeds will be paid to Trustee with respect to penalties.

2. Allocation the Same Without Judicial Estoppel

Even if judicial estoppel did not apply, the court would still hold that the United States should be paid with respect to the tax and interest on tax portions of its tax lien before Trustee is paid on the avoided penalty portion of the same tax lien as being consistent with 11 U.S.C. § 724(a). This is because 11 U.S.C. § 724(a) permits a chapter 7 trustee to "avoid a lien that secures a claim of a kind specified in section 726(a)(4) of this title." Section 726(a)(4), in turn, identifies "any allowed claim, whether secured or unsecured, for a fine, penalty, or forfeiture . . . arising before the earlier of the order for relief or the appointment of a trustee[.]" 11 U.S.C. § 726(a)(4); see Gill v. Kirresh (In re Gill), 574 B.R. 709, 716 (B.A.P. 9th Cir. 2017) (explaining that a chapter 7 trustee may avoid a tax penalty lien). As the Ninth Circuit Bankruptcy Appellate Panel explained in Gill:

The purpose of § 724(a) is to protect unsecured creditors from the debtor's wrongdoing. Enforcement of penalties against a debtor's estate serves not to punish the delinquent taxpayers, but rather their entirely innocent creditors. Innocent creditors should not be punished for the action of delinquent debtor taxpayers. "By avoiding the penalty portions of the tax liens and preserving them for the benefit of creditors, the estate is enriched while the IRS still obtains the principal portion of its liens, with interest in the order and priority of each respective lien."

Gill, 574 B.R. at 716 (quoting In re Bolden, 327 B.R. 657, 665 (Bankr. C.D. Cal. 2005) (internal citations omitted).

By allocating to the United States the tax and interest on tax portions of its tax lien before allocating to Trustee the avoided penalty portion of the same tax lien, the penalty portion of the lien is subordinated to the tax and interest on tax portions. This is consistent with 11 U.S.C. § 724(a), which avoids only the same portion of a tax lien that is also subordinated in § 726(a)(4), and not any other portion of a tax lien. Applying a pro rata distribution scheme as proposed by Trustee, the portion of the tax lien allocated to penalties would be treated on par with the tax and interest on tax portions of the lien and, as in this case, could receive more than if the portions allocated to tax and interest on tax are paid first. This is inconsistent with 11 U.S.C. § 724(a). Accordingly, the United States should be paid with respect to the tax and interest on tax portions of its tax lien before Trustee is paid on the avoided penalty portion of the same tax lien.

B. Homestead Exemption

Trustee relies almost exclusively on an unreported opinion out of the District of Arizona, United States v. Warfield, No. CV-20-08204, 2021 U.S. Dist. LEXIS 75039, 2021 WL 1530094, *1 (D. Ariz. Apr. 19, 2021), for the proposition that the proceeds being held by Trustee from the sale of Debtors' homestead will not be used to pay administrative expenses. According to Trustee, § 522(c)(2)(B) "makes it clear that any claimed exemption falls in line after the tax lien." Tr.'s Reply 3:12, Doc. #160. Trustee argues that because tax liens have priority over exemptions and Trustee stands in the shoes of a tax penalty lien holder, Trustee has priority over exemptions for the benefit of the estate.

However, Trustee's argument ignores the plain language of the Bankruptcy Code and Ninth Circuit authority, both of which are clear that exempt property remains liable for certain tax liens, not that exempt property holds a lower priority than certain tax liens. Nothing in the language of § 522(c)(2)(B) establishes the priority of liens over a claimed exemption. Rather, § 522(c)(2)(B) only informs as to the types of debt for which exempt property may be liable. The remaining proceeds from the sale of Orosi, though liable for certain tax liens, are also exempt.

Warfield is not binding and the court does not find it persuasive. For unknown reasons, the bankruptcy court in Warfield determined that the debtor's homestead exemption was third in line behind the consensual mortgage and the tax liens. Warfield, 2021 U.S. Dist. LEXIS 75039 at *8. In what it termed a "close call," the district court in Warfield agreed "with the bankruptcy court that Debtor's homestead exemption was third in line behind the Tax Lien, rather than existing alongside the Tax Lien." Warfield, 2021 U.S. Dist. LEXIS 75039 at *25. However, deciding that the homestead exemption was third in line was not necessary to the court's decision in Warfield and is not correct under Ninth Circuit authority. The bankruptcy court in Warfield was asked to decide whether the debtor could claim an avoided tax lien as exempt pursuant to § 522(g). Warfield, 2021 U.S. Dist. LEXIS 75039 at *10. In discussing how it is that a trustee can avoid a penalty portion of a tax lien, the district court felt it necessary to state that tax liens occupy a higher priority than homestead exemptions. This conclusion was reached to solve the problem perceived by the district court that any other interpretation would allow debtors to escape liability for tax liens. In this regard, the analysis in Warfield has been superseded by the recent Ninth Circuit authority of Hutchinson.

The Ninth Circuit in Hutchinson implicitly relied on the conterminous nature of valid exemptions and tax liens covered by § 522(c)(2)(B). In Part II of

Hutchinson, the court rejected Debtors' argument that § 522(h) empowered chapter 7 debtors to avoid a tax lien covered by § 522(c)(2)(B). Hutchinson, 15 F.4th at 1232-34. The court reached that conclusion not because tax liens have priority over exemptions, but because the Bankruptcy Code did not authorize chapter 7 debtors, as opposed to trustees, to "remove tax liens from their otherwise exempt property." Hutchinson, 15 F.4th at 1233-34. As the Ninth Circuit reiterated, "Congress could logically have wanted to allow tax penalties to be avoided if that would benefit unsecured creditors while eschewing benefiting debtors who had incurred those penalties by failing to pay their taxes." Id. (citations omitted). That situation exists only if the exemption and the tax lien exist conterminously. If Trustee's argument held true and a tax lien had priority over and primed an exemption rather than existed conterminously with the tax lien, avoiding the penalty portion of a tax lien by a debtor would not put the avoided property back in the hands of a debtor as exempt property. Rather, the debtor would continue to have a subordinated exemption right in the property and the avoided portion would benefit creditors, so the Ninth Circuit would not need to reject Debtors' argument that § 522(h) empowered chapter 7 debtors to avoid a tax lien covered by § 522(c)(2)(B).

In Part III of Hutchinson, the Ninth Circuit considered whether tax liens avoided by a chapter 7 trustee can be preserved for the benefit of the debtor. Hutchinson, 15 F.4th at 1234. This part of the decision concerned preservation rather than priority, and the court ultimately held that a chapter 7 debtor cannot preserve for the benefit of the debtor a tax lien avoided by the trustee. Hutchinson, 15 F.4th at 1235-36. Part III expands on the implications of Part II, and repeatedly emphasizes that § 522(c)(2)(B) "makes quite clear that . . . debtors cannot use exemption authority to escape tax liens . . . even if (as here) the tax liens are otherwise avoided by a trustee under § 724(a)." Hutchinson, 15 F.4th at 1235. Section 522(c)(2)(B) "operate[s], vis-à-vis a debtor, to preserve tax liens against otherwise exempt property *regardless* of whether the trustee has avoided them." Id. (punctuation omitted) (italics in original).

Hutchinson says that a debtor's avoidance and preservation powers are "subordinate to § 522(c)(2)(B)'s bright-line rule that debtors lack the right to remove tax liens from their otherwise exempt property." Hutchinson, 15 F.4th at 1235. Section 522(c)(2)(B) establishes the "settled rule that tax liens apply to exempt property." Id. That tax liens "apply to" exempt property and can be "removed" from exempt property belies Trustee's argument that tax liens have priority over and prime exempt property.

The Hutchinson court further acknowledges the conterminous nature of allowed exemptions and tax liens by way of two alternative and undesirable scenarios that would result if the court did not restrict a debtor's preservation authority.

On one hand, the Ninth Circuit explains that allowing a debtor to preserve a tax penalty lien avoided by the trustee for the benefit of the debtor could permit the debtor to strip tax liens from exempt property and "would create precisely the kind of end-run around § 522(c)(2)(B)" previously rejected. Hutchinson, 15 F.4th at 1236. In other words, a debtor would be able to launder exempt property through the debtor's preservation power and wash off tax liens.

On the other hand, if a trustee avoided a lien "only to turn over the benefits to the debtor, whose exempt property would then be *subject* to the lien under § 522(c)(2)(B), that would effectively nullify the trustee's express lien-avoidance power under § 724(a)." Hutchinson, 15 F.4th at 1236 (italics in

original). Either way, the conterminous exemption would either impermissibly enrich the debtor or would create an avoidance paradox.

Regarding the interplay between a debtor's preservation and avoidance powers with § 522(c)(2)(B)'s prohibition on debtors avoiding tax liens, the court stated that "[t]he only way to read these provisions sensibly together is to conclude that, with respect to a tax lien covered by § 522(c)(2)(B), a debtor may not invoke § 522(i)(2) in order to override § 551's otherwise applicable rule that, after the trustee avoids a lien under § 724(a), the lien is preserved for the benefit of the estate." Hutchinson, 15 F.4th at 1236. Under Hutchinson, because the exemption existed conterminously with the tax liens, "the penalty portions of the tax liens that [Trustee] successfully avoided were preserved for the benefit of the estate and not [Debtors]." Id.

The court finds the analysis in In re Selander, 592 B.R. 729 (Bankr. W.D. Wash. 2018), more compelling than Warfield and consistent with Ninth Circuit authority. As the court in Selander explained:

> Ordinarily, a debtor's allowed exemption removes property (or a debtor's interest up to a certain value in such property) from the bankruptcy estate and the reach of debtor's creditors. An exception to the general exemption scheme is § 522(c)(2)(B), which provides that exempt property remains liable for a properly noticed tax lien. Accordingly, the IRS retains its interest in the Homestead Exemption even after that property is removed from the bankruptcy estate.

Selander, 592 B.R. at 733 (internal citations omitted). Looking at the Bankruptcy Code as a whole, it makes more sense to the court that a tax lien and a debtor's homestead exemption exist conterminously rather than a tax lien having priority over and priming a debtor's homestead exemption.

Although Trustee will receive some distribution from Orosi sale proceeds, those funds cannot be used to pay administrative expenses. Section 522(k) states that exempt property is not liable for payment of any administrative expense except-

> (1) The aliquot share of the costs and expenses of avoiding a transfer of property that the debtor exempts under subsection (g) of this section, or of recovery of such property, that is attributable to the value of the portion of such property exempted in relation to the value of the property recovered; and
>
> (2) any costs and expenses of avoiding a transfer under subsection (f) or (h) of this section, or of recovery or property under subsection (i)(1) of this section, that the debtor has not paid.

11 U.S.C. § 522(k)(1)-(2). Neither subsection applies here because Trustee, not Debtors, avoided the penalty tax lien. Thus, Trustee cannot use the remaining sale proceeds that are still subject to Debtors' homestead exemption to pay administrative expenses because such payment would violate § 522(k).

Trustee argues that § 522(k) does not prevent him from using the sale proceeds to pay administrative expenses because he holds the equivalent of an IRS tax lien for penalties, which have priority or prime any exemption, and therefore exempt property will not be used to pay administrative expenses. As explained above, the IRS tax liens and Debtors' homestead exemption are conterminous, so this argument fails.

Additionally, the administrative expenses sought to be paid by Trustee all arose post-petition. Section 522(c)(2)(b) specifically provides: "Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor **that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case,** except – . . . a tax lien, notice of which is properly filed[.]" 11 U.S.C. § 522(c)(2)(B) (emphasis added). This subsection limits the liability of exempt property to certain prepetition debts. It is not in conflict with § 522(k) prohibiting exempt property from being used to pay administrative expenses because administrative expenses are not prepetition debts. To the extent Trustee has stepped into the shoes of the IRS, § 522(c)(2)(B) does not authorize Trustee to use exempt property to pay the requested post-petition administrative expenses.

Because Debtors have a homestead exemption of $100,000 in Orosi, all of the remaining sale proceeds remain subject to that homestead exemption. To the extent that Trustee seeks to use the remaining sale proceeds to pay administrative expenses, such funds may not be used to pay administrative expenses pursuant to 11 U.S.C. § 522(k) or § 522(c).

CONCLUSION

For the foregoing reasons:

(1) The first $87,157.73 in sale proceeds are allocated to the tax and interest on tax portions of the IRS's most senior tax lien and should be paid to the United States pursuant to 11 U.S.C. § 522(c)(2)(B).

(2) The remaining $5,494.98 in sale proceeds are allocated to the avoided penalty portion of the IRS's most senior tax lien and, while they remain subject to Debtors' homestead exemption, are payable to the estate. However, these funds may not be used to pay administrative expenses pursuant to 11 U.S.C. § 522(k) or § 522(c).

15. 21-11997-A-7 **IN RE: FELIPE REYNOSO AND HILDA AYON**
JES-2

MOTION FOR TURNOVER OF PROPERTY
1-10-2022 [34]

JAMES SALVEN/MV
T. O'TOOLE/ATTY. FOR DBT.
JAMES SALVEN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Although service of the papers was not properly made on the debtors' bankruptcy counsel, the debtors, through counsel, filed written opposition on February 7, 2022. Doc. #39. The court will treat the

opposition as a waiver to any defective service and will also consider the documents despite their untimely filing. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Felipe Ayon Reynoso and Hilda I Ayon (together, "Debtors"), moves the court to compel Debtors to turn over a 2011 Freightliner Cascadia truck ("Asset"). Mot., Doc. #34; Decl. of James Salven, Doc. #36. Trustee believes the Asset has equity over and above any encumbrance or exemption claimed by Debtors. Tr.'s Decl., Doc. #36. Although Trustee's motion requests that Debtors turn over the Asset "for liquidation," Trustee has not submitted or moved for authority to sell the Asset, and the granting of this motion does not authorize a sale of the Asset.

Section § 541(a)(1) defines property of the estate as "all legal or equitable interests of the debtor in property as of the commencement of the case." Section 542(a) requires an entity in possession of estate property to deliver such property to the trustee, "unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. § 542(a). Trustee contends that the Asset has value to the estate, and Debtors do not oppose turnover.

Accordingly, this motion is GRANTED. Debtors shall turn over the Asset within 10 days of the court order. Failure to do so may result in sanctions pursuant to 11 U.S.C. § 105(a). No other relief is awarded. To the extent Trustee seeks to sell the Asset, Trustee must comply with the requirements of 11 U.S.C. § 363.