

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, March 8, 2022
Place: Department B – Courtroom #13
Fresno, California

The court resumed in-person courtroom proceedings in Fresno ONLY on June 28, 2021. Parties may still appear telephonically provided that they comply with the court's telephonic appearance procedures. For more information click [here](#).

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. [22-10061](#)-B-11 IN RE: CALIFORNIA ROOFS AND SOLAR, INC.
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY
PETITION
1-17-2022 [[1](#)]

MICHAEL BERGER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

The court is in receipt of debtor-in-possession California Roofs and Solar, Inc.'s ("Debtor") status conference report. Doc. #14. Debtor intends to timely file its Subchapter V plan on or before the April 15, 2022 deadline. This status conference will be called and proceed as scheduled.

11:00 AM

1. [20-12269](#)-B-7 **IN RE: ANTHONY VILLA**
[20-1054](#)

FURTHER PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
11-12-2020 [\[23\]](#)

VOKSHORI LAW GROUP V. VILLA
NIMA VOKSHORI/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

The court specially set this further pretrial conference on March 3, 2022 to clarify whether the standard form order language should be omitted from the *Amended Joint Pretrial Order* ("*Proposed Order*"). Doc. #93.

This hearing was requested by debtor Anthony Villa's ("Defendant"). Doc. #91. Vokshori Law Group, APLC ("Plaintiff") was served the *Request for Pretrial Conference* on March 2, 2022 and the *Order Setting Further Pretrial Conference* on March 3, 2022. Docs. #92; ##94-95.

Defendant objects to the changes in the *Proposed Order* from the version previously submitted. Doc. #91. The court requested the order to be amended to correct the Exhibit List so that it conforms to ordering in the binder submitted to the court. *Cf. Feb. 10, 2022 Minutes*, Doc. #86 ("The parties shall file an updated joint pre-trial order not later than March 11, 2022, to only correct the exhibits numbers and letterings.")

After submission, the *Proposed Order* was rejected with instructions to add the following language from the standard form located on the court's website.¹ That language is as follows:

The witnesses listed may be called at trial. A witness not identified herein shall not be permitted to testify on either party's case in chief absent good cause shown. Each party shall list the witnesses it intends to call on its case in chief and, if a witness's testimony will be offered by deposition, shall designate by page and line numbers the portions of the deposition transcript it intends to offer. Each party shall set forth any objections it has to deposition testimony designated by the other and the basis for each objection.

Joint Pretrial Order form, at 4, Part X, ¶¶ 12-20.²

Defendant seeks clarification as to whether this paragraph should be included based on the court's previous *Order Setting Trial*, which ordered that Alternate Direct Testimony ("ADT") procedure outlined in LBR 9017-1 shall apply except as modified in that order. Doc. #52.

LBR 9017-1(a)(3) provides:

Content and Preparation of Alternate Direct Testimony Declarations. For each witness (excluding hostile or adverse witnesses) that an attorney calls on behalf of his/her client's case, there shall be prepared in triplicate a succinct written declaration, executed under penalty of perjury, of the direct testimony which the witness would be prepared to give as though questions were propounded in the usual fashion. Each statement of fact or opinion shall be separate, sequentially numbered and shall contain only matters that are admissible under the Federal Rules of Evidence (e.g., avoiding redundancies, hearsay, and other obvious objectionable statements).

Per LBR 9017-1(c), "[a]ll cross-examination, rebuttal, surrebuttal and appropriate impeachment evidence shall be given by live testimony. Notwithstanding provisions of this Rule, the Court, in its discretion, may allow live direct testimony."

Defendant objects to insertion of the standard form language because Plaintiff did not submit any admissible ADT declarations. Doc. #91; *cf. Defendant's Evidentiary Objections*, Doc. #77. Defendant, in great detail, objects to the entirety of the *Plaintiff's Direct Testimony* (Doc. #56) because Mr. Vokshori allegedly never spoke to Defendant, has no personal knowledge of the case, and his testimony contains legal conclusions and arguments. *Id.* Defendant believes that including the standard form language will permit Plaintiff to call witnesses from the witness list for whom no ADT declarations have been filed. Doc. #91. Defendant says this would be akin to a "second bite at the apple" after Plaintiff failed to timely submit ADT declarations for its witnesses and would moot the ADT procedure specified in the *Order Setting Trial*.

This matter will be called and proceed as scheduled to inquire about Plaintiff's position.

¹ See Joint Pretrial Order, <http://www.caeb.uscourts.gov/Judges/Lastreto.aspx> (March 3, 2022).

² *Id.*

1:30 PM

1. [21-12404](#)-B-7 **IN RE: APRIL KUSICK**
[JES-1](#)

MOTION TO EMPLOY BAIRD AUCTIONS & APPRAISALS AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
2-2-2022 [[22](#)]

JAMES SALVEN/MV
MARK ZIMMERMAN/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.

Chapter 7 trustee James E. Salven ("Trustee") seeks authorization to
(a) employ Baird Auctions & Appraisals ("Auctioneer"); and (b) sell
the estate's interest in a 2008 Mazda CX9 ("Vehicle") at public
auction under 11 U.S.C. § 363(b)(1). Doc. #22. The auction will be
held on or after April 5, 2022 at Baird Auctions & Appraisals, 1328 N.
Sierra Vista, Suite B, Fresno, California.

Trustee requests to pay 15% of gross proceeds from the sale as
compensation under 11 U.S.C. §§ 327(a) and 328, along with expenses of
up to \$500.00 for anticipated sale preparation and storage expenses.
Doc. #24. In addition to those fees and expenses, Auctioneer charges
buyers a 10% premium on the purchase price. *Id.* Trustee and Jeffrey
Baird, Auctioneer's owner, filed declarations attesting that
Auctioneer is a disinterested person as defined in § 101(14) and does
not hold any interests adverse to the estate in accordance with §
327(a). *Id.*; Doc. #25.

No party in interest timely filed written opposition. This motion will
be GRANTED.

This motion was set for hearing on 28 days' notice as required by
Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P.
("Rule") 2002(a)(2) and (a)(6). The failure of the 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). 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 amounts of damages). *Televideo Sys.*,

Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion affects the proposed disposition and the auctioneer. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion and allow the relief requested by movant here as to the proposed auctioneer and use the court's discretion to add a party under Civ. Rule 21.

Compensation is separate from the sale. Since this relief, and appointing the auctioneer are separate claims, the court will allow their joinder in this motion under Civ. Rule 18 (Rule 7018) because it is economical to handle this motion in this manner absent an objection. This rule is not incorporated in contested matters absent court order under Rule 9014(c) and affected parties are entitled to notice. Movant having requested this relief is deemed to have notice. Since no party timely filed written opposition, defaulted parties are deemed to have consented to application of this rule.

Employment and Compensation

11 U.S.C. § 327 allows the trustee, with the court's approval, to employ one or more attorneys, accountants, auctioneers, or other professional persons to represent or assist the trustee in carrying out trustee's duties. Section 327 requires that the professional does not hold or represent interests adverse to the estate and is a disinterested person. § 327(a).

11 U.S.C. § 328(a) permits employment of "a professional person under section 327" 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." Section 328(a) further "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.'" *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002).

Trustee declares that it is necessary to employ Auctioneer to liquidate certain property of the estate. Doc. #24. Auctioneer will assist Trustee by (1) actively advertising the sale of the property; (2) assisting in storing the property until sold; (3) performing and assisting Trustee in matters which are customarily done and performed by Auctioneer in connection with the sale of property. *Id.*

As noted above, both Trustee and Auctioneer declare that Auctioneer is a disinterested person as defined in § 101(14) because Auctioneer is

not a creditor, equity security holder, or insider, and Auctioneer does not have an interest materially adverse to the interest of the estate, creditors, Debtor, or any other party in interest. *Id.*; Doc. #25. Further, Trustee has made no payments on account for Auctioneer from operating revenues or income, and the source of all compensation for professional services shall be funds of the Debtor, specifically from proceeds of any sale of Vehicle. Doc. #24. Auctioneer will not accept any engagement or perform any services for any entity related to this chapter 7 case other than Debtor. Doc. #25. Auctioneer also holds a Bankruptcy Auctioneer Blanket Bond and carries liability insurance coverage.

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. §§ 327(a), 328 and authorize Trustee to pay the 15% commission and reimbursement of up to \$500.00 for anticipated sale preparation and storage expenses as prayed.

Sale of Vehicle

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 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 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 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.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Trustee wishes to sell Vehicle under § 363(b). Doc. #22. April M. Kusick ("Debtor") listed Vehicle in the amended schedules with a value of \$4,954.00, noting its approximate mileage of 180,000 miles. Doc. #14, *Am. Sched. A/B*. Debtor did not claim an exemption in Vehicle, and it is not encumbered by any security interests. Docs. #1, *Sched. D*; #18, *Am. Sched. C*. If Vehicle is sold for its scheduled value, the sale would be illustrated as follows:

Vehicle (<i>Am. Sched. A/B</i> value)	\$4,954.00
Auctioneer compensation (15%)	- \$743.10
Auctioneer expenses (\leq \$500)	- \$500.00
Debtor's exemption	- \$0.00
Net to the estate	\geq \$3,710.90

Trustee believes that using the auction process to sell Property will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #24. Based on Trustee's experience, this will yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.*

Sale by auction under these circumstances should maximize potential recovery for the estate. The sale of Property appears to be in the best interests of the estate because it will provide liquidity to the estate that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be authorized to employ Auctioneer, sell Vehicle at public auction on or after April 5, 2022, and pay Auctioneer for its services as outlined above. Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale, and reimbursement of reasonable expenses of up to \$500.00.

2. [22-10037](#)-B-7 **IN RE: MOURILIO ALVAREZ**
[KR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-16-2022 [[14](#)]

YAMAHA MOTOR FINANCE CORP./MV
R. BELL/ATTY. FOR DBT.
KAREL ROCHA/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Yamaha Motor Finance Corp. ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362 with regard to a 2017 Yamaha YFZ450R ("Yamaha ATV"). Doc. #14.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Federal Rules of Bankruptcy Procedure ("Rule") and Local Rules of Practice ("LBR") and for evidence deficiencies described below.

The motion does not comply with Rule 9013 and does not state the factual and legal grounds with particularity upon which the requested relief is sought. Doc. #14.

Rule 9013 requires a request for an order to be by written motion, unless made during a hearing. *"The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought."* Rule 9013 (emphasis added).

The particularity requirement is restated in LBR 9014-1(d)(3)(A):

The application, motion, contested matter, or other request for relief shall set forth the relief or order sought and *shall state with particularity the factual and legal grounds therefor*. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request but does not include a discussion of those authorities or argument for their applicability.

The motion states:

- (a) Movant requests termination or modification of the automatic stay with respect to the Yamaha ATV under § 362.
- (b) The motion is supported by a concurrently filed memorandum of points and authorities (Doc. #16), and the declaration of Tashina Hardwick (Doc. #19).
- (c) Movant requests an order granting relief from the automatic stay.

Doc. #14. This is insufficient. Though Movant did include a citation to the statute, factual grounds and analysis are omitted. Movant includes more detailed factual and legal grounds in the *Memorandum of Points and Authorities* (Doc. #16), but under Rule 9013 and LBR 9014-1(d)(3)(A), the additional details should have been included in the motion.

The court notes that LBR 9014-1(d)(4) permits a motion and memorandum of points and authorities to be filed together as a single document provided that the document does not exceed six (6) pages in length, including the caption page.

Second, the court also notes the Debtor did not list the Yamaha ATV on his schedules. The only evidence of value is the *Declaration of Tashina Hardwick*, a "Title Supervisor" employed by Movant.

Though the foundation for admission of business records was presented, no expertise in vehicle valuation is described by the declarant. So, the declarant is not testifying as an expert on collateral value. True enough, assuming a proper foundation is established, a NADA valuation may not be excluded as hearsay under Fed. R. Evid. 803(17). But that does not permit admission of the testimony of a lay witness relying on a market quotation for valuation. The declarant is not the owner of the ATV.

Even if the court accepted the declaration as referencing the market quotation, the exhibit cannot be admitted because of lack of foundation. Nothing in the exhibit suggests it is a quotation from NADA. The only reference is "JD Power-CONNECT." It is also unclear that declarant could ever provide a foundation as the quotation itself references a "Matt Schwausch" who is not the declarant. So, at minimum the quotation lacks foundation and would be excluded as hearsay.

So, there is no evidence supporting valuation of collateral under § 362(d)(2). That is Movant's burden under § 362(g)(1).

Third, the exhibits do not procedurally comply with the local rules. Doc. #17. LBR 9004-2(d) requires exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets. Though the exhibits are filed separately and include an index, the document is not consecutively numbered, and the index does not state the page number where each exhibit can be located.

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE.

3. [19-15246](#)-B-7 **IN RE: ANDREA CASTILLO**
[ICE-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH SHARON OSBORN
1-27-2022 [[52](#)]

IRMA EDMONDS/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
IRMA EDMONDS/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 with the stipulation attached as an exhibit. A copy of the original

stipulation shall be filed separately and docketed as a stipulation.

Chapter 7 trustee Irma C. Edmonds ("Trustee") requests an order approving a settlement agreement between the estate and Sharon Osborne, the mother of Andrea Marie Castillo ("Debtor"), pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #52.

No party in interest timely filed written opposition. This motion will be GRANTED.

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 the 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Debtor filed chapter 7 bankruptcy on December 18, 2019. Doc. #1. In her *Statement of Financial Affairs*, Form 107, Debtor reported three payments of \$300.00 each to Osborne for rent for the months of October, November, and December 2019. *Id.*, *Stmt. Fin. Affairs*, Part 3, ¶ 6. After conducting a preliminary investigation, Trustee discovered that Debtor's pre-petition payments to Osborne totaled approximately \$2,000.00. Doc. #54. As result, the estate has a pre-petition claim against Osborne for preferential payments or fraudulent conveyances by Debtor to her mother within one year preceding the petition date.

Trustee and Debtor settled the claim for preferential payments made to Osborne in the sum of \$1,715.00. *Id.* Trustee is in receipt of the settlement funds and seeks approval of the settlement, along with authorization to enter into, execute, and deliver any releases and other documents as may be required. Doc. #52.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Rule 9019. Approval of a compromise must be based upon considerations of fairness and equity. *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. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the *Woodson* factors balance in favor of approving the compromise. That is,

1. Although Trustee believes the probability of success in litigation is high, the need to continue the litigation is obviated based upon the terms and conditions of the settlement achieved. Doc. #52. Notwithstanding that the payments appear to be an innocent transfer between parties, there do not appear to be any defenses to Trustee's claim. However, Trustee contends that the settlement provides to the estate as much money was owing at the time of filing this matter, and further litigation to recover the remaining \$285.00 would not be in the best interest of the estate and the parties. *Id.*; Doc. #54.
2. If approved, there will be no difficulties in the matter of collection because Trustee has been promptly paid the settlement amount of \$1,715.00. This factor weighs in favor of approving the settlement or is neutral.
3. Trustee does not believe the action to recover the preferences would be complex. *Id.* However, even a non-complex adversary proceeding would delay in recovery and increase expenses for the estate, which would reduce the distribution to general unsecured creditors. This factor weighs in favor of approving the settlement.
4. Trustee declares that the interests of creditors and the estate weigh in favor of approving the settlement. Trustee anticipates that the settlement amount is what would be recovered in litigation, but with significantly reduced administrative expenses because no litigation is needed. This factor supports approving the settlement.

The settlement appears to be fair, equitable, and a reasonable exercise of Trustee's business judgment.

No party in interest timely filed written opposition. The court concludes the compromise to be in the best interests of the creditors and the estate. Further, the law favors compromise and not litigation for its own sake. This motion will be GRANTED. The settlement is approved, and Trustee is authorized to enter into, execute, and deliver any releases and other documents as may be required to effectuate the settlement

Upon executing the settlement agreement, Trustee shall separately file the original agreement as a stipulation. The proposed order shall attach the settlement agreement as an exhibit.

4. [21-12461](#)-B-7 **IN RE: RICHARD WEBB**
[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
1-31-2022 [\[15\]](#)

JAMES SALVEN/MV
JEFF REICH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") seeks authorization to
(a) employ Baird Auctions & Appraisals ("Auctioneer"); and (b) sell
the estate's interest in a Smith & Wesson .357 long barrel revolver
and a Raven model P-25 .25 auto ("Property"). Doc. #15. The auction
will be held on or after April 5, 2022 at Baird Auctions & Appraisals,
1328 N. Sierra Vista, Suite B, Fresno, California.

Trustee requests to pay 15% of gross proceeds from the sale as
compensation under 11 U.S.C. §§ 327(a) and 328, along with expenses of
up to \$100.00 for anticipated sale preparation and storage expenses.
Doc. #17. In addition to those fees and expenses, Auctioneer charges
buyers a 10% premium on the purchase price. *Id.* Trustee and Jeffrey
Baird, Auctioneer's owner, filed declarations attesting that
Auctioneer is a disinterested person as defined in § 101(14) and does
not hold any interests adverse to the estate in accordance with
§ 327(a). *Id.*; Doc. #18.

No party in interest timely filed written opposition. However, due to
the debtor's claimed exemptions, the proposed distribution of proceeds
is unclear. This matter will be called and proceed as scheduled. If
Trustee adequately explains the fair market valuation of Property and
the proposed distribution at the hearing, this motion may be GRANTED.
Absent that, the court would be inclined to DENY THE MOTION WITHOUT
PREJUDICE.

This motion was set for hearing on 28 days' notice as required by
Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P.
("Rule") 2002(a)(2) and (a)(6) and will proceed as scheduled. The
failure of the 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 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

This motion affects the proposed disposition and the auctioneer, Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion and allow the relief requested by movant here as to the proposed auctioneer and use the court's discretion to add a party under Civ. Rule 21. Compensation is separate from the sale.

Since this relief and appointing the auctioneer are separate claims, the court will allow their joinder in this motion under Civ. Rule 18 (Rule 7018) because it is economical to handle this motion in this manner absent any objection. This rule is not incorporated in contested matters absent court order under Rule 9014(c) and affected parties are entitled to notice. Movant, having requested this relief, is deemed to have notice. Since no party timely filed written opposition, defaulted parties are deemed to have consented to application of this rule.

Employment and Compensation

11 U.S.C. § 327 allows the trustee, with the court's approval, to employ one or more attorneys, accountants, auctioneers, or other professional persons to represent or assist the trustee in carrying out trustee's duties. Section 327 requires that the professional does not hold or represent interests adverse to the estate and is a disinterested person. § 327(a).

11 U.S.C. § 328(a) permits employment of "a professional person under section 327" 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." Section 328(a) further "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.'" *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002).

Trustee declares that it is necessary to employ Auctioneer to liquidate certain property of the estate. Doc. #17. Auctioneer will assist Trustee by (1) actively advertising the sale of the property; (2) assisting in storing the property until sold; (3) performing and assisting Trustee in matters which are customarily done and performed by Auctioneer in connection with the sale of property. *Id.*

As noted above, both Trustee and Auctioneer declare that Auctioneer is a disinterested person as defined in § 101(14) because Auctioneer is not a creditor, equity security holder, or insider, and Auctioneer does not have an interest materially adverse to the interest of the estate, creditors, Debtor, or any other party in interest. *Id.*; Doc. #18. Further, Trustee has made no payments on account for Auctioneer from operating revenues or income, and the source of all compensation for professional services shall be funds of the Debtor, specifically from proceeds of any sale of Property. Doc. #17. Auctioneer will not accept any engagement or perform any services for any entity related to this chapter 7 case other than Debtor. Doc. #18. Auctioneer also holds a Bankruptcy Auctioneer Blanket Bond and carries liability insurance coverage. *Id.*

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. §§ 327(a), 328 and authorize Trustee to pay the 15% commission and reimbursement of up to \$100.00 for anticipated sale preparation and storage expenses as prayed.

Sale of Firearms

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 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 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 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.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Trustee wishes to sell Property under § 363(b). Doc. #15. Richard Kent Webb ("Debtor") listed Property in the schedules with a third firearm, a "Winchester 30/30." Doc. #1, *Sched. A/B*, Part 3, ¶ 10. The three firearms are listed with a combined value of \$700.00. *Ibid.* This valuation is not itemized. Debtor claimed a \$700.00 exemption for all three firearms under Cal. Code Civ. Proc. ("C.C.P.") § 704.020. *Id.*, *Sched. C*. It is unclear how this exemption is itemized among the three firearms. Does the \$700.00 apply in full to the Winchester 30-30, leaving Property fully non-exempt? Or is the Winchester partially exempted such that sale proceeds will need to be distributed to Debtor pursuant to his exemption?

The court notes that the deadline to object to Debtor's claim of exemptions was 30 days after the conclusion of the § 341 meeting of creditors. Doc. #9. The meeting of creditors was held and concluded on December 9, 2021, so the deadline for objections passed on January 9, 2022. Doc. #9. No objections were filed.

Trustee declares that the sale is in the best interests of the estate and will result in the quickest liquidation of the property at the full, fair market value because it will be exposed to many prospective purchasers. Doc. #17. Based on Trustee's experience, this will yield the highest net recovery to the estate, both in terms of efficiency and the amount that will be realized from the sale. However, no information about the method for determining the full, fair market value of Property is provided. Further, there is no discussion regarding whether Debtor's \$700.00 exemption will entitle him to a portion of the net sale proceeds.

If there is exemption credit remaining after its application to the Winchester 30-30, and if Property sells for less than the remaining balance on that exemption, then the sale could potentially net no proceeds for the estate. The court will inquire at the hearing about the fair market value of Property, the treatment of Debtor's claimed exemption, and the proposed distribution of the net proceeds.

Should the Debtor affirmatively consent, or if the Trustee provides sufficient evidence on the value of the firearms to be sold and resolution of the Debtor's exemption, the sale of Property would appear to be in the best interests of the estate because it will provide liquidity to the estate that can be distributed for the benefit of unsecured claims. Sale by auction under these circumstances should maximize potential recovery for the estate. The sale otherwise appears to have been proposed in good faith, would be an appropriate exercise of Trustee's business judgment, and would be given deference.

No party in interest timely filed written opposition. If Trustee provides sufficient clarification, this motion may be GRANTED and Trustee may be authorized to employ Auctioneer, sell Property at public auction on or after April 5, 2022, and pay Auctioneer for its services as outlined above. Trustee may be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale, and reimbursement of reasonable expenses of up to \$100.00.

5. [19-13569](#)-B-7 **IN RE: JOHN ESPINOZA**
[JRL-7](#)

OBJECTION TO CLAIM OF DONALD JONES, CLAIM NUMBER 5
1-21-2022 [[173](#)]

JOHN ESPINOZA/MV
JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

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

John Espinoza ("Debtor") objects to Proof of Claim No. 5 filed by Debtor on behalf of Donald Jones ("Claimant") in the amount of \$10,000.00 on November 12, 2020.³ Doc. #173; Claim 5-1. Though Debtor objects to the claim, it was filed to acknowledge the potential claim against Debtor at the time of filing the case.

No party in interest timely filed written opposition. This objection will be SUSTAINED.

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1).⁴ The failure of the creditors, the chapter 7 trustee, 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

BACKGROUND

Debtor is the sole proprietor and owner of an auto body repair shop known as Johnny's Custom Paint. Doc. #175. In June of 2017, Debtor was contracted to paint Claimant's 2014 Harley Davidson Street Glide ("Harley") through Claimant's insurance provider, Allstate Northbrook Indemnity Company ("Allstate").⁵ Debtor painted the Harley. Allstate check made out to both Debtor and Claimant. Allstate assessed the damaged motorcycle and the work that was needed to repair it, which is

included as an exhibit. Doc. #176, *Ex. A*. Specifically, Allstate estimated that \$1,374.00 in paint labor (22.9 hours at \$60/hour), and \$732.80 in paint supplies would be required to repair the Harley. *Id.*, at 8.

Debtor declares Claimant agreed to provide paint, and Debtor agreed to provide the required labor for \$1,200.00, which is less than the amount appraised by Allstate. Doc. #175. As evidence, Debtor attached a copy of the work estimate as an exhibit. See Doc. #176, *Ex. B*. The estimate was prepared on May 20, 2017 and provides that Debtor will perform refinishing services for the fender, gas tank, side covers, saddlebags, trunk, and center console, among other things. Claimant signed the estimate on June 20, 2017. On June 30, 2017, Claimant paid Debtor a \$900.00 deposit. The remaining balance of \$300.00 was due upon completion. There are also notes dated July 8, 2017, indicating that "customer did not bring in parts" and February 2018, "customer was advised about [illegible.]"

Upon completion of the job, Debtor declares that Claimant inspected the work performed and took delivery of the Harley without any complaints. Doc. #175. It is unclear whether Claimant paid the outstanding \$300.00 balance.

Approximately two years later, Debtor filed bankruptcy on August 21, 2019. Doc. #1. Thereafter, Claimant came to Debtor's shop and allegedly demanded money for paint chipping under the Harley's seat. Doc. #175. Debtor informed Claimant that he had filed bankruptcy and Claimant would need to speak to his attorney. Claimant subsequently filed a small claims lawsuit in 2019 and a second lawsuit in 2020. The 2020 lawsuit is attached to Claim 5, wherein Claimant seeks recovery of \$10,000.00 for "[p]aint job cracking, didn't replace music, tv's and didn't replace rims and tires[.]" Claim 5, at 8. This work allegedly began in June of 2018 and was supposedly "[n]ever completed[.]" *Id.*

Debtor objects because he did not agree to replace music, tv's, rims, and tires. Doc. #173. Further, Debtor contends that any paint chips under the seat were caused by Claimant and are not the result of faulty workmanship. Supposedly, Claimant removed the clear coat from the tank and had another shop add additional artwork without replacing the clear coat. Doc. #175.

DISCUSSION

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under section 501, is deemed allowed, unless a party in interest objects.

Federal Rule of Bankruptcy Procedure ("Rule") 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute *prima facie* evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is

on the objecting party. *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000).

To "defeat the claim, the objector must come forward with sufficient evidence and 'show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves.'" *Id.*, at 1039. "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence." *Id.*

Here, Debtor's invoices establish that he never agreed to replace music, televisions, rims, or tires. Additionally, Debtor disputes any paint job cracking alleged in Claimant's small claims lawsuit. Further, Claimant alleges that the subject transaction occurred in June 2018, but the estimate indicates that it actually began in June 2017, so the small claims complaint appears to be factually deficient on its face. Claimant was properly served at the address indicated in the lawsuit and on the proof of claim. Claimant did not file any opposition.

CONCLUSION

Accordingly, this objection will be SUSTAINED and Claim 5 will be disallowed in its entirety.

³ Debtor complied with Rule 3007(a)(2)(A) by serving Claimant by first-class mail to the person most recently designated on the proof of claim as the person to receive notices, at the address so indicated, on January 21, 2022. Doc. #177.

⁴ The original certificate of service omitted proof that the supporting exhibits were served. Debtor corrected the certificate of service on January 31, 2022 to indicate that all pleadings, including the exhibits, were served on Claimant on January 21, 2022. Doc. #180.

⁵ The motion and declaration say that Debtor contracted with Claimant in June of 2018. Docs. #173; #175. The exhibits indicate otherwise. The Allstate estimate was prepared September 8, 2017. Doc. #176, Ex. A. Debtor's estimate contains dates ranging from May 20, 2017 to February 2018. *Id.*, Ex. B.

6. [20-11484](#)-B-7 **IN RE: CHRISTOPHER JONES**
[ICE-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH MODESTO LUNA
1-27-2022 [[21](#)]

IRMA EDMONDS/MV
IRMA EDMONDS/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 with the stipulation attached as an exhibit. A copy of the original stipulation shall be filed separately and docketed as a stipulation.

Chapter 7 trustee Irma C. Edmonds ("Trustee") requests an order approving a settlement agreement between the estate and Modesto Luna, the mother-in-law of Christopher James Jones ("Debtor"), pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #21.

No party in interest timely filed written opposition. This motion will be GRANTED.

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 the 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Debtor filed *pro se* chapter 7 bankruptcy on April 24, 2020. Doc. #1. The only pre-petition transfers reported in his *Statement of Financial Affairs*, Form 107, was a \$125.00 payment to Richard Lima for preparing a bankruptcy petition. *Id.* No payments were reported to Luna. After being appointed as Trustee and following review of the schedules and examination, Trustee discovered pre-petition transfers to Luna

totaling \$4,000.00 in March 2020. Doc. #23. As result, the estate has a pre-petition claim against Luna for preferential payments or fraudulent conveyances by Debtor to his mother-in-law within one year preceding the petition date.

Trustee and Debtor settled the claim for preferential payments made to Luna in the sum of \$1,250.00. *Id.* Trustee is in receipt of the settlement funds and seeks approval of the settlement, along with authorization to enter into, execute, and deliver any releases and other documents as may be required. Doc. #21.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Rule 9019. Approval of a compromise must be based upon considerations of fairness and equity. *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. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the *Woodson* factors balance in favor of approving the compromise. That is,

1. Although Trustee believes the probability of success in litigation is high, the need to continue the litigation is obviated based upon the terms and conditions of the settlement achieved. Doc. #21. Notwithstanding that the payments appear to be an innocent transfer between parties, there do not appear to be any defenses to Trustee's claim. However, Trustee contends that the settlement provides to the estate as much money was owing at the time of filing this matter, and further litigation to recover the remaining \$2,750.00 would not be in the best interest of the estate and the parties. *Id.*; Doc. #23.
2. If approved, there will be no difficulties in the matter of collection because Trustee has been promptly paid the settlement amount of \$1,250.00. This factor weighs in favor of approving the settlement or is neutral.
3. Trustee does not believe the action to recover the preferences would be complex. *Id.* However, even a non-complex adversary proceeding would delay in recovery and increase expenses for the estate, which would reduce the distribution to general unsecured creditors. This factor weighs in favor of approving the settlement.
4. Trustee declares that the interests of creditors and the estate weigh in favor of approving the settlement. Trustee anticipates that the settlement amount is what would be recovered in

litigation, but with significantly reduced administrative expenses because no litigation is needed. This factor supports approving the settlement.

The settlement appears to be fair, equitable, and a reasonable exercise of Trustee's business judgment.

No party in interest timely filed written opposition. The court concludes the compromise to be in the best interests of the creditors and the estate. Further, the law favors compromise and not litigation for its own sake. This motion will be GRANTED. The settlement is approved, and Trustee is authorized to enter into, execute, and deliver any releases and other documents as may be required to effectuate the settlement

Upon executing the settlement agreement, Trustee shall separately file the original agreement as a stipulation. The proposed order shall attach the settlement agreement as an exhibit.

7. [21-10495](#)-B-7 **IN RE: ROSARIO ALDACO**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
2-4-2022 [[56](#)]

JAMES SALVEN/MV
SCOTT LYONS/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted as modified below.

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

James. E. Salven ("Applicant"), in his capacity as certified public accountant employed by the estate in his capacity as chapter 7 trustee, seeks final compensation under 11 U.S.C. § 330 in the sum of \$1,296.48. Doc. #56. This amount consists of \$1,064.00 in fees as reasonable compensation and \$232.48 in reimbursement of expenses for actual, necessary services rendered for the benefit of the estate from October 19, 2021 through February 4, 2022. *Id.*

Applicant, in his capacity as chapter 7 trustee, has reviewed the application and supporting documents, and consents to the proposed payment. Doc. #60.

No party in interest timely filed written opposition. However, 0.6 hours of services, totaling \$168.00 in fees, were performed prior to the December 31, 2021 effective date of Applicant's employment. The

court will reduce the fee award by this amount and approve fees for services rendered from December 31, 2021 through February 4, 2022. The motion will be GRANTED as modified below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled. The failure of the 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 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 and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Rosario Rodriguez Aldaco ("Debtor") filed chapter 7 bankruptcy on February 26, 2021. Doc. #1. Applicant was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors on April 1, 2021. Doc. #4. Applicant, in his capacity as trustee, moved to employ himself under 11 U.S.C. §§ 327, 330, and 331 as the estate's accountant on January 7, 2022. Doc. #45. The court approved employment on January 18, 2022, effective December 31, 2021. Doc. #48. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for accounting services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Acceptance of employment was deemed to be an irrevocable waiver by Applicant of all pre-petition claims, if any, against the bankruptcy estate.

This is Applicant's first and final fee application. Applicant performed 3.8 billable hours of accounting services at a rate of \$280.00 per hour, totaling \$1,064.00 in fees. Doc. #58, Ex. A. The court notes that 0.6 billable hours, totaling \$168.00 in fees, were performed on October 29, 2021. *Id.* These services were performed before the December 31, 2021 effective date of employment. Doc. #48. Professionals who perform services for a chapter 7 trustee "cannot recover fees for services rendered to the estate unless those services have been previously authorized by a court order." *Atkins v. Wain, Samuel, & Co. (In re Atkins)*, 69 F.3d 970, 973 (9th Cir. 1995). Since services were rendered prior to December 31, 2021, the court will reduce the compensation award by the amount billed prior to the effective date of employment.

It appears applicant did not intend to charge the estate as the time entry suggests the estate was not to be charged for the service. It appears this charge was inadvertently included. Therefore, the court will reduce the compensation award by \$168.00 and Applicant will be awarded fees in the amount of **\$896.00**. Applicant also incurred **\$232.48** for the following expenses:

Copies (163 @ \$0.20)	\$32.60
Lacerte Tax Proc. (1 @ \$86.00)	+ \$86.00
Service (52 @ \$2.19)	+ \$113.88
Total expenses	= \$232.48

Doc. #58, *Ex. B*. These combined fees and expenses, including the reduction, total **\$1,128.48**.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." 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, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services included, without limitation: (1) conflict review and preparing the employment application (JES-1)⁶; (2) inputting data into tax software program; (3) preparing and processing tax returns; (4) preparing prompt determination letters; and (5) preparing, filing, and serving the fee application (JES-2). Docs. #58, *Ex. A*; #59. The court finds the services and expenses actual, reasonable, and necessary. As noted above, Applicant, in his capacity as chapter 7 trustee, has reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #60.

No party in interest timely filed written opposition. This matter will be called as scheduled because the court intends to reduce the fees as outlined above. The court is inclined to GRANT the motion and award Applicant \$896.00 in fees and \$232.48 in expenses on a final basis pursuant to 11 U.S.C. § 330. Applicant, in his capacity as chapter 7 trustee and in his discretion, will be authorized to pay himself, in his capacity as the estate's accountant, \$1,128.48 for services rendered to and costs incurred for the benefit of the estate from December 31, 2021 through February 4, 2022.

⁶ These entries were either not charged or reduced as outlined above.