

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, March 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.

1. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[CAE-1](#)

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

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

2. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-31](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
2-14-2022 [[882](#)]

LEONARD WELSH/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 the hearing.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtors and debtors in possession Eduardo Zavala Garcia and Amalia Perez Garcia (collectively, "DIP"), requests allowance of interim compensation in the amount of \$3,870.00 and reimbursement for expenses in the amount of \$214.16 for services rendered from December 1, 2021 through January 31, 2022. Doc. #882.

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). According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #33. In determining the amount of reasonable compensation to be awarded to counsel, 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 general case administration; (2) preparing for and attending status conferences; (3) assisting with the preparation of monthly operating reports; (4) assisting

with claims administration; and (5) preparing and filing the fee application. Decl. of Leonard K. Welsh, Doc. #885; Ex. B, Doc. #886. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$3,870.00 and reimbursement of expenses in the amount of \$214.16. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

1. [21-12310](#)-A-7 **IN RE: RAFAEL/LETICIA SANCHEZ**
[PFT-1](#)

MOTION TO EMPLOY GOLD AUCTION AND APPRAISAL COMPANY AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING
PAYMENT OF AUCTIONEER FEES AND EXPENSES
2-9-2022 [\[24\]](#)

PETER FEAR/MV
MARK ZIMMERMAN/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 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.

Peter L. Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Rafael E. Sanchez and Leticia Sanchez (together, "Debtors"), moves the court for an order (1) authorizing the employment of Gould Auction and Appraisal Company ("Auctioneer"); (2) authorizing the sale of a 2007 GMC Yukon SLT VIN 1GKFC13017R253518 and a 2014 Honda Accord LX VIN 1HGCR2F34EA174074 (together, the "Property") at public auction on or after March 19, 2022 at 10:00 a.m. at 6200 Price Street, Bakersfield, CA; and (3) authorizing the estate to pay Auctioneer commission and expenses. Tr.'s Mot., Doc. #24.

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 Trustee, Doc. #26. Trustee's experience indicates that a sale of the Property at public auction will yield the highest net recovery to the estate. Doc. #26. 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 Jerry Gould, Doc. #27. Trustee requires Auctioneer's services to sell the Property at public auction, advertise the sale of the Property, and assist in other matters related to the auction sale of the Property. Doc. #26. Trustee has agreed to pay Auctioneer a commission of 15% of the gross sale price, a \$250 pick-up fee per vehicle, and expenses up to \$500. Doc. #26. Trustee unambiguously requests pre-approval of payment to Auctioneer pursuant to § 328. Doc. #24.

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

2. [18-14920](#)-A-7 **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA
SJS-3 GENERAL PARTNERSHIP**

MOTION TO EMPLOY SHANON J. SLACK AS ATTORNEY(S)
2-22-2022 [\[410\]](#)

DAVID SOUSA/MV
JACOB EATON/ATTY. FOR DBT.
JOHN WASTE/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

The Notice of Hearing filed in connection with this motion does not comply with Local Rule of Practice ("LBR") 9014-1(d)(3)(B). The Notice of Hearing does not advise potential respondents whether and when written opposition must be filed. LBR 9014-1(d)(3)(B)(i). The Notice of Hearing does not advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. LBR 9014-1(d)(3)(B)(iii). The court encourages counsel to review the local rules to ensure compliance in future matters.

Further, while an application for an order approving employment is presumed to relate back to 30 days before the filing of the application, it appears that the employment application seeks approval of general insolvency counsel effective January 22, 2022. LBR 2014-1(b)(2) requires the movant show exceptional circumstances and satisfactorily explain the applicant's failure to receive prior approval and must demonstrate that the applicant's services benefited the bankruptcy estate when the retroactive effective date for employment exceeds 30 days prior to the date of the application.

3. [21-11937](#)-A-7 **IN RE: CHARLES TEMPLE
BLF-4**

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BAKKEN LAW FIRM
FOR LORIS L. BAKKEN, TRUSTEES ATTORNEY(S)
2-9-2022 [\[44\]](#)

HAGOP BEDOYAN/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.

Loris L. Bakken of the Bakken Law Firm ("Movant"), attorney for chapter 7 trustee Irma C. Edmonds ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered September 7, 2021 through March 9, 2022. Doc. #44. Movant provided legal services valued at \$6,230.00, and requests compensation for that amount. Doc. #44. Movant requests reimbursement for expenses in the amount of \$25.23. Doc. #44. This is Movant's first and final fee application. Trustee reviewed Movant's fee application has no objection. Doc. #47.

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 negotiating a settlement with the debtor; and (3) preparing and filing employment and fee applications. Decl. of Loris L. Bakken, Doc. #46; Ex. A, Doc. #48. 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 \$6,230.00 and reimbursement for expenses in the amount of \$25.23. Trustee is authorized to make a combined payment of \$6,255.23, 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.

MOTION FOR COMPENSATION FOR LORIS L. BAKKEN, TRUSTEES ATTORNEY(S)
2-9-2022 [\[60\]](#)

RILEY WALTER/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.

Loris L. Bakken of the Bakken Law Firm ("Movant"), attorney for chapter 7 trustee Irma C. Edmonds ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered June 2, 2021 through March 9, 2022. Doc. #60. Movant provided legal services valued at \$15,085.00, and requests compensation for that amount. Doc. #60. Movant requests reimbursement for expenses in the amount of \$123.14. Doc. #60. This is Movant's first and final fee application. Trustee reviewed Movant's fee application has no objection. Doc. #63.

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) investigating ownership and valuation of property of the estate, including interests in lawsuits; (3) reviewing and responding to a stay relief motion; (4) providing legal assistance in negotiating a sale of a lawsuit; and (5) providing legal assistance in negotiating a settlement of fraudulent transfer claims. Decl. of Loris L. Bakken, Doc. #62; Ex. A, Doc. #64. 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 \$15,085.00 and reimbursement for expenses in the amount of \$123.14. Trustee is authorized to make a combined payment of \$15,208.14,

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.

5. [21-11860](#)-A-7 **IN RE: KATHERINE MAKOWSKI**
[MMJ-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-27-2022 [[47](#)]

BMW BANK OF NORTH AMERICA/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
MARJORIE JOHNSON/ATTY. FOR MV.
DISCHARGED 11/08/2021

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

DISPOSITION: Granted in part and denied as moot in part.

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.

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. Doc. #48. The court encourages counsel for the moving party to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtor's discharge was entered on November 8, 2021. Doc. #39. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, BMW Bank of North America ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2014 BMW 5 Series 528i ("Vehicle"). Doc. #47.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must

be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least four complete post-petition payments. Doc. #49. Movant has produced evidence that the debtor is delinquent by at least \$1,360.48. Doc. #49.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. The Vehicle is valued at \$15,961.00 and the debtor owes \$16,988.44. Doc. #49.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least four post-petition payments to Movant and the Vehicle is a depreciating asset.

6. [22-10166](#)-A-7 **IN RE: ROBERT BARBER**
[VVF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-21-2022 [\[10\]](#)

AMERICAN HONDA FINANCE CORPORATION/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
VINCENT FROUNJIAN/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 Moving Party shall submit a proposed order after hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The movant, American Honda Finance Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2020 Honda CR-V ("Vehicle"). Doc. #10.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor is three payments past due in the amount of \$1,839.03 plus late fees of \$281.30. Doc. #12. The debtor does not oppose this motion. Doc. #16.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. Movant values the Vehicle at \$29,500.00, and the amount owed to Movant is \$36,342.06. Doc. #12. Movant recovered the vehicle on January 26, 2022, and currently has possession.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor has failed to make at least three pre-petition payments and the Vehicle is a depreciating asset. Movant has possession of the Vehicle, which was recovered pre-petition.

7. [20-10271](#)-A-7 **IN RE: JEFFREY KERBO**
[ICE-2](#)

AMENDED OBJECTION TO CLAIM OF NANCY RUSSELL KERBO, CLAIM NUMBER 2
1-31-2022 [[26](#)]

IRMA EDMONDS/MV
NICHOLAS WAJDA/ATTY. FOR DBT.
IRMA EDMONDS/ATTY. FOR MV.

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

DISPOSITION: Overruled without prejudice.

ORDER: The court will issue an order.

This objection will be OVERRULED WITHOUT PREJUDICE for improper notice.

The chapter 7 trustee ("Trustee") filed this claim objection on January 31, 2022, and set the matter for hearing on March 9, 2022. Doc. ##26-29. The Notice of Hearing required opposition to Trustee's objection to be in writing, filed with the court, and served on Trustee at least 14 days before the hearing on March 9, 2022. Doc. #27. The Notice of Hearing further stated that failure of a responding party to timely file written opposition may be deemed a waiver of any opposition. Doc. #27. The last paragraph of the Notice of Hearing stated, in bold capital letters, that failure to respond by February 23, 2022, may

result in the granting of the motion without further opportunity to respond.
Doc. #27.

Local Rule of Practice ("LBR") 3007-1(b)(1) states that written opposition to an objection to claim is only required if the objecting party files and serves the objection with at least forty-four (44) days' notice prior to the hearing date. Trustee's objection was filed and served on less than 44 days' notice. "When fewer than forty-four (44) days' notice of a hearing is given, no party in interest shall be required to file written opposition to the objection. Opposition, if any, shall be presented at the hearing on the objection." LBR 3007-1(b)(2).

Because the objection was filed and served less than 44 days before the scheduled hearing date and the Notice of Hearing required written opposition to the objection, this objection is OVERRULED WITHOUT PREJUDICE.

8. [22-10073](#)-A-7 **IN RE: JESSICA ALCALA AND MARCELO MARTINEZ GUTIERREZ**
[BDB-1](#)

MOTION TO AVOID LIEN OF CAVALRY INVESTMENTS, LLC
2-7-2022 [\[14\]](#)

JESSICA ALCALA/MV
BENNY BARCO/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE.

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

Federal Rule of Bankruptcy Procedure ("Rule") 4003(b)(1) allows a party in interest to object to a claim of exemption within 30 days after the conclusion of the § 341 meeting of creditors or 30 days after the filing of an amended Schedule C, whichever is later. In this case, the § 341 meeting was held February 22, 2022, and continued to April 4, 2022. See Tr. Reports entered on docket 2/23/2022.

Because parties in interest can still object to the debtors' claimed exemption under Rule 4003, the debtors cannot yet establish that they are entitled to the scheduled exemption the debtors assert is impaired by the lien. This motion is therefore premature and not ripe for hearing because the debtors cannot satisfy the elements required to avoid a lien under § 522(f)(1).

MOTION FOR COMPENSATION FOR JAMES SALVEN, ACCOUNTANT(S)
2-9-2022 [\[64\]](#)

JAMES SALVEN/MV
KARNEY MEKHITARIAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part, the compensation awarded will be reduced by \$125.00.

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

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). Therefore, the defaults of the non-responding parties in interest are entered. Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

James E. Salven, Certified Public Accountant ("Movant"), accountant for chapter 7 trustee Peter L. Fear ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered January 1, 2022 through March 9, 2022. Doc. #64. Movant provided accounting services valued at \$1,125.00, and requests compensation for that amount. Doc. #64. Movant requests reimbursement for expenses in the amount of \$236.82. Doc. #64. This is Movant's first and final fee application. Trustee reviewed Movant's fee application has no objection. Doc. #68.

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).

The court notes that the Order Authorizing Employment of Accountant authorized Movant's employment for services rendered on or after January 1, 2022, yet Movant billed some time on September 2, 2021. Order, Doc. #63; Ex. A, Doc. #66. 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). Because services rendered prior to January 1, 2022 were not authorized by the bankruptcy court, the court will reduce the award of compensation by the amount billed to the estate prior to January 1, 2022.

An additional wrinkle occurs when attempting to calculate the amount of the reduction. Examining Movant's Exhibit A, it appears that Movant billed a total of 4.5 hours, of which 0.5 is attributed to services rendered prior to

January 1, 2022. Ex. A, Doc. #66. However, Movant calculates fees using two different billing rates in Exhibit A. Movant uses a billing rate of \$280 per hour at the top of Exhibit A, where the time entry descriptions are listed, and uses a \$250 per hour billing rate at the bottom of Exhibit A. Id. Neither the motion, declaration, nor other documents filed in support of the fee application state Movant's hourly rate. However, the motion and supporting papers repeatedly state that Movant provided services valued at \$1,125.00, which is the product of 4.5 hours at \$250 per hour. Because an hourly rate of \$250 per hour is the amount relied on by Movant and Trustee, the court will adopt that rate. Doc. #64; Doc. #68. Therefore, a reduction of 0.5 hours billed for services rendered prior to January 1, 2022 becomes a reduction of \$125.00.

Movant's authorized services included, without limitation: (1) analyzing and entering data; (2) processing tax returns and determination letters; and (3) preparing and filing the fee application. Decl. of James E. Salven, Doc. #67; Ex. A, Doc. #66. Subject to the reduction of \$125.00, the court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion will be GRANTED on a final basis. The court will allow final compensation in the amount of \$1,000.00 and reimbursement for expenses in the amount of \$236.82. Trustee is authorized to make a combined payment of \$1,236.82, 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.