



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California**

**Honorable René Lastreto II  
Department B – Courtroom #13  
Fresno, California**

**Hearing Date: Tuesday, March 12, 2024**

Unless otherwise ordered, all matters before the Honorable René Lastreto II shall be simultaneously: (1) **In Person** at, Courtroom #13 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties or their attorneys who wish to appear at a hearing remotely must sign up by **4:00 p.m. one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>. Each party/attorney who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties and their attorneys who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest and/or their attorneys may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press who wish to attend by ZoomGov may only listen in to the hearing using the Zoom telephone number. Video participation or observing are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may attend in person unless otherwise ordered.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#). If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

**Unauthorized Recording is Prohibited:** Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

## 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.

9:30 AM

1. [20-10809](#)-B-11     **IN RE: STEPHEN SLOAN**  
[WF-9](#)

MOTION TO SELL  
2-13-2024    [\[641\]](#)

TERRENCE LONG/MV  
PETER FEAR/ATTY. FOR DBT.  
DANIEL EGAN/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed for higher and better bids only.

DISPOSITION:                    Granted.

ORDER:                            The Moving Party shall submit a proposed order after hearing.

Terrance Long ("Long"), Plan Administrator in this Chapter 11 case, seeks authorization to sell the estate's interest in real property located at 0 Volta Road, Los Banos, CA (hereinafter "the Pistachio Orchard" or "the Property") and to pay secured claims and a real estate commission from the proceeds at the close of escrow. Doc. #641.

*Id.* The motion outlines the proposed overbidding procedures with which anyone wishing to offer a competing bid at the hearing must comply. *Id.* Long further requests that the order authorize Long to pay customary closing costs, including a commission to Pearson Realty. *Id.* Long also seeks authorization to pay outstanding property taxes out of escrow, and the motion proposes to pay Oak Valley Community Bank ("Oak Valley") one-half the net proceeds of the sale in exchange for Oak Valley releasing its judgment lien on the Pistachio Orchard in the amount of \$600,593.92. *Id.* Oak Valley will retain its lien on any other assets encumbered by the judgment lien at the time of filing. *Id.*

No party in interest timely filed written opposition. This motion will be GRANTED, and the hearing will proceed for bid solicitations only.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and 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 and the matter will proceed for higher and better bids only. 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

Stephen William Sloan ("Debtor") filed this Chapter 11 case on March 2, 2020. Doc. #1. On February 2, 2022, the Chapter 11 plan was confirmed, and subject to the plan, Long was appointed Plan Administrator. Doc. #483. Provisions of the plan direct Long to sell certain property owned by Debtor, including the Pistachio Orchard if certain conditions were met under the Plan. *Id.*

On September 1, 2023, the court authorized Long to enter into a listing agreement with Stanley Kjar of Person Realty to market the Pistachio Orchard in exchange for a commission of 6% (if Kjar is the only broker involved) or 3% (if another broker is entitled to share in the total commission paid). Doc. ##594, 603.

Long previously filed a motion to approve the sale of the Property, but that sale fell through and Long withdrew the earlier motion for approval. Doc. #626. Long has since received and accepted a new offer from Eric Germino ("Buyer") to purchase the Property as outlined below subject to court approval after an overbid procedure. *Id.* See also Doc. 643 ("*Purchase Agreement*").

The relevant terms are:

1. A purchase price of \$250,000.00, plus reimbursement of cultural costs incurred by seller for the 2024 pistachio crop.
2. A deposit of \$15,000.00 which has already been paid into escrow.
3. A close of escrow on or before April 15, 2024.
4. The sale is "as-is."
5. Buyer has waived all contingencies other than court approval.

*Id.*

#### DISCUSSION

##### Sale of Property

Long is the Plan Administrator under the confirmed Plan and is not technically a "Trustee." But the Plan does provide that when the Plan Administrator assumed "post-Plan default" duties, Long would perform the obligations of Debtor with respect to liquidating properties in accordance with the Plan. Debtor's obligations were commensurate with those of a Trustee under the Plan.

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 N. Brand Partners v. Colony GFP Partners, Ltd. P'ship (In re 240 N.*

*Brand Partners*), 200 B.R. 653, 659 (B.A.P. 9<sup>th</sup> 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*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer, 16<sup>th</sup> 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).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1<sup>st</sup> Cir. 2016). There is nothing in the record suggesting that Buyer is an insider with respect to Debtor. Buyer is neither listed in the schedules nor the master address list. Docs. #1,2.

Property is listed in *Schedule A/B* with a value of \$275,000.00. Doc. #19. Debtor did not exempt Property in *Schedule C*. *Id.*

Long entered into a contract ("Purchase Agreement") with Buyer to sell Property for \$250,000.00, subject to the terms and conditions outlined above. Doc. #643. The exhibits include the Purchase Agreement, Seller's Counter-Offer, and Buyer's Contingency Removal. *Id.*

A preliminary title report was not made an exhibit to the motion, but it was incorporated by reference in Long's Declaration. Doc. #644. In it, Long averred that the Property is subject to outstanding property taxes (approximately \$3,539.42, with the actual amount to be prorated at close) and the Oak Valley judgment lien (\$600,593.92). *Id.* Oak Valley has agreed to release its lien on the Property in exchange for one-half the net sales proceeds. *Id.* The moving papers are silent as to any estimated costs of sale or recording/transfer costs.

If sold at the proposed sale price, the proceeds from the proposed sale could be illustrated as follows:

Sale price	\$250,000.00
Estimated taxes	- \$3,539.42
Estimated broker fee (6%)	- \$15,000.00
<b>Estimated sale proceeds</b>	<b>= \$231,460.51</b>
1/2 of proceeds to be paid to Oak Valley	- 115,730.25
<b>Estimated proceeds for the Estate</b>	<b>115,730.25</b>

The sale under these circumstances should maximize potential recovery for the estate. The sale of the Property appears to be in the best interests of the estate because it will pay off the outstanding tax debt, remove Oak Valley's secured lien on the Property, and provide liquidity 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. Long has

marketed the property and the property has been exposed twice - once before the current offer - and now. There are no objections to the motion. Therefore, this sale is an appropriate exercise of the Plan Administrator's business judgment and will be given deference.

#### Real Estate Brokers' Compensation

This motion affects the proposed disposition of estate assets and compensation for the Broker. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion to add Broker as a party.

LBR 9014-1(d) (5) (B) (ii) permits joinder of claims for authorization for the sale of real property and allowance of fees and expenses for such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rule 6004.

On August 8, 2023, Long moved to employ Broker to assist the Plan Administrator in carrying out his duties by selling property of the estate. Doc. #594. The court authorized Broker's employment on September 1, 2023 under 11 U.S.C. §§ 327 and 328. Doc. #603.

Pursuant to the employment order, Trustee requests to compensate Broker with a commission of 6%, which will be split equally between Broker and the buyer's real estate broker. Doc. #*Id.* Proposed Buyers' broker is T. Kaljian Real Estate, Inc. ("Kaljian"). Broker and Kaljian would each receive 3.0% commission, or \$7,500.00 each, if there are no overbidders and Property is sold at the proposed sale price. The court will authorize Trustee to pay broker commissions as prayed.

#### Overbid Procedure

Any party wishing to overbid shall, prior to the hearing, comply with the overbid procedures as outlined in the *Motion to Sell*. See Doc. #641.

#### Waiver of 14-day Stay

The motion does not request waiver of the 14-day stay of Rule 6004(h), and no such relief will be granted.

#### Conclusion

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be authorized: (1) to sell the Property to the prevailing bidder at the hearing, as determined at the hearing; (2) to execute all documents necessary to effectuate the sale of the Property; (3) to pay broker commission in the amount of 6% of the total sale price to be split evenly between Broker and the buyer's broker, as determined at the hearing; and (4) to pay all costs, commissions, and real property taxes directly from escrow. The 14-day stay of Rule 6004(h) will not be waived.

2. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**  
NON-PROFIT CORPORATION  
[WJH-33](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
2-12-2024 [[474](#)]

TWILIGHT HAVEN, A CALIFORNIA  
NON-PROFIT CORPORATION/MV  
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

3. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**  
NON-PROFIT CORPORATION  
[WJH-34](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
2-12-2024 [[479](#)]

TWILIGHT HAVEN, A CALIFORNIA  
NON-PROFIT CORPORATION/MV  
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

4. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**  
[PSJ-32](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF PERKINS COIE  
LLP FOR PAUL S. JASPER, CREDITORS ATTORNEY(S)  
2-9-2024 [[1400](#)]

RILEY WALTER/ATTY. FOR DBT.  
PAUL JASPER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted or continued to a date to be  
determined.

ORDER: Unless otherwise ordered, the moving party  
shall submit a proposed order after hearing.

Perkins Coie LLP ("Applicant"), co-counsel to the chapter 11  
Creditors Committee ("the Committee") in the above-styled Chapter 11  
case filed by Madera Community Hospital ("Debtor"), requests  
approval of its *Second Interim Application for Allowance of*  
*compensations for services and reimbursement of Expenses* under 11  
U.S.C. §§ 330 and 331 in the sum of **\$153,735.50** in attorneys' fees  
and **\$1,724.95** in expense reimbursement for a total award of  
**\$155,100.49**. Doc. #1400.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest timely filed written opposition. This motion will be GRANTED or continued to a new date. The Application does not include a statement by the Committee or any of its constituent members approving of this Fee Application, although Applicant does aver that it sent an email containing the Application to the Committee members, none of whom raised any objections. Doc. #1400. In the absence of a signed statement by the Committee or at least the Committee Chairman affirmatively evincing non-opposition to this Application, the court will continue the matter to permit counsel to obtain the affirmative approval from the Committee.

Applicant's retention as committee counsel was authorized pursuant to 11 U.S.C. §§ 327(a) and 329-31 on May 23, 2023, effective on the petition date. Doc. #970. This is Applicant's Second Interim Fee Application, which has been brought pursuant to the *Order Establishing Procedures for Allowance and Payment of Interim Compensation*, which this court entered on August 2, 2023 ("the Compensation Order"). *Id.*, Doc. #759. Under the terms of the Compensation Order, Applicant (along with several other professionals subject to the Compensation Order ("the Subject Professionals")) was required to submit monthly fee statements to various entities listed in the order to give those entities time to object to any fee requests. Doc. #759. The Compensation Order authorized Applicant to collect 80% of any fees owed under the monthly fee statement, with the remaining 20% collectable only after an interim or final application for compensation such as the one presently before the court. *Id.*

Pursuant to the Compensation Order and §§330 and 331 of the Code, Applicant now seeks court approval to collect the remaining 20% of the outstanding fees and expenses owed to it for work done and expenses incurred from August 1, 2023, through November 30, 2023. Doc. #1400. The Application seeks approval of **\$153,735.50** in attorney's fees and **\$1,724.95** in expenses over that span. *Id.* Of that, Applicant has already been paid **\$122,700.40** (or 80% of the attorney's fees billed), as well as **\$1,724.99** for expense reimbursement. *Id.* The remaining 20% in billable fees is **\$30,657.10**



for which Applicant needs court approval prior to payment. *Id.* There is no outstanding expense reimbursement still owed.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" 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). The previous interim compensation awards under 11 U.S.C. § 331 are subject to final review under § 330.

Applicant's services here included, without limitation: (1) asset analysis and recovery (Fees: \$10,845.00; Hours 10.9), (2) asset disposition (Fees: \$59,998.50; Hours 60.3), (c) case administration (Fees: \$16,682.00; Hours: 31.2), (d) claims administration and objections (Fees \$11,830.50; Hours 16.8), (e) executory contracts and unexpired leases (Fees: \$2,786.00; Hours 2.8); (f) fee applications (Fees: \$20,330; Hours 28.2), (f) financing (Fees: \$5,671.50; Hours: 5.7), (g) interim compensation (Fees: \$23,507.50; Hours: 54.4), (h) meetings of creditors (Fees: \$13,239.50; Hours: 16.4), and (j) plan and disclosure statement (Fees: \$31,252.50; Hours: 37.4). Doc. ##1400, 1403.

If the necessary approvals are forwarded to the court, Applicant's interim request for attorney's fees in the amount of **\$153,735.00** and expenses in the amount of **\$1,724.95** will be approved. It will be further ordered that Applicant is allowed to collect the uncollected 20% of fees and expenses in the amount of **\$30,657.10**.

5. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[PSJ-33](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SILLS CUMMIS &  
GROSS P.C FOR ANDREW H SHERMAN, CREDITORS ATTORNEY(S)  
2-9-2024     [[1405](#)]

RILEY WALTER/ATTY. FOR DBT.  
PAUL JASPER/ATTY. FOR MV.

TENTATIVE RULING:             This matter will proceed as scheduled.

DISPOSITION:                     Granted or continued to a date to be  
determined.

ORDER:                             Unless otherwise ordered, the moving party  
shall submit a proposed order after hearing.

Sills Cummins & Gross P.C. ("Applicant"), co-counsel to the chapter 11 Creditors Committee ("the Committee") in the above-styled Chapter 11 case filed by Madera Community Hospital ("Debtor"), requests approval of its motion for interim compensation under 11 U.S.C. §§ 330 and 331 in the sum of **\$253,181.70**, which includes **\$252,990.00** in

attorney's fees and **\$191.70**, less amount already paid, in expense reimbursement. Doc. #1405.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest timely filed written opposition. This motion will be GRANTED or continued to a new date. The Application does not include a statement by the Committee or any of its constituent members approving of this Fee Application, although Applicant does aver that it sent an email containing the Application to the Committee members, none of whom raised any objections. Doc. #1405. In the absence of a signed statement by the Committee or at least the Committee Chairman affirmatively evincing non-opposition to this Application, the court may continue the matter to permit counsel to obtain the affirmative approval from the Committee.

Applicant's retention as committee co-counsel was authorized pursuant to 11 U.S.C. §§ 327(a) and 329-31 on May 23, 2023, effective on the petition date. Doc. #489. This is Applicant's Second Interim Fee Application, which has been brought pursuant to the *Order Establishing Procedures for Allowance and Payment of Interim Compensation*, which this court entered on August 2, 2023 ("the Compensation Order"). *Id.*, Doc. #759. Under the terms of the Compensation Order, Applicant (along with several other professionals subject to the Compensation Order ("the Subject Professionals")) was required to submit monthly fee statements to various entities listed in the order to give those entities time to object to any fee requests. Doc. #759. The Compensation Order authorized Applicant to collect 80% of any fees owed under the monthly fee statement, with the remaining 20% collectable only after an interim or final application for compensation such as the one presently before the court. *Id.*

Pursuant to the Compensation Order and §§330 and 331 of the Code, Applicant now seeks court approval to collect the remaining 20% of the outstanding fees and expenses owed to it for work done and expenses incurred from August 1, 2023, through November 30, 2023. *Id.* The Application seeks approval of **\$252,990.00** in attorney's fees and **\$191.70** in expenses over that span. Doc. #1405. Of that, Applicant has already been paid **\$202,392.00** (or 80% of the

attorney's fees billed), as well as \$417.26 in reimbursement for expenses. *Id.* The remaining 20% of compensation sought consists of **\$102,168.00** in fees and **\$45.40** in expense reimbursements, for which Applicant needs court approval prior to payment. *Id.*

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" 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). The previous interim compensation awards under 11 U.S.C. § 331 are subject to final review under § 330.

Applicant's services here included, without limitation: (a) asset analysis and recovery (Fees: \$11,547.50; Hours 12.9), (b) asset disposition (Fees: \$55,407.00; Hours 59.4), (c) business operations (Fees: \$2m382,59; Hours: 2.7), (d) case administration (Fees: \$44,784.50; Hours: 53.3), (e) claims administration and objections (Fees \$12,770.00; Hours 15.2), (f) fee applications (Fees \$23,869.50; Hours: 32.3), (g) fee/employment objections (Fees, \$290.00; Hours: 0.4), (h) financing (Fees: \$31,629.50; Hours: 34.9), (i) litigation (other than avoidance action litigation) (Fees: \$4,842.50; Hours 7.7); (j) plan and disclosure statement (Fees: \$103,987.50; Hours 140.7), (k) relief from stay proceedings (Fees: \$11,778.00; Hours: 14.6), and (l) corporate finance and valuation (Fees: \$612.50; Hours: 0.7). Doc. #1405.

If the necessary approvals are forwarded to the court, Applicant's interim request for attorney's fees in the amount of **\$252,990.00** and expenses in the amount of **\$191.70** will be approved. It would be further ordered that Applicant is allowed to collect the uncollected 20% of compensation owed in the amount of **\$102,168.00** in fees and **\$45.40** in expenses.

6. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**  
[PSJ-34](#)

MOTION FOR COMPENSATION FOR FTI CONSULTING, INC, FINANCIAL  
ADVISOR(S)  
2-9-2024 [[1410](#)]

RILEY WALTER/ATTY. FOR DBT.  
PAUL JASPER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted or continued to a date to be  
determined.

ORDER: Unless otherwise ordered, the moving party  
shall submit a proposed order after hearing.

FTI Consulting, Inc. ("Applicant"), financial adviser to the chapter 11 Creditors Committee ("the Committee") in the above-styled Chapter 11 case filed by Madera Community Hospital ("Debtor"), requests approval of its *Second Interim Application* for compensation and expense reimbursement under 11 U.S.C. §§ 330 and 331 in the sum of **\$94,010.00** in fees for professional services. Doc. #1410. Of that, **\$18,802.00** remains to be paid. *Id.* No expense reimbursement is sought in this Application. *Id.*

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest timely filed written opposition. This motion will be GRANTED or continued to a new date. The Application does not include a statement by the Committee or any of its constituent members approving of this Fee Application, although Applicant does aver that it sent an email containing the Application to the Committee members, none of whom raised any objections. Doc. #1410. In the absence of a signed statement by the Committee or at least the Committee Chairman affirmatively evincing non-opposition to this Application, the court will continue the matter to permit counsel to obtain the affirmative approval from the Committee.

Applicant's retention as financial advisor to the committee was authorized pursuant to 11 U.S.C. §§ 327(a) and 329-31 on June 21, 2023, effective on the petition date. Doc. #595. This is Applicant's Second Interim Fee Application, which has been brought pursuant to the *Order Establishing Procedures for Allowance and Payment of Interim Compensation*, which this court entered on August 2, 2023 ("the Compensation Order"). *Id.*, Doc. #759. Under the terms of the Compensation Order, Applicant (along with several other professionals subject to the Compensation Order ("the Subject Professionals")) was required to submit monthly fee statements to various entities listed in the order to give those entities time to object to any fee requests. *Id.* The Compensation Order authorized Applicant to collect 80% of any fees owed under the monthly fee statement, with the remaining 20% collectable only after an interim or final application for compensation such as the one presently before the court. *Id.*

Pursuant to the Compensation Order and §§330 and 331 of the Code, Applicant now seeks court approval to collect the remaining 20% of the outstanding fees and expenses owed to it for work done and expenses incurred from August 1, 2023, through November 30, 2023. *Id.* The Application seeks approval of **\$94,010.00** in professional fees and **\$0.00** in expenses over that span. Doc. #1410. Of that, Applicant has already been paid **\$75,208.00** (or 80% of the professional fees billed). No expenses have been billed by or reimbursed to this Applicant as of this filing. *Id.* The remaining 20% in billable fees is **\$18,802.00**, for which Applicant needs court approval prior to payment. *Id.*

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" 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). The previous interim compensation awards under 11 U.S.C. § 331 are subject to final review under § 330.

Applicant's services here included, without limitation: (a) current operating results and events (Fees: \$6,287.00; Hours 5.4), (2) cash and liquidity analysis (Fees: \$15,289.50; Hours 14.4), (c) financing matters (DIP, Exit, Other) (Fees: \$2,371.00; Hours: 2.2), (d) trade vendor issues (Fees: \$394.00; Hours: 0.4), (e) real estate issues (Fees: \$394.00; Hours 0.4), (f) asset sales (Fees \$24,773.50; Hours: 25.2), and (g) analysis of other miscellaneous motions (Fees: \$492.50; Hours: 0.5). Doc. #1410.

If the necessary approvals are forwarded to the court, Applicant's interim request for attorney's fees in the amount of **\$94,010.00** and expenses in the amount of **\$0.00** will be approved. It would be further ordered that Applicant is allowed to collect the uncollected 20% of compensation owed in the amount of **\$18,802.00** in fees and **\$0.00** in expenses.

7. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[SSA-2](#)

MOTION FOR ADMINISTRATIVE EXPENSES  
2-8-2024    [[1389](#)]

TELCION COMMUNICATIONS  
GROUP/MV  
RILEY WALTER/ATTY. FOR DBT.  
STEVEN ALTMAN/ATTY. FOR MV.  
CONT'D TO 3/26/24 PER ECF ORDER #1469

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

DISPOSITION:                    Continued to March 26, 2024, at 9:30 a.m.

No order is required.

Pursuant to the Stipulation approved by this court on February 23, 2024 (Doc. #1469), this matter is CONTINUED to March 26, 2024, at 9:30 a.m.

8. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[WJH-3](#)

FURTHER HEARING RE: MOTION TO USE CASH COLLATERAL AND/OR  
MOTION FOR ADEQUATE PROTECTION  
3-13-2023    [[18](#)]

MADERA COMMUNITY HOSPITAL/MV  
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

11:00 AM

1. [23-12646](#)-B-7     **IN RE: TIMOTHY/ANDREA PUERNER**

REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION  
2-1-2024     [[15](#)]

ROBERT CERVANTES/ATTY. FOR DBT.

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

DISPOSITION:     Dropped and removed from the court's calendar.

ORDER:             The court will issue an order.

Debtor's counsel shall notify the debtor that no appearance is necessary.

A Reaffirmation Agreement between Timothy and Andrea Puerner ("Debtors") and Noble Credit Union for a 2021 Chevrolet Silverado #136281 was filed on February 1, 2024. Doc. #15.

The court is not approving or denying approval of the reaffirmation agreement. Debtors were represented by counsel when entering into the agreement. The form of the reaffirmation agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the Debtors' attorney with the appropriate attestations. *Id.* Pursuant to § 524(d), the court need not approve the agreement.

1:30 PM

1. [23-12602](#)-B-7    **IN RE: CINDY SOLTIS**  
[JDR-1](#)

MOTION TO AVOID LIEN OF BANK OF AMERICA, N.A.  
2-9-2024    [[14](#)]

CINDY SOLTIS/MV  
JEFFREY ROWE/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.

Cindy Soltis ("Debtor") moves for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of Bank of America, N.A. ("Creditor") in the sum of \$12,187.50 and encumbering residential real property located at 2362 Lance Street, Merced, CA 95348 ("Property"). Doc. #14.

Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor's registered agent for service of process via first class mail on June 15, 2023. Doc. #18. Debtor further complied with Rule 7004(h) by serving Creditor, an insured depository institution, in this contested matter via certified mail addressed to an officer of the institution. Rule 7004(h). The exceptions to Rule 7004 are not implicated. See Rule 7004(h)(1)-(3).

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 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.



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). § 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), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of Creditor in the amount of \$12,187.50 on June 13, 2023. *Ex. B*, Doc. #17. The abstract of judgment was issued on October 9, 2023, and was recorded in Merced County on October 27, 2023. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #1. Debtor estimates that the current amount owed on account of this lien is \$12,187.50. *Id.*

As of the petition date, Property had an approximate value of \$131,000.00. *Id.*; *cf. Sched. A/B*, Doc. #1. Debtor claimed a \$340,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Sched. C, id.*

Property is encumbered by a first deed of trust in favor of First American Mortgage Solutions on Behalf of Stearns Lending ("Mortgagee") in the amount of \$152,250.00. *Sched. D, id.* Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. Mortgagee	152,250.00	6/5/2019	Unavoidable
2. Creditor	\$12,187.50	10/27/2023	Avoidable

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*; § 522(f)(2)(B).

"Under the full avoidance approach, as used in *Brantz*, the only way a lien would be avoided 'in full' was if the debtor's gross equity were equal to or less than the amount of the exemption." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 596 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999), citing *In re Brantz*, 106 B.R. 62, 68 (Bankr. E.D. Pa. 1989) ("Avoidance of all judicial liens results unless (3) [the result of deducting the debtor's allowable exemptions and the sum of all liens not avoided from the value of the property] is a positive figure."), citing *In re Magosin*, 75 B.R. 545, 547 (Bankr. E.D. Pa. 1987) (judicial lien was avoidable in its entirety where equity is less than exemption).

This lien is the only lien subject to avoidance, and there is not any equity to support the lien. Strict application of the

§ 522(f)(2) formula with respect to Creditor's junior lien is illustrated as follows:

Amount of judgment lien		\$12,187.50
Total amount of unavoidable liens	+	\$152,250.00
Debtor's claimed exemption in Property	+	340,000.00
<i>Sum</i>	=	\$504,437.50
Debtor's claimed value of interest absent liens	-	\$152,250.00
Extent lien impairs exemption	=	\$352,187.50

*All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007); accord. *Hanger* 217 B.R. at 596, *Higgins v. Household Fin. Corp. (In re Higgins)*, 201 B.R. 965, 967 (B.A.P. 9th Cir. 1996); cf. *Brantz*, 106 B.R. at 68, *Magosin*, 75 B.R. at 549-50, *In re Piersol*, 244 B.R. 309, 311 (Bankr. E.D. Pa. 2000). Since there is no equity for liens to attach and this case does not involve fractional interests or co-owned property with non-debtor third parties, the § 522(f)(2) formula can be re-illustrated using the *Brantz* formula with the same result:

Fair market value of Property		\$131,000.00
Total amount of unavoidable liens	-	\$152,250.00
Homestead exemption	-	\$340,000.00
Remaining equity for judicial liens	=	(\$133,000.00)
Creditor's judicial lien	-	12,187.50
Extent Debtor's exemption impaired	=	(\$145,187.50)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support any judicial liens. Therefore, the fixing of Creditor's judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). Accordingly, this motion will be GRANTED. The proposed order shall state that Creditor's lien is avoided on the subject Property only and include a copy of the abstract of judgment as an exhibit.

2. [24-10009](#)-B-7     **IN RE: NELSON MARTINEZ AND BIANCA ORTIZ**  
[PPI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-22-2024    [16]

HUGHES FEDERAL CREDIT UNION/MV  
LAYNE HAYDEN/ATTY. FOR DBT.  
MISTY PERRY-ISAACSON/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    The court intends to grant the motion for relief on the grounds stated in the motion.

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

Hughes Federal Credit Union ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2012 Toyota Tundra Crew Max (Vin No. 5TFD&5F11CX240323) ("Vehicle"). Doc. #16. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). *Id.*

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was filed and served 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.

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 an 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 Nelson Martinez and Bianca Ortiz ("Debtors") are two payments past due in the amount of \$939.68 and one post-petition payment in the amount of \$484.92. Doc. #19. Additionally, Debtor has failed to maintain insurance coverage.

The court also finds that the Debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because Debtors are in chapter 7. Movant values the

Vehicle at \$22,220.00 and the amount owed to Movant is \$23,715.40.  
Doc. #20.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the 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. Adequate protection is unnecessary in light of the relief granted herein.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the Debtors have failed to make at least one post-petition payment and the Vehicle is a depreciating asset.

3. [19-10016](#)-B-7     **IN RE: QUALITY FRESH FARMS, INC.**

MOTION FOR PAYMENT OF UNCLAIMED FUNDS IN THE AMOUNT OF \$  
11081.15 WITH ANISHA BLODGETT  
2-1-2024     [\[181\]](#)

RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION:     Continued to March 26, 2024, at 1:30 p.m.

ORDER:            The court will issue an order.

Upon the ex parte request of the Movant, Anisha Blodgett, for a continuance due to a scheduling conflict, this application for payment of unclaimed funds will be continued to March 26, 2018, at 1:30 p.m.

4. [23-12916](#)-B-7     **IN RE: AMANDA SMITH**  
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
2-6-2024     [\[18\]](#)

**After posting the original pre-hearing dispositions, the court has modified its intended ruling on this matter.**

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

DISPOSITION:     Conditionally denied.

ORDER:            The court will issue an order.

The Chapter 7 trustee ("Trustee") seeks dismissal of this case for the debtor's failure to appear and testify at the § 341(a) meeting of creditors held on February 5, 2024. Doc. #19.

Amanda Smith ("Debtor") timely filed written opposition. Doc. #21. Debtor avers that she did not attend the hearing because she was unable to download the link to the Zoom conference. *Id.*

This motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for **April 1, 2024, at 4:00 p.m.** See Doc. #18. If Debtor fails to appear at testify at the rescheduled meeting, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The times prescribed in Fed. R. Bankr. P. 1017(e)(1) and 4004(a) for the Chapter 7 Trustee and U.S. trustee to object to Debtor's discharge or file motions for abuse, other than presumed abuse under § 707, are extended to 60 days after the conclusion of the meeting of creditors.

5. [24-10127](#)-B-7     **IN RE: VILMA JOSUE**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE  
1-22-2024    [\[6\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

**After posting the original pre-hearing dispositions, the court has modified its intended ruling on this matter.**

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

DISPOSITION:                    Denied as moot.

ORDER:                            The court will enter the order.

The docket in the above-styled case reflects that the Debtor paid the filing fee in full on February 20, 2024. *See Docket.* Accordingly, this motion is DENIED as moot and will be dropped from the calendar.

6. [23-12833](#)-B-7     **IN RE: PEAK POWER, LLC**  
[DMG-2](#)

MOTION TO EMPLOY GOULD AUCTION AND APPRAISAL COMPANY AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES  
2-20-2024    [\[21\]](#)

JEFFREY VETTER/MV  
LEONARD WELSH/ATTY. FOR DBT.  
D. GARDNER/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.

Jeffrey Vetter ("Trustee"), the trustee in the Chapter 7 bankruptcy of Peak Power LLC ("Debtor"), seeks authorization to (a) employ Jerry Gould ("Gould") of Gould Auction and Appraisal Company ("GAAC" or "the Auctioneer") under 11 U.S.C. § 328; (b) sell the estate's interest in certain estate assets ("the Estate Assets") at public auction under § 363(b)(1); and (c) compensate Auctioneer under §§ 327(a) and 328. Doc. #21. The proposed auction will be held on or after April 27, 2024, at 9:00 a.m. at 6200 Price Way, Bakersfield, CA, 93308, subject to court approval. Doc. #23.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was filed and served on at least 21 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Fed. R. Bankr. P. ("Rule") 2002(a)(2) and (a)(6) 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.

#### Employment and Compensation

This motion affects the proposed disposition of estate assets and retention and compensation of an 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 to add Auctioneer as a party.

LBR 9014-1(d)(5)(B)(iii) permits joinder of requests for authorization to employ a professional, i.e., auctioneer, for sale of estate property at public auction, and allowance of fees and expenses for such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rules 6004-05.

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 the trustee's duties. The professional is required to be a disinterested person and neither hold nor represent interests adverse to the estate. § 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).

Under these sections, Trustee requests to employ and compensate Auctioneer by paying: (i) **a 15% commission** on the gross proceeds from the sale; and (ii) estimated expenses not to exceed \$1,200.00 for storage and sale, plus up to \$500.00 for "extraordinary expenses" including detailing and repairs, for a total maximum expense compensation of **\$1,700.00**. Doc. #21. Auctioneer will be responsible for paying all applicable sales tax and "ordinary expenses" such as security, advertising, and other costs of sale. Doc. #21. Auctioneer will also charge a "buyers commission" in the form of an additional 10% on the purchase price to be paid by any buyers. Docs. #23.

Trustee and Gould 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.* With respect to Debtor, Auctioneer is not a creditor, equity security holder, insider, investment banker for a security of the debtor within the three years before the petition date, or an attorney for such investment banker, and within two years of the petition date was not a director, officer, or employee of the Debtor or an investment banker. *Id.* Auctioneer does not have an interest materially adverse to the interest of the estate, creditors, Debtor, equity security holders, an investment banker for a security of the debtors, or any other party in interest, and had not served as an examiner in this case. *Id.* Auctioneer does not have any connection with any creditors, parties in interest, their attorneys, accountants, the U.S. Trustee, or anyone employed by the U.S. Trustee. *Id.* Additionally, no agreement exists between Auctioneer or any other person for the sharing of compensation received by Auctioneer in connection with the services rendered. *Id.*

Trustee declares that it is necessary to employ Auctioneer to liquidate the Estate Assets. Doc. #24. Trustee believes that the proposed fees and expenses for services are reasonable and customary for the services to be rendered by Auctioneer. *Id.* Auctioneer will assist Trustee by (1) actively advertising the sale of the property, (2) generally performing and assisting Trustee in matters customarily done and performed by auctioneers in connection with an auction sale of property. *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 up to \$1,200.00 for storage expenses and up to \$500.00 for extraordinary expenses, as prayed.

#### Proposed Sale

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).

The Estate Assets include a voluminous mix of vehicles and other personal property used in Debtor's business operations. The seven vehicles are listed in Debtor's *Schedule A/B* as having an aggregate value of approximately \$197,286. Doc. 1, *Sched. A/B*. Three of the vehicles are subject to secured claims with an aggregate value of \$112,000.00, all of which will be paid at the time of sale. Doc. #21. Neither the moving papers nor *Schedule A/B* provide any estimated value for the other personal property to be sold, all of which appear to fall under the heading of machinery or equipment. The total value of all machinery, equipment, and vehicles on *Schedule A/B* is \$205,786.00. Doc. #1, *Sched. A/B*. Debtor is a business, and so none of the Estate Assets are subject to exemption.

There is no indication in the moving papers as to the expected sale price for any of the Estate Assets beyond the implicit assertion that it will be enough to pay off the debts secured by the three encumbered vehicles and also the Auctioneer's fees and expenses and still provide some equity to be paid to unsecured creditors.

Trustee believes that using the auction process to sell the Estate Assets 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 could 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 such that the sale of the Vehicle would be in the best interests of the estate if 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. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.



## Conclusion

This matter will be called and proceed as scheduled. In the absence of opposition, this motion will be GRANTED. Trustee will be permitted to employ Auctioneer, sell the Vehicle and Estate Assets at public auction, and pay Auctioneer for its services as outlined above. If the sale is completed, Trustee will be authorized to compensate Auctioneer on a percentage collected basis: **15%** of gross proceeds from the sale and payment of up to **\$1,200.00** for moving and storage expenses and up to **\$500.00** for extraordinary expenses.

7. [23-10961](#)-B-7     **IN RE: GARY FERNANDEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
2-16-2024    [[31](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:                The minutes of the hearing will be the  
                                  court's findings and conclusions.

ORDER:                        The court will issue an order.

Gary Fernandez ("Debtor") made an installment payment on June 27, 2023. On July 2, 2023, the payment was rejected for insufficient funds. Doc. #14. There is a \$53.00 charge for returned checks. On September 5, 2023, a *Notice of Intent to Close Chapter 7 Case Without Entry of Discharge Due to Failure to Pay Filing Fee and Administrative Fee* was filed and served on Debtor. Docs. ##27, 28. Debtor paid the filing fee in the amount of \$338.00 on September 29, 2023, but did not pay the returned check fee. On February 16, 2024, an *Order to Show Cause re Dismissal, Conversion or Imposition of Sanctions Combined with Notice Thereof* was filed and served on Debtor. Docs. ##31, 312.

This matter will proceed as scheduled. If the returned check fee of \$53.00 is not paid prior to the hearing, the court may correct the docket, vacate the discharge, and close the case without entry of discharge under Fed. R. Civ. Proc. 60 (a) (Fed. R. Bankr. Proc. 9024) and sanctions imposed on the Debtor and/or Debtor's counsel on the grounds stated in the OSC

8. [23-12788](#)-B-7     **IN RE: JONATHAN LEONARDO**  
[CAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-5-2024    [[16](#)]

CAPITAL ONE AUTO FINANCE/MV  
SETH HANSON/ATTY. FOR DBT.  
CHERYL SKIGIN/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.

Capital One Auto Finance ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2021 Nissan Rogue SV, 5N1AT3BB0MC823054 ("Vehicle"). Doc. #16. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). Id.

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 amount of damages). *Televideo Systems, 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.

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 an 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 Debtor has missed two pre-petition payments totaling \$987.44 and two post-petition payments in the amount of \$987.44. Docs. #17, 19.

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 Debtor is in chapter 7. *Id.* The Vehicle is valued at \$24,182.00 and Debtor owes \$27,678.33. Docs. #17, 19.

Accordingly, the motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the 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.

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