

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, March 30, 2021
Place: Department B – Courtroom #13
Fresno, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

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. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

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

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

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

9:30 AM

1. [20-11612](#)-B-11 **IN RE: BENTON ENTERPRISES, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
5-5-2020 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

2. [20-11612](#)-B-11 **IN RE: BENTON ENTERPRISES, LLC**
[FW-5](#)

CONFIRMATION HEARING RE: CHAPTER 11 PLAN
2-2-2021 [[141](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

3. [20-11612](#)-B-11 **IN RE: BENTON ENTERPRISES, LLC**
[FW-7](#)

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION FOR
COMPENSATION FOR PEARSON REALTY, BROKER(S)
3-2-2021 [[154](#)]

BENTON ENTERPRISES, LLC/MV
PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Granted in part.

ORDER: The Moving Party shall submit a proposed order
after 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 the
creditors, the U.S. Trustee, or any other party in interest to file
written opposition at least 14 days prior to the hearing as required
by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to

the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered 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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Debtor-in-possession Benton Enterprises, LLC ("DIP"), seeks authorization to sell the estate's interest in certain agricultural real property ("Real Property") and related equipment ("Equipment" or collectively, "Estate Assets") to Prabjit Singh "or assignee" ("Buyer") subject to higher and better bids for \$4,000,000.00. Doc. #154. DIP intends to pay property taxes and the claims of secured creditors Fresno-Madera Federal Land Bank Association, FLCA ("FLCA") and Fresno-Madera Production Credit Association ("PCA") using the sale proceeds.

But DIP also wishes to sell the Estate Assets pursuant to 11 U.S.C. § 363(f)(5)—free and clear of the liens of (i) ESHEG, Inc., as successor in interest to Fresno First Bank ("ESHEG"); (ii) Everett Meisser, Jr., Trustee of the amended and restated Jeffrey M. Canepa 2012 Irrevocable Trust dated December 11, 2012 ("Canepa Trust"); and (iii) Everett Meisser, Jr., as successor Trustee of the Canepa Trust (collectively "Claimants"). DIP seeks further authorization to pay a brokerage commission of five percent (5%) to be split evenly between the buyer and seller's brokers. No party in interest timely filed written opposition.

This motion will be GRANTED IN PART.

11 U.S.C. §§ 363, 1107

11 U.S.C. § 1107 gives the DIP all the rights and powers of a trustee and shall perform all the functions and duties, certain exceptions inapplicable here.

11 U.S.C. § 363(b)(1) allows the DIP 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, LP (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enterprises, 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 [DIP]'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 [DIP]'s business judgment is to be given great judicial deference." *Id.* citing *In re Psychometric Systems, 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).

Under 11 U.S.C. § 363(f)(5), the DIP may sell property of the estate outside the ordinary course of business under § 363(b), after notice and a hearing, free and clear of any interest in such property of an entity other than the estate only if such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

Background

DIP filed its chapter 11 petition on May 5, 2020. Doc. #1. DIP owns Estate Assets consisting of approximately 130 acres of Real Property and related Equipment in Madera County. Doc. #156, ¶ 3. Approximately 102 acres are planted with almonds and 28 acres contain an almond harvesting operation, which includes a 20,600-square-foot nut processing facility, 3,000-square-foot storage warehouse, 2,640-square-foot pole barn, 4,000-square-foot residence, and 1,700-square-foot home that DIP used as an office space. *Ibid.* The related Equipment is a "substantial amount of nut processing equipment" located on the Real Property. *Ibid.*

The Estate Assets are listed in the schedules as follows: Real Property is valued at \$4,600,000.00 and located at 18252 Avenue 20, Madera, CA, includes two houses, 134 acres of almond farmland, and facilities. Doc. #13, Schedule A/B, ¶ 55. A full list of the Equipment is also attached, which DIP states was appraised at \$2,800,000 on February 19, 2019 with approximately \$100,000 worth of equipment sold prior to the petition date, resulting in an Equipment value of \$2,700,000.00. *Id.*, ¶ 50. By this court's estimate, the Estate Assets were listed for an approximate total value of \$7,300,000.00, though it does appear that four fewer acres are included in this sale than were scheduled.

On May 29, 2020, DIP sought to employ Pearson Realty ("Broker") to sell the Estate Assets. Doc. #28. The court authorized Broker's employment under 11 U.S.C. §§ 327(a) and 328 on June 8, 2020. Doc. #38.

DIP recently entered into a contract to sell the Estate Assets to Buyer "or assignee" for \$4,000,000.00. See Doc. #157, Ex. A. Per the purchase agreement, "[a]ll processing equipment and related machinery related to running the business" are included in the sale. *Id.*, at 12, ¶ 11(B). The purchase agreement is also subject to the attached counteroffer modifying the purchase price from \$4,500,000.00 to \$4,000,000.00. *Id.*, at 23-24.

DIP also has a hearing on the confirmation of its Chapter 13 Plan scheduled in matter #2 above. See FW-5. This Plan contemplates this sale free and clear of certain liens, with those liens to attach to the proceeds of the sale. DIP anticipates that the affected creditors will consent. Doc. #154, ¶ 8. If they do not consent, DIP wants to conduct such sale free and clear under 11 U.S.C. §§ 363(f)(5) and 1129(b)(2)(A)(ii). This will be discussed further below.

Secured Creditors - Paid Through Sale Proceeds

The Estate Assets' Real Property is encumbered by multiple secured creditors. DIP proposes to pay the following creditors from the sales proceeds:

(1) FLCA is secured by Real Property with a first priority deed of trust and UCC-1 financing statement. FLCA is listed in Schedule D with a secured claim of \$2,190,182.79 as of the petition date. Doc. #13, Schedule D, ¶ 2.6. FLCA filed Proof of Claim No. 12 on June 25, 2020 in the amount of \$2,369,061.96. See Claim #12-1. William B. Pitman, DIP's president, estimates approximately \$2,500,000.00 is owed to FLCA based on its balance of \$2,461,004.79 as of November 30, 2020. Doc. #156, ¶ 6(b).

(2) PCA is secured by Real Property with a second priority deed of trust and UCC-1 financing statement. PCA is listed in Schedule D as Fresno Madera Farm Credit with a secured claim of \$673,700.12 as of the petition date. Doc. #13, Schedule D, ¶ 2.5. PCA filed Proof of Claim No. 13 on June 25, 2020 in the amount of \$733,172.52. See Claim #13-1. Mr. Pitman estimates approximately \$770,000.00 is owed to PCA based on its balance of \$769,384.70 as of November 30, 2020. Doc. #156, ¶ 6(c).

(3) Tracy Kennedy Desmon, Treasurer, is listed in Schedule D with two entries totaling \$100,189.96 on behalf of the Madera County Tax Collector ("MCTC"). Doc. #13, Schedule D, ¶¶ 2.9-2.10. MCTC filed Proof of Claim No. 32 on October 28, 2020 in the amount of \$10,249.61. Mr. Pitman estimates that property taxes total approximately \$190,000.00 and will be paid in full using the sale proceeds. Doc. #156, ¶ 6(a).

Secured Creditors - Free and Clear

Real Property is also encumbered by Claimants' interests. DIP proposes to sell the Estate Assets free and clear of the following interests:

(4) ESHEG is the successor in interest to Fresno First Bank. Fresno First Bank is listed in Schedule D twice with two claims secured by Real Property in the amounts of \$241,826.31 and \$952,812.43 as of the petition date. Doc. #13, Schedule D, ¶¶ 2.3, 2.4. ESHEG filed Proofs of Claim Nos. 24-25 in the amounts of \$259,033.24 and \$250,759.72 on September 17, 2020 and No. 26 in the amount of \$832,687.52 on September 21, 2020. See Claims ##24-26.

ESHEG is listed in Classes 2.3, 2.6, and 2.7 of the plan. DIP states that ESHEG has recorded the following security documents:

- (i) Financing statement recorded December 21, 2015 as Document No. 2015029754 in favor of Fresno First Bank;
- (ii) A deed of trust dated July 26, 2017 securing the principal amount of \$2,250,000.00 for loan no. 10**5973**, recorded August 3, 2017 as Document No. 2017019647.

Doc. #154. Both of these seem to relate to Proof of Claim No. 26 in the amount of \$832,687.52 for the loan ending in **5973**, deed of trust recorded August 3, 2017 as Document No. 2017019647, and UCC Financing Statement filed with the Secretary of State on December 17, 2015 as File No. 15-7501475419. Claim #26-1, Ex. B, at 15-29. Fresno First Bank assigned this interest to ESHEG on June 25, 2020. *Id.*, at 44, 57

But according to the other proofs of claim, ESHEG has additional secured interests:

- (iii) Proof of Claim No. 24 in the amount of \$259,033.24 relates to a loan ending in **5819** and includes a UCC Financing Statement filed with the Secretary of State on June 1, 2015 as File No. 15-7467816883. Claim #24-1, Ex. B, at 18. A UCC Financing Statement Amendment was filed on December 6, 2019 bearing Filing No. 19-77504015 and Document No. 84246250002. *Id.*, at 24. Fresno First Bank assigned this interest to ESHEG on June 25, 2020. *Id.*, at 25.
- (iv) Proof of Claim No. 25 in the amount of \$250,759.72 relates to a loan ending in **5989** and includes a UCC Financing Statement recorded in Madera County on December 29, 2015 as Document No. 2015030255 in favor of Fresno First Bank. Claim #25-1, Ex. B, at 19. It was filed with the Secretary of State on December 23, 2015 bearing Filing No. 15-7501000362. *Id.*, at 23. Fresno First Bank assigned this interest to ESHEG on June 25, 2020. *Id.*, at 24.

ESHEG also has an unsecured claim in the amount of \$1,884,983.62 it was assigned by Stepanian Farms, but this claim is not implicated in this sale. See Claim #27-1.

(5) Everett Meisser, Jr., as both the Trustee and successor Trustee of the amended and restated Canepa Trust. Mr. Meisser's claim is listed twice in Schedule D in the amounts of \$821,000.00 and \$500,000.00. Doc. #13, Schedule D, ¶¶ 2.1, 2.2. Mr. Meisser does not appear to have filed a proof of claim.

Mr. Meisser as Trustee of the Canepa Trust is listed in Plan Classes 2.4 and 2.5. DIP states Mr. Meisser has recorded the following security documents:

- (i) A deed of trust dated July 18, 2018 securing a principal amount of \$500,000.00 in favor of Mr. Meisser as Trustee of the Canepa Trust recorded July 23, 2018 as Document No. 2018016447;
- (ii) A deed of trust dated September 10, 2018 securing a principal amount of \$821,201.00 in favor of Mr. Meisser as successor Trustee of the Canepa Trust recorded September 13, 2018 as Document No. 2018020579.

Other Secured Creditors

(6) National Funding may also have a security interest in Real Property. Though not listed on Schedule D, National Funding is listed in Schedule E/F with an unsecured claim in the amount of \$145,000.00. Doc. #13, Schedule E/F, ¶ 3.113. But National Funding filed Proof of Claim No. 28 on September 21, 2020, in which it purports to be secured in the amount of \$135,090.50. Claim #28-1. It filed a UCC Financing Statement with the Secretary of State on February 12, 2020 as Filing No. 20-7762236954, which is attached to the proof of claim. See *Id.*, Ex. C.

(7) WT Capital Lender Services is also listed on Schedule D, but DIP indicates this is only for notice purposes for a possible trustee sale. Doc. #13, Schedule D, ¶ 2.11.

Proposed Sale

DIP proposes the following payout in connection with this sale:

Proposed sale price of Property		\$4,000,000.00
Property taxes	-	\$190,000.00
FLCA deed of trust	-	\$2,500,000.00
PCA deed of trust	-	\$770,000.00
Broker fees (5% of sale price)	-	\$200,000.00
Costs of sale	-	?
Remaining proceeds	<	\$340,000.00

Docs. #154, ¶ 6. As noted above, DIP's proposed Chapter 11 Plan is also set for hearing in matter #2 above. FW-5. As part of Plan confirmation, Debtor believes Claimants will consent to the sale the Estate Assets free and clear of their liens with those liens attaching to the proceeds. Doc. #154, ¶ 8.

Free and Clear of Certain Liens

If Claimants do not consent to the sale free and clear of their respective liens, DIP requests the sale be "free and clear" of certain liens subordinate to FLCA and PCA. The only basis asserted for such an order is § 363(f)(5). That subsection authorizes free and clear sales:

["only if"] such entity could be compelled in a legal or equitable proceeding, to accept a money satisfaction of such interest.

Debtor points only to the "cram down" provisions of § 1129(b)(2)(A)(ii). This alternative secured claim cramdown provision authorizes confirmation over a secured claimant's objection if the claimant has "bid in" rights under § 363(k) and the treatment of the liens on any proceeds satisfy one of the other secured claim cram down provisions - payments equaling the "value" of the claims or "indubitable" equivalence.

The motion and supporting declaration do not provide evidence that either alternative is present for the "out of the money" Claimants. Also, even if such evidence were presented, cramdown has already been held not to be the type of "legal or equitable proceeding" to which § 363(f)(5) is applicable. *Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC)*, 391 B.R. 25, 46 (B.A.P. 9th Cir., 2008).

California receiverships do not provide support for Debtor' position either. *County of Sonoma v. Quail*, 56 Cal. App. 5th 657 (2020) review denied December 30, 2020 (Receivership addressing nuisance and dilapidation in residential housing under Cal. Health & Safety Code § 17980.7); *City of Riverside v. Horspool*, 223 Cal. App. 4th 670 (2014) (same). No similar facts are present here.

The court is aware that one or more of the Claimants may "bid in" their claims at the hearing, but that is unknown now. It is speculative whether the Claimants will meet and exceed the "stalking horse" bid. Furthermore, it appears there is no objection to confirmation of the DIP's plan. So, it is conceivable the sale can be confirmed with the Claimants' consent to satisfy § 363(f)(2) and the confirmed plan will provide for the interests.

The portion of the motion for an order that the sale is "free and clear" of liens under § 363(f)(5) will be DENIED.

Claimants' Plan Confirmation Consent

The court notes that no parties in interest have objected to this motion or the Plan confirmation. All Claimants effectively consented to the Plan that contemplates this sale. Because Claimants consented to the Plan, they have in effect consented to this sale under § 363(f)(2). Moreover, all Claimants including National Funding were served all of the motion documents. Doc. #158.

National Funding was also served the motion and notice of the hearing, which contained information about the proposed sale. Doc. #159, at 7. National Funding was further served the Disclosure Statement, Plan, and notice of time for filing objections on November 24, 2020. Doc. #105. National Funding was served in accordance with its Request for Notice to Jennifer E. Duty, Esq. at 9820 Towne Centre Dr., San Diego, CA 92121. Cf. Doc. #18. National Funding and Ms. Duty were further served the post-stipulation updated Disclosure Statement, Plan, and the redlined versions of the same on February 2, 2021. Doc. #144. Thus, National Funding was properly served, had ample time to object to either the Disclosure Statement, Plan, or this sale, and has not done so.

The defaults of all non-responding parties, including Claimants and National Funding, will be entered. Claimants and National Funding consented to the Plan confirmation that contemplates this sale and have therefore consented to the sale under § 363(f)(2).

Sales to an Insider

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. 1st Cir. 2016). Here, Buyer does not appear to be an insider or a creditor of DIP as they are not on the Master Address List, Amended Master Address Lists, Schedules D, E/F, H, List of Equity Holders, or List of 20 Largest Creditors. Docs. #2; #13; #47; #68; #82.

Broker Compensation

DIP seeks authorization to pay the real estate brokers a five percent (5%) commission on the final sale price for reasonable compensation for actual, necessary services, which will be split equally between the buyer and seller's brokers at two-and-one-half percent (2.5%) each. Doc. #154. If the Estate Assets are sold at the proposed price of \$4,000,000.00, broker commission would be \$200,000.00 total, with \$100,000.00 to Broker and the remaining \$100,000.00 to the buyer's broker.

As noted above, this court previously authorized employment of Broker under 11 U.S.C. §§ 327(a) and 328 on June 8, 2020. Doc. #28. The court will allow the commission to be paid as prayed. The court finds the compensation reasonable.

Fed R. Bankr. P. 6004(h)

The request for waiver of the 14-day stay of Fed. R. Bankr. P. 6004(h) will be DENIED because DIP presents no factual basis to waive the stay as provided by law. See *Palladino v. S. Coast Oil Corp. (In re S. Coast Oil Corp.)*, 566 F. App'x 594, 595 (9th Cir. 2014) (affirming waiver of the 14-day stay because "time was of the essence" due to regulatory deadlines); *In re Ormet Corp.*, 2014 LEXIS 3071 (Bankr. D. Del. July 17, 2014) (finding cause existed to lift the stay because there had been one previous failed sale attempt and the buyer required closing before the 14-day stay would expire).

Overbid Procedure

Any party wishing to overbid must deposit with DIP's counsel certified monies in the amount of \$75,000.00 **no later than close of business on March 23, 2021**. All overbids shall be in \$10,000.00 increments. Unsuccessful bidders' deposits will be returned at the end of the hearing. The successful bidder's deposit will be applied toward the purchase price.

Overbidders must provide written proof of the financial ability to cover the purchase amount, such as a letter of credit or some other written pre-qualification for any financing that may be required to cover the overbid purchase price. Overbidders must close the sale within 15 days of the delivery of a certified copy of the court's order approving this motion and can execute a purchase agreement for the Estate Assets with no contingencies. In the event a successful

overbidder fails to close the sale within 15 days of delivery of a certified copy of the court's order approving the sale and execute a purchase agreement, the deposit shall become non-refundable, and the next highest bidder shall become the buyer.

Overbidders must be present at the hearing, make overbids in the amount of \$10,000.00, be aware that their deposit will be forfeited if they do not timely close the sale, and acknowledge that no warranties or representations are included with the property; it is sold "as-is."

Conclusion

The motion will be GRANTED IN PART pursuant to §§ 363(b)(1).

The request to sell Estate Assets free and clear of certain liens under § 363(f)(5) will be DENIED.

The sale of the Estate Assets will be free and clear of certain liens with the liens attaching to the sales proceeds under § 363(f)(2) will be GRANTED because the lienholders consented to the Plan confirmation that contemplates this sale and have therefore consented to the sale.

The request for broker compensation of five percent (5%) split at two-and-one-half percent (2.5%) each to the buyer and seller's broker will be GRANTED.

The request for waiver of the Fed. R. Bankr. P. 6004(h) 14-day stay will be DENIED.

This matter will proceed for higher and better bids only.

4. [13-16954](#)-B-11 **IN RE: MADERA ROOFING, INC.**
[FW-2](#)

CONTINUED MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS
FOR VIOLATION OF THE DISCHARGE INJUNCTION
1-22-2021 [\[864\]](#)

MADERA ROOFING, INC./MV
ERIC FROMME/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Resolved by stipulation.

NO ORDER REQUIRED.

On March 22, 2021, the parties jointly executed and filed a stipulation to withdraw this motion. Doc. #876. The full details of the agreement are set forth in the stipulation. *Id.* Accordingly, this matter will be dropped from calendar.

5. [20-11992](#)-B-11 **IN RE: CHAR PHAR INVESTMENTS, LLC**
[WLC-6](#)

CONTINUED MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
7-27-2020 [\[64\]](#)

CHAR PHAR INVESTMENTS, LLC/MV
WILLIAM COWIN/ATTY. FOR DBT.

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

DISPOSITION: Continued to June 8, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

On March 22, 2021, the parties stipulated to continuing this matter to June 8, 2021 at 9:30 a.m. Doc. #180. On March 24, 2021, the court approved the stipulation and entered an order continuing the motion. Doc. #182. Accordingly, this matter will be continued to June 8, 2021 at 9:30 a.m. Any opposition to the motion must be filed 14 days before the continued hearing date.

6. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[GL-1](#)

CONTINUED MOTION TO FILE AMENDED PROOF OF CLAIM
8-25-2020 [\[2258\]](#)

DEPARTMENT OF HEALTH CARE
SERVICES/MV
RILEY WALTER/ATTY. FOR DBT.
GRANT LIEN/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

7. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-18](#)

CONTINUED SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF
TULARE HOSPITALIST GROUP, CLAIM NUMBER 231
1-8-2020 [\[1784\]](#)

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING. CONT'D TO 6/15/21 PER ECF ORDER #2389

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

DISPOSITION: Continued to June 15, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

Due to ongoing discussions, Tulare Local Healthcare District ("District") and Tulare Hospitalist Group stipulated to continue the hearing on this objection to June 15, 2021 at 9:30 a.m. Doc. #2383.

On February 11, 2021, this court issued an order continuing the objection to June 15, 2021 at 9:30 a.m. Doc. #2389. Per the stipulation, the District's counsel shall file a status report not later than June 10, 2021. *Id.*

8. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-19](#)

CONTINUED SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF
GUPTA-KUMAR MEDICAL PRACTICE, CLAIM NUMBER 232
1-8-2020 [[1789](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING. CONT'D TO 6/15/21 PER ECF ORDER #2390

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

DISPOSITION: Continued to June 15, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

Due to ongoing discussions, Tulare Local Healthcare District ("District") and Gupta-Kumar Practice Associates, Inc., stipulated to continue the hearing on this objection to June 15, 2021 at 9:30 a.m. Doc. #2385.

On February 12, 2021, this court issued an order continuing the objection to June 15, 2021 at 9:30 a.m. Doc. #2390. Per the stipulation, the District's counsel shall file a status report not later than June 10, 2021. *Id.*

9. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-25](#)

CONTINUED SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF
INPATIENT HOSPITAL GROUP, INC., CLAIM NUMBER 230
1-10-2020 [[1834](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING. CONT'D TO 6/15/21 PER ECF ORDER #2391

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

DISPOSITION: Continued to June 15, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

Due to ongoing discussions, Tulare Local Healthcare District ("District") and Inpatient Hospital Group, Inc., stipulated to continue the hearing on this objection to June 15, 2021 at 9:30 a.m. Doc. #2387.

On February 11, 2021, this court issued an order continuing the objection to June 15, 2021 at 9:30 a.m. Doc. #2391. Per the stipulation, the District's counsel shall file a status report not later than June 10, 2021. *Id.*

10. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-4](#)

CONTINUED OBJECTION TO CLAIM OF DEPARTMENT OF HEALTH CARE
SERVICES, CLAIM NUMBER 197
7-1-2019 [\[1512\]](#)

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

11:00 AM

1. [21-10048](#)-B-7 **IN RE: MANUEL TAPIA**

REAFFIRMATION AGREEMENT WITH CAPITAL ONE AUTO FINANCE
3-3-2021 [\[14\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Counsel shall inform his client that no appearance is necessary at this hearing.

Debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), "if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney' attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok. 2009) (emphasis in original). In this case, the debtor's attorney affirmatively represented that the agreement established a presumption of undue hardship and that his opinion the debtor was not able to make the required payments. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

1:30 PM

1. [20-13702](#)-B-7 **IN RE: OFELIA AGUILAR**
[AP-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-24-2021 [\[23\]](#)

FIRST TECH FEDERAL CREDIT
UNION/MV
T. O'TOOLE/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.
DISCHARGED 3/17/21

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 the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo 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.

The movant, First Tech 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 2019 Kia Soul ("Vehicle"). Doc. #23, #26.

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The debtor's discharge was entered on March 17, 2021. Doc. #32. Therefore, the automatic stay terminated with respect to the debtor on March 17, 2021. This motion will be DENIED AS MOOT IN PART as to the debtors' interest and will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

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 failed to make one pre-petition payment and at least two post-petition payments. The movant has produced evidence that debtor is delinquent at least \$1,581.59. Doc. #26.

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 \$24,410.00 and debtor owes \$28,009.56. Doc. #26.

Accordingly, the motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtors' interest under § 362(c)(2)(C).

2. [19-15103](#)-B-7 **IN RE: NATHAN/AMY PERRY**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-16-2021 [\[24\]](#)

WELLS FARGO BANK, N.A./MV
MARK ZIMMERMAN/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.
DISCHARGED 2/1/21, RESPONSIVE PLEADING

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). Debtors filed non-opposition on March 3, 2021. Doc. #31. The failure of the creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts 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.

The movant, Wells Fargo Bank, N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2012 Ford Explorer ("Vehicle"). Doc. #24, #28.

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The debtors' discharge was entered on February 1, 2021. Doc. #21. Therefore, the automatic stay terminated with respect to the debtors on February 1, 2021. This motion will be DENIED AS MOOT IN PART as to the debtors' interest and will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

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 debtors surrendered the Vehicle to Movant on October 7, 2020. Movant is currently in possession of the Vehicle. Doc. #28.

Accordingly, the motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtors' interest under § 362(c)(2)(C).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the Movant is in possession of the Vehicle.

3. [20-12404](#)-B-7 **IN RE: WILLIAM LOPEZ**
[IF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-11-2021 [\[45\]](#)

ERYKA COHEN/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
IGOR FRADKIN/ATTY. FOR MV.
DISCHARGED 10/22/20

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Bankruptcy Rules ("LBR").

First, LBR 9004-2(a)(6), (b)(5), (b)(6), (e), and LBR 9014-1(c), (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require the DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN.

A Motion For Relief from Automatic Stay by Eryka Cohen and Mikeiah Dshae Hargrett ("Movants") was previously filed on December 16, 2020 (Doc. #31) and denied without prejudice for procedural reasons on January 27, 2021. Doc. #44. The DCN for that motion was IF-1. This motion (Doc. #45) also has a DCN of IF-1 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

Second, LBR 9004(c)(1) requires motions, notices, and other specified pleadings to be filed as separate documents. LBR 9014-1(d)(1) requires every motion or other request for an order to be comprised of a motion, notice, evidence, and a certificate of service. LBR 9014-1(d)(4) requires each document specified in (d)(1), other than a motion and a memorandum of points and authorities when not exceeding six pages in length, to be filed as separate documents.

Here, the motion (Doc. #45) is both a motion and a notice, meaning that the two were not filed separately. As a notice, it complies with most of the requirements of LBR 9014-1(d)(3)(B). In future filings, Movants should separate the motion and notice into separate documents that are separately filed to comply with LBR 9014-1(d)(4).

The notice should also list the names and addresses of the persons who must be served with any opposition per LBR 9014-1(d)(3)(B)(ii). Movants also cite to LBR 9013-1, which is not one of this court's local rules. These two errors are *de minimis* because opposition was not required, and Movants used the correct language for motions set on less than 14 days' notice under LBR 9014-1(f)(2)(c). The notice and motion should be filed separately, however. This rule was not implicated in the last attempt due to Movants' Amended Notice filed December 23, 2020. Doc. #39.

Third, LBR 9004-2(d) requires exhibits to be filed as a separate document, contain an index identifying each exhibit by number or letter and stating the page number at which each exhibit is found within the exhibit document, and include consecutively numbered exhibit pages, including the index page and any separator, cover, or divider sheets. While the exhibits here are filed as a separate exhibit document and contain an index page specifying on which page the exhibits are located, the exhibit pages are not consecutively numbered throughout the entire document. Doc. #47.

Accordingly, this motion will be DENIED WITHOUT PREJUDICE.

The court notes:

- (a) The original motion (Doc. #31) and this motion (Doc. #45) bear DCN IF-1;
- (b) Declarations (Docs. #32; #46) bear IF-2;
- (c) Exhibits (Docs. #33; #47) bear IF-3;
- (d) Eryka Cohen's summary sheets (Docs. #34; #48) bear IF-4;
- (e) Mikeiah Dshae Hargrett's summary sheets (Docs. #35; #49) bear IF-5;
- (f) Proofs of service (Docs. #36; #50) bear IF-6.

The local rules require each *separate matter* to be filed under a different DCN. These separate documents are all part of the same matter: the Motion for Relief from the Automatic Stay.

All of the original motion documents should have been filed with the DCN: IF-1. Since that motion was denied, all of this motion's documents should be labeled with IF-2 as the DCN. The next attempt should have all documents filed with the DCN of IF-3, though technically "IF-2" has not been used according to the court's docket. Although some of the above documents were filed under DCNs IF-2 through IF-6, all documents are listed as IF-1 on the docket. Movants will need to refile under a DCN other than IF-1 for their next attempt and should ensure all documents as part of that matter have the same, unused DCN. As noted above, the motion should be separate from the notice.

The court further notes that the service issues in the previous motion were corrected and the notice was filed separately from its certificate of service. Doc. #50; *cf.* #43. These corrections were an improvement over the last motion, but as noted above, the motion should be separate from the notice.

4. [21-10119](#)-B-7 **IN RE: SULEYMA GUTIERREZ**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
 2-25-2021 [\[13\]](#)

TOYOTA MOTOR CREDIT
 CORPORATION/MV
 R. BELL/ATTY. FOR DBT.
 KIRSTEN MARTINEZ/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 the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*,

46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo 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.

The movant, Toyota Motor Credit Corporation ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2019 Toyota Camry ("Vehicle"). Doc. #13.

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 failed to make two pre-petition payments and at least one post-petition payment. The movant has produced evidence that debtor is delinquent at least \$3,245.85. Doc. #15, #16.

The court also finds that 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.* Debtor values the Vehicle at \$28,200.00 and debtor owes \$50,810.04. Doc. #15, #16.

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.

5. [19-12927](#)-B-7 **IN RE: CEDAR MILL FARMS, LLC**
[RH-6](#)

MOTION TO PAY
2-22-2021 [\[146\]](#)

JAMES SALVEN/MV
ROBERT HAWKINS/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 the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo 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.

Chapter 7 trustee James E. Salven ("Trustee") filed this motion for authority to pay administrative tax claims to the Franchise Tax Board. Doc. #146. No party in interest timely filed written opposition.

This motion will be GRANTED.

11 U.S.C. § 503 provides:

- (a) An entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause.
- (b) After notice and a hearing, there shall be allowed, administrative expenses, other than claims allowed under section 502(f) of this title, including—
 - (1)
 - (B) any tax—
 - (i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both,

- except a tax of a kind specified in section 507(a)(8) of this title; or
- (ii) attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after the commencement of the case;
- (C) any fine, penalty, or reduction in credit relating to a tax of a kind specified in subparagraph (B) of this paragraph; and
- (D) notwithstanding the requirements of subsection (a), a governmental unit shall not be required to file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense[.]

11 U.S.C. §§ 503(b)(1)(B)-(D). Under 28 U.S.C. § 960(b), trustees are required to pay estate taxes on or before the date they become due even if the respective tax agency does not file a request for administrative expenses. *Dreyfuss v. Cory (In re Cloobek)*, 788 F.3d 1243, 1246 (9th Cir. 2015).

The Franchise Tax Board filed an administrative tax claim in the amount of \$800.00. See Claim #16-1. The accountants for the estate have advised Trustee that an additional \$800.00 payment will soon become due. Doc. #148. Trustee also believes that the estate may have additional tax liability due, potential incidental charges of interest, or other penalties on account of the administrative tax claim. *Id.* Thus, Trustee asks for an order allowing payment to the Franchise Tax Board claims totaling up to but not more than **\$3,000.00**. Trustee anticipates that the taxes will not exceed this amount but requests a "small buffer" so the estate will not need to incur further expenses seeking additional approval for a nominal amount of tax liability. *Id.*

This motion was fully noticed and no party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be authorized to pay, in the Trustee's discretion, the administrative tax claim of Franchise Tax Board in an amount not to exceed \$3,000.00.

6. [17-14133](#)-B-7 **IN RE: BENJAMIN HARRIS**
[JMV-2](#)

MOTION TO SELL
3-9-2021 [\[168\]](#)

JEFFREY VETTER/MV
ROBERT WILLIAMS/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 will submit a proposed order after hearing.

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.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") seeks authorization to sell the estate's interest in "Vacant Land" ("Property") located in Kern County to Benjamin Franklin S Harris ("Debtor") subject to higher and better bids for \$23,000.00. Doc. #168. Trustee indicates that the estate is in receipt of a \$5,000.00 deposit from Debtor. *Id.* Though not required, no party in interest timely filed written opposition.

In the absence of opposition, the court is inclined to GRANT this motion.

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, LP (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enterprises, 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 Systems, 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. 1st Cir. 2016). This sale is to the Debtor. Property is listed in Schedule A/B with a value of \$35,000.00. Doc. #1, Schedule A/B, ¶ 1.2. Property is not exempted in Schedule C and does not appear to have any secured creditors per Schedule D. *Id.*, Schedules C, D.

Trustee contends that the sale price reflects Property's fair market value and the best price attainable under the conditions of Debtor's chapter 7 case. Doc. #170. Trustee believes the sale of Property to Debtor is in the best interest of the estate because it will yield funds to be distributed to creditors. *Id.* Trustee has presumably conducted due diligence and concluded the sale in the best interest of creditors and the estate.

No information is provided about costs of sale, commissions, or any other expenses incurred in connection with this sale. The court will inquire about the net proceeds to the estate at the hearing. No title fees or other expenses are discussed in the evidence supporting the motion.

It appears that the sale of the Property is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith. Though not required, there are no objections or opposition to the motion, which may be presented at the hearing.

The motion does not request, nor will the court authorize, the sale free and clear of any liens or interests. Trustee indicates that there are no encumbrances on the Property.

Any party wishing to overbid must mail or deposit a \$5,000.00 refundable deposit to the Trustee at P.O. Box 2424, Bakersfield, CA 93303. The deposit must be certified funds such as a money order or cashier's check and **must be received not later than March 27, 2021 at 5:00 p.m.** Overbidding will start at \$24,000.00 and continue in \$1,000.00 increments. Unsuccessful bidders' deposits will be returned at the end of the hearing. The successful bidder's deposit will be applied toward the purchase price.

Overbidders must pay the remaining balance due within 10 days of the order authorizing the sale or will forfeit their \$5,000.00 deposit. The only sale document provided by Trustee will be the order granting the motion, but Trustee will execute other reasonable documents requested by the buyer to expedite or facilitate the sale. Overbidders must be present at the hearing, make overbids in the amount of \$1,000.00, be aware that their deposit will be forfeited if they do not timely close the sale, and acknowledge that no warranties or representations are included with the property; it is being sold "as-is."

Trustee also requests waiver of the 14-day stay of Fed. R. Bankr. P. 6004(h). This request will be denied because Trustee presents no factual basis to waive the stay as provided by law. See *Palladino v. S. Coast Oil Corp. (In re S. Coast Oil Corp.)*, 566 F. App'x 594, 595 (9th Cir. 2014) (affirming waiver of the 14-day stay because "time was of the essence" due to regulatory deadlines); *In re Ormet Corp.*, 2014 LEXIS 3071 (Bankr. D. Del. July 17, 2014) (finding cause existed to lift the stay because there had been one previous failed sale attempt and the buyer required closing before the 14-day stay would expire).

In the absence of opposition, this motion will be GRANTED, and the matter will proceed for higher and better bids.

7. [20-12833](#)-B-7 **IN RE: MA DEL CARMEN DE IBARRA**
[JES-2](#)

MOTION TO SELL
2-22-2021 [\[39\]](#)

JAMES SALVEN/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

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

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 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 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.

Chapter 7 trustee James E. Salven ("Trustee") asks this court for authorization to sell residential real property commonly known as 4555 W. Yale Ave., Fresno, CA 93722 ("Property") to Ma Del Carmen Alcaraz De Ibarra ("Debtor") subject to higher and better bids at the hearing for \$210,000.00. Doc. #39. No party in interest timely filed written opposition.

This motion will be GRANTED and proceed for higher and better bids only.

11 U.S.C. § 363(b)(1) allows the trustee "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, LP (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enterprises, 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 Systems, 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. 1st Cir. 2016). This sale is to the Debtor. Property is listed in Schedule A/B with a value of \$168,600.00. Doc. #14, Schedule A/B, ¶ 1.1. Debtor exempted \$100,000.00 of Property's equity under California Code of Civil Procedure ("C.C.P.") § 704.730. *Id.*, Schedule C. Per Schedule D, PennyMac Loan Services, LLC ("PennyMac"), owns a deed of trust encumbering Property in the amount of \$88,813.00. *Id.*, Schedule D.

The court notes that PennyMac was served notice of and information about the hearing on February 22, 2021 at:

Attn Correspondence Unit
Po Box 514387
Los Angeles CA 90051-4387

Doc. #42. Although Trustee should have served a registered agent for service of process or an officer of PennyMac, its interest is not being paid off or affected by the sale.

Under the terms of the proposed sale, Debtor will make payments to Trustee of \$1,250.00 on the 20th of each month until \$22,000.00 is paid. Doc. #39, ¶ 6. This, plus Debtor's \$100,000.00 homestead exemption, results in a sale price of \$122,000.00.

The estate is in receipt of the first payment of \$1,250.00 for January 2021. Should any payment be more than 7 days late, the estate will proceed to sell the Property and all previous payments will be forfeit. *Ibid.*

Trustee contends that the sale price reflects Property's fair market value and the best offer to purchase the property. Doc. #41, ¶¶ 3, 6. Trustee believes the sale of Property to Debtor is in the best interest of the estate because it will yield funds to be distributed to creditors. *Id.* Trustee has presumably conducted due diligence and concluded the sale in the best interest of creditors and the estate.

Trustee also states that no commission is to be paid in connection with this sale. *Id.*, ¶ 4. Property is being sold subject to existing liens and encumbrances. Trustee believes that property is subject to a lien secured by a deed of trust in favor of PennyMac in the approximate amount of \$88,000.00, which will be paid through the sale proceeds. *Id.*, ¶ 5. Debtor's \$100,000.00 homestead exemption under C.C.P. § 704.730 will be credited against the sale price. *Ibid.* Trustee anticipates approximately \$13,000.00 in costs of sale, which will result in net proceeds of \$9,000.00 for the benefit of the estate. *Ibid.*

The proposed sale can be illustrated as follows:

Proposed sale price of Property (including Debtor's homestead credit and PennyMac deed)		\$210,000.00
PennyMac's deed of trust (approximate)	-	\$88,000.00
Costs of sale (approximate)	-	\$13,000.00
Debtor's homestead exemption (sale credit)	-	\$100,000.00
Net proceeds to estate	=	\$9,000.00

It appears that the sale of Property is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith.

Any party wishing to overbid must appear at the hearing and acknowledge that no warranties or representations are included with the Property; it is being sold "as-is" and subject to all liens and encumbrances of record. Any and all overbids will be cash-only with a minimum overbid of \$5,000.00. Since the sale is subject to PennyMac's approximate \$88,000.00 deed of trust, the standing bid is currently \$122,000.00. Thus, the first overbid, if any, will be \$127,000.00 and prospective bidders will need to have certified funds, such as a cashier's check or money order, in the amount of \$127,000.00 to qualify as a bidder.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED and proceed for higher and better bids only.

8. [20-11334](#)-B-7 **IN RE: RICK/LINDA MILLER**
[RWR-1](#)

MOTION FOR ADMINISTRATIVE EXPENSES
2-25-2021 [\[83\]](#)

PETER FEAR/MV
D. GARDNER/ATTY. FOR DBT.
RUSSELL REYNOLDS/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 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.

Chapter 7 trustee Peter L. Fear ("Trustee") seeks authorization to pay the estate's federal and state income taxes as administrative expenses under 11 U.S.C. § 503. Doc. #83. No party in interest timely filed written opposition.

This motion will be GRANTED.

11 U.S.C. § 503 provides:

- (a) An entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause.
- (b) After notice and a hearing, there shall be allowed, administrative expenses, other than claims allowed under section 502(f) of this title, including—
 - (1)
 - (B) any tax—
 - (i) incurred by the estate, whether secured or unsecured, including property taxes for which liability

- is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title; or
- (ii) attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after the commencement of the case;
- (C) any fine, penalty, or reduction in credit relating to a tax of a kind specified in subparagraph (B) of this paragraph; and
- (D) notwithstanding the requirements of subsection (a), a governmental unit shall not be required to file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense[.]

11 U.S.C. §§ 503(b)(1)(B)-(D). Under 28 U.S.C. § 960(b), trustees are required to pay estate taxes on or before the date they become due even if the respective tax agency does not file a request for administrative expenses. *Dreyfuss v. Cory (In re Cloobek)*, 788 F.3d 1243, 1246 (9th Cir. 2015).

Here, Rick Joe Miller and Susan Linda Miller ("Debtors") filed bankruptcy on April 6, 2020. Doc. #1. Jeffrey M. Vetter was appointed as the interim trustee on that same date. Doc. #2. Mr. Vetter rejected the appointment on April 13, 2020 (Doc. #16) and Trustee was appointed as interim trustee on April 14, 2020. Doc. #17. The first § 341(a) meeting of creditors was held on May 18, 2020 and Trustee became permanent trustee on that same date.

On June 29, 2020, Trustee sought to employ James E. Salven ("Accountant") as the estate's accountant. Doc. #37. The court approved employment on July 7, 2020. Doc. #50. Accountant's contemporaneous declaration states that the estate has federal tax liability of **\$12,668.00** and California state tax liability of **\$10,750.00** for the fiscal year ending January 31, 2021. Doc. #86, ¶ 3. Accountant believes that these amounts are properly payable as administrative expenses. *Ibid*. Trustee requests allowance of these taxes as administrative expenses and to allow Trustee to pay the taxes.

This motion was fully noticed and no party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be authorized to pay the federal taxes of \$12,668.00 and California state taxes of \$10,750.00 as allowed administrative expenses.

9. [21-10237](#)-B-7 **IN RE: CHRISTINA RAMOS**
[YUM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-9-2021 [\[13\]](#)

WESTLAKE SERVICES, LLC/MV
R. BELL/ATTY. FOR DBT.
TAMAR ELLYIN/ATTY. FOR MV.

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

DISPOSITION: Resolved by stipulation.

NO ORDER REQUIRED.

This matter was resolved by stipulation of the parties. Doc. #21. An order approving stipulation was entered on March 16, 2021. Doc. #22. The hearing will be dropped from calendar.

10. [16-14447](#)-B-7 **IN RE: JEFFREY/ELIZABETH GIBSON**
[LNH-5](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH BOART LONGYEAR COMPANY AND/OR MOTION FOR
COMPENSATION FOR PACIFIC ATTORNEY GROUP, SPECIAL COUNSEL(S)
3-2-2021 [\[64\]](#)

PETER FEAR/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
LISA HOLDER/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 the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo 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.

Chapter 7 trustee Peter L. Fear ("Trustee") asks this court for an order authorizing Trustee to: (1) resolve the estate's interest in debtors' personal injury claim against Boart Longyear Company ("Boart") for \$350,000.00 paid by Boart to the estate in exchange for releasing the estate's claim against Board; (2) pay Pacific Attorney Group ("Special Counsel") \$140,000.00 in fees and \$14,352.14 in costs for services rendered on behalf of the estate from July 30, 2018 until settlement on November 8, 2018. Doc. #64.

This motion will be GRANTED.

Jeffrey Lee Gibson and Elizabeth Gibson ("Debtors") filed chapter 7 bankruptcy on December 13, 2016. Doc. #1. Jeffrey M. Vetter was appointed as interim trustee on that same day. Doc. #2. The § 341(a) meeting of creditors was held and concluded on February 10, 2017 and Mr. Vetter filed a Report of No Distribution on February 11, 2017. Doc. #12.

On April 17, 2017, the court entered Debtor's discharge. Doc. #16. The case was closed on April 21, 2017. Doc. #18.

Debtors moved to reopen the case on April 30, 2018 for the purpose of scheduling a previously unscheduled asset. Doc. #20. The court reopened the case that same day. Doc. #23. Mr. Vetter continued acting as trustee and moved to employ general and special counsel. See LNH-1; LNH-2. Mr. Vetter also sought approval of a settlement agreement with Boart in the amount of \$350,000.00 in exchange for releasing all claims against Boart. LNH-3. Additionally, Special Counsel was awarded attorney fees of \$140,000.00 and expenses of \$14,352.14 on a final basis. Doc. #52.

On November 17, 2019, United States Trustee Tracey Hope Davis ("UST") sought authority to appoint a successor trustee after it was realized that Mr. Vetter was not reappointed after the reopening of the case. Doc. #53. The court authorized UST to appoint a new chapter 7 trustee on January 21, 2020. Doc. #57. UST then proceeded to appoint Trustee as successor trustee on February 27, 2020. Doc. #58.

On July 8, 2020, Trustee sought further approval to employ general counsel, which was granted on July 17, 2020. LNH-4. Now, Trustee seeks to (1) employ Special Counsel in matter #11 below, and (2) approve the settlement agreement and compensate Special Counsel in this matter. See LNH-6.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors:

- (a) the probability of success in the litigation;

- (b) the difficulties, if any, to be encountered in the matter of collection;
- (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

In re Woodson, 839 F.2d 610, 620 (9th Cir. 1987); *A & C Properties*, 784 F.2d at 1381. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.*

Here, Trustee requests approval of a settlement agreement between the estate and Boart for a personal injury claim. The claim was precipitated when Boart negligently operated a crain equipped with a chain sling with lifting hooks, which struck debtor Jeffrey Gibson on February 9, 2016. Doc. #67. The settlement was reached pursuant to a mediation with Craig McCollum, a San Luis Obispo mediator.

Under the terms of the compromise, Boart will pay \$350,000.00 Trustee in exchange for Trustee releasing the estate's claim against Board. Doc. #68, Ex. B. After payment of certain fees associated with the litigation, Trustee expects the estate to net approximately \$194,647.86, which will be used to pay general unsecured claims with the residual going to Debtors.

Trustee expects the settlement to be paid out as follows:

Gross settlement amount		\$350,000.00
Debtors' exemption	-	\$28,600.31
General unsecured claims	-	\$95,295.58
Special Counsel's fees and costs	-	\$154,352.14
Trustee's fees and costs (estimated)	-	\$20,750.00
Accountant's fees and costs (estimated)	-	\$3,500.00
General Counsel's fees and costs (estimated)	-	\$12,000.00
Residue to be returned to Debtors (estimated)	=	\$35,501.97

The court concludes that the *Woodson* factors balance in favor of approving the compromise. That is: (1) the probability of success is far from assured as Boart has disclaimed all liability for Mr. Gibson's injuries and the trial would hinge on the testimony of expert witnesses. (2) Collection will not be difficult because Boart appears to have the resources to pay a judgment, as well as insurance coverage for at least a portion of the judgment. (3) The litigation is incredibly complex and has already incurred over \$14,000 in expenses. Trustee estimates that prosecuting the case through trial would cost another \$100,000 in expert fees and take another 18-24 months. (4) The paramount interest of the creditors weighs in favor of settlement because this settlement will pay all filed claims in full plus the cost of administration. Creditors will

greatly benefit from the net to the estate that would otherwise not exist. Doc. #66. The settlement is equitable and fair.

Accordingly, it appears that the compromise pursuant to Fed. R. Bankr. P. 9019 is a reasonable exercise of the Trustee's business judgment.

Additionally, Trustee seeks authorization to compensate Special Counsel \$140,000.00 fees and \$14,352.14 in expenses, for a total of \$154,352.14 for services rendered throughout this case. The court intends to grant Special Counsel's employment motion under § 327(e) and § 328(a) in matter #11 below. See LNH-6.

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).

As part of that authorization in matter #11, the court is approving a fixed contingency fee of 40%. Of the \$350,000 gross settlement, a 40% contingency fee results in **\$140,000.00** in fees.

Special Counsel also incurred **\$14,352.14** with the following expenses:

Filing fees	\$507.50
USA Legal Network	\$148.00
Randall C. Epperson, Ph.D	\$8,750.00
EPIQ Court Reporting	\$2,141.80
Just Resolutions	\$1,416.33
Pair & Marotta Physical Therapy	\$40.00
Stockdale Radiology	\$15.00
One Call Care Management	\$30.00
Hotel/Lodging Expenses	\$307.19
Mileage Fees	\$746.32
Cost processing	\$250.00
Totals:	\$14,352.14

Doc. #68, Ex. A. These fees and expenses total **\$154,352.14**.

These terms and conditions and conditions do not appear to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.

Accordingly, this motion will be GRANTED. The settlement agreement will be approved, and Trustee will be authorized to pay Special Counsel up to \$154,352.14 in his discretion for services rendered and expenses incurred throughout this case.

11. [16-14447](#)-B-7 **IN RE: JEFFREY/ELIZABETH GIBSON**
[LNH-6](#)

MOTION TO EMPLOY PACIFIC ATTORNEY GROUP AS SPECIAL COUNSEL
3-2-2021 [\[71\]](#)

PETER FEAR/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
LISA HOLDER/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 the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo 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.

Chapter 7 trustee ("Trustee") Peter L. Fear wishes to employ Pacific Attorney Professional Law Corp., 856 South Robertson Boulevard, Los Angeles, CA 90035 ("Counsel") as special counsel under 11 U.S.C. §§ 327(e) and 328(a) on a 40% contingency fee to prosecute the estate's interest in a state court complaint filed by joint debtor Jeffrey Gibson against Boart Longyear Company ("Boart") for personal injury in Fresno County Superior Court, case no. 16CECG03651. Doc. #71. Counsel was tasked with preparing pleadings, motions, notices, and orders as required to prosecute the state court case to its conclusion. Trustee has a related motion to approve a settlement agreement and compensate Counsel in matter #10 above. *See* LNH-5.

No party in interest timely filed written opposition.

This motion will be GRANTED.

Jeffrey Lee Gibson and Elizabeth Gibson ("Debtors") filed chapter 7 bankruptcy on December 13, 2016. Doc. #1. Jeffrey M. Vetter was appointed as interim trustee on that same day. Doc. #2. The § 341(a) meeting of creditors was held and concluded on February 10, 2017 and Mr. Vetter filed a Report of No Distribution on February 11, 2017. Doc. #12.

On April 17, 2017, the court entered Debtor's discharge. Doc. #16. The case was closed on April 21, 2017. Doc. #18.

Debtors moved to reopen the case on April 30, 2018 for the purpose of scheduling a previously unscheduled asset. Doc. #20. The court reopened the case that same day. Doc. #23. Mr. Vetter continued acting as trustee and moved to employ general and special counsel. See LNH-1; LNH-2. Mr. Vetter also sought approval of a settlement agreement with Boart in the amount of \$350,000.00 in exchange for releasing all claims against Boart. LNH-3. Additionally, Counsel was awarded attorney fees of \$140,000.00 and expenses of \$14,352.14 on a final basis. Doc. #52.

On November 17, 2019, United States Trustee Tracey Hope Davis ("UST") sought authority to appoint a successor trustee after it was realized that Mr. Vetter was not reappointed after the reopening of the case. Doc. #53. The court authorized UST to appoint a new chapter 7 trustee on January 21, 2020. Doc. #57. UST then proceeded to appoint Trustee as successor trustee on February 27, 2020. Doc. #58.

On July 8, 2020, Trustee sought further approval to employ general counsel, which was granted on July 17, 2020. LNH-4. Now, Trustee seeks to employ Counsel, approve the settlement agreement, and compensate Counsel. See also LNH-5.

11 U.S.C. § 327 provides:

(e) The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any adverse interest to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 327(e). 11 U.S.C. § 328(a) permits employment of "a professional person under section 327" on "any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." Section 328(a) further "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such

terms and conditions.'" *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002).

Trustee states that Counsel and its attorneys have no disqualifying conflicts or connections prohibiting Counsel from representing the estate. Doc. #71. Trustee also includes a declaration from Mike Holloman that was filed in Mr. Vetter's employment motion wherein he states that Counsel does not hold any interest adverse to the bankruptcy estate and Counsel is a disinterested person as defined in 11 U.S.C. § 101(14). Doc. #73, Ex. A.

But Trustee also asks for authorization of Counsel's pre-employment services because Counsel's work is already complete because the state court case has been settled. Doc. #64. Trustee contends that he was faced with extraordinary circumstances since this is a reopened case and Counsel's employment was previously approved by the court, but on behalf of a prior chapter 7 trustee who was no longer acting trustee.

The Supreme Court recently rejected federal courts' use of *nunc pro tunc* orders to retroactively re-write the record. *Roman Catholic Archdiocese of San Juan v. Feliciano*, 140 S. Ct. 696, 701 (2020). Although *nunc pro tunc* employment is no longer available, Counsel's pre-employment services can still be approved and compensated. The Ninth Circuit uses *In re THC Fin. Corp.* and *Atkins* as its standard for compensation under § 330 for pre-employment services. See *In re Miller*, 620 B.R. 637, 643 (Bankr. E.D. Cal. 2020).

"Retroactive approval should be limited to situations in which 'exceptional circumstances' exist." *In re THC Fin. Corp.*, 837 F.2d 389, 392 (9th Cir. 1988). For the court to find 'exceptional circumstances,' Movant must (1) satisfactorily explain their failure to receive prior judicial approval and (2) demonstrate that their services benefitted the bankrupt estate in a significant manner. *Id.* "Moreover, the professional must have satisfied the criteria for employment pursuant to 11 U.S.C. § 327, other than the usual requirement of pre-employment approval." *Atkins v. Wain*, 69 F.3d 970, 972 (9th Cir. 1995).

Trustee contends the following extraordinary circumstances exist:

- (1) There was an express employment agreement between Debtors, Trustee, and Counsel that was disclosed to the court in July 2018 (discussed in Mr. Hollomon's declaration, Doc. #33). Doc. #71.
- (2) Notice of the proposed employment was properly given with an opportunity for objection. This motion was set for hearing on 28 days' notice under LBR 9014-1(f)(1) and notice of the hearing was served on all parties in interest. Docs. #72; #75.
- (3) Counsel meets all of the requirements under § 327 for the time periods for which employment approval is sought. Doc. #73, Ex. A.

- (4) Counsel's declaration makes a threshold showing justifying employment under Fed. R. Bankr. P. 2014. *Ibid.*
- (5) Counsel does not exhibit a pattern of inattention or negligence in soliciting prior judicial approval of employment because Counsel was previously approved, but the trustee was no longer acting trustee.
- (6) Counsel's failure to seek preemployment approval is satisfactorily explained due to the unique nature of this case being reopened, counsel approved, work performed, and a settlement reached before realizing that the former trustee had no authority to employ Counsel and other professionals. Doc. #71.
- (7) The estate or other parties in interest will not be actually or potentially prejudiced because they likely believed Counsel was already employed, so employing Counsel now will not be prejudiced. *See* Doc. #36.
- (8) The work performed by Counsel prior to employment authorization has been of high quality and performed properly and efficiently because Counsel obtained a \$350,000.00 settlement, which the court previously approved. *See* Doc. #52.

Doc. #71. Moreover, Trustee asserts that Counsel's services greatly benefitted the estate by providing by liquidating its claim with a gross settlement of \$350,000.00. *Id.* No party in interest timely filed written opposition.

The court agrees. Counsel satisfies the employment requirements of § 327(e), is a disinterested person, and holds no interests adverse to the estate. Extraordinary circumstances exist warranting Counsel's failure to properly obtain employment authorization previously and Counsel's pre-employment services greatly benefitted the estate.

This motion will be GRANTED.

12. [17-13947](#)-B-7 **IN RE: EDWIN CATUIRA**
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR PETER L. FEAR, TRUSTEES ATTORNEY(S)
2-18-2021 [\[79\]](#)

LAYNE HAYDEN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Fear Waddell, P.C. ("Movant"), general counsel for chapter 7 trustee James E. Salven ("Trustee"), requests fees of \$27,637.50 and costs of \$163.67 for a total of \$27,801.17 for services rendered from July 10, 2019 through February 16, 2021. Doc. #79. Trustee has reviewed the fee application, believes the fees and expenses requested are reasonable and necessary for the administration of the estate, and has no objection to those fees. Doc. #82.

This is Movant's first and final fee application. No party in interest timely filed written opposition.

This motion will be GRANTED.

Edwin Catuira ("Debtor") filed chapter 7 bankruptcy on October 13, 2017. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors, which was held and concluded on November 22, 2017. Doc. #2. Trustee filed a Report of No Distribution on December 5, 2017. Doc. #11.

Debtor's discharge was entered on January 24, 2018. Doc. #15. The case was closed on January 26, 2018. Doc. #15.

On June 6, 2019, Debtor moved to reopen the case after learning of the viability of an employment lawsuit filed on his behalf on January 18, 2018. Doc. #18. The court reopened the case that same day. Doc. #20. Trustee was re-appointed as successor trustee on June 19, 2019. Doc. #26.

Trustee moved to employ Movant as general counsel on July 29, 2019. Doc. #31. On August 6, 2019, the court authorized Movant's employment effective July 1, 2019 subject to 11 U.S.C. §§ 327, 329-331. Doc. #37. The order further specified that compensation will be at the "lodestar rate" applicable at the time services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988), and would not be permitted except upon court order following application under 11 U.S.C. § 330(a).

Movant indicates that his firm spent 85.0 billable hours totaling **\$27,637.50** in fees as follows:

Professional	Rate	Hours	Fees
Peter L. Fear (2019)	\$390.00	43.9	\$17,121.00
Peter L. Fear (2020)	\$400.00	4.3	\$1,720.00
Gabriel J. Waddell (2019)	\$310.00	4.0	\$1,240.00
Peter A. Sauer (2019)	\$225.00	12.4	\$2,790.00
Peter A. Sauer (2020)	\$235.00	12.6	\$2,961.00
Peter A. Sauer (2021)	\$245.00	3.1	\$759.50
Katie Waddell (2019)	\$210.00	1.2	\$252.00
Katie Waddell (2020)	\$220.00	1.1	\$242.00
Katie Waddell (2021)	\$230.00	2.4	\$552.00
Totals:		85.0	\$27,637.50

Doc. #79, ¶ 6. Movant also incurred **\$163.67** in the following expenses:

Postage	\$63.37
Copying	\$86.10
Court Fees	\$14.20
Total:	\$163.67

Id., ¶ 7. These combined fees and expenses total **\$27,801.17**. As noted above, Trustee filed a declaration stating that he reviewed the fee application, believes the fees and expenses are reasonable and necessary for the administration of the estate, and has no objection to this fee application. Doc. #82.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." Movant's services included, without limitation: (1) advising Trustee about the estate's interest in an undisclosed lawsuit in which Debtor was involved; (2) reviewing and analyzing the case file to strategize as to what needed to be done and advising Trustee as to the same; (3) negotiating with Debtor's state court counsel and bankruptcy counsel as to Debtor's exemptions, preparing and filing an objection to those exemptions, and executing a settlement agreement; (4) preparing fee and employment applications; (5) analyzing undisclosed transfers involving Debtor and his close family members that had been for far less than equivalent value, but ultimately concluding that the value exchanged was of inconsequential value to the estate; and (6) analyzing various proofs of claim and providing Trustee as to whether objection to certain claims was suitable. Doc. #83, Ex. A. The court finds the services reasonable and necessary, and the expenses requested actual and necessary.

No party in interest timely filed written opposition.

Accordingly, this motion will be GRANTED. Movant shall be awarded \$27,637.50 in fees and \$163.67 in costs. Trustee will be authorized to pay Movant \$27,801.17 in Trustee's discretion for services rendered and expenses incurred between July 10, 2019 and February 16, 2021.

13. [21-10449](#)-B-7 **IN RE: NASREEN PATHAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-9-2021 [\[11\]](#)

\$3.00 FILING FEE PAID 3/10/21

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the fee was paid on March 10, 2021. Therefore, the Order to Show Cause will be vacated.

14. [18-13153](#)-B-7 **IN RE: LUIS BRAVO**
[EPE-3](#)

MOTION TO COMPEL ABANDONMENT
3-12-2021 [\[105\]](#)

LUIS BRAVO/MV
ERIC ESCAMILLA/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 will submit a proposed order after hearing.

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.

Luis Bravo ("Debtor") asks the court to compel chapter 7 trustee Peter L. Fear ("Trustee") to abandon the estate's interest in Debtor's sole proprietorship construction business, California Shine Construction. Doc. #105. Opposition was not filed but may be presented at the hearing.

In the absence of opposition, the court is inclined to GRANT this motion.

The assets ("Business Assets") include the following:

Asset	Value	Lien	Amount Exempt	Cal. Civ. Proc. §	Net Value
2015 Ford F250 Extended Cab	\$23,086.00	\$23,086.00	\$0.00	-	\$0.00
1998 Chevrolet Pickup	\$1,089.00	\$0.00	\$1,089.00	703.140 (b) (2)	\$0.00
7' x 16' Dump Trailer	\$6,000.00	\$0.00	\$6,000.00	703.140 (b) (6)	\$0.00
7' x 16' Flatbed Trailer	\$5,000.00	\$0.00	\$5,000.00	703.140 (b) (5)	\$0.00
2017 Dodge Ram	\$33,368.00	\$33,368.00	\$0.00	-	\$0.00
Hand tools and compressor	\$750.00	\$0.00	\$750.00	703.140 (b) (6)	\$0.00

Doc. #107. The Business Assets consist of three vehicles, two trailers, hand tools, and compressor with a total value of \$69,293.00. *Id.* The Dodge Ram and Ford F250 Extended Cab are both fully encumbered by their respective liens and the remaining Business Assets have been exempted for their full value under California Code of Civil Procedure ("C.C.P.") §§ 703.140(b)(2), (b)(5), and (b)(6). Doc. #47, Schedule C. Debtor states that he has operated this business for approximately 24 years and primarily uses subcontractors to perform the duties required to complete services offered by his business. Doc. #107. Debtor further agrees not to amend any exemptions without Trustee approval. *Id.*

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000).

As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554); *In re Galloway*, 2014 Bankr. LEXIS 3626, at *16-17 (B.A.P. 9th Cir. 2014).

The court finds that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately scheduled and are either fully encumbered or exempted in their

entirety. See Doc. #47, Schedules A/B, C, & D. In the absence of opposition, this motion will be GRANTED.

The order shall include a specific list of the property abandoned.

15. [21-10181](#)-B-7 **IN RE: TRAVIS/HEATHER GARRETT**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-1-2021 [\[22\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.
\$32.00 FILING FEE PAID 3/1/21

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the fee was paid on March 1, 2021. Therefore, the Order to Show Cause will be vacated.

16. [21-10096](#)-B-7 **IN RE: BHUPINDER SINGH AND NAVNEET KAUR**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-2-2021 [\[43\]](#)

NEWTEK SMALL BUSINESS FINANCE,
LLC/MV
PETER FEAR/ATTY. FOR DBT.
WENDY LOCKE/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 the creditors, the debtors, 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 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.

Newtek Small Business Finance, LLC ("Movant") seeks an order terminating the automatic stay as to certain personal and real property under 11 U.S.C. § 362(d)(1). Doc. #43. No party in interest timely filed written opposition.

This motion will be GRANTED.

Background

On November 20, 2017, Bhupinder Singh and Navneet Kaur (collectively "Debtors") executed two contracts in favor of Movant. These contracts consisted of the following:

(1) First Contract

- (a) Singh, individually and on behalf of N Transport, LLC ("N Transport"), jointly executed a U.S. Small Business Administration ("SBA") note in favor of Movant in the principal amount of \$1,640,000.00. Doc. # 48, Ex. A.
- (b) Kaur individually and on behalf of JNB Properties, LLC ("JNB Properties"), separately executed Unconditional Guarantees in favor of Movant guaranteeing the \$1,640,000.00 financed per the first note. *Id.*, Ex. B, C.
- (c) N Transport (by both Debtors) and Singh individually memorialized the note and guarantees by jointly executing a Security Agreement that granted Movant a security interest in Debtors' personal property including but not limited to all assets, inventory, rolling stock, accounts receivable, equipment, accounts, and general intangibles ("N Transport/Singh Collateral"). *Id.*, Ex. D.

(2) Second Contract

- (a) N Transport (by Debtors) and JNB Properties (by Kaur) jointly executed a U.S. SBA note in favor of Movant in the principal amount of \$705,000.00. *Id.*, Ex. E.
- (b) Kaur and Singh individually executed separate Unconditional Guarantees in favor of Movant guaranteeing the \$705,000.00 financed per the second note. Doc. #49, Ex. F, G.
- (c) N Transport (by Debtors) and JNB Properties (by Kaur) jointly memorialized the note and guarantees by jointly executing a Security Agreement that granted Movant a security interest in their personal property including but not limited to all assets, inventory, rolling stock, accounts receivable, equipment, accounts, and general intangibles ("N Transport/JNB Properties Collateral"). *Id.*, Ex. H.

Personal Property

As result of these contracts, N Transport granted Movant a security interest in the following vehicles:

- i. 2017 Kenworth Truck ("Kenworth 0721") (I-1);
- ii. 2016 Peterbilt Truck ("Peterbilt 9877") (I-2).

Id., Ex. I. Singh granted Movant a security interest in the following vehicles:

- iii. 2002 Utility Trailer ("Trailer 9604") (J-1);
- iv. 2017 Volvo Truck ("Volvo 4298") (J-2);
- v. 2016 Volvo Truck ("Volvo 8720") (J-3);
- vi. 2017 Volvo Truck ("Volvo 4296") (J-4);
- vii. 2016 Volvo Truck ("Volvo 1614") (J-5);
- viii. 2017 Utility Trailer ("Trailer 8715") (J-6);
- ix. 2017 Utility Trailer ("Trailer 8820") (J-7);
- x. 2016 Utility Trailer ("Trailer 1825") (J-8);
- xi. 2013 Utility Trailer ("Trailer 6436") (J-9);
- xii. 2015 Volvo Truck ("Volvo 7333") (J-10);
- xiii. 2016 Freightliner Tractor ("Freightliner 5943") (J-11);
- xiv. 2017 Kenworth Truck ("Kenworth 0722") (J-12).

Id., Ex. J; Doc. #50, Ex. J.

Real Property

JNB Properties executed a deed of trust granting Movant a security interest in:

- i. 294 N. Fruit Ave., Fresno, CA 93706 ("Fruit Property").

Id., Ex. M. Singh also executed a deed of trust granting Movant a security interest in:

- ii. 5348 West Brown Ave., Fresno, CA 93722 ("West Brown Property").

Doc. #51, Ex. N.

Cross-collateralization, Cross Default, and UCC Financing

Cross-Collateralization and Cross Default agreements were signed that cross collateralized the N/Singh Collateral and N Transport/JNB Properties Collateral between the two contracts (collectively "Collateral"). Doc. #50, Ex. K. Movant also filed UCC Financing Statements on November 6, 2017 and December 6, 2017 with the Secretary of State. *Id.*, Ex. L.

Default

Movant contends that Debtors defaulted on both contracts on December 1, 2018. As of February 11, 2021, Debtors are delinquent under the first contract in the amount of \$595,214.00 and the total amount owed is \$2,015,970.11. Doc. #46, ¶ 18. As of that same date, Debtors are delinquent under the second contract in the amount of \$155,780 and the total amount owed is \$832,750.42. *Id.*, ¶ 19.

Bankruptcy

Debtors filed chapter 11 bankruptcy on January 15, 2021. Doc. #1. The case was converted to chapter 7 on February 22, 2021. Doc. #25.

Debtors' Amended Schedule A/B (Doc. #53) lists their interests in the following property:

Property	Value	A/B
West Brown Property	\$300,000.00	¶ 1.1
Personal and household items	\$9,440.00	¶ 15
Financial Assets	\$12,593.67	¶ 36
Accounts Receivable	\$916.00	¶ 38
100% ownership: Rathaur & Sons Trucking	\$0.00	¶ 19
100% ownership: N Transport ¹	\$0.00	¶ 19
100% ownership: JNB Properties ²	\$0.00	¶ 19
100% ownership: JNB Truck & Trailer Repair Services	\$0.00	¶ 19
Total:	\$322,949.67	¶ 63

The total value of Debtors' property is **\$322,949.67**. Doc. #53, Schedule A/B, ¶ 63.

In Schedule C, Debtors exempted certain personal property under California Code of Civil Procedure ("C.C.P.") § 703.140(b)(3) totaling \$41,181.00. *Id.*, Schedule C.

Per Schedule D, West Brown Property is encumbered by the following creditors:

Secured Creditor	Amount	D
Commercial Trade, Inc. (judgment lien)	\$3,509.22	¶ 2.1
Freedom Mortgage	\$162,681.87	¶ 2.2
Gurmit Singh Gill (disputed)	\$44,019.21	¶ 2.12
Nanda Gomjen (judgment)	\$11,544.10	¶ 2.13
New Chance Capital, LLC	\$35,114.22	¶ 2.14
Movant	\$1,640,000.00	¶ 2.15
Movant	\$705,000.00	¶ 2.16
Sunstreet Energy Group (solar lease)	Unknown	¶ 2.17
Sunstreet Energy Group (solar lease)	Unknown	¶ 2.18
Total:	\$2,601,868.62	

Doc. #40, Schedule D. Fruit Property is encumbered by the following creditors:

¹ N Transport owns "9 trucks and 4-5 trailers, all of which are worth far less than the debt[.]" Doc. #53, Schedule A/B, ¶ 19.

² JNB Property owns Fruit Property. *Ibid.*

Secured Creditor	Amount	D
Fresno County Tax Collector (nine separate claims)	\$11,266.85	¶¶ 2.3-2.11
New Chance Capital, LLC	\$35,114.22	¶ 2.14
Movant	\$1,640,000.00	¶ 2.15
Movant	\$705,000.00	¶ 2.16
Totals:	\$2,391,381.07	

Ibid.

Debtors' Statement of Intention says Debtors will surrender their interest in "9 Trucks and 4-5 Trailers", Fruit Property, West Brown Property. Doc. #38. The Statement of Intention states that all collateral will be surrendered to all secured creditors.

Stay Relief

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).

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtors are in default on the First Contract approximately \$595,214.00 and on the Second Contract approximately \$155,780.00. Movant has produced evidence that Debtor owes at least \$2,848,720.53. Doc. #47, ¶¶ 18-19. No party in interest timely filed written opposition. The court notes that all secured creditors were served notice of the motion. Doc. #52.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) 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 many of the personal property items are depreciating assets, Debtors intend to surrender the Collateral to Movant, and Fruit Property is currently pending foreclosure.

17. [20-12797](#)-B-7 **IN RE: THOMAS/LAURA HARDWICK**
[TCS-2](#)

MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS
2-12-2021 [\[21\]](#)

LAURA HARDWICK/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

On March 8, 2021, the debtors withdrew this motion. Doc. #27.
Accordingly, the motion will be dropped from calendar.