



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, April 10, 2024
Department A - Courtroom #11
Fresno, California

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at, Courtroom #11 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

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

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

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

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

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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. [19-11628](#)-A-12 **IN RE: MIKAL JONES**
[LGT-1](#)

MOTION TO SELL FREE AND CLEAR OF LIENS, MOTION TO PAY
3-13-2024 [[193](#)]

LILIAN TSANG/MV
PETER FEAR/ATTY. FOR DBT.
LILIAN TSANG/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. This matter will proceed as scheduled for higher and better offers.

As an informative matter, paragraph 5 of the declaration of Christopher Webb filed in support of the motion references an Exhibit B that was not included in the exhibit documents filed with the motion. See Doc. ##196, 197. Because the referenced Exhibit B was not filed with the court and it is unclear whether the referenced Exhibit B was served on parties in interest, the court will not consider the referenced Exhibit B in ruling on this motion.

Lilian G. Tsang ("Trustee"), the chapter 12 trustee of the bankruptcy estate of Mikal Alex Jones ("Debtor"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of approximately 63 acres of real property used in farming and located at 0 Bogart Drive, Springville, California 93257 (the "Property") to Robert E. Konda ("Buyer") for the purchase price of \$475,000.00, subject to higher and better bids at the hearing. Motion, Doc. #193. Title to the Property is currently vested as follows: "The heirs or devisees of Lorene Hensley, aka Chloe Lorene Hensley, deceased their interest being subject to administration of the estate of said decedent." Debtor is in the process of correcting title to the Property in probate court, and the proposed sale is subject to that correction in the title to the Property. Id. Trustee seeks to sell the Property free and clear of the liens of Russell Dilday, Tanna Dilday, Mary Ann Ferrero and Pleasant Valley Canal Company on the Property pursuant to 11 U.S.C. § 1206, with such liens attaching to the sale proceeds. Motion, Doc. #193; Decl. of Trustee, Doc. #195. Trustee also seeks authorization to pay a commission for the sale to realtor Christopher Webb of Downtown Realty. ("Broker"). Motion, Doc. #193.

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Selling Property of Estate under 11 U.S.C. §§ 363(b) and 1206 Permitted

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

If the property to be sold is farmland, a chapter 12 trustee may sell the property "free and clear of any interest in such property of an entity other than the estate . . . , except that the proceeds of such sale shall be subject to such interest. 11 U.S.C. § 1206.

The Property, which is farmland, was listed by the Broker on or about June 29, 2023. Decl. of Christopher Webb, Doc. #197. Broker obtained an offer from Buyer for \$475,000.00. Id. Buyer has agreed to the sale of the Property at \$475,000 subject to higher and better offers and has a signed contract for this transaction. Id.

From the sale proceeds, Trustee expects to pay a \$28,500.00 commission to Broker, \$4,750.00 in closing costs, \$500.00 in open and unpaid real property taxes on the Property, \$13,252.50 for income tax withholding to the California Franchise Tax Board, statutory chapter 12 trustee fees in the amount of \$16,329.57, a partial payment to Mary Ann Ferrero in the amount of \$309,327.28, and a partial payment to Russel Dilday and Tanna Dilday in the amount of \$102,340.65. Trustee Decl., Doc. #195. The listing agreement for the Property provides for a commission of 6% for Broker, who represents both the estate and the proposed Buyer. Id.

Pursuant to the terms of the confirmed chapter 12 plan, one payment has already been made by Trustee's office to Mary Ann Ferrero, Russel Dilday and Tanna Dilday (collectively, "Creditors"). Trustee Decl., Doc. #195. Creditors have acknowledged that the proceeds from the sale of the Property are insufficient to pay their allowed secured claim in full and consent to the proposed sale free and clear of their liens with their liens to attach to the proceeds of sale. Decl. of Mary Ann Ferrero, Doc. #199; Decl. of Russell Dilday, Doc. #200. Creditors also have agreed that Trustee will be paid her statutory commission upon receipt of funds from the escrow before payment of Creditors' claims. Trustee Decl., Doc. #195; Ferrero Decl., Doc. #199; Dilday Decl., Doc. #200.

It appears that the sale of the estate's interest in the Property is in the best interests of the estate, the Property will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith. Creditors consent to the sale of the Property and the net sale proceeds will be subject to the liens of Creditors and Pleasant Valley Canal Company as required by 11 U.S.C. § 1206, so the court approves sale of the Property free and clear of the liens of Creditors and Pleasant Valley Canal Company.

Compensation to Broker

Trustee also seeks authorization to pay Broker a commission for the sale of the Property. This court has determined that employment of Broker is in the best interests of the estate and has previously authorized employment pursuant to 11 U.S.C. § 328. Order, Doc. #188.

Trustee seeks to pay Broker a 6% commission on the sale of the Property as the real estate broker for the sale, with the commission to be received entirely by Broker as the agreement states the commission is to be split 50/50 between the seller's Broker and Buyer's Broker, and Broker represents both parties. Trustee Decl., Doc. #195. The 6% fee is in accordance with the terms of employment agreed to by the Broker. Id. Trustee estimates that Broker's commission for the sale of the Property will equal \$28,500.00. Id. The court finds the compensation sought is reasonable, actual, and necessary.

Conclusion

Accordingly, subject to overbid offers made at the hearing, the court will GRANT Trustee's motion and authorize the sale of the Property free and clear of the liens of Creditors and Pleasant Valley Canal Company pursuant to 11 U.S.C. §§ 363(b) and 1206 with the outstanding liens of Creditors and Pleasant Valley Canal Company to attach to the net sale proceeds, including the withholding amounts forwarded to the Franchise Tax Board. Trustee is authorized to pay Broker for services as set forth in the motion.

11:00 AM

1. [24-10313](#)-A-7 **IN RE: ALEJANDRO GAMEZ**

REAFFIRMATION AGREEMENT WITH FLAGSHIP CREDIT ACCEPTANCE
3-11-2024 [\[15\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Approved.

ORDER: The court will issue an order.

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

The form of the Reaffirmation Agreement complies with 11 U.S.C. §524(c) and 524(k), and it was signed by the debtor's attorney with the appropriate attestations. The reaffirmation agreement between the debtor and Flagship Credit Acceptance (Doc. #15) indicates that the interest rate has been significantly reduced. Although the debtor's schedules do not reflect an increase in income, the debtor represents that he will work more overtime and reduce monthly expenses to afford the new payment. Therefore, the court will approve the reaffirmation between the debtor and Flagship Credit Acceptance.

1:30 PM

1. [22-12107](#)-A-7 **IN RE: MICHAEL GARCIA MENDOZA AND CAROLINA ORTEGA DE GARCIA**
[JES-2](#)

MOTION TO COMPEL
3-1-2024 [[31](#)]

JAMES SALVEN/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Michael Garcia Mendoza and Carolina E. Ortega De Garcia (collectively, "Debtors"), moves the court to compel Debtors to turn over their 2022 California income tax refund in the amount of \$940.00 (the "Refund"). Motion, Doc. #31. Trustee believes Debtors have no available exemption in the Refund. Decl. of James E. Salven, Doc. #34. Debtors has not complied with Trustee's previous requests to turn over the Refund. Salven Decl., Doc. #34; Ex. B, Doc. #33.

Section 541(a)(1) of the Bankruptcy Code defines property of the estate as "all legal or equitable interests of the debtor in property as of the commencement of the case." In the Ninth Circuit, "the right to receive a tax refund constitutes an interest in property[.]" Nichols v. Birdsell, 491 F.3d 987, 990 (9th Cir. 2007).

11 U.S.C. § 542(a) requires Debtors to turn over property of the estate, or its value, then in Debtors' possession, custody or control during the case. "Section 542(a) does not require the debtor to have current possession of the property which is subject to turnover. If a debtor demonstrates that he is not in possession of the property of the estate or its value at the time of the turnover action, the trustee is entitled to recovery of a money judgment for the value of the property of the estate." Newman v. Schwartz (In re Newman), 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013) (citations and punctuation omitted).

Accordingly, this motion is GRANTED. Debtors are ordered to turn over the Refund in the amount of \$940.00 within 10 days of the court order. Failure to do so may result in sanctions pursuant to 11 U.S.C. § 105(a).

2. [24-10510](#)-A-7 **IN RE: FRANCISCO ZUNIGA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
3-15-2024 [[15](#)]

DISMISSED 03/19/24

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED.

An order dismissing the case was entered on March 19, 2024. Doc. #17. The order to show cause will be dropped as moot. No appearance is necessary.

3. [23-12321](#)-A-7 **IN RE: REHAN KHAN AND AMY LEE**
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY, MOTION/APPLICATION TO CONFIRM
TERMINATION OR ABSENCE OF STAY
3-4-2024 [[18](#)]

SANTANDER CONSUMER USA INC./MV
PETER BUNTING/ATTY. FOR DBT.
SHERYL ITH/ATTY. FOR MV.
DISCHARGED 01/22/2024

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

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtors' interest pursuant to 11 U.S.C. § 362(c)(2)(C). The debtors' discharge was entered on January 22, 2024. Doc. #16. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, Santander Consumer USA Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2013 Honda Pilot, VIN: 5FN3F3H95DB012304 (the "Vehicle"). Doc. #18.

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 debtors do not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least one complete post-petition payment. Movant has produced evidence that the loan delinquent by at least \$672.68 plus recovery fees of \$285.00. Decl. of Christopher Little, Doc. #22. The debtors do not oppose the motion. Doc. #26. The Vehicle was voluntarily surrendered to Movant on January 30, 2024. Little Decl., Doc. #22.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. Movant values the Vehicle at \$13,825.00, and the amount owed to Movant is \$24,642.65. Little Decl., Doc. #22.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtors do not oppose the motion, have voluntarily surrendered the Vehicle to Movant, and the Vehicle is a depreciating asset.

4. [24-10221](#)-A-7 **IN RE: GUILLERMINA SANTOS DE SANTANA**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-12-2024 [[14](#)]

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

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 2021 Honda Passport, VIN: 5FN9YF7H57MB009621 (the "Vehicle"). Doc. #14.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least five complete pre-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$4,100.00, including late fees of \$100.00. Decl. of Jamie Kekaulua, Doc. #18. Movant took possession of the Vehicle pre-petition on November 26, 2023. Id.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. The Vehicle is valued at \$27,125.00, and the debtor owes \$44,056.37. Kekaulua Decl., Doc. #18.

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

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

MOTION TO COMPEL
2-26-2024 [24]

JAMES SALVEN/MV
INDERRAJ SINGH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Varinder Singh Bedi ("Debtor"), moves the court to compel Debtor to turn over his 2022 California state income tax refund in the amount of \$10,444.00 (the "Refund"). Doc. #24. Trustee believes Debtor has no available exemption in the Refund. Decl. of James E. Salven, Doc. #26. Debtor has not complied with Trustee's previous requests to turn over the Refund. Salven Decl., Doc. #26; Ex. B, Doc. #27.

Section 541(a)(1) of the Bankruptcy Code defines property of the estate as "all legal or equitable interests of the debtor in property as of the commencement of the case." In the Ninth Circuit, "the right to receive a tax refund constitutes an interest in property[.]" Nichols v. Birdsell, 491 F.3d 987, 990 (9th Cir. 2007).

11 U.S.C. § 542(a) requires Debtor to turn over property of the estate, or its value, then in Debtor's possession, custody or control during the case. "Section 542(a) does not require the debtor to have current possession of the property which is subject to turnover. If a debtor demonstrates that he is not in possession of the property of the estate or its value at the time of the turnover action, the trustee is entitled to recovery of a money judgment for the value of the property of the estate." Newman v. Schwartz (In re Newman), 487 B.R. 193, 202 (B.A.P. 9th Cir. 2013) (citations and punctuation omitted).

Accordingly, this motion is GRANTED. Debtor is ordered to turn over the Refund in the amount of \$10,444.00 within 10 days of the court order. Failure to do so may result in sanctions pursuant to 11 U.S.C. § 105(a).

MOTION TO SELL
3-4-2024 [16]

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

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

DISPOSITION: Granted.

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

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

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Ambra Bryant ("Debtor"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the bankruptcy estate's interest in a 2018 Volkswagen Passat (the "Vehicle") to Debtor for the purchase price of \$3,500.00, subject to higher and better bids at the hearing. Motion, Doc. #16.

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

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Motion, Doc. #16; Decl. of James E. Salven, Doc. #18. Trustee's proposed sale to Debtor is made in consideration of the full and fair market value of the Vehicle less a claimed exemption and listed encumbrance that Debtor is assuming. Salven Decl.,

Doc. #18. Debtor offered to buy the Vehicle for the net purchase price of \$3,500.00, subject to overbid at the hearing. Motion, Doc. #16. Trustee is in receipt of the funds from Debtor. Salven Decl., Doc. #18. The court recognizes that no commission will need to be paid because the sale is to Debtor.

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

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

7. [24-10069](#)-A-7 **IN RE: STEPHEN/CYNTHIA BEVERIDGE**
[JES-1](#)

MOTION TO SELL
3-1-2024 [\[15\]](#)

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

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

DISPOSITION: Granted.

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

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

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Stephen Wayne Beveridge and Cynthia L. Beveridge (together, "Debtors"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the bankruptcy estate's interest in a 2017 Nissan Altima (the "Vehicle") to Debtors for the purchase price of \$2,500.00, subject to higher and better bids at the hearing. Motion, Doc. #15.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr.

D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Motion, Doc. #15; Decl. of James E. Salven, Doc. #17. Trustee's proposed sale to Debtors is made in consideration of the full and fair market value of the Vehicle less Debtors' claimed exemption. Salven Decl., Doc. #17. Debtors offered to buy the Vehicle for the net purchase price of \$2,500.00, subject to overbid at the hearing. Motion, Doc. #15. Trustee is in receipt of the funds from Debtors. Salven Decl., Doc. #17. The court recognizes that no commission will need to be paid because the sale is to the Debtors.

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

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

8. 23-12892-A-7 **IN RE: CHARITY FUENTES**
PFT-1

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT
SEC. 341(A) MEETING OF CREDITORS
3-5-2024 [[24](#)]

GRISELDA TORRES/ATTY. FOR DBT.

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is **CONDITIONALLY DENIED**.

The debtor shall attend the meeting of creditors rescheduled for April 29, 2024 at 4:00 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Federal Rules of Bankruptcy Procedure 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge or file motions for abuse, other than presumed abuse, under 11 U.S.C. § 707, is extended to 60 days after the conclusion of the meeting of creditors.