



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Department B – Courtroom #13
Fresno, California
Hearing Date: Thursday, April 11, 2024**

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

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

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

Please also note the following:

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

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

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

Post-Publication Changes: 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 any possible updates.

9:30 AM

1. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[WF-6](#)

MOTION TO EMPLOY PEARSON REALTY AS REALTOR(S)
3-19-2024 [\[652\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Terence J. Long, the duly appointed Plan Administrator in the above-styled Chapter 11 case ("Plan Administrator" or "Long") moves for an order, pursuant to §§ 327(a) and 328, authorizing him to employ Pearson Realty ("Realtor") as real estate broker to list for sale certain properties (collectively "the Properties") owned by Stephen Sloan ("Debtor"). The application was supported by a copy of the parties' listing agreements, a verified statement of connections, and the declaration of Stanley Kjar ("Kjar"), a broker for Realtor. Docs. ##652, 654-55.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion.

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.

On March 2, 2020, Debtor filed for Chapter 11 relief. Doc. 1. The plan was confirmed on February 2, 2022, and the Confirmation Order appointed Long as the Plan Administrator. Doc. #483. Pursuant to various provisions of the confirmed plan, Long was directed to sell the Properties. Id. The individual properties at issue in this matter are identified more specifically in the motion, but for purposes of this ruling, they will be identified as "the Pistachio Orchard," "the Almond Orchard," and "the Adjacent Land." Doc. #652.

Under 11 U.S.C. § 327(a), a professional person, such as an accountant, can be employed by the estate with the court's approval to represent or assist the trustee [debtor in possession] in carrying out its duties provided that the proposed professional does not hold or represent an interest adverse to the estate and is a

"disinterested person." In a chapter 11 case, a person is not disqualified for employment solely because of such person's employment by or representation of a creditor, unless there is an objection from the creditor or the UST. § 327(c).

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).

This matter will be called and proceed as scheduled. Written opposition was not required and may be presented at the hearing. Absent opposition, the court may find that Applicant does not hold or represent an interest adverse to the estate and is a "disinterested person," and this motion will be GRANTED.

Under these sections, Long requests to employ and compensate Realtor by paying: (i) a 6% commission on the gross proceeds from the sale if Realtor is the only broker involved in the transaction or (ii) 3% if another licensed broker is entitled to share in the total commission paid under the Listing Agreements. Doc. #652. The term of the listing ends on July 31, 2024. Id.

Long and Kjar filed declarations attesting that Realtor is a disinterested person as defined in § 101(14) and does not hold any interests adverse to the estate in accordance with § 327(a). Id. With respect to Debtor, Realtor has no connections with Debtor, his creditors, or any other parties in interest, or with their attorneys and accountants, or with the office of the U.S. Trustee or any of its employees. Doc. #655. Realtor does not have an interest materially adverse to the interest of the estate, creditors, Debtor, equity security holders, an investment banker for a security of the debtors, or any other party in interest, and had not served as an examiner in this case. Id.

Kjar's verified statement of connections indicates that Realtor does not hold or represent an interest adverse to the estate and is a "disinterested person."

Plan Administrator declares that it is necessary to employ Realtor to sell the Properties. Doc. #652. Plan Administrator believes that the proposed commission is reasonable and customary for the services to be rendered by Realtor in marketing the Properties.

This matter will be called and proceed as scheduled. Written opposition was not required and may be presented at the hearing. Absent opposition, the court may find that Realtor does not hold or

be sold free and clear of liens, with some of the proceeds going to pay secured creditor BMO Harris Bank, N.A. ("BMO"). Id. (Article VI). The docket reflects a Stipulation for Plan Payment executed by BMO consenting to the plan of reorganization and, consequently, the sale of the Property free and clear of liens provided BMO received the "net proceeds.". Doc. #135.

The motion identifies the remaining encumbrances on the Property as follows:

- a. Outstanding taxes owed on the Property which will apparently be paid off by the sale.
- b. A pending court action recorded on July 29, 2019, from Bank of the West (predecessor to BMO) which will apparently be paid off by the sale or BMO, the successor, has consented.
- c. A judgment in favor of K&M Press, Inc. which, by order of the court entered July 25, 2023 (Doc. #123), has a value of \$0.00.
- d. A judgment in favor of Nextwave Enterprises, LLC which Debtor avers did not include this debtor, which means that the interest is in bona fide dispute. Furthermore, Nextwave has not filed a claim in this case and does not appear to assert any status as creditor. Attached to the certificate of service is the first page of the abstract of judgment for this lien. The abstract states that other judgment creditors are listed on the next page; the next page is missing. Nextwave was apparently served with notice of this motion but not the confirmed Plan. The interest may be in bona fide dispute, but such dispute is not going to be resolved in this motion.
- e. A judgment in favor of Rollin Duty, which, by order of the court entered July 25, 2023 (Doc. #124), has a value of \$0.00.
- f. A judgment in favor of Ironwood Finance, Inc., the abstract for which was not recorded until after the filing of the petition and which is thus void in violation of the automatic stay and in bona fide dispute. Ironwood also did not file a proof of claim in this case.

Docs. ##165, 167. Debtor wishes to sell the Property for \$170,000.00 to Travis and Brooke Lopes ("Buyers"). Id. Trustee's entire prayer for relief, which is too lengthy to reproduce here, is GRANTED. This matter will proceed for higher and better bids only, with any such bids subject to the overbid procedures contained in Debtor's Notice of Hearing. Doc. #166.

The order granting the motion will make no findings concerning the validity of the interests which have not consented or previously been valued at \$0.00.

3. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**
NON-PROFIT CORPORATION
[WJH-31](#)

MOTION TO TERMINATE APPOINTMENT OF PATIENT CARE OMBUDSMAN
3-13-2024 [[521](#)]

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

Twilight Haven, a California non-profit corporation ("Debtor"), moves for an order terminating the appointment of Bianca Castro as the patient care Ombudsman ("Ombudsman" in this case. Doc. #521.

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

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

According to the declaration of Kristine Williams, Debtor's CEO, Debtor operated three distinct businesses on a single campus: an assisted living facility, an independent living facility, and a skilled nursing facility. Doc. #523. Pursuant to certain agreements approved by the court and entered into by Debtor and Bayshire Central Valley, LLC, d/b/a Jericho Care Group ("Bayshire"), the Debtor transitioned all of its care related decision for all of its residents to Bayshire effective March 8, 2024. Id. After that date, Debtor no longer had any responsibility for the patients at the campus. Id.

Previously, on July 20, 2023, the court appointed the Ombudsman to monitor the patient care quality delivered to Debtor's patients and submit regular reports to the court regarding the quality of patient care provided to patients of the Debtor. Doc. #105. In the instant motion, Debtor declares that the Ombudsman's services are no longer required because the Debtor no longer has responsibility for any of the patients covered by the order appointing Ombudsman. Doc. #521. Furthermore, Debtor avers that the Ombudsman herself has requested that her appointment be terminated. Id.

Unless opposition is presented at the hearing, the court is inclined to GRANT this motion. The appointment of Bianca Castro as patient care ombudsman will be terminated with the entry of this order. Ombudsman's final fee application shall be filed within thirty (30) days of her termination.

4. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-81](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WANGER JONES
HELSEY FOR RILEY C WALTER, DEBTORS ATTORNEY(S)
3-20-2024 [[1562](#)]

RILEY WALTER/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.

Wanger Jones Helsley PC ("Applicant") seeks approval of a fourth interim allowance of compensation under 11 U.S.C. §§ 330 and 331 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as counsel for Madera Community Hospital, the Debtor-In-Possession in the above-styled case ("DIP"). Doc. #1109.

Applicant was employed to perform legal services under § 327 of the Code pursuant to an order of this court dated April 18, 2023. Docs. ##259, 1109. This motion covers fees and costs incurred from October 16, 2023 through February 29, 2024. Doc. #1562. The court has previously authorized fees as follows:

Date	Fees Allowed	Costs Allowed	Payment Date
6/1/23	\$166,909.50	\$5,048.45	6/7/23
7/11/23	\$138,517.00	\$9,586.84	7/19/23
12/19/23	\$311,917.50	\$5,778.19	12/22/23

The instant Application requests \$263,744.00 in attorney's fees and \$5,325.86 in expenses, for a total award of \$269,069.86. Id. The billing records included as exhibits reflect a total of 569.40 billable hours were incurred during the relevant time frame at a blended rate of \$433.50 per hour. Doc. #1564.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3). The previous interim

compensation awards under 11 U.S.C. § 331 are subject to final review under § 330.

Applicant's services here included, without limitation: (1) work pertaining to the assumption/rejection of Debtor's leases and contracts, (2) case administration, (3) claim administration and objections, (4) estate and business operations, (5) fees and employment, (6) financing, (7) litigation and other contested matters, (8) work on the plan and disclosure statement, (8) relief from stay and adequate protection motions, and (9) sales and transfers. The court finds the services and expenses reasonable, actual, and necessary. Karen Paolinelli, the DIP representative, declares that she has reviewed the Application and approves. Doc. #1566.

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.

In the absence of opposition, this motion will be GRANTED. The court will approve on an interim basis under 11 U.S.C. §331 compensation in the amount of \$263,744.00 in fees and \$5,325.86 in expenses. The court grants the Application for a total award \$269,069.86 as an administrative expense of the estate and an order authorizing Applicant to claim any remaining retainer fees in satisfaction of this award. Finally, the court approves a payment of \$52,745.80 in fees which had been previously awarded but not paid due to the 20% holdback from amounts sought in Applicant's monthly fee statements. Payment is permitted to the extent allowed under the court's Compensation Procedures Order.

5. [24-10546](#)-B-12 **IN RE: MAXIMINIO/MARIE SILVEIRA**
[FW-2](#)

MOTION TO SELL
4-1-2024 [[34](#)]

MARIE SILVEIRA/MV
PETER FEAR/ATTY. FOR DBT.
OST 4/1/24

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Conditionally 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.

Maximinio Manuel Silveira and Marie Madelena Silveira ("Debtors") move for an order authorizing them to sell 1,400 tons of silage at

\$67.00 per ton for a total price of \$93,800.00 to Double Creek Dairy, subject to higher and better bids. Doc. #34. "Silage" is a form of plant-based cattle feed subject to spoilage or rot in warmer weather conditions, and Debtors declare that "time is of the essence" to sell the spoilage, which Debtors do not need for their operations, before it spoils. Doc. #36. Debtors further declare that there is no written sale agreement with Double Creek Dairy but simply a verbal agreement. Id. Debtors propose to pay the proceeds of the sale over to their primary secured creditor, Bank of the Sierra. Id.

This motion was set for hearing on shortened notice with an OST under the procedure specified in Local Rule of Practice ("LBR") 9014-1(f)(3). The order approving the shortened notice time was entered on April 1, 2024. Doc. #38. Consequently, the creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 N. Brand Partners v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer, 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

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)). There is nothing in the record suggesting that Proposed Buyers are insiders with respect to Debtor. Proposed Buyers are neither listed in the schedules nor the master address list. Docs. ##3,15.

The silage is listed in Schedule A/B as "Feed/Corn Silage has 1,400 tons. @ \$67/ton" with a value of \$93,800.00. Doc. #15 (Sched. A/B).

Debtor did not exempt Property in Schedule C. Id. It appears that the silage is unencumbered, and because of the nature of the sale, there will be no costs associated with the sale, which means the sale at the agreed upon price will result in a gain of \$93,800.00 for the estate.

The sale under these circumstances should maximize potential recovery for the estate. The sale of the Property appears to be in the best interests of the estate because it will provide liquidity that can be distributed for the benefit of creditors. The moving papers indicate an intention to earmark the proceeds for the benefit of Bank of the Sierra, which is Debtors' largest secured creditor, but the motion is vague on whether any creditors have an interest in the silage. At the hearing, Debtors are expected to clarify those issues and address the court's concerns as to which creditors are entitled to benefit from the proceeds. That said, the sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

Though Debtors propose to pay the "net proceeds" to Bank of the Sierra, there are at least three other creditors with secured claims that may be partially secured by the silage: Diversified Financial, Associated Feed & Supply, United Ag. The schedules do not specify which creditor has the superior (or indeed any) lien on the silage. Neither the motion nor the supporting declaration sets forth these facts. The schedules are not clear either. Debtors need to satisfy the court as to the nature of any secured interests in the silage.

Assuming the court is convinced as to the lien interests, and in the absence of any opposition, this motion will be GRANTED. Debtors will be authorized: (1) to sell the silage to Double Creek Dairy or to the prevailing bidder at the hearing, as determined at the hearing and (2) to execute all documents necessary to effectuate the sale of the silage. The 14-day stay of Rule 6004(h) will be ORDERED WAIVED.

6. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[PSJ-25](#)

MOTION TO STRIKE
4-9-2024 [[1651](#)]

AMERICAN ADVANCED MANAGEMENT,
INC./MV
RILEY WALTER/ATTY. FOR DBT.
PAUL JASPER/ATTY. FOR MV.
OST 4/9/24

NO RULING.

11:00 AM

1. [24-10037](#)-B-7 **IN RE: SOMELANE SOURIYAMATH AND HOMKESONE**
KEOPHILALAY

REAFFIRMATION AGREEMENT WITH ONEMAIN FINANCIAL GROUP, LLC
3-20-2024 [\[15\]](#)

DEAN FELDMAN/ATTY. FOR DBT.

NO RULING.

2. [23-12849](#)-B-7 **IN RE: MATTHEW WHITLEY**

REAFFIRMATION AGREEMENT WITH ALLY BANK
3-15-2024 [\[16\]](#)

JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

A Reaffirmation Agreement between Matthew Robert Whitley ("Debtor") and Ally Bank for a 2019 Chevrolet Blazer ("Vehicle") was filed on March 15, 2024. Doc. #16.

11 U.S.C. § 524(c)(6)(A)(ii) states "An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable non-bankruptcy law, whether or not discharge of such debt is waived, only if the court approves such agreement as in the best interest of the debtor."

Here, the Vehicle is valued at \$22,175.00. The amount being reaffirmed by Debtor is \$27,375.77 with an 11.65% interest rate. Debtor has negative equity of \$5,200.77 with approximately 60 months (five years) remaining on the loan and only \$4.00 remaining in the budget every month according to the Debtor's own documents filed with the motion.

The court finds no evidence that this Reaffirmation Agreement is in the best interest of the Debtor. Accordingly, the Reaffirmation Agreement between Debtor and Ally Bank will be DENIED.

3. [24-10399](#)-B-7 **IN RE: ISMAEL/JERILYN SOLIS**

PRO SE REAFFIRMATION AGREEMENT WITH BANK OF AMERICA, N.A.
3-21-2024 [\[21\]](#)

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

A Reaffirmation Agreement between Ismael Solis ("Debtor") and Bank of America for a 2015 Chevrolet Cruz was filed on 3/21/2024. Doc. #21.

The court is neither approves nor denies the reaffirmation agreement. Debtors w represented by counsel when they 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). The reaffirmation agreement, in the absence of a declaration by debtors' counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

The Debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

1:30 PM

1. [22-11403](#)-B-7 **IN RE: STANFORD CHOPPING, INC.**
[LAH-3](#)

MOTION TO EMPLOY DAVID SOUSA AND SOUSA AND COMPANY AS
ACCOUNTANT(S)
3-21-2024 [[138](#)]

LISA HOLDER/MV
DAVID JOHNSTON/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Lisa Holder ("Trustee"), Chapter 7 Trustee in the case filed by Stanford Chopping, Inc. ("Debtor") applies for an order approving the employment of David Sousa and Sousa & Company (collectively "Sousa") as accountants for the estate. Doc. #138. The application avers that Sousa was the long-time accountant for Debtor and provided accounting and bookkeeping services to Debtor prepetition. Id. Trustee argues that she requires the services of a licensed CPA to prepare income tax returns for the bankruptcy estate and to advise Trustee regarding the tax effects of actions taken to administer the estate. Id. Because Sousa has "extensive knowledge regarding the Debtor's historic tax attributes and can easily prepare the required estate returns," Trustee opines that Sousa's employment is necessary for the administration of the estate. Id.

Sousa has not received retainer from the estate, and the application proposes that Sousa will be paid at its usual rates, which currently are as follows:

Partners	\$345.00 per hour
Manager:	\$295.00 per hour
Senior:	\$175.00 per hour
Staff:	\$145.00 per hour
Admin:	\$135.00 per hour.

Id; see also Doc. #140 (Declaration of David M. Sousa).

This application 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 application. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014 1(f)(2). The court will issue an order if a further hearing is necessary.

11 U.S.C. § 327 allows the trustee, with the court's approval, to employ one or more attorneys, accountants, auctioneers, or other professional persons to represent or assist the trustee in carrying out the trustee's duties. The professional is required to be a disinterested person and neither hold nor represent interests adverse to the estate. § 327(a).

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

Under these sections, Trustee requests to employ and compensate Sousa at the rates alluded to above. Sousa does not have an interest materially adverse to the interest of the estate, creditors, Debtor, equity security holders, an investment banker for a security of the debtors, or any other party in interest, and had not served as an examiner in this case. Doc. #138.

Sousa does not have any connection with any creditors, parties in interests, their attorneys, accountants, the U.S. Trustee, or anyone employed by the U.S. Trustee except as follows:

1. Sousa provided prepetition accounting services to Debtor.
2. Sousa provides prepetition accounting services to several of Debtor's principals and to J&L Stanford, a general partnership between two of those principals.
3. While Sousa has not provided services to those principals or to any related entities, those principals have pending claims in the case for which Sousa may be called upon to deliver tax advice to those entities. However, Sousa declares that he will segregate all work performed for the Trustee and the estate from any work performed on behalf of the principals.
4. Sousa filed a claim in this case for unpaid services. That claim was subsequently paid in full by the principals, and the estate currently owes no debts to Sousa.

Doc. #140. Sousa declares that it otherwise has no connections with Debtor, creditors or any other party in interest, attorneys and accountants, the United States Trustee, or any person employed by the Office of the United States Trustee, or the bankruptcy judge. Id.

In the absence of any opposition, this Application will be GRANTED. the court will authorize Sousa's employment pursuant to 11 U.S.C. §§ 327(a), 328. No fees will be approved without a properly noticed fee application. Pursuant to LBR 2014-1(b)(1), Sousa's employment shall be deemed to relate back 30 days before the filing of the

application, which was March 21, 2024. Accordingly, Sousa's employment is authorized and effective for services rendered from and after February 22, 2024.

2. [22-11410](#)-B-7 **IN RE: HOWARD/KIM CRAUSBY**
[DAB-7](#)

MOTION TO RECONSIDER AND/OR MOTION FOR STAY PENDING APPEAL
3-15-2024 [\[145\]](#)

KIM CRAUSBY/MV
DAVID BOONE/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The court will issue the order.

Debtors Howard and Kim Crausby ("Crausby" or "Movants") ask the court to reconsider its March 13, 2024, ruling converting their chapter 13 case to chapter 7. They also ask the court for a stay pending their appeal of the ruling. Doc. #145. Movants have provided no legal basis to reconsider the ruling converting the case nor established any element necessary for a stay pending appeal.

The motion will be DENIED.

I

A.

The Crausbys' Third Modified Plan was confirmed on May 15, 2023. The plan provided for 100% payment to allowed unsecured claims. Under the plan, the Crausbys were to make monthly payments of \$1,895.00 per month for the first year then \$3,200.00 per month until the conclusion of the sixty-month plan.

About three months later, the Crausbys sold their residence in Los Banos, California. Doc. #125. Then, the Crausbys told the court they needed to sell to move closer to where Mr. Crausby was employed. All net proceeds from the house sale - after liens - were paid to the Crausbys who had exempted their equity in the residence.

The Crausbys could not maintain the plan payments. On February 6, 2024, chapter 13 trustee Lillian G. Tsang ("Trustee") filed a motion to dismiss. Docs. ## 131-134. The Trustee's grounds were § 1307(c)(1) - unreasonable delay that is prejudicial to creditors and (c)(6) - material default by a debtor with respect to a term of a confirmed plan. The motion was supported by a declaration stating that at the scheduled hearing on the motion, the plan would be delinquent in the amount of \$9,725.00. The motion also said that the court may determine that conversion rather than dismissal is in the best interest of creditors and the estate.

The Trustee's notice of motion (Doc. #132) stated that timely opposition was required to be filed. The supporting declaration (Doc. #133) set forth the delinquency and that after subtracting trustee commissions, in excess of \$12,000.00 of non-exempt liquidation value would be available to unsecured creditors comprised of the "equity" in an automobile and motorcycle, cash at the filing of the bankruptcy, and stocks owned by the Debtors. The declaration went on to state that even if the Debtors elected to amend their exemptions, there would still be equity available for unsecured creditors.

The motion was served on the Debtors, counsel for the Debtors, and creditors under limited service as permitted by Rule 2002(h) and LBR 2002-3. Doc. #134.

The Crausbys did not file any opposition and neither the Crausbys nor their counsel appeared at the hearing. The court issued a tentative ruling before the hearing stating the court would convert the case to chapter 7 based upon the uncontested evidence submitted by the Trustee. Doc. #137.

At the hearing on March 13, 2024, the court entered the defaults of the Debtors under Civ. Rule 55(Fed. Rule Bankr. Proc. 7055). The court granted the Trustee's motion and converted the case to chapter 7.

Two days later, the Crausbys through their counsel, filed this motion for reconsideration and for a stay pending appeal but did not set the motion for hearing. Doc. #145. Three days later, the court issued an order setting the matter for hearing. Doc. #147.

B.

The Crausbys make three arguments which they contend justify reconsideration of the conversion ruling. First, they argue that under *In Re Nichols*, 10 F. 4th 956 (9th Cir. 2021) the court had no discretion but to dismiss the case on the Debtors' request or for non-payment of a confirmed plan. Second, the Crausbys contend that the reason that they could not make the payment is because Ms. Crausby became ill and required chemotherapy. Accordingly, they could not pay the plan payments and moved to San Jose to be closer to Kaiser facilities. Third, the Crausbys argue that they would not qualify for Chapter 7 because under the "means test," it would be an abuse of the bankruptcy process under § 707(b).

The Crausbys also contend, without argument, that the court should issue a stay of the ruling converting the case.

C.

The United States District Court for the Eastern District of California has jurisdiction over this contested matter under 28 U.S.C. § 1334(b) in that it is a civil proceeding arising under

Title 11 of the United States Code. The District Court has referred this matter to this court under 28 U.S.C. § 157(a). This is a "core" proceeding and this court may issue a "final ruling" under 28 U.S.C. § 157(b) (2) (A), and (O). Venue is appropriate under 28 U.S.C. § 1409(a).

II

The Crausbys have not established any legal basis to reconsider the ruling converting the chapter 13 case to chapter 7.

"A motion for reconsideration is treated as a motion to alter or amend judgment under Fed. R. Civ. Proc. 59(e) [Fed. R. Bankr. Proc. 9023] if it is filed within [14] days of entry of judgment. Otherwise, it is treated as a [Civil] Rule 60(b) motion for relief from a judgment or order." *American Ironworks & Erectors, Inc. v. North American Construction Corp.*, 248 F.3d 892, 898-99 (9th Cir. 2001). Civ. Rule 59(e) motions "may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009). Civ. Rule 59(e) "does not provide a vehicle for a party to undo its own procedural failures [or] allow a party to introduce new evidence or advance new arguments that could and should have been presented to the [Bankruptcy] Court prior to the judgment." *DiMarco-Zappa v. Cabanillas*, 238 F.3d 25, 34 (1st Cir. 2001). Matters that were not presented in the first instance by a well-represented party are not considered on a motion for reconsideration. See, *389 Orange Street Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999). Here, the Crausbys are represented by counsel. They chose not to respond to the Trustee's motion to dismiss in writing nor appear at the hearing. They did not seek to dismiss their case under § 1307(b) before the court ordered the conversion under § 1307(c).

There are four basic grounds recognized in the Ninth Circuit for a motion for reconsideration. (1) if the motion is necessary to correct a manifest error of law or fact upon which the judgment rests; (2) the motion is necessary to present newly discovered or previously unavailable evidence; (3) the motion is necessary to prevent a manifest injustice; or (4) an amendment to the judgment as justified by an intervening change in controlling law. *Allstate Insurance Co. v. Herron*, 634 F.3d 1101, 1110 (9th Cir. 2011). In this motion, the Crausbys assert two grounds. First, that the court made a manifest error of law in converting the case instead of dismissing the case. Second, they now claim, without evidence, that they could not make plan payments because of extensive medical expenses caused by Ms. Crausby's medical condition. The Crausbys have established neither basis.

A.

The court did not erroneously convert the case to chapter 7.

The Crausbys simply ignore the statutory basis for the conversion which was § 1307(c). That section establishes a two-step analysis for dealing with questions of conversion or dismissal. "First, it must be determined that there is 'cause' to act. Second, once a determination of cause had been made, the choice must be made between conversion and dismissal based on the 'best interests of creditors and the estate.'" *Nelson v. Meyer (In Re Nelson)*, 343 B.R. 671, 675 (BAP 9th Cir. 2006); *Ho v. Dowell (In Re Ho)*, 274 B.R. 867, 871 (BAP 9th Cir. 2002). The Crausbys do not challenge the court's finding of cause. It is undisputed that the Crausbys were in material default under the terms of the confirmed chapter 13 plan and that the multiple months of nonpayment was prejudicial to creditors. Instead, the Crausbys assert that under Ninth Circuit authority, *In Re Nichols*, the court had no choice but to dismiss the case.

The Crausbys misread *Nichols*. True enough, chapter 13 is voluntary and under *Nichols*, the court has no discretion to deny a Debtors' motion to dismiss under § 1307(b) for abuse of the bankruptcy process. That was the holding in *Nichols*. The *Nichols* court noted that a bankruptcy court does not have discretion to contravene an "explicit mandate of other sections of the Bankruptcy Code." *Law v. Siegel*, 571 U.S. 415, 421 (2014). The Crausbys argue that the "explicit mandate" is the Crausbys right to dismiss under § 1307(b).

What the Crausbys ignore are two crucial problems with their premises. First, in *Nichols* the debtors sought to dismiss the case after the bankruptcy court gave the debtors 30 additional days to file tax returns and submit a confirmable plan. *Id.* 959. The Crausbys here did not seek to dismiss the case; the chapter 13 trustee did. So, the Trustee's motion was under § 1307(c) not § 1307(b). Notably, § 1307(b) does not give debtors unlimited rights to dismiss. That right is lost if the case was previously converted. § 1307(b).

The second premise is unsupported. The Crausbys provide no controlling authority stating that if the Debtors' missed plan payments are the subject of a motion under § 1307(c), the court is only authorized to dismiss a case. *Nichols* specifically noted the decision did not consider or affect dismissals under § 1307(c) *Nichols* 10 F.4th at 962. The Debtors' position here, if true, would render § 1307(c)(6) and other subsections under § 1307(c) a nullity.

There are only two statutory restrictions to conversion of a case under § 1307(c). Under § 1307(f), if a debtor is a farmer, the farmer must request a conversion. Under subsection (g), conversion is unavailable if the debtor cannot be a debtor under the chapter to which the case is converted. There is nothing in the record supporting the notion that the Debtors here are farmers. In fact, in the Debtors' own moving papers, they state that neither Debtor is engaged in farming. Doc. #145, page 3.

Here, the motion was brought by the Trustee, an irrefragable party in interest. The motion and the declaration supporting the motion

set forth a delinquency and that there was non-exempt liquidation value for unsecured creditors after trustee compensation should the case be converted. The assets available included a vehicle, a motorcycle, cash, and stocks. Doc. #133.

Whether to convert or dismiss a case on a motion to dismiss is discretionary with the court. *In Re Staff Investment Co.*, 146 B.R. 256, 260 (Bankr. E.D. Cal. 1992). A prime criterion for assessing the interest of the estate is the maximization of value as an economic enterprise. *Id.* The debtor's interests are not a consideration under § 1307(c). Congress certainly knows how to include the debtor's interest when assessing the relief sought in a motion. See § 305(a)(1).

The court determined here it was in the best interest of creditors to convert the case under the circumstances. The Debtors did not oppose the motion, propose a modified plan, or voluntarily dismiss before the motion was scheduled to be heard. Their desire to dismiss was tardily manifested in this motion. The court focused on the considerations of the creditors and the estate. The label of the motion filed by the Trustee does not excuse the court's required review on a motion to dismiss under § 1307(c). True, the plan in default was a 100% plan. But the Debtors were in a bankruptcy case for one and one-half years and could not make the regular plan payments. Given the delinquency, the nonexempt equity, and the lack of response, the court determined the creditors, and the estate would benefit by a conversion to chapter 7. The conversion was not erroneous.

2.

The Debtors also argue that they would not qualify for a chapter 7 under § 707(b) because of their disposable income. The Debtors surmise that under § 1307(g) they would not be eligible for relief under chapter 7. The argument is not persuasive.

First, under § 707(b) it is discretionary with the court whether to dismiss the case or, with the debtor's consent, convert the case to chapter 13. § 707(b)(1). The court is unlikely to dismiss the case for abuse here because the court converted the case to chapter 7 since the Debtors were unable to make payments under the plan. It also seems unlikely that the U.S. Trustee would bring such a motion after a conversion nor would a chapter 7 trustee. In short, the Crausbys can be debtors under chapter 7 unless the court dismisses the case or converts the case to chapter 13 based upon a motion which may or may not be filed.

Second and more importantly, in their motion, the Debtors provide no controlling authority that the case would again be converted to chapter 13 or dismissed after it was involuntarily converted to chapter 7 under § 1307(c). *But see, In Re Hieter*, 414 B.R. 665, 673 (Bankr. D. Id. 2009) (holding that a chapter 13 case was dismissed for bad faith because of serial filings. The court noted that the debtors there "may not be able" to pass the "means test" though it was not necessary for the decision.)

It is entirely speculative now whether the "means test" would preclude these Debtors from staying in chapter 7. But it is equally speculative whether any party would file a motion to reconvert the case to chapter 13 given the Debtors inability to complete a "100% plan."

There was no error in converting the case to chapter 7 notwithstanding the "means test."

B.

Ms. Crausby's medical condition does not change the result.

The facts about Ms. Crausby's medical condition are merely statements of the Crausbys' counsel. They are not under oath. Even if they were, they would be hearsay. But more importantly, there is no evidence that Ms. Crausby's medical condition was "newly discovered" or the evidence concerning that condition was previously unavailable to the Crausbys or counsel. The facts are the Crausbys were behind on plan payments for multiple months. There is no evidence that Ms. Crausby's condition was unknown until after the court ruled on the Trustee's motion to dismiss. The Crausbys sold their house in Los Banos eight months ago. Now, the Crausbys' counsel says the Crausbys moved to be closer to Ms. Crausby's treatments. If that is true (even though it is not proven) Ms. Crausby's condition was known well before the Trustee even filed the motion to dismiss.

That is not newly discovered evidence and does not establish a basis for reconsideration. The "evidence" may explain the plan defaults but not change the court's conversion vs. dismissal analysis.

III

The Crausbys have not established any basis to stay the effect of the conversion order pending appeal.

The Crausbys request a stay of the order converting the case pending appeal. But the Crausbys provide no evidence or legal analysis as to why a stay is appropriate.

There are four factors a court should consider in assessing a request for a stay of an order pending appeal. *Nken v. Holder*, 556 U.S. 418, 434 (2009). Those factors are: (1) has the applicant made a strong showing that he is likely to succeed on the merits; (2) will the applicant be irreparably injured absent a stay; (3) will issuance of a stay substantially injure the other parties interested in the proceeding; (4) where the public interest lies.

Failure of any one factor "dooms the motion." *In Re Irwin*, 338 B.R. 839, 843 (E.D. Cal. 2006). A stay pending appeal is an extraordinary remedy. The court must examine the factors with obligatory restraint. *In Re Smith*, 397 B.R. 134, 136 (Bankr. D. Nv. 2008); *In Re Chan*, 18-cv-05582-HSG; 2018 U.S. Dist. Lexis 189189

(N.D. Cal., November 5, 2018). The court will briefly examine the elements here.

A.

Based on the above, the Crausbys are not likely to succeed on the merits. Under § 1307(c) the court is to consider the decision to dismiss or convert using the lens of the interests of the creditors and the estate, not the Debtors. The decision to convert instead of dismiss is discretionary with the court and the court has set forth the reasons for its ruling.

B.

The Crausbys have provided no evidence or argument as to how they would be irreparably injured absent a stay. They will likely receive a discharge earlier in a chapter 7 case. The chapter 7 trustee is duty bound to sell assets if it would result in a benefit to the estate. At this moment, that is speculative. But the Crausbys have options should they be faced with those issues.

C.

On the other hand, issuance of a stay would injure other creditors of the estate. As mentioned, the Crausbys have been in bankruptcy since 2022. They failed to make multiple payments under their plan before the motion to dismiss was filed. Thus, the fact the confirmed plan was a 100% plan is meaningless. Even so, the creditors may receive a distribution faster under chapter 7 since there is nonexempt equity a chapter 7 trustee may be able to administer.

D.

The public has an interest in the efficient resolution of bankruptcy proceedings so that debtors can obtain a "fresh start." Further, the creditors can receive dividends from the chapter 7 estate or if not, a chapter 7 will resolve any claims against the Crausbys. Public interest weighs in favor of denying the motion.

A party requesting a stay pending appeal bears the burden of demonstrating that circumstances justify the exercise of the court's discretion. *Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012). The Crausbys have not demonstrated any circumstances why the court should exercise its discretion to issue a stay pending appeal.

For the foregoing reasons, the Debtors' requests for reconsideration of the court's conversion order and a stay pending appeal shall be DENIED.

3. [22-11614](#)-B-7 **IN RE: NANCY JERKOVICH**
[ADJ-04](#)

RESCHEDULED HEARING RE: ORDER TO SHOW CAUSE
12-6-2023 [[49](#)]

LAYNE HAYDEN/ATTY. FOR DBT.

NO RULING.

On November 30, 2023, the court issued an order to show cause why Nancy Jerkovich ("Debtor") should not be held in contempt for failing to comply with the court's July 14, 2023, order (Doc. #37; "the July Order) that Debtor turn over information to the Trustee. Doc. #49. Pursuant to the July Order, Debtor was ordered to immediately turn over to Trustee various documents related to the Super Suds Laundry. Id.

At the conclusion of the hearing originally set for February 13, 2024, the court continued the matter to April 11, 2024. Doc. #57. On April 2, 2024, the Trustee submitted at Status Report indicating that Debtor had submitted some of the requested documents but was still deficient as to the following documents:

- a. Federal tax return for the time period of January 2, 2022 through December 31, 2022;
- b. Any real property lease(s);
- c. Equipment lease - The Debtor did provide an equipment amortization schedule but has failed to provide a copy of the lease;
- d. Payroll tax returns for the time period of January 1, 2019 through December 31, 2020;
- e. Payroll tax return for the 1st and 2nd quarter of 2021;
- f. Payroll tax return for the 3rd and 4th quarter of 2022;
- g. Schedule showing owner salaries, including benefits, for the time period of January 1, 2019 through December 31, 2022;
- h. Annual income statements for the time period of 2019 through 2022;
- i. Balance sheet for the first day of January 2019 through 2023; and
- j. J. Bank statements for the time periods of January 1, 2019 through December 31, 2019 and January 1, 2021 through December 31, 2023.

Doc. #59. Based on the record, it appears that Debtor failed to comply with the court's order to turn over the listed documents. See Docket generally. The court will hear from the parties at the hearing.

4. [23-10115](#)-B-7 **IN RE: JOSE CALDERON**
[JES-2](#)

MOTION TO COMPEL
2-26-2024 [30]

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

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

DISPOSITION: Granted.

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

Chapter 7 trustee James E. Salven ("Trustee"), filed this motion seeking to compel Jose Calderon ("Debtor") pursuant to 11 U.S.C. § 542(a) to turnover within seven days either: (1) 2022 Federal and State tax returns ("Tax Returns") with their 2022 Federal and State tax refunds ("Tax Refunds"); or (2) data necessary to prepare the Tax Returns. Doc. #30.

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.

Debtor did not file opposition and default will be entered.

11 U.S.C. § 541 establishes Tax Returns and Tax Refunds as assets of the estate and provides, in relevant part:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interest of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

- (A) under the sole, equal, or joint management and control of the debtor; or
- (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

11 U.S.C. § 541(a). 11 U.S.C. § 542(a) requires Debtors to deliver Tax Returns and Tax Refunds to Trustee as follows:

- (a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

11 U.S.C. § 542(a). If Debtor has not yet filed the 2022 Tax Returns, 11 U.S.C. § 521(a)(4) requires Debtors to deliver data necessary to prepare the returns under 11 U.S.C. § 521:

- (a) The debtor shall—
 - (4) if a trustee is serving in the case or an auditor is serving under section 586(f) of title 28, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title[.]

11 U.S.C. § 521(a)(4).

Trustee has demonstrated that the 2022 Tax Returns and any or all Tax Refunds exceeding Debtor's claimed exemptions are property of the estate and Trustee has the right to receipt for the benefit of the estate. Therefore, this motion will be GRANTED.

It will be ordered that Debtor shall comply with Trustee's request for turnover of documents and data related to their 2022 Tax Returns and turnover all or part of any Tax Refunds exceeding their claimed exemptions not later than seven calendar days after an order granting this motion is issued and served on Debtor. Failure to comply may result in an order imposing sanctions, including movant's attorney's fees, upon further motion.

5. [23-12426](#)-B-7 **IN RE: RAUL FERNANDEZ-MARTINEZ**
[FW-2](#)

MOTION TO APPROVE STIPULATION WITH THE U.S. SMALL BUSINESS
ADMINISTRATION
3-22-2024 [[41](#)]

PETER FEAR/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
GABRIEL WADDELL/ATTY. FOR MV.
OST 3/22/24

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: Prevailing party to prepare order.

Peter L. Fear, Chapter 7 Trustee ("Trustee") in the above-styled case, moves for the court to approve a stipulation with the U.S. Small Business Administration ("SBA") pursuant to Fed. R. Bankr. P. 9019. Doc. #41.

The SBA holds a lien on certain estate property (collectively "the Assets"), specifically (1) real property located at 3032 W. Alamos Avenue, Fresno, CA 93722 ("the Real Property") and (2) two 2019 53-foot Great Dane Trailers ("the Trailers"). Doc. #44 (Declaration of Peter Fear). The Trustee further declares he wishes to sell the Assets for the benefit of creditors but, because of cross-collateralization issues, he cannot do so without SBA's consent. Id. SBA is willing to consent to a sale of its secured collateral free and clear of its liens, provided that SBA's liens attach to the net proceeds (as defined by the Stipulation). Id. If the proceeds are insufficient to pay both SBA's claim in full and also at least \$20,000.00 to the bankruptcy estate, SBA agrees to a carve-out from the sale proceeds to ensure that the bankruptcy estate receives \$20,000.00. Id.

Pursuant to LBR 9014-1(f)(3), this motion was filed contemporaneously with a Motion to Shorten Time requesting that the period of notice be reduced to permit the hearing to take place on April 11, 2024. Doc. #40. Trustee was required to give notice to all parties in interest by first-class mail by March 22, 2024. Doc. #46. Trustee appears to have complied with the OST by serving notice on all requisite parties on that date. Doc. #45.

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 Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the

paramount interest of the creditors with a proper deference to their reasonable views. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that the Trustee has considered the A & C Props. and Woodson factors, which weigh in favor of approving the settlement agreement as follows:

1. Probability of success in litigation: Without the stipulation, SBA will not consent to a sale free and clear of its lien, and Trustee would not be able to sell the Assets at all. This factor supports approval.

2. Collection: The stipulation resolves the SBA's lien issues and provides for sale of the Assets and distribution of the proceeds. Collectability is not an issue, and so this factor is neutral.

3. Complexity of litigation: While the legal issues involved in the litigation are not difficult, the factual issues are insurmountable absent approval of the stipulation. Trustee avers that he cannot sell the Assets at all without SBA's consent, which will not be given except under the terms of the Stipulation. Furthermore, the Stipulation will ensure some benefit to creditors, whereas turnover to the SBA would likely result in no benefit to the bankruptcy estate. This factor supports approval of the settlement.

4. Paramount interests of creditors: The Stipulation allows Trustee to sell the Assets and maximize the return to unsecured creditors, which would otherwise likely be impossible. This factor supports approval of the settlement.

The A & C Props. and Woodson factors appear to weigh in favor of approving the settlement. Therefore, the settlement appears to be a fair, equitable, and reasonable exercise of Trustee's business judgment. 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.*

Accordingly, this motion will be GRANTED. The settlement between the estate and the SBA will be approved.

This ruling is not authorizing the payment of any fees or costs associated with the settlement. Additionally, Trustee shall attach a copy of the settlement agreement as an exhibit to the proposed order and shall separately file the settlement agreement and docket it as a stipulation.

6. [23-12426](#)-B-7 **IN RE: RAUL FERNANDEZ-MARTINEZ**
[FW-3](#)

MOTION TO REDUCE TIME ALLOWED TO AMEND EXEMPTIONS
3-28-2024 [\[47\]](#)

PETER FEAR/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
GABRIEL WADDELL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Peter L. Fear, Chapter 7 Trustee ("Trustee") in the above-styled case, moves for the court to reduce the time allowed for Raul Fernandez-Martinez ("Debtor") to amend his exemptions in this case. Doc. #47.

The Trustee declares that the reduction in time is necessary because Trustee is preparing to sell certain estate property ("the Assets), specifically (1) real property located at 3032 W. Alamos Avenue, Fresno, CA 93722 ("the Real Property") and (2) two 2019 53-foot Great Dane Trailers ("the Trailers"), pursuant to the Stipulation approved by this court at *Item #6*, above. #49 (*Declaration of Peter Fear*). Debtor has not claimed any exemption in the Assets on his Schedule C and purportedly told Trustee at the 341 meeting that he approved of selling the Assets. *Id*; *Doc. 1 (Sched. C)*.

Trustee argues that if Debtor amends his schedules to exempt the Assets after the sale, the bankruptcy estate would be prejudiced by Trustee's reliance on Debtor's statements. Doc. #47. Consequently, Trustee seeks an order limiting the period in which Debtor can amend his exemptions to May 9, 2024, which is twenty-eight (28) days after the date of the hearing. *Id*.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion.

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.

Under Rule 1009(a), Debtor may, as a matter of course, amend his schedules at any time before the case is closed. Fed. R. Bankr. P. 1009(a). However, Rule 9006(c)(1) authorizes the court to reduce the time for acts allowed by the Rules within a specified time (such as

amending a schedule) for cause shown. Fed. Rule Bankr. P. 9006(c)(1). The Trustee here is providing a time when the Debtor (or presumably a dependent of the Debtor) may file an amended schedule under Rule 4003 (a). Though the Trustee asks for 28 days, Rule 4003 requires 30 days for a dependent of the Debtor to amend the exemptions if the Debtor fails to do so. Rule 9006 (c) precludes shortening times under Rule 4003(a)

Trustee decided to sell the Assets and relied on representations by Debtor that he was in favor of the sale with proceeds going to pay creditors and that he would not be amending his exemptions in hopes of claiming any proceeds for himself. Doc. #49. The court finds that, under these circumstances, cause is shown for granting the requested relief and limiting Debtor's right to amend his Schedule C exemptions as to these assets. Any such amendment by the Debtor or a dependent of the Debtor must be made no later than May 9, 2024, or 30 days after entry of the order, whichever is later.

7. [23-12426](#)-B-7 **IN RE: RAUL FERNANDEZ-MARTINEZ**
[PFT-1](#)

MOTION TO EMPLOY GOULD AUCTION AND APPRAISAL COMPANY AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
3-14-2024 [[34](#)]

PETER FEAR/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
GABRIEL WADDELL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Chapter 7 trustee Peter Fear ("Trustee") seeks authorization to (a) employ Gould Auction and Appraisal Company ("Auctioneer") under 11 U.S.C. § 328; (b) sell the estate's interest in two 2019 53-foot Great Dane Trailers ("the Trailers") at public auction under § 363(b)(1); and (c) compensate Auctioneer under §§ 327(a) and 328. Doc. #10. The auction will be held on or after April 27, 2024, beginning at 9:00 a.m. at 6200 Price Way, Bakersfield, California. *Id.* The Debtor is Raul Fernandez-Martinez ("Debtor").

The Trailers are subject to a lien held by the Small Business Administration ("SBA"), which has consented to the sale pursuant to the Stipulation approved by the court at *Item #5*, above. The Trailers are cross collateralized with certain real property which Trustee also plans to sell. Doc. #37. Trustee declares his belief that the sale of the Trailers and the real property will yield enough equity to pay the lien and allow for a meaningful distribution to creditors. *Id.*

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

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

Employment and Compensation

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

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

11 U.S.C. § 327 allows the trustee, with the court's approval, to employ one or more attorneys, accountants, auctioneers, or other professional persons to represent or assist the trustee in carrying out the trustee's duties. The professional is required to be a disinterested person and neither hold nor represent interests adverse to the estate. § 327(a).

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

Under these sections, Trustee requests to employ and compensate Auctioneer by paying: (i) a 15% commission on the gross proceeds

from the sale; (ii) an additional 10% premium to be paid by the buyer; (iii) an additional 3% fee paid to the online service Proxibid, if the buyer makes use of that service; (iv) up to \$500.00 for "extraordinary expenses" and (v) a \$1,200.00 pick-up fee without further order of the court. Doc. #37.

Trustee and Jerry Gould, Auctioneer's owner, filed declarations attesting that Auctioneer is a disinterested person as defined in § 101(14) and does not hold any interests adverse to the estate in accordance with § 327(a). Docs. ##36-37. With respect to Debtor, Auctioneer is not a creditor, equity security holder, insider, investment banker for a security of the debtor within the three years before the petition date, or an attorney for such investment banker, and within two years of the petition date was not a director, officer, or employee of the Debtor or an investment banker. Doc. #36. Auctioneer does not have an interest materially adverse to the interest of the estate, creditors, Debtor, equity security holders, an investment banker for a security of the debtors, or any other party in interest, and had not served as an examiner in this case. *Id.* Auctioneer does not have any connection with any creditors, parties in interests, their attorneys, accountants, the U.S. Trustee, or anyone employed by the U.S. Trustee. *Id.* Additionally, no agreement exists between Auctioneer or any other person for the sharing of compensation received by Auctioneer in connection with the services rendered. *Id.*

Trustee declares that it is necessary to employ Auctioneer to liquidate Vehicle. Doc. #37. Trustee believes that the proposed fees and expenses for services are reasonable and customary for the services to be rendered by Auctioneer. *Id.* Auctioneer will assist Trustee by generally performing and assisting Trustee in matters customarily done and performed by auctioneers in connection with an auction sale of property. *Id.*

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. §§ 327(a), 328 and authorize Trustee to pay the 15% commission, and up to \$500.00 for extraordinary expenses and up to \$1,200.00 for pick-up fees.

Proposed Sale

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889, quoting 3 Collier on

Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Here, the Trailers are listed in the schedules with a value of \$30,000.00. *Sched. A/B*, Doc. #1. Debtor did not claim an exemption in the Trailers and has indicated to Trustee that he will not be doing so. *See Item #6, above*. The court has granted a motion by Trustee limiting Debtor's time in which he can change his mind and amend his Schedule C to claim any such exemptions. *Id.*

While Debtor values the Trailers at a total of \$60,000.00, Trustee values them at only \$30,000.00 total. Doc. #35. However, pursuant to the Stipulation of the estate and the SBA which this court has approved, the estate is guaranteed at least \$20,000.00 from the net sale proceeds for the estate.

Trustee believes that using the auction process to sell the Trailers will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #37. Based on Trustee's experience, this could yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.*

Sale by auction under these circumstances should maximize potential recovery for the estate such that the sale of the Trailers would be in the best interests of the estate if it will provide liquidity to the estate that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

Conclusion

No party in interest objected to the instant motion, which is Granted. Trustee will be permitted to employ Auctioneer, sell the Trailers at public auction, and pay Auctioneer for its services as outlined above. If the sale is completed, Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale and payment of up to \$500.00 for "extraordinary expenses" and up to \$1,200.00 for pick-up fees.

8. [23-12532](#)-B-7 **IN RE: EMILY FOX**
[ICE-1](#)

MOTION TO EMPLOY BAIRD AUCTION & APPRAISAL AS AUCTIONEER(S)
3-8-2024 [\[18\]](#)

IRMA EDMONDS/MV
JOEL WINTER/ATTY. FOR DBT.
IRMA EDMONDS/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Chapter 7 trustee Irma Edmonds ("Trustee") seeks authorization to (a) employ Baird Auctions & Appraisals ("Auctioneer") under 11 U.S.C. § 328 in anticipation of selling the estate's interest in a 2014 Infinity QX60 ("Vehicle") at public auction under § 363(b)(1). Doc. #19. Trustee's separate motion to sell the Vehicle and to compensate Auctioneer under §§ 327(a) and 328 will be addressed in *Item #9*, below. The motion does not identify the date of the auction, but the Trustee's *Motion to Sell*, which was filed contemporaneously with the instant motion indicates that the sale will take place "on or after April 11, 2014, through Baird Auction & Appraisal, 1328 North Sierra Vista Avenue, Suite B, Fresno, California 93703. Doc. #22.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

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

Employment and Compensation

This motion affects the proposed disposition of estate assets and Auctioneer. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021

incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion to add Auctioneer as a party.

11 U.S.C. § 327 allows the trustee, with the court's approval, to employ one or more attorneys, accountants, auctioneers, or other professional persons to represent or assist the trustee in carrying out the trustee's duties. The professional is required to be a disinterested person and neither hold nor represent interests adverse to the estate. § 327(a).

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

Under these sections, Trustee requests to employ and compensate Auctioneer by paying: (i) a 20% commission on the gross proceeds from the sale; and (ii) reimbursement of estimated expenses not to exceed \$500.00 for transportation, storage, labor, and repairs. Doc. #20.

Jeffrey Baird, Auctioneer's owner, filed a declaration attesting that Auctioneer is a disinterested person as defined in § 101(14) and does not hold any interests adverse to the estate in accordance with § 327(a). *Id.* With respect to Debtor, Auctioneer is not a creditor, equity security holder, insider, investment banker for a security of the debtor within the three years before the petition date, or an attorney for such investment banker, and within two years of the petition date was not a director, officer, or employee of the Debtor or an investment banker. *Id.* Auctioneer does not have an interest materially adverse to the interest of the estate, creditors, Debtor, equity security holders, an investment banker for a security of the debtors, or any other party in interest, and had not served as an examiner in this case. *Id.* Auctioneer does not have any connection with any creditors, parties in interests, their attorneys, accountants, the U.S. Trustee, or anyone employed by the U.S. Trustee. *Id.* Additionally, no agreement exists between Auctioneer or any other person for the sharing of compensation received by Auctioneer in connection with the services rendered. *Id.*

Trustee declares that it is necessary to employ Auctioneer to liquidate Vehicle. Doc. #18. Trustee believes that the proposed fees and expenses for services are reasonable and customary for the services to be rendered by Auctioneer. *Id.* Auctioneer will assist Trustee by (1) actively advertising the sale of the property, (2) assisting in storing the Vehicle until sold, and (3) generally performing and assisting Trustee in matters customarily done and

performed by auctioneers in connection with an auction sale of property. *Id.*

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. § 327(a). Court approval of Auctioneer's compensation will be addressed in *Item #9*, below.

9. [23-12532](#)-B-7 **IN RE: EMILY FOX**
[ICE-2](#)

MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR BAIRD
AUCTION & APPRAISAL, AUCTIONEER(S)
3-8-2024 [[22](#)]

IRMA EDMONDS/MV
JOEL WINTER/ATTY. FOR DBT.
IRMA EDMONDS/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Chapter 7 trustee Irma Edmonds ("Trustee") seeks authorization to (a) sell the estate's interest in a 2014 Infinity QX60 ("Vehicle") at public auction under § 363(b)(1), and (b) compensate Baird Auction & Appraisal ("Auctioneer") for work performed in connection with the sale pursuant to the terms of the court's order authorizing the retention of Auctioneer. Doc. #19; *See Item 8, above (authorizing employment of Auctioneer)*. The sale will take place "on or after April 11, 2014, through Baird Auction & Appraisal, 1328 North Sierra Vista Avenue, Suite B, Fresno, California 93703. Doc. #22.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

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

Proposed Sale

11 U.S.C. § 363(b) (1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Here, Vehicle is listed in the schedules as having 116,000 miles and is valued at \$7,450.00. Doc. #1 (*Sched A/B*). Vehicle does not appear to have any encumbrances, and Debtor has not claimed an exemption for it. Doc. #1 (*Sched. C and D*).

The moving papers do not include a valuation by the Trustee, so the court will look to Debtor's estimated value of \$7,450.00. If Trustee sells Vehicle at public auction at the scheduled sale price under § 363(b) and Debtor's initial exemption is considered valid, then the proposed sale would be illustrated as follows:

Sale price	\$7,450.00
Auctioneer fees (20%)	(\$1,490.00)
Estimated expenses (≤ \$500)	(\$500.00)
Debtors' exemption	\$0.00
Estimated net proceeds (≥)	\$5,450.00

Trustee believes that using the auction process to sell Vehicle will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #22. Based on Trustee's experience, this could yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.*

Sale by auction under these circumstances should maximize potential recovery for the estate such that the sale of the Vehicle would be in the best interests of the estate if it will provide liquidity to the estate that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. Therefore, this sale is an

appropriate exercise of Trustee's business judgment and will be given deference.

Conclusion

This matter will be called and proceed as scheduled. In the absence of opposition, this motion will be GRANTED. Trustee will be permitted sell the Vehicle at public auction and pay Auctioneer for its services as outlined in the court's order granting the *Application to Employ* the Auctioneer. See *Item #8*, above. If the sale is completed, Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 20% of gross proceeds from the sale and payment of up to \$500.00 for expenses.

10. [22-10760](#)-B-7 **IN RE: MATTHEW CRIPPEN**
[FW-2](#)

MOTION TO EMPLOY GOULD AUCTION & APPRAISAL COMPANY AS
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
3-5-2024 [[127](#)]

JAMES SALVEN/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Chapter 7 trustee James Salven ("Trustee") seeks authorization to (a) employ Gould Auction and Appraisal Company ("Auctioneer") under 11 U.S.C. § 328; (b) sell the estate's interest in certain personal property (hereinafter "the Assets") described below at public auction under § 363(b)(1); and (c) compensate Auctioneer under §§ 327(a) and 328. Doc. #10. The auction will be held on or after April 27, 2024, beginning at 9:00 a.m. at 6200 Price Way, Bakersfield, California. *Id.* The Debtor is Matthew Crippen ("Debtor").

The Assets are described as follows:

Asset Description	Scheduled Value	Trustee's Estimated Value	Liens	Exemptions	Net Value
2001 Peterbilt Tractor, Model 379 with 582,000 miles	\$12,000	\$15,000	\$0	\$12,000	\$3,000
1985 Peterbilt Tractor, Model 379 with 673,882 miles	\$6,000	\$4,000	\$0	\$0	\$4,000
1979 Mack Rolloff Tractor, with 374,687 miles	\$6,000	\$6,000	\$0	\$50	\$5,950
2007 Suzuki 450	\$2,000	\$2,000	\$0	\$0	\$2,000
1992 Diamond Z Tub Grinder	\$25,000	\$25,000	\$0	\$0	\$25,000
1999 Kobelco Excavator	\$20,000	\$10,000	\$0	\$0	\$10,000
2000 Western Highside Dump Trailer	\$15,000	\$7,500	\$0	\$0	\$7,500
1995 Western Highside Dump Trailer	\$10,000	\$5,000	\$0	\$0	\$5,000
1984 Ranco Belly Dump	\$5,000	\$2,500	\$0	\$0	\$2,500
Carson Dump Trailer	\$5,000	\$1,000	\$0	\$0	\$1,000
Scheduled Total	\$106,000.00			NET TOTAL	\$65,950

Doc. #128 The Assets are unencumbered, and except for the 2001 Peterbilt Tractor, Debtors does not claim an exemption in any of the Assets. Doc. #1 (*Sched. C & D*). Trustee declares his belief that the sale of the Assets will yield enough equity to allow for a meaningful distribution to creditors. *Id.*

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima

facie case for the requested relief. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

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

Employment and Compensation

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

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

11 U.S.C. § 327 allows the trustee, with the court's approval, to employ one or more attorneys, accountants, auctioneers, or other professional persons to represent or assist the trustee in carrying out the trustee's duties. The professional is required to be a disinterested person and neither hold nor represent interests adverse to the estate. § 327(a).

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

Under these sections, Trustee requests to employ and compensate Auctioneer by paying: (i) a 15% commission on the gross proceeds from the sale; (ii) an additional 10% premium to be paid by the buyer; (iii) an additional 3% fee paid to the online service Proxibid, if the buyer makes use of that service; (iv) Buyer will be required to pay a \$50.00 document fee for title expense which will go to Auctioneer; and Auctioneer may be reimbursed for up to \$1,000.00 for "extraordinary expenses," without further order of the court. Doc. #129. Any "extraordinary expenses" beyond that amount will require court approval. *Id.*

Trustee and Jerry Gould, Auctioneer's owner, filed declarations attesting that Auctioneer is a disinterested person as defined in § 101(14) and does not hold any interests adverse to the estate in accordance with § 327(a). Docs. #129-30. With respect to Debtor, Auctioneer is not a creditor, equity security holder, insider, investment banker for a security of the debtor within the three

years before the petition date, or an attorney for such investment banker, and within two years of the petition date was not a director, officer, or employee of the Debtor or an investment banker. Doc. #129. Auctioneer does not have an interest materially adverse to the interest of the estate, creditors, Debtor, equity security holders, an investment banker for a security of the debtors, or any other party in interest, and had not served as an examiner in this case. *Id.* Auctioneer does not have any connection with any creditors, parties in interests, their attorneys, accountants, the U.S. Trustee, or anyone employed by the U.S. Trustee. *Id.* Additionally, no agreement exists between Auctioneer or any other person for the sharing of compensation received by Auctioneer in connection with the services rendered. *Id.*

Trustee declares that it is necessary to employ Auctioneer to liquidate Vehicle. Doc. #140. Trustee believes that the proposed fees and expenses for services are reasonable and customary for the services to be rendered by Auctioneer. *Id.* Auctioneer will assist Trustee by generally performing and assisting Trustee in matters customarily done and performed by auctioneers in connection with an auction sale of property. *Id.*

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. §§ 327(a), 328 and authorize Trustee to pay the 15% commission, and up to \$500.00 for extraordinary expenses and up to \$1,200.00 for pick-up fees.

Proposed Sale

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Here, the Trailers are listed in the schedules with a value of \$106,000.00. Doc. #1 (*Sched. A/B*). However, Trustee values the Assets at considerably less, only \$65,950.00 total. Doc. #130. Trustee believes that using the auction process to sell the Assets will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. *Id.* Based

on Trustee's experience, this could yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.*

Sale by auction under these circumstances should maximize potential recovery for the estate such that the sale of the Trailers would be in the best interests of the estate if it will provide liquidity to the estate that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

Conclusion

No party in interest objected to the instant motion, which is Granted. Trustee will be permitted to employ Auctioneer, sell the Assets at public auction, and pay Auctioneer for its services as outlined above. If the sale is completed, Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale and payment of up to \$1000.00 for "extraordinary expenses" without further order of the court. Any requests for extraordinary expenses beyond that will require court approval after notice and hearing.

11. [22-11967](#)-B-7 **IN RE: IRMA MEDRANO AND MARCO RODRIGUEZ LARA**
[JES-2](#)

MOTION TO COMPEL
3-8-2024 [27]

JAMES SALVEN/MV
TRAVIS POTEAT/ATTY. FOR DBT.

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

DISPOSITION: Granted. Order effective May 14, 2024.

ORDER: Movant to prepare the order.

Chapter 7 trustee James E. Salven ("Trustee"), filed this motion seeking to compel Irma Medrano and Marco Rodriguez Lara ("Debtors") pursuant to 11 U.S.C. § 542(a) to turnover within seven days combined federal and state tax refunds totaling \$1057.00. Doc. #27. On March 29, 2024, Debtors filed a response stating that they have not yet received part of their refund and are awaiting a check in the mail. Doc. #32. They anticipate being able to turn over \$1057.00 to Trustee by April 9, 2024, and they request a thirty (30) day continuance so that the Trustee can confirm receipt of the monies and remove this matter from the calendar.

In addition to being untimely (which the court will excuse) the response is solely statements of Debtors' counsel and therefore hearsay. So, there is no evidence that disputes Trustee's evidence

and indeed, counsel's hearsay statements admit that Trustee's position is factually correct.

Thus, Debtors' request to continue the motion is DENIED. But because a short period for the Debtors to comply seems reasonable, the court will GRANT the motion but stay the effectiveness of the order until May 14, 2024.

12. [21-12873](#)-B-7 **IN RE: CESAR PENA BARRAZA AND OLGA PENA LOPEZ**
[SL-1](#)

MOTION TO COMPEL ABANDONMENT
2-16-2024 [53]

OLGA PENA LOPEZ/MV
SCOTT LYONS/ATTY. FOR DBT.
HEARING CONTINUED/RESCHEDULED BY MR. LYONS WITHOUT AN ORDER

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

DISPOSITION: Denied without prejudice.

ORDER: The court will prepare the order.

On February 16, 2024, Cesar Pena Barraza and Olga Pena ("Debtors") moved to compel the Trustee to abandon certain real property ("the Property") from the estate. The motion was originally scheduled for hearing on March 26, 2024, at 1:30 p.m. Doc. #54.

On March 14, 2024, Debtors filed an Amended Notice of Hearing which purported to change the hearing date to April 11, 2024, at 1:30 p.m. Doc. #60. The notice stated that the amendment was necessary because the addresses for the Chapter 7 Trustee and for Debtor Cesar Pena contained in the notice were incorrect. *Id.* However, continuances without a court order are not permitted under the Local Rules of Practice ("LBR"). See LBR 9014-1(j). Accordingly, this motion will be DENIED WITHOUT PREJUDICE and dropped from the calendar.

Should counsel want to correct the record, a motion under Rule 9024 and a properly noticed motion for the relief requested may be necessary.

13. [23-12389](#)-B-7 **IN RE: FATIMA SENTMAN**
[PFT-1](#)

MOTION TO EMPLOY GOULD AUCTION AND APPRAISAL COMPANY AS
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
3-1-2024 [18]

PETER FEAR/MV
SCOTT LYONS/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Chapter 7 trustee Peter Fear ("Trustee") seeks authorization to (a) employ Gould Auction and Appraisal Company ("Auctioneer") under 11 U.S.C. § 328; (b) sell the estate's interest in a 2009 Toyota Corolla which Trustee values at \$5,000.00 ("the Vehicle") at public auction under § 363(b)(1); and (c) compensate Auctioneer under §§ 327(a) and 328. Doc. #18. The auction will be held on or after April 27, 2024, beginning at 9:00 a.m. at 6200 Price Street, Bakersfield, California. Doc. #19. The Debtor is Fatima Zorilla Sentman ("Debtor"). Doc. #18.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

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

Employment and Compensation

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

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

11 U.S.C. § 327 allows the trustee, with the court's approval, to employ one or more attorneys, accountants, auctioneers, or other professional persons to represent or assist the trustee in carrying out the trustee's duties. The professional is required to be a disinterested person and neither hold nor represent interests adverse to the estate. § 327(a).

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

Under these sections, Trustee requests to employ and compensate Auctioneer by paying: (i) a 15% commission on the gross proceeds from the sale; (ii) an additional 10% premium to be paid by the buyer; (iii) potentially a \$50.00 DMV fee to be paid by Buyer to Auctioneer; (iv) an additional 3% fee paid to the online service Proxibid, if the buyer makes use of that service; and (iv) reimbursement for "extraordinary expenses" not to exceed \$500.00 and a \$250.00 pick-up fee, both subject to court approval. Doc. #18. Necessary expenses including inventory, advertising and other costs of sale will be included in the commission and the Buyer's premium. *Id.* Auctioneer holds a Bankruptcy Auctioneer Blanket Bond and carries Liability Insurance Coverage as required by the U.S. Trustee. Doc. #21.

Trustee and Jerry Gould, Auctioneer's owner, filed declarations attesting that Auctioneer is a disinterested person as defined in § 101(14) and does not hold any interests adverse to the estate in accordance with § 327(a). Docs. ##20-21. With respect to Debtor, Auctioneer is not a creditor, equity security holder, insider, investment banker for a security of the debtor within the three years before the petition date, or an attorney for such investment banker, and within two years of the petition date was not a director, officer, or employee of the Debtor or an investment banker. *Id.* Auctioneer does not have an interest materially adverse to the interest of the estate, creditors, Debtor, equity security holders, an investment banker for a security of the debtors, or any other party in interest, and had not served as an examiner in this case. *Id.* Auctioneer does not have any connection with any creditors, parties in interests, their attorneys, accountants, the

U.S. Trustee, or anyone employed by the U.S. Trustee. *Id.* Additionally, no agreement exists between Auctioneer or any other person for the sharing of compensation received by Auctioneer in connection with the services rendered. *Id.*

Trustee declares that it is necessary to employ Auctioneer to liquidate Vehicle. Doc. #21. Trustee believes that the proposed fees and expenses for services are reasonable and customary for the services to be rendered by Auctioneer. *Id.* Auctioneer will assist Trustee by generally performing and assisting Trustee in matters customarily done and performed by auctioneers in connection with an auction sale of property. *Id.*

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. §§ 327(a), 328 and authorize Trustee to pay the 15% commission, and upon subsequent motion and court approval, up to \$500.00 for "extraordinary expenses."

Proposed Sale

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Here, Vehicle is described in the schedules as having 245,790 miles and being in operable. *Sched. A/B*, Doc. #1. Debtor speculates it would be worth \$5,010.00 if in working condition, and Trustee values it at \$5,000.00. *Id.*; Doc. #21. Vehicle does not appear to have any encumbrances. *Sched. D*, *Id.* Debtor has not claimed an exemption in the Vehicle. *Sched. C*, Doc. #1.

If Trustee sells Vehicle at public auction at its estimated \$5,000.00 value under § 363(b), then the proposed sale would be illustrated as follows:

Sale price	\$5,000.00
Auctioneer fees (15%)	-\$750.00
"Extraordinary expenses" (\leq \$750.00)	-\$750.00
Debtors' exemption	\$0.00
Estimated net proceeds (\geq)	\$3,500.00

Doc. #21. Based on Trustee's experience, this could yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.*

Sale by auction under these circumstances should maximize potential recovery for the estate such that the sale of the Vehicle would be in the best interests of the estate if it will provide liquidity to the estate that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

Conclusion

No party in interest objected to the instant motion, which is Granted. Trustee will be permitted to employ Auctioneer, sell the Vehicle at public auction, and pay Auctioneer for its services as outlined above. If the sale is completed, Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale. If "extraordinary expenses" are to be sought, they must be the subject to a later motion and hearing.

14. [15-14892](#)-B-7 **IN RE: ROSA CABRERA**
[ICE-1](#)

MOTION FOR COMPENSATION FOR IRMA EDMONDS, CHAPTER 7
TRUSTEE(S)
3-14-2024 [\[87\]](#)

IRMA EDMONDS/MV
MARIO LANGONE/ATTY. FOR DBT.
IRMA EDMONDS/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Chapter 7 Trustee Irma Edmonds ("Trustee") brings this first and final Application for Compensation in the above-styled case. Doc. #87. Rosa Cabrera ("Debtor") filed chapter 7 bankruptcy on December 23, 2015, and received her discharge on April 25, 2016, with the case closed four days later. Docs. #1,16,18. The U.S. Trustee's Office ("UST") subsequently filed a motion to reopen the case on the

grounds that Debtor failed to schedule her interest in a personal injury lawsuit which the UST believed to be property of the estate. Doc. #20. The case was reopened by order of the court on August 11, 2023, and was appointed as Successor Trustee. Docs. ##22,23. The court later approved a settlement of the lawsuit. Doc. #61. The Trustee's Final Report has been issued, and the deadline for opposition has run. Docs. ##81,82. Trustee now seeks \$11,516.23 for her Statutory Commission, plus \$61.34 in costs. Doc. #87.

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 may unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). 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.

No party in interest has responded, and the defaults of all such parties in interest are entered. This motion will be GRANTED.

11 U.S.C. § 326 permits the court to allow reasonable compensation to the chapter 7 trustee under § 330 for the trustee's services. Section 326(a) states:

In a case under chapter 7 or 11, other than a case under subchapter V of chapter 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including all holders of secured claims. 11 U.S.C. § 326(a).

11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses. 11 U.S.C. § 330(a)(1)(A) & (B).

The Application is accompanied by a Trustee Compensation Report which reflects that total disbursements in this case other than to Debtor were **\$165,345.64**. Doc. #90. Applying the statutory compensation scheme outlined in 11 U.S.C. § 326 to the total distribution yields the following results.

	Total Disbursements =	\$165,324.64
25% of First \$5000.00	\$5,000.00	(\$1,250.00)
10% of next \$45,000.00	\$45,000.00	(\$4,500.00)
5% of next \$950,00.00	\$115,324.64	(\$5,766.23)
3% of Balance	\$0.00	\$0.00
	Calculated Total Compensation	\$11,516.23

Trustee also requests **\$61.34** in reimbursement for expenses as follows:

Copies	\$37.20
Distribution Copies	\$11.80
Distribution Postage	\$2.64
Distribution Postage	\$2.70
Distribution Checks	\$7.00
	\$61.34

Doc. #90.

The court finds Trustee's services were actual and necessary to the estate, and the fees are reasonable and consistent with § 326(a). The motion will be GRANTED and Trustee will be awarded the requested fees and costs.