

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, April 20, 2022
Place: Department A - Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

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

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-28-2022 [[891](#)]

NEWREZ LLC/MV
LEONARD WELSH/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.
WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on April 6, 2022. Doc. #952.

2. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[GAG-1](#)

CONTINUED STATUS CONFERENCE RE: OBJECTION TO CLAIM OF NINO GLOBAL, LLC,
CLAIM NUMBER 13, OBJECTION TO CLAIM OF NINO GLOBAL, LLC, CLAIM NUMBER 14,
OBJECTION TO CLAIM OF PLATINUM FARMS SERVICES, LLC, CLAIM NUMBER 16,
OBJECTION TO CLAIM OF NINO GLOBAL, LLC, CLAIM NUMBER 17
5-24-2021 [[593](#)]

EDUARDO GARCIA/MV
LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

3. [20-12258](#)-A-11 **IN RE: JARED/SARAH WATTS**
[LKW-13](#)

MOTION TO SELL FREE AND CLEAR OF LIENS
3-25-2022 [\[287\]](#)

JARED WATTS/MV
LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Though not required, BMO Harris Bank N.A. ("BMO") filed written opposition on April 6, 2022. Doc. #302. If further 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.

Among the assets of the estate are a 2011 Freightliner Coronado Truck (the "2011 Freightliner") and two Wilson Step Deck Trailers (the "Trailers"). Doc. #287; Schedule A/B, Doc. #1. Jared Allen Watts and Sarah Danielle Watts (together, "DIP") want to sell the Trailers outside the ordinary course of business and free and clear of any interests in the property pursuant to 11 U.S.C. § 363(b)(1) and (f). Doc. #287. DIP seeks authorization to sell the Trailers for no less than \$25,000 each. Doc. #287.

The 2011 Freightliner and the Trailers secure the claim of BMO as provided for in Class Five of DIP's confirmed First Modified Plan of Reorganization Dated September 20, 2020 (the "Plan"). Doc. #297; Plan, Doc. #141. The Plan valued BMO's Class Five claim at \$64,048.92 as of the petition date. Plan, Doc. #141. DIP believes that the balance owed on the Class Five claim is \$44,688.48. Decl. of Jared Allen Watts, Doc. #289.

The Plan requires 100% of all proceeds received from the sale of any asset sold outside of the ordinary course of business be paid to Class One (priority claims) and Class Twenty-Two (allowed general unsecured claims) after payment of any claim secured by a lien against the asset sold and cost of sale. Plan § 10.03, Doc. #141. Creditors in Class Twenty-Two are to be paid less than 100% of the allowed amount of their claims. Plan § 7.01, Doc. #141.

Section 363 of the Bankruptcy Code states that a trustee, or debtor in possession, may use, sell, or lease property of the estate outside the ordinary course of business after notice and a hearing. 11 U.S.C. §§ 363(b)(1), 1184. The debtor proposing a sale under § 363(b) must demonstrate a valid business justification for the sale and that the sale is proposed in good faith. 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996).

"Good faith encompasses fair value, and further speaks to the integrity of the transaction." Id. (quoting In re Wilde Horse Enters., Inc. 136 B.R. 830, 842 (Bankr. C.D. Cal. 1991)). To make such a determination, "the court and creditors must be provided with sufficient information to allow them to take a position on the proposed sale." Wilde Horse Enters., 136 B.R. at 842. The bankruptcy court should consider whether the sale is in the best interests of the estate, is for a fair and reasonable price, has been adequately marketed, and is an "arms-length" transaction. Id. at 841.

DIP requests approval of the sale because DIP determined that the Trailers are not needed for use in DIP's business or reorganization. Decl. of Jared Allen Watts ¶ 4, Doc. #289. DIP testifies that it is in DIP's best interest to sell the Trailers. Id. DIP believes "the Trailers have a value of \$25,000 or more each" and intends to sell the Trailers "for no less than \$25,000 each." Id. ¶ 5. However, DIP does not explain how the value of the Trailers was determined. DIP does not state whether the sale will be at auction or through a private sale. DIP does not describe any plans to market the Trailers or promote the sale. DIP does not identify any buyers for the Trailers. These concerns were raised in BMO's opposition. Doc. #302.

In the reply filed April 13, 2022, DIP offers to provide BMO with: (1) an appraisal of the Trailers; (2) the identity of a buyer; (3) information related to DIP's marketing efforts; and (4) other information demonstrating that the Trailers are being sold for fair market value. Doc. #305. DIP proposes to provide only BMO with that information conditioned upon BMO releasing the lien against the Trailers and consenting to the sale without DIP having to supplement the motion. Doc. #305.

The court is inclined to DENY this motion because DIP has not demonstrated that proposed sale of the Trailers is proposed in good faith. DIP is required to provide sufficient information to all creditors and the court necessary for the determination that the proposed sale is made in good faith. The motion and supporting papers are silent as to how Debtors determined the value of the Trailers, what past or future marketing efforts there have been or will be for the Trailers, who potential buyers of the Trailers might be, and whether any sale of the Trailers will be an "arms-length" transaction.

Section 363(f)(3) permits the sale of property free and clear of any interest in such property only if such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property. 11 U.S.C. § 363(f)(3). Section 363(f)(2) permits the sale of property free and clear of an entity's interest in such property if the entity consents. 11 U.S.C. § 363(f)(2). DIP moves under both subsections.

On April 6, 2022, BMO filed written opposition and does not consent to the sale of the Trailers. Doc. #302. BMO argues that the Trailers were cross-collateralized and secured all debts owed to BMO. Doc. #302. BMO further contends that it holds two deficiency claims in a combined amount of \$29,987.72 from collateral previously surrendered to BMO. Doc. #302. Thus, according to BMO, the Trailers will not be sold for an amount greater than the aggregate value of all liens on the Trailers as required by § 363(f)(3) if sold for \$25,000 each. Doc. #302. BMO does not consent to the sale unless all sale proceeds are paid towards the balance owed BMO, including BMO's deficiency claims. Doc. #302. Per the reply, DIP agrees that all allowed claims of BMO shall be paid in full from the sale of the Trailers, including BMO's deficiency claims which would satisfy BMO's objection but would still require BMO's consent under § 363(f)(2). Doc. #302; Doc. #305. However, even if BMO were to consent to the sale of the Trailers, DIP has not demonstrated to the court that the sale as currently presented is proposed in good faith.

Accordingly, this motion will be DENIED.

4. [20-12258](#)-A-11 **IN RE: JARED/SARAH WATTS**
[LKW-14](#)

MOTION TO SELL FREE AND CLEAR OF LIENS
3-25-2022 [\[292\]](#)

JARED WATTS/MV
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and deny 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.

Among the assets of the estate are a 2016 Freightliner Coronado Truck contract no. 32001 (the "Freightliner 32001") and a 2016 Freightliner Coronado Truck contract no. 45001 (the "Freightliner 45001"). Doc. #292; Schedule A/B, Doc. #1. Jared Allen Watts and Sarah Danielle Watts (together, "DIP") want to sell the Freightliner 32001 outside the ordinary course of business and free and clear of any interests in the property pursuant to 11 U.S.C. § 363(b)(1) and (f). Doc. #292. DIP seeks authorization to sell the Freightliner 32001 for no less than \$127,000. Doc. #292.

The Freightliner 32001 and Freightliner 45001 secure the claim of Daimler Truck Financial ("Daimler") as provided for in Class Ten of DIP's confirmed First Modified Plan of Reorganization Dated September 20, 2020 (the "Plan"). Doc. #292; Plan, Doc. #141. The Plan valued Daimler's Class Ten claim at \$140,963.44 as of the petition date based on DIP's belief that the combined replacement value of both Freightliners totaled \$140,963.44. Plan, Doc. #141. DIP believes that the balance owed on the Class Ten claim is \$126,862. Decl. of Jared Allen Watts, Doc. #294.

The Plan requires 100% of all proceeds received from the sale of any asset sold outside of the ordinary course of business be paid to Class One (priority claims) and Class Twenty-Two (allowed general unsecured claims) after payment of any claim secured by a lien against the asset sold and cost of sale. Plan § 10.03, Doc. #141. Creditors in Class Twenty-Two are to be paid less than 100% of the allowed amount of their claims. Plan § 7.01, Doc. #141.

Section 363 of the Bankruptcy Code states that a trustee, or debtor in possession, may use, sell, or lease property of the estate outside the ordinary course of business after notice and a hearing. 11 U.S.C. §§ 363(b)(1), 1184. The debtor proposing a sale under § 363(b) must demonstrate a valid business

justification for the sale and that the sale is proposed in good faith. 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996).

"Good faith encompasses fair value, and further speaks to the integrity of the transaction." Id. (quoting In re Wilde Horse Enters., Inc. 136 B.R. 830, 842 (Bankr. C.D. Cal. 1991)). To make such a determination, "the court and creditors must be provided with sufficient information to allow them to take a position on the proposed sale." Wilde Horse Enters., 136 B.R. at 842. The bankruptcy court should consider whether the sale is in the best interests of the estate, is for a fair and reasonable price, has been adequately marketed, and is an "arms-length" transaction. Id. at 841.

DIP requests approval of the sale because DIP determined that the Freightliner 32001 is not needed for use in DIP's business or reorganization. Decl. of Jared Allen Watts ¶ 4, Doc. #294. DIP testifies that it is in DIP's best interest to sell the Freightliner 32001. Id. DIP believes "the Freightliner 32001 has a value of \$127,000 or more" and intends to sell the Freightliner 32001 "for no less than \$127,000." Id. ¶ 5. However, DIP does not explain how the value of the Freightliner 32001 was determined. DIP does not state whether the sale will be at auction or through a private sale. DIP does not describe any plans to market or promote the sale. DIP does not identify any buyers of Freightliner 32001.

The court is inclined to DENY this motion because DIP has not demonstrated that proposed sale of Freightliner 32001 is proposed in good faith. DIP is required to provide sufficient information to all creditors and the court necessary for the determination that the proposed sale is made in good faith. The motion and supporting papers are silent as to how Debtors determined the value of Freightliner 32001, what past or future marketing efforts there have been or will be for Freightliner 32001, who potential buyers of Freightliner 32001 might be, and whether any sale of Freightliner 32001 will be an "arms-length" transaction.

Section 363(f)(3) permits the sale of property free and clear of any interest in such property only if such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property. 11 U.S.C. § 363(f)(3). Section 363(f)(2) permits the sale of property free and clear of an entity's interest in such property if the entity consents. 11 U.S.C. § 363(f)(2). DIP moves under both subsections.

While the consent requirement of § 363(f)(2) may be satisfied if no objection is raised, the motion did not require written opposition and objections may be raised at the hearing. However, even if § 363(f)(2) or (f)(3) is satisfied, DIP has not demonstrated to the court that the sale as currently presented is proposed in good faith.

Accordingly, this motion will be DENIED.

5. [20-12258](#)-A-11 **IN RE: JARED/SARAH WATTS**
[LKW-15](#)

MOTION TO SELL FREE AND CLEAR OF LIENS
3-25-2022 [\[297\]](#)

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and deny 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.

Among the assets of the estate is a 2015 GMC Yukon XL ("Yukon") Doc. #297; Schedule A/B, Doc. #1. Jared Allen Watts and Sarah Danielle Watts (together, "DIP") want to sell the Yukon outside the ordinary course of business and free and clear of any interests in the property pursuant to 11 U.S.C. § 363(b)(1) and (f). Doc. #297. DIP seeks authorization to sell the Yukon for no less than \$40,000. Doc. #292.

The Yukon secures the claim of Safe 1 Credit Union ("Safe 1") as provided for in Class Four of DIP's confirmed First Modified Plan of Reorganization Dated September 20, 2020 (the "Plan"). Doc. #297; Plan, Doc. #141. The Plan valued Safe 1's Class Four claim at \$22,219.81 as of the petition date based on DIP's schedules. Plan, Doc. #141. DIP believes that the balance owed on the Class Four claim is \$17,249.43. Decl. of Jared Allen Watts, Doc. #299.

The Plan requires 100% of all proceeds received from the sale of any asset sold outside of the ordinary course of business be paid to Class One (priority claims) and Class Twenty-Two (allowed general unsecured claims) after payment of any claim secured by a lien against the asset sold and cost of sale. Plan § 10.03, Doc. #141. Creditors in Class Twenty-Two are to be paid less than 100% of the allowed amount of their claims. Plan § 7.01, Doc. #141.

Section 363 of the Bankruptcy Code states that a trustee, or debtor in possession, may use, sell, or lease property of the estate outside the ordinary course of business after notice and a hearing. 11 U.S.C. §§ 363(b)(1), 1184. The debtor proposing a sale under § 363(b) must demonstrate a valid business justification for the sale and that the sale is proposed in good faith. 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996).

"Good faith encompasses fair value, and further speaks to the integrity of the transaction." Id. (quoting In re Wilde Horse Enters., Inc. 136 B.R. 830, 842 (Bankr. C.D. Cal. 1991)). To make such a determination, "the court and creditors must be provided with sufficient information to allow them to take a position on the proposed sale." Wilde Horse Enters., 136 B.R. at 842. The bankruptcy court should consider whether the sale is in the best interests of the estate, is for a fair and reasonable price, has been adequately marketed, and is an "arms-length" transaction. Id. at 841.

DIP requests approval of the sale because DIP determined that the Yukon is not needed for use in DIP's business or reorganization. Decl. of Jared Allen Watts ¶ 4, Doc. #299. DIP testifies that it is in DIP's best interest to sell the Yukon. Id. DIP believes "the Yukon has a value of \$40,000 or more" and intends to sell the Yukon "for no less than \$40,000." Id. ¶ 5. However, DIP does not explain how the value of the Yukon was determined. DIP does not state whether the sale will be at auction or through a private sale. DIP does not describe any plans to market or promote the sale. DIP does not identify any buyers.

The court is inclined to DENY this motion because DIP has not demonstrated that proposed sale of the Yukon is proposed in good faith. DIP is required to provide sufficient information to all creditors and the court necessary for the determination that the proposed sale is made in good faith. The motion and supporting papers are silent as to how Debtors determined the value of the Yukon, what past or future marketing efforts there have been or will be for the Yukon, who potential buyers of the Yukon might be, and whether any sale of the Yukon will be an "arms-length" transaction.

Section 363(f)(3) permits the sale of property free and clear of any interest in such property only if such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property. 11 U.S.C. § 363(f)(3). Section 363(f)(2) permits the sale of property free and clear of an entity's interest in such property if the entity consents. 11 U.S.C. § 363(f)(2). DIP moves under both subsections.

While the consent requirement of § 363(f)(2) may be satisfied if no objection is raised, the motion did not require written opposition and objections may be raised at the hearing. However, even if § 363(f)(2) or (f)(3) is satisfied, DIP has not demonstrated to the court that the sale as currently presented is proposed in good faith.

Accordingly, this motion will be DENIED.

11:00 AM

1. [22-10101](#)-A-7 **IN RE: COURTNEY SHACKELFORD AND REFUGIO ORTEGA**

REAFFIRMATION AGREEMENT WITH CAPITAL ONE AUTO FINANCE
3-22-2022 [[16](#)]

ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

The debtors' counsel will inform the debtors that no appearance is necessary.

Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship, which has not been rebutted in the reaffirmation agreement. Although the debtors' attorney executed the agreement, the attorney could not affirm that (a) the agreement was not a hardship, and (b) the debtors would be able to make the payments.

1. [21-11960](#)-A-7 **IN RE: RAMIRO AYALA AND MARIA GOMEZ**
[JES-1](#)

MOTION TO SELL
3-23-2022 [[20](#)]

JAMES SALVEN/MV
JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Ramiro Tapia Ayala and Maria E. Gomez (together, "Debtors"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the bankruptcy estate's interest in a 2014 Nissan Altima (the "Vehicle") to Debtors for a purchase price of \$9,325, less \$3,325 in allowed exemption, for a net to the estate of \$6,000. Doc. #20. The proposed sale is subject to higher and better bids at the hearing. Doc. #20.

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

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Tr. Decl., Doc. #22. Trustee's proposed sale to Debtors is made in consideration of the full and fair market value of the Vehicle. Doc. #22. Debtors offered to buy the Vehicle for a net to the estate of \$6,000.00, subject to overbid at the hearing. Doc. #22. Trustee is in receipt of the funds and is awaiting court approval. Doc. #22. Debtors have an allowed exemption in the Vehicle of \$3,325. Sched. C, Doc. #1. The court recognizes that no commission will need to be paid because the sale is to Debtors.

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

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

2. [16-13295](#)-A-7 **IN RE: DAVID GONZALEZ AND CYNTHIA DE LA GARZA**
[FW-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
FOR PETER A. SAUER, TRUSTEES ATTORNEY(S)
3-16-2022 [\[74\]](#)

KARNEY MEKHITARIAN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Fear Waddell P.C. ("Movant"), attorney for chapter 7 trustee Peter L. Fear ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered March 19, 2020 through March 10, 2022. Doc. #74. Movant provided legal services valued at \$12,748, and requests compensation for that amount. Doc. #74. Movant requests reimbursement for expenses in the amount of \$199.31. Doc. #74. This is Movant's first and final fee application.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing counsel to Trustee as to the administration of the chapter 7 case; (2) providing legal assistance in organizing and approving the settlement of a product liability litigation; (3) working to collect the settlement proceeds and resolving related exemption issues; and (4) preparing and filing employment and fee applications. Decl. of Peter A. Sauer, Doc. #77; Exs. A & B, Doc. #76. Trustee reviewed the fee application and has no objection. Doc. #75. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$12,748 and reimbursement for expenses in the amount of \$199.31. Trustee is authorized to make a combined payment of \$12,947.31, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

3. [21-11997](#)-A-7 **IN RE: FELIPE REYNOSO AND HILDA AYON**
[JES-3](#)

MOTION TO SELL
3-18-2022 [\[47\]](#)

JAMES SALVEN/MV
T. O'TOOLE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Felipe Ayon Reynoso and Hilda Ayon (together, "Debtors"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the bankruptcy estate's interest in a 2011 Freightliner Cascadia VIN 1FUJGLDR6BSAU6333 (the "Vehicle") to Debtors for a purchase price of \$19,850, less \$4,850 in allowed exemption, for a net to the estate of \$15,000. Doc. #47. The proposed sale is subject to all liens and encumbrances and subject to higher and better bids at the hearing. Doc. #47.

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

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Tr. Decl., Doc. #49. Trustee's proposed sale to Debtors is made in consideration of the full and fair market value of the Vehicle. Doc. #22. The Vehicle is in need of repairs and is currently inoperable. Ex. A, Doc. #50. Debtors agreed to buy the Vehicle for a net to the estate of \$15,000.00, subject to overbid at the hearing. Doc. #49. Trustee is in receipt of the funds and is awaiting court approval. Doc. #49. Debtors have an allowed exemption in the Vehicle of \$4,850. Order, Doc. #29. The court recognizes that no commission will need to be paid because the sale is to Debtors.

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

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