

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, April 20, 2021
Place: Department B – Courtroom #13
Fresno, California

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, **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.

1:30 PM

1. [21-10404](#)-B-7 **IN RE: KELLY/MELISSA KIRKPATRICK**
[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
3-30-2021 [\[12\]](#)

PETER FEAR/MV
DAVID JENKINS/ATTY. FOR DBT.
PETER FEAR/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.

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

Chapter 7 trustee Peter L. Fear ("Trustee") asks the court to employ Gould Auction and Appraisal Company ("Auctioneer") as auctioneer to sell property of the estate consisting of a 2008 KTM 450 XCF off road only dirt bike ("Property") at public auction. Doc. #12. The auction is scheduled for April 24, 2021 at 10:00 a.m. at 6200 Price Street, Bakersfield, CA 93307.

This motion will be GRANTED

11 U.S.C. § 327 provides:

(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

11 U.S.C. § 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).

Trustee wishes to sell Property under 11 U.S.C. § 363(b). Property is non-exempt, unencumbered, and listed in the petition with a value of \$3,000.00. Docs. #1; #15.

Trustee requests to pay 15% of gross proceeds from the sale as compensation under 11 U.S.C. §§ 327(a) and 328, along with a 10% buyer's premium on the gross proceeds of the sale, up to \$500.00 for extraordinary expenses, and a \$150.00 pick-up fee. Doc. #12. Trustee and Jerry Gould, Auctioneer's owner and operator, filed declarations stating that Auctioneer is a disinterested person as defined in § 101(14) and does not hold interests adverse to the estate as required by § 327(a). Docs. ##14-15.

Trustee will be authorized to employ Auctioneer to sell Property at public auction. Trustee will also be authorized to compensate Auctioneer on a percentage collected basis, 15% of the gross proceeds from the sale, 10% buyer's premium, reimbursement of up to \$500.00 for extraordinary expenses, and a \$150 pick-up fee. Doc. #15. The buyer's premium is paid on top of the payment price and paid directly from the buyer to Auctioneer. *Id.* Auctioneer will be responsible for paying any and all sales tax in relation to this auction. *Id.*

The court finds the proposed arrangement reasonable in this instance. If the arrangement proves improvident, the court may allow different compensation under § 328(a).

Sale by auction under these circumstances should maximize potential recovery for the estate. Therefore, it is an appropriate exercise of Trustee's business judgment.

This motion will be GRANTED. Trustee will be authorized to employ and pay Auctioneer for his services as outlined above, and the proposed sale at auction of the Property will be approved.

2. [21-10334](#)-B-7 **IN RE: MICHAEL/JENNIFER ROBISON**
[PFT-2](#)

MOTION TO EMPLOY GOULD AUCTION AND APPRAISAL COMPANY AS
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
3-30-2021 [\[19\]](#)

PETER FEAR/MV
MARIO LANGONE/ATTY. FOR DBT.
PETER FEAR/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.

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

Chapter 7 trustee Peter L. Fear ("Trustee") asks the court to employ Gould Auction and Appraisal Company ("Auctioneer") as auctioneer to sell certain property of the estate (collectively "Property"), described below, at public auction. Doc. #19. The auction is scheduled for April 24, 2021 at 10:00 a.m. at 6200 Price Street, Bakersfield, CA 93307.

This motion will be GRANTED

11 U.S.C. § 327 provides:

(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

11 U.S.C. § 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).

Trustee wishes to sell Property under 11 U.S.C. § 363(b). All Property is non-exempt, unencumbered, and listed in the petition with the following values:

Asset	Value
2005 Jeep Rubicon	\$8,683.00
1991 Ford F250	\$2,900.00
1997 Chevrolet Cavalier	\$895.00
1989 Laton 5th Wheel	\$3,500.00
1969 Jeep CJ5	\$5,500.00
Total:	\$21,478.00

Docs. #1; #22.

Trustee requests to pay 15% of gross proceeds from the sale as compensation under 11 U.S.C. §§ 327(a) and 328, along with a 10% buyer's premium on the gross proceeds of the sale, up to \$500.00 for extraordinary expenses, and a \$150.00 pick-up fee per item with a maximum \$600.00. Doc. #12. Trustee and Jerry Gould, Auctioneer's owner and operator, filed declarations stating that Auctioneer is a disinterested person as defined in § 101(14) and does not hold interests adverse to the estate as required by § 327(a). Docs. ##21-22.

Trustee will be authorized to employ Auctioneer to sell Property at public auction. Trustee will also be authorized to compensate Auctioneer on a percentage collected basis, 15% of the gross proceeds from the sale, 10% buyer's premium, reimbursement of up to \$500.00 for extraordinary expenses, and a \$150 pick-up fee per item (maximum of \$600.00). Doc. #22. The buyer's premium is paid on top of the payment price and paid directly from the buyer to Auctioneer. *Id.* Auctioneer will be responsible for paying any and all sales tax in relation to this auction. *Id.*

The court finds the proposed arrangement reasonable in this instance. If the arrangement proves improvident, the court may allow different compensation under § 328(a).

Sale by auction under these circumstances should maximize potential recovery for the estate. Therefore, it is an appropriate exercise of Trustee's business judgment.

This motion will be GRANTED. Trustee will be authorized to employ and pay Auctioneer for his services as outlined above, and the proposed sale at auction of the Property will be approved.

3. [21-10061](#)-B-7 **IN RE: JACINTO/KAREN FRONTERAS**
[JES-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
3-3-2021 [\[16\]](#)

JAMES SALVEN/MV
GLEN GATES/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

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

This objection was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

Chapter 7 trustee James Salven ("Trustee") objects to Jacinto Fronteras and Karen Jo Fronteras' ("Debtors") claim of exemptions for certain assets claimed in the Debtors' schedules. Doc. #16. Debtors timely filed written opposition. The defaults of all non-responding parties will be entered.

The court is inclined to SUSTAIN this objection.

Fed. R. Bankr. P. 4003(b) allows a party in interest to file an objection to a claim of exemption within 30 days after the § 341 meeting of creditors is held or within 30 days after any amendment to Schedule C is filed, whichever is later.

In this case, the § 341 meeting was concluded on February 11, 2021 and this objection was filed on March 3, 2021, which is within the 30-day timeframe.

The Eastern District of California Bankruptcy Court in *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015) held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [relevant California law] and the extent to which that exemption applies." The exemption statutes are to be liberally construed in favor of the debtors. *In re Turner*, 186 B.R. 108, 113 (B.A.P. 9th Cir. 1995).

Debtors exempted four firearms (collectively "Firearms") under California Code of Civil Procedure ("C.C.P.") 704.020 in the total amount of \$1,150.00. Doc. #1, Schedule C. The Firearms and their values are as follows:

Property	Value
Taurus .38 revolver	\$250.00
Ruger 38 revolver	\$250.00
S&W M&P 40	\$350.00
S&W M&P 40 compact	\$300.00
Total	\$1,150.00

Id. C.C.P. § 704.020 provides an exemption for “[h]ousehold furnishings, appliances, provisions, wearing apparel, and other personal effects” so long as they are “ordinarily and reasonably necessary to, and personally used or procured for use by” the Debtors at their principal place of residence.

Trustee acknowledges that the Firearms could qualify as “personal effects,” but should be disqualified as exempt property because they are not “used or procured for use . . . at the place of residence.” Doc. #16 quoting C.C.P. §§ 704.020(a)(1) and (2). Trustee contends that the Firearms are not “ordinarily and reasonably necessary” as defined in § 704.020(b). *Id.* In the alternative, Trustee argues that Debtors should only be allowed to exempt one gun only.

Joint debtor Jacinto Fronteras filed a declaration under penalty of perjury. Doc. #20. Mr. Fronteras states that he owns a gun permit and has a concealed weapons permit from the Madera Sheriff’s Office. Mr. Fronteras is a lifetime veteran member of the Sun Mountain Gun Club and last attended a safety class on June 30, 2018. Debtors use the guns recreationally for target practice, hunting, protection from potential intruders, and personal safety. Debtors “vehemently dispute” that the quantity of guns owned and exempted is not reasonably necessary for only two people. *Id.* Debtors live in Coarsegold, California on a 1.1-acre lot of land and use the Firearms to deter rattlesnakes that visit on a seasonal basis. *Id.*

The Honorable W. Richard Lee encountered a similar situation in this district in *In re Dunnaway*, 466 B.R. 515 (Bankr. E.D. Cal. 2012). In *Dunnaway*, the chapter 13 trustee objected to firearm exemptions under C.C.P. §§ 703.140 and 702.020 in a consolidated opinion to four separate bankruptcy cases. *Id.* at 518-19. The debtors owned between one to four guns and cited hunting and self-protection as reasons that their firearms were household items. *Ibid.* As here, the trustee did not object based on the value of the exemptions, but rather that firearms cannot be exempted as “household property” under California law. *Ibid.*

The court considered “the station in life of the owner and the manner of comfortable living to which he has become accustomed” and the important recreational value of the disputed property to be liberally construed in favor of the debtors. *Id.* at 521-22 citing *In re Lucas*, 77 B.R. 242, 245 (B.A.P. 9th Cir. 1987). The court noted that a debtor’s use of household items, for the purposes of exemptions, cannot be “purely ornamental” and must “serve some useful purpose.” *Id.* at 524 citing *Indep. Bank v. Heller*, 275 Cal. App. 2d 84, 89 (1969). Ultimately, the court stated that “[t]here is no reason why firearms of moderate value, owned and used for

hunting, protection, or general recreational purposes cannot exist in the same category as golf clubs, camera equipment, and an exercise bike." *Ibid.* Moreover, the court noted that the general custom and practice in the debtor's community is also relevant to determine whether a firearm is "ordinarily found in the household" within a debtor's community such that firearm ownership would be ordinary and reasonable. *Id.* at 525. On this basis, the court found that the trustee failed to make a *prima facie* factual showing as to why the firearms should not qualify as "household property" for the purposes of the exemption statute. *Id.* at 524.

The court agrees with *Dunnaway* that as a matter of law, there is no *per se* rule in excluding firearms from the definition of "personal effects" under C.C.P. § 704.020. But should the debtors be permitted to exempt four of them here?

Dunnaway was decided before *Pashenee*, *In re Tellerico*, 532 B.R. 774, 788 (Bankr. E.D. Cal. 2015), and *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). Application of the burdens of proof and persuasion were critical in *Dunnaway*. It is unclear whether application of the burden of proof for California exemption claimants under C.C.P. § 703.580(b) in *Dunnaway* would have changed the result. No matter, that burden of proof allocation is necessary now.

As in *Dunnaway*, Debtors here declared under penalty of perjury that the Firearms are used for recreation, hunting, household protection, and self-defense. Doc. #20. Debtors live in Coarsegold, California on a 1.1-acre plot of land where rattlesnakes are common and the potential for intruders is never impossible. Debtors have cited a "useful purpose" for some firearms that is not purely ornamental.

But, viewing the exemption statutes liberally, the debtors have not sustained their burden that they should exempt four firearms as valid household items.

Mr. Fronteras testified that he has a gun permit (concealed carry), but he does not have a hunting license. Doc. #20. He is also a "lifetime veteran member" of a recreational gun club.

The court thanks Mr. Fronteras for his service.

Mr. Fronteras also testifies that he and his spouse "intend" to target practice and "intend" to continue recreational use and obtain hunting licenses. So, the debtors have not used the pistols for hunting game but for target practice, gun club activities, personal protection, and extermination of rattlesnakes. They have not testified that all of guns or those activities are "used" at their personal place of residence under C.C.P. § 704.020(a)(1).

Absent from proof is why four guns are needed for those activities. Apparently, Ms. Fronteras has neither a permit nor hunting license or did she when the case was filed.

The court agrees that golf clubs, camera equipment, and an exercise bike may be in the same category as exemptible personal effects as firearms. But not four of each.

This matter will be called as scheduled. The court is inclined to SUSTAIN the objection.

4. [20-13966](#)-B-7 **IN RE: SHERRY/BRETT JORDAN**
[UST-1](#)

MOTION TO DISMISS CASE AND/OR MOTION TO EXTEND TIME TO FILE
A MOTION TO DISMISS CASE UNDER SEC. 707(B)
4-6-2021 [\[12\]](#)

TRACY DAVIS/MV
D. GARDNER/ATTY. FOR DBT.
JORGE GAITAN/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 court will issue an order.

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.

The United States Trustee ("UST") filed this motion moving the court to approve Stipulation to Dismiss Chapter 7 Case Without Entry of Discharge. Doc. #12. Alternatively, UST requests to extend the deadline to file a motion to dismiss a case for abuse under 11 U.S.C. §§ 707(b) or (c) for 60 days.

This motion will be GRANTED.

A chapter 7 case may be dismissed only after a notice and hearing and only for "cause," including three enumerated causes 11 U.S.C. § 707(a) states, in relevant part:

- (a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including—
 - (1) unreasonable delay by the debtor that is prejudicial to creditors;
 - (2) nonpayment of any fees or charges required under chapter 123 of title 28; and
 - (3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition

commencing such case, the information required by paragraph (1) of section 521(a), but only on a motion by the United States trustee.

11 U.S.C. § 707(a). These statutorily enumerated grounds are not exclusive. *Sherman v. SEC (In re Sherman)*, 491 F.3d 948, 970 (9th Cir. 2007); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 840 (B.A.P. 9th Cir. 2008). Under 11 U.S.C. § 707(b), an individual chapter 7 consumer debtor's case may be dismissed for presumed abuse or where abuse is demonstrated by bad faith or the totality of the circumstances of the debtor's financial condition. See 11 U.S.C. §§ 707(b) (1), (b) (2), and (b) (3).

Here, Sherry Elaine Jordan and Brett Allen Jordan ("Debtors") filed bankruptcy on December 31, 2020. Doc. #1. The § 341 meeting of creditors was held on February 19, 2021 and continued to March 5, 2021. The meeting was continued to March 19, 2021, then to April 9, 2021, and continued again to April 23, 2021. The UST is prepared to file motions under 11 U.S.C. §§ 707(b) (1), (b) (2), or (b) (3), but Debtors stipulated to dismissal without entry of discharge because they do not wish to defend UST's allegations. See Doc. #14.

There does not appear to be any benefit to creditors in keeping the bankruptcy case open. The court has reviewed the schedules and it appears that Debtors own \$175,000.00 in real property, \$70,000.00 in vehicles, and \$7,630.00 in other personal property assets. Doc. #1, Schedule A/B. Meanwhile, Debtors exempted \$23,631.00 in real property assets, \$10,000.00 in vehicles, and \$5,600.00 in personal property. *Id.*, Schedule C. Debtors' remaining real property and vehicles are fully encumbered, which gives Debtors approximately \$2,030 in non-exempt assets consisting of a "Vacant Lot in Onyx" which has been "Listed for sale for years" valued at \$2,000, and \$30.00 in checking and savings *Id.*, Schedules A/B, ¶¶ 17, 53; D. After costs of sale, there appears to be minimal equity remaining for the benefit of the estate.

Opposition was not required and may be presented at the hearing. In the absence of further opposition, this motion will be GRANTED. Debtors' stipulation with UST to dismiss the case without entry of discharge will be GRANTED and the case will be dismissed. The alternative relief requested to extend the deadlines to file motions under §§ 707(b) or (c) will be denied as moot.

5. [19-13569](#)-B-7 **IN RE: JOHN ESPINOZA**
[THA-2](#)

MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR REALTY
CONCEPTS, BROKER(S), MOTION FOR ADMINISTRATIVE EXPENSES
3-18-2021 [\[93\]](#)

REALTY CONCEPTS/MV
JERRY LOWE/ATTY. FOR DBT.
KELSEY SEIB/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

First, the court notes that the trustee's supplemental declaration (Doc. #98) included exhibits that were not filed as a separate document and did not contain an exhibit index. LBR 9004-2(c)(1) requires declarations, exhibits, and other specified pleadings to be filed as separate documents. LBR 9004-2(d)(2) requires each exhibit document to have an index at the start of the document that lists and identifies by exhibit number or letter each exhibit individually with the page number that it is found within the exhibit document.

INTRODUCTION

Chapter 13 trustee Peter L. Fear ("Trustee") seeks authorization to sell the estate's interest in residential real property commonly known as 25591 Honda Road, Madera, CA 93638 ("Property") for \$215,000.00 to Hector Medina ("Buyer") subject to higher and better bids under 11 U.S.C. § 363(b). Doc. #93.

Trustee asks to pay broker commission of six percent (6%) to be split equally between the buyer and seller's brokers.

Trustee also wishes to pay \$4,500.00 from escrow to Property's current tenant, Nicole Danielle Santillan Valenzuela ("Valenzuela"), as an administrative expense under 11 U.S.C. § 503(b)(1)(A). Further, because there is old debris, appliances, and miscellaneous clutter and trash that needs to be removed from the Property, Trustee wants to pay not more than \$400.00 to rent a refuse dumpster as an administrative expense under 11 U.S.C. § 503(a)(1)(A).

Trustee filed a supplement and declaration on March 25, 2021, which was 26 days before the hearing. Docs. #97-98. This supplement discloses two additional interests in Property held by Timothy James Cox ("Cox") and Madera Valley Water Company, Inc. ("MVWC"). Doc. #97. As part of the supplement, Trustee also served the original motion documents on Valenzuela, Cox, and MVWC. Doc. #100. Because these documents were served on less than 28 days' notice, Valenzuela, Cox, and MVWC may present opposition at the hearing. The defaults of all other non-responding parties are entered.

If opposition is presented the matter will be continued.

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

11 U.S.C. § 363

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

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

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). There is no indication here that Buyer is an insider. Buyer does not appear to be a creditor of or co-debtor with Debtor. Docs. #1; #4; #32; #73; #84.

SALE

Trustee wishes to sell Property to Buyer for \$215,000.00. Doc. #93.

John Espinoza ("Debtor") filed bankruptcy on December 31, 2019. Doc. #1. Debtor listed Property in Schedule A/B with a value of \$205,000.00 and did not exempt any equity in Schedule C. Doc. #40, Schedule A/B, ¶ 1.2; Schedule C. According to Schedule D, Property is encumbered by Rushmore in the amount of \$89,428.00. Doc. #32, Schedule D. Rushmore Loan Management Services did file a proof of claim, but it concerned a different property owned by Debtor. *Cf.* Claim #4-1. Rushmore did not file a proof of claim for any debt secured by Property. However, Trustee states that there is a first position consensual lien against Property in an approximate amount of \$100,000.00. Doc. #95, ¶ 10. Real property taxes will come due in April 2021. *Ibid.*

The proposed sale can be illustrated as follows:

Proposed sale price of Property		\$215,000.00
Approximate first priority lien	-	\$100,000.00
Broker commission (6%)	-	\$12,900.00
Cash for keys (incl. \$879 MVWC payout)	-	\$4,500.00
Refuse dumpster	-	\$400.00
Proposed Cox payout	-	\$2,000.00
Other costs of sale and taxes	-	?
Net to the estate	<	\$95,200.00

Docs. #93; #97.

The sale of the Property appears to be in the best interests of the estate because it will pay off the first mortgage and provide liquidity to the estate. Trustee estimates that sufficient net funds will remain in the estate with which to pay all claims, and it is likely that there will be a surplus that will be returned to the Debtor following administration of the estate. Doc. #98, ¶ 8. The sale appears to be supported by a valid business judgment and proposed in good faith because the sale will pay all claims and administrative expenses of the estate. Trustee's business judgment appears to be reasonable and will be given deference.

BROKER COMPENSATION

In connection with this sale, Trustee asks to pay broker commission of six percent (6%) under §§ 328 and 330, split equally between the buyer and seller's brokers.

On March 12, 2021, this court authorized employment of Realty Concepts ("Broker") as Trustee's broker pursuant to 11 U.S.C. § 327(a) to sell Property. Doc. #92. The order specified that Broker's compensation was subject to court approval under §§ 328 and 330. *Id.*

Under the Listing Agreement between the Trustee and Broker, the broker commission will be set at six percent (6%) commission to be split between the buyer and seller's respective brokers, unless Clarence Hal Harris, Jr. ("Harris"), is the buyer's agent, then broker commission shall be five percent (5%). Doc. #93. Harris is not Buyer's agent, so unless there is an overbidder represented by Harris, Trustee asks that the brokerage commission be set at 6%, which is the industry standard commission for sales of residential property. *Id.*

The court will allow the commission to be paid as prayed. The court finds the compensation reasonable. If there is an objection from Cox, MVWC, or Valenzuela, the hearing will be continued.

SUPPLEMENT

As noted above, Trustee's supplement and declaration discloses two additional exceptions to Fidelity's title coverage that were unknown at the time of filing this motion:

- (1) Lis Pendens recorded by Cox on December 9, 2005 as Document No. 2005059259 relating to a state court dissolution action between Debtor and his former spouse;
- (2) A lien in favor of MVWC in the amount of \$879.00 against Valenzuela.

Doc. #97. Trustee states that Cox formerly represented Melinda Espinoza, Debtor's ex-wife. Doc. #98, ¶ 6. Trustee has communicated with Cox, who purportedly has suffered a significant debilitating medical ailment. As result, Cox indicated that it would be "extremely difficult for him to obtain his file to support his claim" but that he would execute a withdrawal of the Lis Pendens for a "nominal sum." *Ibid.* Thus, Trustee proposes to pay Cox \$2,000.00 as consideration for his withdrawal of the Lis Pendens so that the sale may close as soon as practicable. Doc. #97.

This conversation with Cox is hearsay and is not admissible to prove that Cox is willing to settle his claim and execute a withdrawal. See Fed. R. Evid. 802. Cox was served the motion documents and the supplemental documents on March 25, 2021. As noted above, this is on less than 28 days' notice and Cox may present opposition at the hearing.

As mentioned, if there is opposition from any served party at the hearing, the hearing will be continued.

CASH FOR KEYS

The second lien in favor of MVWC is derived from the unpaid water charges by Valenzuela, the current tenant and temporary owner of Property. Valenzuela was a named defendant in Trustee's Adversary Proceeding No. 20-1021, *Fear v. Espinoza et al.* Valenzuela did not oppose the adversary proceeding and executed a declaration and stipulation for turnover of the Property to the estate. See AP 20-1021, Docs. ##55-56. Valenzuela reconveyed title to the estate under

those documents and the court granted entry of default judgment. *Id.*, Doc. #64.

Trustee entered into a "Cash for Keys" agreement with Valenzuela in exchange for her cooperation in vacating the Property. Doc. #93, ¶ 15. Trustee states that Valenzuela cared for Property and maintained mortgage payments for a number of years. Doc. #95, ¶ 18. Recently, Valenzuela's mother needed housing and Valenzuela allowed her to move into Property temporarily with her. Valenzuela agreed to assist with helping her mother relocate to another property. In exchange for that cooperation, Trustee proposes to pay Valenzuela \$4,500.00 from escrow upon close of escrow as an administrative expense under 11 U.S.C. § 503(b) (1) (A) .

Trustee's supplement and declaration discloses a lien in favor of MVWC in the amount of \$879.00 against Valenzuela. Docs. ##97-98. Trustee suggests that this amount be paid through escrow from the \$4,500 allocated to Valenzuela, leaving her with \$3,621.00 after payment to MVWC. Doc. #98, ¶ 7. As with Cox, MVWC and Valenzuela were served the motion and supplemental documents on March 25, 2021 and may present opposition at the hearing.

REFUSE DUMPSTER

Lastly, Trustee states there is old debris that needs to be removed from Property. The debris consists of appliances such as washers and dryers, miscellaneous clutter, and trash. Doc. #95, ¶ 19. Broker and Trustee have agreed to obtain a refuse dumpster to dispose of the debris and Broker has agreed to advance the cost, not to exceed \$400.00, for the removal of those items. The estate is without funds to rent a dumpster, so Trustee asks to reimburse Broker \$400.00 upon close of escrow as an administrative cost under 11 U.S.C. § 503(b) (1) (A) .

OVERBID PROCEDURE

Any party wishing to overbid must deposit with Trustee's counsel certified monies in the amount of \$2,500.00 **no later than Tuesday, April 13, 2021, 5:00 p.m. Pacific Standard Time**. Unsuccessful bidders' deposits will be returned within ten (10) days following the hearing. The successful bidder's deposit will be applied toward the purchase price. Overbidders must provide written proof of the financial ability and sufficiency of funds to close escrow within thirty (30) days of the delivery of a certified copy of the court's order approving this motion and can execute a purchase agreement for the property.

Overbidders must be present at the hearing, make overbids in the amount of \$1,000.00, be aware that their deposit will be forfeited if they do not timely close the sale, and acknowledge that no warranties or representations are included with the property; it is sold "as-is."

CONCLUSION

It appears that the sale of the Property is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith. There are no objections or opposition to the motion.

The motion does not request, nor will the court authorize, the sale free and clear of any liens or interests. Valid encumbrances including those mentioned here will be paid through escrow or alternate arrangements made. The sale is subject to all interests.

Trustee will be authorized to pay broker commission of six percent (6%) of the gross sale proceeds unless Harris is the buyer's broker, then five percent (5%) of gross sale proceeds. Trustee will be authorized to pay administrative expenses under § 503(b)(1)(A): (1) \$879.00 to MVWC for the unpaid water charges; (2) \$3,621.00 to Valenzuela in accordance with the cash for keys agreement; and (3) not more than \$400.00 to reimburse Broker for the refuse dumpster upon close of escrow.

No party in interest timely filed written opposition, but Valenzuela, Cox, and MVWC may present opposition at the hearing. Any opposition presented will result in a continuance of the hearing.

In the absence of further opposition from Valenzuela, Cox, or MVWC, the court is inclined to GRANT the motion. This matter will proceed as scheduled for higher and better bids, only.

6. [20-13583](#)-B-7 **IN RE: JESUS VILLALOBOS**
[ALG-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-19-2021 [\[25\]](#)

VALLEY STRONG CREDIT UNION/MV
ARNOLD GRAFF/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned

parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Valley Strong Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to real property located at 2325 Rounds St. Delano, California 93215 ("Property"). Doc. #25.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least 6 post-petition payments. The movant has produced evidence that debtor is delinquent at least \$9,674.88 and the entire balance of \$221,615.71 is due. Doc. #27, #30.

The court declines finding that Debtor does not have any equity in the Property. Although this is a chapter 7 case and the Property is not necessary for an effective reorganization, the moving papers indicate that Debtor has approximately \$13,384.29 in equity. Doc. #30. Relief under § 362(d)(2) is moot because there is "cause" to grant the motion under § 362(d)(1).

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

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The request of the Moving Party, at its option, to provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement as allowed by state law will be denied. The court is granting stay relief to movant to exercise its rights and remedies under applicable bankruptcy law. No more, no less.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 6 payments to Movant.

7. [19-14891](#)-B-7 **IN RE: GREGORIO/TANYA SALAS**
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-10-2021 [\[42\]](#)

FREEDOM MORTGAGE CORPORATION
AUTHORITY/MV
THOMAS GILLIS/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.
DISCHARGED 3/2/20

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

DISPOSITION: Granted in part and denied as moot in part.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the 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 amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Freedom Mortgage Corporation Authority ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a piece of real property located at 623 Carol Avenue, Sanger, California 93657 ("Property"). Doc. #42.

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The debtors' discharge was entered on March 2, 2020. Doc. #33. Therefore, the automatic stay terminated with respect to the debtors on March 2, 2020. This motion will be DENIED AS MOOT IN PART as to the debtors' interest and will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary

relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors have been in default since December 1, 2020. Doc. #44.

The Chapter 7 Trustee, James Salven, filed a motion to employ broker on February 6, 2020, which the court granted on February 18, 2020. Docs. #21, #28. To date, the Trustee has filed no further motion for approval of sale. Also, the Trustee did not oppose this motion.

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

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.