



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, April 24, 2024
Department A – Courtroom #11
Fresno, California

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

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

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

Please also note the following:

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

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

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

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [22-12016](#)-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
11-28-2022 [[1](#)]

D. GARDNER/ATTY. FOR DBT.

NO RULING.

2. [22-12016](#)-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
[DMG-13](#)

MOTION TO BORROW
4-3-2024 [[425](#)]

FUTURE VALUE CONSTRUCTION, INC./MV
D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to permit the debtor to supplement the record as indicated below.

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 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Though not required, Logan Investments, Inc., as agent for Robert Korda, Trustee of the Survivor's Trust created under the Robert and Rosina Korda Living Trust dated August 28, 2002 ("Secured Creditor"), filed written opposition on April 10, 2024 ("Opposition"). Doc. #440. Further opposition may be presented at the hearing, and this matter will proceed as scheduled. The court intends to enter the defaults of non-responding parties and continue the hearing to give the debtor time to supplement the record in the motion.

As a procedural matter, the Opposition and related certificate of service do not comply with LBR 9014-1(c)(4), which requires that all related papers filed by a party include the Docket Control Number assigned by the moving party. Neither pleading includes the Docket Control Numbers for the three motions to which those pleadings relate. In addition, Secured Creditor should not have filed one omnibus opposition to three separate motions; three separate oppositions should have been filed, one for each motion.

As a further procedural matter, the certificate of service for the Opposition does not comply with LBR 7005-1 and General Order 22-03, which require attorneys

and trustees to use the court's Official Certificate of Service Form as of November 1, 2022. The court encourages counsel for Secured Creditor to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

Future Value Construction, Inc. ("DIP") seeks to borrow \$528,230.08 from CoFi ("Lender") secured by a first deed of trust against DIP's real property commonly referred to as Lot 8 in Lakeview at Rio Bravo ("Lot 8"). Decl. of Chuck R. Thomason, Doc. #427. The purpose of the loan is to complete the construction of a house on Lot 8 so that property can be sold. Id. DIP estimates that the sale price of the constructed home on Lot 8 will be approximately \$720,000. Id. DIP estimates a profit with respect to Lot 8 of approximately \$100,000. Motion, Doc. #425.

Section 364(c) provides:

If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

. . .

(2) secured by a lien on property of the estate that is not otherwise subject to a lien.

11 U.S.C. § 364(c). In a chapter 11 case, the debtor in possession has the rights and powers of a trustee. 11 U.S.C. § 1107(a). Debtors in possession must obtain the approval of the bankruptcy court when they wish to incur secured debt. 11 U.S.C. § 364(c)(2); In re Harbin, 486 F.3d 510, 521 (9th Cir. 2007). Section 364(c)(2) provides an exception to the general prohibition against creating post-petition encumbrances on property of the bankruptcy estate. Harbin, 486 F.3d at 521.

Courts generally give debtors in possession considerable deference to determine, in their business judgment, the terms under which they obtain post-petition secured credit. See, e.g., In re Los Angeles Dodgers LLC, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender."); In re Ames Dep't Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.").

To determine whether a debtor in possession has met this business judgment standard, a court need only "examine whether a reasonable business person would make a similar decision under similar circumstances." In re Exide Techs., 340 B.R. 222, 239 (Bankr. D. Del. 2006); see also In re Curlew Valley Assocs., 14 B.R. 506, 513-14 (Bankr. D. Utah 1981) (recognizing the court should not entertain objections to a trustee's business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the [Bankruptcy] Code").

However, there are several issues that need to be addressed in supplemental pleadings before the court will grant the motion. While Exhibit A to the motion states that interest on the post-petition loaned funds is variable and will be determined by the WSJ prime rate plus 4.00% per annum, the motion and supporting evidence do not state how often the interest rate will vary. Ex. A, Doc. #428. Further, the term of the loan is 12 months, although the payment terms of the loan are unclear because a copy of the proposed promissory note was not included with the moving papers, as noted by Secured Creditor in the Opposition. Doc. #440. If monthly loan payments are required, the moving papers and supporting evidence do not provide any information regarding whether DIP has the funds to make those payments beyond the interest reserve set forth Exhibit A to the motion. Ex. A, Doc. #428. Finally, the motion is not clear whether the proposed loan is to be subordinated to the pro-rata portion of real property taxes owed to the Kern County Tax Collector.

Because DIP needs to supplement the record with respect to this motion before the court can make the required findings to grant the motion, the court is inclined to continue the hearing on this motion and set a deadline for the filing and service of additional pleadings.

3. [22-12016-A-11](#) **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
[DMG-14](#)

MOTION TO BORROW
4-3-2024 [[430](#)]

FUTURE VALUE CONSTRUCTION, INC./MV
D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to permit the debtor to supplement the record as indicated below.

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 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Though not required, Logan Investments, Inc., as agent for Robert Korda, Trustee of the Survivor's Trust created under the Robert and Rosina Korda Living Trust dated August 28, 2002 ("Secured Creditor"), filed written opposition on April 10, 2024 ("Opposition"). Doc. #440. Further opposition may be presented at the hearing, and this matter will proceed as scheduled. The court intends to enter the defaults of non-responding parties and continue the hearing to give the debtor time to supplement the record in the motion.

As a procedural matter, the Opposition and related certificate of service do not comply with LBR 9014-1(c)(4), which requires that all related papers filed by a party include the Docket Control Number assigned by the moving party. Neither pleading includes the Docket Control Numbers for the three motions to which those pleadings relate. In addition, Secured Creditor should not have filed one omnibus

opposition to three separate motions; three separate oppositions should have been filed, one for each motion.

As a further procedural matter, the certificate of service for the Opposition does not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022. The court encourages counsel for Secured Creditor to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

Future Value Construction, Inc. ("DIP") seeks to borrow \$100,000.00 from Bon and Kathleen Reynolds ("Lender") secured by a second deed of trust against DIP's real property commonly referred to as Lot 8 in Lakeview at Rio Bravo ("Lot 8"). Decl. of Chuck R. Thomason, Doc. #432. The purpose of the loan is to make payments towards a performance bond for the completion of street and other common area improvements necessary to record the Phase 2 map of Lakeview at Rio Bravo and pay DIP's ongoing business expenses. Id. The proposed borrowing will be subordinate to the proposed post-petition borrowing from CoFi that is the subject of another motion (DMG-13) also set for hearing on this calendar. DIP estimates that the sale price of the constructed home on Lot 8 will be approximately \$720,000. Id. While DIP estimates a profit with respect to Lot 8 of approximately \$200,000 in this motion, DIP estimates a profit with respect to Lot 8 of approximately \$100,000 in the other motion regarding Lot 8 on this calendar. Compare Motion (DMG-13), Doc. #425 with Motion (DMG-14), Doc. #430. Interest on the post-petition loaned funds will be 12% per annum. Ex. A, Doc. #433. Monthly loan payments are \$1,000.00, and the term of the loan is 12 months. Id.

Section 364(c) provides:

If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

. . .

(3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c). In a chapter 11 case, the debtor in possession has the rights and powers of a trustee. 11 U.S.C. § 1107(a). Debtors in possession must obtain the approval of the bankruptcy court when they wish to incur secured debt. 11 U.S.C. § 364(c)(3); In re Harbin, 486 F.3d 510, 521 (9th Cir. 2007). Section 364(c)(3) provide exceptions to the general prohibition against creating post-petition encumbrances on property of the bankruptcy estate. Harbin, 486 F.3d at 521.

Courts generally give debtors in possession considerable deference to determine, in their business judgment, the terms under which they obtain post-petition secured credit. See, e.g., In re Los Angeles Dodgers LLC, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender."); In re Ames Dep't Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement

does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”).

To determine whether a debtor in possession has met this business judgment standard, a court need only “examine whether a reasonable business person would make a similar decision under similar circumstances.” In re Exide Techs., 340 B.R. 222, 239 (Bankr. D. Del. 2006); see also In re Curlew Valley Assocs., 14 B.R. 506, 513-14 (Bankr. D. Utah 1981) (recognizing the court should not entertain objections to a trustee’s business decision when that decision involves “a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the [Bankruptcy] Code”).

However, there are several issues that need to be addressed in supplemental pleadings before the court will grant the motion. First, as raised by Secured Creditor in the Opposition, there is no information in the moving papers on the amount of the performance bond the City of Bakersfield will require in order to proceed with the Phase 2 tract map. Doc. #440. If there are insufficient proceeds from the proposed junior financing from Lender to fund the performance bond, this motion should not be granted. Id. Second, as raised by Secured Creditor, there is no information, term or budget for the business expenses DIP proposes to pay through the junior borrowing. Id. In addition, the moving papers and supporting evidence do not provide any information regarding how DIP will pay the monthly interest payments. Ex. A, Doc. #433. Finally, the motion is not clear whether the proposed loan is to be subordinated to the pro-rata portion of real property taxes owed to the Kern County Tax Collector as well as to the proposed senior post-petition borrowing from CoFi.

Because DIP needs to supplement the record with respect to this motion before the court can make the required findings to grant the motion, the court is inclined to continue the hearing on this motion and set a deadline for the filing and service of additional pleadings.

4. [22-12016-A-11](#) **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
[DMG-15](#)

MOTION TO BORROW
4-3-2024 [[435](#)]

FUTURE VALUE CONSTRUCTION, INC./MV
D. GARDNER/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continue to permit the debtor to supplement the record as indicated below.

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 14 days’ notice prior to the hearing date pursuant to Local Rule of Practice (“LBR”) 9014-1(f)(2) and will proceed as

scheduled. Though not required, Logan Investments, Inc., as agent for Robert Korda, Trustee of the Survivor's Trust created under the Robert and Rosina Korda Living Trust dated August 28, 2002 ("Logan"), filed written opposition on April 10, 2024 ("Logan Opposition") (Doc. #440), and Forge Trust Co. FBO Paul Francis Accinelli IRA 451782 ("Forge") filed written opposition on April 22, 2024 ("Forge Opposition") (Doc. #445). Further opposition may be presented at the hearing, and this matter will proceed as scheduled. The court intends to enter the defaults of non-responding parties and continue the hearing to give the debtor time to supplement the record in the motion.

As a procedural matter, the Logan Opposition and related certificate of service do not comply with LBR 9014-1(c)(4), which requires that all related papers filed by a party include the Docket Control Number assigned by the moving party. Neither pleading includes the Docket Control Numbers for the three motions to which those pleadings relate. In addition, Logan should not have filed one omnibus opposition to three separate motions; three separate oppositions should have been filed, one for each motion.

As a further procedural matter, the certificate of service for the Logan Opposition does not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Logan Creditor to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

Future Value Construction, Inc. ("DIP") seeks to borrow \$528,230.08 from CoFi ("Lender") secured by a first deed of trust against DIP's real property commonly referred to as Lot 18 in Lakeview at Rio Bravo ("Lot 18"). Decl. of Chuck R. Thomason, Doc. #437. The purpose of the loan is to complete the construction of a house on Lot 18 so that property can be sold. Id. The proposed borrowing with respect to Lot 18 will be senior to the deed of trust currently held against Lot 18 by Forge in the amount of \$70,700, which DIP estimates will be \$88,500 at the time construction is complete. Id. DIP estimates that the sale price of the constructed home on Lot 18 will be approximately \$730,000. Id. DIP estimates a profit with respect to Lot 18 of approximately \$100,000. Id.

Section 364(d) of the Bankruptcy Code permits the court to authorize the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if:

- (A) the chapter 11 debtor in possession is unable to obtain such credit otherwise; and
- (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior lien is proposed to be granted.

11 U.S.C. § 364(d)(1). The debtor bears the burden of proof on the issue of adequate protection. 11 U.S.C. § 364(d)(2). "The determination of adequate protection is a fact-specific inquiry." In re Mosello, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996). The purpose of § 364(d) is to "facilitate a plan that will inure to the benefit of all creditors and the estate." In re Stoney Creek Techs., LLC, 364 B.R. 882, 895 (Bankr. E.D. Pa. 2007).

Courts generally give debtors in possession considerable deference to determine, in their business judgment, the terms under which they obtain post-petition secured credit. See, e.g., In re Los Angeles Dodgers LLC, 457 B.R. 308, 313 (Bankr. D. Del. 2011) (“[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender.”); In re Ames Dep’t Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”).

To determine whether a debtor in possession has met this business judgment standard, a court need only “examine whether a reasonable business person would make a similar decision under similar circumstances.” In re Exide Techs., 340 B.R. 222, 239 (Bankr. D. Del. 2006); see also In re Curlew Valley Assocs., 14 B.R. 506, 513-14 (Bankr. D. Utah 1981) (recognizing the court should not entertain objections to a trustee’s business decision when that decision involves “a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the [Bankruptcy] Code”).

However, there are several issues that need to be addressed in supplemental pleadings before the court will grant the motion. First, as noted in the Forge Opposition, DIP has failed to provide sufficient evidence that DIP cannot obtain junior financing for the proposed construction on Lot 18. Doc. #445. Second, while Exhibit A to the motion states that interest on the post-petition loaned funds is variable and will be determined by the WSJ prime rate plus 4.00% per annum, the motion and supporting evidence do not state how often the interest rate will vary. Ex. A, Doc. #438. Third, the term of the loan is 12 months, although the payment terms of the loan are unclear because a copy of the proposed promissory note was not included with the moving papers, as noted in the Logan Opposition and Forge Opposition. Doc. ##440, 445. Finally, if monthly loan payments are required, the moving papers and supporting evidence do not provide any information regarding whether DIP has the funds to make those payments beyond the interest reserve set forth Exhibit A to the motion. Ex. A, Doc. #438.

Because DIP needs to supplement the record with respect to this motion before the court can make the required findings to grant the motion, the court is inclined to continue the hearing on this motion and set a deadline for the filing and service of additional pleadings.

5. [22-10778](#)-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
[KF-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-27-2024 [[440](#)]

MERCED DIP LENDER LLC/MV
NOEL KNIGHT/ATTY. FOR DBT.
THOMAS PHINNEY/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

MOTION TO SELL
3-27-2024 [[200](#)]

KODIAK TRUCKING INC./MV
PETER FEAR/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 shall submit a proposed order after the hearing.

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

Kodiak Trucking, Inc. ("DIP"), the chapter 11 debtor and debtor-in-possession, moves the court for an order authorizing DIP to sell a 2018 Kenworth T880 dump truck, VIN: 1XKZAK8X0JJ200149 (the "Vehicle"), to B T Trucking, Inc. ("Buyer") for \$65,000.00, subject to higher and better offer, with all proceeds being paid directly to eCapital ("Creditor"), the secured creditor on the Vehicle. Motion, Doc. #200. To bid on the Vehicle, a potential bidder needs to:

- (1) Deposit \$10,000.00 in certified funds with DIP's counsel no later than 7 days before the hearing date on this motion;
- (2) Provide written proof of financial ability to cover the necessary overbid amount;
- (3) Provide written proof that the successful overbidder can close the sale within 15 days of the delivery of a certified copy of the court's order approving the sale and can execute a purchase agreement for the Vehicle;
- (4) Be prepared to match the terms and conditions of the stalking horse bidder;
- (5) Be aware that in the event the successful overbidder fails to close the sale and execute a purchase agreement within 15 days of the delivery of a certified copy of the court's order approving the sale for any reason, the \$10,000.00 deposit becomes non-refundable;
- (6) Be present at the sale hearing and be prepared to match non-monetary terms included in the contract or by other bidders; and

(7) Acknowledge that the sale of the Vehicle shall be "as-is" with no warranty or representation expressed or implied by DIP or its representatives.

Notice, Doc. #201. The court finds that these bidding procedures are reasonable, appropriate, and reasonably calculated to provide parties with an interest in overbidding on the Vehicle an opportunity to do so. In re Baroni, 654 B.R. 334, 354 (Bankr. C.D. Cal. 2023). The court approves the proposed overbid procedures.

Section 363 of the Bankruptcy Code provides that a 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 in possession 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.

DIP testifies that the Vehicle is not needed for use in DIP's business or reorganization. Decl. of Marco Arambula, Doc. #202. DIP believes that selling the Vehicle to Buyer subject to higher and better offers is in the best interests of creditors and the estate. Id. The proceeds received from the sale of the Vehicle will be paid directly to Creditor, who holds a fully secured blanket lien on the Vehicle. Id. DIP also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3). Motion, Doc. #200.

Accordingly, subject to overbid offers made at the hearing, the court will GRANT DIP's motion and authorize the sale of the Vehicle subject to the overbid procedures. The 14-day stay of Rule 4001 will be ordered waived because the Vehicle is a depreciating asset.

7. [23-12784](#)-A-11 **IN RE: KODIAK TRUCKING INC.**
[FW-11](#)

MOTION TO SELL
3-27-2024 [[204](#)]

KODIAK TRUCKING INC./MV
PETER FEAR/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 shall submit a proposed order after the hearing.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of

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

Kodiak Trucking, Inc. ("DIP"), the chapter 11 debtor and debtor-in-possession, moves the court for an order authorizing DIP to sell a 2019 Peterbilt 389 tractor, VIN: 1XPXD49X1KD656020 (the "Vehicle"), to Jesus Martinez Gonzalez ("Buyer") for \$123,725.58, subject to higher and better offer, with all proceeds being paid directly to Integrated Vehicle Leasing, Inc. ("Creditor"), the secured creditor on the Vehicle. Motion, Doc. #204. To bid on the Vehicle, a potential bidder needs to:

- (1) Deposit \$10,000.00 in certified funds with DIP's counsel no later than 7 days before the hearing date on this motion;
- (2) Provide written proof of financial ability to cover the necessary overbid amount;
- (3) Provide written proof that the successful overbidder can close the sale within 15 days of the delivery of a certified copy of the court's order approving the sale and can execute a purchase agreement for the Vehicle;
- (4) Be prepared to match the terms and conditions of the stalking horse bidder;
- (5) Be aware that in the event the successful overbidder fails to close the sale and execute a purchase agreement within 15 days of the delivery of a certified copy of the court's order approving the sale for any reason, the \$10,000.00 deposit becomes non-refundable;
- (6) Be present at the sale hearing and be prepared to match non-monetary terms included in the contract or by other bidders; and
- (7) Acknowledge that the sale of the Vehicle shall be "as-is" with no warranty or representation expressed or implied by DIP or its representatives.

Notice, Doc. #205. The court finds that these bidding procedures are reasonable, appropriate, and reasonably calculated to provide parties with an interest in overbidding on the Vehicle an opportunity to do so. In re Baroni, 654 B.R. 334, 354 (Bankr. C.D. Cal. 2023). The court approves the proposed overbid procedures.

Section 363 of the Bankruptcy Code provides that a 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 in possession 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.

DIP testifies that the Vehicle is not needed for use in DIP’s business or reorganization. Decl. of Marco Arambula, Doc. #206. DIP believes that selling the Vehicle to Buyer subject to higher and better offers is in the best interests of creditors and the estate. Id. The proceeds received from the sale of the Vehicle will be paid directly to Creditor, who holds a fully secured blanket lien on the Vehicle. Id. DIP also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure (“Rule”) 4001(a)(3). Motion, Doc. #204.

Accordingly, subject to overbid offers made at the hearing, the court will GRANT DIP’s motion and authorize the sale of the Vehicle subject to the overbid procedures. The 14-day stay of Rule 4001 will be ordered waived because the Vehicle is a depreciating asset.

11:00 AM

1. [24-10109](#)-A-7 **IN RE: JAE YOUNG/JIN SUN HAHM**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
3-25-2024 [\[14\]](#)

JAENAM COE/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 that has not been rebutted in the reaffirmation agreement. Although the debtors' attorney executed the agreement, no evidence has been presented to the court to indicate how the debtors can afford to make the payment. The debtors claim they can afford the payment but have not provided the court with an amended Schedule J. Therefore, the reaffirmation agreement with Toyota Motor Credit Corporation will be DENIED.

2. [23-12921](#)-A-7 **IN RE: DEBORAH APPELEGATE**

PRO SE REAFFIRMATION AGREEMENT WITH NUVISION CREDIT UNION
3-27-2024 [\[15\]](#)

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

The debtor's counsel will inform the debtor 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 that has not been rebutted in the reaffirmation agreement. In this case, the debtor's attorney refused to sign the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

3. [24-10092](#)-A-7 **IN RE: EDUARDO MEZA IBARRA**

CONTINUED REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
2-29-2024 [[30](#)]

RAYMOND PEREZ/ATTY. FOR DBT.
RESCISSION

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

DISPOSITION: Dropped.

NO ORDER REQUIRED.

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

The debtor filed a notice of rescission of reaffirmation agreement on April 5, 2024. Doc. #45. Therefore, this hearing on the reaffirmation agreement is dropped from calendar.

4. [24-10092](#)-A-7 **IN RE: EDUARDO MEZA IBARRA**

ORDER TO SHOW CAUSE
4-3-2024 [[43](#)]

RAYMOND PEREZ/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: The order to show cause will be vacated.

ORDER: The court will issue an order.

The record shows that the reaffirmation agreement that was the basis of this order to show cause was rescinded. Doc. #45. Therefore, this order to show cause will be VACATED.

1:30 PM

1. [23-12606](#)-A-7 IN RE: ELBIO CARBALLO AND SANDRA SOLARINO DE CARBALLO
[JRL-5](#)

MOTION TO AVOID LIEN OF STATE OF CALIFORNIA EMPLOYMENT DEVELOPMENT
DEPARTMENT
3-25-2024 [[49](#)]

SANDRA SOLARINO DE CARBALLO/MV
JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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 non-responding parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Elbio Ramon Carballo and Sandra Virginia Solarino De Carballo (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of the State of California Employment Development Department ("Creditor") on the residential real property commonly referred to as 4094 W. Providence Avenue, Fresno, CA 93722 (the "Property"). Doc. #49; Schedule C, Doc. #1; Schedule D, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). "[J]udicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtors filed their bankruptcy petition on November 22, 2023. Doc. #1. A judgment was entered against Debtors in the amount of \$6,693.62 in favor of Creditor on July 28, 2022. Ex. A, Doc. #51. The abstract of judgment was recorded pre-petition in Fresno County on July 29, 2022, as document number 2022-0096589. Id. The lien attached to Debtors' interest in the Property located in Fresno County. Id. Debtors assert a market value for the Property as of the petition date at \$356,000.00. Schedule A/B, Doc. #1; Decl. of Elbio Ramon Carballo, Doc. #52. The Property also is encumbered by a first deed of trust held by Select Portfolio Servicing, Inc. in the amount of \$100,127.00. Schedule D, Doc. #1. Debtors claimed an exemption of \$300,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1.

It appears that there are three senior judicial liens on the Property, although two of the liens have already been avoided:

- (1) The first senior judicial lien was recorded in Fresno County on May 20, 2010 with respect to a judgment in favor of FIA Card Services, N.A. for \$7,361.81. Ex. A, Doc. #57; Carballo Decl., Doc. #56.
- (2) The second senior judicial lien was recorded in Fresno County on October 8, 2010 with respect to a judgment in favor of Fresno County Federal Credit Union nka Noble Federal Credit Union for \$11,855.60. Ex. A, Doc. #28; Carballo Decl., Doc. #27. This lien has previously been avoided by the court. Order, Doc. #48.
- (3) The third senior judicial lien was recorded in Fresno County on January 18, 2012 with respect to a judgment in favor of Midland Funding, LLC for \$4,601.69. Ex. A, Doc. #24; Carballo Decl., Doc. #23. This lien has previously been avoided by the court. Order, Doc. #47.

Applying the statutory formula and including only the senior judicial liens that have not already been avoided:

Amount of Creditor's judicial lien		\$6,693.62
Total amount of all other liens on the Property (excluding junior judicial liens and previously avoided senior liens)	+	\$107,488.81
Amount of Debtors' claim of exemption in the Property	+	\$300,000.00
		\$414,182.43
Value of Debtors' interest in the Property absent liens	-	\$356,000.00
Amount Creditor's lien impairs Debtors' exemption		\$58,182.43

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED. The proposed order shall state that Creditor's judicial lien is avoided on the subject Property only and include a copy of the abstract of judgment as an exhibit.

2. [23-12606](#)-A-7 **IN RE: ELBIO CARBALLO AND SANDRA SOLARINO DE CARBALLO**
[JRL-6](#)

MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A.
3-25-2024 [[54](#)]

SANDRA SOLARINO DE CARBALLO/MV
JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the 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 non-responding parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Elbio Ramon Carballo and Sandra Virginia Solarino De Carballo (together, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of FIA Card Services, N.A. ("Creditor") on the residential real property commonly referred to as 4094 W. Providence Avenue, Fresno, CA 93722 (the "Property"). Doc. #54; Schedule C, Doc. #1; Schedule D, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." All Points Cap. Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). "[J]udicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtors filed their bankruptcy petition on November 22, 2023. Doc. #1. A judgment was entered against Debtors in the amount of \$7,361.81 in favor of Creditor on April 20, 2010. Ex. A, Doc. #57. The abstract of judgment was recorded pre-petition in Fresno County on May 20, 2010, as document number 2010-0065094. Id. The lien attached to Debtors' interest in the Property located in Fresno County. Id. Debtors assert a market value for the Property as of the petition date at \$356,000.00. Schedule A/B, Doc. #1; Decl. of Elbio Ramon Carballo, Doc. #56. The Property also is encumbered by a first deed of trust held by Select Portfolio Servicing, Inc. in the amount of \$100,127.00. Schedule D, Doc. #1. There also are several junior judicial liens that have been avoided. Doc. ##47, 48; pre-hearing disposition for matter #1 on this calendar (JRL-5). Debtors claimed an exemption of \$300,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$7,361.81
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$100,127.00
Amount of Debtors' claim of exemption in the Property	+	\$300,000.00
		\$407,488.81
Value of Debtors' interest in the Property absent liens	-	\$356,000.00
Amount Creditor's lien impairs Debtors' exemption		\$51,488.81

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED. The proposed order shall state that Creditor's judicial lien is avoided on the subject Property only and include a copy of the abstract of judgment as an exhibit.

3. [24-10323](#)-A-7 **IN RE: KAREN EARL**
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT
SEC. 341(A) MEETING OF CREDITORS
3-15-2024 [[29](#)]

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

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

The debtor shall attend the meeting of creditors rescheduled for April 25, 2024 at 9:00 a.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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

4. [24-10536](#)-A-7 **IN RE: DANIEL MONTEJANO**
[CAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-21-2024 [[11](#)]

BMW BANK OF NORTH AMERICA/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CHERYL SKIGIN/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, BMW Bank of North America ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2018 BMW 4 Series 430i Gran Coupe Sedan 4D, VIN: WBA4J1C52JBG77634 (the "Vehicle"). Doc. #11.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has failed to make at least four complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$2,937.64. Decl. of Christopher Dick, Doc. #14. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1. Movant repossessed the Vehicle on February 8, 2024. Dick Decl., Doc. #14.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. The Vehicle is valued at \$17,568.00 and the debtor owes \$36,966.52. Dick Decl., Doc. #14.

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

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

5. [24-10249](#)-A-7 **IN RE: MANVEL MAGLAMYAN**
[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
3-27-2024 [[20](#)]

PETER FEAR/MV
JERRY LOWE/ATTY. FOR DBT.
GABRIEL WADDELL/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Peter L. Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Manvel Maglamyan ("Debtor"), moves the court for an order authorizing: (1) the employment of Gould Auctions & Appraisals ("Auctioneer"); (2) the sale of seventeen vehicles, specifically, a (i) 2014 Audi A4, (ii) 2015 Chevrolet Cruze LT, (iii) 2004 Mercedes S430, (iv) 2012 Kia Sorento, (v) 2011 Mercedes E350, (vi) 2007 Chrysler 300, (vii) 2010 Mercedes C300, (viii) 2009 Nissan Maxima, (ix) 2009 Chrysler Mini Cooper, (x) 2006 Land Rover Range Rover HSE, (xi) 2004 Porsche Cayenne S, (xii) 2011 Nissan Maxima 3.5 S, (xiii) 2003 BMW 330i, (xiv) 2012 Ford Fusion S, (xv) 2007 Mercedes E350, (xvi) 2005 Mazda Rx8 with 57,000 miles, and (xvii) 2007 Vespa (collectively, the "Property") at public auction on or after April 27, 2024 at Auctioneer's location at 6200 Price Way, Bakersfield, California 93308; and (3) the estate to pay Auctioneer's commission and expenses. Tr.'s Mot., 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. Decl. of Peter L. Fear, Doc. #22. Trustee's experience indicates that a sale of the Property at public auction will yield the highest net recovery to the estate. Id. The proposed sale is made in good faith.

Section 327(a) of the Bankruptcy Code provides, in relevant part, "the trustee, with the court's approval, may employ . . . auctioneers . . . 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). The trustee may, with the court's approval, employ an auctioneer 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. 11 U.S.C. § 328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

The court finds that Auctioneer is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Decl. of Jerry Gould, Doc. #23. Trustee requires Auctioneer's services to advertise the sale of the Property, assist in storing the Property until sold, and assist in other matters related to the auction sale of the Property. Fear Decl., Doc. #22. Trustee has agreed to pay Auctioneer a commission of 15% of the gross sale price, 10% of the buyer's premium of the gross sale price and estimated expenses of \$8,800.00. Id. Trustee unambiguously requests pre-approval of payment to Auctioneer pursuant to § 328. Tr.'s Mot., Doc. #20; Fear Decl., Doc. #22.

Accordingly, this motion is GRANTED. Trustee's business judgment is reasonable and the proposed sale of the Property at public auction is in the best interests of creditors and the estate. The arrangement between Trustee and Auctioneer is reasonable in this instance. Trustee is authorized to sell the Property on the terms set forth in the motion. Trustee is authorized to employ and pay Auctioneer for services as set forth in the motion. Trustee shall submit a form of order that specifically states that employment of Auctioneer has been approved pursuant to 11 U.S.C. § 328.

MOTION TO EMPLOY DAVID BARRY AS SPECIAL COUNSEL
3-27-2024 [[47](#)]

PETER FEAR/MV
T. O'TOOLE/ATTY. FOR DBT.
PETER SAUER/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date 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.

Peter L. Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Ivan Omar Mendoza and Yadira Madrigal (together, "Debtors"), moves the court for an order authorizing the employment of The Barry Law Firm ("Special Purpose Counsel") to serve as special purpose counsel in this chapter 7 case pursuant to 11 U.S.C. §§ 327 and 328. Motion, Doc. #47. Special Purpose Counsel was retained by Debtor prepetition to pursue a breach of warranty/lemon law claim ("Claim") against General Motors. Decl. of David Barry, Doc. #50. Under the proposed terms of employment, Proposed Special Purpose Counsel will pursue the Claim against defendants and, if successful (whether by settlement, verdict, or other judgment), seek its fees and costs from General Motors as provided by California law. Accordingly, Trustee seeks authority to employ Special Purpose Counsel pursuant to 11 U.S.C. § 328(a) with compensation to be paid pursuant to the legal services agreement, i.e., that Special Purpose Counsel attorneys' fees and costs incurred in pursuing the Claim will be sought from General Motors as provided for by statute. Tr.'s Mot., Doc. #47.

Section 327(a) of the Bankruptcy Code permits Trustee to employ, with court approval, professionals "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). Section 327(e) of the Bankruptcy Code permits Trustee to employ, with court approval, for a specified special purpose, other than to represent the Trustee in

conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney "does not represent or hold any interest adverse to the debtor or to the estate with respect to matter on which such attorney is to be employed." 11 U.S.C. § 327(e). The trustee may, with the court's approval, employ a professional 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. 11 U.S.C. § 328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

Trustee contends the Claim is a pre-petition asset of the estate and seeks to bring into the estate any proceeds related to the Claim for administration. Decl. of Peter L. Fear, Doc. #49. Trustee requires Special Purpose Counsel's services to assist with: (1) pursuing the Claim on behalf of the bankruptcy estate; (2) performing the necessary terms to complete the settlement; and (3) obtaining bankruptcy court approval of any settlement offered or continuing litigation. Tr.'s Mot., Doc. #47. Trustee proposes to employ Special Purpose Counsel pursuant to 11 U.S.C. § 328(a), with Special Purpose Counsel attorneys' fees and costs incurred in pursuing the Claim to be sought from General Motors as provided for by statute. Id.

Except for the prepetition retention by Debtors as set forth above, Special Purpose Counsel has verified that it has no connection with the creditors, professionals, or any other party in interest. Barry Decl., Doc. #50. The court finds that Special Purpose Counsel is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate.

Accordingly, this motion is GRANTED. The arrangement between Trustee and Special Purpose Counsel is reasonable in this instance. Trustee shall submit a form of order specifically stating that employment of Special Purpose Counsel has been approved pursuant to 11 U.S.C. § 328.

7. [24-10069-A-7](#) **IN RE: STEPHEN/CYNTHIA BEVERIDGE**
[JES-2](#)

MOTION TO EMPLOY BAIRD AUCTIONS AND APPRAISALS AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES

3-11-2024 [[19](#)]

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

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of

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

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Stephen Beveridge and Cynthia Beveridge (together, "Debtors"), moves the court for an order authorizing: (1) the employment of Baird Auctions & Appraisals ("Auctioneer"); (2) the sale of a 2014 Nissan Titan (the "Property") at public auction on or after May 7, 2024 at Auctioneer's location at 1328 N. Sierra Vista Ave, Suite. B, Fresno, California; and (3) the estate to pay Auctioneer's commission and expenses. Tr.'s Mot., Doc. #19.

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. Decl. of James E. Salven, Doc. #22. Trustee's experience indicates that a sale of the Property at public auction will yield the highest net recovery to the estate. Id. The proposed sale is made in good faith.

Section 327(a) of the Bankruptcy Code provides, in relevant part, "the trustee, with the court's approval, may employ . . . auctioneers . . . 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). The trustee may, with the court's approval, employ an auctioneer 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. 11 U.S.C. § 328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

The court finds that Auctioneer is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Decl. of Jeffrey Baird, Doc. #21. Trustee requires Auctioneer's services to advertise the sale of the Property, assist in storing the Property until sold, and assist in other matters related to the auction sale of the Property. Salven Decl., Doc. #22. Trustee has agreed to pay Auctioneer a commission of 15% of the gross sale price, 10% of the buyer's premium of the gross sale price and estimated expenses of \$500.00. Id. Trustee unambiguously requests pre-approval of payment to Auctioneer pursuant to § 328. Tr.'s Mot., Doc. #19; Salven Decl., Doc. #22.

Accordingly, this motion is GRANTED. Trustee's business judgment is reasonable and the proposed sale of the Property at public auction is in the best interests of creditors and the estate. The arrangement between Trustee and Auctioneer is reasonable in this instance. Trustee is authorized to sell the Property on the terms set forth in the motion. Trustee is authorized to employ and pay Auctioneer for services as set forth in the motion. Trustee shall submit a form of order that specifically states that employment of Auctioneer has been approved pursuant to 11 U.S.C. § 328.

8. [23-11771](#)-A-7 **IN RE: PARADIGM STEEL FABRICATORS INC.**
[LNH-4](#)

MOTION FOR COMPENSATION FOR GOULD AUCTION AND APPRAISAL CO., LLC,
AUCTIONEER(S)
4-2-2024 [[46](#)]

D. GARDNER/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 shall submit a proposed 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 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.

Jeffrey M. Vetter ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Paradigm Steel Fabricators Inc. ("Debtor"), moves the court for an order authorizing Trustee to reimburse Gould Auction and Appraisal Co., LLC ("Auctioneer") for extraordinary expenses incurred from the sale of inventory, equipment, and vehicles of Debtor (collectively, the "Property"). Trustee states that total expenses incurred by Auctioneer in the public auction of the Property amounted to \$3,881.41, of which \$1,500.00 has already been disbursed. Tr.'s Mot.,

Doc. #46. Therefore, Trustee requests authority to reimburse Auctioneer for extraordinary expenses in the amount of \$2,381.41. Id.

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).

The court previously approved Trustee's motion for order authorizing: (1) sale of the Property at public auction; (2) carve-out with IRS; and (3) auctioneer compensation ("Order"). Order, Doc. #37. The Order states that Auctioneer may be reimbursed for extraordinary expenses and unexpected expenses, not to exceed \$1,500.00 as approved by Trustee. Id. However, expenses incurred by Auctioneer were \$3,881.41, which exceeded the initial \$1,500.00 approved in the Order. Decl. of Jeffrey M. Vetter, Doc. #49. Trustee has already reimbursed the \$1,500.00 to Auctioneer and now requests authority to reimburse Auctioneer for the remaining \$2,381.41 owed. Id. The court finds the additional requested reimbursements sought are reasonable, actual, and necessary.

This motion is GRANTED. The court allows Trustee to reimburse Auctioneer for extraordinary expenses incurred in the amount of \$3,881.41. Trustee is authorized to make a payment of \$2,381.41, representing the amount owed after the \$1,500.00 already paid for expenses, to Auctioneer. 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.

9. [23-12875-A-7](#) **IN RE: ANTONIO HERREJON**
[UST-1](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF
THE DEBTOR
3-13-2024 [[16](#)]

TRACY DAVIS/MV
NEIL SCHWARTZ/ATTY. FOR DBT.
DEANNA HAZELTON/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtor, 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.

Tracy Hope Davis, the United States Trustee for Region 17 ("UST"), moves for an order extending the time for filing a complaint objecting to the discharge of Antonio De Jesus Ortiz Herrejon ("Debtor") in this chapter 7 bankruptcy case under 11 U.S.C. § 727. Motion, Doc. #16.

Federal Rule of Bankruptcy Procedure ("Rule") 4004(b)(1) provides that, "[o]n motion of any party in interest, after notice and a hearing, the court may for cause extend the time to object to discharge." Similarly, Rule 1017(e)(1) allows the court, "for cause" to extend the time for filing a motion to dismiss under 11 U.S.C. § 707(b). UST's motion was filed within sixty days of the first date set for the meeting of creditors and is timely.

After review of the included evidence, the court finds that "cause" exists to extend the time for filing a complaint objecting to Debtor's discharge under 11 U.S.C. § 727 because Debtor has failed to provide all documents requested numerous times by UST regarding a \$400,000.00 SBA loan listed in Debtor's statement of financial affairs, and UST needs further time to conduct its investigation given the document delays. Decl. of Cecilia Jimenez, Doc. #18. The investigation by UST may require further documents from Debtor, possibly an examination under Rule 2004 and the service of subpoenas. Motion, Doc. #16; Jimenez Decl., Doc. #18.

Accordingly, this motion is GRANTED. The time for UST to file a complaint objecting to the discharge of Debtor is extended to July 19, 2024.

10. [23-12889-A-7](#) **IN RE: CHRISTINE DE LA CRUZ**
[PFT-2](#)

MOTION TO SELL
3-26-2024 [[24](#)]

PETER FEAR/MV
GRISelda TORRES/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as

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

Peter L. Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Christine De La Cruz ("Debtor"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the bankruptcy estate's interest in a 2018 Toyota Rav4 (the "Vehicle") to Debtor for the purchase price of \$3,300.00, subject to higher and better bids at the hearing. Tr.'s Mot., Doc. #24.

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.'s Mot., Doc. #24; Decl. of Peter L. Fear, Doc. #26. Trustee's proposed sale to Debtor is made in consideration of the full and fair market value of the Vehicle less a claimed exemption and listed encumbrance. Id. Debtor offered to buy the Vehicle for the net purchase price of \$3,300.00, subject to overbid at the hearing. Tr.'s Mot., Doc. #24. The court recognizes that no commission will need to be paid because the sale is to Debtor.

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

Trustee also requests that the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 6004(g) be waived. Doc. #24. However, Rule 6004(g) does not impose a stay on an order authorizing a sale of property; that provision is in Rule 6004(h). To the extent Trustee seeks a waiver of the 14-day stay pursuant to Rule 6004(h), the court will waive the 14-day stay of Rule 6004(h) because the sale is to Debtor.

Accordingly, subject to overbid offers made at the hearing, the court is inclined to GRANT Trustee's motion and authorize the sale of the estate's interest in the

Vehicle to Debtor on the terms set forth in the motion. The 14-day stay of Rule 6004(h) will be waived.

11. [24-10194](#)-A-7 **IN RE: LEO ALONZO**
[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
3-26-2024 [\[13\]](#)

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

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

DISPOSITION: Granted.

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

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

Peter L. Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Leo Alonzo ("Debtor"), moves the court for an order authorizing: (1) the employment of Gould Auctions & Appraisals ("Auctioneer"); (2) the sale of a 2019 Indian Scout Sixty (the "Property") at public auction on or after April 27, 2024 at Auctioneer's location at 30602 Imperial Street, Shafter, California 93263; and (3) the estate to pay Auctioneer's commission and expenses. Tr.'s Mot., Doc. #13.

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. Decl. of Peter L. Fear, Doc. #16. Trustee's experience indicates that a sale of the Property at public auction will yield the highest net recovery to the estate. Id. The proposed sale is made in good faith.

Section 327(a) of the Bankruptcy Code provides, in relevant part, "the trustee, with the court's approval, may employ . . . auctioneers . . . 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). The trustee may, with the court's approval, employ an auctioneer 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. 11 U.S.C. § 328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

The court finds that Auctioneer is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Decl. of Jerry Gould, Doc. #15. Trustee requires Auctioneer's services to advertise the sale of the Property, assist in storing the Property until sold, and assist in other matters related to the auction sale of the Property. Fear Decl., Doc. #16. Trustee has agreed to pay Auctioneer a commission of 15% of the gross sale price, 10% of the buyer's premium of the gross sale price and estimated expenses of \$650.00. Id. Trustee unambiguously requests pre-approval of payment to Auctioneer pursuant to § 328. Tr's Mot., Doc. #13; Fear Decl., Doc. #16.

Accordingly, this motion is GRANTED. Trustee's business judgment is reasonable and the proposed sale of the Property at public auction is in the best interests of creditors and the estate. The arrangement between Trustee and Auctioneer is reasonable in this instance. Trustee is authorized to sell the Property on the terms set forth in the motion. Trustee is authorized to employ and pay Auctioneer for services as set forth in the motion. Trustee shall submit a form of order that specifically states that employment of Auctioneer has been approved pursuant to 11 U.S.C. § 328.