

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [20-12258](#)-A-11 **IN RE: JARED/SARAH WATTS**
[LKW-13](#)

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

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

NO RULING.

2. [20-12258](#)-A-11 **IN RE: JARED/SARAH WATTS**
[LKW-14](#)

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

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

NO RULING.

3. [20-12258](#)-A-11 **IN RE: JARED/SARAH WATTS**
[LKW-15](#)

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

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

NO RULING.

4. [20-12258](#)-A-11 **IN RE: JARED/SARAH WATTS**
[LKW-16](#)

MOTION TO SELL
4-20-2022 [[314](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings
and conclusions. The Moving Party 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.

Among the assets of the estate are: two Wilson Step Deck Trailers (the "Trailers"), a 2016 Freightliner Coronado Truck contract no. 32001 (the "Freightliner"), and a 2015 GMC Yukon XL (the "Yukon") (collectively, the "Property"). Doc. #314; Schedule A/B, Doc. #1. Jared Allen Watts and Sarah Danielle Watts (together, "DIP") want to sell the Property outside the ordinary course of business pursuant to 11 U.S.C. § 363(b)(1) at public auction. Doc. #314.

The Trailers secure in part the claim of BMO Harris Bank as provided for in Class Five of DIP's confirmed First Modified Plan of Reorganization Dated September 20, 2020 (the "Plan"). Plan, Doc. #141. The Plan valued BMO's Class Five claim at \$64,048.92 as of the petition date. Plan, Doc. #141. DIP believes that the balance owed on the Class Five claim is \$44,688.48 and that the Trailers have a value of \$25,000 each. Decl. of Sarah Danielle Watts, Doc. #316.

The Freightliner secures in part the claim of Daimler Truck Financial as provided for in Class Ten of the Plan. Plan, Doc. #141. DIP believes that the balance owed on the Class Ten claim is \$126,862 and that the Freightliner has a value of at least \$127,000. Decl. of Sarah Danielle Watts, Doc. #316.

The Yukon secures the claim of Safe 1 Credit Union as provided for in Class Four of the Plan. Plan, Doc. #141. DIP believes that the balance owed on the Class Four claim is \$17,249.43 and that the Yukon has a value of \$40,000. Decl. of Sarah Danielle Watts, Doc. #316.

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

Section 363 of the Bankruptcy Code states that a trustee, or debtor in possession, may use, sell, or lease property of the estate outside the ordinary course of business after notice and a hearing. 11 U.S.C. §§ 363(b)(1), 1184. The debtor proposing a sale under § 363(b) must demonstrate a valid business justification for the sale and that the sale is proposed in good faith. 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996). "Good faith encompasses fair value, and further speaks to the integrity of the transaction." Id. (quoting In re Wilde Horse Enters., Inc. 136 B.R. 830, 842 (Bankr. C.D. Cal. 1991)). To make such a determination, "the court and creditors must be provided with sufficient information to allow them to take a position on the proposed sale." Wilde Horse Enters., 136 B.R. at 842.

DIP testifies that the Property is not needed for use in DIP's business or reorganization. Decl. of Sarah Danielle Watts, Doc. #316. DIP believes that selling the Property at public auction is in the best interests of creditors and the estate because the sale will be conducted as an online timed auction

that attracts agriculture and other commercial enterprises from throughout the United States. Id. The sale of the Property through the online timed auction will expose the Property to the marketplace to the maximum extent possible in the most efficient manner possible. Id. DIP testifies that proceeds received from the sale of the Property, after deducting costs of sale and auctioneer fees, will be delivered to the subchapter V trustee for payment (a) to the creditors secured by liens against the Property sold, then (b) to priority and general unsecured creditors. Id.

The court is inclined to GRANT this motion. DIP's business judgment is reasonable and the proposed sale of the Property at public auction is made in good faith.

1. [20-13808](#)-A-7 **IN RE: YULIANA TEJEDA**
[FW-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL
FOR GABRIEL J. WADDELL, TRUSTEES ATTORNEY(S)
4-8-2022 [\[55\]](#)

SUSAN HEMB/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Fear Waddell P.C. ("Movant"), attorney for chapter 7 trustee James Salven ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered August 4, 2021 through April 5, 2022. Doc. #55. Movant provided legal services valued at \$4,198, and requests compensation for that amount. Doc. #55. Movant requests reimbursement for expenses in the amount of \$129.16. Doc. #55. This is Movant's first and final fee application.

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

Movant's services included, without limitation: (1) providing counsel to Trustee as to the administration of the chapter 7 case; (2) providing legal assistance in negotiating a settlement with the debtor; and (3) preparing and filing employment and fee applications. Decl. of Gabriel J. Waddell, Doc. #57; Exs. A & B, Doc. #59. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$4,198 and reimbursement for expenses in the amount of \$129.16. Trustee is authorized to make a combined payment of \$4,327.16, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the

amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

2. [21-12810](#)-A-7 **IN RE: RENEWABLE LEGACY LLC**
[FW-6](#)

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION TO PAY
4-13-2022 [\[58\]](#)

PETER FEAR/MV
JUSTIN HARRIS/ATTY. FOR DBT.
PETER SAUER/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Peter L. Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Renewable Legacy LLC ("Debtor"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of real property commonly known as Lot 1 Mountain View Road, Sheridan, Montana 59749 (the "Property") to Holly C. Lang and James F. Lang (collectively, "Buyers") for the purchase price of \$300,000.00, subject to higher and better bids at the hearing. Doc. #58. Trustee states that a preliminary title report shows that there are numerous encumbrances attaching to the Property. Doc. #58; Decl. of Tr., Doc. #62. Trustee also seeks authorization to pay a commission for the sale to Berkshire Hathaway - Sheridan MT ("Broker") to be split with the buyer's broker. Doc. #58.

Selling Property of Estate under 11 U.S.C. § 363(b)(1) Permitted

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting

the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

The agent for Broker believes the sale price of \$300,000, subject to higher bids, is a fair and reasonable value for the Property based on experience as a licensed real estate broker. Decl. of Nicholette Picken, Doc. #61. Broker marketed the Property for sale and has a signed contract with Buyers for \$300,000. Id. Trustee has accepted Buyers' offer conditioned upon the court's approval and better and higher offers at the hearing. Ex. A, Doc. #60. The sale is "as is, where is" with no warranties or representations of any nature. Id. Trustee expects to pay a 6% commission to be split between Broker and buyer's agent. Id.

Property taxes are overdue, and there are liens or encumbrances on the Property. Tr.'s Decl., Doc. #62; Ex. B, Doc. #60. The title report discloses overdue property taxes and a construction lien in favor of Northern Rockies Engineering Inc. on the Property in the principal amount of \$5,290.04 that will be paid from escrow. Tr. Decl., Doc. #62; Ex. B, Doc. #60.

The United States recorded a lis pendens that attached to the Property. Doc. #58. Trustee and the United States have stipulated to liquidate the lis pendens whereby Trustee will receive a \$20,000 carveout from escrow and will remit the remaining sale proceeds to the clerk of court in which the criminal case is pending. Doc. #58. The United States will receive the sale proceeds from the Property less an amount sufficient to pay real estate commissions, costs of sale, payment of all other liens on the Property, and payment to Trustee of \$20,000. Ex. C, Doc. #60. The United States will release the lis pendens on the Property at the close of escrow. Id. The United States consents to the sale of the Property. Id.

The trustee may sell property under § 363(b) free and clear of any interest of an entity other than the estate only if: (1) applicable nonbankruptcy law permits the sale; (2) such entity consents; (3) the interest is a lien and the price at which the property is to be sold is greater than the aggregate value of all liens on the property; (4) the interest is in bona fide dispute; or (5) the entity could be compelled to accept a money satisfaction of the interest. 11 U.S.C. § 363(f). If seeking to sell free and clear under § 363(f)(4), the trustee has the burden of establishing the existence of a bona fide dispute, which can be accomplished if the trustee believes that a dispute exists. Sherer v. Fed. Nat'l Mortg. Ass'n (In re Terrace Chalet Apartments), 159 B.R. 821, 828 (Bankr. N.D. Ill. 1993).

The Property will be sold for \$300,000, subject to better and higher offers at the hearing. Title to the Property is vested in Debtor. Ex. B, Doc. #60. The construction lien and property taxes will be paid in full from escrow, and the United States consents to the sale of the Property.

The title report shows two judgments recorded against Ray Brewer. Ex. B, Doc. #60. By the motion, Trustee indicates that both judgments are affidavits of foreign judgment against Ray Brewer a/k/a Raymond Holcomb Brewer, not Debtor. Doc. #58. One affidavit of foreign judgment was filed by Sacor Financial Inc. as Assignee of SSB Pacific Renewable Energy LLC in the amount of \$284,794.54. Doc. #58. The other affidavit of foreign judgment was filed by Sacor Financial Inc. as Assignee of Pacland-Portland Inc., an Oregon Corporation in the amount of \$139,362.79. Doc. #58. The motion states that Trustee disputes that any interest of the judgment creditor attaches to

property of Debtor's bankruptcy estate, and that the sale may occur pursuant to § 363(f)(4). Doc. #58. However, the assertions in the motion regarding the dispute over the judgment liens are not supported by Trustee's declaration testimony. See Tr. Decl., Doc. #62. It appears that timely service of the motion was properly made upon Sacor Financial Inc. Doc. #64.

Notwithstanding the lack of supporting evidence, if Trustee is able to supplement the record at the hearing, the court is inclined to find that a bona fide dispute exists with respect to the judgment liens identifying Ray Brewer a/k/a Raymond Holcomb Brewer as the judgment debtor.

It appears that the sale of the estate's interest in the Property is in the best interests of the estate, the Property will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith. The United States consents to the sale of the Property, the construction and tax liens will be paid in full from escrow, and there is a bona fide dispute as to the validity of Sacor Financial Inc.'s interest in the Property.

In the motion, Trustee also requests that the 14-day stay of Fed. R. Bankr. P. 6004(h) be waived because a considerable amount of time has elapsed in working out the stipulation with the United States, and Buyers want to close on the Property as soon as possible. The 14-day stay of Fed. R. Bankr. P. 6004(h) will be ordered waived because Buyers have indicated that time is of the essence in purchasing the Property and permitting the sale of the Property will benefit creditors and the estate.

Compensation to Broker

Trustee also seeks authorization to pay Broker a commission for the sale of the Property. The commission to Broker will be split between Broker, who will receive 3.5% as seller's agent, and the Buyers' agent who will receive 2.5%. Doc. #58; Doc. #68. This court has determined that employment of Broker is in the best interests of the estate and has previously authorized a percentage commission payment structure pursuant to 11 U.S.C. § 328. Order, Doc. #34; Doc. #30.

Trustee seeks to pay 6% commission on the sale of the Property that will be split between Broker and Buyers' agent. Doc. #58. Trustee believes that a 6% commission is reasonable compensation for services performed because it is only through Broker's work in this matter that the sale is currently on the table. Tr. Decl., Doc. #62. If the Property is sold to someone other than Buyers, Broker will receive 3.5% as seller's agent, and the buyer's agent will receive 2.5%. Doc. #68. The court finds the compensation sought is reasonable, actual, and necessary.

Conclusion

Accordingly, subject to overbid offers made and additional evidence presented at the hearing, the court will GRANT Trustee's motion and authorize the sale of the Property pursuant to 11 U.S.C. §§ 363(b)(1) and (f). The 14-day stay of Fed. R. Bankr. P. 6004(h) will be waived. Trustee is authorized to pay Broker and Buyers' agent as set forth in the motion.

MOTION TO EMPLOY SHANON J. SLACK AS ATTORNEY(S)
4-20-2022 [43]

DAVID SOUSA/MV
DAVID JENKINS/ATTY. FOR DBT.
SHANON SLACK/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 the 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.

David M. Sousa ("Trustee"), the chapter 7 trustee, moves pursuant to 11 U.S.C. § 327(a) for authorization to employ Slack Law Group APC ("General Counsel") to serve as general bankruptcy counsel in this chapter 7 case. Doc. #43.

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).

Trustee requires General Counsel's services to advise and represent Trustee in the bankruptcy case, such as: (1) assisting Trustee with administering the assets of the estate; (2) reviewing and objecting to claims; (3) advising Trustee of his duties and powers and the legal ramifications of asset disposition; (4) advising Trustee regarding leases and other agreements; and (5) performing other legal services as may be required during the case. Doc. #43. General Counsel has not received a retainer in this matter and Trustee proposes to pay General Counsel on an hourly basis and in conformance with 11 U.S.C. §§ 330 and 331. Doc. #43.

General Counsel has verified that it has no connection with the chapter 7 debtor, creditors, professionals, or any other party in interest. Decl. of Shanon J. Slack, Doc. #45. General Counsel represents Trustee in an unrelated chapter 7 bankruptcy case. Id. General Counsel believes it is a disinterested person as defined in 11 U.S.C. § 101(14). Doc. #45.

After review of the evidence, the court finds that General Counsel does not represent or hold an adverse interest to Trustee or to the estate.

Accordingly, the court is inclined to GRANT Trustee's motion to employ General Counsel. Trustee will be authorized to employ General Counsel, and the effective date of such employment shall be March 21, 2022. The order authorizing employment of General Counsel shall specify that any compensation

or reimbursement from the estate is subject to the court's approval pursuant to 11 U.S.C. § 330(a).

4. [22-10461](#)-A-7 **IN RE: ROSA MORALES AND JUAN MORALES GONZALEZ**
[BDB-2](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
4-6-2022 [\[29\]](#)

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 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 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.

Rosa Maria Morales and Juan Carlos Morales Gonzalez (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 706(a) to convert this chapter 7 case to a case under chapter 13. Doc. #29.

Section 706(a) of the Bankruptcy Code authorizes a debtor to convert a case under chapter 7 to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. 11 U.S.C. § 706(a). Any waiver of the right to convert a case under this subsection is unenforceable. Id.

Debtors filed a voluntary petition under chapter 7 on March 23, 2022. Doc. #1. Debtors originally filed under chapter 7 without assistance of counsel to avoid a foreclosure of their residence. Petition, Doc. #1; Decl. of Debtors, Doc. #31. Since filing, Debtors have retained legal counsel and have determined that proceeding in chapter 13 will allow Debtors to propose a plan to keep their home. Decl. of Debtors, Doc. #31. Debtors' sources of income are rental income, family support, and employment. Id. Debtors believe they will be able to make chapter 13 plan payments. Id. This case has not been previously converted under section 1112, 1208, or 1307.

Accordingly, this motion is GRANTED.

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL, P.C.
FOR GABRIEL J. WADDELL, TRUSTEES ATTORNEY(S)
4-6-2022 [[38](#)]

TRAVIS POTEAT/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Fear Waddell P.C. ("Movant"), attorney for chapter 7 trustee James Salven ("Trustee"), requests allowance of final compensation and reimbursement for expenses for services rendered October 13, 2021 through April 5, 2022. Doc. #38. Movant provided legal services valued at \$6,258.50, and requests compensation for that amount. Doc. #38. Movant requests reimbursement for expenses in the amount of \$70.06. Doc. #38. This is Movant's first and final fee application.

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

Movant's services included, without limitation: (1) providing counsel to Trustee as to the administration of the chapter 7 case; (2) providing legal assistance in negotiating a settlement with the debtor and the debtor's son; and (3) preparing and filing employment and fee applications. Decl. of Gabriel J. Waddell, Doc. #40; Exs. A & B, Doc. #42. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on a final basis. The court allows final compensation in the amount of \$6,258.50 and reimbursement for expenses in the amount of \$70.06. Trustee is authorized to make a combined payment of \$6,328.56, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is

administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.