

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, May 24, 2022
Place: Department B – Courtroom #13
Fresno, California

The court resumed in-person courtroom proceedings in Fresno ONLY on June 28, 2021. Parties may still appear telephonically provided that they comply with the court's telephonic appearance procedures. For more information click [here](#).

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. [21-11001](#)-B-11 **IN RE: NAVDIP BADHESHA**
[RMB-16](#)

OBJECTION TO CLAIM OF CALIFORNIA DEPARTMENT OF TAX AND FEE
ADMINISTRATION, CLAIM NUMBER 8
4-11-2022 [[241](#)]

NAVDIP BADHESHA/MV
MATTHEW RESNIK/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

Debtor-in-possession Navdip S. Badhesha ("Debtor") objects to Proof of Claim No. 8 filed by the California Department of Tax and Fee Administration ("CDTFA") on July 14, 2021 in the amount of \$78,989.72. Doc. #241.

Though not required, CDTFA timely filed opposition on May 10, 2022. Doc. #258. CDTFA requests that the objection be overruled because CDTFA properly assessed the outstanding sales and use tax liability against Debtor individually.

Debtor replied, filed evidentiary objections, and moved to strike portions of the declaration in support of CDTFA's opposition. Docs. ##268-69.

This matter will be called and proceed as a scheduling conference. The court intends to CONTINUE the matter to a date to be determined at the hearing.

As a preliminary matter, the objection does not procedurally comply with the Local Rules of Practice ("LBR").

First, LBR 3007-1(b) provides that an objecting party shall file and serve an objection to a proof of claim on at least 44 days' notice unless the objecting party elects to give the notice permitted under LBR 3007-1(b)(2) [30-day notice procedure]. When fewer than 44 days' notice of hearing is given, no party in interest shall be required to file written opposition to the objection, which, if any, shall be presented at the hearing.

Here, the objection was filed and served on April 11, 2022 and set for hearing on May 24, 2022. Docs. #241; #246; #250. April 11, 2022 is **43** days before May 24, 2022. The *Notice of Hearing on Debtor's Objection to California Department of Tax and Fee Administration Claim No. 8* states that written opposition must be in writing and must be served and filed with the court by the responding party at least 14 days

before the hearing, and failure to timely file written opposition may be deemed a waiver of any opposition to the objection. Doc. #242. This is incorrect. Because the objection was set on less than 44 days' notice, the notice should have followed the procedure under LBR 3007-1(b)(2) by stating that opposition was not required and may be presented at the hearing.

Second, the objection and points and authorities are combined into one document. Doc. #241. LBR 9014-1(d)(4) permits the objection and points and authorities to be combined into one document provided that the document does not exceed six (6) pages in length. Here, the combined objection and points and authorities is 11 pages long, so each of these two documents should have been filed separately.

Ordinarily, the objection would be overruled without prejudice due to the above procedural defects. However, since only CDTFA's interest will be impaired by the objection, CDTFA filed opposition despite inadequate notice, and because the court intends to conduct a scheduling conference and continue the hearing, this deficiency will be overlooked in this instance. Counsel is advised to review the local rules and ensure procedural compliance in subsequent matters.

CDTFA's claim is derived from taxes in connection with a Deli Delicious franchise entered into by Debtor and his brother-in-law, Tarnvir Dhaliwal, in September 2013. Debtor and Mr. Dhaliwal incorporated BIL Inc. ("BIL") for the purpose of running the Deli Delicious. Doc. #241. Under their oral agreement, Debtor was a 100% shareholder, but Mr. Dhaliwal would manage day-to-day operations, and profits and losses would be split 50%. Debtor obtained multiple loans for BIL over the course of a seven-year period. Eventually, Deli Delicious Franchising, Inc. took control of the Deli Delicious because BIL failed to pay royalties.

BIL was liable for sales and use taxes. Since Debtor is an officer of BIL, CDTFA determined that he is personally liable to CDTFA under the Revenue and Taxation Code and Code of Regulations. Debtor has appealed this determination, which will be a lengthy process. Debtor intends to engage in discovery.

Debtor was the sole shareholder of BIL but claims that he was not in control of or privy to its finances. Management and operations were left to Mr. Dhaliwal and Debtor was an officer of BIL in name only.

Since Debtor did not have control, supervision of, responsibility for, or a duty to act for the corporation, Debtor contends that he cannot be found to be personally liable for the taxes. Additionally, Debtor insists that CDTFA fails to satisfy the requirement that Debtor had the ability to pay taxes but chose not to do so because he had no knowledge that the taxes were due and not paid.

In response, CDTFA claims that Debtor was an officer of BIL from its creation until it terminated operations on November 9, 2020.

Doc. #258. CDTFA's investigation determined that Debtor was responsible for BIL's sales and use tax compliance, as well as having authority to sign business checks. CDTFA cites to questionnaires allegedly supplied by Debtor, Mr. Dhaliwal, and others. Additionally, CDTFA argues that Debtor has failed to satisfy his burden of proof to overcome the presumptive validity of the proof of claim, failed to demonstrate that he does not owe the liability, had an ongoing responsibility to ensure BIL's financial health and oversee its financial information, and voluntarily, consciously, and intentionally acted in a manner leading to the accrual of unpaid tax liabilities. *Id.*

In reply, Debtor claims that some of CDTFA's evidence supports his position, and other evidence should be stricken. Docs. ##268-69. Debtor claims that he never received the questionnaire and the copy submitted by CDTFA is not signed by him. Debtor accuses CDTFA of failing to conduct due diligence as to BIL's responsible persons and has misinterpreted BIL's business structure. Since Debtor never handled BIL's finances, Debtor insists that the objection should be sustained.

This matter will be called and proceed as a scheduling conference. This matter is deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply. The parties shall be prepared for the court to set an early evidentiary hearing.

Based on the record, the factual issues appear to be:

1. The extent to which Debtor controlled, supervised, or was responsible for BIL.
2. Whether Debtor's failure to pay outstanding tax liabilities was voluntary, conscious, intentional, or willful.

The legal issues include:

1. Whether Debtor had an ongoing responsibility to ensure BIL's financial health or a duty to oversee its financial information.
2. Whether Debtor has satisfied his burden of overcoming the presumptive validity of CDTFA's claim created by its timely filed proof of claim.

2. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[FW-14](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR PETER L. FEAR, DEBTORS ATTORNEY(S)
4-14-2022 [\[491\]](#)

PETER FEAR/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.

Fear Waddell, P.C. ("Applicant"), general bankruptcy counsel for debtor-in-possession Stephen William Sloan ("Debtor"), requests final compensation under 11 U.S.C. § 330 in the amount of \$188,947.54. Docs. #491; #526. This amount consists of \$185,506.05 in fees as reasonable compensation for services rendered and \$3,441.49 in reimbursement of actual, necessary expenses from January 1, 2021 through March 15, 2022. *Id.*

The above requested amounts include a \$4,197.45 reduction to fees. Applicant agreed to this reduction after communication with the Office of the United States Trustee ("UST") in connection with originally requesting \$268,487.50 in fees and \$3,441.49 in costs, for a total of \$189,703.50. *Id.*; *cf.* Doc. #491.

Applicant also requests final approval of \$268,487.50 in fees and \$1,691.77 in costs previously awarded on an interim basis on March 11, 2021. *See* FW-8.

Debtor executed a statement dated April 14, 2022 stating that he has received, reviewed, and has no objections to the application. Doc. #495.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(a)(6). The failure of the creditors, the UST, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved

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

Debtor filed bankruptcy on March 2, 2020. Doc. #1. Debtor moved to employ Applicant as general bankruptcy counsel on March 30, 2020. Doc. #44. Applicant's employment was authorized pursuant to 11 U.S.C. §§ 327 and 329-331 on April 29, 2020, effective for services rendered on or after the March 2, 2020 petition date. Doc. #124.

The appointing order stated that compensation is only permitted upon court order following application under § 330(a). No hourly rate was approved, and compensation was set at the "lodestar rate" applicable at the time services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). All funds received by Movant in connection with this matter were deemed to be an advance payment of fees and property of the estate unless such funds were demonstrated to be reasonable value of pre-petition services under § 329. These funds deemed advance payment of fees were to be maintained in a separate interest-bearing account or an attorney's trust account at an authorized depository, with withdrawals only permitted after court approval. Further, monthly applications for interim compensation under § 331 were authorized provided the accrued fees and costs exceeded \$5,000 net of fees incurred in connection with prior fee applications.

This is Applicant's second and final fee application. Applicant was previously awarded \$268,487.50 in fees and \$1,691.77 in costs on March 11, 2021. Doc. #347. Applicant indicates that he was paid \$6,694.00 on March 16, 2021 and the remainder is still due.

The source of funds for the owing interim compensation award and this application will be paid from liquidating certain assets of the estate pursuant to Debtor's confirmed *Plan of Reorganization* dated December 21, 2021 ("Plan"). Doc. #483, *Ex. A*, ¶¶ 4.01.1-4.01.9. The Plan is estimated to provide a liquidation value in excess of \$14 million.

Applicant's firm has performed 553.30 billable hours of legal services at the following rates, totaling \$189,703.50 in fees, but has requested a reduced fee award of **\$185,506.05**:

Professional	Rate	Hours	Amount	Billed
Peter L. Fear (2021)	\$410	296.60	\$121,606.00	\$121,606.00
Peter L. Fear (2022)	\$425	39.20	\$16,660.00	\$16,660.00
Peter A. Sauer (2021)	\$245	184.50	\$45,202.50	\$43,904.00
Peter A. Sauer (2022)	\$260	16.00	\$4,160.00	\$4,160.00
Katie Waddell (2021)	\$230	9.40	\$2,162.00	\$2,162.00
Katie Waddell (2022)	\$245	2.70	\$661.50	\$661.50
Kayla Schlaak (2021)	\$110	4.00	\$440.00	\$440.00
Kayla Schlaak (2022)	\$125	0.80	\$100.00	\$100.00
Laurel Guenther	\$100	0.10	\$10.00	\$10.00
Total Hours & Fees		553.30	\$191,002.00	\$189,703.50
Voluntary fee reduction				\$4,197.45
Total fees requested in this application				\$185,506.05

Doc. #493, *Exs. G, H*. Applicant also incurred **\$3,441.49** in expenses:

Postage	\$776.56
Copying	+ \$2,314.18
Court Fees	+ \$350.75
Total Costs	= \$3,441.49

Id. These combined reduced fees and expenses total **\$188,947.54**.

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

Applicant’s services included, without limitation: (1) handling routine case administration, including preparing status conference reports, appearing at status conferences, and preparing monthly operating reports; (2) spending a substantial amount of time in discussions with Debtor and potential buyers for Debtor’s interest in 4-S property and Hamburg Ranch, and preparing motions to approve the sale of these interests on shortened time; (3) finalizing Applicant’s first interim fee application (FW-8), preparing special counsel’s fee application (FW-16), and accountant’s fee and employment applications (FW-11; FW-15); (4) filing a motion to dismiss and an Answer in an adversary proceeding initiated by Sandton against Debtor; (5) research and analysis regarding a potential objection to Sandton’s claim (FW-13); (6) preparing, filing, prosecuting, and prevailing on approval of the Disclosure Statement and Plan (FW-9; FW-12); and (7) preparing and filing this fee application (FW-14). Docs. #493, *Ex. F*; #494. The

court finds the services and expenses reasonable, actual, and necessary. As noted above, Debtor reviewed the fee application and consents to payment of the requested compensation. Doc. #495.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$185,506.05 in fees and \$3,441.49 in expenses on a final basis under 11 U.S.C. § 330. Debtor will be authorized to pay Applicant \$188,947.54 in accordance with the confirmed Plan for services rendered to the estate from January 1, 2021 through March 15, 2022. Additionally, the court will approve on a final basis the interim award of \$268,487.50 in fees and \$1,691.77 in expenses from March 11, 2021. The total amount of compensation awarded to Applicant in this case will be \$459,126.81.

3. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[FW-15](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
4-14-2022 [[498](#)]

JAMES SALVEN/MV
PETER FEAR/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.

James E. Salven ("Applicant"), the certified public accountant engaged by debtor-in-possession Stephen William Sloan ("Debtor"), requests final compensation under 11 U.S.C. § 330 in the sum of \$11,547.40. Doc. #498. This amount consists of \$11,312.00 in fees as reasonable compensation for services rendered and \$235.40 in reimbursement of actual, necessary expenses from May 18, 2021 through April 11, 2022. *Id.*

Debtor executed a statement dated April 14, 2022 stating that he has received, reviewed, and has no objections to the application. Doc. #502.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(a)(6). The failure of the 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 amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Debtor filed bankruptcy on March 2, 2020. Doc. #1. Debtor moved to employ Applicant as the estate's accountant on May 26, 2021. Doc. #377. The court approved employment on June 22, 2021, effective April 26, 2021 under the presumptive 30-day period outlined in LBR 2014-1(b)(1) and Fed. R. Bankr. P. 2014(a). Doc. #392. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for accounting services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). The services performed here are within the time period authorized under the employment order.

This is Applicant's first and final fee application. Doc. #498. The source of funds for the application will be from liquidating certain assets of the estate pursuant to Debtor's confirmed *Plan of Reorganization* dated December 21, 2021 ("Plan"). Doc. #483, Ex. A, ¶¶ 4.01.1-4.01.9. The Plan is estimated to provide a liquidation value in excess of \$14 million.

Applicant performed 40.4 billable hours of accounting services at a rate of \$280.00 per hour, totaling **\$11,312.00** in fees.¹ Doc. #500, Ex. B. Applicant also incurred **\$235.40** in copying expenses.² *Id.* These combined fees and expenses total **\$11,547.40**.

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

Applicant's services included, without limitation: (1) meeting with Debtor and Debtor's attorney for introductions; (2) conducting conflict review, reviewing the case and docket, and reviewing the employment application (FW-11); (3) attending meetings at counsel's office and corresponding via email and phone; (4) uploading data into Quickbooks and reviewing accounting information for Debtor and his various companies; (5) tracing intercompany transfers; (6) requesting

and reviewing property ownership records, depreciation records, and commencing ownership review via Fidelity Passport regarding transfers and tax bases; (7) reviewing foreclosure potential tax effect regarding the plan; (8) updating the plan and transmitting it to the estate's attorney; and (9) reviewing this final fee application (FW-15). Doc. #500, *Exs. A, B*. The court finds the services and expenses actual, reasonable, and necessary. As noted above, Debtor has reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #502.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$11,312.00 in fees and \$235.40 in expenses on a final basis pursuant to 11 U.S.C. § 330. Debtor will be authorized to pay Applicant \$11,547.00 in accordance with the confirmed Plan for services rendered to the estate from May 18, 2021 through April 11, 2022.

¹ Applicant waived fees for meeting with Debtor and Debtor's attorney on May 18, 2021. Doc. #500, *Ex. B*.

² Applicant made 1177 copies at \$0.20 each. *Id.*

4. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[FW-16](#)

MOTION FOR COMPENSATION FOR GEORGE RODARAKIS, SPECIAL
COUNSEL(S)
4-14-2022 [[503](#)]

GEORGE RODARAKIS/MV
PETER FEAR/ATTY. FOR DBT.
GEORGE RODARAKIS/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.

Rodarakis & Sousa, P.C. ("Applicant"), special counsel for debtor-in-possession Stephen William Sloan ("Debtor"), requests final compensation under 11 U.S.C. § 330 in the amount of \$78,212.15. Docs. #503; #527. This amount consists of \$73,362.50 in fees as reasonable compensation for services rendered and \$4,849.65 in reimbursement for actual, necessary expenses from March 2, 2021 through March 15, 2022. *Id.*

The above requested amounts include a \$1,750.00 reduction to fees. Applicant agreed to these reductions after communication with the Office of the United States Trustee ("UST") in connection with

originally requesting \$75,112.50 in fees and \$4,849.65 in costs, for a total of \$80,062.15. *Id.*; cf. Doc. #503.

Debtor executed a statement dated April 14, 2022 stating that he has received, reviewed, and has no objections to the application. Doc. #507.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the UST, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Debtor filed bankruptcy on March 2, 2020. Doc. #1. On April 2, 2020, Debtor moved to employ Applicant as special counsel for the bankruptcy estate for the following purposes: (i) continuing prosecution of the pre-petition Fresno County Superior Court lawsuit styled *Sloan v. Panoche Water District, et al.*, Case No. 18-CECG-00511; and (ii) continuing the pending, pre-petition appeal of an order dismissing Debtor's First Amended Cross-Complaint in the Tuolumne County Superior Court lawsuit styled *Mother Lode Bank v. Sloan, et al.*, Case No. 12-CV57470. Doc. #57. Applicant's employment was authorized pursuant to 11 U.S.C. §§ 327, 329-31 on May 15, 2020, effective for services rendered on or after the May 12, 2020. Doc. #143. The appointing order stated that compensation is only permitted upon court order following application under § 330(a). No hourly rate was approved, and compensation was set at the "lodestar rate" applicable at the time services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988).

Applicant's *Second Supplemental Declaration of George P. Rodarakis in Support of Final Application of Rodarakis & Sousa, PC as Special Counsel for Payment of Fees and Expenses* addresses the application's request for fees for services rendered preceding the effective date of the employment order. Doc. #527. The employment order had a May 15, 2020 effective date, but the application was filed on April 2, 2020. Under LBR 2014-1(b)(1) and Rule 2014(a), employment orders are

presumptively effective 30 days prior to the date of the employment application. The employment order lodged with the court erroneously contained a May 15, 2020 date and could have been presumptively effective March 3, 2020. This one-day delay appears to be *de minimis* in light of Applicant's voluntary fee reduction. Additionally, Rule 6003(a) does not permit entry of employment orders within the first 21 days after a bankruptcy case has been filed. The court will allow the compensation requested as prayed in this instance.

This is Applicant's first and final fee application. Doc. #503. The source of funds for the application will be from liquidating certain assets of the estate pursuant to Debtor's confirmed *Plan of Reorganization* dated December 21, 2021 ("Plan"). Doc. #483, *Ex. A*, ¶¶ 4.01.1-4.01.9. The Plan is estimated to provide a liquidation value in excess of \$14 million.

Applicant's firm has performed 239.10 billable hours of services in connection with the *Panoche* lawsuit and 22.5 billable hours for the *Motherlode* appeal as follows, totaling \$75,112.50 in fees, but has requested a reduced fee award of **\$73,362.50**:

Professional	Rate	Hours	Amount
George Rodarakis (<i>Panoche</i>)	\$375	73.50	\$27,562.50
Brandy L. Barnes (<i>Panoche</i>)	\$250	0.70	\$175.00
Kathryn L. Greene (<i>Panoche</i>)	\$250	164.90	\$41,225.00
George Rodarakis (<i>Mother Lode</i>)	\$375	4.20	\$1,575.00
Brandy L. Barnes (<i>Mother Lode</i>)	\$250	18.30	\$4,575.00
Total <i>Panoche</i>		239.10	\$68,962.50
Total <i>Mother Lode</i>		22.50	\$6,150.00
Total Hours & Fees		261.60	\$75,112.50
Voluntary fee reduction			\$1,750.00
Total fees requested in this application			\$73,362.50

Docs. #506, *Exs. G, H*; #528. Applicant also incurred **\$4,849.65** in expenses:

<i>Panoche</i>	
Court Fees	\$1,207.55
Postage	+ \$29.54
Copies	+ \$28.30
Travel / Parking	+ \$3.39
Online Research	+ \$1,108.36
Deposition Transcripts	+ \$2,159.40
<i>Mother Lode</i>	
Court Fees	+ \$125.50
Postage	+ \$56.60
Delivery Services / Couriers	+ \$103.80
Online Research	+ \$27.21
Total <i>Panoche</i>	= \$4,536.54
Total <i>Motherlode</i>	= (+) \$313.11
Total Expenses	= \$4,849.65

Id. These combined reduced fees and expenses total **\$78,212.15**.

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

Applicant's services included, without limitation: (1) continuing representation of Debtor in the Panoche Water District; (2) defending a pending motion for summary judgment against Debtor, which included researching and analyzing legal issues, discovery, preparing opposition memoranda and evidence; (3) filing a notice of appeal after defeat in summary judgment; (4) engaging in the appeal process by meeting scheduling deadlines, conducting discovery, and communicating with opposing counsel and Debtor; (5) continuing representation of Debtor in the *Mother Lode* appeal; (6) analyzing orders, determining their effect, and complying; (7) providing additional information to the UST; (8) accidentally billing Debtor three times and receiving payment of \$26,126.44, but immediately reversing those payments and placing the funds in trust until further order of the court; and (9) assisting in the preparation and filing of this fee application. Docs. #505; #506, *Ex. F*. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Debtor reviewed the fee application and consents to payment of the requested compensation. Doc. #507.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$73,362.50 in fees and \$4,849.65 in expenses on a final basis under 11 U.S.C. § 330. Debtor will be authorized to pay Applicant \$78,212.15, including from amounts currently held in trust, in accordance with the confirmed Plan for services rendered to the estate from March 2, 2021 through March 15, 2022.

5. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[FW-17](#)

MOTION TO SELL
4-28-2022 [[519](#)]

STEPHEN SLOAN/MV
PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Debtor-in-possession Stephen William Sloan ("Debtor") requests an order authorizing the sale of the estate's interest in a 2012 Bentley Continental GT ("Vehicle") to Los Gatos Luxury Cars ("Proposed Buyer") for \$63,000.00, subject higher and better bids at the hearing. Docs. #519; #529. The original sale price was \$62,000.00, but Proposed Buyer increased its offer to purchase Vehicle by filing a *Notice of Increased Bid by Stalking Horse Bidder* on May 18, 2022. *Id.*

This motion was filed, served, and set for hearing on at least 21 days' notice as required by Fed. R. Bankr. P. 2002(a)(2) and 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.

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

Debtor filed bankruptcy on March 2, 2020. Doc. #1. Among the assets of the estate is Vehicle. Pursuant to Debtor's obligations under the confirmed *Plan of Reorganization* dated December 21, 2021 ("Plan"), Debtor is required to liquidate Vehicle for the benefit of the estate. Doc. #483, *Ex. A*. As result, Debtor entered into an agreement to sell

Vehicle to Proposed Buyer for \$62,000.00, subject to court approval and higher and better bids. Doc. #521. Proposed Buyer increased its bid to \$63,000.00 on May 18, 2022. Doc. #529.

11 U.S.C. § 1107 gives a debtor-in-possession all of the rights and powers of a trustee and requires the debtor-in-possession to perform all functions and duties, notwithstanding certain exceptions inapplicable here.

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Therefore, under § 1107, Debtor has the authority to sell estate property free and clear of liens under § 363(b).

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

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887, citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). There is no indication that Proposed Buyer is either an insider or party in interest with respect to Debtor. Proposed Buyer is not listed in the *Voluntary Petition, Master Address List, Amended Master Address List*, schedules, or amended schedules. Docs. #1-2; #16; #19, *Scheds. D, E/F, G, H*; #265, *Am. Sched. E/F*.

Vehicle is listed in the schedules with an approximately 8,000 miles, in excellent condition, and valued at \$100,000.00. Doc. #19, *Sched. A/B*, ¶ 3.2. Debtor claimed a \$3,325.00 exemption in Vehicle pursuant to Cal. Code Civ. Proc. § 704.010. *Id.*, *Sched. C*. Vehicle is not encumbered by any security interests and is owned free and clear. *Id.*, *Sched. D*; Doc. #521.

Debtor declares that he entered into an agreement to sell Vehicle to Proposed Buyer for \$62,000.00, subject to court approval and higher and better bids at the hearing. Doc. #521. As noted, Proposed Buyer has increased its bid to \$63,000.00. Doc. #529. It does not appear

that any commissions will be paid in connection with the sale and there are no encumbrances of record. Presumably, Debtor will be paid on account of his \$3,325.00 exemption.

Absent any overbidders, the sale of Vehicle will net approximately \$59,675.00 to the estate after payment of Debtor's \$3,325.00 exemption.

It is unclear how the sale price to Proposed Buyer was determined. The court will inquire how this number was determined. Regardless, Debtor is required to liquidate Vehicle under the terms of the Plan. The sale appears to be in the best interests of creditors and the estate, supported by a valid exercise of Debtor's business judgment and the Plan, and appears to be proposed in good faith. The sale subject to higher and better bids should maximize estate recovery and yield the best possible sale price.

In the absence of opposition at the hearing, the court is inclined to GRANT this motion and solicit higher and better bids at the hearing. Debtor will be authorized to sell Vehicle to the highest bidder as determined at the hearing.

Any party wishing to overbid must appear at the hearing. Winning bidders must pay the general counsel for the Debtor, Fear Waddell, P.C., at 7650 North Palm Avenue, Suite 101, Fresno, CA 93711 no later than five (5) business days following conclusion of the auction. Back-up bids will be taken and once a back-up bidder is notified that the prior bidder has failed to perform, payment of the purchase price must be received by Debtor from the back-up bidder within five (5) days of the back-up bidder being notified that the back-up bid is now the winning bid. Prospective bidders must also acknowledge that the sale of Vehicle is "as-is, where-is," with the buyer required to promptly pick up Vehicle and remove it from the premises of the bankruptcy estate.

6. [22-10472](#)-B-11 **IN RE: STANFORD CHOPPING INC.**
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY
PETITION
3-24-2022 [1]

DISMISSED 4/8/22

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

DISPOSITION: Concluded.

ORDER: The court will issue an order.

Stanford Chopping, Inc.'s ("Debtor") chapter 11 bankruptcy case was dismissed on April 8, 2022 for failure to timely file documents. Doc. #18.

The court notes that Debtor filed an *Ex-Parte Application to Reopen a Closed Case Under 11 U.S.C. § 350(b)* on April 18, 2022. Doc. #22. Creditor Farm Credit Services of America, PCA ("Farm Credit") objected because (1) Debtor is a corporation and has never been represented by counsel in this case; and (2) the case was not closed. Doc. #23, citing *Rowland v. Cal. Men's Colony*, 506 U.S. 194, 202 (1993).

As Farm Credit correctly points out, this case was not closed, it was dismissed. Therefore, there is nothing for the court to reopen.

Accordingly, this status conference is CONCLUDED and will be DROPPED FROM CALENDAR AS MOOT because the case has already been dismissed.

7. [22-10274](#)-B-12 **IN RE: BRYAN SCHOONOVER**
[ACW-2](#)

MOTION TO EMPLOY ANDY C. WARSHAW AS ATTORNEY(S)
4-8-2022 [\[27\]](#)

BRYAN SCHOONOVER/MV
ANDY WARSHAW/ATTY. FOR DBT.
DISMISSED 4/21/22

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

Debtor-in-possession Bryan Scott Schoonover ("Debtor") seeks to employ Financial Relief Law Center, APC ("Applicant") as general bankruptcy counsel effective as of the petition date. Doc. #27.

However, this bankruptcy case was dismissed on April 21, 2022 because Debtor is ineligible to be a debtor under the Bankruptcy Code. Docs. ##43-44.

Accordingly, this motion will be DENIED AS MOOT because the case has already been dismissed.

1:30 PM

1. [21-12620](#)-B-7 **IN RE: LEORA GALLICHIO**
[JDR-1](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
4-7-2022 [\[30\]](#)

LEORA GALLICHIO/MV
JEFFREY ROWE/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.

Leora Lorraine Gallichio ("Debtor") seeks to avoid a judicial lien in favor of Capital One Bank (USA), N.A. ("Creditor") in the amount of \$4,329.18 and encumbering residential real property located at 1424 Bentley Drive, Los Banos, California 93635 ("Property").³ Doc. #30.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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). § 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), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of Creditor in the sum of \$4,329.18 on September 8, 2020. Doc. #32, *Ex. B*. The abstract of judgment was issued on September 21, 2020 and recorded in Merced County on October 19, 2020. *Id.* That lien attached to Debtor's interest in Property and appears to be the only non-consensual judgment lien encumbering Property. *Id.*; Doc. #33; *cf.* Doc. #13, *Am. Sched. D*.

As of the petition date, Property had an approximate value of \$435,500.00. Docs. #13, *Am. Sched. D*; #33. Property is encumbered by a single \$138,841.00 deed of trust in favor of Mr. Cooper. *Id.*; Doc. #13, *Am. Sched. D*. Debtor claimed a "homestead" exemption in Property pursuant to Cal. Code Civ. Proc. § 704.730 in the amount of \$300,000.00. *Id.*, *Sched. C*.

Strict application of the § 522(f)(2) formula is as follows:

Amount of Creditor's judicial lien	\$4,329.18
Total amount of unavoidable liens	+ \$138,841.00
Amount of Debtor's claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$443,170.18
Debtor's claimed value of interest absent liens	- \$435,500.00
Amount Creditor's lien impairs Debtor's exemption	= \$7,670.18

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property	\$435,500.00
Total amount of unavoidable liens	- \$138,841.00
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$3,341.00)
Creditor's original judicial lien	- \$4,329.18
Extent Debtor's exemption impaired	= (\$7,670.18)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under § 522(f)(1). This motion will be GRANTED. The proposed order shall include a copy of the abstract of judgment attached as an exhibit.

³ Debtor complied with Fed. R. Bankr. P. 7004(h) by serving Richard D. Fairbank, Creditor's Chair, by certified mail at 4851 Cox Road, Glen Allen, VA 23060 on April 7, 2022. Doc. #34. Fairbank is also the President, CEO, and Chairman of Capital One Financial Corporation, Creditor's parent company. *Id.*

2. [21-12733](#)-B-7 **IN RE: YOLANDA GOMEZ**
[JES-1](#)

MOTION TO SELL
4-11-2022 [[33](#)]

JAMES SALVEN/MV
SCOTT LYONS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") requests an order authorizing the sale of the estate's interest in a 2020 Chevrolet Silverado ("Vehicle") to Yolanda Godinez Gomez ("Debtor") for \$46,816.81, subject to higher and better bids at the hearing. Doc. #33.

Secured creditor Americredit Financial Services, Inc. dba GM Financial ("Creditor") timely filed limited non-opposition. Doc. #38. Though Creditor does not oppose the motion, it will not release its lien securing Vehicle until paid in full. *Id.*

No other parties in interest timely filed written opposition. This motion will be GRANTED and proceed for higher and better bids only.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(a)(2). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest except Creditor to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in

interest except Creditor are entered and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887, citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to the Debtor.

The Vehicle has approximately 12,000 miles and is listed in the schedules with a value of \$46,100.00. Doc. #17, *Am. Sched. A/B*. This sale is subject to Creditor's lien in the sum of \$23,067.61. Doc. #40. Debtor claimed a \$3,325.00 exemption in vehicle pursuant to Cal. Code Civ. Proc. § 704.010 and will be receiving an exemption credit if Debtor is the prevailing bidder.

Trustee declares that Debtor offered to purchase Vehicle for \$46,816.81, which he accepted subject to court approval and higher and better bids. Doc. #35. Trustee has not agreed to pay a commission to any party in connection with the sale and it is subject to any encumbrances of record. *Id.*

Trustee anticipates a net of \$18,644.81 to the estate after considering Creditor's lien and Debtor's exemption credit. Trustee declares that he is in receipt of the funds and is awaiting court approval. *Id.* Trustee believes the proposed sale is in the best interests of creditors and the estate because it is for the full and

fair market value of the Vehicle. *Id.* However, the amount of funds in Trustee's possession is unclear.

The \$18,644.81 net to the estate was based on an estimate of \$24,847.00 as the amount owed to Creditor on account of its lien. The sale is subject to any liens and encumbrances, so it does not appear that Creditor will receive an immediate payoff for its interest and the lien will survive the sale. It therefore appears that Trustee has received \$18,644.81 from Debtor in connection with this sale.

However, since the amount owed on account of Creditor's lien is less than what was estimated, the sale of Vehicle at the fair market value sale price would instead be illustrated as follows:

Sale price	\$46,816.81
Creditor's lien	- \$23,067.61
Debtor's exemption credit	- \$3,325.00
Net to the estate	= \$20,424.20

Id.; cf. Doc. #40. Absent any overbidders, the sale of Vehicle will net approximately \$20,424.20 to the estate after a reduction for Creditor's \$23,067.61 lien and application of Debtor's \$3,325.00 exemption credit.

Alternatively, if Debtor has only paid \$18,644.81 with Creditor's lien surviving the sale, then the sale price would be reduced to \$45,037.42. The court will inquire about the amount of funds received by Trustee and the sale price at the hearing.

Otherwise, the sale appears to be in the best interests of creditors and the estate, for a fair and reasonable price, supported by a valid exercise of Trustee's business judgment, and was proposed in good faith. The sale subject to higher and better bids will maximize estate recovery and yield the best possible sale price. No party has filed opposition to the sale.

Accordingly, this motion will be GRANTED. Other than potentially adjusting either the sale price based on the updated value of Creditor's lien, or the amount due from Debtor based on the same, this hearing will proceed for higher and better bids only. Trustee will be authorized to sell Vehicles to the highest bidder as determined at the hearing.

Any party wishing to overbid must appear at the hearing and acknowledge that the sale is subject to all liens and encumbrances, known or unknown, and no warranties or representations are included with the sale; the Vehicle is being sold "as-is, where-is."

3. [22-10658](#)-B-7 **IN RE: ALICIA RAMOS**
[MTL-1](#)

MOTION TO DISMISS DUPLICATE CASE
4-18-2022 [8]

ALICIA RAMOS/MV
MARIO LANGONE/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Alicia Marie Ramos ("Debtor") moves for an order dismissing this duplicate filed chapter 7 case. Doc. #8.

Chapter 7 trustee Peter L. Fear ("Trustee") timely filed non-opposition to this motion. Doc. #14.

However, this motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, the notice of hearing did not contain necessary language advising potential respondents of the pre-hearing dispositions that are available on the court's website. Doc. #13. Local Rule of Practice ("LBR") 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

Second, the notice of hearing does not appear to have been served on any parties in interest. Doc. #13. Failure to prove service does not affect the validity of service and the court may permit the proof of service to be amended. Fed. R. Civ. P. 4(1)(3), *incorporated by* Fed. R. Bankr. P. 7004(a)(1). However, LBR 9014-1(e) requires service of all pleadings and documents filed in support of a motion on or before the day they are filed with the court, with proof of service in the form of a certificate of service to be filed with the Clerk concurrently with the pleadings or documents served, or not more than three days after they are filed. LBR 9014-1(e)(1), (2).

The *Proof of Service* filed April 18, 2022 indicates that only the motion and *ex-parte* notice (Doc. #9) were filed. Doc. #10. Later that same day, Debtor filed an updated notice that set this matter for

hearing on May 24, 2022. Doc. #13. No certificate of service was filed in connection with the updated notice.

Accordingly, this motion will be DENIED WITHOUT PREJUDICE for failure to comply with the LBR.

4. 21-12859-B-7 **IN RE: WILLIAM/MARIBEL SOTO**
PSC-1

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
4-22-2022 [27]

MARIBEL SOTO/MV
PATRICIA CARRILLO/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

William H. Soto and Maribel Rivas Soto ("Debtors") seek to avoid a judicial lien in favor of Portfolio Recovery Associates, LLC ("Creditor") in the sum of \$3,493.95 and encumbering residential real property located at 1755 Fairmont, Clovis, California 93611.⁴ Doc. #27.

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

First, LBR 9004-2(a)(6), (b)(5), (b)(6), & (e) and LBR 9014-1(c) & (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case.

On March 6, 2022, Debtor filed a *Motion to Remove Lien by Portfolio Recovery Associates LLC*. Doc. #16. That motion was docketed under DCN PSC-1 and denied without prejudice for omission of required notice language and failure to include with the exhibits an exhibit index with consecutively numbered pages. Debtor has cured the notice language deficiency, but this motion also has a DCN of PSC-1. This is incorrect. Since the PSC-1 DCN has already been used, Debtors should have used a different DCN. For example, Debtor could have used DCN PSC-2 since these are the initials of Debtor's attorney, Patricia S. Carrillo, and PSC-2 does not appear to have been used yet.

Second, LBR 9004-2(d)(1)-(3) require exhibits to be filed as a separate document, include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets. Although the exhibit was filed as a separate exhibit document and now contains an index, the exhibit pages were not consecutively numbered in violation of LBR 9004-2(d)(3). Doc. #30.

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE.

⁴ Debtors complied with Fed. R. Bankr. P. 7004(b)(3) by serving Corporation Service Company dba CSC Lawyers Incorporating Service, Creditor's registered agent for service of process by first class mail at 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California 95833 on April 22 and 27, 2022. Docs. #31; #33.

5. [21-12461](#)-B-7 **IN RE: RICHARD WEBB**
[JES-2](#)

MOTION TO EMPLOY BAIRD AUCTIONS & APPRAISALS AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
4-18-2022 [[26](#)]

JAMES SALVEN/MV
JEFF REICH/ATTY. FOR DBT.

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

DISPOSITION: Granted in part; denied in part.

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

Chapter 7 trustee James E. Salven ("Trustee") seeks authorization to (i) employ Baird Auctions & Appraisals ("Auctioneer") under 11 U.S.C. § 328; (ii) sell the estate's interest in a 2017 Hyundai Accent ("Vehicle") at public auction under § 363(b)(1); and (iii) compensate Auctioneer under §§ 327(a) and 328. Doc. #26. The auction will be held on or after June 7, 2022 at Baird Auctions & Appraisals located at 1328 N. Sierra Vista, Suite B, Fresno, California. *Id.* Trustee also requests waiver of the 14-day stay under Federal Rule of Bankruptcy Procedure ("Rule") 6004(h). *Id.*

No party in interest timely filed written opposition. This motion will be GRANTED IN PART and DENIED IN PART with respect to the request for waiver of the 14-day stay under Rule 6004(h).

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(2) and (a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion affects the proposed disposition and the Auctioneer. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion and allow the relief requested by movant here as to the proposed auctioneer and use the court's discretion to add a party under Civ. Rule 21.

Compensation is separate from the sale. Since this relief and appointing the Auctioneer are separate claims, the court will allow their joinder in this motion under Civ. Rule 18 (Rule 7018) because it is economical to handle this motion in this manner absent an objection. This rule is not incorporated in contested matters absent court order under Rule 9014(c) and affected parties are entitled to notice. Trustee, having requested this relief, is deemed to have notice. Since no party timely filed written opposition, defaulted parties are deemed to have consented to application of this rule.

Richard Kent Webb ("Debtor") filed chapter 7 bankruptcy on October 19, 2021. Doc. #1. Trustee was appointed as interim trustee that same date and became permanent trustee at the first § 341 meeting of creditors held December 9, 2021. Doc. #5; see also docket generally.

In the course of administering the estate, Trustee investigated Debtor's assets. Doc. #28. Among those assets is Vehicle, which is listed in the schedules with approximately 38,000 miles and valued at \$6,000.00. Doc. #1, *Sched. A/B*, ¶ 3.2. Vehicle does not appear to be encumbered by any security interests. *Id.*, *Sched. D*. Further, no party has filed a proof of claim asserting any interest in Vehicle. See Claims Register.

Debtor initially claimed a \$6,000.00 exemption in Vehicle pursuant to Cal. Code Civ. Proc. ("CCP") § 704.060. Doc. #1, *Sched. C*. However, Debtor reduced this claimed exemption to \$0.00 under CCP § 704.010 on March 25, 2022. Doc. #25, *Am. Sched. C*. This amended schedule also

increases the current value of Vehicle from \$6,000.00 to \$11,000.00. No corresponding *Amended Schedule A/B* has been filed.⁵

Now, Trustee wants to employ Auctioneer, sell Vehicle, and compensate Auctioneer from the sale proceeds. Doc. #26.

Employment and Compensation

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

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

Under these sections, Trustee requests to employ and compensate Auctioneer by paying: (i) a 15% commission on the gross proceeds from the sale; and (ii) up to \$500.00 for anticipated storage and preparation for sale fees. Doc. #28. In addition to those fees and expenses, Auctioneer charges buyers an additional 10% premium on the purchase price. *Id.* Funds from the sale, sans Auctioneer's fees and expenses if this motion is granted, will be remitted to the bankruptcy estate within 30 days of the sale. *Id.*

Trustee and Jeffrey Baird, the owner and operator of Auctioneer, filed declarations attesting that Auctioneer is a disinterested person as defined in § 101(14) and does not hold any interests adverse to the estate in accordance with § 327(a). *Id.*; Doc. #29. Trustee and Mr. Baird declare that Auctioneer, with respect to Debtor, is not a creditor, equity security holder, insider, investment banker for a security of the debtor within the three years before the petition date, or an attorney for such investment banker, and within two years of the petition date was not a director, officer, or employee of the debtor or an investment banker. *Id.* Auctioneer does not have an interest materially adverse to the interest of the estate, creditors, Debtor, equity security holders, an investment banker for a security of the debtor, or any other party in interest, and had not served as an examiner in this case. *Id.*

Trustee declares that it is necessary to employ Auctioneer to liquidate Vehicle. Doc. #28. Trustee believes that the proposed fees and expenses for services are reasonable and customary for the services to be rendered by Auctioneer. *Id.* Auctioneer will assist Trustee by (1) actively advertising the sale of the property, (2) assisting in storing the property until sold, and (3) generally performing and assisting Trustee in matters customarily done and performed by auctioneers in connection with an auction sale of property. *Id.*

Additionally, no agreement exists between Auctioneer or any other person for the sharing of compensation received by Auctioneer in connection with the services rendered. Doc. #29.

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. §§ 327(a), 328 and authorize Trustee to pay the 15% commission and reimbursement of up to \$500.00 for preparation and storage fees as prayed.

Proposed Sale

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

Trustee wishes to sell Vehicle under § 363(b). Doc. #26. As noted above, Vehicle has a scheduled value of \$6,000.00 with no secured creditors or claimed exemptions, but recent *Amended Schedule C* indicates that it might be worth \$11,000.00. Docs. #1, *Sched. A/B, D*; #25, *Am. Sched. C*. If sold at a price between these potential values, Auctioneer's 15% commission would range between \$900 and \$1,650. After payment of up to \$500 for preparation and storage fees, the net to the estate would range between \$4,600 and \$8,850.

Trustee believes that using the auction process to sell Vehicle will result in the quickest liquidation for the best possible price because

it will be exposed to many prospective purchasers. Doc. #28. Based on Trustee's experience, this will yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.*

Sale by auction under these circumstances should maximize potential recovery for the estate. The sale of the Vehicle appears to be in the best interests of the estate because it will provide liquidity to the estate that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

No party in interest timely filed written opposition. This motion will be GRANTED IN PART. Trustee will be authorized to employ Auctioneer, sell the Vehicle at public auction on or after June 7, 2022, and pay Auctioneer for its services as outlined above. Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale, and payment of up to \$500.00 for preparation and storage fees.

Rule 6004(h)

Trustee's request for waiver of the 14-day stay under Rule 6004(h) will be DENIED because Trustee presents no legal or factual bases in support of such waiver. See *Paladino v. S. Coast Oil Corp.* (*In re S. Coast Oil Corp.*), 566 F. App'x 594, 595 (9th Cir. 2014) (affirming waiver of 14-day stay because time was of the essence due to regulatory deadlines); *In re Ormet Corp.*, 2014 LEXIS 3071 (Bankr. D. Del. July 17, 2014) (finding cause to lift 14-day stay because the buyer required closing before the stay would expire). Trustee says that the auction will occur on or after June 7, 2022, which is the 14th day after the May 24, 2022 hearing date. Therefore, there do not appear to be any circumstances warranting waiver of the stay under Rule 6004(h).

⁵ *Amended Schedule C* also increases the value of a 2003 Chevrolet Silverado 1500 from \$1,000 to \$6,000. Doc. #25, *Am. Sched. C*; cf. Doc. #1, *Sched. A/B*. Though it is possible that the values of these vehicles were transposed after erroneously adding an additional "1" to the Silverado's original \$1,000 valuation, the court presumes such \$5,000 increases in value for both vehicles were intentional, and that the Silverado's new \$6,000 valuation is merely coincidental to the prior same valuation for Vehicle. Still, Debtor should have filed an *Amended Schedule A/B* consistent with *Amended Schedule C*.

6. [21-10368](#)-B-7 **IN RE: SIMONA PASILLAS**
[FW-4](#)

MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR BERKSHIRE
HATHAWAY HOMESERVICES, BROKER(S)
4-22-2022 [\[73\]](#)

JAMES SALVEN/MV
SCOTT LYONS/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") seeks authorization to (i) sell, pursuant to 11 U.S.C. § 363, residential real property of the estate located at 40624 Eddy Road, Cutler, California 93615-2028 ("Property")⁶ to Leobardo Nunez and Jose Barragan ("Proposed Buyers") for \$195,000.00,⁷ subject to higher and better bids; and (ii) to pay brokers' commission of 6% under 11 U.S.C. § 328, to be split equally between the buyer's and seller's brokers. Doc. #73.

Secured creditor Specialized Loan Servicing, LLC ("Creditor") filed conditional non-opposition on May 11, 2022, but it was not timely. Doc. #80. Under Local Rule of Practice ("LBR") 9014-1(f)(1), written opposition was due not later than 14 days before the hearing – May 10, 2022. Creditor's non-opposition will be stricken because it was late, and Creditor's default entered.

Notwithstanding, Creditor does not oppose the sale provided that it is paid in full out of escrow pursuant to an updated payoff demand, or Creditor's duly notarized writing agreeing to any sale providing for less than payment in full, and Debtor remains current with the ongoing monthly payment due under the terms of the loan agreement. *Id.* The proposed sale satisfies these new requirements because any approved sale will require the liens to be paid from the proceeds since the motion does not request approval to sell free and clear of liens under § 363(f).

No other parties in interest timely filed written opposition. This motion will be GRANTED and proceed for higher and better bids only.

This motion was set for hearing on 28 days' notice as required by LBR 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(2) and (a)(6). The failure of Creditor, all other 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 and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion affects the proposed disposition and the brokers. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021, *incorporated in contested matters under* Rule 9014(c)), the court will exercise its discretion and allow the relief requested by Trustee here as to the brokers' commission and use the court's discretion to add parties under Civ. Rule 21. Compensation is separate from the sale.

Since this relief and compensating the brokers are separate claims, the court will allow their joinder in this motion under Civ. Rule 18 (Rule 7018) because it is economical to handle this motion in this manner absent any objection. This rule is not incorporated in contested matters absent court order under Rule 9014(c) and affected parties are entitled to notice. Trustee, having requested this relief, is deemed to have notice. Other than Creditor's untimely conditional non-opposition, no party opposed, so defaulted parties are deemed to have consented to application of this rule. Creditor consents to the sale provided that it is paid from the sale proceeds.

BACKGROUND

Simona Pasillas ("Debtor") filed chapter 7 bankruptcy on February 12, 2021. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a) meeting of creditors on March 11, 2021. Doc. #5.

Debtor listed Property the schedules with a value of \$215,755.00. Doc. #1, *Sched. A/B*. Debtor did not claim an exemption in Property. *Id.*, *Sched. C*.

As of the petition date, Property was subject to a deed of trust in favor of Wells Fargo Home Mortgage ("WFHM") in the amount of \$99,528.00. Doc. #1, *Sched. D*. WFHM obtained that interest by assignment from Country Club Mortgage, Inc., which was then assigned to Creditor. Doc. #81, *Ex. C*. Creditor's stricken conditional non-opposition estimates the amount owed to be approximately \$102,880.21. Doc. #80.

Trustee filed adversary proceeding no. 21-01038 entitled *Salven v. Pasillas et al.* ("Adv. Proc.") to determine the validity, extent, and priority of the estate's interest in Property.⁸ Adv. Proc. Doc. #1. On February 16, 2022, the court entered a judgment in favor of Trustee

finding that Debtor and other defendants had no interest in Property and ordered the turnover of Property to Trustee. Adv. Proc. Doc. #78.

Thereafter, Trustee moved to employ Berkshire Hathaway HomeServices California Realty ("Broker") on March 9, 2022 as the estate's real estate broker to market and sell Property at the highest and best possible price. Doc. #68; FW-3. On March 17, 2022, the court authorized Broker's employment pursuant to 11 U.S.C. §§ 327 and 328. Doc. #72. The employment authorization is presumptively effective February 7, 2022 under the 30-day time frame prescribed in LBR 2014-1(b)(1) and Rule 2014(a) for employment orders.

Subject to court approval, Trustee has entered into a contract to sell Property to Proposed Buyers for \$195,000.00. Doc. #77, Ex. A.

Trustee's proposed sale, if approved, is estimated to have the following distribution:

Sale price	\$195,000.00
Estimated costs of sale	- \$3,900.00
Brokers' commission (6%)	- \$11,700.00
Estimated net after closing costs	= \$179,400.00
Creditor's lien (approx.)	- \$102,880.21
Estimated net proceeds to estate	= \$76,519.79

Docs. #76; #77, Ex. A. After paying closing costs and Creditor's lien, approximately \$76,519.79 in net proceeds will be remitted to the estate for the benefit of unsecured claims.

DISCUSSION

11 U.S.C. § 363

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

(Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Robert Casey, a licensed real estate broker employed by Broker, declares that he has been working closely with Trustee to sell Property. Doc. #75. Based on his experience, he believes that the sale price in the contract with Proposed Buyers is both a fair and reasonable value for the Property. *Id.*

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887, citing *Mission Prod. Holdings, Inc. v. Old Cold, LLC (In re Old Cold, LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). There is nothing in the record suggesting that Proposed Buyer is an insider. Proposed Buyer is neither listed in the original nor amended master address lists, nor listed in the original or amended schedules. Docs. #1; #2; ##22; #25

The sale of Property appears to be in the best interests of the estate and creditors because it will pay off property taxes and provide liquidity to the estate. The sale subject to higher and better bids will maximize estate recovery and yield the best possible price. The sale appears to be supported by a valid business judgment, proposed in good faith, and for a fair and reasonable price. Trustee's business judgment appears to be reasonable and may be given deference if additional evidence is provided as outlined above.

Brokers' Commissions

In connection with this sale, Trustee also seeks authorization under § 330 to pay a 6% commission on the final sale price as reasonable compensation for actual, necessary services of the real estate brokers. Docs. #73; #76. This commission will be split equally between the buyer's and seller's brokers. Trustee is represented by Broker and Debtors are represented by Edward Escobar of Better Homes & Gardens Real Estate Bloom Group.⁹ Doc. #77, *Ex. A*, at 20. If Property is sold at the proposed sale price with no overbidders, Broker and Edward Escobar would receive \$5,850.00 each. The court will allow the commission to be paid as prayed.

CONCLUSION

Since no party in interest timely filed written opposition, this motion will be GRANTED. The matter will be called as scheduled. Other than verifying whether Proposed Buyers are represented by Broker, Edward Escobar, or someone else, the hearing will proceed for higher and better bids only. The winning bidder will be authorized to purchase Property on the terms set forth below. Trustee will be authorized to compensate the brokers on the terms outlined above.

Overbid Procedure

Any party wishing to overbid must: (i) deposit with Trustee certified monies in the amount of \$8,000.00 prior to the time of the hearing on this motion; (ii) provide proof in the form of a letter of credit, or some other written pre-qualification for any financing that may be required to complete the purchase sufficient to cover the necessary overbid amount; (iii) provide proof that any successful over bidder can and will close the sale within 15 days of delivery of a certified copy of the order approving the sale and execute a purchase agreement for the Property; and (iv) make an appearance at the hearing or have an authorized representative with written proof of authority to bid on behalf of the prospective overbidder.

Any unsuccessful bidder's deposit shall be returned at the conclusion of the hearing and any successful overbid shall have the deposit applied to the successful overbid price. In the event that a successful overbidder fails to close the sale within 15 days of delivery of a certified copy of the order approving the sale and execute a purchase agreement for the Property, the \$8,000.00 deposit shall become non-refundable, and the next highest bidder shall become the buyer. All overbids shall be in the minimum amount of \$5,000.00 such that the first of any overbid shall be in the minimum amount of \$195,000.

Prospective bidders must acknowledge that the Property is being sold "as-is, where-is" condition with no warranties or representations, express, implied, or otherwise by the bankruptcy estate, the Debtor, or their representatives.

⁶ Property's street address is also known as 40624 Sante Fe Dr. Doc. #77, *Ex. A*, at 4.

⁷ The prayer for relief asks for authorization to sell Property for \$200,000, but this appears to be a typographical error. Doc. #73, at 4. The motion earlier says the sale price is \$195,000, which is the value restated in both declarations. *Id.*, at 2; Docs. ##75-76. Further, the purchase agreement states a \$195,000.00 purchase price. Doc. #77, *Ex. A*, at 5.

⁸ The court *sua sponte* takes judicial notice of documents filed in Trustee's related adversary proceeding, adv. proc. no. 21-01038, under Fed. R. Evid. 201.

⁹ The court notes that the prayer for relief says that Broker represents both Trustee and Proposed Buyers. Doc. #73, at 4. However, the purchase agreement indicates that Proposed Buyers are represented by Edward Escobar. *Id.*, *Ex. A*, at 20.

7. [18-14689](#)-B-7 **IN RE: JAVIER GONZALEZ**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
4-20-2022 [[130](#)]

JAMES SALVEN/MV
THOMAS GILLIS/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.

James E. Salven ("Applicant"), in his capacity as certified public accountant employed by himself in his capacity as chapter 7 trustee of the bankruptcy estate, seeks final compensation under 11 U.S.C. § 330 in the sum of \$3,249.87. Doc. #130. This amount consists of \$2,772.00 in fees as reasonable compensation for services rendered and \$477.87 in reimbursement of actual, necessary expenses from February 20, 2020 through April 8, 2022.¹⁰ *Id.*

Applicant, in his capacity as chapter 7 trustee, has reviewed the application and supporting documents, and consents to the proposed payment. Doc. #134.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Javier Ramirez Gonzalez ("Debtor") filed chapter 7 bankruptcy on November 20, 2018. Doc. #1. Applicant was appointed as interim trustee on that same date and became permanent trustee at the first § 341(a)

meeting of creditors on December 27, 2018. Doc. #4; see also docket generally. Applicant, in his capacity as trustee, moved to employ himself as accountant on February 20, 2020 under 11 U.S.C. §§ 327, 330, and 331. Doc. #112. The court approved employment on February 28, 2020, effective January 31, 2020. Doc. #118. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for accounting services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Acceptance of employment was deemed to be an irrevocable waiver by Applicant of all pre-petition claims, if any, against the bankruptcy estate. *Id.* Applicant's services here were within the time frame prescribed by the employment order, as well as the presumptive 30-day period outlined in LBR 2014-1(b)(1) and Fed. R. Bankr. P. 2014(a).

This is Applicant's first and final fee application. Doc. #130. Applicant performed 9.9 billable hours of accounting services at a rate of \$280.00 per hour, totaling **\$2,772.00** in fees.¹¹ Doc. #133, Ex. A. Applicant also incurred **\$477.87** for the following expenses:

Copies (289 @ \$0.15)	\$43.35
Envelopes (8 @ \$0.20)	+ \$1.60
Lacert Tax Proc	
Debtor - 1st year return	+ \$175.00
Debtor - final return	+ \$196.00
Service - Fee app.	+ \$61.92
Total Costs	= \$477.87

Id., Ex. B. These combined fees and expenses total **\$3,249.87**.

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

Applicant's services included, without limitation: (1) conflict review and preparing the employment application (JES-1); (2) determining the tax basis of the residence and reviewing receipts and basis to determine best year end for the estate; (3) analyzing and inputting data into the system, processing returns and clearance letters, analyzing data and a revised settlement, and inputting such information into the tax system; (4) processing and finalizing tax returns and transmitting prompt determination information; and (5) preparing and filing this fee application (JES-2). Doc. #133, Exs. A, B. The court finds the services and expenses actual, reasonable, and necessary. As noted above, Applicant, in his capacity as chapter 7

trustee, has reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #134.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$2,772.00 in fees and \$477.87 in expenses on a final basis pursuant to 11 U.S.C. § 330. Applicant, in his capacity as chapter 7 trustee and in his discretion, will be authorized to pay Applicant, in his capacity as accountant, \$3,249.87 for services rendered to and costs incurred for the benefit of the estate from February 20, 2020 through April 8, 2022.

¹⁰ The motion requests compensation "through April 8, 2022." Doc. #130, at 2. No start date is specified, but the time records indicate services were performed between February 20, 2020 and April 7, 2022. Doc. #133, *Ex. A*.

¹¹ Applicant waived fees for conflict review, preparing, and filing the employment application. Doc. #53, *Ex. A*.

8. [21-10495](#)-B-7 **IN RE: ROSARIO ALDACO**
[JES-3](#)

MOTION FOR COMPENSATION FOR JAMES SALVEN, CHAPTER 7
TRUSTEE(S)
4-21-2022 [[69](#)]

JAMES SALVEN/MV
SCOTT LYONS/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.

Chapter 7 trustee James E. Salven ("Trustee") requests statutory compensation of \$10,471.06 under 11 U.S.C. §§ 326, 330. Doc. #69. This amount consists of \$10,418.36 as statutory fees for services rendered to the estate and \$52.70 in actual, necessary expenses from February 26, 2021 through April 9, 2022. *Id.*

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B)

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

As a preliminary matter, the motion references certain exhibits, but no such exhibits were filed. However, the court notes that Trustee filed *Trustee's Final Report* ("Final Report") on May 16, 2022 with an attached narrative report. Docs. #74; #76. The court takes judicial notice of the

Rosario Rodriguez Aldaco ("Debtor") filed chapter 7 bankruptcy on February 26, 2021. Doc. #1. Trustee was appointed as interim trustee that same day and became permanent trustee at the meeting of creditors on April 1, 2021. Doc. #4; see also docket generally. Trustee administered the estate, filed the final report on May 16, 2022, and now seeks final compensation. Doc. #69.

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

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

11 U.S.C. § 326(a). Here, Trustee has requested:

- (a) \$1,250.00 (25%) of the first \$5,000.00;
- (b) \$4,500.00 (10%) of the next \$45,000.00; and
- (c) \$4,668.36 (5%) of the next \$93,367.15.

Doc. #76, at 3. These percentages comply with the restrictions imposed by § 326(a) and total **\$10,418.36**. The total disbursements were

\$143,367.15. *Id.* Trustee also incurred \$64.20 in expenses as follows, but requests reimbursement of only **\$52.70**:

Copies (126 @ \$0.20)	\$25.20
Distribution (5 @ \$1.00)	+ \$5.00
Certified copy of Order	+ \$11.50
Court Call	+ \$22.50
Total Costs	= \$64.20

Id.; Doc. #69. These combined fees and requested expenses total **\$10,471.06**.

11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses. 11 U.S.C. § 330(a)(1)(A) & (B). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Trustee's services included but were not limited to: (1) conducting the meeting of creditors; (2) selling real property; (3) objecting to a claim exemption; (4) reviewing and reconciling financial records; and (5) preparing the Final Report. Docs. #74; #76. The court finds Trustee's services and expenses actual, reasonable, and necessary to the estate.

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be awarded \$10,471.06 as final compensation pursuant to §§ 326, 330.