



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Department B – Courtroom #13
Fresno, California**

Hearing Date: Thursday, May 30, 2024

Unless otherwise ordered, all matters before the Honorable René Lastreto II, shall be simultaneously: (1) **In Person** at, Courtroom #13 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

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

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

Please also note the following:

- Parties in interest and/or their attorneys may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press who wish to attend by ZoomGov may only listen in to the hearing using the Zoom telephone number. Video participation or observing are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may attend in person unless otherwise ordered.

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

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#). If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

Post-Publication Changes: 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 any possible updates.

9:30 AM

1. [24-11015](#)-B-11 **IN RE: PINNACLE FOODS OF CALIFORNIA LLC**
[MJB-2](#)

CONTINUED MOTION TO USE CASH COLLATERAL
4-23-2024 [[12](#)]

PINNACLE FOODS OF CALIFORNIA
LLC/MV
MICHAEL BERGER/ATTY. FOR DBT.

NO RULING.

2. [24-11015](#)-B-11 **IN RE: PINNACLE FOODS OF CALIFORNIA LLC**
[MJB-4](#)

MOTION TO EMPLOY MICHAEL JAY BERGER AS ATTORNEY(S)
5-3-2024 [[51](#)]

PINNACLE FOODS OF CALIFORNIA
LLC/MV
MICHAEL BERGER/ATTY. FOR DBT.

NO RULING.

3. [24-11016](#)-B-11 **IN RE: TYCO GROUP LLC**
[MJB-1](#)

CONTINUED MOTION TO USE CASH COLLATERAL
4-23-2024 [[8](#)]

TYCO GROUP LLC/MV
MICHAEL BERGER/ATTY. FOR DBT.

NO RULING.

4. [24-11016](#)-B-11 **IN RE: TYCO GROUP LLC**
[MJB-3](#)

MOTION TO EMPLOY MICHAEL JAY BERGER AS ATTORNEY(S)
5-3-2024 [[44](#)]

TYCO GROUP LLC/MV
MICHAEL BERGER/ATTY. FOR DBT.

NO RULING.

5. [24-11017](#)-B-11 **IN RE: CALIFORNIA QSR MANAGEMENT, INC.**
[MJB-2](#)

CONTINUED MOTION TO USE CASH COLLATERAL
4-23-2024 [\[14\]](#)

CALIFORNIA QSR MANAGEMENT,
INC./MV
MICHAEL BERGER/ATTY. FOR DBT.

NO RULING.

6. [24-11017](#)-B-11 **IN RE: CALIFORNIA QSR MANAGEMENT, INC.**
[MJB-4](#)

MOTION TO EMPLOY MICHAEL JAY BERGER AS ATTORNEY(S)
5-3-2024 [\[53\]](#)

CALIFORNIA QSR MANAGEMENT,
INC./MV
MICHAEL BERGER/ATTY. FOR DBT.

NO RULING.

7. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**
NON-PROFIT CORPORATION
[WJH-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JORGE CASTELLANOS
4-26-2024 [\[593\]](#)

TWILIGHT HAVEN, A CALIFORNIA
NON-PROFIT CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order with
a copy of the stipulation attached as an exhibit.
The stipulation shall also be separately filed and
docketed as a stipulation.

Twilight Haven, a California Non-profit, ("Twilight Haven"), Debtor-
in-Possession and Defendant in this adversary, requests an order
approving a settlement agreement to resolve the adversary proceeding
brought against it by Plaintiff-Creditor Jorge Castellanos
("Castellanos") pursuant to Fed. R. Bankr. P. ("Rule") 2002 and
9019. Doc. #593.

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 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.

Twilight Haven filed for chapter 11, Subchapter V bankruptcy on June 22, 2023. Doc. #1. Lisa A. Holder ("Trustee ") was appointed as the trustee on June 27, 2023. Doc. #50.

On September 18, 2023, Twilight Haven filed the *Notice of Removal* for a state court proceeding ("the Castellanos Suit") initiated by Castellanos against Twilight Haven in the Superior Court of California, County of Tulare. See AP 23-01037, Doc. #1. The Castellanos Suit alleged violations by Twilight Haven of various California state wage and hour laws and was styled as a class-action complaint. *Id.* Castellanos filed two proofs of claim in the underlying bankruptcy proceeding: POC #22, styled as a "class" claim, and POC #23, for Castellanos in his individual capacity. See POCs ##22, 23.

In an effort to avoid litigation, Twilight Haven and Castellanos have entered into a settlement. Doc. #593. Under the terms of the settlement, Twilight Haven will pay \$17,500.00 to resolve the claims of the Castellanos Suit, of which (a) \$1,439.55 will go to Castellanos for his personal wage claims, (b) \$5,000.00 will go to Castellanos for his claim for penalties, and (c) \$11,060.45 will go to Castellanos' attorneys. *Id.* In exchange, Castellanos will withdraw POCs ##23 and 23, dismiss with prejudice all of his individual claims, and dismiss without prejudice the purported class members and aggrieved employees' class and representative action claims as raised by the Castellanos Suit. *Id.*

It appears that a copy of the settlement agreement has not been filed in this case. The motion will only be granted if Twilight Haven separately files the settlement agreement and docketts it as a stipulation.

As Debtor In Possession ("DIP"), Twilight Haven has the authority to settle claims against it subject to court approval. 11 U.S.C. § 323(a). On a motion and after notice and a hearing, the court may approve a compromise or settlement. Rule 9019. The confirmed plan also authorizes the DIP to see that "[t]hrough either settlement,

mediation or litigation, the claims of Castellanos will be fixed and determined." Doc. #353, §V, ¶x.

Approval of a compromise must be based upon considerations of fairness and equity. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Twilight Haven has considered the *A & C Props.* and *Woodson* factors, which weigh in favor of approving the settlement agreement as follows:

1. Probability of success in litigation: Twilight Haven asserts that it has evaluated the merits of the dispute and concluded they raise questions of law and fact, with no guarantee of a favorable outcome. This factor supports settlement.

2. Collection: As of the filing of the instant motion, the Chapter 11 case is ongoing. Twilight Haven anticipates that the court will likely establish a claims reserve if this dispute is not timely resolved. Thus, the impact of this factor is minimal.

3. Complexity of litigation: Twilight Haven does not address the complexity of the issues raised by Castellanos, but it does suggest that "[c]ontinued litigation would reduce the resources of the estate with no promise of a beneficial result to the estate." Doc. #598. Thus, this factor favors settlement.

4. Paramount interests of creditors: Twilight Haven argues that settlement is in the best interests of creditors, as opposed to continued litigation, which will reduce the estate's resources and reduce the amount available to pay allowed claims. Settlement will also facilitate a swift and orderly administration of the estate and timely payment to remaining general unsecured creditors. This factor favors settlement.

The *A & C Props.* and *Woodson* factors appear to weigh in favor of approving the settlement. Therefore, the settlement appears to be a fair, equitable, and reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.*

Accordingly, this motion will be GRANTED. The settlement between Twilight Haven and Castellanos will be approved.

This ruling is not authorizing the payment of any fees or costs associated with the settlement. Additionally, Twilight Haven shall attach a copy of the settlement agreement as an exhibit to the

proposed order and shall separately file the settlement agreement and docket it as a stipulation.

8. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**
NON-PROFIT CORPORATION
[WJH-46](#)

OMNIBUS OBJECTION TO CLAIMS
4-10-2024 [\[577\]](#)

TWILIGHT HAVEN, A CALIFORNIA
NON-PROFIT CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

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

Twilight Haven, a California nonprofit corporation ("Debtor") brings this *Omnibus Objection to Claims* under Fed. R. Bankr. P. 3007(d) (5) and 3007(e) as to certain claims ("the Claims") either filed by creditors or scheduled by Debtor at the outset of the case ("the Affected Creditors"). Doc. #577. Debtor does not object to the Claims on grounds of timeliness but rather on the grounds that they were "satisfied or released" prepetition but were mistakenly listed in Debtor's Schedules. Doc. #579 (*Decl. of Kristine Williams*). Debtor avers that nothing is owed on these debts. *Id.* The Omnibus Objection is directed to the claims of the following Affected Creditors who have scheduled claims:

- a. Care West Insurance Company
- b. Comcast National
- c. EMD Networking Services
- d. NetChex
- e. Kaiser Foundation

Id. The Objection is supported by the Williams Declaration and a list of Exhibits which purport to show that the claims of Affected Creditors have been paid in full. *Id.*; Doc. #580 (*Exhibits*).

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the sustaining of the objection. *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.

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under section 501, is deemed allowed, unless a party in interest objects. Federal Rule of Bankruptcy Procedure 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000). Here, however, it appears that no proofs of claim were executed and filed for any of these scheduled debts.

The Objection is supported by evidence in the form of a Declaration and Exhibits which appear to demonstrate that the Claims have been satisfied. No party in interest has responded to the Objection. The defaults of all nonresponsive parties in interest will be entered, and this Objection will be **SUSTAINED**.

9. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**
NON-PROFIT CORPORATION
[WJH-47](#)

OBJECTION TO CLAIM OF JENNA BUCKLEY, CLAIM NUMBER 16 AND/OR
OBJECTION TO CLAIM OF JENNA BUCKLEY, CLAIM NUMBER 17
4-10-2024 [[582](#)]

TWILIGHT HAVEN, A CALIFORNIA
NON-PROFIT CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Sustained.

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

Twilight Haven, a California nonprofit corporation ("Debtor") objects to two proofs of claim filed in this case, POC #16 and POC #17, both filed by Jenna Buckley on behalf of Jill Buckley (collectively "Buckley", the latter of whom was a former resident of Twilight Haven during the time of its prepetition operations. Doc. #582. POC #16 seeks recovery of pro-rated rent for 15 days and a security deposit for independent living studio occupied by Jill Buckley and in the amount of \$1,200.00. POC #16. The basis for POC #17 is unclear to the court beyond the fact that Buckley is seeking \$1,355.00, as most of the blanks in that proof of claim

appear to be filed with computer-generated gibberish and no exhibits supporting the POC are attached. POC #17.

Debtor filed this Chapter 11 case on June 22, 2023, and the *Notice of Chapter 11 Bankruptcy Case* generated by the clerk's office set August 31, 2023, as the bar date for non-governmental proofs of claim. Doc. #41. Buckley timely filed both proofs of claim on August 21, 2023. POC #16 and #17.

Debtor's objections to these two proofs of claim are supported primarily by the Declaration of Kristine Williams, Debtor's CEO. Doc. #584. Williams states as follows:

The Debtor objects to both of Jenna Buckley's claims on the basis that such Claims are inconsistent with the Debtor's books and records and that the Debtor has no liability for the amount and Claims asserted and said Claims should be disallowed in their entirety. Any sums owing to Jenna Buckley or Jill Buckley, respectively, on account of the asserted claims have been satisfied and no sums remain due.

Id. at ¶10. The Objection is also accompanied by Exhibits in the form of copies of the two proofs of claim and a great many pages of contracts between Buckley and Debtor. Doc. #582. Neither the Objection nor any of the moving papers advise the court of what conclusions it is meant to draw from these exhibits.

This objection was set for hearing on 44 days' notice as required by Local Rule of Practice ("LBR") 3007-1(b)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the sustaining of the objection. *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.

11 U.S.C. § 502(a) states that a claim or interest, evidenced by a proof filed under section 501, is deemed allowed, unless a party in interest objects.

Federal Rule of Bankruptcy Procedure 3001(f) states that a proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim. If a party objects to a proof of claim, the burden of proof is on the objecting party. *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (B.A.P. 9th Cir. 2000). Federal Rule of

Bankruptcy Procedure 3003(c)(3) authorizes the court to set a claims bar date, which the court in this case set as December 11, 2023, for claims arising from rejection of a lease. Fed. R. Bankr. P. 3003(c)(3).

The Objection is supported by evidence in the form of a Declaration and Exhibits which appear to demonstrate the relevant facts as alleged by Debtor. POC #17 is clearly subject to valid objection as, due presumably to computer error, it does not identify Buckley's basis for the claim. POC #16 is a closer question, as it clearly asserts that the \$1,200.00 sought is for pro-rated rent and a security deposit due to be refunded, and Debtor's objection is based on a pro forma statement that the claims are "inconsistent with the Debtor's books and records" and a boilerplate denial of liability.

That said, neither Buckley nor any other party in interest has responded to the Objection. The defaults of all nonresponsive parties in interest will be entered, and this Objection will be **SUSTAINED**.

10. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[BPC-1](#)

CONTINUED MOTION FOR ADMINISTRATIVE EXPENSES
2-22-2024 [[1459](#)]

SIEMENS FINANCIAL SERVICES,
INC./MV
RILEY WALTER/ATTY. FOR DBT.
ANTHONY NAPOLITANO/ATTY. FOR MV.

NO RULING.

11. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[HRR-2](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT AND/OR MOTION
TO PAY , MOTION FOR RELATED RELIEF
5-2-2024 [[1740](#)]

AMERICAN ADVANCED MANAGEMENT,
INC./MV
RILEY WALTER/ATTY. FOR DBT.
HAMID RAFATJOO/ATTY. FOR MV.

NO RULING.

12. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[SSA-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR
MOTION TO TURNOVER PROPERTY
1-22-2024 [[1303](#)]

TELCION COMMUNICATIONS
GROUP/MV
RILEY WALTER/ATTY. FOR DBT.
STEVEN ALTMAN/ATTY. FOR MV.
WITHDRAWN

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

DISPOSITION: Withdrawn.

No order is required.

On May 3, 2024, the Movant withdrew without prejudice its *Motion for Relief from Stay and/or Adequate Protection and turnover of Property*. Doc. #1745. Accordingly, this motion is WITHDRAWN.

13. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[SSA-2](#)

CONTINUED MOTION FOR ADMINISTRATIVE EXPENSES
2-8-2024 [[1389](#)]

TELCION COMMUNICATIONS
GROUP/MV
RILEY WALTER/ATTY. FOR DBT.
STEVEN ALTMAN/ATTY. FOR MV.

NO RULING.

14. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-19](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-6-2023 [[204](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

15. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-21](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-6-2023 [[218](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

16. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-22](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-7-2023 [[230](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

17. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-40](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
4-26-2023 [[301](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

18. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-42](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
5-2-2023 [[334](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

19. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-82](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH SHERI CABALLERO
4-25-2024 [\[1728\]](#)

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order with
a copy of the stipulation attached as an exhibit.
The stipulation shall also be separately filed and
docketed as a stipulation.

Madera Community Hospital, ("MCH"), Debtor-in-Possession and Defendant in this adversary, requests an order approving a settlement agreement to resolve the adversary proceeding brought against it by Plaintiff-Creditor Sheri Caballero ("Caballero") pursuant to Fed. R. Bankr. P. ("Rule") 2002 and 9019. Doc. #1728.

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 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.

MCH filed for chapter 11 on March 10, 2023. Doc. #1. Caballero filed a prepetition complaint on October 13, 2021, entitled *Sheri Caballero v. Madera Community Hospital, a California Corporation, et al*, in the California Superior Court, County of Madera, cause number MCV086128 ("the Lawsuit"). Doc. #1728. The Lawsuit arose from alleged medical malpractice, with Caballero seeking lost wages, hospital and medical expenses, and general damages. *Id.*

In an effort to avoid litigation, MCH and Caballero have entered into a settlement. Doc. #1728. Under the terms of the settlement,

Caballero will dismiss MCH from the Lawsuit with prejudice, proceeding only against the other defendants. *Id.* MCH will pay no money to Caballero but will waive any rights to recovery expenses pursuant to Cal. Code of Civil Procedure §§ 1033.5 and 998. *Id.* Both parties will bear their own costs, and Caballero withdraws any right to seek leave to file an untimely proof of claim. *Id.*

It appears that a copy of the settlement agreement has not been filed in this case. The motion will only be granted if MCH separately files the settlement agreement and docket it as a stipulation.

As Debtor In Possession ("DIP"), MCH the authority to settle claims against it subject to court approval. 11 U.S.C. § 323(a). On a motion and after notice and a hearing, the court may approve a compromise or settlement. Rule 9019. Approval of a compromise must be based upon considerations of fairness and equity. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that the MCH has considered the *A & C Props.* and *Woodson* factors, which weigh in favor of approving the settlement agreement as follows:

1. Probability of success in litigation: MCH asserts that it has evaluated the merits of the dispute and concluded they raise questions of law and fact, with no guarantee of a favorable outcome. This factor supports settlement.

2. Collection: MCH asserts that there will likely be difficulties in connection of the underlying claims. This factor supports settlement.

3. Complexity of litigation: MCH does not address the complexity of the issues raised by Caballero, but it does suggest that "[c]ontinued litigation would reduce the resources of the estate with no promise of a beneficial result to the estate." Doc. #1730. MCH claims that it "stands to lose if the litigation continues" but "there is little, if anything, to be gained." *Id.* Thus, this factor favors settlement.

4. Paramount interests of creditors: MCH argues that settlement is in the best interests of creditors, as opposed to continued litigation, which will reduce the estate's resources and reduce the amount available to pay allowed claims. Settlement will also facilitate a swift and orderly administration of the estate and timely payment to remaining general unsecured creditors. This factor favors settlement.

The *A & C Props.* and *Woodson* factors appear to weigh in favor of approving the settlement. Therefore, the settlement appears to be a fair, equitable, and reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.*

Accordingly, this motion will be GRANTED. The settlement between MCH and Caballero will be approved.

This ruling is not authorizing the payment of any fees or costs associated with the settlement. Additionally, MCH shall attach a copy of the settlement agreement as an exhibit to the proposed order and shall separately file the settlement agreement and docket it as a stipulation.

20. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-83](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH NOAH SIFUENTES
4-25-2024 [\[1733\]](#)

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order with a copy of the stipulation attached as an exhibit. The stipulation shall also be separately filed and docketed as a stipulation.

Madera Community Hospital, ("MCH"), Debtor-in-Possession and Defendant in this adversary, requests an order approving a settlement agreement to resolve the adversary proceeding brought against it by Plaintiff-Creditor Noah Sifuentes ("Sifuentes") pursuant to Fed. R. Bankr. P. ("Rule") 2002 and 9019. Doc. #1733.

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 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.

MCH filed for chapter 11 on March 10, 2023. Doc. #1. Sifuentes filed a prepetition complaint on October 13, 2021, entitled *Noah Sifuentes v. Fresno Community Hospital and Medical Center et al.*, in the California Superior Court, County of Fresno, cause number 21CECG01742 ("the Lawsuit"). Doc. #1733. The Lawsuit is a wrongful death action based on medical malpractice and survival, brought by and through Sifuentes' guardian ad litem as successor in interest to Frank Angel Sifuentes, Jr. (deceased). *Id.*

In an effort to avoid litigation, MCH and Sifuentes have entered into a settlement. Doc. #*Id.* Under the terms of the settlement, Sifuentes will dismiss MCH from the Lawsuit with prejudice, proceeding only against the other defendants. *Id.* Both parties will bear their own costs, and Sifuentes withdraws any right to seek leave to file an untimely proof of claim. *Id.*

It appears that a copy of the settlement agreement has not been filed in this case. The motion will only be granted if MCH separately files the settlement agreement and docket it as a stipulation.

As Debtor In Possession ("DIP"), MCH has the authority to settle claims against it subject to court approval. 11 U.S.C. § 323(a). On a motion and after notice and a hearing, the court may approve a compromise or settlement. Rule 9019. Approval of a compromise must be based upon considerations of fairness and equity. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that the MCH has considered the *A & C Props.* and *Woodson* factors, which weigh in favor of approving the settlement agreement as follows:

1. Probability of success in litigation: MCH asserts that it has evaluated the merits of the dispute and concluded they raise questions of law and fact, with no guarantee of a favorable outcome. This factor supports settlement.

2. Collection: MCH asserts that there will likely be difficulties in collection of the underlying claims. This factor supports settlement.

3. Complexity of litigation: MCH does not address the complexity of the issues raised by Sifuentes , but it does suggest that "[c]ontinued litigation would reduce the resources of the estate with no promise of a beneficial result to the estate." Doc. #1735. MCH claims that it "stands to lose if the litigation continues" but "there is little, if anything, to be gained." *Id.* Thus, this factor favors settlement. *Id.*

4. Paramount interests of creditors: MCH argues that settlement is in the best interests of creditors, as opposed to continued litigation, which will reduce the estate's resources and reduce the amount available to pay allowed claims. Settlement will also facilitate a swift and orderly administration of the estate and timely payment to remaining general unsecured creditors. This factor favors settlement.

The *A & C Props.* and *Woodson* factors appear to weigh in favor of approving the settlement. Therefore, the settlement appears to be a fair, equitable, and reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.*

Accordingly, this motion will be GRANTED. The settlement between MCH and Sifuentes will be approved.

This ruling is not authorizing the payment of any fees or costs associated with the settlement. Additionally, MCH shall attach a copy of the settlement agreement as an exhibit to the proposed order and shall separately file the settlement agreement and docket it as a stipulation.

11:00 AM

1. [24-10512](#)-B-7 **IN RE: JAMES/REGINA POYNTER**

REAFFIRMATION AGREEMENT WITH DRIVEWAY FINANCE CORPORATION
4-26-2024 [[15](#)]

JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue the order.

Debtors were represented by counsel during the negotiation of the reaffirmation agreement. Counsel's certification states that there is no undue hardship presumption and so, counsel certified that the reaffirmation agreement can be performed by the Debtors.

The reaffirmation motion documents show that there is a presumption of undue hardship. There is no proof that the presumption can be overcome. The Debtor's say that the monthly expense for this vehicle is part of their monthly budget. That is not proof to overcome the presumption of undue hardship. Reaffirming this debt with its remaining term and the current value and age of the vehicle is not in the Debtors' best interests. Approval of the reaffirmation agreement is DENIED.

2. [24-10520](#)-B-7 **IN RE: MIGUEL DIAZ**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION
5-13-2024 [[16](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

A Reaffirmation Agreement between Miguel Diaz ("Debtor") and Nobile Credit Union for a 2021 Chevrolet Silverado was filed on May 13, 2024. Doc. #16.

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the Debtor is represented by counsel, the agreement must be accompanied by an affidavit of the Debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In*

re Minardi, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by Debtor's counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

The Debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

3. [24-10838](#)-B-7 **IN RE: RENA MUSTO**

PRO SE REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT
CORPORATION
5-9-2024 [[14](#)]

NO RULING.

4. [24-10399](#)-B-7 **IN RE: ISMAEL/JERILYN SOLIS**

PRO SE REAFFIRMATION AGREEMENT WITH ROCKET MORTGAGE, LLC
5-6-2024 [[36](#)]

NO RULING.

1:30 PM

1. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[DMG-18](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH KALPESHBHAI PATEL AND BUNITAKUMAR PATEL
5-2-2024 [\[1223\]](#)

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order with
a copy of the stipulation attached as an exhibit.
The stipulation shall also be separately filed and
docketed as a stipulation.

Jeffrey M. Vetter ("Trustee"), Chapter 7 Trustee assigned to Freon Logistics ("Debtor"), debtor in the above-styled Chapter 7 case, requests an order approving a settlement agreement to resolve the adversary proceeding *Vetter v. Kalpeshbhai Patel & Bunitakumar Patel* ("the Patels"); *Blues Brothers Properties*, a California Liability Company ("Blues Brothers"); *Eagle Brothers a California Corporation* ("Eagle Brothers"); AND *Shajot Singh*, an individual ("Singh") (collectively "the Defendants"), adversary no. 2023-01008 ("the Adversary Proceeding"). Doc. #1223. Trustee brought the Adversary Proceeding (a) to avoid a fraudulent conveyance; (b) for determination of interest in property; (c) recovery of preference; (d) conversion; (e) recovery of post-petition transfer; and (f) declaratory relief. *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). 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.

Debtor filed for chapter 11 on November 8, 2022. Doc. #1. The case was converted to Chapter 7 on December 14, 2022. Doc. #290.

On February 4, 2023, Trustee filed the Adversary Proceeding against the Defendants, alleging actions for avoidance and recovery of a fraudulent conveyance (11 U.S.C. § 548); determination of interest in property (11 U.S.C. § 548); recovery of a preferential transfer (11 U.S.C. § 547); conversion; recovery of post-petition transfer (11 U.S.C. § 549); and declaratory relief. Doc. #1225 (Declaration of Jeffrey Vetter). These claims allegedly arose when Debtor borrowed the sum of \$400,000.00 from some of the Defendants (who are interconnected). *Id.* No payments were ever made, but just prior to the petition date, the parties attempted to exercise a clause in the borrowing agreement whereby certain real property located at 310 Chico Street ("the Property") would be transferred to some of the Defendants. *Id.*

In an effort to avoid litigation, Trustee and Defendants have entered into a settlement ("the Settlement Agreement") through the court's Bankruptcy Resolution Dispute Program before Judge Ronald H. Sargis. *Id.* Under the terms of the Settlement Agreement:

1. The Property would be sold by Trustee in a 363 sale, with all commissions and costs to be paid from the sale proceeds.
2. Defendant Eagle Brothers would be reimbursed from sale proceeds for paying off the first mortgage. The motion and the copy of the Settlement Agreement included as an exhibit disagree on how much Eagle Brothers would receive; the motion says \$250,000.00, while the Settlement Agreement says \$263,277.02. The court assumes for purposes of this order that the figure from the finalized settlement will be correct.
3. The next \$175,000.00 of the sale proceeds will go to the Chapter 7 estate.
4. The Chapter 7 estate will "split 50-50" any remaining sale proceeds after the prior two disbursements are made. The motion is unclear on who the recipients of the 50-50 split are, but the Settlement Agreement itself clarifies that Blues Brothers and the Chapter 7 Estate will each receive 50% of the remaining sale proceeds.
5. Trustee will retain on behalf of the estate a \$10,000.00 payment made by the Patels.
6. All Defendants will waive all unsecured claims in the underlying Chapter 7 proceeding except for what is being paid to them through the Settlement Agreement.
7. The Adversary Proceeding will be dismissed upon close of escrow and disbursement of sale proceeds.

Id. See also Doc. #1276 (Exhibit A: Settlement Agreement).

It appears that a copy of the settlement agreement has not been filed as a separate document in this case. The motion will only be granted if Trustee separately files the settlement agreement and docket it as a stipulation.

Trustee has the authority to settle estate claims subject to court approval. 11 U.S.C. § 323(a). On a motion and after notice and a

hearing, the court may approve a compromise or settlement. Rule 9019. Approval of a compromise must be based upon considerations of fairness and equity. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that the Trustee has considered the *A & C Props.* and *Woodson* factors, which weigh in favor of approving the settlement agreement as follows:

1. Probability of success in litigation: Trustee declares that the case is conceptually easy to understand, litigation would involve protracted inquiry into whether the post-petition transferee was a bona fide purchaser for value and whether there was intentional conduct on the part of the Defendants. Thus, there is no guarantee of a judgment more favorable than what the parties have agreed to. This factor supports settlement.

2. Collection: If the court sets aside the transfers as proposed by the settlement, collection will not be difficult. To the extent that the Trustee would seek money damages against any Defendants for intentional conduct, such efforts would, at a minimum, impose administrative costs on the estate. This factor supports settlement or is neutral.

3. Complexity of litigation: While Trustee characterizes the case as simple from an issue standpoint, he also notes that Debtor's representative and the various Defendants are unified, and all would need to be impeached at trial to secure a favorable verdict. Thus, this factor favors settlement.

4. Paramount interests of creditors: Trustee argues that settlement serves the interests of creditors because it obtains a sum certain for the estate without the expenditure of attorneys' fees and expenses that would be paid as administrative fees. Also, the Defendants waive their claims against the estate, which will increase the percentage of funds available to general unsecured claims. This factor favors settlement.

The *A & C Props.* and *Woodson* factors appear to weigh in favor of approving the settlement. Therefore, the settlement appears to be a fair, equitable, and reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.*

Accordingly, this motion will be GRANTED. The settlement between Trustee and the Defendants will be approved.

This ruling is not authorizing the payment of any fees or costs associated with the settlement. Additionally, Trustee shall attach a copy of the settlement agreement as an exhibit to the proposed order and shall separately file the settlement agreement and docket it as a stipulation.

2. [24-10409](#)-B-7 **IN RE: THEODORE/DEBRA SMITH**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-26-2024 [[19](#)]

TOYOTA MOTOR CREDIT
CORPORATION/MV
YASHA RAHIMZADEH/ATTY. FOR DBT.
KIRSTEN MARTINEZ/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.

Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2023 Toyota Camry (VIN: 4T1T11AK1PU784624) ("Vehicle").
Doc. #19.

Theodore and Debra Lynn Smith ("Debtors") did not file opposition. Debtors' Statement of Intention indicated that the Vehicle would be surrendered. No other 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 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 the amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtors have failed to make at least three (3) pre-petition payments and one (1) post-petition payment. The Movant has produced evidence that Debtor is delinquent at least 1,980.92. Docs. ##17, 19.

The court also finds that the Debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because Debtor is in chapter 7. The Vehicle is valued at \$38,275.00 and Debtor owes \$59,913.99,152.17. Doc. #21. Debtors have failed to maintain insurance coverage. *Id.*

The motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the Debtor's Statement of Intention, the Vehicle will be surrendered.

3. [22-10816](#)-B-7 **IN RE: ROBERTO RENTERIA AND ERIKA ARTEAGA**
[FAT-3](#)

MOTION TO COMPEL ABANDONMENT
5-14-2024 [\[57\]](#)

ERIKA ARTEAGA/MV
FLOR DE MARIA TATAJE/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Roberto and Erika Arteaga ("Debtors") move for an order compelling chapter 7 trustee Irma C. Edmonds ("Trustee") to abandon the estate's interest in their residence at 2089 Valor Court, Atwater, CA 95301 ("the Property"). Doc. #57. Debtors declare that they wish for Trustee to abandon the Property so that they can execute a loan modification. Doc. #59.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless

opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate."

To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). *In re Galloway*, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at *16-17 (B.A.P. 9th Cir. 2014).

Debtors filed this case on May 16, 2022. Doc. #1. This is an asset case, and the deadline to file claims expired on October 13, 2022. Doc. #59. The Debtors received a discharge on August 26, 2022. Doc. #23. Trustee is currently administering the non-exempt assets of the estate. Doc. #59.

Debtors value the Property at \$260,000.00, and it is encumbered by a Deed of Trust held by Summit Mortgage in the amount of \$216,751.00. Doc. #1 (Sched. A/B and D). In the motion, Debtors declare that they have claimed a \$300,000.00 exemption in the Property, but this is belied by Debtors' Schedule C, which reflects that Debtors have only claimed a \$40,000.00. *Compare Doc. #59 and Doc. #1 (Sched. C).*

The estate has little or no equity in the property.

Debtors certify that they were qualified and eligible to claim the exemptions under applicable law (without acknowledging the inconsistency in the filings) and that they understand that if for any reason it is determined that Debtors are not qualified to claim an exemption in the property listed, or if there is some other error in the exemption claimed, Trustee may demand that Debtors compensate the estate for any damage caused by the claimed exemption. Doc. #59.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court will find that the Property is of inconsequential value and benefit to the estate. The

court has noted the discrepancy between the instant motion and Debtors' Schedule C, but the equity in the house even with the lower exemption figure is only \$3,249.00 which the court finds de minimis. Furthermore, even if the court concluded otherwise, Debtors would still be able to amend their Schedule C, as it appears they have additional equity that could be exempted under C.C.P. § 704.730(a)(2).

Unless there is opposition, the court intends to GRANT this motion. The order shall specifically include the property to be abandoned.

4. [24-11124](#)-B-7 **IN RE: BUSH BUSINESS DEVELOPMENT CORPORATION**
[CAE-1](#)

ORDER TO SHOW CAUSE
5-2-2024 [\[9\]](#)

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Case dismissed. The minutes of the hearing
will be the court's findings and conclusions.

ORDER: The court will issue an order.

An *Order Showing Cause* was filed by this court on May 2, 2024, directing Bush Business Development Corp. ("BBDC") to appear at the hearing and show cause why this case should not be dismissed since Debtor has not appeared with counsel. Doc. #9.

BBDC has not filed a written response providing evidence as to why the bankruptcy petition should not be dismissed and/or monetary sanctions imposed. As set forth in the order, this court can dismiss the matter based on the lack of response. The court notes that no attorney has made an appearance on behalf of BBDC.

The case will be DISMISSED. Furthermore, consistent with the Order to Show Cause, BBDC is henceforth barred from any further bankruptcy filings unless filed by an attorney licensed to practice law in the State of California. Any future bankruptcy cases filed by BBDC that are not filed by an attorney licensed to practice law in the State of California shall be summarily dismissed without further notice or hearing.

5. [24-11130](#)-B-7 **IN RE: GUADALUPE VELASQUEZ**
[EPE-1](#)

MOTION TO COMPEL ABANDONMENT
5-1-2024 [\[11\]](#)

GUADALUPE VELASQUEZ/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

LBR 7005-1 requires service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by attorneys, trustees, or other Registered Electronic Filing System Users to document service using the *Official Certificate of Service Form*, EDC 007-005 ("Official Form"), which can be found on the court's website. See <https://www.caeb.uscourts.gov/CertificateOfServiceForm> (visited Mar. 11, 2023).

Here, the docket reflects that no Certificate of Service was filed for this motion. Therefore, the motion will be DENIED WITHOUT PREJUDICE.

6. [24-11034](#)-B-7 **IN RE: IAN HOGAN**
[ALG-1](#)

MOTION TO COMPEL ABANDONMENT
4-25-2024 [\[6\]](#)

IAN HOGAN/MV
JANINE ESQUIVEL OJI/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

For motions filed on 28 days' notice, LBR 9014-1(f)(1)(B) requires the movant to notify respondents that any opposition to the motion must be in writing and filed with the court at least 14 days preceding the date of the hearing.

Here, the motion and supporting documents were filed and served on April 26, 2024, and set for hearing on May 30, 2024. Docs. ##6-10. April 26, 2024, is thirty-four (34) days before May 30, 2024. Therefore, this motion was set for hearing on 28 or more days of notice under LBR 9014-1(f)(1). Nevertheless, the notice provided:

Pursuant to Local Bankruptcy Rule 9014-1 et seq., because less than 28 days of notice have been given to all parties, no written opposition has to be filed by any responding party. Any opposition or response to the motion shall be made by oral argument at the hearing at the time, date and place noted above.

Doc. #7. This is incorrect. Since the hearing was set on more than 28 days' notice, LBR 9014-1(f)(1) is applicable. The notice should have stated that written opposition was required and must be filed at least 14 days before the hearing, and failure to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion. Instead, the respondents were told not to file and serve written opposition even though it was necessary. Therefore, the notice was materially deficient. If the movant gives 28 days or more of notice of the hearing, there is no option to simply pretend that the motion was set for hearing on less than 28 days of notice to dispense with the court's requirement that any opposition must be in writing and filed with the court. Also, under LBR 9014-1(d)(3)(B)(i), the motion must include the names and addresses of the persons who must be served with such opposition.

For this reason, this motion will be DENIED WITHOUT PREJUDICE.

7. [24-10844](#)-B-7 **IN RE: MICHAEL WATTS AND MYRA CRUZ**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-25-2024 [\[15\]](#)

FIRST TECH FEDERAL CREDIT
UNION/MV
LAYNE HAYDEN/ATTY. FOR DBT.
WENDY LOCKE/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.

First Tech Federal Credit Union ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2023 Toyota Camry, (VIN: 4T1K31AK0PU059442) ("Vehicle"). Doc. #15. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). Id.

Michael Watts ("Debtor") did not file opposition. Debtor's Statement of Intention indicated that the Vehicle would be surrendered. No other 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 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 the amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has failed to make at least two (2) pre-petition payments. The Movant has produced evidence that Debtors are delinquent at least \$2,434.00. Docs. #17, 19.

The court also finds that the Debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because Debtor is in chapter 7. The Vehicle is valued at \$38,275.00 and Debtors owe \$59,913.99. Doc. #17.

The motion will be granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the Debtor's Statement of Intention, the Vehicle will be surrendered.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the Debtor has failed to make at least two pre-petition payments, the Vehicle is a depreciating asset, and Debtors' Statement of Intention said the vehicle would be surrendered.

8. [24-10056](#)-B-7 **IN RE: PEDRO JUNIO**
[JES-1](#)

MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR , AND/OR MOTION TO EXTEND DEADLINE
TO FILE A COMPLAINT OBJECTING TO DISCHARGEABILITY OF A DEBT
4-12-2024 [\[17\]](#)

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

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

DISPOSITION: Granted.

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

James E. Salven, Chapter 7 Trustee ("Trustee") requests an order
extending the deadlines for filing a complaint objecting to Pedro
Junio's ("Debtor") discharge under 11 U.S.C. § 727, and/or objecting
to the dischargeability of certain debts pursuant to 11 U.S.C. § 523.
Doc. #17.

No party in interest timely filed written opposition. The 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 debtor, the chapter 7 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.

Federal Rule of Bankruptcy Procedure ("Rule") 4004(a) requires a
complaint objecting to the debtor's discharge under § 727 to be
filed no later than 60 days after the first date set for the
§ 341(a) meeting of creditors unless an extension of time is
requested. Rule 4004(b)(1) allows the court to extend the time to
object to discharge, for cause, on motion of any party in interest,
and after a noticed hearing. The motion shall be filed before the
time has expired unless the conditions specified in Rule 4004(b)(2)
are met.

Rule 4007(c) requires a complaint to determine the dischargeability of a debt under § 523(c) to be filed no later than 60 days after the first date set for the § 341 meeting of creditors. The court may for "cause" extend the time fixed on request of any party in interest, after notice and a hearing, and filed before the time has expired.

Extension of time for "cause" under Rules 4004(b) and 4007(c) "should be granted liberally absent a clear showing of bad faith[.]" *In re Kellogg*, 41 B.R. 836, 838 (Bankr. W.D. Okla. 1984). "The moving party has the burden of proof to show cause to extend the time for matters relating to the debtor's discharge." *In re Bomarito*, 448 B.R. 242, 248 (Bankr. E.D. Cal. 2011), citing *In re Stonham*, 317 B.R. 544, 547 (Bankr. D. Colo. 2004).

The first 341 meeting here was scheduled for February 15, 2024. Doc. #8. Therefore, the deadline to file a complaint pursuant to §§ 523 or 727 was Monday, April 15, 2024. The meeting was continued to March 14, 2024, and then again to April 11, 2024. See *Docket generally*.

The Trustee avers that the continuances were necessary as is the requested extension because at the third meeting of creditors, Debtor gave statements that contradicted his Schedules and prior testimony. Doc. #19. According to the Schedules and original testimony on February 15, 2024, Debtor testified that he had made preferential transfers to insiders in excess of \$58,000.00 during the recovery period. Doc. #17. See also Doc. 20 ("Exhibit A"). At the third meeting, however, Debtor stated that he had not made any preferential transfers to family members and had, instead, lost the money at issue gambling. Doc. #17. As a result of these developments, the meeting of creditors has again been continued to June 25, 2024.

Trustee then filed the instant motion, seeking to extend the April 15, 2024, deadline for filing objections to discharge, or the dischargeability of any particular debt, to July 31, 2024, so that the situation can be evaluated by the U.S. Trustee's Office. Doc. #19.

Courts have analyzed "cause" for the purposes of requesting an extension of time to object to a debtor's discharge or the dischargeability of certain debts. These factors include:

- (1) Whether the moving party had sufficient notice of the deadline and information to file an objection;
- (2) The complexity of the case;
- (3) Whether the moving party has exercised diligence; and
- (4) Whether the debtor has been uncooperative or acted in bad faith.

Bomarito, 448 B.R. at 249, citing *In re Nowinski*, 291 B.R. 302 (Bankr. S.D. N.Y. 2004).

Here, accepting Trustee's un rebutted averments as true, there is compelling evidence that debtor has been uncooperative and/or acted in bad faith.

An extension of time will provide Trustee with sufficient time to complete its evaluation of whether an adversary proceeding for nondischargeability is necessary. Cause exists based on the evidence about the Debtor's conduct which was not adduced until the April 11, 2024, meeting of creditors.

Accordingly, this motion will be GRANTED. The last date for objections to discharge, or the dischargeability of a particular debt is hereby reset to July 31, 2024 as to the Trustee and the United States Trustee.

9. [24-10056](#)-B-7 **IN RE: PEDRO JUNIO**
[SL-1](#)

MOTION BY SCOTT LYONS TO WITHDRAW AS ATTORNEY
4-19-2024 [\[22\]](#)

SCOTT LYONS/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.

Scott Lyons ("Lyons"), counsel for Pedro Junio ("Debtor") moves to permission from the court to withdraw as Debtor's counsel. Doc. #22.

According to Lyons' Declaration and Memorandum of Authorities, Debtor initially advised Lyons and his staff that Debtor had transferred \$58,100.00 within the year preceding the filing of the petition to insiders (specifically, six family members) in repayment of personal loans they had previously made to him. Docs. ##24-25. Those transfers were disclosed in Debtor's Schedules and Statement of Financial Affairs. *Id*; see also Doc. #1. According to the Schedules and original testimony on February 15, 2024, Debtor testified that he had made preferential transfers to insiders in excess of \$58,000.00 during the recovery period. Doc. #17. See also Doc. 20 ("Exhibit A"). At the continued meeting on April 11, 2024, however, Debtor stated that he had not made any preferential transfers to family members and had, instead, lost the money at issue gambling. Doc. #17. In doing so, Lyons Declares, Debtor's testimony at the third meeting of creditors was an admission that Debtor had filed false information under penalty of perjury to the court and had done so at the two earlier 341 meetings. Doc. #24. Debtor indicated a desire to amend his schedules to correct his previous "allegedly false" filings, and the meeting of creditors has again been continued to June 25, 2024. *Id*.

Lyons seeks to withdraw as counsel because, as he states in his Declaration, he believes that Debtor's April 11, 2024, testimony was false testimony proffered by Debtor in an effort to prevent the Trustee from issuing demands on Debtor's family members disclosed in his original filings that they turnover the funds paid to them as preferential transfers. *Id.* Accordingly, Lyons' position is that, should he assist Debtor in amending his schedules to reflect the missing funds as gambling losses rather than as avoidable preferential transfers, he will be assisting Debtor in perjuring himself. *Id.*

Furthermore, Lyons continues, even if Debtor's April 11, 2024, testimony was truthful, it still means that Debtor lied to Lyons and his office and caused Lyons to submit perjurious filings to the court, which Lyons says has "irreparably damaged" the attorney-client relationship. *Id.* Lyons asserts that Debtor has sufficient time to find alternative legal counsel because the continued 341 hearing is not set until June 25, 2024. *Id.*

Under the Rules of Professional Conduct of the State Bar of California ("RPC"), motions to withdraw as counsel or to terminate a representation fall under RPC 1.16. Doc. #24. In particular, RPC 1.16(b) allows an attorney to withdraw from a representation for one or more of the following reasons:

1. if the client seeks to pursue a criminal or fraudulent course of conduct or has used the lawyer's services to advance a course of conduct that the lawyer reasonably believes was a crime or fraud. (RPC 1.16(b)(2));
2. if the client insists that the lawyer pursue a course of conduct that is criminal or fraudulent (RPC 1.16(b)(3));
3. if the client by other conduct renders it unreasonably difficult for the lawyer to carry out the representation (RPC 1.16(b)(4); and
4. if a continuation of the representation is likely to result in a violation of the Rules of Professional Conduct or the California State Bar Act (RPC 1.16(b)(9)).

Doc. #24.

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

prima facie showing that they are entitled to the relief sought, which the movant has done here.

Pursuant to LBR 2017-1(e), and based upon movant's declaration, the court GRANTS this motion and Scott Lyons may withdraw as the attorney for Debtor Pedro Junio in this bankruptcy case. Withdrawal of an attorney is governed by the Rules of Professional Conduct of the State Bar of California, and Attorney shall conform to the requirements of those rules. The authority and duty of Attorney as attorney for Debtor in the bankruptcy case shall continue until the court enters the order. The order submitted shall state the debtor's last known address.

10. [22-10760](#)-B-7 **IN RE: MATTHEW CRIPPEN**
[FW-3](#)

MOTION TO EMPLOY GOULD AUCTION & APPRAISAL COMPANY AS
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
4-29-2024 [[134](#)]

JAMES SALVEN/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Chapter 7 trustee James Salven ("Trustee") seeks authorization to (a) employ Gould Auction and Appraisal Company ("Auctioneer") under 11 U.S.C. § 328; (b) sell the estate's interest in certain personal property (hereinafter "the Assets") described below at public auction under § 363(b)(1); and (c) compensate Auctioneer under §§ 327(a) and 328. Doc. #134. The Debtor is Matthew Crippen ("Debtor").

This is Trustee's second motion to sell the Assets. On April 15, 2024, the court granted a prior motion to sell the same assets, with a proposed sale date of April 27, 2024. Doc. 133. Trustee declares that, in the exercise of his business judgment, he agreed to postpone the sale date and brings the instant motion with a new proposed auction date and a request for additional expenses incurred by the auctioneer as a result of the postponement, and the increase in expenses necessitates the filing of the new motion. Doc. #136.

The Assets are described as follows:

Asset Description	Scheduled Value	Trustee's Estimated Value	Liens	Exemptions	Net Value
2001 Peterbilt Tractor, Model 379 with 582,000 miles	\$12,000	\$15,000	\$0	\$12,000	\$3,000
1985 Peterbilt Tractor, Model 379 with 673,882 miles	\$6,000	\$4,000	\$0	\$0	\$4,000
1979 Mack Rolloff Tractor, with 374,687 miles	\$6,000	\$6,000	\$0	\$50	\$5,950
2007 Suzuki 450	\$2,000	\$2,000	\$0	\$0	\$2,000
1992 Diamond Z Tub Grinder	\$25,000	\$25,000	\$0	\$0	\$25,000
1999 Kobelco Excavator	\$20,000	\$10,000	\$0	\$0	\$10,000
2000 Western Highside Dump Trailer	\$15,000	\$7,500	\$0	\$0	\$7,500
1995 Western Highside Dump Trailer	\$10,000	\$5,000	\$0	\$0	\$5,000
1984 Ranco Belly Dump	\$5,000	\$2,500	\$0	\$0	\$2,500
Carson Dump Trailer	\$5,000	\$1,000	\$0	\$0	\$1,000
Scheduled Total	\$106,000.00			NET TOTAL	\$65,950

Doc. #136. The Assets are unencumbered, and except for the 2001 Peterbilt Tractor, Debtors does not claim an exemption in any of the Assets. Doc. #1 (Sched. C & D). Trustee declares his belief that the sale of the Assets will yield enough equity to allow for a meaningful distribution to creditors. Id.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima

facie case for the requested relief. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

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

Employment and Compensation

This motion affects the proposed disposition of estate assets and 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 to add Auctioneer as a party.

LBR 9014-1(d)(5)(B)(iii) permits joinder of requests for authorization to employ a professional, i.e., auctioneer, for sale of estate property at public auction, and allowance of fees and expenses for such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rules 6004-05.

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:

- a. a 15% commission on the gross proceeds from the sale;
- b. an additional 10% premium to be paid by the buyer;
- c. an additional 3% fee paid to the online service Proxibid, if the buyer makes use of that service;
- d. Buyer will be required to pay a \$50.00 document fee for title expense which will go to Auctioneer;
- e. Reimbursement for "necessary expenses" such as advertising and other costs of sale;
- f. reimbursement for up to \$1,000.00 for "extraordinary expenses" (such as, for example, a replacement truck battery) without further order of the court;
- g. reimbursement for up to \$3,000.00 in payment and transportation costs reasonably incurred by the Auctioneer in preparation for the previously proposed auction date.

h. Auctioneer will be responsible for paying any and all sales taxes in relation to the auction.

Doc. #136.

Trustee and Jerry Gould, Auctioneer's owner, 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). Docs. ##136-37. With respect to Debtor, Auctioneer 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. Doc. #137. 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 debtors, or any other party in interest, and had not served as an examiner in this case. Id. Auctioneer does not have any connection with any creditors, parties in interests, their attorneys, accountants, the U.S. Trustee, or anyone employed by the U.S. Trustee. 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. Id.

Auctioneer declares that because of the expenses incurred in the prior cancelled auction, he will be unable to sell the Assets at the postponed auction unless he receives the \$3,000.00 reimbursement requested. Doc. #137.

Trustee declares that it is necessary to employ Auctioneer to liquidate Property. Doc. #136. 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 generally performing and assisting Trustee in matters customarily done and performed by auctioneers in connection with an auction sale of property. Id.

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 up to \$500.00 for extraordinary expenses and up to \$1,200.00 for pick-up fees.

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).

Here, the Trailers are listed in the schedules with a value of \$106,000.00. Doc. #1 (Sched. A/B). However, Trustee values the Assets at considerably less, only \$65,950.00 total. Doc. #136. Trustee believes that using the auction process to sell the Assets will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. *Id.* Based on Trustee's experience, this could 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 such that the sale of the Trailers would be in the best interests of the estate if 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. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

Conclusion

No party in interest objected to the instant motion, which is Granted. Trustee will be permitted to employ Auctioneer, sell the Assets at public auction, and pay Auctioneer for its services as outlined above. If the sale is completed, Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale, payment of up to \$1000.00 for "extraordinary expenses" incurred in connection with the auction, and payment of up to \$3000.00 for expenses incurred in connection with the prior cancelled auction without further order of the court. Any requests for extraordinary expenses beyond that will require court approval after notice and hearing.

11. [17-11365](#)-B-7 **IN RE: MARIO GUERRA**
[PFC-1](#)

TRUSTEE'S FINAL REPORT
3-25-2024 [\[205\]](#)

JERRY LOWE/ATTY. FOR DBT.
RUSSELL REYNOLDS/ATTY. FOR MV.

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

DISPOSITION: Approved.

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

Peter L. Fear ("Trustee"), Chapter 7 Trustee in this case, requests fees of \$10,207.95 and costs of \$66.65 for a total award of \$10,274.60 as statutory compensation and actual and necessary expenses. Doc. 206.

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

No party in interest has filed a response, and the defaults of all non-responding parties in interest are entered. This motion will be GRANTED.

Mario Alberto Guerra ("Debtor") filed chapter 7 bankruptcy on April 12, 2017. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee on June 9, 2017. Doc. #4; Docket generally.

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). To restate these percentages, a Chapter 7 Trustee is entitled a maximum reimbursement of:

1. \$25% of the first \$5,000.00 in disbursements;
2. \$10% of the next \$45,000.00 in disbursements, if any;
3. 5% of the next \$95,000.00 in disbursements, if any;
4. 3% of any further disbursements exceeding \$1,000,000.00.

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).

Trustee states that the total disbursements (other than to Debtor) amounted to \$139,159.00. Doc. #207. Trustee seeks statutory reimbursement as follows:

25% of first \$5,000.00	\$1,250.00
10% of next \$45,000.00	\$4,500.00
5% of the remaining \$89,159.00	\$4,457.95
TOTAL	\$10,207.95

Doc. #207. These percentages comply with the percentage restrictions imposed by § 326(a). The services performed by Trustee included, but were not limited to:

1. The administration of an estate asset in the form of a bad faith insurance claim which the Trustee administered to the point of a settlement approved by the court.
2. Trustee paid taxes owed by Debtor.
3. Trustee reviewed the Petition, Schedules, and Statement of Financial Affairs filed by Debtor.
4. Claim administration.
5. Review and reconciliation of bank statements.
6. OUST Reporting.
7. Preparation of the Final Report.
8. Matters pertaining to the disbursement of funds.

Id. Trustee also seeks expenses as follows:

Claims Register	\$2.00
Distribution	\$11.00
Distribution	\$1.15
Notice of Fee Application	\$31.90

Postage	\$7.32
Postage	\$8.28
Submission of TFR and TDR Signatures	\$5.00
TOTAL	\$66.65

Id. The court finds these fees reasonable.

The court finds Trustee's services were actual and necessary to the estate, and the fees are reasonable and consistent with § 326(a). The motion will be GRANTED and Trustee will be awarded the requested fees and costs.

12. [24-10976](#)-B-7 **IN RE: ANTON WEBER AND CAMILE LEROY**
[KTS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-6-2024 [\[18\]](#)

SANTA ANA PACIFIC
ASSOCIATES/MV
C. GREER/ATTY. FOR MV.
DISMISSED 05/06/24

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

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

An order dismissing this case was already entered on May 6, 2024. (Doc. #17). The motion will be DENIED AS MOOT.

13. [24-10381](#)-B-7 **IN RE: BOUNPHET SILAPACHAI**
[PFT-1](#)

MOTION TO SELL
4-30-2024 [\[15\]](#)

PETER FEAR/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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 Peter L. Fear ("Trustee") seeks authorization to sell the estate's interest certain estate assets described below ("the Assets") Bounphet Silpachai ("Debtor"), subject to higher and

better bids. Doc. #15. The proposed sale price is \$2,502.00, to be paid by Debtor in five equal monthly payments of \$500.40 each. Doc. #18 (*Support Document "Sale Agreement"*).

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

No party in interest timely filed written opposition. This motion will be GRANTED, and the hearing will proceed for higher and better bids only.

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., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

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

Asset Description	Scheduled Value	Trustee's Value	Liens	Exemptions	Net Value
2005 Honda Accord; 200,000 miles	\$3,000.00	\$3,000.00	\$0.00	\$1,398.00	\$1,602.00
Heckler & Koch 9mm handgun	\$600.00	\$500.00	\$0.00	\$0.00	\$600.00
Rock Island 12-gauge shotgun	\$300.00	\$300.00	\$0.00	\$0.00	\$300.00
TOTAL					\$2,502.00

Trustee contends that the sale price was determined by estimating the fair market value of the property and believes that the proposed sale is in the best interests of creditors. Doc. #17 (*Decl. of Peter Fear*). No commission will be paid to any party in connection with this sale. *Id.* Trustee has presumably conducted due diligence and concluded the sale in the best interest of creditors and the estate.

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

The motion does not request, nor will the court authorize, the sale free and clear of any liens or interests. Trustee indicates that there are no encumbrances on the Assets.

Any party wishing to overbid must appear at the hearing and acknowledge that no warranties or representations are include with the Vehicle; it is being sold "as-is."

14. [24-10381](#)-B-7 **IN RE: BOUNPHET SILAPACHAI**
[PFT-2](#)

MOTION TO EMPLOY GOULD AUCTION AND APPRAISAL COMPANY AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
4-30-2024 [\[20\]](#)

PETER FEAR/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Chapter 7 trustee Peter L. Fear ("Trustee") seeks authorization to (a) employ Gould Auction and Appraisal Company ("Auctioneer") under 11 U.S.C. § 328; (b) sell the estate's interest in a 2009 Jeep

Wrangler with 150,000 miles ("the Vehicle") at public auction under § 363(b)(1); and (c) compensate Auctioneer under §§ 327(a) and 328. Doc. #20. The auction will be held on or after June 8, 2024, at 9:00 a.m. at 6200 Price Way, Bakersfield, California. *Id.* The Debtor ("Debtor") is Bounphet Silapachai.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's 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). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

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

Employment and Compensation

This motion affects the proposed disposition of estate assets and 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 to add Auctioneer as a party.

LBR 9014-1(d)(5)(B)(iii) permits joinder of requests for authorization to employ a professional, i.e., auctioneer, for sale of estate property at public auction, and allowance of fees and expenses for such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rules 6004-05.

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:

- a. a 15% commission on the gross proceeds from the sale;
- b. an additional 10% premium to be paid by the buyer;
- c. \$50.00 to be paid by buyer as a DMV fee to be paid directly to Auctioneer;
- d. an additional 3% fee paid by the buyer for use of the online service Proxibid, if the buyer makes use of that service;
- e. reimbursement for necessary expenses including but not limited to inventory, advertising, and other costs of sale;
- f. estimated expenses for pickup and storage not to exceed \$250.00, and reimbursement for "extraordinary expenses" not to exceed \$500.00 and without further court approval.
- g. Auctioneer will be responsible for collecting and paying all sales taxes in relation to the auction.

Doc. #10.

Trustee and Jerry Gould, Auctioneer's owner, 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). Docs. ##22-23. With respect to Debtor, Auctioneer 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. Doc. #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 debtors, or any other party in interest, and had not served as an examiner in this case. *Id.* Auctioneer does not have any connection with any creditors, parties in interests, their attorneys, accountants, the U.S. Trustee, or anyone employed by the U.S. Trustee. *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. *Id.*

Trustee declares that it is necessary to employ Auctioneer to liquidate Vehicle. Doc. #22. 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 generally performing and assisting Trustee in matters customarily done and performed by auctioneers in connection with an auction sale of property. *Id.*

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. §§ 327(a), 328 and authorize Trustee to pay the 15% commission, reimbursement for necessary expenses, reimbursement up to \$500.00 for "extraordinary expenses," and a \$250.00 pick-up fee.

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).

Here, Vehicle is listed in the schedules as having 170,000 miles and is valued at \$7,500.00. *Sched. A/B*, Doc. #1. Vehicle does not appear to have any encumbrances. *Sched. D*, *Id.* Debtor has not exempted the Vehicle.

The motion does not list a proposed sale price but rather seeks the best price that can be obtained at open auction. However, given the fact the limitations on expense reimbursement and that auctioneer fees are limited to 15%, that no Debtor's exemption will be applied, and that the Vehicle is unencumbered, the court concludes that the auction will almost inevitably produce at least some net proceeds for the estate.

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. #22. Based on Trustee's experience, this could 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 such that the sale of the Vehicle would be in the best interests of the estate if 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. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

Conclusion

No party in interest objected to the instant motion, which is Granted. Trustee will be permitted to employ Auctioneer, sell the

Vehicle at public auction, and pay Auctioneer for its services as outlined above. If the sale is completed, Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale, reimbursement for necessary expenses in connection with the auction, and payment of up to \$500.00 for reimbursement for "extraordinary expenses" without court approval.

15. [24-10687](#)-B-7 **IN RE: IRMA VALENZUELA MIRANDA**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
3-20-2024 [[6](#)]

IRMA VALENZUELA MIRANDA/MV
IRMA VALENZUELA MIRANDA/ATTY. FOR MV.

NO RULING.