



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California**

**HONORABLE RENÉ LASTRETO II  
Department B – Courtroom #13  
Fresno, California**

**Hearing Date: Tuesday, June 13, 2023**

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in 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.

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## **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. [23-10219](#)-B-11 IN RE: WPI WATER RESOURCES, INC.  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V  
VOLUNTARY PETITION  
2-6-2023 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

2. [23-10219](#)-B-11 IN RE: WPI WATER RESOURCES, INC.  
[LKW-5](#)

MOTION TO CONFIRM CHAPTER 11 PLAN  
4-26-2023 [[73](#)]

WPI WATER RESOURCES, INC./MV  
LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

Subchapter V, chapter 11 debtor in possession WPI Water Resources, Inc. ("Debtor") moves for an order confirming *Debtor's Plan of Reorganization dated April 26, 2023*, as modified on June 5, 2023 (the "Plan"). Docs. #73, #93.

Debtor transmitted the Plan, motion to confirm, declaration, exhibits, ballots, and notice of the confirmation hearing to all parties in interest on April 26, 2023 without lodging a proposed *Order Setting Confirmation Hearing and Related Deadlines (for Use Only in Cases Under Subchapter V of Chapter 11)* ("Deadline Order") using the current EDC Official Order Form 006-202 (Rev. 1/23) as ordered in paragraph 4 of the *Amended Order Setting Subchapter V Chapter 11 Status Conference Date; Claims Bar Date; and Other Deadlines* filed February 15, 2023.<sup>1</sup> Docs. #77; #79.

On June 5, 2023, Debtor filed a modification, supplemental declarations, a memorandum of points and authorities, exhibits, and ballot tabulations. Docs. ##94-100.

Notwithstanding the failure of Debtor to lodge a proposed Deadline Order, the court finds it would cause unnecessary and undue delay in confirmation of the Plan to require Debtor to lodge a proposed Deadline Order and re-solicit ballots in favor of confirming the Plan. Accordingly, the court finds notice and service of the Plan and related documents were proper and the confirmation hearing should proceed. No objections to confirmation of the Plan have been filed.

Additionally, the Plan was not filed using Official Form 425A, *Plan of Reorganization for Small Business Under Chapter 11*, which is obligatory under Fed. R. Bankr. P. ("Rule") 9009 and has been prescribed by the Judicial Conference of the United States for use in subchapter V cases. However, the Plan as filed contains content that conforms substantially to the appropriate Official Form 425A as permitted under Rule 3016(d) and Interim Local Rule 3016(d).

Debtor set confirmation of the Plan with at least 28 days' notice of the deadline for filing objections to confirmation of the plan pursuant to Rule 2002(b) and Local Rule of Practice ("LBR") 9014-1(f)(1). Under LBR 9014-1(f)(1), written opposition, if any, is due at least 14 days prior to the hearing and failure to timely file written opposition 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).

The Plan appears to comply with 11 U.S.C. § 1190. Specifically, the Plan contains a brief history of Debtor's business operations, a liquidation analysis, and projections evidencing Debtor's ability to make payments as required by 11 U.S.C. § 1190(1). Docs. #72, #76. The Plan also provides for the submission of all or such portion of "Debtor's future income **to the Plan** as is necessary for execution of the Plan" as required by § 1190(2). Plan at 2:1-2, Doc. #72 (emphasis added). The court finds that § 1190(3) is inapplicable here.

#### **Plan Confirmation**

11 U.S.C. § 1191 governs plan confirmation in subchapter V. Under § 1191(a), the court shall confirm a plan if all of the requirements of § 1129(a), other than paragraph (15), are met. However, under § 1191(b), the court shall confirm a plan if all of the requirements of § 1129(a) are met except for paragraphs (8), (10), and (15), and the plan does not discriminate unfairly and is fair and equitable with respect to each impaired class that has not accepted the plan.

Under § 1191(c), a plan is "fair and equitable" if (a) the requirements of § 1129(b)(2)(A) are met, (b) the plan provides for payment of Debtor's projected disposable income for a 3- to 5-year period, and (c) the plan is feasible and provides appropriate remedies to protect the interests of creditors and other parties in interest if plan payments are not made.

Here, Debtor seeks confirmation of the Plan under § 1191(b). Doc. #97.

#### **§ 1129(a)(1)**

The Plan appears to satisfy the requirements of § 1129(a)(1) by complying with the applicable provisions of chapter 11 and meets most of the applicable mandatory provisions of § 1122 and 1123.

#### **§§ 1122 & 1123(a)**

(a)(1): A plan shall designate classes of claims other than claims of a kind specified in § 507(a)(2), (a)(3), or (a)(8), as required by

§ 1123(a)(1), subject to § 1122. Debtor does not have any § 507(a)(2) or (a)(3) claims except for fees owed to her attorney and the Subchapter V Trustee, which will be paid in full under the Plan as authorized by § 1191(e). Plan Art. IV, § 4.02, Doc. #72. Debtor anticipates that these fees will be less than \$30,000 on the Effective Date of the Plan. *Id.*

(a)(2): A plan shall specify any class of claims or interests that are not impaired under the Plan as required by § 1123(a)(2). Here, Classes Nine (executory contracts and unexpired leases) and Ten (interests of Debtor) are not impaired under the Plan. Arts. VIII, IX, *id.*

(a)(3): A plan shall specify the treatment of any class of claims or interests that are impaired under the plan as required by § 1123(a)(3). Here, the following classes are impaired under the plan:

Class One:	Priority Claims;
Class Two:	Tulare County Tax Collector ("TCTC");
Class Three:	United States Small Business Administration ("SBA");
Class Four:	State of California Employment Development Department ("EDD");
Class Five:	Unique Funding Solutions, LLC ("Unique");
Class Six:	Samson MCA, LLC ("Samson");
Class Seven:	California Department of Tax and Fee Administration ("CDTFA");
Class Eight:	General Unsecured Creditors; and
Class Eleven:	Debtor's Shareholders.

Plan, Arts. V, VI, VII, IX, X, *id.*

(a)(4): A plan shall provide the same treatment for each claim or interest of a particular class, unless the holder of the particular claim or interest agrees to less favorable treatment of such particular claim or interest as required by § 1123(a)(4). The Plan provides for the same treatment for each claim or interest within a particular class.

(a)(5): A plan shall provide adequate means for implementation and execution of the Plan as required by § 1123(a)(5). Debtor will fund the Plan by continuing its business to generate revenue for the operation of its business and to fund the Plan and retain all property of the estate. § 1123(a)(5)(A); *cf.* Plan, Art. IX, § 9.01. Debtor projects its business will generate gross revenue of \$853,250 in 2023 and \$1,694,506 per year thereafter during the term of the Plan. *Ex. B*, Doc. #76.

(a)(6): If the debtor is a corporation, 11 U.S.C. § 1123(a)(6) requires the plan to:

provide for the inclusion in the charter of the debtor . . . of a provision prohibiting the

issuance of nonvoting equity securities and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends[.]

Section 1123(a) (6) appears to be applicable because Debtor is a corporation. The Plan does not appear to provide for the inclusion in Debtor's charter a prohibition on the issuance of non-voting shares, nor does it include provisions relating to election of directors in the event of default in the payment of dividends under the Plan.

However, the Plan does provide for classification and treatment of its shareholders, who shall retain their interests in Debtor during the term of plan. Plan, Art. X, § 10.01, Doc. #72. Nothing in the Plan shall divest Debtor's shareholders of their interests in Debtor, but they shall not receive dividends from Debtor during the term of Plan. *Id.* Therefore, here, it is not possible for there to be an event of default in the payment of dividends.

Further, the Plan provides a list officers serving during the term of the Plan and states the expected persons serving as Debtor's Board of Directors during the term of the Plan. Plan, Art. XI, § 11.02, *id.*

The court will inquire at the hearing whether Debtor intends to provide for inclusion of a prohibition on issuance of nonvoting equity securities or provide for an appropriate distribution of such power among such classes pursuant to § 1123(a) (6).

(a) (7): A plan shall contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan, and any successor to such officer, director, or trustee. Here, the Plan does not appear to contain any provisions that violate public policy with respect to the selection of any officer, director, or trustee under the Plan as required by § 1123(a) (7).

(a) (8): The provisions of § 1123(a) (8) do not apply in a subchapter V case. See § 1181(a).

§ 1123(b)

The Plan includes the six permissive provisions of § 1123(b) as follows:

(b) (1): A plan may impair or leave unimpaired any class of claims, secured or unsecured, or of interests under § 1123(b) (1). The impaired

classes have been discussed above. They include Classes One, Two, Three, Four, Five, Six, Seven, Eight, and Eleven.

(b) (2): A plan may provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the Debtor not previously rejected under 11 U.S.C. § 365. § 1123(b) (2). Class Nine includes claims of Debtor's executory contracts and unexpired leases. Plan, Art. VIII, Doc. #72. Class Nine claims are unimpaired under the Plan. Executory contracts not rejected prior to the Effective Date will be assumed under the plan.

(b) (3): A plan may provide for settlement or adjustment of any claim or interest belonging to the Debtor or the estate. § 1123(b) (3) (A). Alternatively, a plan may provide for the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest. § 1123(b) (3) (B).

Here, the Plan provides that Debtor retains the right to (a) employ managers, agents, brokers, laborers, representatives, and attorneys to carry out any activities authorized by the plan; (b) prosecute all claims arising from any dispute involving Debtor or any property within its control; (c) prosecute any claims against other entities including any avoidance actions to recover fraudulent transfers or preferential payments; (d) object to any claim pursuant to the Plan and may pursue litigation to resolve such disputes and objections; and (e) pursue any claim for monetary damages that Debtor determines is appropriate against any person or entity. Plan, Art. XI, § 11.02, Doc. #72. Additionally, the Plan provides that Debtor will retain any pre-petition causes of action arising before confirmation, including those held by a trustee. Plan, Art. XV, § 15.12, *id*. The right to pursue such claims will continue post-confirmation and the court will have jurisdiction to pursue such claims provided that such jurisdiction is authorized by the Bankruptcy Code. *Ibid*.

The Plan designates Amanda Jensen as Debtor's Chief Executive Officer and Matthew McDonald as Debtor's Secretary. *Id*. Debtor expects both to serve as the Board of Directors during the term of the Plan. *Id*.

(b) (4): A plan may provide for the sale of all or substantially all of the property of the estate and the distribution of proceeds of such sale among holders of claims or interests. § 1123(b) (4).

The Plan provides that Debtor will not sell any of its assets outside of the ordinary course of business without authorization from the court. Plan, Art. XI, § 11.04, Doc. #72. All proceeds received from any such sale will be paid to creditors holding liens against the assets sold and costs of sale, which shall be paid according to priority by Debtor or the Subchapter V Trustee. *Id*.

(b) (5): A plan may modify the rights of holders of secured claims unless the claim is secured only by a security interest in real

property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims. § 1123(b)(5).

Debtor does not have a principal residence because it is a corporation, so the exception for modifying the rights of holders of secured claims in § 1123(b)(5) is not implicated.

(b)(6): A plan may include any other provision not inconsistent with the applicable provisions of this title. § 1123(b)(6). Here, the Plan contains other provisions not expressly referred to in § 1123, but it does not appear that any of these provisions are inconsistent with the Bankruptcy Code.

§ 1123(c)

Since Debtor proposed the Plan, § 1123(c) is inapplicable. Further, § 1123(c) does not apply in subchapter V cases. § 1181(a).

**§ 1129(a)(2)**

The Plan appears to comply with the applicable provisions of chapter 11 as required by § 1129(a)(2). Since Debtor is the proponent of the Plan, Debtor is not required to comply with § 1125 before soliciting acceptances unless the court otherwise orders. § 1181(b). The court did not here. Also, even though Debtor modified the plan before confirmation, § 1127 does not apply in subchapter V. § 1181(a). Debtor therefore complied with § 1129(a)(2).

**§ 1129(a)(3)**

A plan is required to be proposed in good faith and not by any means forbidden by law. § 1129(a)(3). A plan is filed in "good faith" if it will achieve a result consistent with the objectives and purposes of the Bankruptcy Code. *In re Stolrow's Inc.*, 84 B.R. 167, 172 (B.A.P. 9th Cir. 1991); *In re Kemp*, 134 B.R. 413, 415 (Bankr. E.D. Cal. 1991) (plan satisfies this requirement if it promotes two primary objectives of chapter 11: (1) resolution of disputes and (2) payment of creditors). Here, the Plan resolves disputes and provides for payment of allowed claims as required by law. The purpose of the Plan is to restructure and repay debts owed to creditors while retaining ownership and possession of the business. Plan, Art. I, § 1.01, Doc. #72. The Plan appears to have been proposed in good faith and not by any means forbidden by law.

**§ 1129(a)(4)**

Pursuant to § 1129(a)(4), the Plan provides that payment to holders of allowed administrative claims, including payment of compensation and reimbursement of expenses to professionals, shall be made only after entry of an order by the Bankruptcy Court following notice and a hearing.

**§ 1129(a)(5)**

Pursuant to § 1129(a)(5)(A), the Plan discloses the identity and affiliations of individuals proposed to serve post-confirmation as an

officer, director, or voting trustee. Specifically, the Plan identifies Amanda Jensen as Debtor's Chief Executive Officer and Matthew McDonald as Debtor's Secretary during the term of the Plan. Plan, Art. XI, § 11.02, Doc. #72. Debtor expects these individuals will also serve as the Board of Directors during the term of the Plan. *Id.* Section 1129(a)(5)(B) appears to be inapplicable. Therefore, the Plan complies with § 1129(a)(5).

**§ 1129(a)(6)**

Section 1129(a)(6) appears to be inapplicable because no changes in regulatory rates are provided for in the Plan.

**§ 1129(a)(7)**

Section 1129(a)(7) requires each holder of a claim or interest in an impaired class to either accept the Plan or receive an amount equal to or greater than the amount such holder of a claim or interest would receive in a chapter 7 case. Debtor contends the Plan complies with § 1129(a)(7). *Mem. P. & A.*, Doc. #97, citing *Kane v. Johns-Manville Corps.*, 843 F.2d 636, 649 (2d Cir. 1988).

If this case were liquidated under chapter 7, Debtor anticipates that there would be approximately \$321,385.00 in non-encumbered, non-exempt proceeds after costs of sale and administrative fees that would be available for distribution to priority claims, and \$39,939.33 available for general unsecured creditors. *See Ex. A*, Doc. #76. Therefore, the Plan appears to satisfy the "best interest of creditors" test because it provides for payment of an amount equal to or greater than creditors would receive in a chapter 7 case. Further, the Plan provides:

i. Class One: Debtor's priority creditors are listed in Class One, which are impaired under the Plan and will be paid in full over the Term of the Plan. Debtor believes that the allowed Class One claims total \$281,445.67 as of the Effective Date of the Plan, which include:

- (a) the Internal Revenue Service ("IRS"): \$205,854.34;
- (b) CDTFA: \$67,089.21;
- (c) California Franchise Tax Board ("FTB"): \$1,625.21; and
- (d) Kern County Child Support Services ("KCCSS"): \$6,876.91.

Plan, Art. V, § 5.01, Doc. #72. Class One claimants will be paid in full from the "Employee Retention Tax Credit" of \$378,000 that Debtor will receive from the IRS. *Id.* Class One claims were originally to accrue interest at 6% per annum from the Effective Date, but this provision has been changed to be paid at the rates determined by § 511 and applicable nonbankruptcy law, including California Revenue and Tax Code § 6591.5. Doc. #93. Debtor anticipates receiving the Employee Retention Tax Credit and making payment from it before December 31, 2023. Doc. #75. Class One claimants will receive an amount equal to or greater than the amount they would receive in a chapter 7.

- ii. Class Two: Class Two consists of the secured claim of TCTC in the amount of \$7,573.81. Plan, Art. VI, § 6.03, Doc. #72. This claim is impaired under the Plan and represents personal property taxes secured by liens against Debtor's equipment and office equipment ("Business Equipment"). TCTC shall retain its lien against the Business Equipment until TCTC's claim is paid in full or until the collateral is liquidated. Repayment on this claim will be amortized over five years at 18% interest per annum from the petition date. Payments to Class Two shall be \$2,340.00 per year beginning on December 31, 2023 and continuing on December 31 of each year thereafter until paid in full. *Id.* Class Two claimants will receive an amount equal to or greater than the amount they would receive in a chapter 7.
- iii. Class Three: Class Three consists of the secured claim of SBA in the amount of \$164,840.75. *Id.* § 6.04. This claim is impaired under the Plan and represents a "Secured Disaster Loan" made by SBA to Debtor in June 2020, which is secured by a lien against Debtor's personal property. SBA shall retain its lien against the personal property until SBA's claim is paid in full or until the collateral is liquidated. Repayment on this claim will be amortized over twenty-five years at 3.75% interest per annum from the petition date. Payments to Class Three shall be \$1,690.00 per month due on the 30th day of each month beginning on July 31, 2023 and shall continue until the Class Three claim is paid in full. Class Three claimants will receive an amount equal to or greater than the amount they would receive in a chapter 7.

The court notes that the language of the Plan suggests that the first payment to SBA will occur on August 30, 2023.

- iv. Class Four: Class Four consists of the secured claim of EDD in the amount of \$81,747.76. *Id.* § 6.05. This claim is impaired under the Plan and represents taxes owed to EDD secured by liens against Debtor's personal property. EDD shall retain its lien against the personal property under EDD's claim is paid in full or until the collateral is liquidated. Repayment on this claim will be amortized over five years at 8.00% interest per annum from the petition date. Payments to Class Four shall be \$19,890.00 per year beginning on December 31, 2023 and continuing on December 31 of each year thereafter until paid in full. *Id.* Class Four claimants will receive an amount equal to or greater than the amount they would receive in a chapter 7.
- v. Class Five: Class Five consists of the secured claim of Unique in the amount \$82,795.00. *Id.* § 6.06. This claim is impaired under the Plan and represents money borrowed from Unique by Debtor, which is secured by a lien against Debtor's accounts receivables. Unique shall **not** retain its lien against the accounts receivables, and the accounts receivables will **not** secure repayment of the Class Five claim because Unique's lien is junior

and subordinate to the liens held by SBA and EDD. SBA's and EDD's liens exceed the value of the accounts receivables. Therefore, Class Five will be treated as a Class Eight nonpriority unsecured claim under the Plan. *Id.*, citing § 506(a); *First S. Nat'l Bank v. Sunnyslope Hous. Ltd. P'ship (In re Sunnyslope Hous. Ltd. P'ship)*, 859 F.3d 637 (9th Cir. 2017). Class Five claimants will receive an amount equal to or greater than the amount they would receive in a chapter 7.

- vi. Class Six: Class Six consists of the secured claim of Samson in the amount of \$398,374.03. Plan, Art. VI, § 6.07, Doc. #72. This claim is impaired under the plan and represents money owed to Samson secured by a lien against Debtor's accounts receivables. Samson shall **not** retain its lien against the accounts receivables, and the accounts receivables will **not** secure repayment of the Class Six claim because Samson's lien is junior and subordinate to the liens held by SBA, EDD, and Unique. SBA's, EDD's, and Unique's liens exceed the value of the accounts receivables. Therefore, Class Six will be treated as a Class Eight nonpriority unsecured claim under the Plan. *Id.*, citing § 506(a); *Sunnyslope Hous.*, 859 F.3d at 637. Class Six claimants will receive an amount equal to or greater than the amount they would receive in a chapter 7.
- vii. Class Seven: Class Seven consists of the secured claim of CDTFA in the amount of \$67,089.21. Plan, Art. VI, § 6.08, Doc. #72. This claim is impaired under the plan and represents money owed to CDTFA secured by liens against Debtor's personal property. CDTFA shall **not** retain its liens against the personal property and the personal property will **not** secure repayment of the Class Seven claim because CDTFA's liens are junior and subordinate to the liens held by TCTC, SBA, EDD, Unique, and Samson. TCTC's, SBA's, EDD's, Unique's, and Samson's liens exceed the value of the personal property. Therefore, Class Seven will be treated as a Class One priority claim under the plan. § 506(a). Class Seven (and Class One) claimants will receive an amount equal to or greater than the amount they would receive in a chapter 7.
- viii. Class Eight: Class Eight consists of the allowed claims of general unsecured creditors in the aggregate amount of \$2,008,945.42. Plan, Art. VII, § 7.01, Doc. #72. Class Eight is impaired under the Plan and includes (a) general unsecured claims existing on the petition date and (b) the unsecured portion of any secured claim as provided for in § 506. Repayment on these claims will be amortized over 48 months and shall not accrue interest after the Effective Date of the Plan. Class Eight claimants shall receive a *pro rata* share of \$40,944.00 during the term of the Plan (the "Class Eight Dividend"). Any Class Eight claim not paid through the Plan will be discharged under §§ 1141 and 1192. Payments to Class Eight shall be \$10,236.00 per year beginning on December 31, 2024. Class Eight claimants shall receive a *pro rata* share of the \$10,236.00 per year until the

Class Eight Dividend is paid in full. *Id.* One vote from Class Eight was received and voted to accept the Plan. Doc. #99. Further, Class Eight claimants will receive an amount equal to or greater than the amount they would receive in a chapter 7.

- ix. Class Nine: Class Nine consists of executory contracts and unexpired leases, which are unimpaired under the Plan. Plan, Art. VIII, § 8.01, Doc. #72. Executory contracts not rejected prior to the Effective Date will be assumed under the Plan. General unsecured claims arising from the rejection of executory contracts will be treated as Class Nine claims, which must be filed no later than 30 days after the Administrative Claims Bar Date, or the date of an order approving the rejection of such contract or lease. Allowed Administrative Claims arising out of the rejection of the executory contracts post-confirmation will be treated as a Class One claim. *Id.* This section is modified to provide that Debtor's Equipment Rental Agreement with US Bank Equipment Finance concerning two Brother Copiers (Customer Credit Account No. 1382791) shall be deemed rejected on the Effective Date. Doc. #93. Class Nine is not impaired under the Plan.
- x. Class Ten: Class Ten claims consist of Debtor's interest and is not impaired. *Id.* Art. IX, § 9.01. Debtor will retain its assets, remain in possession of property of the estate, manage its affairs subject to the Plan without appointment of a trustee or manager except for the Subchapter V Trustee. If the Plan is confirmed under § 1191(a), then confirmation of the Plan shall vest all property of the estate in Debtor and all property dealt with by the Plan shall be free and clear of all claims except as provided in the Plan. However, this Plan is not being confirmed under § 1191(a). Property of the estate shall include all property specified under § 1191(b) that Debtor acquires post-petition but before case closing, dismissal, or conversion, and shall not vest in Debtor until Debtor's case is closed, dismissed, or converted. Debtor's assets shall remain property of the estate if the case is converted to chapter 7 at any time after confirmation of the Plan and before the court enters a final decree. Class Ten is not impaired under the Plan.
- xi. Class Eleven: Class Eleven claims consist of the ownership interests held by Debtor's shareholders, which are impaired under the Plan. *Id.* Art. X, § 10.01. Class Eleven has accepted the Plan. As noted above, Debtor's shareholders shall retain their interests in Debtor during the Term of the Plan and shall not be divested of their interests. Debtor's shareholders shall not receive dividends from Debtor during the Term of the Plan. Although Class Eleven is impaired under the Plan, Amanda Jensen and Matthew McDonald voted to accept the Plan. Doc. #99.

**§ 1129(a)(8)**

Section 1129(a)(8) requires that each class of claims or interests either accept the plan or not be impaired under the Plan. Here, Debtor

cannot satisfy § 1129(a)(8) because votes were not received from Classes One, Two, Three, Four, Five, Six, and Seven. Compliance with § 1129(a)(8) is not required if the Plan is confirmed under § 1191(b) and (c) provided that the Plan (a) does not unfairly discriminate and (b) is fair and equitable. This provision will be discussed in greater detail below.

#### **§ 1129(a)(9)**

Section 1129(a)(9) requires that the Plan treat all priority claims consistent with the requirements of § 507(a) unless they have agreed to different treatment. Administrative claimants and holders of non-priority tax claims who have rejected the Plan must be paid in full on the Effective Date. § 1129(a)(9)(A).

Section 1129(a)(9)(B) requires that wage claimants (§ 507(a)(3)), employee benefit priority claimants (§ 507(a)(4)), certain farmer and fisherman priority claimants (§ 507(a)(5)), and consumer deposit priority claimants (§ 507(a)(6)) will receive full payment of the allowed amount of their respective priority claims in cash on the effective date of the plan if the class has not voted to accept the plan, or deferred cash payments of a value, as of the effective date of the plan, equal to such allowed claims if the class has accepted the plan. Debtor does not have any claimants of these types, so § 1129(a)(9)(A) and (B) do not appear to be implicated.

Subsections (a)(9)(C) and (D) require § 507(a)(8) tax claims to be paid in full over a period not exceeding 5 years after the date of the order for relief and on terms that are not less favorable than the most favored nonpriority unsecured claim. § 1129(a)(9)(C), (a)(9)(D). Here, Debtor has no priority unsecured tax claims in this case except for the claims in favor of the IRS and the State of California, which will be paid in full within five years of the petition date. The remaining tax claims are secured. The Plan therefore complies with § 1129(a)(9).

#### **§ 1129(a)(10)**

Section 1129(a)(10) requires that if a class of claims is impaired under the Plan, at least one class of claims that is impaired has accepted the plan, which is determined without including the acceptance by any insider. Here, the Plan has been accepted by impaired, non-insider Class Eight. Doc. #99. Since this impaired class has voted to accept the Plan, it complies with § 1129(a)(10). Further, if the Plan is confirmed under § 1191(b), compliance with § 1129(a)(10) is not required.

#### **§ 1129(a)(11)**

Section 1129(a)(11) requires that the court find that the Plan is feasible and confirmation of the Plan is not likely to be followed by the liquidation, or need for further financial reorganization, of Debtor or any successor to Debtor under the Plan. The Plan projects that all of the projected disposable income of Debtor to be received in the five-year period beginning on the date that the first payment

is due under the Plan will be applied to make the payments under the Plan. Debtor's income and expense projections, which are attached as Exhibit B, show that Debtor projects it will have sufficient income from the revenue generated from its business operations to fund the Plan. *Ex. B*, Doc. #76. Debtor's Chief Executive Officer, Amanda Jensen, believes that Debtor will be profitable during the term of the plan, so there the Plan has a "reasonable probability of success" and is not a "visionary scheme." Doc. #75; *cf. In re Pizza of Hawaii, Inc.*, 761 F.2d 1374, 1382 (9th Cir. 1985).

On this record, the court cannot find that Debtor can make all payments under the Plan. It is uncertain whether there is a reasonable probability of success. This factor will be discussed further below.

**§ 1129(a) (12)**

Section 1129(a) (12) has been satisfied because all fees due under 28 U.S.C. § 1930 have been paid. However, since Debtor is a subchapter V chapter 11 debtor, quarterly fees due to the Office of the United States Trustee are not required, so this section is inapplicable.

**§ 1129(a) (13)**

Section 1129(a) (13) is inapplicable because Debtor does not provide retiree benefits.

**§ 1129(a) (14)**

Section 1129(a) (14) is not applicable because Debtor does not have any domestic support obligations.

**§ 1129(a) (15)**

Section 1129(a) (15) is not applicable in subchapter V. § 1181(a). Further, if the Plan is confirmed under § 1191(b), compliance with § 1129(a) (15) is not required.

**§ 1129(a) (16)**

Section 1129(a) (16) is not applicable because Debtor is a business or commercial corporation.

**§ 1191(b) and (c)**

Although Debtor cannot meet all of the requirements to confirm the Plan under § 1191(a), the Plan may still be confirmable under § 1191(b). The requirements under this subsection are that the Plan does not discriminate unfairly and is fair and equitable with respect to each class of claims or interests that is impaired under and has not accepted the Plan. As noted above, this Plan impairs several classes of creditors: Classes One, Two, Three, Four, Five, Six, and Seven. Two classes have accepted by affirmative vote: equity holders (Class Eleven) and unsecured claims (Class Eight). The other classes chose not to vote so have not accepted the Plan.

**Fair Discrimination**

The Plan here does not treat creditors differently that are in the same class. Priority claims will receive payment before the end of the

year from the Employee Retention Tax Credit. Secured claimants keep their liens but those who are under secured or unsecured will receive *pro rata* distributions from the "unsecured claim pool" of liquidated assets. All unsecured claimants are treated the same with *pro rata* distributions.

Fair and Equitable

Whether a plan is fair and equitable includes three requirements. First, secured claims must be treated as set forth in § 1129(b)(2)(A) of the Bankruptcy Code. Second, Debtor must provide for payment of projected disposable income over the period of the plan or property distributed under the plan must be the equivalent of that projected disposable income. Third, there must at least be a reasonable likelihood that the debtor will be able to make payments under the plan, and the plan must provide appropriate remedies to protect holders of claims or interests if payments are not made. § 1191(c).

Secured claimholders here retain liens and are receiving payments equal to their secured claims. Debtor here claims some of the secured claims are under secured to such an extent that they are completely unsecured claims entitled to distribution under Class Eight. No secured creditor has objected to the treatment or challenged Debtor's valuation. There is no order valuing secured claims either nor a request to value claims.

The Plan here does provide for the distribution of projected disposable income. Ms. Jensen's declarations state that the projections attached to the Plan are the result of consultation with Debtor's staff and counsel. Docs. #75, #94. The court notes no accountant or other financial professional has opined about the adequacy of the projections. Nevertheless, there is no contrary evidence concerning projected disposable income.

That said, the court cannot find on this record that there is a reasonable likelihood Debtor will be able to make all payments under the plan. Ms. Jensen's declarations are not specific as to feasibility. *Id.* The court has no reason to doubt Ms. Jensen believes the plan is feasible. But Debtor here presented no evidence why the plan will be successful and what is different now or in the future.

The court has its doubts based on the projections in comparison to the Monthly Operating Reports. *Compare Ex. B, Doc. #76 with Doc. #101.* The latter show at times negative income (based on Profit and Loss Statements). The reports also show a month's combination of cash and accounts receivable that are less (in some cases substantially less) than projected when considering the amount that must be generated monthly to meet the projections. If Debtor's business naturally fluctuates, that is not evident in the presentation so far.

Additionally, proof of the actual amount of Employee Retention Tax Credit has not been provided. Debtor projects that amount will be received but the basis for that projection is unexplained.

Also, the Monthly Reports show Todd Jensen made "loans" to Debtor to cover payroll. Doc. #101. If these are part of the ordinary course of business, two problems arise. One, is Mr. Jensen entitled to an administrative claim under §§ 364(a) and 503(b)(1)? What will that do to feasibility? Two, what does that say about the viability of the projections?

If the loans are not in the ordinary course, they were made without court authorization under § 364. This suggests problems with Debtor's on-going consideration of performance under the Plan if it is confirmed.

The three "requirements" for finding a plan fair and equitable under § 1191(c) are not limiting. See § 102(3). Because of the minimal creditor participation in this case and the minimal distribution to allowed unsecured claims, more is needed by way of proof of feasibility than currently provided.

This plan confirmation hearing will be called and proceed as scheduled.

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<sup>1</sup> The Deadline Order is available on the court's website as EDC 6-202 (Rev. 1/23), <https://www.caeb.uscourts.gov/documents/Forms/EDC/EDC.006-202.pdf> (visited June 5, 2023).

3. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[WJH-15](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT  
4-4-2023    [[173](#)]

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

TENTATIVE RULING:            This matter will be called 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.

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") moved for an order authorizing Debtor to reject the following agreements (collectively, the "Agreements"):

- (1) a non-residential, real property *Lease and Operating Agreement* dated May 15, 2007, as amended July 1, 2013, September 6, 2017,

- and July 1, 2022 ("Lease Agreement") between Debtor and Chowchilla Memorial Hospital District ("CMHD");
- (2) a related *Rural Health Care Management Agreement* dated May 15, 2007 ("Management Agreement") between Debtor and CMHD; and
  - (3) a related *Sublease Agreement* commencing July 1, 2013 ("Sublease Agreement") between Debtor and Brenda Neer Physical Therapy, Inc., a California corporation dba Chowchilla Physical Therapy ("CPT").

Doc. #173. Debtor also requested the court to fix a date by which any claim(s) based on this motion must be filed. *Id.*

Debtor sought to reject the Agreements pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.<sup>2</sup> The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities and copies of the Agreements. Docs. ##175-77.

This motion was originally heard on April 18, 2023. At Debtor's request, the motion was continued to May 9, 2023 and continued again to June 13, 2023. Docs. #251, #263, #364, #391. The continued hearing will proceed under 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.

Debtor filed chapter 11 bankruptcy on March 10, 2023. Doc. #1. Prior to filing bankruptcy, Debtor operated a rural health clinic located at 285 Hospital Drive in Chowchilla (the "Clinic"), which is leased to Debtor by CMHD under the Lease Agreement. Doc. #175. The management of the Clinic is governed by the Management Agreement between Debtor and CMHD. *Id.* A portion of the Clinic was subleased by Debtor to CPT under the Sublease Agreement, which is subordinate to the Lease Agreement. *Id.*; see also, *Exs. A-B*, Doc. #176.

Debtor ceased providing patient care services and shut down the operations of its hospital and rural healthcare clinics. Doc. #175. As a result, Debtor, in its business judgment, has determined the Agreements are no longer needed or of any benefit to Debtor, and therefore should be rejected. *Id.*

11 U.S.C. § 1107 gives a chapter 11 debtor in possession all rights and powers of a trustee, other than the right to compensation under § 330, and requires the debtor in possession to perform all of the functions and duties of a trustee, except those specified in § 1106(a)(2), (3), and (4).

11 U.S.C. § 365(a) allows a trustee [or debtor in possession] to assume or reject an executory contract or unexpired lease of the debtor.

An "executory contract" is a contract "on which performance remains due to some extent on both sides." *Unsecured Creditors' Comm. V. Southmark Corp. (In re Robert L. Helms Constr. & Dev. Co.)*, 139 F.3d 702, 705 (9th Cir. 1998) (cleaned up). Contracts have been defined as executory when "the obligations of both parties are so unperformed that the failure of either party to complete performance would constitute a material breach and thus excuse the performance of the other." *Id.* at 705; see also, Countryman, *Executory Contracts in Bankruptcy*, 57 Minn. L. 439, 446 (1973).

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

Here, rejection of the Agreements appears to be a reasonable exercise of Debtor's business judgment because it has ceased providing services at the Clinic, so the Agreements are no longer beneficial to Debtor or the estate.

This matter will be called and proceed as scheduled. Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court intends to GRANT this motion. The court will inquire about the fixing of a bar date by which claims based on this motion must be filed.

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<sup>2</sup> Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving officers of CMHD and CPT via first class mail on April 4, 2023. Doc. #178.

4. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[WJH-16](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT  
4-4-2023    [\[179\]](#)

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

TENTATIVE RULING:            This matter will be called 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.

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") moved for an order authorizing Debtor to reject a non-residential, real property *Office Lease Agreement* dated July 25, 2019 ("Agreement"), between Debtor and Alliance for Medical Outreach and Relief<sup>3</sup> ("Alliance"), as subsequently assigned by Alliance to, and assumed by, AMOR Wellness Center, Inc. ("AMOR"). Doc. #179. Debtor also requested the court to fix a date by which any claim(s) based on this motion must be filed. *Id.*

Debtor sought to reject the Agreement pursuant to 11 U.S.C. § 365 and Fed. R. Bankr. P. ("Rule") 6006 and 9014.<sup>4</sup> The motion was supported by the declaration of Debtor's Chief Executive Officer, Karen Paolinelli, as well as a memorandum of points and authorities and a copy of the Agreement. Docs. ##181-83.

This motion was originally heard on April 18, 2023. At Debtor's request, the motion was continued to May 9, 2023 and continued again to June 13, 2023. Docs. #252, #264, #377, #396. The continued hearing will proceed under 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.

Debtor filed chapter 11 bankruptcy on March 10, 2023. Doc. #1. Prior to filing bankruptcy, Debtor operated a rural health clinic located at 121 Belmont Avenue in Mendota (the "Clinic"). Doc. #181. Debtor leased the Clinic from Alliance pursuant to the Agreement on July 25, 2019. *Ex. A*, Doc. #183. The Agreement was subsequently amended, assigned, and transferred to AMOR, and AMOR assumed all rights, title, interest, duties, and obligations under the Agreement. *Id.*; Doc. #181.

Debtor ceased providing patient care services and shut down the operations of its hospital and rural healthcare clinics. Doc. #181. As a result, Debtor, in its business judgment, has determined the Agreement is no longer needed and does not provide any benefit to Debtor, and therefore it should be rejected. *Id.*

11 U.S.C. § 1107 gives a chapter 11 debtor in possession all rights and powers of a trustee, other than the right to compensation under § 330, and requires the debtor in possession to perform all of the functions and duties of a trustee, except those specified in § 1106(a)(2), (3), and (4).

11 U.S.C. § 365(a) allows a trustee [or debtor in possession] to assume or reject an executory contract or unexpired lease of the debtor.

An "executory contract" is a contract "on which performance remains due to some extent on both sides." *Unsecured Creditors' Comm. V. Southmark Corp. (In re Robert L. Helms Constr. & Dev. Co.)*, 139 F.3d 702, 705 (9th Cir. 1998) (cleaned up). Contracts have been defined as executory when "the obligations of both parties are so unperformed that the failure of either party to complete performance would constitute a material breach and thus excuse the performance of the other." *Id.* at 705; see also, Countryman, *Executory Contracts in Bankruptcy*, 57 Minn. L. 439, 446 (1973).

In evaluating a decision to reject an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Agarwal v. Pomona Valley Med. Group, Inc. (In re Pomona Valley Med. Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted).

Here, rejection of the Agreement appears to be a reasonable exercise of Debtor's business judgment because it has ceased providing services at the Clinic, so the Agreement is no longer beneficial to Debtor or the estate.

This matter will be called and proceed as scheduled. Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court intends to GRANT this motion. The court will inquire about the fixing of a bar date by which claims based on this motion must be filed.

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<sup>3</sup> The motion says that the Agreement was executed by and between Debtor and AMOR before it was assigned to AMOR. This appears to be a clerical error in that the Agreement was initially executed by and between Debtor and Alliance, and then Alliance assigned it to AMOR. Doc. #179; *cf. Ex. A*, Doc. #183.

<sup>4</sup> Debtor complied with Rules 6006(a), 7004(b)(3), and 9014(b) by serving officers of and registered agents for service of process for AMOR via first class mail on April 4, 2023. Doc. #189.

5. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[WJH-3](#)

CONTINUED MOTION TO USE CASH COLLATERAL, AND/OR MOTION FOR  
ADEQUATE PROTECTION  
3-13-2023    [[18](#)]

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

NO RULING.

The operative order authorizing interim use of cash collateral is effective through June 17, 2023. Doc. #451.

The court is in receipt of Debtor's corrected budget for June 17, 2023 through July 7, 2023. *Ex. A*, Doc. #550.

Additionally, the court received Saint Agnes Medical Center's objection to further use of cash collateral. Doc. #555.

This matter will be called and proceed as scheduled.

6. [23-10457](#)-B-11     **IN RE: MADERA COMMUNITY HOSPITAL**  
[WJH-26](#)

MOTION TO EMPLOY JWT & ASSOCIATES, LLP AS ACCOUNTANT(S)  
5-17-2023    [[461](#)]

MADERA COMMUNITY HOSPITAL/MV  
RILEY WALTER/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.

Chapter 11 debtor in possession Madera Community Hospital ("Debtor") asks the court to approve Debtor's retention of JWT & Associates, LLP ("Applicant") as accountant(s) for the estate. Doc. #461. The application is supported by a verified statement of connections, resume, and the declaration of Rick Jackson, a partner of Applicant. Docs. ##463-64.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was 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.

Debtor filed chapter 11 bankruptcy on March 10, 2023. Doc. #1. Debtor seeks to employ Applicant pursuant to 11 U.S.C. §§ 327(a), 328, 330, and Fed. R. Bankr. P. ("Rule") 2013-14, 2016, 5002, 5004, 9001, and LBR 2014-1. Doc. #461.

Debtor argues it is necessary and essential for Debtor to employ Applicant because of the extensive accounting services required, including, but not limited to creating quarterly and annual Office of Statewide Health Planning and Development ("OSHDP") reports. *Id.* Debtor selected Applicant because of Applicant's knowledge in the field of accounting and healthcare financial consulting.

Debtor proposes paying Applicant from the assets of the estate on an hourly basis at the respective hourly rates of Applicant's billable professionals, subject to court approval. *Id.* Applicant's rates range from \$150-250 per hour for partners down to as low as \$100 per hour for non-owners. Doc. #463. Debtor also requests that monthly applications for interim compensation pursuant to 11 U.S.C. § 331 be entertained if the combined fees and expenses sought exceed \$5,000.00. Doc. #461.

Included with this application is a verified statement of connections to Debtor pursuant to LBR 2014-1(a), which contains the following disclosures:

- (1) Applicant has represented Debtor since 1992.
- (2) Applicant does not currently represent any creditors on totally unrelated matters, and it is Applicant's position that closed matters are not related to this bankruptcy case. Applicant has not obtained through any previous representation the confidential information of any creditor in this case that could be used in a way that is adverse to that creditor.
- (3) Applicant has no known connection with any other parties in interest or their respective attorneys and accountants.
- (4) Applicant has no connections with any attorneys in this case.
- (5) Applicant has no known connection with the accountants for any other party in interest.
- (6) Applicant has no known connections with the UST, or any person employed by the UST's office.
- (7) Applicant has no connections with the bankruptcy judge presiding over this case except as noted above.
- (8) If additional connections are discovered, Applicant will disclose such connections.

Ex. A, Doc. #464. The verified statement of connections is incorporated by reference in the declaration of Rick Jackson. Doc. #463. Mr. Jackson's declaration also says that Applicant was not owed any fees on the petition date, Applicant did not provide any services to Debtor prior to the condition of this application, and Applicant has not received a retainer for services and understands fees are subject to court approval.

11 U.S.C. § 1107 gives a chapter 11 debtor in possession all rights and powers of a trustee, other than the right to compensation under § 330, and requires the debtor in possession to perform all of the functions and duties of a trustee, except those specified in § 1106(a)(2), (3), and (4).

Under 11 U.S.C. § 327(a), a professional person, such as an accountant, can be employed by the estate with the court's approval to represent or assist the trustee [debtor in possession] in carrying out its duties provided that the proposed professional does not hold or represent an interest adverse to the estate and is a "disinterested person." In a chapter 11 case, a person is not disqualified for employment solely because of such person's employment by or representation of a creditor, unless there is an objection from the creditor or the UST. § 327(c).

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).

Here, Applicant's verified statement of connections indicates that Applicant does not hold or represent an interest adverse to the estate and is a "disinterested person."

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion may be GRANTED. The court may find that Applicant does not hold or represent an interest adverse to the estate and is a "disinterested person."

If granted, interim requests for compensation under 11 U.S.C. § 331 will be entertained if the combined fees and expenses sought exceed \$5,000.00, but such compensation will be subject to final review pursuant to § 330.

1:30 PM

1. [23-10600](#)-B-7    **IN RE: OSCAR LUNA**  
[PFT-1](#)

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC.  
341(A) MEETING OF CREDITORS  
5-2-2023    [[13](#)]

T. O'TOOLE/ATTY. FOR DBT.  
OPPOSITION

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

DISPOSITION:        Conditionally denied.

ORDER:                The court will issue the order.

Chapter 13 trustee Peter L. Fear ("Trustee") seeks dismissal of this case for the debtor's failure to appear and testify at the § 341(a) meeting of creditors held on May 1, 2023. Doc. #13.

Oscar Medina Luna ("Debtor") timely opposed. Doc. #15. Debtor's attorney appeared at the May 1, 2023 meeting of creditors but Debtor was unable to timely arrange time off of work to appear. *Id.* Debtor will be present for the continued meeting.

This motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for July 10, 2023 at 3:00 p.m. See Doc. #12. If Debtor fails to appear and testify at the rescheduled meeting, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The times prescribed in Fed. R. Bankr. P. 1017(e)(1) and 4004(a) for the Chapter 7 Trustee and U.S. Trustee to object to Debtor's discharge or file motions for abuse, other than presumed abuse under § 707, are extended to 60 days after the conclusion of the meeting of creditors.

2. [22-12009](#)-B-7     **IN RE: ANTHONY FLORES**  
[JES-1](#)

MOTION TO EMPLOY JEFFREY S. BAIRD AS AUCTIONEER, AUTHORIZING  
SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT  
OF AUCTIONEER FEES AND EXPENSES  
5-15-2023    [[17](#)]

JAMES SALVEN/MV  
JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") seeks authorization to  
(a) employ Baird Auctions & Appraisals ("Auctioneer") under 11 U.S.C.  
§ 328; (b) sell the estate's interest in a 2013 Toyota Corolla  
("Vehicle") at public auction under § 363(b)(1); and (c) compensate  
Auctioneer under §§ 327(a) and 328. Doc. #17. The auction will be held  
on or after July 11, 2023 beginning at 5:30 p.m. at Baird Auctions &  
Appraisals located at 1328 N. Sierra Vista, Suite B, Fresno,  
California. *Id.*

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

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

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 Broker 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: (i) a 15% commission on the gross proceeds from the sale; and (ii) estimated expenses not to exceed \$300.00 for storage and sale. Doc. #17. In addition to those fees and expenses, Auctioneer charges buyers an additional 10% premium on the purchase price. Docs. #19, #20. The buyer's premium and commission include Auctioneer's necessary expenses, including, but not limited to, marketing and advertising of the property, and other costs of sale. *Id.* Auctioneer holds a Bankruptcy Auctioneer Blanket Bond and carries Liability Insurance Coverage as required by the U.S. Trustee. Doc. #19.

Trustee and Jeffrey Baird, 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. ##19-20. 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. *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. #20. Trustee believes that the proposed fees and expenses for services are reasonable and customary for the services to be rendered by Auctioneer. *Id.* Auctioneer will assist Trustee by (1) actively advertising the sale of the property, (2) 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 \$350.00 for expenses as prayed.

#### Proposed Sale

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

Here, Vehicle is listed in the schedules as having 210,025 miles and is valued at \$4,814.00. *Sched. A/B*, Doc. #1. Additionally, Debtor notes:

Vehicle was stolen on 11/18/2022. Debtor filed a police report with Atwater Police Department Case # 22-04730[.] Aspire General Insurance claim # 79685CAG[.]

*Ibid.* Debtor did not exempt any equity in Vehicle. *Sched. C, id.* Santander Consumer USA, Inc. ("Secured Creditor") is listed as having a security interest in Vehicle in the amount of \$1,746.00. *Sched. D, id.*

If Trustee sells Vehicle at public auction at the scheduled sale price under § 363(b), then the proposed sale would be illustrated as follows:

Sale price	\$4,814.00
Secured Creditor's Interest	- \$1,746.00
Auctioneer fees (15%)	- \$722.10
Estimated expenses (≤ \$350)	- \$350.00
<b>Estimated net proceeds (≥)</b>	<b>= \$1,995.90</b>

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. #20. 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 timely filed written opposition. Accordingly, this motion will be 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 and payment of up to \$350.00 for expenses.

### 3. [23-10115](#)-B-7 **IN RE: JOSE CALDERON** [JES-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH JOSE CALDERON  
5-9-2023 [[20](#)]

JAMES SALVEN/MV  
MARK ZIMMERMAN/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.

Chapter 7 trustee James E. Salven ("Trustee") requests an order approving a settlement agreement between the estate and Jose V. Calderon ("Debtor") pursuant to Fed. R. Bankr. P. ("Rule") 9019. Doc. #20.

No party in interest timely filed written opposition. This motion will be GRANTED provided that Trustee files a copy of the settlement agreement and docket it as a stipulation, and such settlement does not contravene the terms set forth in the moving papers.

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 chapter 7 bankruptcy on January 24, 2023. Doc. #1. Trustee was appointed as the interim trustee on that same date and became permanent trustee at the 341 meeting of creditors on February 16, 2023. Doc. #6; docket generally.

While investigating the assets of the estate, Trustee learned of a cause of action against Debtor's son for the transfer of a 2014 Camaro ("Vehicle") for less than fair market value. Doc. #22. Debtor's son paid Debtor \$2,000 and took over payments on the vehicle in the secured amount of approximately \$14,900. However, at the time of the transfer, Trustee believes the car had a gross value of \$24,000, and thus, it appears that the car had excess value of approximately \$7,100 at the time of the transfer. *Id.* Trustee has a duty to administer the estate and recover the unrealized value on this cause of action. In an effort to avoid litigation, Trustee and Debtor's son entered into a settlement. *Id.*

Under the terms of the settlement, Debtor's son will pay \$5,500 in exchange for full release of the estate's claims against him. *Id.* As of this writing, Debtor's son has deposited \$4,700 with the estate and

will pay the remaining \$800 prior to the hearing on this motion. Trustee now seeks approval of the settlement agreement.

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

As representative of the chapter 7 bankruptcy estate, Trustee has the authority to settle claims of Debtor subject to court approval. 11 U.S.C. § 323(a). On a motion by the trustee 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 stipulation as follows:

1. Probability of success in litigation: If the issues were litigated, Trustee believes he would prevail on a fraudulent transfer claim against Debtor's son. However, the recovery of the asset, or its value, may not exceed the value provided to the estate through this settlement proposal. Since the estate would bear the burden of proof in that proceeding, it is likely that a sizeable portion of the recovery would go to litigation costs, which would deplete the funds otherwise available for distribution to unsecured creditors. This factor supports approval of the settlement.
2. Collection: Although collection would likely not be an issue, Trustee would be required to locate and collect Vehicle if the parties litigated the estate's claim against Debtor's claim. Meanwhile, if this settlement is approved, the estate already has all but \$800 in proceeds on hand, which is anticipated to be paid prior to the hearing on this motion. This factor supports approval of the settlement.
3. Complexity of litigation: The issues raised in the estate's claim against Debtor's son are not particularly complex. However, since the estate bears the burden of proof, it would be required to incur litigation expenses to prevail on its claim. This factor supports approval of the settlement.
4. Paramount interests of creditors: Trustee contends the settlement maximizes the recovery for unsecured creditors in this bankruptcy and avoids the risk that the estate would be reduced by potential

litigation expenses. Since the settlement eliminates potential administrative expenses, Trustee believes it is in the best interests of creditors and the estate. This factor supports approval of the 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 the estate and Debtor's son 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.

4. [23-10421](#)-B-7     **IN RE: BRANDON DEBRUM**  
[JDR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
5-15-2023    [\[15\]](#)

PAUL MICU/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
JEFFREY ROWE/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.

Paul Micu ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 467 Farmhouse Lane, Clovis, California 93619 (the "Property"). Doc. #15. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 4001(a)(3). *Id.*

Brandon James Debrum ("Debtor") did not oppose. 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 chapter 7 trustee, the U.S. Trustee, or any

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

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.

Here, Movant jointly owns Property with his wife, Amy Micu. *Ex. 1*, Doc. #17. Movant entered into a lease with Debtor on November 16, 2022 whereby the Property is rented to Debtor as a residential rental home. *Ex. 2, id.*; Doc. #19.

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has failed to make at least one complete pre-petition and two post-petition payments. *Id.*; *Exs. 3-4*, Doc. #17. The Movant has produced evidence that Debtor is delinquent at least \$9,000.00 for pre- and post-petition rent. *Id.* Movant served a three-day notice to quit on Debtor on March 4, 2023. *Ex. 4, id.* Debtor filed bankruptcy on March 6, 2023. Doc. #1.

The court also finds that the Debtor does not have any equity in the Property because Debtor is renting the property with no ownership interest. The Property is not necessary to an effective reorganization because Debtor is in chapter 7.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit the Movant to proceed under applicable California or non-bankruptcy law to obtain possession of the Property.

The 14-day stay of Rule 4001(a)(3) will be ordered waived because Debtor has failed to make pre- and post-petition payments to Movant.

5. [01-61942](#)-B-7     **IN RE: RICHARD WARREN**  
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG,  
ACCOUNTANT(S)  
5-1-2023    [\[62\]](#)

RATZLAFF TAMBERI & WONG/MV  
DAVID ADALIAN/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.

Ratzlaff, Tamberi & Wong ("Applicant"), the certified public accountancy firm engaged by chapter 7 trustee James E. Salven ("Trustee"), seeks final compensation under 11 U.S.C. § 330 in the sum of \$1,532.00. Doc. #62. This amount consists of \$1,517.00 in fees and \$15.00 in expenses from September 5, 2022 through April 24, 2023. *Id.*; *Ex. A*, Doc. #66.

Trustee has received and reviewed the application and supporting documents, indicates that the requested fees and expenses are reasonable and necessary for estate administration, and has no objection to the proposed payment. Doc. #64.

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

As a preliminary matter, the original certificates of service did not comply with LBR 7005-1. Docs. ##67-68. However, Applicant filed a corrected certificate of service to cure this defect on May 31, 2023. Doc. #69.

Richard Llewellyn Warren and Karen Sue Warren (collectively "Debtors") filed chapter 7 bankruptcy on December 28, 2001. Doc. #1. The court entered Debtors' discharge on April 4, 2002 and the case was closed by final decree on April 9, 2002. Docs. ##8-9. The case was reopened on December 17, 2021 and Trustee was reappointed as successor trustee. Docs. #11, #13. On September 12, 2022, the court approved Applicant's employment as the estate's accountant, effective for services rendered on or after August 12, 2022. Doc. #40. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for accounting services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Acceptance of employment was deemed to be an irrevocable waiver by Applicant of all pre-petition claims, if any, against the bankruptcy estate. *Id.* Applicant's services here were within the time period prescribed by the employment order.

This is Applicant's first and final fee application. Doc. #62. Applicant's firm performed 6.1 billable hours of accounting services at the following rates, totaling **\$1,517.00** in fees:

Professional	Rate	Hours	Total
Chris Ratzlaff (2022)	\$240	0.8	\$192.00
Chris Ratzlaff (2023)	\$250	5.3	\$1,325.00
<b>Total Hours &amp; Fees</b>		<b>6.1</b>	<b>\$1,517.00</b>

*Ex. A*, Docs. ##65-66. Applicant also incurred **\$15.00** in expenses for postage to notice creditors. *Ibid.* These combined fees and expenses total **\$1,532.00**.

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

Applicant's services included, without limitation: (1) reviewing the petition, information related to potential settlement income, and Trustee's final accounting to determine tax attributes of the estate; (2) preparing and filing federal and state fiduciary income tax returns and underlying work papers for the period ending March 31, 2023; and (3) preparing and filing this fee application. *Ex. A*, Docs. ##65-66. The court finds the services and expenses actual, reasonable, and necessary. As noted above, Trustee has reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #64.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$1,517.00 in fees as reasonable compensation for services rendered and \$15.00 in reimbursement for actual, necessary expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized to pay Applicant \$1,532.00 for services rendered and costs incurred from September 5, 2022 through April 24, 2023.

6. [23-10450](#)-B-7    **IN RE: MARK/THERESA PARKER**  
[JES-1](#)

MOTION TO SELL  
5-3-2023    [[17](#)]

JAMES SALVEN/MV  
GABRIEL WADDELL/ATTY. FOR DBT.

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

DISPOSITION:                    Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") requests an order authorizing the sale of the estate's interest in a 2015 Chevrolet Equinox ("Vehicle") to Mark Allan Parker and Theresa Renee Parker (collectively "Debtors") for \$10,500.00 under 11 U.S.C. § 363, subject to higher and better bids at the hearing. Doc. #17.

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

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

Debtors filed chapter 7 bankruptcy on March 9, 2023. Doc. #1. Trustee was appointed as the interim trustee on that same date and became permanent trustee at the first § 341 meeting of creditors on April 13, 2023. Doc. #5; docket generally. Among the assets of the estate is Vehicle, which Trustee now seeks to sell to Debtors pursuant to 11 U.S.C. § 363(b).

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

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

Vehicle is listed in the schedules with a value of \$10,000.00. *Am. Sched. A/B*, Doc. #14. The schedules also note that Vehicle has 52,000 miles and is in fair condition, but that it needs significant repairs or replacement for the air conditioning, tires, front-end bearings, transmission, and others. *Ibid.* Debtor claimed a \$7,500.00 exemption in Vehicle pursuant to Cal. Code Civ. Proc. § 704.010. *Sched. C*, Doc. #1. Vehicle does not appear to be encumbered by any security interests, but the sale is subject to all liens and encumbrances of record. *Sched. D, id.* Debtor will receive a \$7,500.00 exemption credit towards the purchase price, resulting in \$3,000.00 in net proceeds to the estate if the sale is completed as proposed.

Trustee received an offer from Debtors to purchase the Vehicle at the sale price indicated, which he accepted subject to court approval and higher and better bids. Docs. #17, #19. Trustee has received the \$3,000.00 in funds from Debtors and is waiting for court approval to complete the transaction. *Id.* Trustee believes the sale price is fair when considering the fair market value of the Vehicle and Debtor's exemption. *Id.* Trustee has not agreed to pay commissions to any party in connection with the proposed sale. *Id.*

The sale appears to be in the best interests of creditors and the estate, for a fair and reasonable price, supported by a valid exercise of Trustee's business judgment, and proposed in good faith. The sale subject to higher and better bids will maximize estate recovery and yield the best possible sale price.

No party has filed opposition to the sale. Accordingly, this motion will be GRANTED, and the sale will proceed for higher and better bids only. Trustee will be authorized to sell the Vehicle to the highest bidder as determined at the hearing.

Any party wishing to overbid must appear at the hearing, acknowledge that the sale is "as-is, where-is," with no representations or warranties, express, implied, or otherwise from the bankruptcy estate, the Debtors, or their representatives.

7. [22-11769](#)-B-7 **IN RE: PREMIER RAIL SERVICES, INC.**  
[CAB-1](#)

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC  
STAY  
5-31-2023 [[57](#)]

CENTRA FUNDING, LLC/MV  
D. GARDNER/ATTY. FOR DBT.  
CHRISTOPHER BEYER/ATTY. FOR MV.

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 9014-1(f)(3) requires motions filed on less than 14 days' notice to be accompanied by an order shortening time. Here, the motion, stipulation, and notice of hearing were filed and served on May 31, 2023 and set for hearing on June 13, 2023. Docs. ##57-58, ##60-61. May 31, 2023 is 13 days before June 13, 2023. Therefore, the movant was required to comply with the procedure under LBR 9014-1(f)(3) for motions filed on shortened time.

8. [23-10771](#)-B-7     **IN RE: CASAMIRA FLORENDO**  
[SL-1](#)

MOTION TO COMPEL ABANDONMENT  
5-25-2023    [[14](#)]

CASAMIRA FLORENDO/MV  
SCOTT LYONS/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.

Casamira Tanya Florendo ("Debtor") moves for an order compelling chapter 7 trustee Irma C. Edmonds ("Trustee") to abandon the estate's interest in property used in the operation of Debtor's hair stylist/cosmetologist business (collectively, the "Business Assets"). Doc. #14.

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).

Debtor is the owner and operator of an independent hair styling/cosmetology business with a booth at Element Hair Lab in Visalia, California. Doc. #16. Debtor seeks to compel Trustee to abandon the Business Assets, which are listed in the schedules as follows:

Asset	Value	Exempt	Lien	Net
Goodwill	\$0.00	\$0.00	\$0.00	\$0.00
Tools of the Trade: Clippers, chair, shampoo chair, shampoo bowl, large mirror, 2 lockers with color and developers, combs, brushes, capes, towels, disinfectant, shampoo, conditioners and styling products, sheers, blow dryer and three drawer chest and dryer chair.	\$1,500.00	\$1,500.00	\$0.00	\$0.00

*Id.*; *Sched. A/B* ¶ 40, Doc. #1. None of the Business Assets are encumbered by any secured creditors. *Sched. D, id.* Debtor exempted all of the Business Assets for their full value as tools of the trade under Cal. Code Civ. Proc. § 703.140(b)(6).

Debtor contends there is no goodwill value in the business because substantially all of the income from the business is the result of the labor of Debtor, and Debtor does not have any employees. Doc. #16. Further, Debtor certifies that Debtor was qualified and eligible to claim the exemptions under applicable law and understands that if for any reason it is determined that Debtor is 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 Debtor compensate the estate for any damage caused by the claimed exemption. Debtor agrees to not amend the exemptions affecting the Business Assets unless Trustee stipulated to that amendment or such relief is granted by further order of the court. *Id.*

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court will find that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately scheduled and is encumbered or exempted in their entirety. Therefore, the court intends to GRANT this motion.

The order shall specifically include the property to be abandoned.

9. [21-12473](#)-B-7     **IN RE: BLAIN FARMING CO., INC.**  
[FW-13](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH BOBBIE JUNE BLAIN REVOCABLE TRUST AND/OR  
MOTION TO AUTHORIZE DISTRIBUTION OF PROCEEDS  
5-11-2023    [[224](#)]

JAMES SALVEN/MV  
RILEY WALTER/ATTY. FOR DBT.  
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") requests an order approving a settlement agreement between the estate and the Bobbie June Blain Revocable Trust ("BJB Trust") pursuant to Fed. R. Bankr. P. ("Rule") 9019. Doc. #224. Pursuant to the settlement agreement, Trustee requests:

- (1) authorization to release \$200,000 to the BJB Trust from the proceeds of the sale of real property at 1240 E. Caldwell Ave., Visalia, CA 93292 ("Property");
- (2) authorization to transfer \$60,000 from the remaining proceeds to an unblocked account in the name of the bankruptcy estate; and
- (3) an order avoiding the BJB Trust's remaining lien derived from its deed of trust and, after the \$200,000 and \$60,000 distributions described above, preserving the remaining proceeds for the benefit of the estate pursuant to 11 U.S.C. § 551, and authorizing Trustee to transfer the remainder of these proceeds from the estate's blocked account to an unblocked account in the name of the estate.

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

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

*Eliapo*), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered 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.

Prior to Blain Farming Co., Inc.'s ("Debtor") bankruptcy filing, BJB Trust held a deed of trust secured by Property. Doc. #226. The BJB Trust filed Proof of Claim No. 13 in the amount of \$624,219.07.

The court authorized the sale of Property on March 30, 2022. Docs. ##59-60. However, the court ordered the proceeds from the sale, after certain deductions and payments, to be held in an impound account pending a determination of the parties' interests. Doc. #59. Trustee indicates that these remaining proceeds total \$342,939 ("Remaining Proceeds"). The parties that assert an interest in the Remaining Proceeds include:

- (a) a senior lien in favor of the Socotro Fund, LLC, which was satisfied through the sale of Property;
- (b) a deed of trust held by Williams, Brodersen, Pritchett & Burke LLP, which has recently been resolved by stipulation (FW-11);
- (c) a tax lien held by the State of California;
- (d) a writ of attachment in favor of the City of Visalia;
- (e) a judgment lien held by Mechanics Bank.

Doc. #226.

Prior to the sale of Property Trustee and BJB Trust agreed to a \$60,000 carveout from the proceeds to which BJB Trust was entitled as a result of the sale. Subsequently, Trustee was made aware of bases to dispute the entirety of BJB Trust's deed of trust, and as a result, Property was sold free and clear of BJB Trust's interest.

Trustee disputes the validity of the BJB Trust's deed of trust as well as all liens junior to the deed of trust but indicates that BJB Trust's deed is senior to the remaining interests asserted against the Remaining Proceeds from the sale of Property. *Id.* BJB Trust asserts that its deed of trust cannot be avoided because it actually advanced funds to Debtor, the original note referenced a deed of trust, and the subsequent recording of the deed of trust is not fraudulent. Additionally, BJB Trust argues that Debtor was not insolvent at the time of the recording and it is entitled to payment of reasonable attorneys' fees in enforcing the deed of trust. *Id.*

In an effort to resolve this dispute and avoid litigation, the parties entered into a settlement agreement for distribution of the Remaining Proceeds. Under the terms of the settlement agreement,

- (1) BJB Trust shall be entitled to payment of \$200,000 from the Remaining Proceeds;
- (2) The previously agreed upon \$60,000 carveout previously negotiated will be distributed to the bankruptcy estate;
- (3) The remaining amounts of BJB Trust's secured claim will be avoided for the benefit of the bankruptcy estate.

Ex. A, Doc. #227. Trustee now seeks approval of the settlement agreement.

On a motion by the trustee 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).

The court concludes that the *Woodson* factors balance in favor of approving the compromise. That is,

1. Probability of success in litigation: Trustee believes the estate would prevail in avoiding the deed of trust in whole or in part. Doc. #226. However, Trustee acknowledges that there is a significant risk that the litigation could determine that the BJB Trust's lien could not be avoided. Additionally, litigation would require Trustee to expend significant amounts on attorneys' fees and costs to pursue an adversary proceeding, thus reducing the amounts available for unsecured claims. Trustee therefore believes that settling will result in more funds for distribution to creditors. This factor appears to support approval of the settlement.

2. Difficulties in collection: Trustee is currently holding the Remaining Proceeds in a blocked account. Thus, there is no issue of collection. If Trustee were to prevail on an avoidance action, there would be a significant issue of collection with respect to any attorneys' fees awarded to the estate. Even if BJB Trust has other assets, collection could be difficult and expensive, which would further increase administrative expenses and reduce distributions available to unsecured claims.

3. Complexity of litigation: The issues raised in a potential avoidance action are not particularly complex, but would involve factual issues requiring significant discovery, including factual and potentially expert opinion. This would necessitate significant attorneys' fees and costs to prove the avoidance while delaying resolution. Since the settlement removes the necessity of those

administrative expenses and the delay of litigation, this factor supports approving the settlement.

4. Interests of creditors: Trustee declares that approval of the settlement will maximize the recovery for unsecured creditors in this case and avoid the risk of high administrative expenses and costly delay. Specifically, approval of the settlement preserves \$142,939 for the benefit of creditors of both this bankruptcy estate and the related case of Atlas World Food & Ag., Inc. This factor supports approving the settlement.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of 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.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Trustee is authorized to release \$200,000 to the BJB Trust from the Remaining Proceeds of the sale of Property. Trustee is further authorized to transfer \$60,000 from the Remaining Proceeds to an unblocked account in the name of the bankruptcy estate pursuant to the carveout agreement between Trustee and the BJB Trust. The lien of the BJB Trust pursuant to its deed of trust on the Remaining Proceeds, after distribution of the \$200,000 and \$60,000, is avoided and all of those proceeds are preserved for the benefit of the bankruptcy estate under § 551. Trustee is authorized to transfer the remainder of the Remaining Proceeds from the estate's blocked account to an unblocked account in the name of the bankruptcy estate.

Other than the above-described payments, this ruling is not authorizing payment of any fees or costs associated with the dispute between the estate and BJB Trust. 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.