



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

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

Hearing Date: Tuesday, July 11, 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.

Parties in interest and members of the public may connect to ZoomGov, free of charge, using the information provided:

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Please join at least 10 minutes before the start of your hearing. You are required to give the court 24 hours advance notice on [Court Calendar](#).

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

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Review the court's [Zoom Procedures and Guidelines](#) for these and additional instructions.
3. Parties appearing through CourtCall are encouraged to review the [CourtCall Appearance Information](#).

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

Post-Publication Changes: The court endeavors to publish its rulings as soon as possible. However, calendar preparation is ongoing, and these rulings may be revised or updated at any time prior to 4:00 p.m. the day before the scheduled hearings. Please check at that time for any possible updates.

9:30 AM

1. [23-10224](#)-B-11 **IN RE: WILLIAM MILLER**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V
VOLUNTARY PETITION
2-7-2023 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

2. [23-10224](#)-B-11 **IN RE: WILLIAM MILLER**
[FW-2](#)

CONFIRMATION HEARING RE: CHAPTER 11 SMALL BUSINESS
SUBCHAPTER V PLAN RE:
5-8-2023 [[41](#)]

PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

Subchapter V, chapter 11 debtor in possession William Jacob Miller ("Debtor") moves for an order confirming the *Subchapter V Plan of Reorganization, Dated May 4, 2023* (the "Plan"). Docs. ##41-43, #96.

BMO Harris Bank N.A. ("BMO") and GFRS Equipment Leasing Fund II, LLC ("GFRS") timely filed written opposition. Docs. ##73-74. Debtor responded. Docs. #94, #98.

This matter will be called and proceed as scheduled.

On May 9, 2023, the court issued an order setting the Plan for hearing on July 11, 2023 (the "Deadline Order"). Doc. #42. The Deadline Order required: (1) transmission of the Plan, Deadline Order, ballots, and a notice of hearing to all parties in interest not later than May 23, 2023; (2) parties in interest to transmit to Debtor acceptances or rejections of the Plan and/or to file objections to confirmation of the Plan by June 20, 2023; (3) Debtor to file responses to objection to confirmation and copies of all ballots and a tabulation of ballots not later than seven days before the hearing. *Id.* Pursuant to the Deadline Order, Debtor transmitted the Plan, notice of hearing, and the Deadline Order to all parties in interest on May 23, 2023. Docs. ##42-44. BMO's and GFRS' objections were timely filed by June 20, 2023. Docs. #94, #98. Debtor timely filed copies of the ballots, a ballot tabulation, summary of ballots, a statement demonstrating

compliance with 11 U.S.C. § 1191, and responses to the objections on July 4 and 5, 2023. Docs. ##94-99.

Plan confirmation was set on at least 28 days' notice of the deadline for filing objections to confirmation of the plan pursuant to Fed. R. Bankr. P. ("Rule") 2002(b) and Local Rule of Practice ("LBR") 9014-1(f)(1). Docs. ##42-43. 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).

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.

BMO's Objection

BMO objects for three reasons: (1) the Plan does not address the repayment of BMO's arrearages; (2) the terms of the Plan are ambiguous as to how the annual payment of \$20,126.31 to BMO is calculated; and (3) the Plan is not fair and equitable as required by 11 U.S.C. § 1129(b)(2)(A) because BMO is forced to wait until April 15, 2024 to receive a payment. Doc. #73. BMO contends that there is no guarantee Debtor will make payments, so it could suffer a 10-month delay and then receive nothing while its collateral continues to diminish in value. BMO argues it will be severely prejudiced if the Plan is confirmed because it has to wait with no repayment for 10 months while Debtor is in default before it can act, and therefore, 10% interest does not adequately account for its risk of default compared to the risk of change in market conditions.

In response, first, Debtor says that the Plan modifies BMO's loan rather than providing a cure and maintain provision. Doc. #98. The arrearages owed to BMO are rolled into a new obligation and interest is paid on the new loan amount including arrearages.

Second, Debtor says that BMO's claim will control the amount that will be repaid to BMO under the Plan unless Debtor files a claim objection. *Id.* Debtor has no objection to including a statement regarding the correct amount of the claim in the order confirming the Plan.

Third, Debtor says that BMO has the first position lien on real property at 20058 Elgin Avenue in Lemoore, CA ("Elgin Property"). BMO has a \$217,029.84 claim and Elgin Property has an alleged value of \$355,000, and consequently, BMO has a substantial equity cushion. *Id.* Further, BMO will be paid at 10% interest from the effective date of the plan, so BMO will be entitled to interest before the first payment is due. Thus, Debtor claims that BMO is getting the present value of its claim.

Debtor also notes that Elgin Property secures the Class 4 claim of Bank of the West, which has stipulated to confirmation of the Plan with slightly different terms. Doc. #72. The Class 2, 3, and 4 claimants are all Bank of the West, or its successor by merger, BMO.

GFRS' Objection

GFRS is owed \$174,811.75 on account of a lease and objects because it was not notified of the bankruptcy and is not included in the Plan. Doc. #74. GFRS asks for an order allowing an unsecured claim on its behalf and stating that the equipment leased is not part of the bankruptcy estate. *Id.*

The court notes that GFRS filed a late proof of claim and a motion to allow its claim, which is the subject of matter #7 below. ANF-1. That motion is denied for procedural reasons but GFRS may refile it.

In response, Debtor has no objection to the court allowing GFRS' late-filed claim and to vote on that claim. Doc. #94. Debtor agrees that the equipment on the lease with GFRS is leased to Miller Farm Company, LLC, and not to Debtor, and therefore is not part of the bankruptcy estate. *Id.*

This confirmation hearing will be called and proceed as scheduled.

3. [23-10224](#)-B-11 **IN RE: WILLIAM MILLER [FW-3](#)**

MOTION TO VALUE COLLATERAL OF K & M PRESS, INC.
6-13-2023 [[52](#)]

WILLIAM MILLER/MV
PETER FEAR/ATTY. FOR DBT.

NO RULING.

Subchapter V chapter 11 debtor in possession William Jacob Miller ("Debtor") requests an order valuing collateral securing a judgment lien of K & M Press, Inc. ("Creditor") at \$0.00.¹ Doc. #52.

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

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

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

Here, a judgment was entered in favor of Creditor against Debtor aka Jake Miller and Miller Hay & Trucking, Inc. in the amount of \$125,385.17 on July 17, 2018. *Ex. A*, Doc. #56. An abstract of judgment was issued on July 31, 2018 and was recorded in Kings County on August 6, 2018. *Id.*

Debtor owns several parcels of real property in Kings County, California, and consequently, the abstract shows up in the title records for each of those properties. Doc. #54. However, each of those properties are also encumbered by senior voluntary liens encumbering the whole value of those properties. Specifically, those liens include:

- a. Secured claim of Golden State Farm Credit ("GSFC") in the approximate amount of \$1,170,811.17 secured by a deed of trust covering multiple parcels, which was recorded in Kings County on August 17, 2017. *Cf.* Claim No. 15. This claim is also secured by a blanket UCC lien.
- b. Secured claim of Bank of the West ("BotW") in the approximate amount of \$217,029.84 secured by a deed of trust encumbering at least one parcel, which was recorded in Kings County on December 23, 2008. *Cf.* Claim No. 9.
- c. Secured claim of BotW in the approximate amount of \$274,912.24 secured by a deed of trust covering multiple parcels, which was recorded in Kings County on September 10, 2012. *Cf.* Claim No. 16.

- d. Secured claim of BotW in the approximate amount of \$799,065.55 secured by a deed of trust covering multiple parcels, which was recorded in Kings County on December 4, 2017. *Cf.* Claim No. 17.

Doc. #54. The total amount owed on account of these liens is approximately \$2,461,818.80.

Debtor's properties, the values of each parcel, and the debts on each parcel are illustrated as follows:

Address	Value	1st Lien	2nd Lien	Equity
7337 20th Ave.	\$860,000	\$1,170,811.17 (GSFC)	\$799,065.55 (BotW)	\$0.00
20058 Elgin Ave.	\$375,000	\$217,029.84 (BotW)	\$799,065.55 (BotW)	\$0.00
22401 Fargo Ave.	\$560,000	\$274,912.24 (BotW)	\$799,065.55 (BotW)	\$0.00
1408 N. East St.	\$150,000	\$274,912.24 (BotW)	\$799,065.55 (BotW)	\$0.00
21834 Fargo Ave.	\$180,000	\$1,170,811.17 (GSFC)	\$799,065.55 (BotW)	\$0.00
21811 Fremont Ave.	\$360,000	\$1,170,811.17 (GSFC)	—	\$0.00
21621 Fremont Ave.	\$200,000	\$1,170,811.17 (GSFC)	—	\$0.00
21826 Fargo Ave.	\$225,000	\$1,170,811.17 (GSFC)	—	\$0.00

Id. The total value of all properties is approximately \$2,910,000.00.

Additionally, Debtor claimed a homestead exemption in the property at 7337 20th Avenue in the amount of \$327,500.00 pursuant to Cal. Code Civ. Proc. § 704.730. *Am. Sched. C*, Doc. #12.

Debtor further argues that the equitable doctrine of marshaling should not be applied to apportion the value of the security interests across the multiple properties because it is not applicable here.

"Marshaling is an equitable doctrine developed historically and traditionally used to prevent a junior lienholder with a security interest in a single property from being squeezed out by a senior lienholder with a security interest not only in that property, but in one or more additional properties." 4 Miller & Starr, Cal. Real Est. § 10:215 (4th ed.). Since Creditor has a junior lien across all of the properties, rather than a subset of those properties, marshaling is not applicable. Even if it were applicable, Creditor could not impair Debtor's homestead exemption and there is no equity to support Creditor's lien.

After deducting the amount owed on the above-described liens from the total value of the properties, \$448,181.20 in equity remains. Deducting Debtor's \$327,500.00 exemption in the 7337 20th Avenue property results in \$120,681.20 in equity to which other liens could attach.

This matter will be called and proceed as scheduled to inquire whether Creditor's senior judgment lien can attach to the remaining \$120,681.20 in equity.

If granted, any order shall specifically state that it is not effective until confirmation of the subchapter V plan.

This ruling is only binding on the named respondent in the moving papers and any successor who takes an interest in the property after service of the motion.

¹ Debtor complied with Fed. R. Bankr. P. 7004(b) (3) by serving Creditor's registered agent for service of process via first class mail on June 13, 2023. Doc. #56.

4. [23-10224](#)-B-11 **IN RE: WILLIAM MILLER**
[FW-4](#)

MOTION TO VALUE COLLATERAL OF ROLLIN DUTY
6-13-2023 [[57](#)]

WILLIAM MILLER/MV
PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Subchapter V chapter 11 debtor in possession William Jacob Miller ("Debtor") requests an order valuing collateral securing a judgment lien of Rollin Anthony Duty ("Creditor") at \$0.00..² Doc. #57.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the subchapter V 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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima*

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

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

Here, a judgment was entered in favor of Creditor against Debtor aka Jake Miller and Miller Hay & Trucking, Inc. in the amount of \$21,035.00 on October 19, 2019. *Ex. A*, Doc. #60. An abstract of judgment was issued on November 6, 2019 and was recorded in Kings County on that same day. *Id.*

Debtor owns several parcels of real property in Kings County, California, and consequently, the abstract shows up in the title records for each of those properties. Doc. #59. However, each of those properties are also encumbered by senior voluntary liens encumbering the whole value of those properties. Specifically, those liens include:

- a. Secured claim of Golden State Farm Credit ("GSFC") in the approximate amount of \$1,170,811.17 secured by a deed of trust covering multiple parcels, which was recorded in Kings County on August 17, 2017. *Cf.* Claim No. 15. This claim is also secured by a blanket UCC lien.
- b. Secured claim of Bank of the West ("BotW") in the approximate amount of \$217,029.84 secured by a deed of trust encumbering at least one parcel, which was recorded in Kings County on December 23, 2008. *Cf.* Claim No. 9.
- c. Secured claim of BotW in the approximate amount of \$274,912.24 secured by a deed of trust covering multiple parcels, which was recorded in Kings County on September 10, 2012. *Cf.* Claim No. 16.
- d. Secured claim of BotW in the approximate amount of \$799,065.55 secured by a deed of trust covering multiple parcels, which was recorded in Kings County on December 4, 2017. *Cf.* Claim No. 17.

Doc. #59. The total amount owed on account of these liens is approximately \$2,461,818.80.

Debtor's properties, the values of each parcel, and the debts on each parcel are illustrated as follows:

Address	Value	1st Lien	2nd Lien	Equity
7337 20th Ave.	\$860,000	\$1,170,811.17 (GSFC)	\$799,065.55 (BotW)	\$0.00
20058 Elgin Ave.	\$375,000	\$217,029.84 (BotW)	\$799,065.55 (BotW)	\$0.00
22401 Fargo Ave.	\$560,000	\$274,912.24 (BotW)	\$799,065.55 (BotW)	\$0.00
1408 N. East St.	\$150,000	\$274,912.24 (BotW)	\$799,065.55 (BotW)	\$0.00
21834 Fargo Ave.	\$180,000	\$1,170,811.17 (GSFC)	\$799,065.55 (BotW)	\$0.00
21811 Fremont Ave.	\$360,000	\$1,170,811.17 (GSFC)	—	\$0.00
21621 Fremont Ave.	\$200,000	\$1,170,811.17 (GSFC)	—	\$0.00
21826 Fargo Ave.	\$225,000	\$1,170,811.17 (GSFC)	—	\$0.00

Id. The total value of all properties is approximately \$2,910,000.00.

Additionally, Debtor claimed a homestead exemption in the property at 7337 20th Avenue in the amount of \$327,500.00 pursuant to Cal. Code Civ. Proc. § 704.730. *Am. Sched. C, Doc. #12.*

Debtor further argues that the equitable doctrine of marshaling should not be applied to apportion the value of the security interests across the multiple properties because it is not applicable here.

“Marshaling is an equitable doctrine developed historically and traditionally used to prevent a junior lienholder with a security interest in a single property from being squeezed out by a senior lienholder with a security interest not only in that property, but in one or more additional properties.” 4 Miller & Starr, Cal. Real Est. § 10:215 (4th ed.). Since Creditor has a junior lien across all of the properties, rather than a subset of those properties, marshaling is not applicable. Even if it were applicable, Creditor could not impair Debtor’s homestead exemption and there is no equity to support Creditor’s lien.

After deducting the amount owed on the above-described liens from the total value of the properties, \$448,181.20 in equity remains. Deducting Debtor’s \$327,500.00 exemption in the 7337 20th Avenue property results in \$120,681.20 in equity to which other liens could attach.

Creditor’s lien is junior to a \$125,385.17 judgment lien in favor of K & M Press, Inc. (“K&M”). which was recorded in Kings County on August 6, 2018 and is the subject of matter #3 above. FW-3. Although it is unclear whether K&M’s lien can attach to the remaining equity in the properties, there is clearly insufficient equity to support Creditor’s lien here.

Based on the evidence offered in support of the motion, Creditor’s junior priority judgment lien is wholly unsecured and may be treated as a general unsecured claim in this case. Debtor may proceed to obtain relief from this lien upon completion of the necessary requirements under applicable law.

Accordingly, this motion will be GRANTED. The order shall specifically state that it is not effective until confirmation of the subchapter V plan.

This ruling is only binding on the named respondent in the moving papers and any successor who takes an interest in the property after service of the motion.

² Debtor complied with Fed. R. Bankr. P. 7004(b)(1) by serving Creditor at Creditor's place of business and place of employment via first class mail on June 13, 2023. Doc. #61.

5. [23-10224](#)-B-11 **IN RE: WILLIAM MILLER**
[FW-5](#)

MOTION TO VALUE COLLATERAL OF FC MARKETPLACE, LLC
6-13-2023 [[62](#)]

WILLIAM MILLER/MV
PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Subchapter V chapter 11 debtor in possession William Jacob Miller ("Debtor") requests an order valuing collateral securing a judgment lien of FC Marketplace, LLC ("Creditor") at \$0.00..³ Doc. #62.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the subchapter V 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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima*

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

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

Here, a judgment was entered in favor of Creditor against Debtor and Miller Hay & Trucking, Inc. in the amount of \$173,509.00 on May 13, 2022. *Ex. A*, Doc. #65. An abstract of judgment was issued on September 15, 2022 and was recorded in Kings County on September 30, 2022. *Id.*

Debtor owns several parcels of real property in Kings County, California, and consequently, the abstract shows up in the title records for each of those properties. Doc. #64. However, each of those properties are also encumbered by senior voluntary liens encumbering the whole value of those properties. Specifically, those liens include:

- a. Secured claim of Golden State Farm Credit ("GSFC") in the approximate amount of \$1,170,811.17 secured by a deed of trust covering multiple parcels, which was recorded in Kings County on August 17, 2017. *Cf.* Claim No. 15. This claim is also secured by a blanket UCC lien.
- b. Secured claim of Bank of the West ("BotW") in the approximate amount of \$217,029.84 secured by a deed of trust encumbering at least one parcel, which was recorded in Kings County on December 23, 2008. *Cf.* Claim No. 9.
- c. Secured claim of BotW in the approximate amount of \$274,912.24 secured by a deed of trust covering multiple parcels, which was recorded in Kings County on September 10, 2012. *Cf.* Claim No. 16.
- d. Secured claim of BotW in the approximate amount of \$799,065.55 secured by a deed of trust covering multiple parcels, which was recorded in Kings County on December 4, 2017. *Cf.* Claim No. 17.

Doc. #64. The total amount owed on account of these liens is approximately \$2,461,818.80.

Debtor's properties, the values of each parcel, and the debts on each parcel are illustrated as follows:

Address	Value	1st Lien	2nd Lien	Equity
7337 20th Ave.	\$860,000	\$1,170,811.17 (GSFC)	\$799,065.55 (BotW)	\$0.00
20058 Elgin Ave.	\$375,000	\$217,029.84 (BotW)	\$799,065.55 (BotW)	\$0.00
22401 Fargo Ave.	\$560,000	\$274,912.24 (BotW)	\$799,065.55 (BotW)	\$0.00
1408 N. East St.	\$150,000	\$274,912.24 (BotW)	\$799,065.55 (BotW)	\$0.00
21834 Fargo Ave.	\$180,000	\$1,170,811.17 (GSFC)	\$799,065.55 (BotW)	\$0.00
21811 Fremont Ave.	\$360,000	\$1,170,811.17 (GSFC)	—	\$0.00
21621 Fremont Ave.	\$200,000	\$1,170,811.17 (GSFC)	—	\$0.00
21826 Fargo Ave.	\$225,000	\$1,170,811.17 (GSFC)	—	\$0.00

Id. The total value of all properties is approximately \$2,910,000.00.

Additionally, Debtor claimed a homestead exemption in the property at 7337 20th Avenue in the amount of \$327,500.00 pursuant to Cal. Code Civ. Proc. § 704.730. *Am. Sched. C, Doc. #12.*

Debtor further argues that the equitable doctrine of marshaling should not be applied to apportion the value of the security interests across the multiple properties because it is not applicable here.

“Marshaling is an equitable doctrine developed historically and traditionally used to prevent a junior lienholder with a security interest in a single property from being squeezed out by a senior lienholder with a security interest not only in that property, but in one or more additional properties.” 4 Miller & Starr, Cal. Real Est. § 10:215 (4th ed.). Since Creditor has a junior lien across all of the properties, rather than a subset of those properties, marshaling is not applicable. Even if it were applicable, Creditor could not impair Debtor’s homestead exemption and there is no equity to support Creditor’s lien.

After deducting the amount owed on the above-described liens from the total value of the properties, \$448,181.20 in equity remains. Deducting Debtor’s \$327,500.00 exemption in the 7337 20th Avenue property results in \$120,681.20 in equity to which other liens could attach.

Creditor’s lien is junior to a \$125,385.17 judgment lien in favor of K & M Press, Inc. (“K&M”). which was recorded in Kings County on August 6, 2018 and is the subject of matter #3 above. FW-3. Although it is unclear whether K&M’s lien can attach to the remaining equity in the properties, there is clearly insufficient equity to support Creditor’s lien here.

Based on the evidence offered in support of the motion, Creditor’s junior priority judgment lien is wholly unsecured and may be treated as a general unsecured claim in this case. Debtor may proceed to obtain relief from this lien upon completion of the necessary requirements under applicable law.

Accordingly, this motion will be GRANTED. The order shall specifically state that it is not effective until confirmation of the subchapter V plan.

This ruling is only binding on the named respondent in the moving papers and any successor who takes an interest in the property after service of the motion.

³ Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor's registered agent for service of process via first class mail on June 13, 2023. Doc. #66.

6. [23-10224](#)-B-11 **IN RE: WILLIAM MILLER**
[FW-6](#)

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.
6-13-2023 [[67](#)]

WILLIAM MILLER/MV
PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Subchapter V chapter 11 debtor in possession William Jacob Miller ("Debtor") requests an order valuing collateral securing a purchase money security interest in favor of Bank of America ("Creditor") at \$18,000.00..⁴ Doc. #67.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the subchapter V 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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

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

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

Here, Creditor has a perfected security interest in a 2018 Heartland Pioneer Travel Trailer ("Trailer") in the approximate amount of \$25,427.05 as of the petition date. Doc. #67. The debt owed to Creditor is in the name of Misty Miller, Debtor's wife, but the loan was financed and the Trailer purchased during Debtor's marriage, so this is a "community claim" as defined in 11 U.S.C. § 101(7) and the Trailer is community property of Debtor's bankruptcy estate under 11 U.S.C. § 541(a)(2).

Debtor declares that the value of the Trailer was \$18,000.00 on the petition date. Doc. #69. Debtor is competent to testify as to the value of the Trailer. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Accordingly, this motion will be GRANTED. Creditor's secured claim will be fixed at \$18,000.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the subchapter V plan.

This ruling is only binding on the named respondent in the moving papers and any successor who takes an interest in the property after service of the motion.

⁴ Debtor complied with Fed. R. Bankr. P. 7004(h) and (i) by serving Creditor's President via certified mail on June 13, 2023. Doc. #70.

7. [23-10224](#)-B-11 **IN RE: WILLIAM MILLER**
[ANF-1](#)

MOTION TO FILE CLAIM AFTER CLAIMS BAR DATE
6-21-2023 [[79](#)]

GFRS EQUIPMENT LEASING FUND II, LLC/MV
PETER FEAR/ATTY. FOR DBT.
AMANDA FERNS/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(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Here, the court website and the above disclosure are not included in the notice of hearing. Doc. #80.

8. [17-10327](#)-B-12 **IN RE: EDWARD/LISA UMADA**
[FW-19](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR PETER L. FEAR, DEBTORS ATTORNEY(S)
6-12-2023 [[373](#)]

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

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

DISPOSITION: Granted.

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

Fear Waddell, P.C. ("Applicant"), general bankruptcy counsel to Edward Umada and Lisa Umada (collectively "Debtors"), requests final compensation under 11 U.S.C. § 330 in the sum of \$17,673.96. Doc. #373. This amount consists of \$17,105.50 in fees and \$568.46 in expenses from July 1, 2018 through June 2, 2023. Applicant also

requests final approval of the \$131,970.30 in compensation previously awarded on an interim basis under 11 U.S.C. § 331 for services and expenses from February 3, 2017 through June 30, 2018. *Id.*

Joint debtor Lisa Umada filed a client approval statement indicating that she has reviewed the application and has no objection to the proposed payment. Doc. #376.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the chapter 12 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.

Debtors filed chapter 12 bankruptcy on January 31, 2017. Doc. #1. Applicant's retention as general counsel was approved pursuant to 11 U.S.C. §§ 327 and 329-31 on February 21, 2017, effective for services rendered on or after February 1, 2017. Doc. #22. This is Applicant's third and final fee application. Doc. #373. Applicant was previously awarded the following interim compensation under § 331:

Period	Fees	Expenses	Total
02/03/17-06/30/17	\$28,404.00	\$488.14	\$28,892.14
07/01/17-06/30/18	\$100,780.00	\$2,298.16	\$103,078.16
Total compensation previously awarded			= \$131,970.30
Pre-petition retainer			- \$9,541.00
09/27/2017 payment			- \$15,000.00
Amount paid through chapter 12 plan			- \$60,000.00
Prior compensation to be paid by Debtor			= \$47,429.30
Compensation requested in this application			+ \$17,673.96
Total compensation to be paid by Debtor			= \$65,103.26

Docs. #138, #339, #373. Applicant now requests fees for 52.20 billable hours of legal services at the following rates, totaling **\$17,105.50** in fees:

Professional	Rate	Hours	Amount
Peter L. Fear (2018)	\$375	28.80	\$10,800.00
Peter L. Fear (2019)	\$390	1.70	\$663.00
Peter L. Fear (2020)	\$400	0.30	\$120.00
Peter L. Fear (2021)	\$410	0.20	\$82.00
Peter L. Fear (2023)	\$440	1.70	\$748.00
Katie Waddell (2018)	\$195	1.50	\$292.50
Katie Waddell (2022)	\$245	1.80	\$441.00
Katie Waddell (2023)	\$260	3.80	\$988.00
Peter A. Sauer (2018)	\$210	9.30	\$1,953.00
Gabriel J. Waddell (2023). ⁵	\$360	2.70	\$972.00
Laurel Guenther (2023)	\$115	0.40	\$46.00
Total Fees		52.20	\$17,105.50

Id.; *Exs. B-C*, Docs. #375, #377. Applicant also incurred **\$568.46** in expenses:

Copying	\$319.00
Postage	\$236.96
Court fees	\$12.50
Total Expenses	\$568.46

Ex. B, id. These combined fees and expenses total **\$17,673.96**.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of “reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney” and “reimbursement for actual, necessary expenses.” In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3). The previous interim compensation awards under 11 U.S.C. § 331 are subject to final review under § 330.

Applicant’s services here included, without limitation: (1) communicating with parties regarding case administration and responding to creditor inquiries regarding the effect of the confirmed chapter 12 plan; (2) preparing motion for notice of death of debtor and for entry of discharge (FW-20); (3) assisting Debtors’ real estate broker with the sale of property and preparing and filing a motion to approve the same (FW-17); (4) researching issues related to creditor Scott Thorburn’s motion for relief from the automatic stay (GMJ-2) and advising Debtors of the same; (5) stipulating to stay relief with Madera Water District (DJP-3); (6) finalizing the second interim fee application (FW-11); (7) modifying the chapter 12 plan (FW-16); and (8) preparing and filing this fee application (FW-19). *Ex. A*, Doc. #377. The court finds the services and expenses reasonable,

actual, and necessary. Debtors have consented to payment of the proposed fees and expenses. Doc. #376.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$17,105.50 in fees as reasonable compensation for services rendered and \$568.46 in reimbursement for actual, necessary expenses on a final basis under 11 U.S.C. § 330. Applicant's will be awarded a total of \$17,673.96 in compensation for services and expenses from July 1, 2018 through June 2, 2023.

Additionally, the court will approve on a final basis under § 330 the \$131,970.30 previously awarded on an interim basis under § 331 for services and expenses from February 3, 2017 through June 30, 2018. The total compensation awarded to Applicant in this case will be \$149,644.26. After applying the \$9,541.00 pre-petition retainer, the \$15,000.00 payment authorized on September 27, 2017, and the \$60,000.00 paid through the plan, Debtor is authorized to pay \$65,103.26 to Applicant in connection with this case.

⁵ The motion says that Gabriel J. Waddell bills at a rate of \$260 per hour but this appears to be a typographical error. Mot. at 3:15-16, Doc. #373. The exhibits reflect that Mr. Waddell bills at a rate of \$360 per hour. Exs. B-C, Doc. #377. This error is *de minimis* because the amount of compensation requested in the motion accurately reflects Mr. Waddell's hours at the correct rate.

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

ORDER TO APPEAR AND SHOW CAUSE WHY A PATIENT CARE OMBUDSMAN
SHOULD NOT BE APPOINTED
6-23-2023 [\[15\]](#)

RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Patient care ombudsman will be appointed.

ORDER: The court will issue an order.

The court issued this order to show cause why a patient care ombudsman should not be appointed pursuant to 11 U.S.C. § 333. Doc. #15. Twilight Haven, a California Non-Profit Corporation ("Debtor") filed non-opposition. Doc. #74.

This order to show cause will be called and proceed as scheduled.

In chapters 7, 9, or 11 cases in which the debtor is a health care business, Fed. R. Bankr. P. ("Rule") 2007.2(a) requires the court to order the appointment of a patient care ombudsman under 11 U.S.C. § 333(a)(1), unless, on motion of the UST or another party in interest filed within 21 days of the petition date or another time fixed by the court, the court finds that appointment of a patient care ombudsman is not necessary under the specific circumstances of the case and for the protection of patients. Under § 333(a)(1), the court shall order within 30 days of the petition the appointment of an ombudsman to monitor the quality of patient care and represent the interests of the patients, unless such appointment is not necessary for the protection of patients under the circumstances of the case.

The term "health care business" is broadly defined under 11 U.S.C. § 101(27A) as:

- (A) . . . any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for—
 - (i) the diagnosis or treatment of injury, deformity, or disease; and
 - (ii) surgical, drug treatment, psychiatric, or obstetric care; and
- (B) includes—
 - (i) any—
 - (I) general or specialized hospital;
 - (II) ancillary ambulatory, emergency, or surgical treatment facility;
 - (III) hospice;
 - (IV) home health agency; and
 - (V) other health care institution that is similar to an entity referred to in subclause (I), (II), (III), or (IV); and
 - (ii) any long-term care facility, including any—
 - (I) skilled nursing facility;
 - (II) intermediate care facility;
 - (III) assisted living facility;
 - (IV) home for the aged;
 - (V) domiciliary care facility; and
 - (VI) health care institution that is related to a facility referred to in subclause (I), (II), (III), (IV), or (V), if that institution is primarily engaged in offering room, board, laundry, or personal assistance with activities of daily living and incidentals to activities of daily living.

§ 101(27A) .

Here, Debtor described itself in the voluntary petition as a "Health Care Business" as defined in 11 U.S.C. § 101(27A). ¶ 7 at 2, Doc. #1. Debtor provides care for elderly adults in Fresno County and operates a skilled nursing facility, assisted living facility, and an

independent living facility. Williams Decl., Doc. #20. Debtor owns a 9.91-acre campus (the "Campus") on which there is an ambulatory building, 33 assisted living rooms, 24 skilled nursing rooms, 24 studio apartments, 36 one-bedroom apartments, an efficiency building with 24 units, and a memorial hall. *Id.* Approximately 100 people reside on the Campus.

In April 2023, Debtor contacted the California Department of Public Health ("CDPH") to advise them of its major financial setbacks. CDPH responded by sending a custodian to the Campus to entirely take over the skilled nursing facility operations and move out all patients. The last skilled nursing facility patient departed Debtor's care on May 30, 2023 and there were no patients in the skilled nursing facility on the petition date. However, Debtor continues to operate and still has 31 patients in its assisted living component and 69 independent living residents. *Id.*

The facts of this particular case appear to warrant the appointment of a patient care ombudsman because Debtor is presently engaged in offering to the general public facilities and services related to healthcare. Additionally, Debtor may be in possession of patient records, which must be actively maintained, safeguarded, and made available to patients upon request.

This matter will be called as scheduled. The court is inclined to issue an order requiring the UST to appoint a patient care ombudsman because such appointment appears to be necessary for the protection of patients under the circumstances of this case.

10. [23-10244](#)-B-11 **IN RE: BEAM & COMPANY, INC**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V
VOLUNTARY PETITION
2-10-2023 [\[1\]](#)

PETER FEAR/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to August 24, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

On June 20, 2023, the parties filed a joint stipulation continuing the plan confirmation hearing and two motions to value collateral to August 24, 2023 at 9:30 a.m. Doc. #111. This status conference will be CONTINUED to August 24, 2023 at 9:30 a.m. to be heard in connection with the plan confirmation hearing and the motions to value collateral.

11. [23-10244](#)-B-11 **IN RE: BEAM & COMPANY, INC**
[FW-4](#)

CONFIRMATION HEARING RE: CHAPTER 11 SMALL BUSINESS PLAN
SUBCHAPTER V
5-8-2023 [[88](#)]

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Continued to August 24, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

Pursuant to the parties' joint stipulation, the court issued an order
CONTINUING this matter to August 24, 2023 at 9:30 a.m.

12. [23-10244](#)-B-11 **IN RE: BEAM & COMPANY, INC**
[FW-5](#)

MOTION TO VALUE COLLATERAL OF HANMI BANK
6-13-2023 [[99](#)]

BEAM & COMPANY, INC/MV
PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Continued to August 24, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

Pursuant to the parties' joint stipulation, the court issued an order
CONTINUING this matter to August 24, 2023 at 9:30 a.m.

13. [23-10244](#)-B-11 **IN RE: BEAM & COMPANY, INC**
[FW-6](#)

MOTION TO VALUE COLLATERAL OF SMALL BUSINESS ADMINISTRATION
6-13-2023 [\[104\]](#)

BEAM & COMPANY, INC/MV
PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Subchapter V chapter 11 debtor in possession Beam & Company, Inc.
("Debtor") requests an order valuing the collateral securing a claim
in favor of the United States Small Business Administration ("SBA") at
\$0.00.⁶ Doc. #104.

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

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

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent
of the value of such creditor's interest in the estate's interest in
such property . . . and is an unsecured claim to the extent that the
value of such creditor's interest . . . is less than the amount of
such allowed claim."

Here, the SBA loaned Debtor approximately \$500,000.00 on September 12,
2021. Doc. #107. Debtor estimates that the amount owed on this loan as
of the petition date was approximately \$526,250.00. To secure this
loan, Debtor provided a blanket security interest in all of Debtor's

personal property (not including titled vehicles). *Id.* A list of assets securing SBA's loan is included as an exhibit. *Ex. A*, Doc. #106.

One year earlier, Hanmi Bank made a loan to Debtor in the approximate amount of \$3,129,800.00, which is also secured by certain personal property assets including three vehicles and nearly all of Debtor's non-titled personal property assets. Doc. #107. Hanmi Bank was owed approximately \$1,903,810.70 on the petition date. Hanmi Bank's security interest is senior to that of SBA as to all assets in which SBA has a security interest.

Debtor believes that it may be entitled to a payment from the Internal Revenue Service ("IRS") due to an Employee Retention Credit ("ERC"), but it is uncertain what amount it will receive. The ERC could be as much as \$454,647.53 and will be used in the plan to pay the secured creditor if its lien(s) attach to those funds or will be used to pay unsecured claims. Regardless of the outcome, SBA will have no interest in those funds because Hanmi Bank's claim is superior to that of SBA.

Based on the evidence offered in support of the motion, SBA's blanket lien is wholly unsecured and may be treated as a general unsecured claim in this case. Debtor may proceed to obtain relief from this lien upon completion of the necessary requirements under applicable law.

Accordingly, this motion will be GRANTED. The order shall specifically state that it is not effective until confirmation of the subchapter V plan.

This ruling is only binding on the named respondent in the moving papers and any successor who takes an interest in the property after service of the motion.

⁶ Debtor complied with Fed. R. Bankr. P. 7004(b)(4) and (b)(5) by serving the SBA's Office of General Counsel, the Attorney General of the United States, and the civil process clerk of the United States Attorney via first class mail on June 13, 2023. Doc. #108.

14. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL
CAE-1**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY
PETITION
3-10-2023 [\[1\]](#)

RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

15. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[PSJ-4](#)

MOTION FOR AN ORDER ESTABLISHING INFORMATION SHARING
PROCEDURES FOR COMPLIANCE WITH 11 U.S.C. §§ 1102(B)(3) AND
1103(C)
6-5-2023 [\[537\]](#)

OFFICIAL COMMITTEE OF UNSECURED CREDITORS/MV
RILEY WALTER/ATTY. FOR DBT.
PAUL JASPER/ATTY. FOR MV.
RESPONSIVE PLEADING

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.

The Official Committee of Unsecured Creditors ("Committee") moves for
an order establishing information sharing procedures in this chapter
11 case pursuant to 11 U.S.C. §§ 105(a), 107(b)(1), 1102(b)(3), and
1103(c). Doc. #537.

Chapter 11 debtor in possession Madera Community Hospital ("Debtor")
filed non-opposition. Doc. #618.

No other parties 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 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 an informative matter, the motion does not comply with the local
rules. First, the exhibits were attached to the motion rather than
filed separately and omitted an exhibit index and consecutively
numbered pages. Doc. #537. LBR 9004-2(d)(1) provides that exhibits

shall be filed as a separate document from the document to which it relates. Subparts (d)(2) and (d)(3) require the exhibit document to include an exhibit index at the start of the document identifying by exhibit number or letter each exhibit with the page number at which it is located, and use consecutively numbered exhibit pages, including any separator, cover, or divider sheets.

Second, the motion failed to include a declaration or other supporting evidence and are not supported by any authenticating or identifying declarations. Fed. R. Evid. 901. Further, LBR 9014-1(d)(1) requires every motion or other request for an order to be comprised of a motion, notice, evidence, and a certificate of service. Counsel for the Committee is advised to review the local rules and ensure procedural compliance in subsequent matters.

11 U.S.C. § 1102(a) provides for the appointment of creditors' and equity security holders' committees.

11 U.S.C. § 1103 sets forth the powers and duties of committees appointed under § 1102. Subsection (c) permits a committee to, among other things, consult with the trustee or debtor in possession concerning estate administration, investigate the debtor, participate in formulating a plan, and request the appointment of a trustee or examiner. § 1103(c)(1)-(5). To perform its duties under § 1103(c), a committee must have access to Debtor's confidential information.

Meanwhile, § 1102(b)(3)(A) requires a committee to "provide access to information for creditors who (i) hold claims of the kind represented by that committee; and (ii) are not appointed to the committee." The scope of the information that committees must make available to creditors is not defined. See, e.g., *In re Refco Inc.*, 336 B.R. 187 (Bankr. S.D.N.Y. 2006).

Here, Debtor filed chapter 11 bankruptcy on March 10, 2023 and continues to operate and manage its business pursuant to 11 U.S.C. §§ 1107(a) and 1108. Doc. #1. No trustee or examiner has been appointed. The Committee was appointed as the official committee of unsecured creditors pursuant to § 1102(a) on April 5, 2023. Doc. #195.

Given the broad construction of § 1102 and the importance of safeguarding confidential and privileged information, the Committee seeks to clarify that the scope of its information-sharing duty under § 1102(b)(3)(A) do include the dissemination of confidential or privileged communications.

The Committee requests approval of a *nunc pro tunc* order effective as of April 5, 2023, which is the date of its formation, to establish information sharing procedures in this case. Doc. #537. A copy of the Committee's proposed order is attached to the motion as an exhibit. *Ex. A, id.* The proposed order:

- (1) clarifies that 11 U.S.C. § 1102(b)(3) does not require the Committee to disseminate proprietary, non-public confidential information, including but not limited to draft pleadings, documents, expert reports, memoranda, summaries, communications, settlement discussions and other information and materials, whether or not provided voluntarily or involuntarily, intentionally or inadvertently, by or on behalf of Debtor or any third party, or prepared by or for the Committee (collectively, "Confidential Information"), or information that is subject to the attorney-client, work-product, or another state, federal or other jurisdictional law of privilege, whether such privilege is solely controlled by the Committee or is a joint privilege with the Debtor or a third party (collectively "Privileged Information") to its non-member constituency;
- (2) deems the Committee and its advisors to comply with § 1102(b)(3) by implementing certain procedures described below (the "Procedures"); and
- (3) determines that the Committee is not required to comply with any additional procedures beyond the Procedures.

To satisfy its obligations under §§ 1102-03, the Committee proposes the implementation of the Procedures to establish a website hosted by Donlin Recano & Company, Inc. ("DRC") to make certain non-confidential information available to general unsecured creditors. A copy of the Committee's engagement letter with DRC is attached as an exhibit to the motion. *Ex. B, id.*

The website will contain links to the court's CM/ECF website and will include in English and Spanish (where available) the following information: (i) the petition date, case number, and general information about the chapter 11 case; (ii) contact information for the Debtor's and Committee's professionals; (iii) information regarding significant case events and relevant deadlines, including the claims bar date; (iv) when filed, the disclosure statement, plan, and related exhibits; (v) an email address to allow unsecured creditors to send questions and comments directly to the Committee; and (vi) any other information the Committee, in its discretion, deems appropriate, subject to restrictions and limitations imposed by the court.

Under 11 U.S.C. § 105(a), the court may "issue an order . . . that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 107(b)(1) and Fed. R. Bankr. P. 9018 further empower the court to protect Debtor's confidential information from disclosure to creditors.

No party in interest timely filed written opposition to this motion. Accordingly, this motion will be GRANTED.

Notwithstanding the Debtor's non-opposition (Doc. #618), the court notes the proposed order accompanying the motion includes *nunc pro tunc* relief back to April 5, 2023. The court will grant relief

retroactive to April 5, 2023. The court will not issue a *nunc pro tunc* order based on this record. See, *Roman Catholic Archdiocese of San Juan v. Feliciano*, 140 S. Ct. 696, 206 L.Ed.2d 1 (2020).

16. [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.

17. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-56](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WANGER JONES
HELSLEY FOR RILEY C WALTER, DEBTORS ATTORNEY(S)
6-13-2023 [\[568\]](#)

RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Wanger Jones Helsley, P.C. ("Applicant"), general bankruptcy counsel for chapter 11 debtor in possession Madera Community Hospital ("Debtor"), requests compensation in the sum of \$148,103.85 on an interim basis pursuant to 11 U.S.C. § 331, subject to final review under 11 U.S.C. § 330. Doc. #568. This amount consists of \$138,517.00 in fees and \$9,586.85 in expenses from April 16, 2023 through May 31, 2023. *Id.*

Karen Paolinelli, Debtor's representative, has received and reviewed the fee application and has no objections. Doc. #570.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the chapter 12

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.

Debtor filed chapter 11 bankruptcy on March 10, 2023. Doc. #1. Applicant was employed as Debtor's general bankruptcy counsel pursuant to 11 U.S.C. §§ 327 and 329-31 effective as of thirty days before the petition date. Doc. #259. This is Applicant's second interim fee application. Doc. #568. Applicant was previously awarded the following interim compensation under § 331:

Period	Fees	Expenses	Total
03/10/23-04/15/23	\$166,909.50	\$5,048.45	\$171,957.95
Total compensation previously awarded			= \$171,957.95
Pre-petition retainer			- \$173,628.80
Remaining retainer for future applications			= (\$1,670.85)
Compensation requested in this application			+ \$148,103.85
Compensation to be paid by Debtor			= \$146,433.00

Docs. #540, #568. Applicant now requests fees for 361.20 billable hours of legal services at the following rates, totaling **\$138,517.00** fees:

Professional	Rate	Hours	Amount
Riley C. Walter, Attorney	\$550	156.50	\$86,075.00
Kurt F. Vote, Attorney	\$450	2.00	\$900.00
Jay A. Christofferson, Attorney	\$415	0.70	\$290.50
Danielle J. Bethel, Attorney	\$325	118.00	\$38,350.00
Nicole Medina, Paralegal	\$170	70.10	\$11,917.00
Sherri Large, Paralegal	\$185	0.10	\$18.50
April Summers, Paralegal	\$70	13.80	\$966.00
Total Fees & Expenses		361.20	\$138,517.00

Id.; *Exs. B-C*, Docs. ##571-72. Applicant also incurred **\$9,586.85** in expenses:

Postage	\$1,399.62
Reproduction	\$3,878.70
Electronic Research	\$8.20
Mileage	\$250.21
Recording Fees	\$113.00
Filing/Service/Court Fees	\$3,994.12
Total Expenses	\$9,643.85

Ex. B, id. These combined fees and expenses total **\$148,160.85**.

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of “reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney” and “reimbursement for actual, necessary expenses.” In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3). The previous interim compensation awards under 11 U.S.C. § 331 are subject to final review under § 330.

Applicant’s services here included, without limitation: (1) preparing and filing amendments to the bankruptcy schedules; (2) assisting in preparation of the monthly operating report and filing the same; (3) resolving insurance and tail coverage issues; (4) engaging in numerous conferences with creditors’ committee counsel; (5) obtaining authorization for continued use of cash collateral (WJH-3); (6) formulating a chapter 11 plan, which is expected to be filed prior to expiration of the exclusivity period; (7) entertaining potential suitors to purchase the hospital; (8) preparing and filing employment applications of professionals (WJH-26, WJH-30, WJH-47); (9) preparing and filing the first interim fee application (WJH-54); and (10) preparing and filing numerous motions to reject lease or executory contract (WJH-23, WJH-39, WJH-40, WJH-41, WJH-42, WJH-43, WJH-45).

Ex. A, Doc. #572. The court finds the services and expenses reasonable, actual, and necessary. Debtor has consented to payment of the proposed fees and expenses. *Doc. #570.*

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$138,517.00 in fees as reasonable compensation for services rendered and \$9,643.85 in reimbursement for actual, necessary expenses on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. Applicant will be awarded \$148,160.85 for services and expenses from April 16, 2023 through May 31, 2023. Applicant will be authorized to draw down the \$1,670.85 retainer remaining on the terms outlined above and Debtor will be authorized to pay Applicant \$146,433.00 when authorized by a cash collateral order. This ruling is not permitting any unauthorized use of cash collateral.

11:00 AM

1. [23-10806](#)-B-7 **IN RE: CARLOS MOLINA**

REAFFIRMATION AGREEMENT WITH AMERICREDIT FINANCIAL SERVICES,
INC DBA GM FINANCIAL
6-8-2023 [[18](#)]

GREGORY SHANFELD/ATTY. FOR DBT.

NO RULING.

2. [23-10676](#)-B-7 **IN RE: LUZ FIGUEROA**

REAFFIRMATION AGREEMENT WITH LENDMARK FINANCIAL SERVICES,
LLC
6-1-2023 [[17](#)]

ERIC ESCAMILLA/ATTY. FOR DBT.

NO RULING.

3. [23-10983](#)-B-7 **IN RE: JUSTON VONGPHACHANH**

REAFFIRMATION AGREEMENT WITH AMERICAN HONDA FINANCE
CORPORATION
6-21-2023 [[11](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

NO RULING.

1:30 PM

1. [22-10005](#)-B-7 **IN RE: PATRICIA TESSENDORE**
[ADJ-4](#)

CONTINUED ORDER TO SHOW CAUSE
3-1-2023 [[112](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

NO RULING.

On May 12, 2023, the court ordered that Patricia Marie Tessendore ("Debtor") is in contempt of this court's order compelling her to appear and testify at the continued meeting of creditors. Doc. #115. The court ordered Debtor to appear at the continued meeting of creditors rescheduled for June 26, 2023, and Debtor could purge the contempt by attending and completing the meeting on that date. *Id.* The order stated that the court would consider further coercive sanctions, including incarceration, if Debtor failed to appear at that meeting. *Id.*

Based on the record, it appears that Debtor failed to attend the § 341 meeting on June 26, 2023. See docket generally. This matter will be called and proceed as scheduled. The court intends to consider further coercive sanctions at the hearing.

2. [15-12406](#)-B-7 **IN RE: ANDREW/KRISTA MIRELEZ**
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR PETER A. SAUER, TRUSTEES ATTORNEY(S)
6-8-2023 [[95](#)]

FEAR WADDELL, P.C./MV.
PETER A. SAUER/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Fear Waddell, P.C. ("Applicant"), general counsel for chapter 7 trustee Peter L. Fear ("Trustee"), requests final compensation under 11 U.S.C. § 330 in the sum of \$8,946.48. Doc. #95. This amount consists of \$8,761.00 in fees and \$185.48 for reimbursement of expenses from August 22, 2022 through May 30, 2023. *Id.*

Trustee has received and reviewed the fee application and supporting documents, indicates that they are reasonable and necessary for estate administration, and has no objection to the same. Doc. #99.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to 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.

Andrew Robert Mirelez and Krista Michele Mirelez (collectively "Debtors") filed chapter 7 bankruptcy on June 17, 2015. Doc. #1. The court entered Debtors' discharge on October 19, 2015, and the case was closed by final decree on March 10, 2017. Docs. #23, #39. The case was reopened on August 11, 2022 and Trustee was reappointed as Trustee. Docs. #42, #52. The court approved Applicant's employment as the estate's general counsel under 11 U.S.C. §§ 327, 329-31 on August 29, 2022, which is presumptively effective on July 24, 2022 under LBR 2014-1(b)(1). Doc. #59. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). *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. #95. Applicant's firm provided 33.40 billable hours⁷ of legal services at the following rates, totaling **\$8,761.00** in fees:

Professional	Rate	Hours	Fees
Peter A. Sauer (2022)	\$260	18.60	\$4,836.00
Peter A. Sauer (2023)	\$280	9.40	\$2,632.00
Katie Waddell (2022)	\$245	1.20	\$294.00
Katie Waddell (2023)	\$260	3.60	\$936.00
Laurel Guenther (2022)	\$100	0.40	\$40.00
Laurel Guenther (2023)	\$115	0.20	\$23.00
Total Hours & Fees		33.40	\$8,761.00

Id.; *Exs. B-C*, Doc. #98. Applicant also incurred **\$185.48** in expenses:

Copying	\$100.87
Court fees	\$0.70
Postage	\$83.91
Total Expenses	\$185.48

Ex. B, id. These combined fees and expenses total **\$8,946.48**.

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

Applicant's services here included, without limitation: (1) seeking authorization to employ general counsel and special counsel (FW-1; FW-2); (2) analyzing the status of the case and communicating with Trustee regarding the same; (3) preparing and filing a motion to approve a settlement agreement and compensate special counsel (FW-3); (4) redacting and filing the settlement agreement; and (5) preparing and filing this fee application (FW-4). *Ex. A*, Doc. #98. The court finds the services and expenses actual, reasonable, and necessary. Trustee has reviewed the application and consents to payment of the requested fees and expenses. Doc. #99.

No party in interest timely filed written opposition. This motion will be GRANTED. Applicant will be awarded \$8,761.00 in fees as reasonable compensation for services rendered and \$185.48 in reimbursement for actual, necessary expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized to pay Applicant \$8,946.48 for services rendered and costs incurred from August 22, 2022 through May 30, 2023.

⁷ The motion says that Applicant's firm provided 28.90 billable hours but this appears to be a typographical error. Mot. at 2:6-10, Doc. #95. The exhibits reflect that Applicant provided 33.40 billable hours of legal services. *Exs. B-C*, Doc. #98. This error is *de minimis* because the amount of compensation requested in the motion accurately reflects the services in the exhibits.

3. [22-11614](#)-B-7 **IN RE: NANCY JERKOVICH**
[ADJ-2](#)

MOTION TO COMPEL
5-31-2023 [[30](#)]

IRMA EDMONDS/MV.
LAYNE HAYDEN/ATTY. FOR DBT.
ANTHONY JOHNSTON/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Chapter 7 trustee Irma C. Edmonds ("Trustee") moves for an order compelling Nancy Jerkovich ("Debtor") to turnover information related to property of the estate. Doc. #30. Debtor did not oppose.

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

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

Debtor filed chapter 7 bankruptcy on September 19, 2022. Doc. #1. Trustee was appointed as the chapter 7 trustee on that same day and

became permanent trustee at the first meeting of creditors on November 14, 2022. Doc. #5; docket generally.

Debtor is married to Michael A. Jerkovich ("Non-Filing Spouse"), but he did not join in the bankruptcy petition. Doc. #32. Debtor's schedules disclose an interest in business-related property consisting of a "LAUNDROMAT WASHERS AND DRYERS FINANCE [sic] BY LEASER OWES 160,000 AND IS ONLY 1/3 OWNER OF BUSINESS" valued at \$2,500.00. *Sched. A/B & Am. Sched. A/B* ¶ 39, Docs. #1, #12. Trustee believes that the laundry business is known as Super Suds Laundry. Doc. #32.

On November 28, 2022, Trustee received three Westamerica Bank account statements for the months of August 2022 and September 2022 for account numbers ending in 3594 (held by Super Suds Laundry), 4345 (held by Super Suds Laundry), and 4410 (held by Debtor and Non-Filing Spouse). *Id.* These accounts show multiple sizable deposits. Trustee also received a copy of the 2018 federal tax return for Super Suds Laundry and requested more recent tax returns, but Trustee has not yet received them.

On January 25, 2023, Trustee's counsel, Anthony D. Johnston, mailed a stamped letter to Debtor's counsel, Layne Hayden, requesting the following information:

- (1) tax returns for the laundromat business for tax years 2019 through 2021;
- (2) any real property lease;
- (3) any equipment lease;
- (4) any partnership or similar agreement;
- (5) all payroll tax returns for the time period of January 1, 2019 through December 31, 2022;
- (6) schedule showing owner salaries, including benefits, for the time period of January 1, 2019 through December 31, 2022;
- (7) annual income statements for the time period of 2019 through 2022;
- (8) balance sheet for the first day of January for 2019 through 2023; and
- (9) all bank statements for the time period of January 1, 2019 through December 31, 2022.

Ex. A, Docs. ##33-34. The letter was not returned as undeliverable and Mr. Johnston did not receive any response nor the requested information. *Id.* Having received no response, Mr. Johnston sent an email to Debtor's attorney on May 4, 2023 to request the same information. *Ex. B*, *id.* This email went unanswered. *Id.*

Since Debtor has refused to comply with the Trustee's request for turnover of information pertaining to the laundromat business, Trustee filed this motion to compel Debtor to do the same.

In the Ninth Circuit, the Trustee must prove by a preponderance of the evidence that the estate is entitled to turnover. *Wolfe v. Jacobsen* (*In re Jacobsen*), 676 F. 3d 1193, 1201 (9th Cir. 2012).

Under 11 U.S.C. § 541(a), Debtor created a bankruptcy estate on September 19, 2022 by filing the petition. The estate "is comprised of all of the following property, wherever located and by whomever held: . . . all legal or equitable interests of the debtor in property as of the commencement of the case." § 541(a)(1).

Under 11 U.S.C. § 521(a)(4), Debtor has a duty to surrender to Trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to the property.

As trustee of the bankruptcy estate, Trustee has a duty to "collect and reduce to money the property of the estate . . . and close such estate as expeditiously as is compatible with the best interests of parties in interest." § 704. In furtherance of those duties, a bankruptcy trustee has the power to use, sell, or lease property of the estate under § 363. The trustee is empowered by § 542(a) to compel the debtor to "deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." § 542(a); *In re Gerwer*, 898 F.2d 730, 733 (9th Cir. 1990).

Trustee here requests an order compelling Debtor to turnover or provide to Trustee the following documents related to Super Suds Laundry: (1) federal tax returns for the period of January 1, 2019 through December 31, 2022; (2) any real property lease; (3) any equipment lease; (4) any partnership or similar agreement; (5) any payroll tax returns for the time period of January 1, 2019 through December 31, 2022; (6) schedule showing owner salaries, including benefits, for the time period of January 1, 2019 through December 31, 2022; (7) annual income statements for the period of 2019 through 2022; (8) balance sheet for the first day of January 2019 through 2023; (9) all bank statements for the time period of January 1, 2019 through December 31, 2022; and (10) such further orders as the court deems proper.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED.

4. [15-12715](#)-B-7 **IN RE: JOAQUIN/PAMELA DENIZ**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
6-12-2023 [\[66\]](#)

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 in
conformance with the ruling below.

James E. Salven ("Applicant"), the certified public accountant engaged by chapter 7 trustee Irma C. Edmonds ("Trustee"), requests final compensation under 11 U.S.C. § 330 in the sum of \$2,350.29. Doc. #66. This amount consists of \$2,072.00 in fees and \$278.29 in reimbursement for expenses from April 12, 2023 through June 9, 2023. *Id.*

Trustee has received and reviewed the fee application and supporting documents, indicates that they are reasonable and necessary for estate administration, and has no objection to the same. Doc. #70.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to 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.

Joaquin B. Deniz and Pamela L. Deniz (collectively "Debtors") filed chapter 7 bankruptcy on July 8, 2015. Doc. #1. The court entered Debtors' discharge on November 6, 2015, and the case was closed by final decree on November 13, 2015. Docs. #23, #26. The case was reopened on November 15, 2021 and Trustee was appointed as successor

trustee. Docs. #31, #38. The court approved Applicant's employment under 11 U.S.C. §§ 327, 330-31 as the estate's accountant on April 25, 2023, effective for services rendered on or after April 1, 2023. Doc. #65. 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. #66. Applicant provided 7.4 billable hours of accounting services at a rate of \$280.00 per hour, totaling **\$2,072.00** in fees. *Ex. A*, Docs. ##68-69. Applicant also incurred **\$278.29** in expenses:

Copies (225 @ \$0.20)	\$45.00
Envelopes (5 @ \$0.25)	\$1.25
Lacerte Tax Proc (2 @ \$91.00)	\$182.00
Service: Fee App	\$50.04
Total Expenses	\$278.29

Ex. B, id. These combined fees and expenses total **\$2,350.29**.

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

Applicant's services included, without limitation: (1) conflict review and preparing the employment app; (2) communicating with Trustee and Trustee's counsel regarding settlement and W-2 information; (3) inputting data into tax software and processing Debtors' tax returns; (4) processing tax returns for prompt tax determinations and transmittal letters; and (5) preparing and filing this fee application. *Ex. A*, Doc. #69. The court finds the services and expenses actual, reasonable, and necessary. Trustee has reviewed the application and consents to payment of the requested fees and expenses. Doc. #70.

No party in interest timely filed written opposition. This motion will be GRANTED. Applicant will be awarded \$2,072.00 in fees and \$278.29 in expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized to pay Applicant \$2,350.29 for services rendered and costs incurred from April 12, 2023 through June 9, 2023.

5. [23-10029](#)-B-7 **IN RE: LOUIS/AMY GENARO**
[TCS-1](#)

MOTION TO AVOID LIEN OF DISCOVER BANK
6-12-2023 [\[20\]](#)

AMY GENARO/MV
TIMOTHY SPRINGER/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.

Louis Michael Genaro and Amy Corlyn Genaro (collectively "Debtors") move for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of Discover Bank ("Creditor") in the sum of \$10,064.98 and encumbering residential real property located at 5726 N. Pleasant Ave., Fresno, CA 93711 ("Property").⁸ Doc. #20.

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

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

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

Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against joint debtor Amy Corlyn Genaro fka Amy C. Mitchell in favor of Creditor in the amount of \$10,064.98 on May 20, 2021. *Ex. A*, Doc. #23. The abstract of judgment was issued on March 17, 2022 and was recorded in Fresno County on August 23, 2022. *Id.* That lien attached to Debtors' interest in Property. *Id.*; Doc. #22.

As of the petition date, Property had an approximate value of \$590,800.00. *Id.*; *cf. Sched. A/B*, Doc. #1. Debtors claimed a \$300,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Sched. C*, *id.*

Property is encumbered by a first deed of trust in favor of Freedom Mortgage Corporation ("FMC") in the amount of \$312,548.00. *Sched. D*, *id.* Property is also encumbered by a second judgment lien in favor of Creditor against joint debtor Louis Michael Genaro in the amount of \$11,555.27, which was recorded in Fresno County on November 18, 2022 and is the subject of matter #6 below. *Id.*; *Ex. A*, Doc. #28; *see also*, TCS-2. Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. FMC	\$312,548.00	01/02/15	Unavoidable
2. Creditor	\$10,064.98	08/23/22	Avoidable; matter #5 (TCS-1)
3. Creditor	\$11,555.27	11/18/22	Avoidable; matter #6 (TCS-2)

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*; § 522(f)(2)(B).

"Under the full avoidance approach, as used in *Brantz*, the only way a lien would be avoided 'in full' was if the debtor's gross equity were equal to or less than the amount of the exemption." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 596 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999), citing *In re Brantz*, 106 B.R. 62, 68 (Bankr. E.D. Pa. 1989) ("Avoidance of all judicial liens results unless (3) [the result of deducting the debtor's allowable exemptions and the sum of all liens not avoided from the value of the property] is a positive figure."), citing *In re Magosin*, 75 B.R. 545, 547 (Bankr. E.D. Pa. 1987) (judicial lien was avoidable in its entirety where equity is less than exemption).

If Creditor's judicial lien is avoided in matter #6 below, then this judicial lien would be the most junior lien subject to avoidance and there would not be any equity to support the judicial lien. Strict

application of the § 522(f)(2) formula with respect to Creditor's senior lien is illustrated as follows:

Amount of judgment lien	\$10,064.98
Total amount of unavoidable liens	+ \$312,548.00
Debtors' claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$622,612.98
Debtors' claimed value of interest absent liens	- \$590,800.00
Extent lien impairs exemption	= \$31,812.98

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007); accord. *Hanger* 217 B.R. at 596, *Higgins v. Household Fin. Corp. (In re Higgins)*, 201 B.R. 965, 967 (B.A.P. 9th Cir. 1996); cf. *Brantz*, 106 B.R. at 68, *Magosin*, 75 B.R. at 549-50, *In re Piersol*, 244 B.R. 309, 311 (Bankr. E.D. Pa. 2000). Since there is no equity for liens to attach and this case does not involve fractional interests or co-owned property with non-debtor third parties, the § 522(f)(2) formula can be re-illustrated using the *Brantz* formula with the same result:

Fair market value of Property	\$590,800.00
Total amount of unavoidable liens	- \$312,548.00
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$21,748.00)
Creditor's judicial lien	- \$10,064.98
Extent Debtors' exemption impaired	= (\$31,812.98)

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

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

⁸ Debtors complied with Fed. R. Bankr. P. 7004(h) and (i) by serving Creditor's CEO via certified mail on June 12, 2023. Doc. #24.

6. [23-10029](#)-B-7 **IN RE: LOUIS/AMY GENARO**
[TCS-2](#)

MOTION TO AVOID LIEN OF DISCOVER BANK
6-12-2023 [\[25\]](#)

AMY GENARO/MV
TIMOTHY SPRINGER/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.

Louis Michael Genaro and Amy Corlyn Genaro (collectively "Debtors") move for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of Discover Bank ("Creditor") in the sum of \$11,555.27 and encumbering residential real property located at 5726 N. Pleasant Ave., Fresno, CA 93711 ("Property").⁹ Doc. #25.

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

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

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

Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against joint debtor Louis M. Genaro, Jr., in favor of Creditor in the amount of \$11,555.27 on April 13, 2022. *Ex. A*, Doc. #28. The abstract of judgment was issued on August 19, 2022 and was recorded in Fresno County on November 18, 2022. *Id.* That lien attached to Debtors' interest in Property. *Id.*; Doc. #27.

As of the petition date, Property had an approximate value of \$590,800.00. *Id.*; *cf. Sched. A/B*, Doc. #1. Debtors claimed a \$300,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Sched. C*, *id.*

Property is encumbered by a first deed of trust in favor of Freedom Mortgage Corporation ("FMC") in the amount of \$312,548.00. *Sched. D*, *id.* Property is also encumbered by a second judgment lien in favor of Creditor against joint debtor Amy Corlyn Genaro fka Amy C. Mitchell in the amount of \$10,064.98, which was recorded in Fresno County on August 23, 2022 and is the subject of matter #5 below. *Id.*; *Ex. A*, Doc. #23; *see also*, TCS-1. Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. FMC	\$312,548.00	01/02/15	Unavoidable
2. Creditor	\$10,064.98	08/23/22	Avoidable; matter #5 (TCS-1)
3. Creditor	\$11,555.27	11/18/22	Avoidable; matter #6 (TCS-2)

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*; § 522(f)(2)(B).

"Under the full avoidance approach, as used in *Brantz*, the only way a lien would be avoided 'in full' was if the debtor's gross equity were equal to or less than the amount of the exemption." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 596 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999), citing *In re Brantz*, 106 B.R. 62, 68 (Bankr. E.D. Pa. 1989) ("Avoidance of all judicial liens results unless (3) [the result of deducting the debtor's allowable exemptions and the sum of all liens not avoided from the value of the property] is a positive figure."), citing *In re Magosin*, 75 B.R. 545, 547 (Bankr. E.D. Pa. 1987) (judicial lien was avoidable in its entirety where equity is less than exemption).

This lien is the most junior lien subject to avoidance and there is not any equity to support the judicial. Strict application of the

§ 522(f)(2) formula with respect to Creditor's junior lien is illustrated as follows:

Amount of judgment lien	\$11,555.27
Total amount of unavoidable liens ¹⁰	+ \$322,612.98
Debtors' claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$634,168.25
Debtors' claimed value of interest absent liens	- \$590,800.00
Extent lien impairs exemption	= \$43,368.25

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007); accord. *Hanger* 217 B.R. at 596, *Higgins v. Household Fin. Corp. (In re Higgins)*, 201 B.R. 965, 967 (B.A.P. 9th Cir. 1996); cf. *Brantz*, 106 B.R. at 68, *Magosin*, 75 B.R. at 549-50, *In re Piersol*, 244 B.R. 309, 311 (Bankr. E.D. Pa. 2000). Since there is no equity for liens to attach and this case does not involve fractional interests or co-owned property with non-debtor third parties, the § 522(f)(2) formula can be re-illustrated using the *Brantz* formula with the same result:

Fair market value of Property	\$590,800.00
Total amount of unavoidable liens	- \$322,612.98
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$31,812.98)
Creditor's judicial lien	- \$11,555.27
Extent Debtors' exemption impaired	= (\$43,368.25)

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

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

⁹ Debtors complied with Fed. R. Bankr. P. 7004(h) and (i) by serving Creditor's CEO via certified mail on June 12, 2023. Doc. #29.

¹⁰ This amount consists of the \$312,548.00 first deed of trust in favor of FMC and the \$10,064.98 judgment lien in favor of Creditor because it is the senior-most judgment lien and is unavoidable until all junior liens are avoided.

7. [22-11856](#)-B-7 **IN RE: IGNACIO GOMEZ**
[JES-1](#)

MOTION TO SELL
6-2-2023 [\[21\]](#)

JAMES SALVEN/MV
MARK ZIMMERMAN/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 2014 Ford F-150 ("Vehicle") to Ignacio Gomez ("Debtor") for \$3,000.00 under 11 U.S.C. § 363, subject to higher and better bids at the hearing. Doc. #21.

No party in interest timely filed written opposition. This motion will be GRANTED and the matter will be called and proceed as scheduled to solicit higher and better bids at the hearing.

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). 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). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Debtor filed chapter 7 bankruptcy on October 31, 2022. 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 December 1, 2022. Doc. #6; docket generally. Among the assets of the estate is the Vehicle, which Trustee now seeks to sell to Debtor 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, 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference." *Id.*, citing *In re Psychometric Sys.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

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

The Vehicle has 130,000 miles and is listed in the schedules with a value of \$9,245.00. *Sched. A/B*, Doc. #1. Title to Vehicle is in Debtor's non-filing spouse's name. *Id.* Trustee believes Vehicle has a fair market value of \$12,500.00. Doc. #23. Vehicle is encumbered by a lien in favor of an unspecified creditor in the approximate amount of \$9,500.00. *Id.* Debtor did not claim an exemption in the Vehicle. *Sched. C*, Doc. #1. The sale is subject to all liens and encumbrances of record. Doc. #23. After subtracting the lien, the value of the estate's interest in the Vehicle is approximately \$3,000.00. Trustee is proposing to sell the estate's interest for this amount to Debtor, which will provide a net of \$3,000.00 to the estate. *Id.*

Trustee indicates that the estate is in receipt of \$250.00. Debtor, through his attorney, has arranged to pay the remaining balance of \$2,750.00 prior to the sale hearing date. Trustee believes the sale price is fair when considering the fair market value of the Vehicle and the lien encumbering it. *Id.* Trustee has not agreed to pay commissions to any party in connection with the proposed sale. *Id.*

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

Accordingly, the court intends to GRANT this motion. 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 (1) subject to all liens and encumbrances of record and (2) "as-is, where-is," with no representations or warranties,

express, implied, or otherwise from the bankruptcy estate, the Debtor, or their representatives.

8. [22-10060](#)-B-7 **IN RE: CURTIS/CHARTOTTE ALLEN**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES SALVEN, ACCOUNTANT(S)
6-12-2023 [[134](#)]

JAMES SALVEN/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.

James E. Salven ("Applicant"), the certified public accountant engaged by chapter 7 trustee Peter L. Fear ("Trustee"), requests final compensation under 11 U.S.C. § 330 in the sum of \$2,184.39. Doc. #134. This amount consists of \$1,925.00 in fees and \$259.39 in reimbursement for expenses from May 31, 2023 through June 12, 2023. *Id.*

Trustee has received and reviewed the fee application and supporting documents, indicates that they are reasonable and necessary for estate administration, and has no objection to the same. Doc. #137.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to 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.

Curtis James Allen and Chartotte Yvette Allen aka Charlotte.¹¹ Yvette Allen (collectively "Debtors") filed chapter 13 bankruptcy on January

17, 2022. Doc. #1. On July 20, 2022, the court converted this case to chapter 7. Doc. #63. That same day, Trustee was appointed as the interim chapter 7 trustee and became permanent trustee at the first meeting of creditors on August 29, 2022. Doc. #64; docket generally. Thereafter, the court approved Applicant's employment under 11 U.S.C. §§ 327, 330-31 as the estate's accountant on June 9, 2023, effective for services rendered on or after May 30, 2023. Doc. #128. 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. #134. Applicant provided 7.7 billable hours of accounting services at a rate of \$280.00 per hour, totaling \$2,156.00. However, Applicant has limited his request to **\$1,925.00** in fees. *Ex. A*, Docs. #136, #138. Applicant also incurred **\$259.39** in expenses:

Copies (213 @ \$0.20)	\$42.60
Envelopes (5 @ \$0.25)	\$1.25
Lacerte Tax Proc (2 @ \$91.00)	\$182.00
Service: Fee App	\$33.54
Total Expenses	\$259.39

Ex. B, id. These combined fees and expenses total **\$2,184.39**.

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

Applicant's services included, without limitation: (1) conflict review and preparing the employment app; (2) reviewing Passport to determine acquisition date and tax basis; (3) printing and reviewing multiple transfer documents to determine sale transaction and price; (4) inputting data into tax system to process returns for both Debtors; (5) transmitting returns and preparing prompt determination letters; and (6) preparing and filing this fee application. *Ex. A*, Doc. #138. The court finds the services and expenses actual, reasonable, and necessary. Trustee has reviewed the application and consents to payment of the requested fees and expenses. Doc. #137.

No party in interest timely filed written opposition. This motion will be GRANTED. Applicant will be awarded \$1,925.00 in fees and \$259.39 in expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized to pay Applicant \$2,184.39 for services rendered and costs incurred from May 31, 2023 through June 12, 2023.

¹¹ At the September 22, 2021 hearing on Debtors' motion to extend the automatic stay in their prior bankruptcy, Case No. 21-12079 (Bankr. E.D. Cal.), Debtors' former attorney indicated on the record that joint debtor Charlotte Allen's name was misspelled in the petition as "Chartotte." This typographical error was not corrected when Debtors refiled this case on January 17, 2022.

9. [23-11067](#)-B-7 **IN RE: LETICIA DELGADO**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
5-18-2023 [\[4\]](#)

SCOTT LYONS/ATTY. FOR DBT.

NO RULING.

10. [22-11769](#)-B-7 **IN RE: PREMIER RAIL SERVICES, INC.**
[CAB-1](#)

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC STAY
6-13-2023 [\[63\]](#)

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.

Centra Funding, LLC ("Movant") moves for an order approving a stipulation with Premier Rail Services, Inc. ("Debtor") and chapter 7 trustee Jeffrey M. Vetter ("Trustee") with respect to certain commercial equipment. Doc. #63.

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

First, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in

every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Here, Movant filed a motion to approve a stipulation for relief from the automatic stay on April 20, 2023. Doc. #50. That motion was not set for hearing. On May 31, 2023, Movant refiled the motion to approve the stipulation. Doc. #57. The motion was denied without prejudice due to incorrect notice language. Docs. #62, #67. The DCN for both of these motions was CAB-1.

On June 13, 2023, Movant refiled this motion. The DCN for this motion is also CAB-1, and therefore, it does not comply with the local rules. Each new motion requires a different, unused DCN.

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

Here, the motion and supporting documents were filed and served on June 13, 2023 and set for hearing on July 11, 2023. Docs. ##63-66. July 11, 2023 is twenty-eight (28) days before July 11, 2023. Therefore, this motion was set for hearing on 28 or more days of notice under LBR 9014-1(f)(1). Nevertheless, the notice provided:

PLEASE TAKE FURTHER NOTICE that the Motion is being filed on 14-days' notice pursuant to LBR 9014-1(f)(2), which provides, among other things, that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs.

Notice 2:5-9, Doc. #64. This is incorrect. Since the hearing was set on more than 28 days' notice, LBR 9014-1(f)(1) is applicable. The notice should have stated that written opposition was required and must be filed at least 14 days before the hearing, and failure to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion. Instead, the respondents were told not to file and serve written opposition even though it was necessary. Therefore, the notice was materially deficient. If the movant gives 28 days or more of notice of the hearing, there is no option to simply pretend that the motion was set for hearing on less

than 28 days of notice to dispense with the court's requirement that any opposition must be in writing and filed with the court. Additionally, under LBR 9014-1(d)(3)(B)(i), the motion must include the names and addresses of the persons who must be served with such opposition.

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

11. [22-10870](#)-B-7 **IN RE: BETTY EDELBROCK**
[FW-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, TRUSTEES ATTORNEY(S)
6-9-2023 [\[62\]](#)

LAYNE HAYDEN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Fear Waddell, P.C. ("Applicant"), general counsel for chapter 7 trustee Peter L. Fear ("Trustee"), requests final compensation under 11 U.S.C. § 330 in the sum of \$9,606.12. Doc. #62. This amount consists of \$9,258.00 in fees and \$348.12 for reimbursement of expenses from June 22, 2022¹² through June 8, 2023. *Id.*

Trustee has received and reviewed the fee application and supporting documents, indicates that they are reasonable and necessary for estate administration, and has no objection to the same. Doc. #65.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the 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.

Betty Edelbrock ("Debtor") filed chapter 7 bankruptcy on May 24, 2022. Doc. #1. That same day, Trustee was appointed as the interim chapter 7 trustee and became permanent trustee at the first meeting of creditors on June 27, 2022. Doc. #5; docket generally. The court approved Applicant's employment as the estate's general counsel under 11 U.S.C. §§ 327, 329-31 on July 19, 2022, which is presumptively effective on June 19, 2022 under LBR 2014-1(b)(1). Doc. #23. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). *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 provided 30.70 billable hours of legal services at the following rates, totaling **\$9,258.00** in fees:

Professional	Rate	Hours	Fees
Gabriel J. Waddell (2022)	\$345	10.20	\$3,519.00
Gabriel J. Waddell (2023)	\$360	6.00	\$2,160.00
Peter A. Sauer (2022)	\$260	2.10	\$546.00
Peter A. Sauer (2023)	\$280	1.80	\$504.00
Katie Waddell (2022)	\$245	4.10	\$1,004.50
Katie Waddell (2023)	\$260	5.40	\$1,404.00
Laurel Guenther (2022)	\$100	0.40	\$40.00
Laurel Guenther (2023)	\$115	0.70	\$80.50
Total Hours & Fees		30.70	\$9,258.00

Id.; *Exs. B-C*, Docs. #64, #66. Applicant also incurred **\$348.12** in expenses:

Copying	\$225.24
Court fees	\$37.80
Postage	\$85.08
Total Expenses	\$348.12

Ex. B, id. These combined fees and expenses total **\$9,606.12**.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering

all relevant factors, including those enumerated in subsections (a) (3) (A) through (E). § 330(a) (3).

Applicant's services here included, without limitation: (1) seeking authorization to employ general counsel and a real estate broker (FW-1; PFT-1); (2) preparing, filing, and prosecuting three separate motions to sell the estate's real property (FW-2; FW-3; FW-4); and (3) preparing and filing this fee application (FW-5). *Ex. A*, Doc. #66. The court finds the services and expenses actual, reasonable, and necessary. Trustee has reviewed the application and consents to payment of the requested fees and expenses. Doc. #65.

No party in interest timely filed written opposition. This motion will be GRANTED. Applicant will be awarded \$9,258.00 in fees as reasonable compensation for services rendered and \$348.12 in reimbursement for actual, necessary expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized to pay Applicant \$9,606.12 for services rendered and costs incurred from June 22, 2022 through June 8, 2023.

¹² The motion says that Applicant's services began on September 22, 2022 and Applicant's employment was approved on September 22, 2021, but these appear to be typographical errors. Mot. at 1:21-23, 2:1-2, Doc. #62. The exhibits reflect that Applicant's services began on June 22, 2022. *Exs. B-C*, Doc. #66. These errors are *de minimis* because Applicant's employment was approved on July 19, 2022, effective June 19, 2022. Doc. #23.

12. [22-10870](#)-B-7 **IN RE: BETTY EDELBROCK**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
6-12-2023 [\[69\]](#)

JAMES SALVEN/MV
LAYNE HAYDEN/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

James E. Salven ("Applicant"), the certified public accountant engaged by chapter 7 trustee Peter L. Fear ("Trustee"), requests final compensation under 11 U.S.C. § 330 in the sum of \$1,489.95. Doc. #69. This amount consists of \$1,350.00 in fees and \$139.95 in reimbursement for expenses from May 15, 2023 through June 9, 2023. *Id.*

Trustee has received and reviewed the fee application and supporting documents, indicates that they are reasonable and necessary for estate administration, and has no objection to the same. Doc. #73.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the 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.

Betty Edelbrock ("Debtor") filed chapter 7 bankruptcy on May 24, 2022. Doc. #1. That same day, Trustee was appointed as the interim chapter 7 trustee and became permanent trustee at the first meeting of creditors on June 27, 2022. Doc. #5; docket generally. The court approved Applicant's employment under 11 U.S.C. §§ 327, 330-31 as the estate's accountant on June 1, 2023, effective for services rendered on or after May 10, 2023. Doc. #61. 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. #69. Applicant provided 5.4 billable hours of accounting services at a rate of \$280.00 per hour, totaling \$1,512.00. However, Applicant has limited his request to **\$1,350.00** in fees. *Ex. A*, Docs. #71-72. Applicant also incurred **\$139.95** in expenses:

Copies (143 @ \$0.20)	\$28.60
Envelopes (5 @ \$0.20)	\$1.00
Lacerte Tax Proc (1 @ \$91.00)	\$91.00
Service: Fee App	\$19.35
Total Expenses	\$139.95

Ex. B, *id.* These combined fees and expenses total **\$1,489.95**.

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

Applicant's services included, without limitation: (1) conflict review and preparing the employment app; (2) reviewing Passport to determine acquisition date and tax basis; (3) inputting data into tax system and preparing tax returns; (4) preparing prompt determination letters and cover letter; and (5) preparing and filing this fee application.

Ex. A, Doc. #72. The court finds the services and expenses actual, reasonable, and necessary. Trustee has reviewed the application and consents to payment of the requested fees and expenses. Doc. #73.

No party in interest timely filed written opposition. This motion will be GRANTED. Applicant will be awarded \$1,350.00 in fees and \$139.95 in expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized to pay Applicant \$1,489.95 for services rendered and costs incurred from May 15, 2023 through June 9, 2023.

13. [18-10475](#)-B-7 **IN RE: GREGORY/DEBORAH SMITH**
[JES-3](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
6-9-2023 [[109](#)]

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

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

DISPOSITION: Granted.

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

James E. Salven ("Applicant"), in his capacity as certified public accountant engaged by the estate in his capacity as chapter 7 trustee,

seeks final compensation under 11 U.S.C. § 330 in the sum of \$2,941.00. Doc. #109. This amount consists of \$2,175.00 in fees and \$766.00 in reimbursement for expenses from April 21, 2020 through June 9, 2023. *Id.*

Applicant, in his capacity as chapter 7 trustee, has reviewed the fee application and supporting documents, and consents to the proposed payment. Doc. #112.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the 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.

Gregory Howard Smith and Deborah Cherie Smith (collectively "Debtors") filed chapter 7 bankruptcy on February 14, 2018. Doc. #1. The following day, Trudi Manfredo was appointed as the interim chapter 7 trustee and became permanent trustee at the first meeting of creditors on March 26, 2018. Doc. #2; docket generally. Following Ms. Manfredo's resignation on November 26, 2018, Trustee was appointed as successor trustee on November 28, 2018 and became permanent trustee at the meeting of creditors on December 27, 2018. Doc. #38; docket generally. Thereafter, the court approved Applicant's employment under 11 U.S.C. §§ 329, 330-31 as the estate's accountant on May 1, 2020, effective for services rendered on or after April 20, 2020. Doc. #72. 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. #109. Applicant provided 8.7 billable hours of accounting services at a rate

of \$250.00 per hour, totaling **\$2,175.00** in fees. *Ex. A*, Docs. #111, #113. Applicant also incurred **\$766.00** in expenses:

Copies (440 @ \$0.20)	\$88.00
Envelopes (4 @ \$0.75)	\$3.00
Lacerte Tax Proc (6 @ \$91.00)	\$546.00
Service: Fee App (100 @ \$1.29)	\$129.00
Total Expenses	\$766.00

Ex. B, id. These combined fees and expenses total **\$2,941.00**.

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) conflict review and preparing the employment app; (2) analyzing data, inputting into tax system, and preparing and processing the 2020, 2021, and 2022 returns for Debtor and Debtor's non-filing spouse; (3) preparing and filing this fee application. *Ex. A*, Doc. #113. The court finds the services and expenses actual, reasonable, and necessary. Applicant, in his capacity as the chapter 7 trustee, has reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #112.

No party in interest timely filed written opposition. This motion will be GRANTED. Applicant will be awarded \$2,175.00 in fees and \$766.00 in expenses on a final basis pursuant to 11 U.S.C. § 330. Applicant, in his capacity as trustee, will be authorized to pay himself \$2,941.00 for services rendered and costs incurred from April 21, 2020 through June 9, 2023.

14. [22-11987](#)-B-7 **IN RE: JESUS VALDEZ**
[JES-1](#)

MOTION TO SELL
6-9-2023 [\[21\]](#)

JAMES SALVEN/MV
MARK ZIMMERMAN/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 2013 GMC Sierra ("Vehicle") to Jesus E. Valdez ("Debtor") for \$8,000.00 under 11 U.S.C. § 363, subject to higher and better bids at the hearing. Doc. #21.

No party in interest timely filed written opposition. This motion will be GRANTED and the matter will be called and proceed as scheduled to solicit higher and better bids at the hearing.

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). 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). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Debtor filed chapter 7 bankruptcy on November 21, 2022. 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 December 22, 2022. Doc. #5; docket generally. Among the assets of the estate is the Vehicle, which Trustee now seeks to sell to Debtor 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, 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference." *Id.*, citing *In re Psychometric Sys.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

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

The Vehicle has 197,000 miles and is listed in the schedules with a value of \$3,100.00. *Sched. A/B*, Doc. #1. Trustee believes Vehicle has a fair market value of \$8,000.00 and is selling the estate's interest for this amount. Doc. #23. 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*, Doc. #1. Debtor claimed a \$3,625.00 exemption in Vehicle pursuant to Cal. Code Civ. Proc. § 704.010 and will receive credit towards the sale in this amount. *Sched. C, id.*

Trustee indicates that the estate is in receipt of \$4,000.00. Doc. #23. The remaining balance of \$375.00 will be paid by Debtor prior to the sale hearing date. Trustee believes the sale price is fair when considering the fair market value of the Vehicle and Debtor's claimed exemption. *Id.* Trustee has not agreed to pay commissions to any party in connection with the proposed sale. *Id.*

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

Accordingly, the court intends to GRANT this motion. 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 (1) subject to all liens and encumbrances of record and (2) "as-is, where-is," with no representations or warranties, express, implied, or otherwise from the bankruptcy estate, the Debtor, or their representatives.

15. [23-10990](#)-B-7 **IN RE: NOE CORTEZ**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
5-9-2023 [\[6\]](#)

NO RULING.

16. [23-10792](#)-B-7 **IN RE: TORI/SOMNITH KHUNPHIXAY**
[JRL-1](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
6-12-2023 [\[17\]](#)

SOMNITH KHUNPHIXAY/MV
JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Tori Xayavong Khunphixay and Somnith Khunphixay (collectively "Debtors") move for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of Capital One Bank (USA), N.A. ("Creditor") in the sum of \$3,198.68 and encumbering residential real property located at 21360 Glen Oaks Road, Madera, CA 93638 ("Property").

This matter will be DENIED WITHOUT PREJUDICE for failure to comply with the Federal Rules of Bankruptcy Procedure ("Rule").

Creditor was not properly served. Creditor was a bank that was formerly insured by the Federal Deposit Insurance Corporation ("FDIC") until it was merged with and became part of Capital One, National Association on October 3, 2022.¹³ Capital One, National Association is a bank that is presently insured by the FDIC.¹⁴ Therefore, Creditor and Capital One, National Association was or currently is an "insured depository institution" under 11 U.S.C. § 101(35)(A) and 12 U.S.C. § 1813(c)(2) (an "insured depository institution" is any bank insured by the FDIC).

Service on insured depository institutions is governed by Rule 7004(h), which requires service to be made by certified mail and addressed to an officer, unless one of three exceptions specified in subsections (h)(1) to (h)(3) have been met. There is no indication that any of these exceptions apply. Under Rule 7004(i), an officer does not need to be named if the envelope is addressed to the proper address and directed to the attention of the officer's position or title.

Here, Debtors served the motion to avoid lien and supporting documents on Creditor, Creditor's former state court attorney, and the CEO and registered agent for service of process for Capital One, National Association. Docs. #21, #27. Although service on the CEO for Capital One, National Association would have been sufficient, there is no indication that such service was accomplished via certified mail. *Id.* Each of the certificates indicate that Creditor and Capital One, National Association were served via regular U.S. mail, rather than by certified mail. *Id.*

Accordingly, this motion will be DENIED WITHOUT PREJUDICE because neither Creditor nor Capital One, National Association were properly served in accordance with Rule 7004(h) as incorporated by Rules 4003(d) and 9014(b).

¹³ FDIC Cert. #33954, *BankFind Suite*, <https://banks.data.fdic.gov/bankfind-suite/bankfind/details/33954> (visited July 6, 2023).

¹⁴ FDIC Cert. #4297, *BankFind Suite*, <https://banks.data.fdic.gov/bankfind-suite/bankfind/details/4297> (visited July 6, 2023).

17. [23-10792](#)-B-7 **IN RE: TORI/SOMNITH KHUNPHIXAY**
[JRL-2](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
6-12-2023 [\[22\]](#)

SOMNITH KHUNPHIXAY/MV
JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Tori Xayavong Khunphixay and Somnith Khunphixay (collectively "Debtors") move for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of Portfolio Recovery Associates, LLC ("Creditor") in the sum of \$2,089.46 and encumbering residential real property located at 21360 Glen Oaks Road, Madera, CA 93638 ("Property").¹⁵

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of

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

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against joint debtor Tori Xayavong in favor of Creditor in the amount of \$2,089.46 on October 19, 2020. *Ex. A*, Doc. #25. The abstract of judgment was issued on April 23, 2021 and was recorded in Madera County on May 6, 2021. *Id.* That lien attached to Debtors' interest in Property. *Id.*; Doc. #24.

As of the petition date, Property had an approximate value of \$513,000.00. *Id.*; *cf. Sched. A/B*, Doc. #1. Debtors claimed a \$300,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. *Sched. C*, *id.*

Property is encumbered by a first deed of trust in favor of Carrington Mortgage Services ("CMS") in the amount of \$246,837.00. *Sched. D*, *id.* Property is also encumbered by a second judgment lien in favor of Capital One Bank (USA), N.A. ("Capital One") against joint debtor Tori T. Xayavong in the amount of \$3,198.68, which was recorded in Madera County on September 7, 2021 and is the subject of matter #16 above. *Id.*; *Ex. A*, Doc. #20; see also, JRL-1. Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. CMS	\$246,837.00	12/2016	Unavoidable
2. Creditor	\$2,089.46	05/06/21	Avoidable; matter #17 (JRL-2)
3. Capital One	\$3,198.68	09/07/21	Avoidable; matter #16 (JRL-1)

When a debtor seeks to avoid multiple liens under § 522(f)(1) and there is equity to which liens can attach, the liens must be avoided

in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*;
 § 522(f) (2) (B).

However, this reverse order of priority rule is only applicable when there is equity available for otherwise-avoidable liens to attach. *Hanger*, 217 B.R. at 596 ("The 1994 amendment adopted the full avoidance approach and the formula given is simply a restatement of the *Brantz* formula. This formula is more favorable for debtors by allowing them the full benefit of the exemption and the benefit of any post-avoidance appreciation in the value of the property."), *citing In re Witkowski*, 176 B.R. 114, 115, 117-18 (Bankr. D. Mass. 1994), H.R. Rep. 103-834, 103rd Cong., 2nd Sess. 35-37 (Oct. 4, 1994); *cf. All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007) (specifying reverse priority rule and order of operations for the § 522(f) formula in the case of co-owned property with equity to which liens may attach).

"Under the full avoidance approach, as used in *Brantz*, the only way a lien would be avoided 'in full' was if the debtor's gross equity were equal to or less than the amount of the exemption." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 596 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999), *citing In re Brantz*, 106 B.R. 62, 68 (Bankr. E.D. Pa. 1989) ("Avoidance of all judicial liens results unless (3) [the result of deducting the debtor's allowable exemptions and the sum of all liens not avoided from the value of the property] is a positive figure."), *citing In re Magosin*, 75 B.R. 545, 547 (Bankr. E.D. Pa. 1987) (judicial lien was avoidable in its entirety where equity is less than exemption).

Here, there is no equity to support any judicial liens. Even if Capital One's judicial lien is excluded from the § 522(f) (2) calculation, Creditor's lien is avoidable because the unavoidable liens plus Debtors' exemption exceed the value of Property under § 522(f) (2):

Amount of judgment lien	\$2,089.46
Total amount of unavoidable liens	+ \$246,837.00
Debtors' claimed exemption in Property	+ \$300,000.00
<i>Sum</i>	= \$548,926.46
Debtors' claimed value of interest absent liens	- \$513,000.00
Extent lien impairs exemption	= \$35,926.46

Meyer, 373 B.R. at 91; *accord. Hanger* 217 B.R. at 596, *Higgins v. Household Fin. Corp. (In re Higgins)*, 201 B.R. 965, 967 (B.A.P. 9th Cir. 1996); *cf. Brantz*, 106 B.R. at 68, *Magosin*, 75 B.R. at 549-50, *In re Piersol*, 244 B.R. 309, 311 (Bankr. E.D. Pa. 2000). Since there is no equity for liens to attach and this case does not involve fractional interests or co-owned property with non-debtor third

parties, the § 522(f)(2) formula can be re-illustrated using the Brantz formula with the same result:

Fair market value of Property	\$513,000.00
Total amount of unavoidable liens	- \$246,837.00
Homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= (\$33,837.00)
Creditor's judicial lien	- \$2,089.46
Extent Debtors' exemption impaired	= (\$35,926.46)

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

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

This ruling does not in any way affect attachment of the judgment lien in favor of Capital One.

¹⁵ Debtors complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor's registered agent for service of process via regular U.S. mail on June 12, 2023. Doc. #28.