UNITED STATES BANPTCY COURT
Eastern District of California
Honorable René Lastreto II
Department B – Courtroom #13
Fresno, California
Hearing Date: Thursday, July 11, 2024

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

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

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

Please also note the following:

- Parties in interest and/or their attorneys may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.

- Members of the public and the press who wish to attend by ZoomGov may only listen in to the hearing using the Zoom telephone number. Video participation or observing are not permitted.

- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may attend in person unless otherwise ordered.

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

1. Review the Pre-Hearing Dispositions prior to appearing at the hearing.

2. Parties appearing via CourtCall are encouraged to review the CourtCall Appearance Information. If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. 24-11015-B-11 **IN RE: PINNACLE FOODS OF CALIFORNIA LLC**
MJB-5

MOTION TO CONSOLIDATE LEAD CASE 24-11017 WITH 24-11015, 24-11016
5-29-2024 [76]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's findings and conclusions. Order preparation determined at the hearing.

In this motion, three separate but closely-related debtor-corporations which have each filed for Chapter 11, Subchapter V, move the court for substantive consolidation of their estates, and it appears the three have filed substantially similar motions in each separate case. For convenience, the court will address the issues raised by all these motions in the prehearing disposition of the instant motion and will incorporate it be reference in the court's rulings for the related motions.

The three debtor-corporations are (1) California QSR Management, Inc. ("QSR"), the debtor corporation in Case No. 24-11017 ("the QSR Case"); Tyco Group LLC ("Tyco"), the debtor-corporation in Case No. 24-11016 ("the Tyco Case"); and Pinnacle Foods of California LLC ("Pinnacle"), the debtor-corporation in Case No. 24-11015 ("the Pinnacle Case")(collectively "the Debtor Entities" and "the Debtor Entity Cases"). Except where noted otherwise, references to the docket will refer to the docket of Pinnacle Case.

The Debtor Entities move for substantive consolidation of all three of their estates. Doc. #82. The Debtor Entities aver that substantive consolidation is warranted because the three Debtor Entities

> have been operating as a single unity enterprise and because the financial affairs and identity between [the three Debtor Entities] are s so intertwined that untangling them would be extremely burdensome and would threaten the realization of any nest assets for their creditors. All three Debtor Entities are managed by the same person, Imran Damani; the Debtor Entities share revenue and expenses; and the Debtor Entities' creditor with the largest claim is the same in all three

> bankruptcies: Signature Financial & Leasing, LLC ("Signature").

Id.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

On June 21, 2024, Tiffany Carroll, Acting US Trustee for Region 15 ("U.S. Trustee") timely filed an Objection to substantive consolidation in all three cases. *See Doc. #104; QSR Case at Doc. #110; and Tyco Case at Doc. #93*. The court accepts the Objection as applicable to all three cases. On July 3, 2024, Walter R. Dahl ("Dahl"), the Subchapter V Trustee, filed an untimely Response in which he joined the Trustee's Objection and also provided additional arguments for denying the motions. *See Doc. #108; QSR Case at Doc. #114; Tyco Case at Doc. #97.* Flagstar filed a late joinder in opposition as to the Pinnacle and Tyco cases. *See Doc. #115; QSR Case at Doc. #122; Tyco Case at Doc. #103.* The Flagstar filings join the Objections filed by both the U.S. Trustee and Dahl but present no new arguments. *Id.* No other parties have responded to any of these motions for substantive consolidation, and the defaults of all such nonresponding parties in interest are entered.

The Ninth Circuit BAP has explained substantive consolidation thusly:

> Substantive consolidation is an uncodified, equitable doctrine allowing the bankruptcy court, for purposes of the bankruptcy, to "combine the assets and liabilities of separate and distinct—but related—legal entities into a single pool and treat them as though they belong to a single entity." *In re Bonham*, 229 F.3d at 764. Although it is a case-by-case inquiry, the Ninth Circuit has adopted a two-factor test to guide the determination of whether substantive consolidation is appropriate: "(1) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit; or (2) whether the affairs of the debtor are so entangled that consolidation will benefit all creditors." *Id.* at 766 (quotation omitted) (adopting the test set forth by the Second Circuit in *Union Sav. Bank v. Augie/Restivo Banking Co., Ltd. (In re Augie/Restivo Baking Co., Ltd.)*, 860 F.2d 515, 519 (2d

> Cir. 1988)). Either factor is sufficient to support substantive consolidation. *Id.*
>
> However, "when the Bonham case is considered in its complete context, it is clear that the Ninth Circuit did not require bankruptcy courts to look only to the two [factors]... set forth above, in some 'Pavlovian' way." *In re Bashas' Inc.*, 437 B.R. 874, 929 (Bankr. D. Ariz. 2010) (citing *In re Bonham*, 229 F.3d at 767). "The basic rules, and the discretion to apply them, stem solely and completely from a weighing of the equities, and a decision which emanates from one guiding light: "Is this reasonable under the circumstances?" *Id.* at 929.

Leslie v. Mihranian (In re Mihranian), No. CC-17-1048-KuSA, 2017 Bankr. LEXIS 4124, at *9 (B.A.P. 9th Cir. Dec. 4, 2017)

Thus, the court must first consider the two *Bonham* factors: (1) whether the creditors of the Debtor Entities dealt with them as a single economic unit and did not rely on their separate identities in extending credit, and/or (2) whether the affairs of the Debtor Entities are so entangled that consolidation will benefit all creditors, with an affirmative answer for either question justifying consolidation. *Id.* The ultimate question for the court, after weighing all the equities, is: "Is it reasonable to consolidate the Debtor Entities under these circumstances." *Id.*

"Substantive consolidation should be considered with extreme caution and granted only in extraordinary situations." *In re Bonham*, 226 B.R. 56, 88 (Bankr. D. AK 1998).

With those principles in mind, some discussion of the individual Debtor Entities is called for. According to the Declaration of Imran Damani, the principal and sole owner of all three Debtor Entities, Tyco was formed to enter into a Popeyes franchise agreement and to operate a restaurant in San Diego County. Doc. #84. Damani later formed Pinnacle, through which he entered into franchise and lease agreements for six additional Popeyes franchises in Fresno County. Damani formed QSR at the same time as Pinnacle to manage the revenue and expenses for the seven franchise restaurants held between Tyco and Pinnacle. *Id.* Pinnacle is party to six lease agreements and six franchise agreements, while Tyco is party to one each. *Id.* QSR manages revenues for both other Debtor Entities and pays most of Pinnacle's expenses, including payroll, and all of Tyco's, which does not even have any cash accounts. *Id.*

Damani declares that the largest creditor of all three Debtor Entities is Signature, which "holds a combined scheduled $3,009,466.00 worth of secured claims" against each of the Debtor Entities. *Id.* This is a secured debt jointly owed by all three Debtor Entities, as the U.S. Trustee concedes. Doc. #104. Damani states that Pinnacle is party in two pending lawsuits, one in California and one in Florida. QSR Case at Doc. #84. Tyco is a party to the California case but not the Florida case. *Id.* QSR is apparently not a party to either lawsuit.

The U.S. Trustee, in opposing consolidation, clarifies that QSR is defendant in two employment lawsuits to which neither Pinnacle nor Tyco are parties; Pinnacle lists five lawsuits, four as plaintiff, and one as defendant; and Tyco is co-plaintiff to one of Pinnacle's lawsuits but lists no other lawsuits as plaintiff or defendant in its filings. Doc.# 105. The Trustee also provides a helpful spreadsheet which outlines the different assets and liabilities of each of the three Debtor Entities as described in their respective Schedules. *Id.*

Beginning with the first *Bonham* factor, the U.S. Trustee argues, and the court agrees, that creditors do not appear to have treated the Debtor Entities as a single unit. As the Trustee notes, the three entities filed markedly different Schedules D and E/F, demonstrating that they largely had different creditors and different types of debts. Moreover, with regard to Signature (or "Flagstar"), it appears that this common debt arose from a loan undertaken to refinance several U.S. Small Business Administration loans made during the COVID-19 pandemic. Doc ##82,84. Notably, however, while the assets of all three Debtor corporations secured the Signature loan, it appears that the three Debtor Entities each acted as co-signers and co-obligors. This is, in other words, the exact opposite of the treatment one might expect if Signature were treating the Debtor Entities as a single economic unit. In addition, the Damani declaration states that QSR pays *expenses* for all the entities. Doc. #84. There is no evidence offered that creditors relied on a single entity in *extending credit,* a significant factor under *Bonham.* In fact, no creditor has supported the substantive consolidation of these entities. They have remained silent. The objections are from the U.S. Trustee and the Subchapter V Trustee. Finally, the court notes that the Debtor Entities do not even raise any significant arguments in favor of the first *Bonham* factor.

In reply, the debtors now claim that their largest single secured creditor, Flagstar "dealt with the debtors as one economic unit." First, the only evidence of this is the Damani reply declaration. There is no evidence from Flagstar(Signature) supporting the fact. Second, the Flagstar claim apparently represents a transfer of SBA loans made to the separate entities. That does not mean separate loans were not separately underwritten. Third, though perhaps the largest claim, Flagstar is not the only creditor. The best interests of all creditors must be considered in the court's equitable analysis.

Instead, the Debtor Entities rely on the second factor and the proposition that:

> The Debtor Entities are sufficiently intertwined that substantive consolidation is necessary for creditors to be treated equitably, and the cost of disentangling the operations of each Debtor Entity would be onerous enough as to deplete the estate against the interest of the creditors, the estate, and the Debtor Entities.

Doc. ##82,84. The Debtor Entities state correctly that substantive consolidation is justified where no accurate allocation of assets is

possible or where the time and expenses necessary to disentangle the companies would threaten the ability of creditors to recover. *Id.* As the Trustee notes, however, this statement is belied by the Debtor Entities' own filings, which reflect that Debtors have different debts (except for the common Signature/Flagstar debt), different assets which may secure different debts, different priority and unsecured debts, and different executory contracts and unexpired leases. Doc. #104. The franchisor dealt with Pinnacle and Tyco separately as even the Damani declaration states that Tyco and Pinnacle are parties to contracts and operate Popeyes restaurants. *Id.*

Further, the Damani declaration is conclusory by stating that disentangling is "onerous."

In reply, the debtors claim that each debtor has different assets/liabilities because they each performed different functions. But that does not support the contention that the task of disentangling would endanger creditor recovery.

The Debtor Entities appear to rely primarily on the fact that all three entities had a common ownership and that QSR managed revenue and expenses for all three entities, with Pinnacle and Tyco generating the revenues used by QSR to pay the expenses, including payroll for all three entities. Doc. #82. The Debtor Entities further state that this court "must determine that the assets and liabilities of all the consolidated parties are substantially the same." *Id.*

In this case, however, that is patently untrue. Each of the three entities has filed Schedules outlining their respective assets and liabilities, and, other than the joint Signature/Flagstar loan, they do not appear to overlap. Certainly, Pinnacle has no interest in the assets of Tyco and vice versa. And the court does not see how QSR's role in managing the revenues of the other two entities rises to the level of a commingling that is impossible to untangle.

Somewhat oddly, the Debtor Entities also point to *In re Logistics Info Sys., Inc.*, for a list of other factors which they suggest "are relevant in assessing whether substantive consolidation is appropriate." Doc. #82 (citing *Braunstein v. Sperbeck (In re Logistics Info. Sys.)*, Nos. 03-10886-JBR, 04-1188, 2009 Bankr. LEXIS 652 (Bankr. D. Mass. Mar. 18, 2009)). This case is inapposite. In *In re Logistics*, the motion for substantive consolidation was brought by the Trustee against the corporate defendant who had engaged in fraudulent transfers between companies owned by the same individual, and the list of factors alluded to one used in the First Circuit for consideration of whether the corporate veil may be pierced. *See In re Logistics Info. Sys.*, Nos. 03-10886-JBR, 04-1188, 2009 Bankr. LEXIS 652 at *11. The court does not find this alternative list of factors to be appropriate to the question of substantive consolidation as it is raised here.

That said, Debtors may consider jointly administering the cases which would require a separate motion and make filing numerous documents less onerous. Also, there is nothing preventing the

Debtors in the context of a Plan from proposing transferring assets to other entities or consolidating with other entities. *See 11 U.S.C. § 1123 (a)(5)(A)-(C); 11 U.S.C. § 1123 (b)(4) and (b)(6).*

Based on the foregoing analysis, neither *Bonham* factor is adequately demonstrated. The court is inclined to DENY the motion for substantive consolidation.

2. 24-11015-B-11 **IN RE: PINNACLE FOODS OF CALIFORNIA LLC**
MJB-5

MOTION TO CONSOLIDATE LEAD CASE 24-11015 WITH 24-11016, 24-11017
5-31-2024 [82]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's findings and conclusions. Order preparation determined at the hearing.

Based on the analysis of the substantive consolidation issue in these three interrelated case as outlined under *Item #1, above*, the court is inclined to DENY this motion, which is substantially identical to Item #1.

3. 24-11015-B-11 **IN RE: PINNACLE FOODS OF CALIFORNIA LLC**
MJB-6

MOTION TO EXTEND EXCLUSIVITY PERIOD FOR FILING A CHAPTER 11 PLAN AND MOTION/APPLICATION TO EXTEND EXCLUSIVITY PERIOD FOR FILING A CHAPTER 11 PLAN AND DISCLOSURE STATEMENT FILED BY DEBTOR PINNACLE FOODS OF CALIFORNIA LLC
6-19-2024 [100]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied in part and granted in part. Deadline to file Plan is extended to August 2, 2024.

ORDER: The minutes of the hearing will be the court's findings and conclusions. Order preparation determined at the hearing.

In this motion, three separate but closely-related debtor-corporations which have each filed for Chapter 11, Subchapter V, move the court for an extension of the exclusivity period for fling a Chapter 11 plan in each of the three cases. Doc. #100. It appears the three debtor-corporations have filed substantially similar motions in each separate case. For convenience, the court will address the issues raised by all these motions in the prehearing disposition of the instant motion and will incorporate it be reference in the court's rulings for the related motions.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The three debtor-corporations are (1) California QSR Management, Inc. ("QSR"), the debtor corporation in Case No. 24-11017 ("the QSR Case"); Tyco Group LLC ("Tyco"), the debtor-corporation in Case No. 24-11016 ("the Tyco Case"); and Pinnacle Foods of California LLC ("Pinnacle"), the debtor-corporation in Case No. 24-11015 ("the Pinnacle Case")(collectively "the Debtor Entities" and "the Debtor Entity cases"). Except where noted, references to the docket will refer to the docket entries for the Pinnacle Case.

On July 3, 2024, Walter R. Dahl, Chapter 11, Subchapter V trustee ("Dahl"), filed a response to this motion. Doc. #109; *see also QSR Case Doc. #115; Tyco Case Doc. #98.* On July 8, 2024, creditor Flagstar Financial 7 Leasing LLC ("Flagstar") also filed an

opposition in all three cases. Doc. #117; *see also QSR Case Doc. # 124: Tyco Case Doc. #105.*

The Debtor Entities seek an extension from July 22, 2024, to October 18, 2024, in which to file a plan in this case. Doc. #100. The Debtor Entities argue that:

> The Court's ruling on the Consolidation Motion will materially affect the Debtor's proposed plan of Reorganization. The Debtor will need to cross-reference the claims between the three Debtor Entities, and from that information determine the amounts of disputed claims and the amount of pro-rata shares for all unsecured creditors. Extension of the deadline to file the disclosure statement and Plan is necessary for Debtor to factor in the Court's ruling on the Consolidation motion.

Doc. #100. First, no Disclosure Statement is necessary in a Subchapter V case absent a court order. § 1181(b). The court has not ordered the preparation of a disclosure statement here. So, one major hurdle asserted by the Debtors is non-existent.

Second, the Debtor Entities also argue that "[r]equiring Debtor to file a placeholder plan, simply to meet the statutory deadline will unnecessary expense, waste Court resources, and will not protect the creditors' interests in this case." *Id.* Finally, the Debtor Entities suggest that the extension will give them more time to show financial viability, as they will have filed additional monthly operating reports that will give a more accurate picture of their income and expenses post-petition. *Id.*

The Debtor Entities correctly note that the court may extend the deadline to file a plan "if the need for the extension is attributable to circumstances for which debtor should justly be held accountable." *Id. (quoting 11 U.S.C. § 1189(b).* They further acknowledge that the court's inquiry focuses on whether the need for an extension rose from circumstances beyond the Debtor Entities' control. *Id; See 8 Collier on Bankruptcy ¶ 1221.01[2] (Richard Leven & Henry J.Sommer eds., 16th ed. 2020.*

That said, the Debtor Entities' argument can be summed up as follows: They felt the need for substantive consolidation and filed a motion requesting that relief. The hearing date was set for July 11, 2024, less than two weeks before the deadline to file their Plan, and this was not reasonably within their control. Doc. #100. Dahl notes that the standard for proving that a requested extension is based on circumstances for which Debtor Entities should not "justly be held accountable" is "stringent." Doc. #109 (citing *In re Signia, Ltd.*, No. 23-14384 TBM, 2024 Bankr. LEXIS 199, at *31 (Bankr. D. Colo. Jan. 29, 2024). See also, *Stock v. Harbicht Research (In re: Stock)*, 93-55826, 1994 U.S. App. LEXIS 23896 *5(9thCir. Aug. 29,1994) (citing *Colliers* in construing § 1221 requiring a "stringent" consideration of the extension request.)

In *Signia*, the motion for extension under consideration arose because a motion by the debtor had been objected to and set for

hearing, which the court found "obviously insufficient" to justify an extension:

> The Debtor's only excuse for not filing its Subchapter V plan (asserted in conclusory fashion with no affidavit or evidence) is that its Financing Motion had been objected to by Male Excel and was scheduled for a Court hearing. That type of rationale is not beyond the Debtor's control. The Debtor could have filed its Financing Motion earlier, asked for expedited consideration, or reached some agreement with Male Excel. Alternatively, the Debtor could have drafted around the issue in a plan: presenting a proposal in the event the Debtor prevailed on the Financing Motion and a different proposal if the Debtor lost the Financing Motion.

In re Signia, Ltd., No. 23-14384 TBM, 2024 Bankr. LEXIS 199, at *31-32.

Debtors rely on *In re Baker*, 625 B.R. 27 (Bankr. S.D. Tex. 2020) which developed a four-part test to assist the court in ruling on such motions. The court, according to *Baker* should consider whether the circumstances for the request were within the debtor's control; progress of the debtor in proposing a Plan; the deficiencies preventing a timely filing are reasonably related to identified circumstances; whether any party in interest has moved to dismiss or objected to extending the deadline.

Applying this test as debtor requests fails in three ways. First, there is no evidence of the progress in proposing a Plan. Debtors claim they will tell the court about the progress at the hearing but that suggests there was no progress before this motion was filed and is speculative. Second, the record does not sufficiently tie the delay in filing to the ruling on the substantive consolidation motion. As noted, the Debtors could propose consolidation in a Plan. There is no stated need to seek a ruling on consolidation before proposing a Plan. Third, the debtors chose to file this motion and set a hearing on less than full notice. So, we do not know if there are objections to the extension until the hearing.

There is at least one other test which may be applicable. *In re Trinity Legacy Consortium*, 656 B.R. 429 (Bankr. D. N.M. 2023). In addition to the *Baker* factors this "equitable test" considers prejudice by granting or refusing to grant the extension. Here the prejudice to the debtors is potential dismissal or conversion under § 1112 (b)(4), (5). It also considers the length of the extension. Here the request is to October which is antithetical to the expedience with which Subchapter V cases are to proceed. The test also examines the good faith of the debtors. There has been reason for the court to give the "side eye" to the debtors' early attempts to pay significant salaries to insiders with cash collateral. But the court is not prepared to find bad faith currently.

The court agrees with the reasoning of *Signia* and finds that the mere fact that a hearing on the substantive consolidation motion was scheduled for 11 days prior to the deadline to file a plan is not

sufficient to justify an extension of the filing deadline as requested by the Debtor Entities. In applying the equitable test, there is little prejudice to creditors for a short extension to file a Plan. Further, dismissal or conversion would be prejudicial to creditors here leaving nothing for potential creditor recovery. Accordingly, the court is inclined to DENY this motion in part and GRANT it in part giving the debtors until August 2, 2024, to file a Plan in the three cases.

4. 24-11016-B-11 **IN RE: TYCO GROUP LLC**
MJB-4

MOTION TO CONSOLIDATE LEAD CASE 24-11016 WITH 24-11015, 24-11017
5-31-2024 [74]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's findings and conclusions. Order preparation determined at the hearing.

Based on the analysis of the substantive consolidation issue in these three interrelated case as outlined under *Item #1, above*, the court is inclined to DENY this motion.

5. 24-11016-B-11 **IN RE: TYCO GROUP LLC**
MJB-5

MOTION TO CONSOLIDATE LEAD CASE 24-11017 WITH 24-11015, 24-11016
5-29-2024 [67]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's findings and conclusions. Order preparation determined at the hearing.

Based on the analysis of the substantive consolidation issue in these three interrelated case as outlined under *Item #1, above*, the court is inclined to DENY this motion.

6. 24-11016-B-11 **IN RE: TYCO GROUP LLC**
MJB-5

MOTION TO EXTEND TIME TO FILE PLAN OF REORGANIZATION
6-19-2024 [89]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied in part and granted in part. Deadline to file Plan is extended to August 2, 2024.

ORDER: The minutes of the hearing will be the court's findings and conclusions. Order preparation determined at the hearing.

Based on the analysis of the motion for extension filed in these three interrelated case as outlined under *Item #3, above*, the court is inclined to DENY IN PART AND GRANT IN PART this motion. The Deadline to file the plan is extended to August 2, 2024.

7. 24-11017-B-11 **IN RE: CALIFORNIA QSR MANAGEMENT, INC.**
MJB-5

MOTION TO CONSOLIDATE LEAD CASE 24-11017 WITH 24-11015, 24-11016
5-29-2024 [79]

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

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

DISPOSITION: Withdrawn.

No order is required.

On June 3, 2024, California QSR Management, Inc. withdrew this *Motion to Consolidate*. Accordingly, this motion (Doc. #79) is WITHDRAWN. This Debtor's second *Motion to Consolidate* (Doc. #88) is still before the court and will be addressed under Item # 8, below.

8. 24-11017-B-11 **IN RE: CALIFORNIA QSR MANAGEMENT, INC.**
MJB-5

MOTION TO CONSOLIDATE LEAD CASE 24-11017 WITH 24-11015, 24-11016
5-31-2024 [88]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's findings and conclusions. Order preparation determined at the hearing.

Based on the analysis of the substantive consolidation issue in these three interrelated case as outlined under *Item #1, above*, the court is inclined to DENY this motion.

9. 24-11017-B-11 **IN RE: CALIFORNIA QSR MANAGEMENT, INC.**
MJB-6

MOTION TO EXTEND TIME TO FILE PLAN OF REORGANIZATION
6-19-2024 [106]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied in part and granted in part. Deadline to file Plan is extended to August 2, 2024.

ORDER: The minutes of the hearing will be the court's findings and conclusions. Order preparation determined at the hearing.

Based on the analysis of the motion for extension filed in these three interrelated case as outlined under *Item #3, above*, the court is inclined to DENY IN PART AND GRANT IN PART this motion. The Deadline to file the plan is extended to August 2, 2024.

10. 19-10423-B-12 **IN RE: KULWINDER SINGH AND BINDER KAUR**

MOTION FOR PAYMENT OF UNCLAIMED FUNDS IN THE AMOUNT OF $ 4444.00 WITH ANISHA BLODGETT
5-22-2024 [361]

DAVID JOHNSTON/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The movant will prepare the order.

Anisha Blodgett ("Movant") has filed the instant *Motion for Payment of Unclaimed Funds* and seeks to recoup the sum of $4,444.00 from the unclaimed dividends paid into the court in the underlying Chapter 12 proceeding ("the Proceeding"). Doc. #361. The Proceeding was commenced on February 6, 2019, and a discharge was entered on December 21, 2023. Doc. ##1,357. On October 23, 2023, the Chapter 12 trustee filed with the court a *Notice of Turnover of Unclaimed Funds/Dividends* indicating that the sum of $4,444.00 was paid by check into the Treasury Registry representing unclaimed creditors funds in that amount which should have gone to Central Air Conditioning, Inc. ("the Creditor"), Court Claim No. 6-1. Doc. #344.

On May 22, 2024, Movant filed the instant motion, accompanied *inter alia* by documents that purport to be (1) a notarized Statement of Authority executed by Berta Deochoa, Secretary and CFO of the Creditor, on behalf of herself and Carlos Deochoa, CES of the Creditor; (2) photocopies of driver's licenses confirming the identity of Berta Deochoa and Carlos Deochoa; and (3) a Certificate of Dissolution filed with the California Secretary of State indicating that Creditor has been dissolved effective July 11, 2019, which was signed by the Deochoas. Doc. #361. Based on the moving papers, it appears that Creditor had been dissolved prior to the filing of the underlying Chapter 12 case and that any rights to the unclaimed funds passed to the Deochoas, who contracted with Movant to obtain the funds.

The court is satisfied that Movant has demonstrated that entitlement to the unclaimed funds properly owed to Creditor.

The motion was filed on May 22, 2024, and, consistent with its internal procedures, the Clerk's Office generated a *Notice of Hearing on Application for Payment of Unclaimed Funds* on May 29, 2024. Docs. ##362-363.

Although this matter was set on 28 days' notice, the certificate of service was one generated by the clerk's office which contains none of the language pertaining to the requirement of a written response when a matter is set for hearing under LBR 9014-1(f)(1). In light of the Movant's reliance on court-generated documents in its filing, the court is inclined to overlook any procedural defects. The moving papers include a court-generated certificate of service which indicates that Movant properly served the U.S. Attorney's Office as

required by 28 U.S.C. § 2042. Accordingly, this matter will proceed as scheduled, and any opposition may be presented at the hearing. In the absence of any such opposition, this motion will be GRANTED.

11. 24-10546-B-12 **IN RE: MAXIMINIO/MARIE SILVEIRA**
CAE-1

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION
3-5-2024 [1]

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Continued to August 27, 2024, at 9:30 a.m.

ORDER: The Court will prepare the order.

This matter will be CONTINUED to August 27, 2024, at 9:30 a.m. to be heard in conjunction with the Debtors' continued confirmation hearing. *See Item 12, below.*

12. 24-10546-B-12 **IN RE: MAXIMINIO/MARIE SILVEIRA**
FW-5

MOTION TO CONFIRM CHAPTER 12 PLAN
6-6-2024 [82]

MARIE SILVEIRA/MV
PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Continued to August 27, 2024, at 9:30 a.m.

ORDER: The Court will prepare the order.

Pursuant to the Joint Stipulation which was filed by Debtors and Bank of the Sierra on June 27, 2024 (Doc. #106), this matter will be CONTINUED to August 27, 2024, at 9:30 a.m.

13. 24-10546-B-12 **IN RE: MAXIMINIO/MARIE SILVEIRA**
FW-6

MOTION TO VALUE COLLATERAL OF GOLDEN 1 CREDIT UNION
6-13-2024 [91]

MARIE SILVEIRA/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.

Maximinio and Marie Silveira, Chapter 12 debtors (collectively "Debtors"), move for an order valuing a 2014 GMC Acadia Denali sport utility vehicle ("Vehicle") at $6,000.00 under 11 U.S.C. § 506(a). Doc. #91. Vehicle is encumbered by a purchase money security interest originally in favor of Mendozas Auto Sales and assigned to Golden 1 Credit Union ("Creditor"). Doc. #1 (*Sched. D*); POC 7-1 (Attachment 1). Debtor complied with Fed. R. Bankr. P. 3012(b) and 7004(b)(3) by serving Creditor's registered agent and at the address listed in Creditor's proof of claim on June 16, 2024. Doc. #95.

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 13 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.

> An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount

> of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C.S. § 506(a)(1).

Joint debtor Maximinio Silveira declares Vehicle has a replacement value of $6,000.00. Doc. #93. Debtor is competent to testify as to the value of the Vehicle. 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).

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Creditor's secured claim will be fixed at $6,000.00. The proposed order shall specifically identify the collateral and the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 12 plan.

14. 23-10457-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
MB-4

MOTION FOR COMPENSATION BY THE LAW OFFICE OF MCCORMICK, BARSTOW, SHEPPARD, WAYTE & CARRUTH LLP FOR DANIEL L WAINWRIGHT, SPECIAL COUNSEL(S)
6-11-2024 [1853]

DANIEL WAINWRIGHT/MV
RILEY WALTER/ATTY. FOR DBT.
DANIEL WAINWRIGHT/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order that conforms with the opinion below.

McCormick Barstow, LLP ("Applicant") seeks approval of a final allowance of compensation under 11 U.S.C. §§ 330 and 331 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as counsel for Madera Community Hospital, the reorganized debtor in the above-styled case ("MCH" or "Debtor"). Doc. #1853. Specifically, the fees and expenses were incurred in relation to a state court lawsuit brought against MCH ("the Kimura matter." *Id.* Applicant also seeks final approval of earlier interim orders regarding fees and costs relating to two other civil actions or potential civil actions against MCH ("the Mendoza matter" and "the Saenz matter"). *Id.*

Applicant was employed to perform services under § 327 of the Code pursuant to an order of this court dated May 11, 2023. Doc. #399. In this Application, Applicant seeks **$2,206.00** in fees based on 8.7 billable hours at a blended attorney hourly rate of $250.00 and

$0.00 in expenses from March 10, 2023, through May 7, 2024, for a total compensation award of **$2,206.00**. Doc. #1853. Applicant did not incur any expenses during this period. *Id.*

Applicant was previously awarded fees and expenses as follows:

Date of Hearing	Fees Allowed	Costs Allowed	Subject Matter
9/28/23	$6,270.00	$2,664.26	Saenz
9/28/23	$3,300.00	$0.00	Mendoza
12/19/23	$797.99	$267.75	Saenz

In the Saenz and Mendoza matter, Applicant had accepted a $10,000.00 retainer for each case, but the Kimura matter was not covered by a prior retainer. Doc. #1856.

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) analysis of a potential civil matter related to the underlying bankruptcy. Doc. ## 1853, 1855, 1856. The court finds the services and expenses reasonable, actual, and necessary. Karen Paolinelli, the Debtor's representative, declares that she has reviewed the Application and approves. Doc. #1857.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo*), 468 F.3d 592 (9th Cir. 2006).

No party in interest has responded, and the defaults of all such parties are entered. Accordingly, this motion is GRANTED. The court will approve on a final basis under 11 U.S.C. § 330 compensation in the amount of **$2,206.00** in fees and **$0.00** in expenses, which shall

be treated as an administrative expense of the estate and MCH is directed to pay such to Applicant from the first available estate funds.

The court further approves on a final basis the compensation awards made on an interim basis in prior orders of the court:

1. $6,270.00 in fees and $2,644.26 in costs awarded on September 28, 2023. Doc. #993.
2. $3,300.00 in fees and $0.00 in costs awarded on October 4, 2023. Doc. #1016.
3. $797.99 in fees and $267.76 in costs awarded on December 22, 2203. Doc. #1242.

15. 23-10457-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
WJH-84

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WARD LEGAL INC. FOR ROBERT WARD, SPECIAL COUNSEL(S)
6-11-2024 [1861]

ROBERT WARD/MV
RILEY WALTER/ATTY. FOR DBT.
ROBERT WARD/ATTY. FOR MV.

After posting the original pre-hearing dispositions, the court has modified its intended ruling on this matter.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order that conforms with the opinion below.

Ward Legal, Inc. ("Applicant") seeks approval of a final allowance of compensation under 11 U.S.C. §§ 330 and 331 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as counsel for Madera Community Hospital ("MCH"), the reorganized debtor in the above-styled case. Doc. #1861.

Applicant was employed to perform services under § 327 of the Code pursuant to an order of this court dated April 18, 2023. Doc. #260. Applicant was previously awarded $12,440.00 on an interim basis pursuant to an order of the court entered on December 21, 2023. Doc. #1230. Applicant now seeks **$35,140.00** in fees based on 80.0 billable hours and $0.00 in expenses from November 16, 2023, through May 7, 2024, for a total interim compensation award of **$35,140.00.** Doc. #1861. The fee summary is as follows:

Professional	Hours	Rate	Amount
Robert Ward	87,4	$400.00	$34,960.00
Laura Ward	0.6	$300.00	$180.00

Total	**31.10**		**$35,140.00**

Doc. ##1861, 1865. Applicant does not seek any award for expenses.

Pursuant to the court's Compensation Order, Applicant has already received 80% of the fees for the application period. Doc. #1861. Applicant now seeks allowance of the entire fee award and also payment of $11,588.00 representing the 20% holdback, as well as additional fees incurred through the effective date of May 7, 2024. *Id*.

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: assisting Debtor with business transaction advice and with healthcare transaction matters relating to a proposed sale. Doc. ##1861,1865. The court finds the services and expenses reasonable, actual, and necessary. Karen Paolinelli, the DIP representative, declares that she has reviewed the Application and approves. Doc. #1863.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo*), 468 F.3d 592 (9th Cir. 2006).

No party in interest has responded, and the defaults of all such parties are entered. Accordingly, this motion is GRANTED. The court will approve on a final basis under 11 U.S.C. §330 compensation in the total amount of **$35,140.00** in fees and **$0.00** in expenses. The outstanding 20% of that award in the amount of **$11,588.00** shall be treated as an administrative expense of the estate and MCH is directed to pay such to Applicant from the first available estate funds. The court also approves on a final basis the fees awarded in

its prior order.

16. 23-10457-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
WJH-85

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WANGER JONES HELSEY FOR RILEY C WALTER, DEBTORS ATTORNEY(S)
6-5-2024 [1823]

RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order that conforms with the opinion below.

Wanger Jones Helsley PC("Applicant") seeks approval of a fifth and final allowance of compensation under 11 U.S.C. § 330 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as counsel for Madera Community Hospital, the reorganized debtor in the above-styled case ("MCH" or "Debtor") from March 1, 2024, through May 7, 2024. Doc. #1823.

Applicant was employed to perform legal services under § 327 of the Code pursuant to an order of this court dated April 18, 2023. Doc. ##259. This motion covers fees and costs incurred from March 1, 2024, through May 7, 2024. Doc. #1823. The court has previously authorized fees as follows:

Date/Order	Fees Allowed	Costs Allowed	Payment Date
6/5/23 (#540)	$166,909.50	$5,048.45	6/7/23
7/11/23 (#678)	$138,517.00	$9,586.84	7/19/23
12/19/23 (#1229)	$311,917.50	$5,778.19	12/22/23
4/15/24 (#1678)	$263,744.00	$5,325.86	4/24/24

Applicant seeks **$93,356.50** in fees based on 219.00 billable hours at the following rates:

Personnel	Hours	Rate	Amount
Sanchez, G.	16.00	$360.00	$5,760.00
Quinn, I. (1)	2.90	$325.00	$942.50
Quinn, I. (2)	61.40	$325.00	$19,955.00
Walter, R	99.80	$595.00	$59,500.00
Ravizza, H.	6.90	$220.00	$1,518.00
Medina, N	2.10	$0.00	$0.00
Medina, N.	0.2	$190.00	$38.00
Medina, N.	29.70	$190.0	$5,643.00
Total	**219.00**		**$93,356.50**

Applicant also seeks **$3,024.25** in expenses, mostly in the form of copy and postage charges. Doc. #1825. The total final compensation award sought is **$96,380.75.** Applicant also seeks final approval and ratification of the previously allowed interim fees listed above. *Id.*

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: assumption/rejections of leases and contracts; case administration; claims administration and objections; estate and business operations; fees and employment; financing; litigation and other contested matters; plan and disclosure statement; relief from stay/adequate protection; and sales/transfers. Doc. #1825. The court finds the services and expenses reasonable, actual, and necessary. Karen Paolinelli, the Debtor's representative, declares that she has reviewed the Application and approves. Doc. #1141.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo*), 468 F.3d 592 (9th Cir. 2006).

No party in interest has responded, and the defaults of all such parties are entered.

This motion is GRANTED. The court will approve on a final basis under 11 U.S.C. § 330 compensation in the amount of **$93,356.50** in fees and **$3,024.25** in expenses. The court grants the Application for a total award of **$96,380.75.** The court further approves on a final basis the prior interim awards listed above.

11:00 AM

1. 24-11216-B-7 **IN RE: CLIFTON GINN**

REAFFIRMATION AGREEMENT WITH FORD MOTOR CREDIT COMPANY, LLC
6-21-2024 [24]

YAN SHRAYBERMAN/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

A Reaffirmation Agreement between Clifton Ginn ("Debtor") and Ford Motor Credit Company, LLC for a 2020 Ford F-150 (VIN 1FTFW1E41LKD91159) was filed on June 21, 2024. Doc. #24.

The court notes that neither the Debtor nor the representative for Ford Motor Credit Company LLC signed the Reaffirmation Agreement.

The bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship which has not been rebutted in the reaffirmation agreement. Debtor's monthly income as stated in Schedule I is $5,154.00 and expenses stated in Schedule J are $8,957.00, leaving Debtor with a negative net income of ($3,803.00). Although the Debtor's attorney executed the agreement, he did not indicate by checking the applicable box on Part C: Certification by Debtor's attorney that in his opinion the Debtor is able to make the required payment. Further, no evidence has been presented to the court to indicate how the Debtor can afford to make the payment. The Debtor claims fewer expenses (or that he has filed on all his debt and can afford the payment) but have not provided the court with an amended Schedule J. Therefore, the reaffirmation agreement with Ford Motor Credit Company LLC will be DENIED.

2. 24-10520-B-7 **IN RE: MIGUEL DIAZ**

PRO SE REAFFIRMATION AGREEMENT WITH NOBLE CREDIT UNION
6-11-2024 [23]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

A Reaffirmation Agreement between Miguel Diaz ("Debtor") and Noble Credit Union for a 2021 Chevrolet Silverado was filed on June 11, 2024. Doc. #23.

Debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by Debtor's counsel, does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

In addition, 11 U.S.C. § 524(c)(6)(A)(ii) states "An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable non-bankruptcy law, whether or not discharge of such debt is waived, only if the court approves such agreement as in the best interest of the debtor."

Here, Debtor has approximately 60 months (five years) remaining on the loan and a negative net income of ($1,187.03) remaining in the budget every month according to the Debtor's schedules.

The court finds no evidence that this Reaffirmation Agreement is in the best interest of the Debtor. Accordingly, approval of the Reaffirmation Agreement between Debtor and Noble Credit Union will be DENIED.

3. 24-11125-B-7 **IN RE: PARIS LERMA AND RACHEL ROWAN**

PRO SE REAFFIRMATION AGREEMENT WITH ONEMAIN FINANCIAL GROUP, LLC
6-7-2024 [15]

STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

A Reaffirmation Agreement between Rachael Rowan ("Debtor") and OneMain Financial Group, LLC for a 2017 Honda Civic ("Vehicle") was filed on June 7, 2024. Doc. #15.

Debtor was represented by counsel when she entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), "if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney' attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok. 2009). In this case, it appears the Debtor's attorney failed to sign the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

In addition, 11 U.S.C. § 524(c)(6)(A)(ii) states "An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable non-bankruptcy law, whether or not discharge of such debt is waived, only if the court approves such agreement as in the best interest of the debtor."

Here, the Vehicle is valued at $14,000.00 according to Debtor's Schedule B. The amount being reaffirmed by Debtor is $14,955.15 with a 20.33% interest rate. Debtor has negative equity of ($955.15) with approximately 48 months (four years) remaining on the loan and a negative net income of ($193.20) every month according to Debtor's schedules.

The court finds no evidence that this Reaffirmation Agreement is in the best interest of the Debtor. Accordingly, approval of the Reaffirmation Agreement between Debtor and OneMain Financial Group, LLC will be DENIED.

4. 24-11092-B-7 **IN RE: NICOLE HUFF**

PRO SE REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
6-24-2024 [16]

NO RULING.

5. 24-10895-B-7 **IN RE: HECTOR/MICHELLE LAGUNA**

REAFFIRMATION AGREEMENT WITH AMERICREDIT FINANCIAL SERVICES, INC.
5-15-2024 [16]

GRISELDA TORRES/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

A Reaffirmation Agreement between Hector and Michelle Laguna ("Debtors") and AmeriCredit Financial Services for a 2019 Hyundai Sonata Plug-In ("Vehicle") was filed on May 15, 2024. Doc. #16.

11 U.S.C. § 524(c)(6)(A)(ii) states "An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable non-bankruptcy law, whether or not discharge of such debt is waived, only if the court approves such agreement as in the best interest of the debtor."

Here, the Vehicle is valued at $22,412.00. The amount being reaffirmed by Debtors is $26,050.15 with an 15.99% interest rate. Debtors have negative equity of ($3,638.00) with approximately 70 months (over five years) remaining on the loan and only $3.97 remaining in the budget every month according to the Debtors' schedules.

The court finds no evidence that this Reaffirmation Agreement is in the best interest of the Debtor. Accordingly, approval of the Reaffirmation Agreement between Debtors and AmeriCredit Financial Services will be DENIED.

1:30 PM

1. 23-11003-B-7 **IN RE: JIOVANNI FERGUSON**
RTW-2

MOTION FOR COMPENSATION FOR CHRISTOPHER A. RATZLAFF, ACCOUNTANT(S)
5-20-2024 [46]

RATZLAFF TAMBERI & WONG/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order that conforms with the opinion below.

Ratzlaff Tamberi & Wong ("Applicant") seeks approval of a final allowance of compensation under 11 U.S.C. § 330 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as accountant for Irma Edmonds, Trustee in the above-styled case ("Trustee'). Doc. #46.

Applicant was employed to perform services under § 327 of the Code pursuant to an order of this court dated November 22, 2023. Doc. #43. This is Applicant's first and final request for compensation.

Applicant seeks **$1,642.32** in fees based on **6.3** billable hours from October 24, 2023, through May 14, 2024. Doc. #48. Based on the moving papers, it appears that Chris Ratzlaff was the only employee of Applicant to work on this case, and he billed at a rate of $260.00 per hour except for a single entry of 0.7 hours billed at $250.00. *Id.* Applicant does not seek an award for expenses.

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). Previous interim compensation awards under 11 U.S.C. § 331, if any, are subject to final review under § 330.

Applicant's services here included, without limitation, accounting work on behalf of the estate and reparation and filing of state and federal tax returns for the estate for the tax period ending on May 31, 2024. Doc. #48. The court finds the services and expenses reasonable, actual, and necessary. The Trustee has reviewed the Application and finds the requested fees and expenses to be reasonable. Doc. #50.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest has responded, and the defaults of all such parties are entered.

This Application is GRANTED. The court will approve on a final basis under 11 U.S.C. § 330 compensation in the amount of **$1,642.32** in fees and **$0.00** in expenses. The court grants the Application for a total award **$1,642.32** as an administrative expense of the estate and an order authorizing and directing the DIP to pay such to Applicant from the first available estate funds.

2. 24-11003-B-7 **IN RE: FITIMA GOODMAN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-11-2024 [60]

TENTATIVE RULING: This matter will proceed as scheduled.

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

ORDER: The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

3. 24-10904-B-7 **IN RE: MARGARITO/VANESSA MARTINEZ**
CAS-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-3-2024 [17]

FORD MOTOR CREDIT COMPANY
LLC/MV
MARIO LANGONE/ATTY. FOR DBT.
CHERYL SKIGIN/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.

Ford Motor Credit Company LLC ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2020 Ford Explorer XLT Sport Utility (VIN #1FMSK7DH8LGC92239) ("Vehicle"). Doc. #17. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). Id.

Margarito and Vanessa Martinez ("Debtors") did not oppose. No other party in interest timely filed written opposition. This motion will be GRANTED.

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

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtors have failed to make two complete pre-petition payments and two complete post-petition payments. The Movant has produced evidence that Debtors are delinquent at least $3,362.48. Docs. ##19, 21.

The court also finds that the Debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because Debtors are in chapter 7. *Id.* The Vehicle is valued at $26,042.00 and Debtors owe $32,027.03. Doc. #21.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtors have failed to make two (2) pre-petition payments and two (2) post-petition payments to Movant and the Vehicle is a depreciating asset.

4. 24-10705-B-7 **IN RE: JOHN/CAROLYN GOSS**
PFT-1

MOTION TO SELL
6-11-2024 [15]

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

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

DISPOSITION: Granted.

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

Chapter 7 trustee Peter L. Fear ("Trustee") seeks authorization to sell the estate's interest in a 2011 Ford F350 Super Duty LX Pickup ("Estate Asset") to John and Carolyn Goss ("Debtors"), subject to higher and better bids, for $4,000.00. Doc. #15.

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

917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

No party in interest has responded, and the defaults of all nonresponding parties in interest are entered. The motion is GRANTED, and this matter will proceed for higher and better bids only.

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

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

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

The Estate Asset is a 2011 Ford F350 Super Duty XL pickup with 98,000 miles. Debtor estimates its current value if certain repairs are made at $16,574.00. Doc. #1 (Sched. A/B). Debtors have claimed a $7,500.00 exemption in the Estate Asset pursuant to C.C.P. § 704.730. *Id.* (Sched. C). The Estate Asset is subject to a perfected lien held by Educational Employees Credit Union ("EECU"). *Id.* (Sched. D). The Trustee estimates the Estate Assets value to be only $13,934.44. Doc. #15.

Asset Description	Scheduled Value	Trustee's Value	Liens	Exemptions	Net Value
2011 Ford F350 Super Duty XL pickup with 98,000 miles.	$16,574.00	$13,934.44	$2,434.44	$7,500.00	$4,000.00

Trustee states that this sale is subject to the EECU lien and is only for the non-exempt equity in the vehicle. Doc. #17.

Trustee contends that the sale price was determined by estimating the fair market value of the property and believes that the proposed sale is in the best interests of creditors. *Id.* No commission will be paid to any party in connection with this sale, and there will be no tax consequences. *Id.* Trustee has presumably conducted due diligence and concluded the sale in the best interest of creditors and the estate.

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

The motion does not request, nor will the court authorize, the sale free and clear of any liens or interests.

Any party wishing to overbid must appear at the hearing and acknowledge that no warranties or representations are include with the Vehicle; it is being sold "as-is." Any such party will comply with the over-bid procedures as outlined in the Notice of Motion to Sell that was filed contemporaneously with the motion. *See Doc. #16.*

5. 21-10523-B-7 **IN RE: ZARINA ROSENFELD**
FW-3

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ZARINA ROSENFELD AND MICHAEL ROSENFELD
5-31-2024 [31]

IRMA EDMONDS/MV
LAYNE HAYDEN/ATTY. FOR DBT.
PETER 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 with a copy of the stipulation attached as an exhibit. The stipulation shall also be separately filed and docketed as a stipulation.

Chapter 7 trustee Irma C. Edmonds ("Trustee") requests an order approving a settlement agreement to resolve Adversary Proceeding Case No. 23-01018 ("the Adversary") to recover preferential transfers between Zarina Rosenfield ("Debtor") and Michael Rosenfield ("Michael"), Debtor's ex-husband (collectively "Defendants") pursuant to Fed. R. Bankr. P. ("Rule") 9019. Doc. #31.

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

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

Debtor filed chapter 7 bankruptcy on March 1, 2021. Doc. #1. Trustee was appointed as the interim trustee on that same date and became permanent trustee at the 341 meeting of creditors on April 65, 2022. Doc. #4; Docket generally.

While administering the Debtor's estate, Trustee became aware of pre-petition transfers of real and personal property by and between the Debtor and Michael by virtue of a Marriage Settlement Agreement ('MSA') entered into on or about February 5, 2020. Doc. #34. Trustee later initiated the Adversary to recover for the benefit of the estate the transfers by and between the Defendants as set forth in the MSA. *Id.* Specifically, Trustee contends that she is entitled to avoid the transfer of Debtor's equity via the MSA in the Defendnats' (a) Marital residence; (b) a community property construction business; (c) a community property LLC that held real property; and (d) any other assets unaffected by the MSA. *Id.*

After informal mediation and in an effort to avoid litigation with uncertain outcomes, the parties have reached a settlement *Id.* Defendants will provide a cash payment to Trustee in the amount of $49,000.00 for the benefit of the estate, and they have already tendered that amount which Trustee holds in trust. *Id.*

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

As representative of the chapter 7 bankruptcy estate, Trustee has the authority to settle claims of Debtor subject to court approval. 11 U.S.C. § 323(a). On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Rule 9019. Approval of a compromise must be based upon considerations of fairness and equity. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense,

inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

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

1. Probability of success in litigation: Defendants vigorously dispute the Trustee's claims, and both sides have been engaged in extensive discovery. While Trustee does not consider the Defendants' legal arguments sound, she notes that the results of a trial are always uncertain.

2. Collection: Absent settlement, Trustee would have to prevail at trial and then ascertain what assets Defendants have that are attachable prior to executing against said assets. Trustee will also bear the cost of litigation. If the settlement is approved, the entire settlement amount is already in Trustee's hands.

3. Complexity of litigation: While Trustee characterizes the Adversary as a straightforward application of a trustee's avoidance powers, proving actual fraud, as opposed to constructive fraud may be very difficult without testimony from the Defendants. Establishing evidence as to the value of the assets at issue would be more complex and would require expert testimony for both sides, which would increase both the complexity and expense of the case. Trustee declares that the settlement amount reflects the upper-end value to which Trustee's expert is expected to attest at trial and avoids having to proceed with competing valuations by opposing experts. Trustee declares that the community property business is likely not worth much and the community property LLC has already been dissolved and its proceeds already spent.

4. Paramount interests of creditors: Trustee declares her belief that, absent settlement, it is likely that litigation costs would subtract from a successful post Adversary judgment to the point that there is a significant chance that creditors would get nothing, and a certainty of that outcome if Trustee loses at trial.

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

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

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

6. 23-11723-B-7 **IN RE: FELIPE REYNOSO**
JES-2

MOTION FOR COMPENSATION FOR JAMES SALVEN, ACCOUNTANT(S)
5-22-2024 [56]

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

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order that conforms with the opinion below.

James Salven ("Applicant") seeks approval of a final allowance of compensation under 11 U.S.C. § 330 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as accountant for Peter Fear, Trustee in the above-styled case ("Trustee'). Doc. #56.

Applicant was employed to perform services under § 327 of the Code pursuant to an order of this court dated February 12, 2024. Doc. #43. This is Applicant's first and final request for compensation.

Applicant seeks **$2,520.00** in fees based on **9.0** billable hours from January 23, 2024, through May 6, 2024. Doc. #58. Based on the moving papers, it appears that Applicant was the only employee of Applicant to work on this case, and he billed at a rate of $280.00 per hour. *Id.* Applicant also seeks **$201.83** in expenses as follows:

Copies	$55.40
Envelopes	$1.25
"Lacerte Tax Proc" – Debtor	$91.00
Fee Application	$54.18
TOTAL	**$201.83**

Id. The total amount of compensation sought is **$2,721.83.**

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). Previous interim compensation awards under 11 U.S.C. § 331, if any, are subject to final review under § 330.

Applicant's services here included, without limitation, accounting work on behalf of the estate and reparation and filing of tax

paperwork. Doc. #58. The court finds the services and expenses reasonable, actual, and necessary. The Trustee has reviewed the Application and finds the requested fees and expenses to be reasonable. Doc. #559.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest has responded, and the defaults of all such parties are entered.

This Application is GRANTED. The court will approve on a final basis under 11 U.S.C. § 330 compensation in the amount of **$2,520.00** in fees and **$201.83** in expenses. The court grants the Application for a total award **$2,721.83** as an administrative expense of the estate and an order authorizing and directing the DIP to pay such to Applicant from the first available estate funds.

7. 24-10146-B-7 **IN RE: C.S. & S. BAKERY, LLC**
LNH-2

MOTION TO EMPLOY MICHAEL S. DAWSON AS BROKER(S)
6-26-2024 [24]

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Jeffrey Vetter ("Trustee"), Trustee in the Chapter 7 bankruptcy case of C.S. & S Bakery, LLC ("Debtor"), moves the court for an order authorizing the employment of Business Broker Michael S. Dawson ("Broker" or "Dawson") to market and sell the business equipment and

businesses commonly known as Crumbl Cookies. Doc. #26. There are two separate Crumble Cookies businesses which Trustee hopes to sell, which are located at:

1. 550 Woollomes Ave. #105, Delano, CA 93215 ("Crumbl Delano"); and
2. 481 Madonna Rd., Ste. D, San Luis Obispo, CA 93405 ("Crumbl SLO").

Id. Crumbl Delano is a business owned by Debtor, while Crumbl SLO is a business owned by SLO Dough, LLC ("SLO Dough"), which is debtor in a separate Chapter 7 bankruptcy pending before this court in related case 23-12767 ("the SLO Dough case"). Id. There is a separate motion to employ Dawson as Broker in the SLO Dough case which is the subject of Item #14, below. Trustee proposes to hire Broker for the following purposes:

1. To market and sell both Crumbl Delano and Crumbl SLO (collectively "the Crumbl Businesses");
2. To advise Trustee concerning the highest and best price obtainable for the Crumbl Businesses under the circumstances of the instant case and the SLO Dough case; and
3. To prepare such contracts, offers, counter-offers, and ancillary documents as are required for the orderly liquidation of both Crumbl Businesses.

Doc. #24. The motion proposes that Dawson be paid a 10% commission on the final sales price, whether the sale is of the business or the equipment, with the compensation to be paid as an administrative expense after court approval. Id.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014 1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014 1(f)(2). The court will issue an order if a further hearing is necessary.

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

11 U.S.C. § 328(a) permits employment of "a professional person under section 327" on "any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." Section 328(a) further "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon

compensation only 'if such terms and conditions and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.'" In re Circle K Corp., 279 F.3d 669, 671 (9th Cir. 2002).

Dawson has submitted a Declaration averring that he is a disinterested person as defined by 11 U.S.C. § 101(14); that he neither holds nor represents any interests materially adverse to the estate or any class of creditors or equity security holders, nor does he have any connections to any party involved in the case at bar which would preclude him from serving as Broker. Doc. #27. Dawson further avers that he has never worked for Trustee before. Id.

It appears that both Debtor and SLO Dough are two closely-related companies, so much so in fact that Trustee, in previous filings in this case, intimated that he may seek either joint administration or substantive consolidation of this case and the SLO Dough case. Doc. #15. At this time, there does not appear to be any impediment to either Trustee remaining as Trustee and Dawson being retained in both cases. However, the court reminds Broker and the Trustee of continuing duties of disclosure should it appear that the creditor body in both cases becomes markedly different or that other problems preclude disinterestedness.

Based on the Application, the record before the court, and the verified statement made by Dawson as required by Bankruptcy Rule 2014(a), it appears that Dawson is eligible to be employed in the capacity of Broker. Accordingly, in the absence of any opposition at the hearing, the Court is inclined to GRANT the application, and permit the employment of Dawson, subject to the following reasonable terms and conditions and to the applicable provisions of 11 U.S.C. § 327 and §§ 329-331 set forth below.

Reasonable terms and conditions of employment include the following matters related to compensation:

1. No compensation is permitted except upon court order following application with notice and a hearing pursuant to 11 U.S.C. § 330(a).
2. Compensation will be capped at 10% commission on the final sales price, whether the sale is of the business or the equipment and subject to a separate order from the court after appropriate notice and hearing.

8. 24-11447-B-7 **IN RE: DOMINGO COSSIO**
EPE-1

MOTION TO DISMISS DUPLICATE CASE
6-12-2024 [15]

DOMINGO COSSIO/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The court will issue an order.

Domingo Cossio ("Debtor") moves this court to dismiss this voluntary Chapter 7 case on the grounds that he had accidentally filed two identical voluntary Chapter 7 cases on May 28, 2024: case number 2024-11428 ("the Main Case") and case number 2024-11447 ("the Duplicate Case"). Doc. #15. Debtor avers he desires to proceed with the filing of his first bankruptcy case filed on May 28, 2024, bearing Case No. 24-11428. *Id.*

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir.)

No party in interest filed an objection. Accordingly, this motion will be GRANTED.

9. 24-11750-B-7 **IN RE: TRO KAHKEDJIAN AND MARIANA KAHKEJIAN**
PBB-1

MOTION/APPLICATION TO COMPEL ABANDONMENT
6-25-2024 [6]

MARIANA KAHKEJIAN/MV
PETER BUNTING/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Tro Kahkedjian and Mariana Kahkejian ("Mariana")(collectively "Debtors") move for an order compelling chapter 7 trustee Irma C. Edmonds ("Trustee") to abandon the estate's interest in certain business assets ("the Assets") used in the operation of Mariana's business, which consists of sales made through the online platform EBay under the fictitious names Maryanna Kawajian and/or Mariana Kahkesiao.. Doc. #8. The Assets include:

1. An iPad;
2. Inventory; and
3. The business name Maryanna Kahwajian.

Id. Mariana assigns an aggregate value of $5,500.00 to the Assets. *Id.*

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. For the record, the court notes that the Notice erroneously states that the hearing was set on less than 14 days' notice, but it appears the motion and accompanying papers were served on June 26, 2024, which is less than 28 days but more than 14 days. Doc. #7. Regardless, the requirements for 9014-1`(f)(2) service were satisfied. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

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

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

Mariana declares that her business consists of selling items on eBay. Doc. #8.

Debtor seeks to compel Trustee to abandon the Business Assets, which are listed in the schedules as follows:

Asset	Value	Exempt	Lien	Net
iPad (Sched. A/B, line 39)	$500.00	$500.00	$0.00	$0.00
Inventory (Sched. A/B, line 41)	$3,000.00	$7,000.00	$0.00	$0.00
"dba Maryanna Kahwajian" (Sched. A/B, Line 44)	$2,000.00	$4,00000	$0.00	$0.00

Doc. #1 (*Sched. A/B*, *C*). All of the Assets are exempted under Cal. Code Civ. Proc. § 703.140(b)(5) and (6). *Id. (Sched. C*). All the Assets are unencumbered. *Id. (Sched. D*).

Debtors contend that there is no equity in the Assets because they are all fully exempted. Doc. #8. Debtor has no employees. *Id.* Absent from the filings is a statement by Debtors that they are qualified and eligible to claim the exemptions under applicable law and that they understand that if for any reason it is determined that Debtors are not qualified to claim an exemption in the property listed, or if there is some other error in the exemption claimed, Trustee may demand that Debtors compensate the estate for any damage caused by the claimed exemption. Also absent is a statement that Debtors agree to not amend the exemptions affecting the Assets unless Trustee stipulated to that amendment or such relief is granted by further order of the court.

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

The order shall specifically include the property to be abandoned.

10. 23-10450-B-7 **IN RE: MARK/THERESA PARKER**
DMG-2

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH THE PARKER FAMILY TRUST AND/OR MOTION FOR COMPENSATION FOR RYAN M. JANISSE, SPECIAL COUNSEL(S)
6-12-2024 [43]

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

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

DISPOSITION: Granted.

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

Chapter 7 trustee James Salven ("Trustee"), pursuant to Fed. R. Bankr. P. ("Rule") 9019, requests an order approving a settlement agreement to resolve a state court probate matter in which Trustee will obtain a portion of refinance proceeds on a residence that is part of a family trust. Doc. #43. The motion also requests authorization payment of attorney's fees to the Trustee's special counsel, Ryan M. Janisse ("Janisse"), consist with the terms of the employment agreement previously approved by this court. *Id.* The debtors are Mark and Theresa Parker ("Debtors").

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

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

Debtors filed chapter 7 bankruptcy on March 9, 2023. Doc. #1. Trustee was appointed as the interim trustee on that same date and became permanent trustee at the 341 meeting of creditors. Doc. #5; docket generally.

Among the assets of the estate, there is State Court litigation involving the Debtor, Mark Allan Parker ("Mark"), and his brother, Michael Parker, against stepsister Trina Kozak pertaining to issues related to the administration of the Parker Family Trust (the "Trust") and its assets, including the real property that was subject of the Trust. Doc. #45. The suit was listed in Debtors' *Schedule A/B* as having an unknown value. Doc. #46 (*Exhib A*).

Per the Trustee's Declaration, Mark's claim arises out of a beneficial 1/3 interest in the Trust. Doc. #45. The Trust's principal asset is real property located at 12699 East Sierra Ave., Clovis, California ("the Property"). *Id.* The Property was appraised at fair market value of $515,000, as of March 4, 2024. *Id.* Litigation has been conducted in Fresno County Superior Court under case no. 22-CEPR-01026. *Id.*

On June 21, 2023, the court approved Trustee's application to employ Janisse as special counsel pursuant to an employment agreement which, *inter alia*, provided for Janisse to be awarded "50% of the Gross Recovery if the case is settled or otherwise resolved more than 90 days" after a hearing in the probate matter which was set for July 31, 2023. Docs. ##21,29; *see also Doc. #46 (Exhib C)*. A settlement agreement was reached more than 90 days after that hearing date, and so, under the terms of the employment agreement which this court approved, Janisse is entitled to 50% of the recovery, which was $170,000.00 for the estate. Docs. ##45, 46 (*Exhib B*). Both the motion and the Trustee's declaration incorrectly state that Janisse is entitled to $50,000.00 in attorney's fees. *Id.* However, on June 17, 2024, the Trustee filed a *Notice of Correction/Errata* clarifying that Janisse was actually entitled to $85,000.00, which is 50% of the $170,000.00 recovery. Doc. #49.

The specific relief requested by Trustee includes:

1. That the court grant this motion to compromise claims and to pay attorney's fees;
2. That the court enter the Settlement Agreement attached as "Exhibit B"; and
3. That the court authorize the payment of attorney's fees to Gilmore Magness Janisse.

Doc. #43.

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

As representative of the chapter 7 bankruptcy estate, Trustee has the authority to settle claims of Debtor subject to court approval. 11 U.S.C. § 323(a). On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Rule 9019. Approval of a compromise must be based upon considerations of fairness and equity. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1)

the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

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

1. Probability of success in litigation: The dispute between the parties in this probate action have been resolved, with the end result that the estate will receive Mark's 1/3 interest in the proceeds of the Property after it is refinanced. As the matter was resolved in a manner that yields the maximum benefit that could be obtained for the estate, this factor favors approval.

2. Collection: The settlement agreement obviates the need for a forced sale, thereby saving time and expense for the estate. This factor favors approval.

3. Complexity of litigation: Trustee declares that further litigation in the probate matter would not be difficult, but it would be time-consuming to a degree that renders the settlement reasonable. This factor favors approval.

4. Paramount interests of creditors: Trustee declares that the settlement serves the interests of the creditors because it obtains a sum certain for the estate without the further expenditure of attorneys' fees. This factor favors approval.

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

Accordingly, this motion will be GRANTED as it applies to the settlement, which will be approved. Trustee shall attach a copy of the settlement agreement as an exhibit to the proposed order and shall separately file the settlement agreement and docket it as a stipulation. The court next turns to the matter of Janisse's attorney's fees.

11 U.S.C. § 328(a) permits employment of "a professional person under section 327" on "any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, *or on a contingent fee basis*." 11 U.S.C. § 328 (emphasis added). Section 328(a) further "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions and conditions prove to have been improvident in light of

developments not capable of being anticipated at the time of the fixing of such terms and conditions.'" *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002).

Here, the Trustee submitted an application to hire Janisse on a contingency fee basis, and this court, after notice and an opportunity to be heard, granted the application. No party has come forward to object to the proposed contingency fee award of $85,000.00. Accordingly, the motion is also GRANTED as it applies to the attorneys' fees. Trustee is authorized to pay Janisse $85,000.00 out of the proceeds of the settlement awarded to the estate.

The motion will only be granted if Trustee separately files the settlement agreement and dockets it as a stipulation.

11. 24-11250-B-7 **IN RE: BEAR AG, LLC**
DMG-2

MOTION TO EMPLOY GOULD AUCTION & APPRAISAL COMPANY AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
6-19-2024 [22]

JEFFREY VETTER/MV
LAUREN NAWORSKI/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Chapter 7 trustee Jeffrey Vetter ("Trustee") seeks authorization to (a) employ Gould Auction and Appraisal Company ("GAAC") under 11 U.S.C. § 328; (b) sell the estate's interest in certain estate assets described below ("the Estate Assets") at public auction under § 363(b)(1); and (c) compensate Auctioneer under §§ 327(a) and 328. Doc. #22. The auction will be held on or after July 27, 2024, beginning at 9:00 a.m. at 6200 Price Way, Bakersfield, California. *Id;* Doc. #23. The Debtor corporation ("Debtor") is Bear AG, LLC. Doc. #22.

The Estate Assets include:

Asset	Value (Sched. A/B)
2014 Chevrolet Silverado 3500	$6,976.00
2008 Chevrolet Silverado 2500	$10,008.00
2014 Chevrolet Silverado 1500	$7,092.00
2016 GMC Canyon	$6,428.00
2015 Brock Tilt Trailer	$6,000.00
2015 Brock 40 Ft Gooseneck Trailer	$15,000.00
2016 Trailer 30 ft.	$4,000.00

2020 Haulmark PP852T3-D Trailer	$7,000.00
Total Value per Sched A/B	**$62,504.00**

Doc. #22; Doc. #1 (*Sched. A/B*). The Estate Assets are encumbered by a first priority UCC-1 filing pursuant to a security agreement between Debtors and B-Line Sales, Inc., and Darren & Cynthia Rymer (collectively "B-Line/Rymer"). Doc. #24. Doc. #1 (*Schedule D*).

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

This motion was filed and served on at least 21 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Fed. R. Bankr. P. ("Rule") 2002(a)(2) and (a)(6) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Employment and Compensation

This motion affects the proposed disposition of estate assets and Auctioneer. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion to add Auctioneer as a party.

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

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

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

Under these sections, Trustee requests to employ and compensate Auctioneer by paying: (i) a 15% commission on the gross proceeds from the sale; (ii) an additional 10% premium to be paid by the buyer; (iii) an additional 3% fee paid to the online service Proxibid, if the buyer makes use of that service; (iv) estimated expenses for pickup and storage not to exceed $1,500.00, and (v) reimbursement for "extraordinary expenses" not to exceed $2,000.00 as approved by the Trustee. Doc. #14.

Trustee filed declarations attesting that Auctioneer is a disinterested person as defined in § 101(14) and does not hold any interests adverse to the estate in accordance with § 327(a). Doc. #24. With respect to Debtor, Auctioneer is not a creditor, equity security holder, insider, investment banker for a security of the debtor within the three years before the petition date, or an attorney for such investment banker, and within two years of the petition date was not a director, officer, or employee of the Debtor or an investment banker. *Id.* Auctioneer does not have an interest materially adverse to the interest of the estate, creditors, Debtor, equity security holders, an investment banker for a security of the debtors, or any other party in interest, and had not served as an examiner in this case. *Id.* Auctioneer does not have any connection with any creditors, parties in interests, their attorneys, accountants, the U.S. Trustee, or anyone employed by the U.S. Trustee. *Id.* Additionally, no agreement exists between Auctioneer or any other person for the sharing of compensation received by Auctioneer in connection with the services rendered. *Id.*

Trustee declares that it is necessary to employ Auctioneer to liquidate Estate Assets. Doc. #24. Trustee believes that the proposed fees and expenses for services are reasonable and customary for the services to be rendered by Auctioneer. *Id.* Auctioneer will assist Trustee by generally performing and assisting Trustee in matters customarily done and performed by auctioneers in connection with an auction sale of property. *Id.*

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. §§ 327(a), 328 and authorize Trustee to pay the 15% commission, and expenses up to $1,500.00 for ordinary expenses and, upon Trustee approval, up to $2,000.00 for "extraordinary expenses."

Proposed Sale

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business

justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC,* 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Here, the Estate Assets have an aggregate value of $62,504.00 according to the Schedules. Doc. #1 (*Sched. A/B*). The Estate Assets are fully encumbered by B-Line/Rymer's UCC lien. Doc. #1 (*Sched. D*); Doc. #24. Debtor is a corporate entity, and so no exemptions apply. Trustee declares that he and B-Line/Rymer have reached a carve-out agreement with the following terms:

1. Costs of sale will be shared between B-Line/Rymer and the estate, with B-Line/Rymer paying 65% and the estate 35%.
2. Sale proceeds will be divided between B-Line/Rymer and the estate, with B-Line/Rymer receiving 65% of the proceeds and the estate receiving 35%, until B-Line Rymer has been paid the full amount of its secured loan, with any access paid to the estate.
3. B-Line/Rymer will release their liens against the collateral sold. Trustee retains the right to object to B-Line/Rymer's claims; and B-Line/Rymer retain the right to amend their claims.

Doc. #24.

The motion does not list a proposed sale price but rather seeks the best price that can be obtained at open auction. However, given the fact that expenses are limited to an absolute maximum of $3,500.00, that auctioneer fees are limited to 15%, that no Debtor's exemption will be applied, and that B-Line/Rider has agreed to guarantee the estate at least 35% of the net proceeds, the court concludes that the auction will almost inevitably produce at least some net proceeds for the estate.

Trustee believes that using the auction process to sell Vehicle will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #24. Based on Trustee's experience, this could yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.*

Sale by auction under these circumstances should maximize potential recovery for the estate such that the sale of the Vehicle would be in the best interests of the estate if it will provide liquidity to the estate that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

Conclusion

If no party in interest objects to the instant motion, it will be GRANTED. Trustee will be permitted to employ Auctioneer, sell the Vehicle at public auction, and pay Auctioneer for its services as outlined above. If the sale is completed, Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale and payment of up to $2,000.00 for ordinary expenses and up to $1,500.00 in "extraordinary expenses" subject to Trustee approval.

12. 24-10153-B-7 **IN RE: JAMES/JULIE JEAN**
AP-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-6-2024 [41]

LAKEVIEW LOAN SERVICING, LLC/MV
STEVEN ALPERT/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Lakeview Loan Servicing LLC ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to 20288 1st Street, Hilmar, California 95324 ("Property"). Doc. #41.

James Bryan and Julie Dolores Jean ("Debtors") did not oppose. No other party in interest timely filed written opposition. This motion will be GRANTED.

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

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtors have failed to make at least 10 complete pre-petition and post-petition payments. The Movant has produced evidence that Debtors are delinquent at least $24,896.56 and the entire balance of $414,440.02 is due. Docs. ##43, 44.

The court declines finding that Debtors do not have any equity in the Property. Although this is a chapter 7 case and the Property is not necessary for an effective reorganization, the moving papers indicate that Debtors have approximately $81,359.98 in equity. Doc. #44. Relief under § 362(d)(2) is moot because there is "cause" to grant the motion under § 362(d)(1).

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

13. 24-11264-B-7 **IN RE: SAMUEL MENDEZ**
MAZ-2

MOTION TO COMPEL ABANDONMENT
6-21-2024 [30]

SAMUEL MENDEZ/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Samuel Mendez ("Debtor") moves for an order compelling chapter 7 trustee Peter Fear ("Trustee") to abandon the estate's interest in real property located at 4230 E. Oak Avenue, Visalia, CA 93292 ("the Property"). Doc. #30.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

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

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

In his Schedules, Debtor values the Property at $450,000.00. Doc. #1 (Sched. A/B). He claims an exemption in the amount of $175,000.00 pursuant to CCP § 704.430. *Id.* (Sched. C). The Property is subject to a lien held by M&T Bank Mortgage in the amount of $344,094.00. *Id.* (Sched. D). Thus, Debtor has no equity in the Property, as reflected in the following calculations:

Property Value	$450,000.00
Exemption	($175,000.00)
Mortgage Lien	($344,094.00)
Remaining Equity	($69,094.00)

Debtor declares that because no equity remains for liquidation, the property is of no value or benefit to the estate and abandonment is appropriate in this case. Doc. #32. Debtor certifies that the above-stated value is correct and that if it is later discovered that the value is significantly wrong or misleading, the trustee may demand compensation for the estate for any damages caused by the incorrect statement. *Id.* Debtor avers his intention to sell the Property if this motion is granted. *Id.*

The moving papers do not contain a statement by Debtor that he is qualified and eligible to claim the exemptions under applicable law and understands that if for any reason it is determined that Debtor is not qualified to claim an exemption in the property listed, Trustee may demand that Debtor compensate the estate for any damage caused by the claimed exemption. Nor is there a statement by Debtor agreeing to not amend the exemptions affecting the Property unless Trustee stipulates to such amendment or such relief is granted by further order of the court.

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

The order shall specifically include the property to be abandoned.

14. 23-12767-B-7 **IN RE: SLO DOUGH, LLC**
LNH-2

MOTION TO EMPLOY MICHAEL S. DAWSON AS BROKER(S)
6-26-2024 [20]

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Jeffrey Vetter ("Trustee"), Trustee in the Chapter 7 bankruptcy case of C.S. & S Bakery, LLC ("Debtor"), moves the court for an order authorizing the employment of Business Broker Michael S. Dawson ("Broker" or "Dawson") to market and sell the business equipment and businesses commonly known as Crumbl Cookies. Doc. #20. The debtor in this matter is SLO Dough, LLC ("Debtor"). There are two separate Crumble Cookies businesses which Trustee hopes to sell, which are located at:

1. 550 Woollomes Ave. #105, Delano, CA 93215 ("Crumbl Delano"); and
2. 481 Madonna Rd., Ste. D, San Luis Obispo, CA 93405 ("Crumbl SLO").

Id. Crumbl SLO is property of Debtor, while Crumbl Delano is property of C.S.& S. Bakery, LLC ("Baker"), which is in a separate bankruptcy pending before this court in related case 24-10146 ("the

Bakery case"). *Id.* There is a separate motion to employ Dawson as Broker in the Bakery case which is the subject of Item #7, above. Trustee proposes to hire Broker for the following purposes:

1. To market and sell both Crumbl Delano and Crumbl SLO (collectively "the Crumbl Businesses");
2. To advise Trustee concerning the highest and best price obtainable for the Crumbl Businesses under the circumstances of the instant case and the SLO Dough case; and
3. To prepare such contracts, offers, counter-offers, and ancillary documents as are required for the orderly liquidation of both Crumbl Businesses.

Doc. #24. The motion proposes that Dawson be paid a 10% commission on the final sales price, whether the sale is of the business or the equipment with the compensation to be paid as an administrative expense after court approval. *Id.*

Written opposition was not required and may be presented at the hearing. The court notes that SLO Promenade, D.E. LLC ("Promenade"), lessor of the property where Crumbl SLO was located, objected to the instant motion. Doc. #29. For the reasons outlined below, the court rejects Promenade's arguments in opposition to the motion.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

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

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

Dawson has submitted a Declaration averring that he is a disinterested person as defined by 11 U.S.C. § 101(14); that he neither holds nor represents any interests materially adverse to the estate or any class of creditors or equity security holders, nor

does he have any connections to any party involved in the case at bar which would preclude him from serving as Broker. Doc. #27. Dawson further avers that he has never worked for Trustee before. *Id.*

It appears that both Debtor and Bakery are two closely-related companies, so much so in fact that Trustee, in previous filings relevant to this case, intimated that he may seek either joint administration or substantive consolidation of this case and the Bakery case. *See Bakery Case at Doc. #15*. At this time, there does not appear to be any impediment to either Trustee remaining as Trustee and Dawson being retained in both cases. However, the court reminds Broker and the Trustee of continuing duties of disclosure should it appear that the creditor body in both cases becomes markedly different or that other problems preclude disinterestedness.

Opposition by Promenade

On July 3, 2024, Promenade filed an opposition to the instant motion. Doc. #29. The gravamen of the Objection is the lease agreement between Promenade and Debtor was rejected by operation of law on April 12, 2024, and Trustee has allegedly failed to respond to Promenade's repeated requests to surrender the Crumbl SLO premises in San Luis Obispo. *Id.* Promenade objects to the Trustee seeking to market Debtor's business and business equipment without acknowledging either Promenade's request that the premises be vacated or Promenade's request for administrative rent owed since the petition date including "stub rent." Promenade argues that Trustee should not be allowed to incur the administrative expenses of retaining a Broker when he is not paying the administrative expenses already owed to Promenade. *Id.*

The court is unpersuaded by Promenade's arguments. A motion to employ a broker is not the proper avenue for the relief Promenade seeks. The sole issues before the court are (a) whether a broker should be employed at all, (b) what are the terms of employment; and (c) is the proposed professional qualified. Promenade's administrative expense claim, assuming it exists, cannot be vindicated by preventing Trustee from employing Broker, particularly since it may well be the case that, absent a sale, there will be no money to pay any administrative claims.

If Promenade wishes to assert a claim against the assets of Crumbl SLO, it should file an adversary proceeding and seek provisional relief. If Promenade thinks the Trustee should simply abandon the assets at the facility, it should file a motion under § 554. Either way, this motion is not the proper mechanism for seeking either form of relief, and the court is not going to do Promenade's work for it by expanding the present inquiry beyond a determination of whether to employ Dawson and how he will be paid.

That said, the court agrees with Promenade to the extent it argues that Trustee must pay allowed administrative rent expense and that Trustee should be prepared to negotiate for the use of the subject property while sales efforts are ongoing. At the hearing, the

Trustee should also address the issue of surrender due to the expiration of the deadline to assume or reject, and depending on the information adduced at the hearing, the court may elect to continue the hearing.

CONCLUSION

Based on the Application, the record before the court, and the verified statement made by Dawson as required by Bankruptcy Rule 2014(a), it appears that Dawson is eligible to be employed in the capacity of Broker. Accordingly, in the absence of any opposition at the hearing, the Court is inclined to GRANT the application, and permit the employment of Dawson, subject to the following reasonable terms and conditions and to the applicable provisions of 11 U.S.C. § 327 and §§ 329-331 set forth below.

Reasonable terms and conditions of employment include the following matters related to compensation:

1. No compensation is permitted except upon court order following application with notice and a hearing pursuant to 11 U.S.C. § 330(a).
2. Compensation will be capped at 10% commission on the final sales price, whether the sale is of the business or the equipment and subject to a separate order from the court after appropriate notice and hearing.

This ruling makes no finding concerning Promenade's interest in any assets of SLO Dough or whether Promenade has and if so, to what extent is there an administrative claim owed Promenade for rent.

15. 24-10169-B-7 **IN RE: AUSTIN JIANG**
PFT-1

MOTION TO EMPLOY GOULD AUCTION AND APPRAISAL COMPANY AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
6-11-2024 [18]

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

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

DISPOSITION: Granted.

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

Chapter 7 trustee Peter Fear ("Trustee") seeks authorization to (a) employ Gould Auction and Appraisal Company ("Auctioneer") under 11 U.S.C. § 328; (b) sell the estate's interest in a 2020 Toyota Camry TRD ("the Vehicle") at public auction under § 363(b)(1); and (c)

compensate Auctioneer under §§ 327(a) and 328. Doc. #18. The auction will be held on or after July 27, 2024, beginning at 9:00 a.m. at 6200 Price Way, Bakersfield, California. *Id.* The Debtor ("Debtor") is Austian Jiang.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo*), 468 F.3d 592 (9th Cir. 2006).

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

Employment and Compensation

This motion affects the proposed disposition of estate assets and Auctioneer. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion to add Auctioneer as a party.

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

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

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

conditions.'" *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002).

Under these sections, Trustee requests to employ and compensate Auctioneer by paying: (i) a 15% commission on the gross proceeds from the sale; (ii) an additional 10% premium to be paid by the buyer; (iii) an additional 3% fee paid to the online service Proxibid, if the buyer makes use of that service; (iv) a $50.00 DMV fee which, if required, will be paid by buyer to Auctioneer; (v) estimated expenses for pickup and storage not to exceed $250.00, and (vi) reimbursement for "extraordinary expenses" not to exceed $500.00 without further court approval. Doc. #18.

Trustee and Jerry Gould, Auctioneer's owner, filed declarations attesting that Auctioneer is a disinterested person as defined in § 101(14) and does not hold any interests adverse to the estate in accordance with § 327(a). Docs. #20-21. With respect to Debtor, Auctioneer is not a creditor, equity security holder, insider, investment banker for a security of the debtor within the three years before the petition date, or an attorney for such investment banker, and within two years of the petition date was not a director, officer, or employee of the Debtor or an investment banker. *Id.* Auctioneer does not have an interest materially adverse to the interest of the estate, creditors, Debtor, equity security holders, an investment banker for a security of the debtors, or any other party in interest, and had not served as an examiner in this case. *Id.* Auctioneer does not have any connection with any creditors, parties in interests, their attorneys, accountants, the U.S. Trustee, or anyone employed by the U.S. Trustee. *Id.* Additionally, no agreement exists between Auctioneer or any other person for the sharing of compensation received by Auctioneer in connection with the services rendered. *Id.*

Trustee declares that it is necessary to employ Auctioneer to liquidate Vehicle at auction. Doc. #13. Trustee believes that the proposed fees and expenses for services are reasonable and customary for the services to be rendered by Auctioneer. *Id.* Auctioneer will assist Trustee by generally performing and assisting Trustee in matters customarily done and performed by auctioneers in connection with an auction sale of property. *Id.*

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. §§ 327(a), 328 and authorize Trustee to pay the 15% commission, and expenses up to $250.00 for ordinary expenses and up to $500.00 for "extraordinary expenses" without further court approval.

Proposed Sale

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240*

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

Here, Vehicle is listed in the schedules as having 48,500 miles and is valued at $26,640.00. Doc. #1 (*Sched. A/B*). Vehicle is encumbered by a purchase money security interest lien held by Toyota Financial Services in the amount of $11,815.00. *Id. (Sched. D*). Debtor has not claimed an exemption in the Vehicle. Doc. #1 (*Sched. C*). Based on the Schedules, there is $14,825.00 in equity after the secured creditor is paid off.

The motion does not list a proposed sale price but rather seeks the best price that can be obtained at open auction. However, given the fact that expenses are limited to an absolute maximum of $750.00, that auctioneer fees are limited to 15%, and that no Debtor's exemption will be applied, the court concludes that the auction will almost inevitably produce at least some net proceeds for the estate.

Trustee believes that using the auction process to sell Vehicle will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #20. Based on Trustee's experience, this could yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.*

Sale by auction under these circumstances should maximize potential recovery for the estate such that the sale of the Vehicle would be in the best interests of the estate if it will provide liquidity to the estate that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

Conclusion

No party in interest objected to the instant motion, which is Granted. Trustee will be permitted to employ Auctioneer, sell the Vehicle at public auction, and pay Auctioneer for its services as outlined above. If the sale is completed, Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale, plus payment of up to $250.00 for

expenses and up to $500.00 for "extraordinary expenses" without further order of the court.

16. 24-11296-B-7 **IN RE: MARIA VEGA-MURO**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE
5-13-2024 [7]

MARIA VEGA-MURO/MV

NO RULING.