



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Department B – Courtroom #13
Fresno, California
Hearing Date: Tuesday, July 16, 2024**

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

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

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

Please also note the following:

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

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

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[WF-16](#)

MOTION/APPLICATION FOR COMPENSATION
6-25-2024 [\[677\]](#)

PETER FEAR/ATTY. FOR DBT.
JASON ELDRED/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
will submit a proposed order after hearing.

Daniel Egan ("Egan") on behalf of Wilke Fleury LLP ("Applicant"),
counsel for Chapter 11 Plan Administrator Terence J. Long
("Administrator") in the above-styled Chapter 11 case, comes before
the court on Applicant's *Second Interim Application for Fees And
Expenses Pursuant to 11 U.S.C. § 331*. Doc. #677. The Application
requests attorney fees in the amount of **\$70,083.50**, plus expenses in
the amount of **\$1,433.03**. *Id.*

This is the Second Interim Application brought by this Applicant,
and it covers services rendered from August 1, 2023, through May 31,
2024. Doc. #677. Included with the Application is a Declaration
signed by the Administrator evincing his consent to this fee
application. Doc. #680.

Applicant's employment was approved by an order of the court dated
October 21, 2022. Doc. #573. This court previously granted
Applicant's first interim application on October 18, 2023, awarding
Applicant \$61,248.50 in fees and \$7.05 in costs. Doc. #617.

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 Application is accompanied by: (a) exhibits consisting of a copy
of the order approving Applicant's employment, Applicant's invoice,
and biographies of Applicant's counsel working on this case, (b) a
statement of consent to the fees by the Plan Administrator, and (c)
a Declaration from Egan. Docs. #679-681.

In addition, the motion included a narrative summary of the services
provided in this case and a summary of the work performed and the

expenses incurred. Doc. #677. The moving papers indicate that Applicant incurred 138.40 hours of legal fees as follows:

Attorneys	Hourly Rate	Hours	Total Fees
Daniel Egan	2023 rate: \$495.00	47.30	\$23,413.50
Daniel Egan	2024 rate: \$545.00	70.50	\$38,422.50
Steven Williamson	\$495.00	3.20	\$1,584.00
Jason G. Eldred	\$2023 rate: \$360.00	2.90	\$1,044.00
Jason G. Eldred	\$2024 rate; \$395.00	13.90	\$5,490.50
Kimberly Martinez	\$215.00	.60	\$129.00
	Total	138.40	\$70,083.50

Docs. ##677-78. Applicant also incurred expenses as follows:

Photocopies	\$630.00
Postage	\$775.03
Reimbursement for certified Copy request for WF-9 Order	\$28.00
Total	\$1433.03

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 services provided by the Applicant described above and the expenses incurred were fully detailed in the exhibits accompanying the Application and have been reviewed by the court, which finds them to be reasonable, actual, and necessary. The legal work performed included but was not limited to: administration of the case; asset analysis and recovery/asset disposition; and fee/employment applications. *Id.* The court finds these services were actual and necessary to the estate, and the fees are reasonable and consistent with § 326(a).

Accordingly, in the absence of opposition, this motion will be GRANTED. Applicant will be awarded **\$70,083.50** in fees and **\$1,433.03** in expenses on an interim basis, for a total award of **\$71,516.53**. The Administrator is authorized to pay the allowed fees and expenses from property of the estate as such funds become available.

2. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[WF-17](#)

MOTION/APPLICATION FOR COMPENSATION
6-25-2024 [\[683\]](#)

TERRENCE LONG/MV
PETER FEAR/ATTY. FOR DBT.
JASON ELDRED/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 will submit a proposed order after hearing.

Chapter 11 Plan Administrator Terence J. Long ("Applicant") in the above-styled Chapter 11 case, comes before the court on Applicant's *Second Interim Application for Fees And Expenses Pursuant to 11 U.S.C. § 331*. Doc. #683. The Application requests fees in the amount of **\$27,868.75**. *Id.* The Application also requests costs/expenses in the amount of **\$20.77** for a total award of **\$27,889.52**. *Id.*

The court confirmed Applicant as the Plan Administrator in this case in an order dated February 2, 2022. Doc. #483. This court previously granted Applicant's first interim application on October 18, 2023, awarding Applicant \$38,391.50 in fees and \$ in costs. Doc. #617. This is the Second Interim Application brought by Applicant, and it covers services rendered from August 1, 2023, through May 31, 2024. Docs. ##683, 685. Included with the Application is a Declaration signed by the Administrator evincing his consent to this fee application. Doc. #686.

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 Application is accompanied by: (a) exhibits containing an invoice dated Jun 3, 2024, and a summary of fees by category and (b) a statement of consent to the fees by the Plan Administrator. Docs. ##685-86.

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 services provided by the Applicant described above and the expenses incurred were fully detailed in the exhibits accompanying the Application and have been reviewed by the court, which finds them to be reasonable, actual, and necessary. The work performed included but was not limited to: administration of the case; asset disposition; fee/employment applications; non-working travel; and claims administration. Doc. #685. The court finds these services were actual and necessary to the estate, and the fees are reasonable and consistent with § 326(a). The expense reimbursement requested is limited to \$20.77 in mileage for travel. *Id.*

In the absence of opposition, this motion will be GRANTED. Applicant will be awarded **\$27,868.75** in fees and **\$20.77** in expenses on an interim basis, for a total award of **\$27,889.52**. The Administrator is authorized to pay the allowed fees and expenses from property of the estate as such funds become available.

3. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[BPC-1](#)

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

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

NO RULING.

4. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[FWP-1](#)

CONTINUED STATUS CONFERENCE RE: MOTION FOR ADMINISTRATIVE
EXPENSES
2-26-2024 [[1475](#)]

MADERA COUNTY/MV
RILEY WALTER/ATTY. FOR DBT.
JASON RIOS/ATTY. FOR MV.

NO RULING.

5. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[HRR-2](#)

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

AMERICAN ADVANCED MANAGEMENT,
INC./MV
RILEY WALTER/ATTY. FOR DBT.
HAMID RAFATJOO/ATTY. FOR MV.
RESPONSIVE PLEADING BY CREDITOR SIEMENS FINANCIAL SERVICES, INC.
RESPONSIVE PLEADING WITHDRAWN BY CALIFORNIA PHYSICIANS' SERVICE

NO RULING.

6. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[PSJ-47](#)

MOTION FOR COMPENSATION FOR PAUL S JASPER, CREDITOR COMM.
ATY(S)
6-14-2024 [\[1869\]](#)

RILEY WALTER/ATTY. FOR DBT.
PAUL JASPER/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

ORDER: The moving party shall submit a proposed order.

Perkins Coie LLP ("Applicant"), co-counsel to the chapter 11 Creditors Committee ("the Committee") in the above-styled Chapter 11 case filed by Madera Community Hospital ("Debtor"), requests approval of its *Third Interim and Final Application for Allowance of Compensation for Services and Reimbursement of Expenses* under 11 U.S.C. §§ 330 and 331. Doc. #1869. Applicant seeks:

- a. an interim allowance of **\$442,290.06** (the "Interim Amount") for fees earned between December 1, 2023, and May 6, 2024 ("the Third Interim Application Period");
- b. final allowance and approval of **\$756,245.36** (the "Final Amount") for fees earned and expenses reimbursed between April 17, 2023, and May 6, 2024 ("the Final Application Period"), which represents the entire duration of Applicant's representation; and
- c. approval of a payment of **\$86,248.95** of the Final Amount, which was incurred during the Third Interim Application Period but has not been paid due to a 50% hold back from amounts sought in Applicant's Monthly Fee Statements. *Id.*

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR

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

No party in interest timely filed written opposition. This Application includes a statement by the co-chairs of the Committee of Unsecured Creditors ("the Committee") stating their non-opposition to this fee application. Doc. #1911. This motion will be GRANTED.

Applicant's retention as committee counsel was authorized pursuant to 11 U.S.C. §§ 327(a) and 329-31 on May 23, 2023, effective on the petition date. Doc. #489. This Application has been brought pursuant to the *Order Establishing Procedures for Allowance and Payment of Interim Compensation*, which this court entered on August 2, 2023 ("the Compensation Order"). *Id.*, Doc. #759. Under the terms of the Compensation Order, Applicant (along with several other professionals subject to the Compensation Order ("the Subject Professionals")) was required to submit monthly fee statements to various entities listed in the order to give those entities time to object to any fee requests. *Id.* The Compensation Order authorized Applicant to collect 80% of any fees owed under the monthly fee statement, with the remaining 20% collectable only after an interim or final application for compensation such as the one presently before the court. *Id.*

Pursuant to the Compensation Order and §§ 330 and 331 of the Code, Applicant now seeks court approval to collect the remaining 20% of the outstanding fees and expenses owed to it for work done and expenses incurred during the Third Interim Application Period. Doc. #1869. The Application seeks approval of **\$431,244.75** in attorney's fees and **\$11,045.31** in expenses over that span. Doc. #1872 (*Exh. 2*). Of that, Applicant has already been paid **\$344,995.80** (or 80% of the attorney's fees billed), as well as **\$11,045.31** for expenses incurred by not yet allowed. *Id.* The remaining 20% in billable fees is **\$85,248.95** for which Applicant needs court approval prior to payment. *Id.* There is no outstanding expense reimbursement still owed. *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: asset analysis and recovery; asset disposition; business operations; case administration; claims administration and objections; creditor communications and inquiries; employment applications; executory contracts and unexpired leases; fee applications; financing; interim compensation; meetings of creditors; plan and disclosure statement; relief from stay proceedings; WARN claims; escrow agreement; and WARN claims ESS. The largest entries are for asset disposition (130.60 hours; \$129,947.00 in fees), plan and disclosure statement (272.2 hours; \$212,746.00 in fees) and WARN Claims (178.30 hours; \$114,002.75). The court finds these services were actual and necessary to the estate, and the fees are reasonable and consistent with § 326(a).

Accordingly, the court hereby approves an award to this Applicant of:

- a. **\$442,290.06** for fees earned during the Third Interim Application Period on an interim basis;
- b. **\$756,245.36** for fees earned and expenses reimbursed over the entire duration of Applicant's representation on a final basis; and
- c. **\$86,248.95** for fees incurred during the Third Interim Application Period but which have not been paid due to a 20% hold back from amounts sought in Applicant's Monthly Fee Statements.

7. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[PSJ-48](#)

MOTION FOR COMPENSATION FOR FIT CONSULTING, INC., FINANCIAL
ADVISOR(S)
6-14-2024 [\[1874\]](#)

FTI CONSULTING, INC./MV
RILEY WALTER/ATTY. FOR DBT.
PAUL JASPER/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

ORDER: The moving party shall submit a proposed order.

FTI Consulting, Inc. ("Applicant"), financial adviser to the chapter 11 Creditors Committee ("the Committee") in the above-styled Chapter 11 case filed by Madera Community Hospital ("Debtor"), requests approval of its *Third Interim and Final Application for Allowance of Compensation for Services and Reimbursement of Expenses* under 11 U.S.C. §§ 330 and 331. Doc. #1874. Applicant seeks:

- a. an interim allowance of **\$130,070.93** (the "Interim Amount") for **\$129,850.00** in fees earned and **\$220.93** for expenses incurred between December 1, 2023, and May 6, 2024 ("the Third Interim Application Period");
- b. final allowance and approval of **\$391,660.93** (the "Final Amount") for fees earned and expenses reimbursed between April 17, 2023, and May 6, 2024 ("the Final Application Period"), which represents the entire duration of Applicant's representation; and
- c. approval of a payment of **\$25,970.00** of the Final Amount, which was incurred during the Third Interim Application Period but has not been paid due to a 50% hold back from amounts sought in Applicant's Monthly Fee Statements.

Id.

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

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

No party in interest timely filed written opposition. This Application includes a statement by the co-chairs of the Committee of Unsecured Creditors ("the Committee") stating their non-opposition to this fee application. Doc. #1911. This motion will be GRANTED.

Applicant's retention as committee counsel was authorized pursuant to 11 U.S.C. §§ 327(a) and 329-31 on May 23, 2023, effective on the petition date. Doc. #489. This Application has been brought pursuant to the *Order Establishing Procedures for Allowance and Payment of Interim Compensation*, which this court entered on August 2, 2023 ("the Compensation Order"). *Id.*, Doc. #759. Under the terms of the Compensation Order, Applicant (along with several other professionals subject to the Compensation Order ("the Subject Professionals")) was required to submit monthly fee statements to various entities listed in the order to give those entities time to object to any fee requests. *Id.* The Compensation Order authorized Applicant to collect 80% of any fees owed under the monthly fee statement, with the remaining 20% collectable only after an interim or final application for compensation such as the one presently before the court. *Id.*

Pursuant to the Compensation Order and §§ 330 and 331 of the Code, Applicant now seeks court approval to collect the remaining 20% of the outstanding fees and expenses owed to it for work done and expenses incurred during the Third Interim Application Period. Doc. #1874. The Application seeks approval of **\$129,850.00** in attorney's fees and **\$220.93** in expenses over that span. Doc. #1877 (*Exh. 2*). Of that, Applicant has already been paid **\$103,880.00** (or 80% of the attorney's fees billed), as well as **\$220.93** for expenses incurred by not yet allowed. *Id.* The remaining 20% in billable fees is **\$25,970.00** for which Applicant needs court approval prior to payment. *Id.* There is no outstanding expense reimbursement still owed. *Id.* This application represents 185.50 billable hours by applicant. Doc. #1875. The billing records indicate that Applicant took a voluntary reduction of \$44,112.50 from the total fees incurred to reach the figure listed above.

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: current operating results and events; cash and liquidity analysis; asset sales; analysis of other miscellaneous motions; analysis of claims and liabilities subject to compromise; POR & DS - analysis,

negotiation and formulation; case management; general meetings with committee and committee counsel; preparation of fee application; and insurance review. Doc. #1877. The court finds these services were actual and necessary to the estate, and the fees are reasonable and consistent with § 326(a).

Accordingly, the court hereby approves an award to this Applicant of:

- a. **\$129,850.00** for fees earned and **\$220.93** for expenses incurred, for a total of **\$130,070.93** during the Third Interim Application Period on an interim basis;
- b. **\$391,660.91** for fees earned and expenses reimbursed over the entire duration of Applicant's representation on a final basis; and
- c. **\$25,970.00** for fees incurred during the Third Interim Application Period but which have not been paid due to a 20% hold back from amounts sought in Applicant's Monthly Fee Statements.

8. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[PSJ-49](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF STILLS CUMMIS &
GROSS P.C. FOR ANDREW H SHERMAN, CREDITOR COMM. ATY(S)
6-14-2024 [[1880](#)]

RILEY WALTER/ATTY. FOR DBT.
ANDREW SHERMAN/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

ORDER: The moving party shall submit a proposed order.

Sills Cummins & Gross P.C. ("Applicant"), co-counsel to the chapter 11 Creditors Committee ("the Committee") in the above-styled Chapter 11 case filed by Madera Community Hospital ("Debtor"), requests approval of its *Third Interim and Final Application for Allowance of Compensation for Services and Reimbursement of Expenses* under 11 U.S.C. §§ 330 and 331. Doc. #1880. Applicant seeks:

- a. an interim allowance of **\$676,012.50** (the "Interim Amount") for fees earned and **\$3,508.44** for expenses incurred between December 1, 2023, and May 6, 2024 ("the Third Interim Application Period") for a total interim award of **\$679,520.94**;
- b. final allowance and approval of **\$1,181,452.40** (the "Final Amount") for fees earned and expenses reimbursed between April 14, 2023, and May 6, 2024 ("the Final Application Period"), which represents the entire duration of Applicant's representation; and
- c. approval of a payment of **\$326,085.59** of the Final Amount, which was incurred during the Third Interim Application Period

but has not been paid due to a 20% hold back from amounts sought in Applicant's Monthly Fee Statements.

Id.

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

No party in interest timely filed written opposition. This Application includes a statement by the co-chairs of the Committee of Unsecured Creditors ("the Committee") stating their non-opposition to this fee application. Doc. #1911. This motion will be GRANTED.

Applicant's retention as committee counsel was authorized pursuant to 11 U.S.C. §§ 327(a) and 329-31 on May 23, 2023, effective on the petition date. Doc. #488. This Application has been brought pursuant to the *Order Establishing Procedures for Allowance and Payment of Interim Compensation*, which this court entered on August 2, 2023 ("the Compensation Order"). Doc. #759. Under the terms of the Compensation Order, Applicant (along with several other professionals subject to the Compensation Order ("the Subject Professionals")) was required to submit monthly fee statements to various entities listed in the order to give those entities time to object to any fee requests. *Id.* The Compensation Order authorized Applicant to collect 80% of any fees owed under the monthly fee statement, with the remaining 20% collectable only after an interim or final application for compensation such as the one presently before the court. *Id.*

Pursuant to the Compensation Order and §§ 330 and 331 of the Code, Applicant now seeks court approval to collect the remaining 20% of the outstanding fees and expenses owed to it for work done and expenses incurred during the Third Interim Application Period. Doc. #1883. The Application seeks approval of **\$676,012.50** in attorney's fees and **\$3,508.44** in expenses over that span. Doc. #1883 (*Exh. 2*). Of that, Applicant has already been paid **\$350,225.60** (or 80% of the attorney's fees billed), as well as **\$3,209.75** for expenses incurred by not yet allowed. *Id.* The remaining 20% in billable fees is **\$325,786.90** for which Applicant needs court approval prior to payment. *Id.* Applicant also seeks **\$298.69** in outstanding expense

reimbursement still owed. *Id.* This application represents 1,001.50 billable hours by applicant. *Id.* The billing records indicate that Applicant applied a "Discount Based on Application of Blended Rate for Application Period" in the amount of \$110,823.00 to reach the figure listed above.

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: asset analysis and recovery; asset disposition; business operations; case administration; claims administration and objections; fee/employment applications; financing; litigation (other than avoidance action litigation; plan and disclosure statement; relief from stay proceedings; and corporate finance and valuation. Doc. #1883. By far the most significant of these services were asset disposition (223.4 hours; \$188,132.00 in fees) and work on the plan and disclosure statement (596.20 hours; \$470,861.00 in fees). The court finds these services were actual and necessary to the estate, and the fees are reasonable and consistent with § 326(a).

Accordingly, the court hereby approves an award to this Applicant of:

- a. **\$676,012.50** for fees earned and **\$3,508.44** for expenses incurred, for a total of **\$679,520.94** during the Third Interim Application Period on an interim basis;
- b. **\$1,177,335.00** for fees earned and **\$4,117.40** for expenses reimbursed over the entire duration of Applicant's representation on a final basis; and
- c. **\$325,786.90** for fees earned and **\$298.69** for expenses incurred during the Third Interim Application Period but which have not been paid due to a 20% hold back from amounts sought in Applicant's Monthly Fee Statements.

9. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-19](#)

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

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

NO RULING.

10. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-21](#)

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

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

NO RULING.

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

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

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

NO RULING.

12. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-40](#)

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

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

NO RULING.

13. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-42](#)

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

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

NO RULING.

11:00 AM

1. [24-11147](#)-B-7 **IN RE: JODIE GIBSON**

REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA INC.
6-26-2024 [\[21\]](#)

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 Jodie Gibson ("Debtor") and Santander Consumer USA, Inc. for a 2024 Kia Soul was filed on June 26, 2024. Doc. #21.

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) (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, the Vehicle is valued at \$24,290.00. The amount being reaffirmed by Debtor is \$26,743.74 with a 14.38% interest rate. Debtor has negative equity of (\$2,453.74) with approximately 73 months (six years) remaining on the loan and a negative monthly income of (\$55.42) 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 Santander Consumer USA, Inc. will be DENIED.

2. [24-10584](#)-B-7 **IN RE: GUADALUPE MARTINEZ**

REAFFIRMATION AGREEMENT WITH WELLS FARGO BANK N.A.
6-26-2024 [\[20\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Denied as untimely.

ORDER: The court will issue an order.

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

Debtor was represented by counsel when she entered into the reaffirmation agreement. Pursuant to Fed. R. Bankr. P. 4008 the reaffirmation shall be filed no later than 60 days after the first date set for the meeting of creditors. In this case, the meeting of creditors was set for April 11, 2024. The deadline to file the reaffirmation agreement was June 10, 2024. The case was discharged on June 17, 2024. Doc. #15. Debtor's counsel did not file a request to extend time to file a reaffirmation agreement. The reaffirmation agreement was not filed until June 26, 2024. Doc. #20.

Therefore, the reaffirmation agreement will be denied as untimely.

1:30 PM

1. [24-11611](#)-B-7 **IN RE: JOSLYN JOHNSON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-25-2024 [\[17\]](#)

\$338.00 FILING FEE PAID 6/27/24
DISMISSED 7/1/24

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

DISPOSITION: Dropped and taken off calendar.

NO ORDER REQUIRED.

An order dismissing the case was entered on July 1, 2024. Doc. #19. Accordingly, this Order to Show Cause will be taken off calendar as moot. No appearance is necessary.

2. [23-11228](#)-B-7 **IN RE: BELLA VINEYARD AG SERVICES, INC.**
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG,
ACCOUNTANT(S)
6-4-2024 [\[60\]](#)

RATZLAFF TAMBERI & WONG/MV
LEONARD WELSH/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 Jeffrey M. Vetter, 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 **\$2,696.00** in fees based on **10.4** billable hours from November 19, 2023, through May 28, 2024. Doc. #62. 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 0.8 hours billed at \$250.00. *Id.* Applicant also seeks expense reimbursement in the amount of **\$11.32** for postage to notice creditors. *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). 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 corporate tax returns for the estate for the tax period ending on December 31, 2023. Doc. #62. 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. #64.

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 **\$2,696.00** in fees and **\$11.32** in expenses. The court grants the Application for a total award **\$2,707.32** 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.

3. [24-11130](#)-B-7 **IN RE: GUADALUPE VELASQUEZ**
[EPE-2](#)

MOTION TO COMPEL ABANDONMENT
5-30-2024 [\[17\]](#)

GUADALUPE VELASQUEZ/MV
ERIC ESCAMILLA/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.

Guadalupe Velasquez ("Debtor") moves for an order compelling chapter 7 trustee Peter L. Fear ("Trustee") to abandon the estate's interest in property used in the operation of Debtor's home daycare business (collectively, the "Business Assets"). Doc. #17.

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.

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

To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset . . . Absent an attempt by the trustee to churn property

worthless to the estate just to increase fees, abandonment should rarely be ordered." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). *In re Galloway*, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at *16-17 (B.A.P. 9th Cir. 2014).

Debtor is the owner and operator of a small home daycare business operating as a sole proprietorship. Doc. #19. Debtor seeks to compel Trustee to abandon the Business Assets, which are listed in the schedules as follows:

Asset	Value	Lien	Exemption	Net
Goodwill	\$250.00	0.00	0.00	\$250.00
Business supplies and equipment, children's activity center, easels, tables, chairs, drawing table with drawers, shelves, storage cabinets, school supplies, paper, bulletin board, desk and chair set, office desk, whiteboards, 2 plastic banquet tables, balls, children's game sets, children's books, outdoor play set, children's toys, general childcare facility furnishings and supplies	\$3,000.00	\$0.00	\$3,000.00	\$0.00

Id.; Doc. #1 (Sched. A/B). None of the Business Assets are encumbered by any secured creditors. *Id.* (Sched. D). Debtor exempted all the Business Assets for their full value as tools of the trade under Cal. Code Civ. Proc. § 703.060. *Id.* (Sched. C).

Debtor contends there is no goodwill value in the business because substantially all the income from the business is the result of the labor of Debtor, and Debtor does not have any employees. Doc. #19. Further, Debtor certifies that Debtor was qualified and eligible to claim the exemptions under applicable law and understands that if for any reason it is determined that Debtor is not qualified to claim an exemption in the property listed, or if there is some other error in the exemption claimed, Trustee may demand that Debtor compensate the estate for any damage caused by the claimed exemption. Debtor agrees to not amend the exemptions affecting the Business Assets unless Trustee stipulated to that amendment or such relief is granted by further order of the court. *Id.*

No party in interest has responded, and the defaults of all nonresponding parties in interest are entered. The court finds that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately scheduled and exempted in their entirety except for an estimated value of \$250.00 for the

"goodwill" of Debtor's business which, even if an accurate appraisal, is a nominal sum. Therefore, this motion is GRANTED.

The order shall specifically include the property to be abandoned.

4. [24-11753](#)-B-7 **IN RE: HARWINDER SINGH**
[HRH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-27-2024 [\[7\]](#)

BMO BANK N.A./MV
SUNITA SOOD/ATTY. FOR DBT.
RAFFI KHATCHADOURIAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The court intends to grant the motion for relief on the grounds stated in the motion.

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

BMO Bank N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2022 Kenworth T680-Series Tractor Truck and a 2019 Freightliner Cascadia Series CA 12564SLP Tractor Truck ("Vehicles"). Doc. #7. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). *Id.*

Movant recovered the Vehicles pre-petition. The Vehicles were not listed on Debtor's schedules nor provided for in his Statement of Intention.

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 court notes the presence of two procedural defects in the moving papers. First, while the Notice properly states that the hearing is set for July 16, 2024, the Motion itself incorrectly states that the hearing is set for February 7, 2024. Second, the Certificate of Service has no signature from the attorney responsible for service. See Doc. #13. However, it appears that Movant took possession of the Vehicles prior to the filing of the case, and the Vehicles are not listed as assets of the estate, so the court is willing to overlook these defects in the absence of any objections raised at the hearing.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor is at least six (6) payments past due in the amount of \$37,115.57. Docs. ##10, 11.

The court also finds that the Debtor does not have any equity in the Vehicles and the Vehicles are not necessary to an effective reorganization because Debtor is in chapter 7. Movant values the Vehicles at \$118,550.00 and the amount owed to Movant is \$203,043.22. Doc. #11.

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. Adequate protection is unnecessary in light of the relief granted herein.

The 14-day stay of Fed. R. Bankr. P. 4001(a) (3) will be ordered waived because the Debtor has failed to make at least 6 pre-petition payments and the Vehicles are a depreciating asset.

5. [24-10779](#)-B-7 **IN RE: ARTURO MONTEJANO MELGOZA AND LIDUVINA SEVILLA DE MONTEJANO**
[FW-2](#)

MOTION TO SELL
6-17-2024 [[32](#)]

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

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

DISPOSITION: Granted.

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

Chapter 7 trustee Peter L. Fear ("Trustee") seeks authorization to sell the estate's interest in two vehicles ("the Vehicles") to Arturo Montejano Melgoza and Liduvina Sevilla de Montejano (collectively "Debtors"), subject to higher and better bids, for

\$14,500.00 to be paid in twelve monthly payments beginning in June of 2024. Doc. #32.

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 will be entered.

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 identify the Vehicles as follows:

Asset Description	Scheduled Value	Trustee's Value	Liens	Exemptions	Net Value
2015 Toyota Corolla was 55,000 miles	\$13,500.00	\$13,500.00	\$0.0	\$7,500.00	\$6,000.00
2006 Ford F150 with 115,000 miles	\$8,500.00	\$8,500.00	\$0.00	\$0.00	\$8,500.00
Total					\$14,500.00

Doc. #34. Trustee states the Vehicles are unencumbered. *Id.*

Trustee proposes that the Debtors pay an amount equal to the net equity in the Vehicles (\$14,500.00) in twelve monthly installments. *Id.* He further indicates that the estate has received the Debtors' first monthly payment. *Id.* Debtors will maintain all appropriate insurance on the vehicles and provide proof of insurance. *Id.* If Debtors fail to comply with the terms of the Sales Agreement, Debtors will pay the attorney fees, costs, and any other damages incurred by the Trustee and/or the estate. *Id.*

Trustee declares his belief 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. *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 which is GRANTED. This matter will proceed to hearing for higher and better bids only.

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

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 must also comply with the overbid procedures as outlined in the Trustee's *Notice of Hearing*. Doc. #33.

6. [24-11089](#)-B-7 **IN RE: HECTOR RAMOS**
[MAZ-1](#)

MOTION TO AVOID LIEN OF TUCOEMAS FEDERAL CREDIT UNION
6-14-2024 [\[16\]](#)

HECTOR RAMOS/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

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

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.

Hector Ramos ("Debtor") moves for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of Tucoemas Federal Credit Union ("Tucoemas") in the sum of \$17,259.23 and encumbering residential real property located at 1390 E. Carmelo Avenue, Tulare, California, 93274 ("the Residence"). Doc. #16.

Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor's attorney of record for service of process via first class mail on June 15, 2023. Doc. #20. Debtor also complied with Rule 7004(h), which requires service to be made by **certified mail and addressed to an officer**, unless one of three specified exceptions not relevant here have been met. Doc. #20.

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

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

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be

listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of Tucoemas in the amount of \$17,259.23 on February 20, 2024. Doc. #18 (Exh. D). The abstract of judgment was issued on January 20, 2024, and was recorded in Tulare County on March 12, 2024. *Id.* That lien attached to Debtor's interest in the Residence. *Id.*; Doc. #19. Debtor estimates that the current amount owed on account of this lien is \$7,605.00. *Id.*

As of the petition date, Residence had an approximate value of \$340,000.00. Doc. #1 (Sched. A/B). Debtor claimed a \$349,000.00 exemption in the Residence pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. Doc. #1 (Sched. C).

Property is encumbered by a first deed of trust in favor of Wells Fargo Home Mortgage ("Wells Fargo") in the amount of \$103,939.00. Doc. #1 (Sched. D). Property's encumbrances can be illustrated as follows:

Creditor	Amount	Recorded	Status
1. Wells Fargo	\$103,939.00		Unavoidable
2. Tucoemas	\$17,259.23	03/12/24	Avoidable

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

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

This lien is the most junior lien subject to avoidance and there is not any equity to support the lien. Strict application of the § 522(f)(2) formula with respect to Creditor's junior lien is illustrated as follows:

Amount of judgment lien	\$17,259.23
Total amount of unavoidable liens	+ \$103,939.00
Debtor's claimed exemption in Property	+ 349,000.00
<i>Sum</i>	= \$470,198.23
Debtor's claimed value of interest absent liens	- \$340,000.00
Extent lien impairs exemption	= \$130,198.23

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

Fair market value of Property	\$340,000.00
Total amount of unavoidable liens	- \$103,939.00
Homestead exemption	- 349,000.00
Remaining equity for judicial liens	= (\$112,939.00)
Creditor's judicial lien	- \$17,259.23
Extent Debtor's exemption impaired	= (\$130,198.23)

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

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