

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, August 4, 2021
Place: Department B – 510 19th Street
Bakersfield, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)

Pursuant to District Court General Order 631, courthouses for the Eastern District of California will be reopened to the public effective June 14, 2021.

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878

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.

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 POSSIBLE UPDATES.

9:00 AM

1. [20-10915](#)-B-13 **IN RE: ELOY/DELLA RUIZ**
[RSW-2](#)

MOTION TO MODIFY PLAN
6-11-2021 [\[29\]](#)

DELLA RUIZ/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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.

Eloy Martinez Ruiz and Della Marie Ruiz ("Debtors") seek confirmation of their First Modified Chapter 13 Plan. Doc. #29. Debtors wish to extend the duration of the plan to 84 months under 11 U.S.C. § 1329(d) and the COVID-19 Bankruptcy Relief Extension Act of 2021. 117 P.L. 5, 135 Stat. 249.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1322(a) because the plan fails to provide for the full payment, in deferred cash payments, of all claims entitled to priority under § 507. Doc. #37. Trustee notes that section 3.12 of the plan provides for \$0.00 to priority claims, but the Internal Revenue Service ("IRS") timely filed a proof of claim in the amount of \$1,342.49, which was last amended on November 3, 2020. See Proof of Claim No. 30. Trustee states that the plan as modified provides sufficient funds to pay the priority claim in full, so the omission of payment to the IRS is not fatal and the plan may be corrected in the order confirming plan.

This matter will proceed as scheduled. The court may GRANT the motion.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of the creditors, the U.S. Trustee, or any other party in interest except Trustee 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 except Trustee are entered. 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.

Under 11 U.S.C. § 1329(d), a plan can be extended to not more than seven years after the time that the first payment under the original confirmed plan was due if the debtor is experiencing or has experienced a material financial hardship due to the COVID-19 pandemic. Section 1329(d)(1) requires the plan to have been confirmed prior to the passage of the COVID-19 Bankruptcy Relief Extension Act of 2021 (March 27, 2021).

Here, joint debtor Della Ruiz declares that she was sick between Christmas and New Year's Eve 2020, and again in March 2021. Doc. #31. Although her sickness was not COVID, due to the pandemic she was unable to return to work until she received negative COVID test results. This resulted in a decrease of income while simultaneously increasing expenses for medical care and other necessities. Moreover, Debtors' previous plan was confirmed on June 12, 2020, which is before the COVID-19 Bankruptcy Relief Extension Act of 2021 was enacted on March 27, 2021. Doc. #23. Accordingly, Debtors satisfy the requirements to extend their plan beyond 60 months under § 1329(d).

This matter will be called as scheduled to inquire about Debtors' position. In the absence of further opposition from Trustee, this motion may be GRANTED. Any order confirming plan shall be approved by Trustee, include the docket control number of the motion, and reference the plan by the date it was filed.

2. [21-10143](#)-B-13 **IN RE: GUILLERMO/ELA ALVARADO**
[RSW-1](#)

MOTION TO CONFIRM PLAN
6-29-2021 [\[33\]](#)

ELA ALVARADO/MV
ROBERT WILLIAMS/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.

Guillermo Alvarado and Ela Melissa Alvarado ("Debtors") seek confirmation of their First Modified Chapter 13 Plan. Doc. #33.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(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 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.

This motion will be GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

3. [17-12562](#)-B-13 **IN RE: RICARDO/ELVIA MARTINEZ**
[PK-3](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
6-23-2021 [\[47\]](#)

PATRICK KAVANAGH/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.

Patrick Kavanagh ("Applicant"), attorney for Ricardo Martinez and Elvia Martinez ("Debtors") requests final compensation under 11 U.S.C. §§ 330 and 331 in the amount of \$780.00. Doc. #47. Since Applicant waived his expenses, this amount represents attorney fees for services rendered between November 29, 2017, and June 22, 2021. Debtors signed a statement of consent that they have reviewed the fee application and have no objections. Doc. #52.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 13 trustee ("Trustee"), the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk*

(*In re Eliapo*), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Debtors filed bankruptcy on July 5, 2017. Doc. #1. The initial chapter 13 plan said Applicant was paid \$1,190.00 prior to filing the case and additional fees of \$4,810.00 shall be paid through the plan by filing a motion in accordance with §§ 329, 330, and Fed. R. Bankr. P. 2002, 2016, 2017. Doc. #5. The *Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys* Form EDC 3-096 provides that initial fees of \$6,000.00 were charged in this case, and of this amount, \$1,190.00 was paid by Debtors before filing the petition. Doc. #7.

On November 30, 2017, Applicant requested interim compensation of \$5,220.00, consisting solely of fees for services rendered from June 26, 2017, through November 28, 2017. Doc. #29. The court granted this motion on March 1, 2018. Doc. #38. Considering Applicant's pre-petition retainer of \$1,190.00, the court authorized the Trustee to pay \$4,030.00 through the plan as an administrative expense.

Applicant now requests final compensation of \$780.00. Doc. #47. The source of the funds will be directly from Trustee in accordance with the confirmed chapter 13 plan.

Applicant's office provided 5.80 billable hours of legal services at an hourly rate of \$300.00 per hour, resulting in fees of \$1,710.00. *Id.* However, Applicant has limited his fees to **\$780.00** to conform with Form EDC 3-096 and the confirmed plan. Further, Applicant has waived all expenses.

11 U.S.C. § 330(a)(1)(A) and (B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses."

Applicant's services included, without limitation: (1) preparation and filing of the first interim fee application (PK-2); (2) reviewing claims, notices, and other filings; (3) providing correspondence and status updates to the Debtors; and (4) case administration. Doc. #49, Ex. B. The court finds the services reasonable and necessary.

This motion will be GRANTED. Applicant will be authorized to receive \$780.00 in fees for services rendered from November 29, 2017, through June 22, 2021. Applicant shall be compensated \$780.00 on a final basis. Further, the court will approve on a final basis the \$5,220.00 in fees previously awarded on an interim basis for Applicant's prior application. The total amount of fees and expenses awarded to Applicant in this case is \$6,000.00.

4. [21-10976](#)-B-13 **IN RE: MARK HALL AND LOUISE JURACEK HALL**
[PK-3](#)

MOTION TO SELL
7-14-2021 [\[48\]](#)

LOUISE JURACEK HALL/MV
PATRICK KAVANAGH/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 will submit a proposed order after hearing.

Mark Stephen Hall and Louise Clara Juracek Hall ("Debtors") seek authorization to sell residential real property located at 4701 Beechwood St., Apt. 48, Bakersfield, CA 93309 ("Property") to Brandon Miller ("Proposed Buyer") for \$85,000.00, subject to higher and better bids. Doc. #48.

Debtors also request authorization to pay federal and California capital gains taxes of \$11,000.00 and \$5,000.00, respectively, from escrow, as well as brokerage fees. Debtors further seek waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 6004(h).

On July 26, 2021, Debtors filed a supplemental declaration stating that the appraisal condition has been resolved because Proposed Buyer signed Contingency Removal No. 1. Doc. #58. However, the attached Contingency Removal No. 1 form appears to be the same one signed by Proposed Buyer on July 13, 2021, and included with the original exhibits. Doc. #53, Ex. D; *cf.* Doc. #59, Ex. E. This form appears to remove all buyer contingencies except the loan and appraisal contingencies. *Id.*

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

This motion concerns a proposed sale of property of the estate other than in the ordinary course of business, and therefore was properly set for hearing on at least 21 days' notice as required by Fed. R. Bankr. P. 2002(a)(2).

11 U.S.C. § 363(b)(1) allows the chapter 13 trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

11 U.S.C. § 1303 states that the "debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections . . . 363(b) . . . of this title." 11 U.S.C. § 1302(b)(1) excludes from a chapter 13 trustee's duties the collection of estate property and reduction of estate assets to money. Therefore, a debtor has the authority to sell property of the estate under § 363(b).

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. (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 [debtor]'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 [debtor]'s business judgment is to be given great judicial deference.'" *Id.* (citing *In re Psychometric Sys.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998)).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Prod. Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to Proposed Buyer, who is represented by Eric Mora of Performance Realtors, Inc. Doc. #53, Ex. C. There is no indication that Proposed Buyer is an insider with respect to Debtors. Proposed Buyer is not listed in the original or amended schedules or master address list. Docs. #1; #5; #22; #44; #45. The court will verify at the hearing that Proposed Buyer is not an insider.

Debtors originally valued Property at \$55,000.00 and listed it for \$74,995.00. Docs. ##50-51. Joint debtor Louise Clara Juracek Hall, a realtor, marketed and listed Property. Doc. #51. She increased the list price to \$79,995 after seeing several comparable listings sales in the same condominium complex. *Id.* At this price, Debtors received 5-6 offers and Proposed Buyer's offer was the best. *Id.* Property is in a condominium complex that is primarily renter occupied rather than owner occupied. Ms. Hall declares that some lenders refuse to finance sales in the complex. *Id.* As result, the sale comes with certain contingencies requiring Proposed Buyer to obtain a loan and for Property to appraise at a specified value. See Docs. #53, Ex. D; #59, Ex. E. Debtors' motion states that if the appraisal determines that Property is valued at less than \$85,000, then Debtors will seek approval of the appraised value. Doc. #48. The appraisal has been scheduled but not yet completed as of the filing of this motion on

July 14, 2021. Debtors anticipate that it will be completed prior to the August 4, 2021 hearing date. *Id.*

Debtors' supplemental declaration states that the appraisal contingency was resolved and removed from the sale. Doc. #58. However, the attached Contingency Removal No. 1 appears to be the same included with the original motion documents. Doc. #59, Ex. E. It was signed by Proposed Buyer on July 13, 2021, and states that "ALL Buyer contingencies are removed, EXCEPT" for the Loan Contingency and Appraisal Contingency. *Ibid.* Movant should clarify this discrepancy.

The terms of the sale are that Proposed Buyer will pay \$85,000.00 for Property with marketable title. Doc. #51. The Property will otherwise be sold "as is." *Id.* Proposed Buyer has already paid a \$1,500 deposit to escrow.

Debtors also request payment of real estate commission in connection with this sale. Since Ms. Hall is a real estate agent at Open Door Real Estate, she acted as the seller's broker. Doc. #53, Ex. C. Debtors seek to compensate her firm \$1,450.00 as commission, but Ms. Hall states that she will not receive any of this commission - it will all go directly to her firm. Doc. #51. The buyer's broker will be paid a 3% commission totaling \$2,550.00 if Property sells for \$85,000.00. *Id.* The sale will also include the following fees:

Sale price of Property		\$85,000.00
Closing costs	-	\$4,164.00
Buyer broker commission	-	\$2,550.00
Seller broker commission	-	\$1,450.00
Federal taxes	-	\$11,000.00
State taxes	-	\$5,000.00
IRS tax lien (Paid by Trustee)	-	\$45,000.00
Net to the estate	=	\$15,836.00

Debtors anticipate that capital gains taxes will be triggered in the amounts of \$11,000 for federal taxes and \$5,000 for state taxes. Debtors request to pay these amounts through escrow. *Id.* Debtors also propose to pay \$45,000 to the IRS through Trustee because the Property is subject to a tax lien.

Debtors wish to sell Property to help effectuate their plan by liquidating some of their assets and using the proceeds to pay secured creditors

Patrick Kavanagh, Debtors' attorney, declares that he has reviewed a preliminary title report but stresses the word "preliminary" because there are several debts encumbering Property that are satisfied, and Debtors are working to obtain reconveyances and releases. Doc. #52.

It appears that the sale of Property is in the best interests of the estate, for a fair and reasonable price, supported by valid business judgment, and proposed in good faith. Opposition may be presented at

the hearing. If no party in interest appears to oppose, this motion will be GRANTED.

The request for waiver of the 14-day stay under Rule 6004(h) will be denied because Debtors present no factual basis to waive the stay provided by law.

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 the property will be sold "as is."

5. [21-10391](#)-B-13 **IN RE: SHARON PARKS**
[MHM-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
6-28-2021 [[68](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
DISMISSED 7/7/21

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

DISPOSITION: Overruled as moot.

ORDER: The court will issue an order.

Chapter 13 trustee Michael H. Meyer ("Trustee") objects to Sharon Kathleen Parks' ("Debtor") claim of exemptions. Doc. #68.

Debtor filed an *ex parte* motion to voluntarily dismiss the case on July 6, 2021. Doc. #74. The court granted the motion on July 7, 2021. Doc. #78. Accordingly, this objection will be OVERRULED AS MOOT.

10:00 AM

1. [21-11408](#)-B-7 **IN RE: DARLEEN BORDEN**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-29-2021 [\[11\]](#)

SANTANDER CONSUMER USA INC./MV
NEIL SCHWARTZ/ATTY. FOR DBT.
JENNIFER WANG/ATTY. FOR MV.

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

DISPOSITION: Granted as to the debtor and denied as moot as to
the trustee.

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

Santander Consumer USA Inc. ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2018 Dodge Challenger ("Vehicle"). Doc. #11.

This motion relates to an executory contract or lease of personal property. The case was filed on May 28, 2021, and the lease was not assumed by the chapter 7 trustee within the time prescribed in 11 U.S.C. § 365(d)(1). Pursuant to § 365 (p)(1), the leased property is no longer property of the estate and the automatic stay under § 362(a) has already terminated by operation of law.

The debtor did not file opposition and the Vehicle was surrendered to the Movant on June 6, 2021. Debtor's Statement of Intention indicated that the Vehicle would be surrendered. Since there is no opposition from the debtor, and the Vehicle has been surrendered it is highly unlikely the debtor exercised his option to assume the lease under § 365(p)(2).

This motion will be GRANTED as to the debtor and DENIED AS MOOT as to chapter 7 trustee under § 365(p)(1).

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

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

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).

Accordingly, the motion will be GRANTED as to the debtor 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. The motion will be DENIED AS MOOT as to the chapter 7 trustee pursuant to § 365(p)(1). The leased property is no longer property of the estate and the automatic stay under § 362(a) has already terminated by operation of law.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor surrendered the property on June 6, 2021.

2. [21-11131](#)-B-7 **IN RE: KEVIN HAYS**
[PK-1](#)

MOTION TO AVOID LIEN OF CAVALRY SPV I, LLC
6-28-2021 [\[26\]](#)

KEVIN HAYS/MV
PATRICK KAVANAGH/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.

Kevin J. Hays ("Debtor") moves to avoid a judicial lien in favor of Cavalry SPV I, LLC ("Creditor") in the amount of \$5,928.09 and encumbering residential real property located at 1324 N. Belmont St., Porterville, CA 93257 ("Property"). Doc. #26.

Debtor properly served Creditor's registered agent for service of process, C T Corporation System. Doc. #31. Debtor has complied with Federal Rule of Bankruptcy Procedure ("Rule") 7004(b)(3) and (b)(8).

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 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.

The court notes one procedural issue. Service on Creditor is sufficient under Rule 7004(b)(3) and (b)(8) because Creditor was served through its registered agent for service of process: C T Corporation System. Doc. #31. However, Debtor also directed service to Creditor's "President, CEO or Person Authorized to Accept Service" while attempting to serve Creditor. *Id.* There is a split in authority regarding whether service upon an unnamed officer is proper under Rule 7004(b)(3). *Addison v. Gibson Equip. Co. (In re Pittman Mech. Contractors)*, 180 B.R. 604 (Bankr. E.D. Va. 1995) ("Attn: President" is insufficient for service under Rule 7004(b)(3)); cf. *Schwab v. Assocs. Commercial Corp. (In re C.V.H. Transp., Inc.)*, 254 B.R. 331, 332-34 (Bankr. M.D. Pa. 2000) (finding that service directed to unnamed "officer, managing or general agent, or to any other agent authorized by law to receive service of process" was sufficient under Rule 7004(b)(3)).

The Ninth Circuit has long required Rule 7004(b)(3) service to be directed to a named officer. See *In re Schoon*, 153 B.R. 48, 49 ("By addressing the envelope 'Attn: President' the debtors did not serve an officer, they served an office.") (emphasis in original); *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 94 (B.A.P. 9th Cir. 2004) ("Only if the notice 'is directed to a corporation and the attention of an officer or agent as identified in Rule 7004(b)(3),' can it be received by a person who is charged with responding to the service.") quoting *C.V.H. Transport*, 254 B.R. at 334.

Service here is sufficient because a registered agent for service of process was properly served. But addressing service merely to a "President, CEO, or Person Authorized to Accept Service" by itself would not comply with Rule 7004(b)(3). Had the registered agent not been served, the motion would have been denied for failing to list the name of the officer authorized to receive service.

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 Creditor in the sum of \$5,928.09 on August 14, 2020. Doc. #30, Ex. D. The abstract of judgment was issued on March 12, 2021, and recorded in Tulare County on April 8, 2021. *Id.* That lien attached to Debtor's interest in Property and its current balance is approximately \$6,354.00. Doc. #28.

As of the petition date, Property had an approximate value of \$270,000.00. Doc. #1, *Schedule A/B*. The unavoidable liens totaled \$156,995.00 on that same date, consisting of a deed of trust in favor of Mr. Cooper. *Id.*, *Schedule D*. Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$300,000.00. *Id.*, *Schedule C*. Property's encumbrances can be illustrated as follows:

Fair Market Value of Property		\$270,000.00
Total amount of unavoidable liens	-	\$156,995.00
Remaining available equity	=	\$113,005.00
Debtor's homestead exemption	-	\$300,000.00
Creditor's judicial lien	-	\$6,354.00
Extent Debtor's exemption impaired	=	(\$193,349.00)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the judicial lien. Therefore, the fixing of this 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). Therefore, this motion will be GRANTED.

3. [21-10839](#)-B-7 **IN RE: EDWARD/LISA ANDERSON**
[JMV-1](#)

MOTION TO SELL
7-13-2021 [[14](#)]

JEFFREY VETTER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
JEFFREY VETTER/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.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") seeks authorization to sell the estate's interest in certain personal property (collectively "Estate Assets") to Edward Perry Anderson and Lisa Ann

Anderson ("Debtors") for \$9,250.00, subject to higher and better bids. Doc. #14. The Estate Assets consist of the following:

2010 Acura TL with 106,250 miles;
2004 KTM Motorcycle; and
1998 Seadoo.

Trustee also seeks waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 6004(h).

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. § 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 Enterprises, 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 Systems, 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 Prod. Holdings, Inc. v. Old Cold LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to the Debtors. The Estate Assets are listed in the schedules as follows:

Asset	A/B Value	Sale Price	Net to Estate
2010 Acura TL	\$6,425.00	\$9,050.00	\$9,050.00
2004 KTM Motorcycle	\$0.00	\$100.00	Unknown
1998 Seadoo	\$200.00	\$100.00	\$100.00
Total:	\$6,625.00	\$9,250.00	≤ \$9,250.00

Doc. #1, *Schedule A/B*. Debtors note that the KTM Motorcycle is "IN PIECES - NO TITLE - NO CURRENT VALUE" and the Seadoo "DOESN'T RUN[.]" *Ibid*. Debtors did not exempt any equity in the Estate Assets. *Id.*, *Schedule C*. While the Acura and Seadoo do not appear to be encumbered, the 2004 KTM Motorcycle is encumbered by a purchase money security interest in favor of GE Money Bank in an "Unknown" amount. *Id.*, *Schedule D*. GE Money Bank has not filed a proof of claim. The court will inquire at the hearing about the status of this creditor.

Trustee proposes to sell all Estate Assets for \$9,250.00, which exceeds the total scheduled value of the Estate Assets. Doc. #14. Debtors have made a payment of \$2,500.00 and provided proof of insurance for the Acura. Doc. #16. Trustee states that Debtors offered to purchase the Estate Assets for \$9,250.00, which he accepted subject to court approval and higher or better bids at the hearing. *Id.* Trustee believes that the debtor's bid for the Acura is fair and reasonable after considering the pricing of comparable vehicles of similar make, model, age, mileage, and condition. *Id.* Further, Trustee believes the 2004 KTM Motorcycle and 1998 Seadoo are each worth \$100.00. *Id.* After considering the cost of taking possession of and selling the Estate Assets at a public sale with the risk of receiving a lesser amount, that the price of \$9,250.00 is fair and reasonable. Trustee has presumably conducted due diligence and concluded the sale is in the best interest of creditors and the estate.

It appears that the sale of the Estate Assets is in the best interests of creditors and the estate, for a fair a reasonable price, supported by a valid business judgment, and proposed in good faith.

Opposition was not required and may be presented at the hearing. If there is no opposition, this motion will be GRANTED, and the matter will proceed for higher and better bids.

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

If Debtors are the winning bidder, the 14-day stay of Rule 6004(h) will be ordered waived because the Estate Assets are vehicles and therefore depreciating assets. The Estate Assets are also already in possession of the Debtors and any delay extends a potential estate liability.

Any party wishing to overbid must send a \$2,500.00 refundable deposit to Trustee at P.O. Box 2424, Bakersfield, CA 93303. The deposit must be certified funds such as a money order or cashier's check and must be received not later than August 2, 2021 by 5:00 p.m.

Overbidders must be present at the hearing, make overbids in \$500.00 increments, with the first overbid starting at \$9,750.00, be aware that their deposit will be forfeited if they do not timely pay the balance within 10 days after the order is signed. The only document provided by the Trustee will be the order granting the motion, but

the Trustee will execute other reasonable documents requested by the buyer to expedite and facilitate the sale. All three assets are included in this auction; they are not being sold separately. No warranties or representations are included with the property; it is sold "as is."

4. [16-14447](#)-B-7 **IN RE: JEFFREY/ELIZABETH GIBSON**
[LNH-6](#)

MOTION FOR COMPENSATION FOR LISA NOXON HOLDER, TRUSTEES
ATTORNEY(S)
7-7-2021 [\[93\]](#)

NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Lisa Noxon Holder, PC, general counsel for chapter 7 trustee Peter L. Fear, seeks final compensation under 11 U.S.C. § 330 in the amount of \$4,446.50, consisting of \$4,307.00 in fees and \$139.50 in costs for services rendered from March 2, 2020 through July 7, 2021. Doc. #93.

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

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

A Motion to Employ Pacific Attorney Group as Special Counsel was previously filed on March 2, 2021 (Doc. #71) and granted on March 31, 2021. Doc. #79. The DCN for that motion was LNH-6. This motion also has a DCN of LNH-6 and therefore does not comply with the local rules. Each separate matter filed with the court must have a different DCN.

5. [21-10667](#)-B-7 **IN RE: ISIDRO ESQUIVEL BARRIGA**
[RSW-3](#)

MOTION TO EXTEND TIME TO FILE REAFFIRMATION AGREEMENT
7-8-2021 [\[20\]](#)

ISIDRO ESQUIVEL BARRIGA/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

This motion is DENIED for failure to comply with the Local Rules of Practice ("LBR").

First, LBR 9014-1(f)(2)(C) states that motions filed on less than 28 days' notice, but at least 14 days' notice, require the movant to notify the respondent or respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs.

This motion was filed and served on July 8, 2021 and set for hearing on August 4, 2021. Doc. #23. August 4, 2021 is 27 days after July 8, 2021, and therefore this hearing was set on less than 28 days' notice under LBR 9014-1(f)(2). The notice stated that written opposition was required and must be filed at least 14 days preceding the date of the hearing. Doc. #21. That is incorrect. Because the hearing was set on less than 28 days' notice, the notice should have stated that no written opposition was required and included the language of LBR 9014-1(f)(2)(C).

Second, the U.S. Trustee ("UST"), chapter 7 trustee ("Trustee"), and MidFirst Bank were served electronically. Doc. #23. No relief is being sought from UST or Trustee, so electronic notification is sufficient in this instance. However, this reaffirmation agreement will affect the MidFirst Bank's interests, so it should have been served in accordance with Federal Rule of Bankruptcy Procedure ("Rule") 7004.

Third, although Rule 4008(a) permits the time for filing reaffirmation agreements to be enlarged "at any time," 11 U.S.C. § 524(c)(1) requires the agreement to be made prior to entry of discharge. See *In re Golladay*, 391 B.R. 417, 422 at n.1 (Bankr. C.D. Ill. 2008) ("[W]here it can be shown that the reaffirmation agreement was 'made,' i.e. signed before the granting of the discharge, then the reaffirmation agreement may be 'filed' after the granting of the discharge.") quoting *In re Davis*, 273 B.R. 152, 153 (Bankr. S.D. Ohio 2001) (emphasis in original); *In re Lucious*, 2012 Bankr. LEXIS 3572 (Bankr. N.D. Ohio Aug. 1, 2012).

Here, Debtor's discharge was entered on June 28, 2021. Doc. #12. Debtor's attorney says that Debtor executed the reaffirmation agreement on May 25, 2021. Doc. #22. But on June 29, 2021 – one day after the discharge was entered – Midland Mortgage (a division of MidFirst Bank) contacted Debtor's attorney to say it executed and returned the agreement. Though this is hearsay, it seems to imply that the reaffirmation agreement was not executed until after the discharge was entered. If the agreement was executed after entry of discharge, it is not enforceable. Even if Midland Mortgage signed before June 28, 2021, the time limits are very clear.

There is nothing in counsel's declaration explaining why motions to either extend the date to file the Reaffirmation Agreement or delay entry of discharge were not seasonably filed.

11 U.S.C. § 524(f) may be an alternative for this debtor.

For the foregoing reasons, this motion will be DENIED.

6. [19-12674](#)-B-7 **IN RE: ADRIAN PEREZ**
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG,
ACCOUNTANT(S)
7-2-2021 [[124](#)]

RATZLAFF TAMBERI & WONG/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Ratzlaff Tamberi & Wong ("Applicant"), the certified public accountancy firm engaged by chapter 7 trustee Jeffrey M. Vetter ("Trustee"), seeks final compensation under 11 U.S.C. § 330 in the amount of \$1,297.29, consisting of \$1,282.50 in fees and \$14.79 in costs for services rendered from March 24, 2021, through June 1, 2021.¹ Doc. #124. Trustee declares that he has reviewed the fee application, believes that all fees and expenses are reasonable and

¹ Applicant requests fees between March 24, 2021 and June 1, 2021 but began accruing fees on March 18, 2021. Doc. #128, Ex. A. The employment order was effective for services rendered after February 24, 2021. Doc. #122. The court notes that the presumptive 30-day time frame for employment orders prescribed in LBR 2014-1(b)(1) and Fed. R. Bankr. P. 2014(a) would have allowed employment to be effective as of February 22, 2021, because the employment application was filed on March 24, 2021. Doc. #117. This discrepancy is *de minimis* because Applicant did not begin accruing fees until March 18, 2021. Approving only those fees for services after March 24, 2021, would exclude services rendered from March 18 to March 23, 2021 totaling \$315.00.

necessary for the administration of the estate, and has no objection to those fees and expenses. Doc. #127.

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

On April 1, 2021, the court approved Applicant's employment effective for services rendered on or after February 24, 2021 under 11 U.S.C. §§ 327, 330, and 331. Doc. #122. No compensation was permitted except upon court order following application pursuant to § 330(a) and compensation was set at the "lodestar rate" for accounting services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Acceptance of employment was deemed to be an irrevocable waiver by Applicant of all pre-petition claims, if any, against the bankruptcy estate.

Applicant provided 5.70 hours of accountant services at an hourly rate of \$225.00 per hour totaling \$1,282.50. Doc. #128, Ex. A. Applicant also incurred \$14.79 in expenses for postage. These fees and expenses total **\$1,297.29**.

11 U.S.C. § 330(a)(1)(A) & (B) permit approval of "reasonable compensation for actual services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

Applicant's services included, without limitation: (1) reviewing the petition and estate accounting information, along with Debtor's prior income tax returns; (2) preparing analysis of taxable gains on sale of real estate; (3) preparing and filing federal and state fiduciary income tax returns for the period June 30, 2021; (4) corresponding with Trustee regarding tax matters; and (5) preparing fee application. Doc. #128, Ex. A. The court finds the services reasonable and necessary and the expenses actual and necessary. Trustee reviewed the application and consents to payment of the requested fees and expenses. Doc. #127.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$1,282.50 in fees and \$14.79 in costs on a final basis pursuant to 11 U.S.C. § 330. Trustee will be permitted in his discretion to pay Applicant

\$1,297.29 for services rendered to the estate between March 18, 2021 and June 1, 2021.