



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Department B – Courtroom #13
Fresno, California
Hearing Date: Tuesday, August 13, 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-18](#)

MOTION FOR ORDER APPROVING EXTENSION OF LISTING AGREEMENTS
7-12-2024 [\[700\]](#)

TERRENCE LONG/MV
PETER FEAR/ATTY. FOR DBT.
DANIEL EGAN/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Terrence J. Long (the "Plan Administrator"), the duly appointed Plan Administrator under Steven William Sloan's ("Debtor") Fourth Amended Plan of Reorganization dated December 21, 2021 ("the Plan"), seeks an order extending certain listing agreements between Plan Administrator and Pearson Realty. Doc. #700.

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). 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).

On April 15, 2024, this court granted Plan Administrator's motion to employ Pearson Realty to market and sell various properties of Debtor. Doc. #601. These properties include: (1) 143.08 acres of vacant land in Calaveras County; (2) 58.21 acres of vacant land in Calaveras County; (3) a 50.45-acre almond orchard in Los Banos, CA; and (4) a 64.6-acre pistachio orchard in Los Banos, CA. Doc. #702. The listing agreements expired on July 31, 2024, and the Plan Administrator wishes to extend the listing agreements to January 31, 2025. *Id.* Some of the aforementioned properties have sold already,

and the Plan Administrator declares his belief that extending the listing agreements will afford him time to continue to administer the Plan. *Id.*

No party in interest has opposed the motion, and the defaults of all nonresponding parties are entered. This motion will be GRANTED.

2. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[WF-21](#)

MOTION TO SELL
7-12-2024 [\[705\]](#)

TERRENCE LONG/MV
PETER FEAR/ATTY. FOR DBT.
DANIEL EGAN/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 after hearing.

Terence J. Long ("Long"), duly appointed Plan Administrator in this Chapter 11 case, seeks authorization to sell the estate's interest in commercial real property located at 507 J Street, Los Banos, California, 93635 ("Property") to Michael W. Braa Sr. ("Proposed Buyer") for \$210,000.00 pursuant to 11 U.S.C. § 363, and subject to higher and better bids at the hearing. Doc. #705 *et seq.* Long also requests to pay a six percent (6%) commission to the real estate broker, Pearson Realty. The motion does not request waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 6004(h).

No party in interest timely filed written opposition. This motion will be GRANTED, and the hearing will proceed for bid solicitations only.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(2) and (a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

BACKGROUND

Stephen William Sloan ("Debtor") filed Chapter 11 bankruptcy on March 2, 2020. Doc. #1. On or about September 1, 2023, the court entered an order authorizing Long to enter into a listing agreement with Stanley Kjar of Pearson Realty to market the Property. Doc. #603. The original listing price was \$300,000.00. Doc. #707. Long has secured an offer from and executed a Purchase Agreement with Proposed Buyer to sell Property to Proposed Buyer for \$210,000.00, and now requests approval under 11 U.S.C. § 363(b) to complete the sale. Doc. #705 *et seq.*

DISCUSSION

Sale of Property

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 N. 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*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer, 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., 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). There is nothing in the record suggesting that Proposed Buyer is an insider with respect to Debtor. Proposed Buyers are neither listed in the schedules nor the master address list.

The Property is not listed in the Schedules. The Property is subject to a judgment lien in favor of Oak Valley Community Bank ("OVCB") in the amount of \$600,593.92, but OVCB has agreed to release its lien as to the Property in exchange for one-half the net proceeds of the sale. Doc. #707. OVCB will retain its lien as to any other assets of Debtor that were encumbered as of the petition date. *Id.* The material terms of the sale agreement are: (1) a purchase price of \$210,000.00; (2) a \$3,500.00 deposit which has been put into escrow, (3) close of escrow on or before August 30, 2024, (4) the sale is "as-is," and (5) Proposed Buyer waives all contingencies except for the requirement of court approval. *Id.* Long estimates that sale of

the Property at the proposed sale price will generate approximately \$124,595.28. *Id.*; See Doc. #708 (Exhib. E).

Long declares that a preliminary title report shows that the Property, in addition to the OVCB lien, is subject to outstanding property taxes, but no estimation of the taxes owed is included in the moving papers. Doc. #707.

If sold at the proposed sale price, the proceeds from the proposed sale (excluding the undetermined outstanding taxes) could be illustrated as follows:

Sale price	\$210,000.00
Estimated broker fee (6%)	(\$12,600.00)
Sale Proceeds (not including taxes)	\$197,400.00
1/2 of proceeds to OVCB	(\$98,700.00)
Estimated net proceeds to estate	\$98,700.00

Doc. #708. Long, however, declares that the estimated net proceeds to the estate will be \$124,595.28, but it is unclear to the court from the moving papers how Long arrived at this figure. Doc. #707.

Nevertheless, the sale under these circumstances should maximize potential recovery for the estate. The sale of the Property appears to be in the best interests of the estate because it will pay off the outstanding property taxes owed and reduce OVCB's lien while providing liquidity that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

Real Estate Brokers' Compensation

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

LBR 9014-1(d)(5)(B)(ii) permits joinder of claims for authorization for the sale of real property and allowance of fees and expenses for such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rule 6004.

On August 8, 2023, Long moved to employ Pearson Realty to assist Long in carrying out the Plan Administrator's duties by selling property of the estate. Doc. #594. The court authorized Broker's employment on September 1, 2023, under 11 U.S.C. §§ 327 and 328. Doc. #603.

Pursuant to the employment order, Long requests to compensate Broker with a commission of 6% if Pearson Realty is the only broker involved. Doc. #704; 594. If the eventual buyer is represented by a broker, the compensation will be split evenly between the two. *Id.* The broker's compensation will be \$12,600.00 if there are no

overbidders and Property is sold at the proposed sale price. The court will authorize Long to pay broker commissions as prayed.

Overbid Procedure

Any party wishing to overbid shall, prior to the hearing, comply with the overbid procedures as outlined in the motion. Doc. #705.

Waiver of 14-day Stay

The Movant does not request a waiver of the 14-day stay of Rule 6004(h) and no such relief will be granted.

Conclusion

No party in interest timely filed written opposition. This motion will be GRANTED. The Plan Administrator will be authorized: (1) to sell the Property to the prevailing bidder at the hearing, as determined at the hearing; (2) to execute all documents necessary to effectuate the sale of the Property; (3) to pay broker commission in the amount of 6% of the total sale price to be split evenly between Broker and the buyer's broker, if any, as determined at the hearing; (4) to pay all costs, commissions, and real property taxes directly from escrow, and (5) to pay one-half of the net proceeds to OVCB in exchange for OVCB releasing the Property from its lien. The 14-day stay of Rule 6004(h) will not be waived.

3. [24-11015](#)-B-11 **IN RE: PINNACLE FOODS OF CALIFORNIA LLC**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V
VOLUNTARY PETITION
4-22-2024 [\[1\]](#)

MICHAEL BERGER/ATTY. FOR DBT.

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

DISPOSITION: Continued to October 22, 2024, at 9:30 a.m.

ORDER: The court will prepare the order.

On August 2, 2024, the Debtor in this case filed a Chapter 11 Small Business Plan. Doc. #177. Accordingly, this Status Conference will be reset to **October 22, 2024, at 9:30 a.m.** to coincide with the Confirmation Hearing. The Debtor shall and all other parties are invited to file status reports no later than **seven (7) days** before the hearing date.

4. [24-11015](#)-B-11 **IN RE: PINNACLE FOODS OF CALIFORNIA LLC**
[KCO-1](#)

MOTION TO EMPLOY CRAIG R. TRACTENBERG AS SPECIAL COUNSEL
AND/OR MOTION TO EMPLOY KEITH C. OWENS AS SPECIAL COUNSEL
7-15-2024 [\[143\]](#)

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

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Pinnacle Foods of California, LLC ("Pinnacle" or "Debtor") submits this Application for entry of an order authorizing Debtor to retain Fox Rothschild ("the Firm") as special franchise counsel for Debtor effective as of July 7, 2024, pursuant to 11 U.S.C. § 327(e) and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure, with compensation pursuant to §§ 330 and 331.

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

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

Here, the motion and supporting documents were filed and served on July 15, 2024, and set for hearing on August 13, 2024. Doc. #143 *et seq.* July 15, 2024, is twenty-nine (29) days before August 13, 2024. Therefore, this motion was set for hearing on 28 or more days of notice under LBR 9014-1(f)(1). Nevertheless, the notice provided:

Pursuant to Local Rule 9014-1(f)(2), for Motions filed on less than 28 days' notice, but at least 14 days' notice, no written opposition is necessary, and that any Opposition to the Motion, 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.

Doc. #144 ("Notice"). This is incorrect. Since the hearing was set on more than 28 days' notice, LBR 9014-1(f)(1) is applicable.

The notice should have stated that written opposition was required and must be filed at least 14 days before the hearing, and failure to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion. Instead, the respondents were told not to file and serve written opposition even though it was necessary. Therefore, the notice was materially deficient. If the movant gives 28 days or more of notice of the hearing, there is

no option to simply pretend that the motion was set for hearing on less than 28 days of notice to dispense with the court's requirement that any opposition must be in writing and filed with the court. Additionally, under LBR 9014-1(d)(3)(B)(i), the motion must include the names and addresses of the persons who must be served with such opposition.

Accordingly, this application will be DENIED WITHOUT PREJUDICE.

5. [24-11015](#)-B-11 **IN RE: PINNACLE FOODS OF CALIFORNIA LLC**
[KCO-2](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
7-15-2024 [\[146\]](#)

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

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

DISPOSITION: Withdrawn.

No order is required.

On August 4, 2024, Pinnacle Foods of California ("Movant/Debtor") filed a notice of withdrawal without prejudice as to this motion. Doc. #178. Accordingly, this motion is WITHDRAWN.

6. [24-11015](#)-B-11 **IN RE: PINNACLE FOODS OF CALIFORNIA LLC**
[MB-1](#)

MOTION TO REMOVE THE DEBTOR FROM POSSESSION AND EXPAND THE POWERS OF THE SUBCHAPTER V TRUSTEE AND/OR MOTION TO REVOKE THE DEBTOR'S SUBCHAPTER V DESIGNATION , MOTION TO APPOINT TRUSTEE
7-10-2024 [\[120\]](#)

POPEYES LOUISIANA KITCHEN, INC./MV
MICHAEL BERGER/ATTY. FOR DBT.
HAGOP BEDOYAN/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

7. [24-11015](#)-B-11 **IN RE: PINNACLE FOODS OF CALIFORNIA LLC**
[MB-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-15-2024 [\[134\]](#)

POPEYES LOUISIANA KITCHEN, INC./MV
MICHAEL BERGER/ATTY. FOR DBT.
HAGOP BEDOYAN/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

Creditor Popeyes Louisiana Kitchen, Inc. ("Popeyes") moves for an order pursuant to 11 U.S.C. 362 for relief from the automatic stay to allow it to prosecute a pending motion for attorney's fees and costs in Los Angeles County Superior Court set for hearing on August 20, 2024. Doc. #134. Pinnacle Foods of California LLC ("Pinnacle" or "Debtor") has filed a non-opposition. Doc. #169.

Except for Debtor's non-opposition, 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). 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).

Popeyes has filed identical motions in three related cases: *In re Pinnacle Foods of California*, Case No. 24-11015, Doc. #134 (this matter); *In re Tyco Group, LLC*, Case No. 24-11016, Doc. #122 (Item #11, below); and *in re California QSR Management, Inc.*, Case No. 24-11017, Doc. #141 (Item #15, below). The three motions are substantially identical, and the respective debtor in each case entered a non-opposition to the motion that are all substantially the same. Accordingly, all three motions will be GRANTED.

These motions have their origin in the case of *Pinnacle Foods of Bakersfield, LLC; Pinnacle Foods of California, LLC; Tyco Group, LLC and Imran Damani v. Popeyes Louisiana Kitchen, Inc., et. al.*, Case No. 21STCV35404 ("the California Action") which was brought in the Los Angeles County Superior Court. Doc. #137. The moving papers indicate that an order of dismissal with prejudice was entered in favor of the defendants in the California Action. Doc. #138. Subsequently, the defendant moved for attorney's fees and costs pursuant to a clause in the franchise agreements at the heart of the California Action which granted fees and costs to the prevailing party in any franchise-related suit. *Id.* Hearing on the attorneys' fees and costs motion was originally set for August 20, 2024, in the Los Angeles Superior Court. *Id.*

In its motion, Popeyes avers that good cause exists pursuant to 11 U.S.C. § 362(d)(1) because such relief will aid in the administration of the estate by liquidating the attorneys' fees and costs award which is a component of Popeyes' proof of claim and by determining the amount of Debtor's cure obligations under the franchise agreements. Doc. #134. The motion states that Popeyes' only seeks to obtain a judgment and will not seek to enforce the judgment outside of the bankruptcy proceedings without court authorization. Doc. #134.

Debtor does not oppose the granting of the motion, and no other party in interest has objected. Accordingly, this motion will be GRANTED. Popeyes' is authorized to prosecute its pending motion for attorneys' fees and costs in the Los Angeles County Superior Court. While Popeyes' may seek to liquidate its attorney's fees and costs damages, it may not seek to enforce any judgment entered without authorization from this court. Debtor's counsel to approve the order as to form.

8. [24-11015](#)-B-11 **IN RE: PINNACLE FOODS OF CALIFORNIA LLC**
[VP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
7-22-2024 [\[157\]](#)

FLAGSTAR FINANCIAL & LEASING LLC/MV
MICHAEL BERGER/ATTY. FOR DBT.
KEVIN ETZEL/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied. Adequate protection payments of \$4,000
per week shall begin August 15, 2024.

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

Flagstar Financial & Leasing, LLC ("Flagstar") moves for an order pursuant to 11 U.S.C. § 362(d)(1) and/or (d)(2) for relief from the automatic stay with respect to its collateral or, in the alternative for adequate protection pursuant to 11 U.S.C. § 363. Doc. #157. Flagstar is the successor to the original lender, Signature. Signature was put in receivership by New York State authorities and the FDIC was appointed receiver. Flagstar acquired the loans at issue through the receivership.

Flagstar has filed identical motions in three related cases: *In re Pinnacle Foods of California* ("Pinnacle"), Case No. 24-11015, Doc. #157 (this matter); *In re Tyco Group, LLC* ("Tyco"), Case No. 24-11016, Doc. #134 (Item #12, below); and *In re California QSR Management, Inc.* ("CA QSR"), Case No. 24-11017, Doc. #152 (Item #16, below). The three motions are substantially identical, and the respective debtor in each case filed an opposition to each motion that are all substantially the same.

Written opposition was not required and may be presented at the hearing, although the court notes that in each of the three cases, the Debtor has already filed a response. The court is inclined to DENY this motion but modify the adequate protection payments to \$4,000 per week beginning August 15, 2024.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. The court will issue an order if a further hearing is necessary. The court notes that by filing and prosecuting the motion on less than regular (28-day) notice Flagstar has waived the time limits of 362(e). LBR 9014-1 (f)(2)(B).

Equity and Effective Reorganization

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 the property at issue and such property is not necessary to an effective reorganization.

Here, it appears that there is no equity in the property which is collateral for the two Flagstar loans. The property in question consists of personal property items listed in each Debtor's Schedule A/B such as cooking equipment and fixtures, dining tables, chairs, glasses, and other miscellaneous personal property items necessary to the operation of Debtor's restaurants. Doc. #1. The collateral also includes accounts, chattel paper, deposit accounts, general intangibles, leases, and proceeds. In its opposition, Debtor does not dispute the lack of equity nor the perfection of the collateral interests. Rather, Debtors argue that:

treatment of Flagstar's claim through Debtors' plans of reorganization will yield a substantially higher repayment of Flagstar's claim than what Flagstar will be able to realize from liquidation [of] the debtor's personal property items that are subject to its UCC-1 Financing Statement.

Doc. #170. For the purposes of this motion, the court accepts that there is no equity in the collateral. But that is not the end of the inquiry. Before the court can lift the stay under § 362(d)(2), it must conclude that the property is not necessary to an effective reorganization. Section 362(g) places the burden of showing that the property is necessary on the party opposing stay relief, which in this case is the Debtor. And under these circumstances, the court agrees with Debtor that the property is necessary to any reorganization. Debtor is engaged in the operation and management of restaurants, and the property at issue (tables, chairs, kitchen equipment, etc.) is indispensable for such a purpose.

Flagstar's arguments that the property is not necessary for reorganization are not persuasive. First, Flagstar states that "Debtors have not filed their plans of reorganization." Doc. #157. However, at the time this motion was filed, the time for filing a plan of reorganization had not yet run, and Debtor has since filed a plan of reorganization. See Doc. #177. Second, Flagstar argues that Debtor's reorganization is dependent on Debtor's ability to assume certain Franchise Agreements between Pinnacle Foods, Tyco, and the franchisor, Popeyes. Doc. #157. Because Popeyes has indicated that it will object and withhold consent to any attempt to assume those franchise agreements, it is *a priori* certain that the franchise agreements will not be assumed, and without those franchise agreements, an effective reorganization is an impossibility. *Id.*

The court is aware of Popeyes' strong opposition to any assumption of its franchise agreements with Pinnacle and Tyco. However, the court is also aware that creditors change their minds all the time

during the pendency of bankruptcy cases, and as of this date, nothing has happened in this case to preclude the possibility of Popeyes' and Debtor coming to some sort of agreement whereby Popeyes' will consent to assumption of the agreements. Popeye's counsel has stated in court that it may consent to an assumption and assignment of the agreements to approved entities other than the Debtor, here.

Nor has anything occurred that irrevocably makes assumption an impossibility. The court declines to grant Flagstar's motion for stay relief on the grounds that the current legal position of a third-party makes reorganization an impossibility. The proper forum for that now is plan confirmation. The court need not rule on the feasibility of any Plan without a full ventilation of the necessary confirmation issues. Plans have been timely filed that may be difficult to confirm. But now is not the time to determine those issues.

The court has been asked to rule on Popeye's Louisiana Kitchens' motions to remove the debtor in possession. The primary ground is the arguable impossibility of reorganization without the franchise agreements. That may or may not be true. But that does not need to be determined on a stay relief motion not even involving a contracting party. Flagstar is not the franchisor nor is it a party to any of the franchise agreements.

Adequate Protection

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).

Section 361 sets forth three non-exclusive examples of what may constitute adequate protection: 1) periodic cash payments equivalent to decrease in value, 2) an additional or replacement lien on other property, or 3) other relief that provides the indubitable equivalent. *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984)

According to Flagstar's proof of claim, Debtors owe Flagstar \$3,074,260.72 as of the petition date. Doc. #157; POC #11-1. It appears that all three Debtors are jointly liable for this debt. Flagstar argues that if the court will not grant stay relief, it should "substantially" increase the amount of Debtors' adequate protection payments to \$36,919.41 per month. Debtor's Opposition states that the three Debtors are currently paying Flagstar \$2,000.00 per week for adequate protection, and Debtor proposes to increase those payments to \$4,000.00 per week. Doc. #170.

Though Flagstar argues that it can only be adequately protected by its monthly contractual payments, it provides no basis for concluding that the current payments of \$2,000.00 per week are insufficient to protect Flagstar against diminution of the value of the collateral, let alone Debtor's proposed increase to \$4,000.00 per week. The issue is not whether Flagstar should be made whole by

adequate protection payments, but to what extent does the automatic stay result in a decrease in value of Flagstar's interest. § 361. Mr. Haan's declaration says nothing about the diminution of value. Anything he would say would be speculative anyway as his declaration does not establish his expertise on evaluating Flagstar's collateral package or how much the passage of less than four months has impacted the values.

The Supreme Court has long instructed that Flagstar's lost opportunity cost is not entitled to adequate protection. *United Savings Ass'n. v. Timbers of Inwood Forest Assoc. Ltd.*, 484 U.S. 365, 371 (1988).

To be sure, the Debtors have the ultimate burden of proof on adequate protection. § 362(g). But Flagstar still has the initial burden of making a *prima facie* case. *In re Wilhelm*, 407 B.R. 392, 400 (Bankr. D. Idaho, 2009); *In re Cambridge Woodbridge Apts. LLC*, 292 B.R. 832, 841 (Bankr. N.D. Ohio, 2003); *In re Elmira Litho., Inc.*, 174 B.R. 892, 902 (Bankr. S.D.N.Y. 1994). Flagstar has failed to overcome the Debtor's arguments that the collateral is necessary for an effective reorganization and because it has failed to show that it is not adequately protected under existing orders. Nevertheless, the court will order that adequate protection payments of \$4,000 per week commencing August 15, 2024, be made to Flagstar by the Debtor. The Debtor proposes the new payment. It is also noteworthy that the Debtors propose slightly more than that as a monthly payment to Flagstar under their proposed Plans.

The motion should be DENIED but adequate protection payments shall commence at \$4,000 per week as stated. Order to be prepared by Flagstar's counsel and Debtor's counsel to approve as to form.

9. [24-11016](#)-B-11 **IN RE: TYCO GROUP LLC**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V
VOLUNTARY PETITION
4-22-2024 [\[1\]](#)

MICHAEL BERGER/ATTY. FOR DBT.

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

DISPOSITION: Continued to October 22, 2024, at 9:30 a.m.

ORDER: The court will prepare the order.

On August 2, 2024, the Debtor in this case filed a Chapter 11 Small Business Plan. Doc. #149. Accordingly, this Status Conference will be reset to **October 22, 2024, at 9:30 a.m.** to coincide with the Confirmation Hearing. The Debtor shall and all other parties are invited to file status reports no later than **seven (7) days** before the hearing date.

10. [24-11016](#)-B-11 **IN RE: TYCO GROUP LLC**
[MB-1](#)

MOTION TO REVOKE THE DEBTORS' SUBCHAPTER V DESIGNATION ,
AND/OR MOTION TO APPOINT TRUSTEE , MOTION TO REMOVE THE
DEBTOR FROM POSSESSION AND EXPAND THE POWERS OF THE
SUBCHAPTER V TRUSTEE
7-10-2024 [[107](#)]

POPEYES LOUISIANA KITCHEN, INC./MV
MICHAEL BERGER/ATTY. FOR DBT.
HAGOP BEDOYAN/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

11. [24-11016](#)-B-11 **IN RE: TYCO GROUP LLC**
[MB-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-15-2024 [[122](#)]

POPEYES LOUISIANA KITCHEN, INC./MV
MICHAEL BERGER/ATTY. FOR DBT.
HAGOP BEDOYAN/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

For the reasons outlined in the related motion in Item #7, above,
this motion will be GRANTED.

Creditor Popeyes Louisiana Kitchen, Inc. ("Popeyes") moves for an
order pursuant to 11 U.S.C. 362 for relief from the automatic stay
to allow it to prosecute a pending motion for attorney's fees and
costs in Los Angeles County Superior Court set for hearing on August
20, 2024. Doc. #122. Tyco Group LLC ("Tyco" or "Debtor") has filed a
non-opposition. Doc. #141.

Except for Debtor's non-opposition, 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). 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).

Popeyes has filed identical motions in three related cases: *In re Pinnacle Foods of California*, Case No. 24-11015, Doc. #134 (Item #7, above); *In re Tyco Group, LLC*, Case No. 24-11016, Doc. #122 (this matter); and *in re California QSR Management, Inc.*, Case No. 24-11017, Doc. #141 (Item #15, below). The three motions are substantially identical, and the respective debtor in each case entered a non-opposition to the motion that are all substantially the same. Accordingly, all three motions will be GRANTED.

These motions have their origin in the case of *Pinnacle Foods of Bakersfield, LLC; Pinnacle Foods of California, LLC; Tyco Group, LLC and Imran Damani v. Popeyes Louisiana Kitchen, Inc., et. Al.*, Case No. 21STCV35404 ("the California Action") which was brought in the Los Angeles County Superior Court. Doc. #137. The moving papers indicate that an order of dismissal with prejudice was entered in favor of the defendants in the California Action. Doc. #138. Subsequently, the defendant moved for attorney's fees and costs pursuant to a clause in the franchise agreements at the heart of the California Action which granted fees and costs to the prevailing party in any franchise-related suit. *Id.* Hearing on the attorneys' fees and costs motion was originally set for August 20, 2024, in the Los Angeles Superior Court. *Id.*

In its motion, Popeyes avers that good cause exists pursuant to 11 U.S.C.

§ 362(d)(1) because such relief will aid in the administration of the estate by liquidating the attorneys' fees and costs award which is a component of Popeyes' proof of claim and by determining the amount of Debtor's cure obligations under the franchise agreements. Doc. #122. The motion states that Popeyes' only seeks to obtain a judgment and will not seek to enforce the judgment outside of the bankruptcy proceedings without court authorization. *Id.*

Debtor does not oppose the granting of the motion, and no other party in interest has objected. Accordingly, this motion will be GRANTED. Popeyes' is authorized to prosecute its pending motion for attorneys' fees and costs in the Los Angeles County Superior Court. While Popeyes' may seek to liquidate its damages, it may not seek to enforce any judgment entered without authorization from this court. Debtor's counsel to approve the order as to form.

12. [24-11016](#)-B-11 **IN RE: TYCO GROUP LLC**
[VP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
7-22-2024 [\[134\]](#)

FLAGSTAR FINANCIAL & LEASING LLC/MV
MICHAEL BERGER/ATTY. FOR DBT.
LAUREN WERTHEIMER/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied. Adequate protection payments of \$4,000
per week shall begin August 15, 2024.

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

Flagstar Financial & Leasing, LLC ("Flagstar") moves for an order pursuant to 11 U.S.C. § 362(d)(1) and/or (d)(2) for relief from the automatic stay with respect to its collateral or, in the alternative for adequate protection pursuant to 11 U.S.C. § 363. Doc. #134. Flagstar is the successor to the original lender, Signature. Signature was put in receivership by New York State authorities and the FDIC was appointed receiver. Flagstar acquired the loans at issue through the receivership.

Flagstar has filed identical motions in three related cases: *In re Pinnacle Foods of California* ("Pinnacle"), Case No. 24-11015, Doc. #157 (Item #8 above); *In re Tyco Group, LLC* ("Tyco"), Case No. 24-11016, Doc. #134 (this matter); and *In re California QSR Management, Inc.* ("CA QSR"), Case No. 24-11017, Doc. #152 (Item #16, below). The three motions are substantially identical, and the respective debtor in each case entered an opposition to the motion that are all substantially the same.

Written opposition was not required and may be presented at the hearing, although the court notes that in each of the three cases, the Debtor corporation has already filed a response. The court is inclined to DENY this motion but modify the adequate protection payments to \$4,000 per week beginning August 15, 2024.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. The court will issue an order if a further hearing is necessary. The court notes that by filing and prosecuting the motion on less than regular (28-day notice) Flagstar has waived the time limits of 362(e). LBR 9014-1 (f)(2)(B).

Equity and Effective Reorganization

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 the property at issue and such property is not necessary to an effective reorganization.

Here, it appears that there is no equity in the property which is collateral for the two Flagstar loans. The property in question consists of personal property items listed in each Debtor's Schedule A/B such as cooking equipment and fixtures, dining tables, chairs, glasses, and other miscellaneous personal property items necessary to the operation of Debtor's restaurants. Doc. #1. The collateral also includes accounts, chattel paper, deposit accounts, general intangibles, leases, and proceeds. In its opposition, Debtor does not dispute the lack of equity nor the perfection of the collateral interests. Rather, Debtors argue that:

treatment of Flagstar's claim through Debtors' plans of reorganization will yield a substantially higher repayment of Flagstar's claim than what Flagstar will be able to realize from liquidation [of] the debtor's personal property items that are subject to its UCC-1 Financing Statement.

Doc. #146. For the purposes of this motion, the court accepts that there is no equity in the collateral. But that is not the end of the inquiry. Before the court can lift the stay under § 362(d)(2), it must conclude that the property is not necessary to an effective reorganization. Section 362(g) places the burden of showing that the property is necessary on the party opposing stay relief, which in this case is the Debtor. And under these circumstances, the court agrees with Debtor that the property is necessary to any reorganization. Debtor is engaged in the operation and management of restaurants, and the property at issue (tables, chairs, kitchen equipment, etc.) is indispensable for such a purpose.

Flagstar arguments that the property is not necessary for reorganization are not persuasive. First, Flagstar states that "Debtors have not filed their plans of reorganization." Doc. #157. However, at the time this motion was filed, the time for filing a plan of reorganization had not yet run, and Debtor has since filed a plan of reorganization. See Doc. #149. Second, Flagstar argues that Debtor's reorganization is dependent on Debtor's ability to assume certain Franchise Agreements between Pinnacle Foods, Tyco, and the franchisor, Popeyes. Doc. #157. Because Popeyes has indicated that it will object and withhold consent to any attempt to assume those franchise agreements, it is *a priori* certain that the franchise agreements will not be assumed, and without those franchise agreements, an effective reorganization is an impossibility. *Id.*

The court is aware of Popeyes' strong opposition to any assumption of its franchise agreements with Pinnacle and Tyco. However, the court is also aware that creditors change their minds all the time

during the pendency of bankruptcy cases, and as of this date, nothing has happened in this case to preclude the possibility of Popeyes' and Debtor coming to some sort of agreement whereby Popeyes' will consent to assumption of the agreements. Nor has anything occurred that irrevocably makes assumption an impossibility. The court declines to grant Flagstar's motion for stay relief on the grounds that the non-irrevocable position of a third-party makes reorganization an impossibility. The proper forum for that now is plan confirmation. The court need not rule on the feasibility of any Plan without a full ventilation of the necessary confirmation issues. Plans have been timely filed that may be difficult to confirm. But now is not the time to determine those issues.

The court has been asked to rule on Popeye's Louisiana Kitchens' motions to remove the debtor in possession. One ground is the arguable impossibility of reorganization without the franchise agreements. That may or may not be true. But that does not need to be determined on a stay relief motion not even involving a contracting party.

Adequate Protection

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).

Section 361 sets forth three non-exclusive examples of what may constitute adequate protection: 1) periodic cash payments equivalent to decrease in value, 2) an additional or replacement lien on other property, or 3) other relief that provides the indubitable equivalent. *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984)

According to Flagstar's proof of claim, Debtors owes Flagstar \$3,074,260.72 as of the petition date. Doc. #157; POC #9-1. It appears that all three Debtors are jointly liable for this debt. Flagstar argues that if the court will not grant stay relief, it should "substantially" increase the amount of Debtors' adequate protection payments to \$36,919.41 per month. Debtor's Opposition states that the three Debtors are currently paying Flagstar \$2,000.00 per week for adequate protection, and Debtor proposes to increase those payments to \$4,000.00 per week. Doc. #146. While Flagstar argues that it can only be adequately protected by its monthly contractual payments, it provides no basis for concluding that the current payments of \$2,000.00 per week are insufficient to protect Flagstar against diminution of the value of the collateral, let alone Debtor's proposed increase to \$4,000.00 per week. The issue is not whether Flagstar should be made whole by adequate protection payments, but to what extent does the automatic stay result in a decrease in value of Flagstar's interest. Sec. 361. Mr. Haan's declaration says nothing about the diminution of value. Anything he would say would be speculative anyway as his declaration does not establish his expertise on evaluating Flagstar's collateral.

package or how much the passage of less than four months has impacted the values.

The Supreme Court has long instructed that Flagstar's lost opportunity cost is not entitled to adequate protection. *United Savings Ass'n. v. Timbers of Inwood Forest Assoc. Ltd.*, 484 U.S. 365, 371 (1988).

Flagstar has failed to overcome the Debtor's arguments that the collateral is necessary for an effective reorganization and because it has failed to show that it is not adequately protected. Nevertheless, the court will order that adequate protection payments of \$4,000 per week commencing August 15, 2024, be made to Flagstar by the Debtor. The Debtor proposes the new payment. It is also noteworthy that the Debtors propose slightly more than that as a monthly payment to Flagstar under their proposed Plans.

The motion should be DENIED but adequate protection payments shall commence at \$4,000 per week as stated. Order to be prepared by Flagstar's counsel, Debtor's counsel to approve as to form.

13. [24-11017](#)-B-11 **IN RE: CALIFORNIA QSR MANAGEMENT, INC.**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V
VOLUNTARY PETITION
4-22-2024 [[1](#)]

MICHAEL BERGER/ATTY. FOR DBT.

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

DISPOSITION: Continued to October 22, 2024, at 9:30 a.m.

ORDER: The court will prepare the order.

On August 2, 2024, the Debtor in this case filed a Chapter 11 Small Business Plan. Doc. #166. Accordingly, this Status Conference will be reset to **October 22, 2024, at 9:30 a.m.** to coincide with the Confirmation Hearing. The Debtor shall and all other parties are invited to file status reports no later than **seven (7) days** before the hearing date.

14. [24-11017](#)-B-11 **IN RE: CALIFORNIA QSR MANAGEMENT, INC.**
[MB-1](#)

MOTION TO REVOKE THE DEBTORS' SUBCHAPTER V DESIGNATION ,
AND/OR MOTION TO APPOINT TRUSTEE , MOTION TO REMOVE THE
DEBTOR FROM POSSESSION AND EXPAND THE POWERS OF THE
SUBCHAPTER V TRUSTEE
7-10-2024 [[127](#)]

POPEYES LOUISIANA KITCHEN,
INC./MV
MICHAEL BERGER/ATTY. FOR DBT.
HAGOP BEDOYAN/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

15. [24-11017](#)-B-11 **IN RE: CALIFORNIA QSR MANAGEMENT, INC.**
[MB-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-15-2024 [[141](#)]

POPEYES LOUISIANA KITCHEN, INC./MV
MICHAEL BERGER/ATTY. FOR DBT.
HAGOP BEDOYAN/ATTY. FOR MV.
RESPONSIVE PLEADING

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

DISPOSITION: Granted.

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

Creditor Popeyes Louisiana Kitchen, Inc. ("Popeyes") moves for an order pursuant to 11 U.S.C. 362 for relief from the automatic stay to allow it to prosecute a pending motion for attorney's fees and costs in Los Angeles County Superior Court set for hearing on August 20, 2024. Doc. #141. California QSR Management, Inc. ("CA QSR" or "Debtor") has filed a non-opposition. Doc. #159.

Except for Debtor's non-opposition, 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). 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).

Popeyes has filed identical motions in three related cases: *In re Pinnacle Foods of California*, Case No. 24-11015, Doc. #134 (Item #7, above); *In re Tyco Group, LLC*, Case No. 24-11016, Doc. #122 (Item #11, above); and *in re California QSR Management, Inc.*, Case No. 24-11017, Doc. #141 (this matter). The three motions are substantially identical, and the respective debtor in each case entered a non-opposition to the motion that are all substantially the same. Accordingly, all three motions will be GRANTED.

These motions have their origin in the case of *Pinnacle Foods of Bakersfield, LLC; Pinnacle Foods of California, LLC; Tyco Group, LLC and Imran Damani v. Popeyes Louisiana Kitchen, Inc., et. Al.*, Case No. 21STCV35404 ("the California Action") which was brought in the Los Angeles County Superior Court. Doc. #141. The moving papers indicate that an order of dismissal with prejudice was entered in favor of the defendants in the California Action. *Id.* Subsequently, the defendant moved for attorney's fees and costs pursuant to a clause in the franchise agreements at the heart of the California Action which granted fees and costs to the prevailing party in any franchise-related suit. *Id.* Hearing on the attorneys' fees and costs motion was originally set for August 20, 2024, in the Los Angeles Superior Court. *Id.*

In its motion, Popeyes avers that good cause exists pursuant to 11 U.S.C. § 362(d)(1) because such relief will aid in the administration of the estate by liquidating the attorneys' fees and costs award which is a component of Popeyes' proof of claim and by determining the amount of Debtor's cure obligations under the franchise agreements. *Id.* The motion states that Popeyes' only seeks to obtain a judgment and will not seek to enforce the judgment outside of the bankruptcy proceedings without court authorization. *Id.*

Debtor does not oppose the granting of the motion, and no other party in interest has objected. Accordingly, this motion will be GRANTED. Popeyes' is authorized to prosecute its pending motion for attorneys' fees and costs in the Los Angeles County Superior Court. While Popeyes' may seek to liquidate its damages, it may not seek to enforce any judgment entered without authorization from this court. Debtor's counsel to approve the order as to form.

16. [24-11017](#)-B-11 **IN RE: CALIFORNIA QSR MANAGEMENT, INC.**
[VP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
7-22-2024 [\[152\]](#)

FLAGSTAR FINANCIAL & LEASING LLC/MV
MICHAEL BERGER/ATTY. FOR DBT.
KEVIN ETZEL/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied. Adequate protection payments of \$4,000
per week shall begin August 15, 2024.

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

Flagstar Financial & Leasing, LLC ("Flagstar") moves for an order pursuant to 11 U.S.C. § 362(d)(1) and/or (d)(2) for relief from the automatic stay with respect to its collateral or, in the alternative for adequate protection pursuant to 11 U.S.C. § 363. Doc. #152. Flagstar is the successor to the original lender, Signature. Signature was put in receivership by New York State authorities and the FDIC was appointed receiver. Flagstar acquired the loans at issue through the receivership.

Flagstar has filed identical motions in three related cases: *In re Pinnacle Foods of California* ("Pinnacle"), Case No. 24-11015, Doc. #157 (Item #8, above); *In re Tyco Group, LLC* ("Tyco"), Case No. 24-11016, Doc. #134 (Item #12, above); and *In re California QSR Management, Inc.* ("CA QSR"), Case No. 24-11017, Doc. #152 (this matter). The three motions are substantially identical, and the respective debtor in each case entered an opposition to the motion that are all substantially the same.

Written opposition was not required and may be presented at the hearing, although the court notes that in each of the three cases, the Debtor corporation has already filed a response. The court is inclined to DENY this motion but modify the adequate protection payments to \$4,000 per week beginning August 15, 2024.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. The court will issue an order if a further hearing is necessary. The court notes that by filing and prosecuting the motion on less than regular (28-day notice) Flagstar has waived the time limits of 362(e). LBR 9014-1 (f)(2)(B).

Equity and Effective Reorganization

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 the property at issue and such property is not necessary to an effective reorganization.

Here, it appears that there is no equity in the property which is collateral for the two Flagstar loans. The property in question consists of personal property items listed in each Debtor's Schedule A/B such as cooking equipment and fixtures, dining tables, chairs, glasses, and other miscellaneous personal property items necessary to the operation of Debtor's restaurants. Doc. #1. The collateral also includes accounts, chattel paper, deposit accounts, general intangibles, leases, and proceeds. In its opposition, Debtor does not dispute the lack of equity nor the perfection of the collateral interests. Rather, Debtors argue that:

treatment of Flagstar's claim through Debtors' plans of reorganization will yield a substantially higher repayment of Flagstar's claim than what Flagstar will be able to realize from liquidation [of] the debtor's personal property items that are subject to its UCC-1 Financing Statement.

Doc. #152. For the purposes of this motion, the court accepts that there is no equity in the collateral. But that is not the end of the inquiry. Before the court can lift the stay under § 362(d)(2), it must conclude that the property is not necessary to an effective reorganization. Section 362(g) places the burden of showing that the property is necessary on the party opposing stay relief, which in this case is the Debtor. And under these circumstances, the court agrees with Debtor that the property is necessary to any reorganization. Debtor is engaged in the operation and management of restaurants, and the property at issue (tables, chairs, kitchen equipment, etc.) is indispensable for such a purpose.

Flagstar arguments that the property is not necessary for reorganization are not persuasive. First, Flagstar states that "Debtors have not filed their plans of reorganization." Doc. #152. However, at the time this motion was filed, the time for filing a plan of reorganization had not yet run, and Debtor has since filed a plan of reorganization. See Doc. #166. Second, Flagstar argues that Debtor's reorganization is dependent on Debtor's ability to assume certain Franchise Agreements between Pinnacle Foods, Tyco, and the franchisor, Popeyes. Doc. #152. Because Popeyes has indicated that it will object and withhold consent to any attempt to assume those franchise agreements, it is *a priori* certain that the franchise agreements will not be assumed, and without those franchise agreements, an effective reorganization is an impossibility. *Id.*

The court is aware of Popeyes' strong opposition to any assumption of its franchise agreements with Pinnacle and Tyco. However, the court is also aware that creditors change their minds all the time

during the pendency of bankruptcy cases, and as of this date, nothing has happened in this case to preclude the possibility of Popeyes' and Debtor coming to some sort of agreement whereby Popeyes' will consent to assumption of the agreements. Nor has anything occurred that irrevocably makes assumption an impossibility. The court declines to grant Flagstar's motion for stay relief on the grounds that the non-irrevocable position of a third-party makes reorganization an impossibility. The proper forum for that now is plan confirmation. The court need not rule on the feasibility of any Plan without a full ventilation of the necessary confirmation issues. Plans have been timely filed that may be difficult to confirm. But now is not the time to determine those issues.

The court has been asked to rule on Popeye's Louisiana Kitchens' motions to remove the debtor in possession. One ground is the arguable impossibility of reorganization without the franchise agreements. That may or may not be true. But that does not need to be determined on a stay relief motion not even involving a contracting party.

Adequate Protection

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).

Section 361 sets forth three non-exclusive examples of what may constitute adequate protection: 1) periodic cash payments equivalent to decrease in value, 2) an additional or replacement lien on other property, or 3) other relief that provides the indubitable equivalent. *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984)

According to Flagstar's proof of claim, Debtors owes Flagstar \$3,074,260.72 as of the petition date. Doc. #157; POC #18-1. It appears that all three Debtors are jointly liable for this debt. Flagstar argues that if the court will not grant stay relief, it should "substantially" increase the amount of Debtors' adequate protection payments to \$36,919.41 per month. Debtor's Opposition states that the three Debtors are currently paying Flagstar \$2,000.00 per week for adequate protection, and Debtor proposes to increase those payments to \$4,000.00 per week. Doc. #160. While Flagstar argues that it can only be adequately protected by its monthly contractual payments, it provides no basis for concluding that the current payments of \$2,000.00 per week are insufficient to protect Flagstar against diminution of the value of the collateral, let alone Debtor's proposed increase to \$4,000.00 per week. The issue is not whether Flagstar should be made whole by adequate protection payments, but to what extent does the automatic stay result in a decrease in value of Flagstar's interest. Sec. 361. Mr. Haan's declaration says nothing about the diminution of value. Anything he would say would be speculative anyway as his declaration does not establish his expertise on evaluating Flagstar's collateral.

package or how much the passage of less than four months has impacted the values.

The Supreme Court has long instructed that Flagstar's lost opportunity cost is not entitled to adequate protection. *United Savings Ass'n. v. Timbers of Inwood Forest Assoc. Ltd.*, 484 U.S. 365, 371 (1988).

Flagstar has failed to overcome the Debtor's arguments that the collateral is necessary for an effective reorganization and because it has failed to show that it is not adequately protected. Nevertheless, the court will order that adequate protection payments of \$4,000 per week commencing August 15, 2024, be made to Flagstar by the Debtor. The Debtor proposes the new payment. It is also noteworthy that the Debtors propose slightly more than that as a monthly payment to Flagstar under their proposed Plans.

The motion should be DENIED but adequate protection payments shall commence at \$4,000 per week as stated. Order to be prepared by Flagstar's counsel, Debtor's counsel to approve as to form.

17. [24-11751](#)-B-11 **IN RE: VALDOR LLC**
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 11SUBCHAPTER V VOLUNTARY
PETITION
6-25-2024 [[1](#)]

DISMISSED 7/31/24

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

DISPOSITION: Concluded and dropped from calendar.

No order is required.

On July 31, 2024, this court entered an order dismissing this case. Doc. #47. Accordingly, this Status Conference is CONCLUDED and will be DROPPED from the calendar.

18. [24-11198](#)-B-12 **IN RE: EDUARDO/AMALIA GARCIA**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY
PETITION
5-1-2024 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: Continued to September 5, 2024 at 9:30 am.

ORDER: The court will issue the order.

Debtors filed a Chapter 12 Plan on July 30, 2024. Doc. #42. The hearing on confirmation is scheduled for September 5, 2024, at 9:30 am.

This status conference will be continued to that date and time to be heard in conjunction with Plan confirmation. If Debtors, for some reason, do not intend to proceed with confirmation of the Plan on September 5, 2024, they shall file and serve a status report seven calendar days before the continued hearing date.

19. [24-11016](#)-B-11 **IN RE: TYCO GROUP LLC**
[MJB-7](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
8-6-2024 [[152](#)]

TYCO GROUP LLC/MV
MICHAEL BERGER/ATTY. FOR DBT.
OST 8/7/24

NO RULING.

20. [24-11015](#)-B-11 **IN RE: PINNACLE FOODS OF CALIFORNIA LLC**
[MJB-8](#)

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT
8-6-2024 [[182](#)]

PINNACLE FOODS OF CALIFORNIA LLC/MV
MICHAEL BERGER/ATTY. FOR DBT.
OST 8/7/24

NO RULING.

11:00 AM

1. [24-11128](#)-B-7 **IN RE: MIGUEL ESCALERA BUENO**

REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
7-24-2024 [\[17\]](#)

ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

A Reaffirmation Agreement between Miguel Angel Escalera Bueno ("Debtor") and Ally Bank for a 2015 Chevrolet Silverado 1500 ("Vehicle") was filed on July 24, 2024. Doc. #17.

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 \$16,000.00. The amount being reaffirmed by Debtor is \$22,660.50 with an 3.74% interest rate. Debtor has negative equity of \$6,660.50 with approximately 45 months (over five years) remaining on the loan and only \$110.00 remaining in the budget every month according to the Debtor's schedules.

Further, the vehicle will be fourteen years old when it is paid off.

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 Golden 1 Credit Union will be DENIED.

2. [24-11572](#)-B-7 **IN RE: KENNETH ELLEBRACHT**

PRO SE REAFFIRMATION AGREEMENT WITH AMERICREDIT FINANCIAL
SERVICES, INC.
7-25-2024 [\[22\]](#)

NO RULING.

3. [24-11783](#)-B-7 **IN RE: DEBORAH RUSSELL**

PRO SE REAFFIRMATION AGREEMENT WITH ALLY BANK
7-23-2024 [[17](#)]

NO RULING.

1:30 PM

1. [23-12520](#)-B-7 **IN RE: EMCAST CONSTRUCTION INC**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
7-11-2024 [\[24\]](#)

JAMES SALVEN/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

James Salven, C.P.A. ("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 June 17, 2024. Doc. #23. This is Applicant's first and final request for compensation.

Applicant seeks **\$1,876.00** in fees based on **6.7** billable hours from May 30, 2024, through July 11, 2024. Doc. #28. Based on the moving papers, it appears that Applicant was the only person to work on this case, and he billed at a rate of \$280.00 per hour. *Id.* Applicant seeks an award for expenses in the amount of \$333.42, as follow:

Copies	\$50.40
Envelopes	\$1.24
2023 tax processing	\$125.00
2024 (final) tax processing	\$125.00
Postage	12.31
Service of fee application	\$19.46
Total	\$333.41

Doc. #28.

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 preparation and filing of state and federal tax returns for the estate as appropriate. Docs. #26, #28. 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. #27.

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

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

This Application is GRANTED. The court will approve on a final basis under 11 U.S.C. § 330 compensation in the amount of **\$1,876.00** in fees and **\$333.42** in expenses. The court grants the Application for a total award **\$2,209.42** as an administrative expense of the estate and an order authorizing and directing the Trustee to pay such to Applicant from the first available estate funds.

2. [24-11039](#)-B-7 **IN RE: DAVID/AMANDA PHILLIPS**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-9-2024 [\[14\]](#)

TOYOTA MOTOR CREDIT CORPORATION/MV
GABRIEL WADDELL/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2019 Toyota Prius ("Vehicle"). Doc. #14.

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 amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtors have failed to make at least two (2) pre-petition payments and two (2) post-petition payments.

The Movant has produced evidence that Debtors are delinquent at least \$2,756.00. Docs. #16, #17.

The court also finds that the Debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because Debtors are in chapter 7. *Id.* The Vehicle is valued at \$21,325.00 and Debtors owe \$23,516.74. Doc. #16.

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. According to the Debtors' Statement of Intention, the Vehicle will be surrendered.

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

3. [24-11370](#)-B-7 **IN RE: RACHEL ZIEGLER**
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-28-2024 [\[14\]](#)

FREEDOM MORTGAGE
CORPORATION/MV
GREGORY SHANFELD/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Specialized Loan Servicing LLC ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to 1717 Locust Ravine, Bakersfield, California 93306 ("Property"). Doc. #14. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). *Id.*

Rachel Baby Ziegler ("Debtor") did not oppose. No other party in interest timely filed written opposition. This motion will be GRANTED.

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

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has failed to make at least 20 pre-petition payments. The Movant has produced evidence that Debtor is delinquent at least \$45,133.51 and the entire balance of \$355,512.16 is due. Doc. #17.

The court declines finding that Debtor does not have any equity in the Property. Although this is a chapter 7 case and the Property is not necessary for an effective reorganization, the moving papers indicate that Debtor has approximately \$2,367.84 in equity. Doc. #16. Relief under § 362(d)(2) is moot because there is "cause" to grant the motion under § 362(d)(1).

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

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtor has failed to make at least 21 payments, both pre- and post-petition to Movant.

4. [23-12477](#)-B-7 **IN RE: CHRISTINE COREA**
[JES-3](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
7-11-2024 [\[64\]](#)

JAMES SALVEN/MV
ADELE SCHNEIDEREIT/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

James Salven, C.P.A. ("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 James Salven in his capacity as Trustee in the above-styled case ("Trustee"). Doc. #64.

Applicant was employed to perform services under § 327 of the Code pursuant to an order of this court dated May 13, 2024. Doc. #53. This is Applicant's first and final request for compensation.

As a threshold matter, the court notes a procedural error in the filing of this Application. While a Certificate of Service was filed with the court and indicates that all parties in interest were properly served, it was erroneously filed on the docket with an incorrect Docket Control Number (DCN). See Doc. #69. The Certificate of Service should carry the DCN JES-3 like the other moving papers filed with the court but instead carries the DCN FW-2, which incorrectly links it with a prior *Motion to Sell* which has already been disposed of by the court. The court will overlook the procedural error as it appears that all necessary parties were, in fact, served, but Applicant is advised to be more cautious about following the Local Rules in the future.

Applicant seeks **\$2,296.00** in fees based on **8.2** billable hours from May 8, 2024, through July 11, 2024. Doc. #68. Based on the moving papers, it appears that Applicant was the only person to work on this case, and he billed at a rate of \$280.00 per hour. *Id.* Applicant seeks an award for expenses in the amount of **\$158.73**, as follow:

Copies	\$35.20
Envelopes	\$1.25
tax processing	\$96.00
Service of fee application	\$26.28
Total	\$158.73

Doc. #68.

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

Applicant's services here included, without limitation, accounting work on behalf of the estate and reparation and filing of tax returns for the estate as appropriate. Doc. #64 *et seq.* 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. #67.

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 **\$2,296.00** in fees and **\$158.73** in expenses. The court grants the Application for a total award **\$2,454.73** as an administrative expense of the estate and an order authorizing and directing the Trustee to pay such to Applicant from the first available estate funds.

5. [23-12383](#)-B-7 **IN RE: ANGELES ESTRAD**
[ADJ-3](#)

MOTION TO SELL
7-3-2024 [\[31\]](#)

IRMA EDMONDS/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
ANTHONY JOHNSTON/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 after hearing.

Chapter 7 trustee Irma C. Edmonds ("Trustee") seeks authorization to sell the estate's interest in residential real property located at 402 E. 11th Street, Hanford, California ("Property") to Mohamed S. Ali ("Buyer") for \$155,000.00 pursuant to 11 U.S.C. § 363, and subject to higher and better bids at the hearing. Doc. #31 et seq. Trustee also requests to pay a six percent (6%) commission to the real estate brokers, split evenly between the estate's broker, Berkshire Hathaway HomeServices California Realty ("Broker"), and the buyer's broker, Angel Gonzalez of London Properties ("London"). *Id.* Trustee does not request waiver of the 14-day stay of Fed. R. Bankr. P. ("Rule") 6004(h). *Id.*

No party in interest timely filed written opposition. This motion will be GRANTED, and the hearing will proceed for bid solicitations only.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(2) and (a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will proceed for higher and better bids only. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

BACKGROUND

Angeles Estrada ("Debtor") filed chapter 7 bankruptcy on October 25, 2023. Doc. #1. Trustee was appointed as interim trustee on the following day and became permanent trustee at the first § 341 meeting of creditors on June 27, 2022. Doc. #10; docket generally.

In the course of administering the estate, Trustee investigated the estate's assets, which included Property.

On March 6, 2024, Trustee obtained approval to hire Broker as real estate agent for the sale of the Property. Doc. #30. Trustee avers that she has entered into an agreement, subject to court approval and overbidding to sell the Property to Buyer for \$155,000.00. Doc. #33. Buyer will not finance the purchase but will make a deposit of \$4,650.00. *Id.* A copy of the Purchase Agreement between Trustee and Buyer has been filed as an Exhibit to the motion. Doc. #34.

Trustee now requests approval under 11 U.S.C. § 363(b) to complete the sale. Doc. #31.

DISCUSSION

Sale of Property

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 N. 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*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer, 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., 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). There is nothing in the record suggesting that Buyer is an insider with respect to Debtor. Buyer is neither listed in the schedules nor the master address list. Docs. #1, #6.

Property is listed in Debtor's *Amended Schedule A/B* with a value of \$188,000.00. Doc. #17. Doc. #1. Debtor did not exempt Property in his *Amended Schedule C*. *Id.*

Trustee entered into a contract ("Purchase Agreement") with Buyer to sell Property for \$155,000.00, subject to a number of relevant terms and conditions: (1) the sale of Property is as-is, where-is, with no warranties and (2) the debris on the Property will not be removed. Doc. #34, Pg. 21.

Trustee declares that she has reviewed the title and encumbrances of record for the Property, along with the proof of claim filed by the only creditor who has a lien against the Property: Nancy Xiong, who holds a deed of trust against the property to secure a debt of \$30,496.28. Doc #33.

Based on Trustee's estimations, if sold at the proposed sale price, the proceeds from the proposed sale could be illustrated as follows:

Sale price	\$155,000.00
Estimated broker fees (6%)	(\$9,300.00)
Escrow/title expenses	(\$1,000.00)
Nancy Xiong claim	(30,496.28)
Estimated net proceeds to estate	\$114,203.72

Doc. #33.

The sale under these circumstances should maximize potential recovery for the estate. The sale of the Property appears to be in the best interests of the estate because it will pay off the deed of trust in favor of Nancy Xiong and provide liquidity that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

Real Estate Brokers' Compensation

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

LBR 9014-1(d)(5)(B)(ii) permits joinder of claims for authorization for the sale of real property and allowance of fees and expenses for such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rule 6004.

On March 5, 2024, Trustee moved to employ Broker to assist the trustee in carrying out the trustee's duties by selling property of the estate. Doc. #27. The court authorized Broker's employment on March 6, 23024, under 11 U.S.C. §§ 327 and 328. Doc. #30.

Pursuant to the employment order, Trustee requests to compensate Broker with a commission of 6%, which will be split equally between Broker and London, with each broker receiving 3% of the sale price, or \$4,650.00 each if there are no overbidders and Property is sold at the proposed sale price. Doc. #33. The court will authorize Trustee to pay broker commissions as prayed.

Overbid Procedure

Any party wishing to overbid shall, prior to the hearing, comply with the overbid procedures as outlined in paragraph 3 of the *Notice* accompanying this motion. Doc. #32.

Waiver of 14-day Stay

Trustee does not request waiver of the 14-day stay of Rule 6004(h), and no such relief will be granted.

Conclusion

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be authorized: (1) to sell the Property to the prevailing bidder at the hearing, as determined at the hearing; (2) to execute all documents necessary to effectuate the sale of the Property; (3) to pay broker commission in the amount of 6% of the total sale price to be split evenly between Broker and the buyer's broker, as determined at the hearing; and (4) to pay all costs, commissions, and real property taxes directly from escrow. The 14-day stay of Rule 6004(h) will not be waived.

6. [23-11789](#)-B-7 **IN RE: JESUS JR MENDEZ**
[JES-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JESUS MENDEZ, JR.
7-10-2024 [\[20\]](#)

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

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

DISPOSITION: Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") requests an order approving a settlement agreement to resolve a potential cause of action against Jesus Mendez, Jr. ("Debtor") for allegedly failing to turn over monies (approximately \$21,600.00) due to Debtor at the time of filing. Doc. #20. Trustee declares that the monies were collected by Debtor and spent on living expenses prior to the first 341 Meeting of Creditors. Doc. #22.

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

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

Debtor filed chapter 7 bankruptcy on August 16, 2023. Doc. #1. Trustee was appointed as the interim trustee on that same date and became permanent trustee at the 341 meeting of creditors on January 24, 2022. Doc. #5; docket generally.

While investigating the assets of the estate, Trustee became aware that at the time of filing Debtor was owed approximately \$21,600.00 that had not been disclosed in the petition. Doc. #22. Debtor amended and disclosed the monies on December 14, 2023. *Id.*

Trustee has not yet initiated an adversary proceeding to recover the monies, and Debtor has offered to settle the matter for \$10,000.00 and has deposited that amount with the estate. *Id.*

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

As representative of the chapter 7 bankruptcy estate, Trustee has the authority to settle claims of Debtor subject to court approval. 11 U.S.C. § 323(a). On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Rule 9019. Approval of a compromise must be based upon considerations of fairness and equity. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

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

1. Probability of success in litigation: Trustee believes that there is a high likelihood of success on the merits but anticipates incurring additional expenses to do so that would make this settlement attractive.

2. Collection: Trustee expresses concerns that, given Debtor's present financial situation, collection of any amounts above the \$10,000.00 settlement offer are in doubt.

3. Complexity of litigation: The matter is not complex from a legal standpoint. Trustee simply argues that the litigation costs would unnecessarily eat up any recovery beyond the proposed \$10,000.00 settlement to a degree detrimental to creditors and substantially increase the time that this case must be administered.

4. Paramount interests of creditors: Trustee argues that the administrative costs of recovery through litigation would eat up any recovery to the detriment of creditors.

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

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

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