

**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, August 23, 2022
Department B – Courtroom #13
Fresno, California**



Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [21-11001](#)-B-11 **IN RE: NAVDIP BADHESHA**
[RMB-17](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF RHM LAW LLP FOR
ROKSANA D. MORADI-BROVIA, DEBTORS ATTORNEY(S)
7-18-2022 [\[286\]](#)

MATTHEW RESNIK/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Roksana D. Moradi-Brovia of RHM Law, LLP ("Applicant"), attorney for debtor-in-possession Navdip S. Badhesha ("Debtor"), seeks final compensation under 11 U.S.C. § 330 in the sum of \$69,356.78.¹ Docs. #286; #295. This amount consists of \$68,482.00 in fees as reasonable compensation for services rendered and \$874.78 in reimbursement for actual, necessary expenses from July 13, 2021 through June 28, 2022. *Id.* Applicant also requests final approval of \$11,783.90 previously awarded on an interim basis from April 10, 2021 through July 12, 2021. *Id.*

Debtor has received and reviewed the fee application on July 13, 2022 and has no objection to the proposed payment. Doc. #289.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(a)(6). The failure of the creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima*

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

Applicant's employment as general bankruptcy counsel was authorized pursuant to 11 U.S.C. §§ 327 and 330 on June 9, 2021, effective as to services rendered on or before the April 21, 2021 petition date. Doc. #49. The order incorporated by reference the terms of the employment application, which permits interim compensation under § 331 not more often than every 120-days. Doc. #23.

The court previously awarded \$21,665.00 in fees and \$2,118.89 in expenses, totaling \$23,783.89. from April 12, 2021 through July 12, 2021 on an interim basis under § 331. Docs. #160; #166. After application of the \$12,000.00 retainer, Debtor was permitted to pay Applicant \$11,783.83 from his separate employment income and general debtor-in-possession bank account. *Id.* Applicant also requests final approval of this award under § 330.

This is Applicant's second and final fee application. Doc. #286. The source of funds for payment of the fees will be monthly installments of \$500.00 from Debtor's employment income and funds he has accumulated in his debtor-in-possession accounts. *Id.*

Applicant's firm provided 182.3 billable hours of legal services at the following rates, totaling **\$68,482.00** in fees:

Professional	Rate	Hours	Fees
David Kritzer (Attorney)	\$350	1.00	\$350.00
Matthew Resnik (Attorney)	\$550	2.00	\$1,100.00
Roksana D. Moradi-Brovia (Attorney)	\$500	33.10	\$16,550.00
Rosario Zubia (Paralegal)	\$135	3.20	\$432.00
W. Sloan Youkstetter (Attorney)	\$350	143.00	\$50,050.00
Total Hours & Fees		182.30	\$68,482.00

Docs. #295; #296, *Exs. A-B*. Applicant also incurred \$874.78 in expenses:

CourtCall	\$135.00
Filing Fees	+ \$32.00
Mailing/Postage	+ \$671.67
Miscellaneous	+ \$36.11
Total Costs	= \$874.78

Id., *Ex. C*. These combined fees and expenses total **\$69,356.78**.

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

compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a) (3) (A) through (E). § 330(a) (3).

Applicant's services included, without limitation: (1) preparing a motion to employ appraiser (RMB-8) and corresponding with the appraiser regarding the value of Debtor's real property; (2) preparing the first interim fee application (RMB-9); (3) advising and conferring with Debtor regarding his continuing obligations to the U.S. Trustee, including monthly operating reports and insurance renewals; (4) finalizing the first cash collateral motion to use cash collateral to pay expenses associated with Debtor's raisin farm (RMB-12); (5) preparing and confirming the plan and disclosure statement (RMB-14; RMB-15); and (6) objecting to the claim of the California Department of Tax and Fee Administration (RMB-16). The court finds the services and expenses reasonable, actual, and necessary. As noted above, Debtor consents to the proposed additional fees to Applicant.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant will be awarded \$68,482.00 in fees and \$874.78 in expenses on a final basis under 11 U.S.C. § 330. Additionally, the court will approve the \$21,665.00 in fees and \$2,118.89 in expenses previously awarded on an interim basis. The total compensation for Applicant in this case will be \$93,217.89. After applying the \$12,000.00 retainer, Debtor will be authorized to pay \$81,217.89 to Applicant for compensation in this case pursuant to the terms of the confirmed chapter 11 plan and using his separate employment income and general debtor-in-possession bank account. This ruling is not authorizing the further use of cash collateral.

¹ Applicant reduced the original request from \$69,777.00 in fees and \$874.78 in expenses, totaling \$70,651.78, based on concerns from the U.S. Trustee's Office. Docs. #286; #295.

2. [22-10885](#)-B-11 **IN RE: SYNCHRONY OF VISALIA, INC.**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-25-2022 [[59](#)]

LEONARD WELSH/ATTY. FOR DBT.
\$922.00 FILING FEE PAID 7/26/22

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the chapter 11 conversion filing fee of \$922.00 was paid on July 26, 2022. Therefore, the *Order to Show Cause* will be vacated.

3. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-18](#)

CONTINUED SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF
TULARE HOSPITALIST GROUP, CLAIM NUMBER 231
1-8-2020 [[1784](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to November 15, 2022 at 9:30 a.m.

NO ORDER REQUIRED.

The court continued this hearing to November 15, 2022 at 9:30 a.m. pursuant to the parties' stipulation. Doc. #2518. The District shall file and serve its status report not later than seven days prior to the continued hearing date.

4. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-19](#)

CONTINUED SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF
GUPTA-KUMAR MEDICAL PRACTICE, CLAIM NUMBER 232
1-8-2020 [[1789](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to November 15, 2022 at 9:30 a.m.

NO ORDER REQUIRED.

The court continued this hearing to November 15, 2022 at 9:30 a.m. pursuant to the parties' stipulation. Doc. #2519. The District shall file and serve its status report not later than seven days prior to the continued hearing date.

5. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-25](#)

CONTINUED SCHEDULING CONFERENCE RE: OBJECTION TO CLAIM OF
INPATIENT HOSPITAL GROUP, INC., CLAIM NUMBER 230
1-10-2020 [[1834](#)]

TULARE LOCAL HEALTHCARE
DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to November 15, 2022 at 9:30 a.m.

NO ORDER REQUIRED.

The court continued this hearing to November 15, 2022 at 9:30 a.m.
pursuant to the parties' stipulation. Doc. #2520. The District shall
file and serve its status report not later than seven days prior to
the continued hearing date.

1:30 PM

1. [22-11218](#)-B-7 **IN RE: JANIE ANDERSON**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-29-2022 [[13](#)]

JERRY LOWE/ATTY. FOR DBT.
\$338.00 FILING FEE PAID 8/1/22

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fee of \$338.00 was paid on August 1, 2022. Therefore, the *Order to Show Cause* will be vacated.

2. [22-10922](#)-B-7 **IN RE: ROGELIO GUTIERREZ**
[MCB-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR
ADEQUATE PROTECTION
7-20-2022 [[16](#)]

KINECTA FEDERAL CREDIT
UNION/MV
PHILLIP GILLET/ATTY. FOR DBT.
MARK BLACKMAN/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.

Kinecta Federal Credit Union ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2018 Mitsubishi Outlander ("Vehicle"). Doc. #16.

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 U.S. Trustee, or any other party in interest to file

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

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make at least 1 payment. The movant has produced evidence that debtor is delinquent at least \$486.42. Doc. #19.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. *Id.* The Vehicle is valued at \$18,800.00 and debtor owes \$19,005.71. 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. Adequate protection is unnecessary in light of the relief granted herein. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least 1 payment to Movant and the Vehicle is a depreciating asset. Debtor indicated on his Statement of Intention his intent to surrender the vehicle. Doc. #1.

3. [20-12023](#)-B-7 **IN RE: GABRIELA COVARRUBIAS**
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG,
ACCOUNTANT(S)
7-21-2022 [\[76\]](#)

RATZLAFF, TAMBERI & WONG/MV
T. O'TOOLE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Ratzlaff Tamberi & Wong ("Applicant"), the certified public accountancy firm engaged by chapter 7 trustee James E. Salven ("Trustee"), seeks final compensation under 11 U.S.C. § 330 in the sum of \$1,116.69. Doc. #76. This amount consists of \$1,104.50 in fees as reasonable compensation for services rendered and \$12.19 in reimbursement for actual, necessary expenses from May 25, 2022 through June 20, 2022. *Id.*

Trustee has received and reviewed the application and supporting documents, states they are reasonable and necessary for estate administration, and has no objection to the proposed payment. Doc. #78.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Gabriela Covarrubias ("Debtor") filed chapter 7 bankruptcy on June 15, 2022. Doc. #1. Trustee was appointed as interim trustee on that same day and became permanent trustee at the first meeting of creditors on July 9, 2020. Doc. #3; docket generally. Trustee moved to employ Applicant as the estate's accountant under 11 U.S.C. §§ 327, 330, and 331 on June 7, 2022. Doc. #72. The court approved employment on June 15, 2022, effective May 8, 2022. Doc. #75. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for accounting services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Acceptance of employment was deemed to be an irrevocable waiver by Applicant of all pre-petition claims, if any, against the bankruptcy estate. *Id.* Applicant's services here were within the time period prescribed by the employment order.

This is Applicant's first and final fee application. Doc. #76. Applicant performed 4.7 billable hours of accounting services at a rate of \$235.00 per hour, totaling **\$1,104.50** in fees. Doc. #80, *Ex. A*. Applicant also incurred **\$12.19** in expenses for postage to notice creditors. *Id.* These combined fees and expenses total **\$1,116.69**.

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

Applicant's services included, without limitation: (1) reviewing the petition and trustee's accounting for information relating to tax matters; (2) preparing the final federal and state fiduciary income tax returns including workpapers for the period ending May 31, 2022; (3) corresponding with trustee regarding settlement; and (4) preparing and filing the final fee application. Docs. #79; #80, *Ex. A*. The court finds the services and expenses actual, reasonable, and necessary. As noted above, Trustee has reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #78.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$1,104.50 in fees and \$12.19 in expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized to pay applicant, in Trustee's discretion, \$1,116.69 for services rendered to and costs incurred for the benefit of the estate from May 25, 2022 through June 20, 2022.

4. [20-12833](#)-B-7 **IN RE: MA DEL CARMEN DE IBARRA**
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG,
ACCOUNTANT(S)
7-19-2022 [[67](#)]

RATZLAFF TAMBERI & WONG/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Ratzlaff Tamberi & Wong ("Applicant"), the certified public accountancy firm engaged by chapter 7 trustee James E. Salven ("Trustee"), seeks final compensation under 11 U.S.C. § 330 in the sum of \$1,091.60. Doc. #67. This amount consists of \$1,081.00 in fees as reasonable compensation for services rendered and \$10.60 in reimbursement for actual, necessary expenses from May 4, 2022 through June 20, 2022. *Id.*

Trustee has received and reviewed the application and supporting documents, states they are reasonable and necessary for estate administration, and has no objection to the proposed payment. Doc. #70

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Ma del Carmen Alcaraz De Ibarra ("Debtor") filed chapter 7 bankruptcy on August 28, 2020. Doc. #1. Trustee was appointed as interim trustee

on that same day and became permanent trustee at the first meeting of creditors on September 24, 2020. Doc. #5; docket generally. Trustee moved to employ Applicant as the estate's accountant under 11 U.S.C. §§ 327, 330, and 331 on May 18, 2022. Doc. #63. The court approved employment on May 26, 2022, effective April 18, 2022. Doc. #66. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for accounting services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Acceptance of employment was deemed to be an irrevocable waiver by Applicant of all pre-petition claims, if any, against the bankruptcy estate. *Id.* Applicant's services here were within the time period prescribed by the employment order.

This is Applicant's first and final fee application. Doc. #67. Applicant performed 4.6 billable hours of accounting services at a rate of \$235.00 per hour, totaling **\$1,081.00** in fees. Doc. #68, *Ex. A*. Applicant also incurred **\$10.60** in expenses for postage to notice creditors. *Id.* These combined fees and expenses total **\$1,091.60**.

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

Applicant's services included, without limitation: (1) reviewing the petition and trustee's accounting for information relating to tax matters; (2) preparing the final federal and state fiduciary income tax returns including workpapers for the period ending December 31, 2021; (3) reviewing information received from trustee regarding settlement on real property; and (4) preparing and filing the final fee application. Docs. #68, *Ex. A*; #69. The court finds the services and expenses actual, reasonable, and necessary. As noted above, Trustee has reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #70.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$1,081.00 in fees and \$10.60 in expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized to pay applicant, in Trustee's discretion, \$1,091.50 for services rendered to and costs incurred for the benefit of the estate from May 4, 2022 through June 20, 2022.

5. [21-11635](#)-B-7 **IN RE: JUAN CORDERO**
[JES-3](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
7-16-2022 [\[51\]](#)

JAMES SALVEN/MV
MONICA ROBLES/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

James E. Salven ("Applicant"), his capacity as certified public accountant employed by himself in his capacity as chapter 7 trustee of the bankruptcy estate, seeks final compensation under 11 U.S.C. § 330 in the sum of \$1,924.99. Doc. #51. This amount consists of \$1,680.00 in fees as reasonable compensation for services rendered and \$244.99 in reimbursement of actual, necessary expenses from July 5, 2022 through July 15, 2022. *Id.*

Applicant, in his capacity as chapter 7 trustee, has reviewed the application and supporting documents, and consents to the proposed payment. Doc. #55

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Juan Cordero ("Debtor") filed chapter 7 bankruptcy on June 28, 2021. Doc. #1. Applicant was appointed as interim trustee on that same date and became permanent trustee at the first § 341 meeting of creditors

on August 5, 2021. Doc. #3; docket generally. Applicant, in his capacity as trustee, moved to employ himself as accountant on July 8, 2022 under 11 U.S.C. §§ 327, 330, and 331. Doc. #47. The court approved employment on July 18, 2022, effective July 1, 2022. Doc. #50. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for accounting services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Acceptance of employment was deemed to be an irrevocable waiver by Applicant of all pre-petition claims, if any, against the bankruptcy estate. *Id.* Applicant's services here were within the time period prescribed by the employment order.

This is Applicant's first and final fee application. Doc. #51. Applicant performed 6.0 billable hours of accounting services at a rate of \$280.00 per hour, totaling **\$1,680.00** in fees. Doc. #54, *Ex. A*. Applicant also incurred **\$244.99** for the following expenses:

Copies (122 @ \$0.20)	\$24.40
Envelopes (4 @ \$0.25)	+ \$1.00
Lacerte Tax Proc. (1 @ \$86.00)	+ \$86.00
Service (61 @ \$2.19)	+ \$133.59
Total	= \$244.99

Id., *Ex. B*. These combined fees and expenses total **\$1,924.99**.

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

Applicant's services included, without limitation: (1) conflict review and preparing the employment application (JES-2);² (2) reviewing Fidelity Passport to determine the tax basis; (3) analyzing and inputting data into system and processing tax returns; (4) finalizing returns and prompt determination letters; and (5) preparing and filing this fee application (JES-3). Doc. #54, *Exs. A, B*. The court finds the services and expenses actual, reasonable, and necessary. As noted above, Applicant, in his capacity as chapter 7 trustee, has reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #55.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$1,680.00 in fees and \$244.99 in expenses on a final basis pursuant to 11 U.S.C. § 330. Applicant, in his capacity as chapter 7 trustee and in his

discretion, will be authorized to pay Applicant, in his capacity as accountant, \$1,924.99 for services rendered to and costs incurred for the benefit of the estate from July 5, 2022 through July 15, 2022.

² Applicant waived fees for conflict review, preparing, and filing the employment application. Doc. #54, *Ex. A*.

6. [21-12342](#)-B-7 **IN RE: JEFF/TERESA MERRILL**
[JES-1](#)

MOTION TO SELL
7-22-2022 [[56](#)]

JAMES SALVEN/MV
STEPHEN LABIAK/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") requests an order authorizing the sale of the estate's interest in a 2011 Yamaha Y2450F motorcycle and seven (7) firearms: a Benelli shotgun, a Ruger .22 (non-functional), a Desert Eagle, a Glock 17, a Kimber .45, a Ruger .17, and a Ruger .22 (collectively "Estate Assets") to Jeff Merrill and Teresa Merrill (collectively "Debtors") for \$5,411.00, subject to higher and better bids at the hearing. Doc. #56.

No party in interest timely filed written opposition. However, the court will inquire at the hearing about an underpayment based on credit given for Debtors' claimed exemption in the 2011 Yamaha Y2450F. If this issue is resolved, the court intends to GRANT the motion and solicit higher and better bids only.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(a)(2). The failure of the creditors, the Debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. 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.

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

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

The Estate Assets are listed in the schedules with the following values and exemptions.:

Estate Asset	A/B Value	Exempt	Sale Price	Net
2011 Yamaha 2450F	\$2,530	\$795	\$2,961	\$2,166
Benelli shotgun	\$500	\$0	\$500	\$500
Ruger .22 (non-functional)	\$50	\$0	\$50	\$50
Desert Eagle	\$700	\$0	\$700	\$700
Glock 17	\$350	\$0	\$350	\$350
Kimber .45	\$600	\$0	\$600	\$600
Ruger .17 (damaged)	\$50	\$0	\$50	\$50
Ruger .22	\$250	\$0	\$200	\$200
Total	\$5,030	\$795	\$5,411	\$4,616

Docs. #1; #17; #19, *Scheds. A/B, C, D*. All of the Estate Assets are unencumbered and should therefore provide the estate with **\$4,616.00** in net proceeds. However, Trustee says that the estate has received a total net of \$3,850.00, which is based on an exemption credit of \$1,561.00 for the 2011 Yamaha 2450F. Doc. #58. But Debtors did not claim a \$1,561.00 exemption in the Yamaha Y2450F; they claimed only

\$795.00. Doc. #19, *Sched. C*. Therefore, if Trustee has only received \$3,850.00, then Debtors still owe a remaining balance of \$766.00 provided that they prevail at the proposed sale price.

Trustee declares that he received an offer from Debtors to purchase the Estate Assets at the sale prices indicated, which he accepted subject to court approval and higher and better bids at the hearing. Doc. #58. Trustee has not agreed to pay a commission to any part in connection with the sale and believes the proposed sale is in the best interests of creditors and the estate because it is for the full and fair market value of each asset. *Id.*

The sale appears to be in the best interests of creditors and the estate, for a fair and reasonable price, supported by a valid exercise of Trustee's business judgment, and was proposed in good faith. The sale subject to higher and better bids will maximize estate recovery and yield the best possible sale price. No party has filed opposition to the sale, but the court will inquire at the hearing about the exemption discrepancy. If resolved through exemption amendment or further payment, the motion will be GRANTED, and the hearing will proceed for higher and better bids only. Trustee will be authorized to sell the Estate Assets to the highest bidder as determined at the hearing.

Any party wishing to overbid must appear at the hearing and acknowledge that the sale is subject to all liens and encumbrances, known or unknown, and no warranties or representations are included with the sale; the Estate Assets are being sold "as-is, where-is."

7. [22-10744](#)-B-7 **IN RE: EMELIA BARAJAS AND JUAN ESPINO**
[JES-1](#)

MOTION TO SELL
7-16-2022 [[32](#)]

JAMES SALVEN/MV
JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order after hearing.

Chapter 7 trustee James E. Salven ("Trustee") requests an order authorizing the sale of the estate's interest in a 2009 GMC Sierra and a 2017 Nissan Altima (collectively "Estate Assets") to Emilia De Espino Barajas and Juan Filadelo Espino (collectively "Debtors") for \$24,355.00, less encumbrances of \$16,819.00, for a pre-exemption

credit total of \$7,536.00, subject to higher and better bids at the hearing. Doc. #56.

No party in interest timely filed written opposition. This motion will be GRANTED and proceed for higher and better bids only.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(a)(2). The failure of the creditors, the Debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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.

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

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

The Estate Assets are listed in the schedules with the following values, encumbrances, and exemptions:

Estate Asset	A/B Value	Lien	Exempt	Sale Price	Net
2009 GMC Sierra	\$9,000	\$6,464	\$2,536	\$12,000	\$3,000
2017 Nissan Altima	\$14,000	\$10,355	\$0	\$12,355	\$2,000
Total	\$23,000	\$16,819	\$2,536	\$24,355	\$5,000

Docs. #1, *Scheds. C, D*; #15, *Am. Sched. A/B*. The GMC Sierra is in fair condition with 155,000 miles and has 4WD. *Id.* It is encumbered by a purchase money security interest in the amount of \$6,464.00 in favor of Credit Acceptance. Doc. #1. Debtors claimed a \$2,536.00 exemption in vehicle under Cal. Code Civ. Proc. § 704.010. *Id.* Meanwhile, the 2017 Nissan Altima is in good condition with 96,317 miles, but the estate has only a legal interest in the vehicle because Debtors' son makes the payments and possesses the vehicle. *Id.*, *Sched. H*; Doc. #15. Debtors did not exempt the Nissan, but it is encumbered by a \$10,355.00 purchase money security interest in favor of Capital One Auto Finance. Doc. #1. Trustee is giving Debtors a \$2,536.00 exemption credit and since the sale is subject to all liens and encumbrances, further reducing the sale price by \$16,819.00 on account of the two purchase money security interests. Therefore, the estate will receive **\$5,000.00** in net proceeds if the sale is completed as proposed.

Trustee declares that he received an offer from Debtors to purchase the Estate Assets at the sale prices indicated, which he accepted subject to court approval and higher and better bids at the hearing. Doc. #34. Trustee has not agreed to pay a commission to any part in connection with the sale and believes the proposed sale is in the best interests of creditors and the estate because it is for the full and fair market value of each asset. *Id.* Trustee is in receipt of the funds and is awaiting court approval.

The sale appears to be in the best interests of creditors and the estate, for a fair and reasonable price, supported by a valid exercise of Trustee's business judgment, and was proposed in good faith. The sale subject to higher and better bids will maximize estate recovery and yield the best possible sale price. No party has filed opposition to the sale. Accordingly, this motion will be GRANTED, and the sale will proceed for higher and better bids only. Trustee will be authorized to sell the Estate Assets to the highest bidder as determined at the hearing.

Any party wishing to overbid must appear at the hearing and acknowledge that the sale is subject to all liens and encumbrances, known or unknown, and no warranties or representations are included with the sale; the Estate Assets are being sold "as-is, where-is."

8. [17-11346](#)-B-7 **IN RE: DANIEL CANCHOLA**
[RWR-6](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH INFINITY INSURANCE COMPANIES , AND MOTION FOR
COMPENSATION FOR DAVID M. MOECK, SPECIAL COUNSEL(S)
7-19-2022 [[118](#)]

JAMES SALVEN/MV
JERRY LOWE/ATTY. FOR DBT.
RUSSELL REYNOLDS/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 redacted stipulation attached as an
 exhibit and shall separately file and docket the same
 as a stipulation.

Chapter 7 trustee James E. Salven ("Trustee") requests an order approving a settlement agreement between the estate ("Canchola Estate") and certain defendants involved in litigation against Infinity Insurance Companies ("Creditor"), and others, pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #118. Trustee also seeks approval to pay 40% of the settlement plus expenses to Special Counsel David M. Moeck ("Special Counsel"). *Id.*

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(3) 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). 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.

This motion affects the proposed disposition and Special Counsel. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in

contested matters under Rule 9014(c)), the court will exercise its discretion and allow the relief requested by the movant here as to Special Counsel and use the court's discretion to add a party under Civ. Rule 21.

Compensation is separate from approval of the compromise, so the court will allow their joinder in this motion under Civ. Rule 18 (Rule 7018) because it is economical to handle this motion in this manner absent objection. This rule is not incorporated in contested matters absent court order under Rule 9014(c) and affected parties are entitled to notice. Trustee, having requested this relief, is deemed to have notice. Since no party timely filed written opposition, defaulted parties are deemed to have consented to application of this rule.

Background

Daniel M. Canchola ("Debtor") filed chapter 7 bankruptcy on April 11, 2017. Doc. #1. Trustee was appointed as interim trustee that same day and became permanent trustee at the first § 341 meeting on May 18, 2017. Doc. #2; see docket generally. The § 341 meeting concluded on June 16, 2017 and Trustee filed a *Notice to File Proof of Claim Due to Possible Recovery of Assets*. Doc. #23. Debtor received an order of discharge on April 11, 2017. Doc. #27. Trustee subsequently retained Russell W. Reynolds as general counsel. Docs. #29; #32.

Thereafter, Trustee moved to employ Special Counsel and compromise a controversy with Peter L. Fear, the chapter 7 successor trustee of the bankruptcy estate of Mario Alberto Guerra ("Guerra") on March 28, 2019, but the motions were denied for procedural reasons. Docs. #38; #45; ##51-54.

On the next attempt, the court granted both motions. First, Special Counsel was employed under 11 U.S.C. § 327(e) and §§ 329-331 to represent the estate for a bad faith and/or tortious injury claim against Debtor's insurance, Infinity Insurance. Docs. #82; #85. The employment order was retroactively effective as of March 28, 2019 because the court found that Trustee satisfactorily explained the failure to obtain judicial approval for Special Counsel's employment sooner and demonstrated that Special Counsel's services benefited the bankruptcy estate in a significant manner. Doc. #82. The court further ordered that compensation, if any, shall be a 40% contingency fee, plus costs and expenses, as described in the Attorney-Client Contingent Fee Contract. Doc. #85, citing Doc. #66.

Second, the court approved an agreement between Trustee and Peter L. Fear, the chapter 7 trustee of the Guerra Estate, to hire one attorney (Special Counsel) to prosecute the bad faith and/or tortious injury action on behalf of both the Canchola and Guerra Estates. Docs. #81; #84. Approval of similar agreements between the Guerra and Canchola Estates and/or Creditor are the subjects of matters #9 (RWR-7), #12 (Case No. 17-11365, RWR-6), 13 (Case No. 17-11365, RWR-7) below.

Lawsuit

Special Counsel filed an action against Creditor, its agents, and attorneys in Fresno County Superior Court and entitled *Le Duc et al. v. Infinity et al.*, Case No. 19CECG01278, for claims of insurance bad faith and other tortious injury claims arising out of a motor vehicle accident and the handling of the claims arising from that accident. Doc. #121. Creditor provided Commercial Liability Insurance for Guerra, and by reason of additional insured provisions in the policy, Debtor was also covered. *Id.*

Special Counsel declares that he and other plaintiffs have been diligently prosecuting this claim since the spring of 2019. *Id.* Discovery has been taken and defended, the parties have mediated, and two of the defendants have offered to settle the lawsuit for \$150,000.00. *Id.*

Under the employment order, contingency fee agreement, and the Canchola and Guerra Estates' agreement, Trustee seeks approval of the settlement and authorization to pay Special Counsel 40% of the net proceeds, plus fees and costs.

Compensation

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

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

The court approved Special Counsel's employment under 11 U.S.C. § 327(e) and §§ 329-331 on July 8, 2019, effective March 28, 2019. Doc. #85. Though § 328 is not cited in the employment order, the court fixed Special Counsel's compensation, if any, at 40% of the recovery, plus costs and expenses, as described in the Attorney-Client Fee Contract. Doc. #85, citing Doc. #66.

Special Counsel incurred the following fees and costs totaling
\$16,301.32:

Opening File Charge	\$150.00
Court Filing Fees	+ \$141.75
Photocopies	+ \$2,160.75
Postage	+ \$570.38
Investigator's Fees	+ \$282.00
Process Server's Fees	+ \$44.71
Reporter's Fees/Depo Costs	+ \$7,497.24
Mediator's Fees	+ \$1,062.50
CourtCall	+ \$1,316.00
Travel Expenses	+ \$1,990.99
Expert Fees	+ \$935.00
Closing File Charges	+ \$150.00
Total Costs	= \$16,301.32

Doc. #123, *Ex. D*. The settlement amount of \$150,000 minus \$16,301.32 in costs leaves a net recovery of \$133,698.68. Forty percent (40%) of \$133,698.68 is **\$53,479.47** in contingency fees. The combined contingency fees and costs total **\$69,780.79**.

The court will authorize Special Counsel's compensation to paid as prayed. Trustee will be authorized to pay Special Counsel \$69,780.79 in compensation for services rendered to the Canchola and Guerra Estates from the \$150,000 settlement for both Estates, which consists of \$53,479.47 in contingency fees (40% of \$133,698.68) and \$16,301.32 in costs. See also matter #12 below.

Approval of Settlement

Two of the several defendants offered to settle all claims against them for \$150,000 (inclusive of fees, costs, and expenses) in exchange for a dismissal with prejudice as to them only, and the action will continue as to the non-settling defendants. *Id.* Trustees Salven and Fear, on behalf of the Canchola and Guerra Estates, respectively, have accepted this settlement subject to court approval. *Id.*; Docs. #122; #124. The confidential settlement agreement was filed under seal. Docs. #117; #127. However, Trustee included a redacted version of the settlement agreement as an exhibit. See Doc. #123, *Ex. C*.

Under the terms of the settlement, the Canchola and Guerra Estates will dismiss with prejudice all claims against certain defendants in the action against Creditor and others in exchange for \$150,000. *Id.*

After payment of Special Counsel's \$69,780.79 in fees and expenses, \$80,219.21 will remain in net proceeds for the Canchola and Guerra Estates. Doc. #121. This amount will be split between both Estates, and each will receive approximately \$40,109.60. These amounts will be

further split with the debtor of each case. As a result, both Estates, Debtor, and Guerra will each receive approximately \$20,054.80.

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).

The court concludes that the *Woodson* factors balance in favor of approving the settlement. That is,

1. Probability of success in litigation: Though success in litigation is speculative, Trustee and Special Counsel believe that the case has merit. Docs. ##120-21. However, the defendants have vigorously defended the case of the last three years. Even if the plaintiffs prevail, it is difficult to determine whether the award would exceed the settlement amount. Trustee believes that after payment of Special Counsel's fees and costs, there will be funds available to pay a significant portion of administrative expenses, taxes, unsecured claims, and Debtor. Doc. #122. Regardless, after the settling defendants have the claims against them dismissed, the case will proceed against other named defendants. Docs. ##120-21. This factor weighs in favor of approving the settlement.

2. Difficulties in collection: Collection will not be difficult because the lawsuit is against insurance companies or insured defendants. This factor weighs towards approving the settlement.

3. Complexity of litigation: The litigation in this case is very complex due to there being several plaintiffs and several defendants. Additionally, the Canchola and Guerra Estates have the burden of proving their claims, including damages. The settlement guarantees recovery and simplifies the remaining litigation that will proceed post-approval. Therefore, this factor supports approval.

4. Interests of creditors: The settlement yields approximately \$20,054.40 each to the Canchola and Guerra Estates, Debtor, and Guerra. Trustee believes there will be funds available to pay a significant portion of administrative expenses, taxes, unsecured claims, and Debtor. Doc. #122. This factor weighs in favor of approving the settlement.

The settlement appears to be fair, equitable, and a reasonable exercise of Trustee's business judgment.

When a compromise of claims involves a sale, the compromise does not require analysis under § 363 if it resolves mutual claims and is not a one-way sale. *Spark Factor Design Inc. v. Hjelmeset*, Nos. NC-21-1233-FBS, NC-21-1234-FBS, 2022 Bankr. LEXIS 1511, at **19-24 (B.A.P. 9th Cir. May 26, 2022), citing *Goodwin v. Mickey Thompson Entm't Grp., Inc. (In re Mickey Thompson Entm't Grp., Inc.)*, 292 B.R. 415, 421-422 (B.A.P. 9th Cir. 2003).

No party in interest timely filed written opposition. Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. 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.* This motion will be GRANTED, and the settlement agreement will be approved, and Trustee will be authorized to pay Special Counsel as prayed.

Trustee shall separately file a copy of the redacted settlement agreement as a stipulation. The proposed order shall attach the redacted settlement agreement as an exhibit.

9. [17-11346](#)-B-7 **IN RE: DANIEL CANCHOLA**
[RWR-7](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH DANIEL M. CANCHOLA AND MARIO ALBERTO GUERRA
7-20-2022 [[128](#)]

JAMES SALVEN/MV
JERRY LOWE/ATTY. FOR DBT.
RUSSELL REYNOLDS/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 and shall separately file and docket the same as a stipulation.

Chapter 7 trustee James E. Salven ("Trustee") requests an order approving a settlement agreement between the bankruptcy estate ("Canchola Estate") of Daniel M. Canchola ("Debtor") and Peter L. Fear, chapter 7 successor trustee of the bankruptcy estate ("Guerra Estate") of Mario Alberto Guerra ("Guerra") pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #128. This motion seeks to divide between the two estates the proceeds from the settlement agreement in matter #8 above, which the court intends to grant.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(3). 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.

This motion affects Guerra and the Guerra Estate. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion and allow the relief requested by the movant here as to Guerra and the Guerra Estate and use the court's discretion to add a party under Civ. Rule 21. The court notes that Trustee Fear also seeks approval of the same agreement in matter #13 below.

Daniel M. Canchola ("Debtor") filed chapter 7 bankruptcy on April 11, 2017. Doc. #1. Trustee was appointed as interim trustee that same day and became permanent trustee at the first § 341 meeting on May 18, 2017. Doc. #2; see docket generally. The § 341 meeting concluded on June 16, 2017 and Trustee filed a *Notice to File Proof of Claim Due to Possible Recovery of Assets*. Doc. #23. Debtor received an order of discharge on April 11, 2017. Doc. #27. Trustee subsequently retained Russell W. Reynolds as general counsel and David M. Moeck as special counsel. Docs. #29; #32; #82; #85. Mr. Moeck was retained pursuant to an agreement with the Guerra Estate by which the two estates would hire one attorney to prosecute a bad faith and/or tortious injury action on behalf of both the Canchola and Guerra Estates against Infinity Insurance Companies and others. Docs. #81; #84.

Mr. Moeck received a \$150,000 offer to settle the adversary proceeding with respect to two of the defendants, with the litigation proceeding against the remaining defendants. The court intends to approve that settlement agreement in matters #8 above and #12 below and award contingency fees and expenses totaling \$69,780.79 to the special counsel. After payment of those fees and expenses, \$80,219.21 will remain in net proceeds to be split between Debtor, Guerra, and the Canchola and Guerra Estates. The parties have agreed to split the net proceeds evenly with 25% to each party. Doc. #132, *Ex. A*. This will

result in payment of approximately **\$20,054.80** each to Debtor, Guerra, the Canchola Estate, and the Guerra Estate. Trustee now seeks approval of that compromise. Docs. #128; #133.

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).

The court concludes that the *Woodson* factors balance in favor of approving the settlement. That is,

1. Probability of success in litigation: Trustee acknowledges that bad faith litigation is difficult because the plaintiff bears the burden of proof, however, Trustee says that there are undisputed facts in evidence that weigh in favor of Debtor's success against Infinity, its agents, and attorneys. However, the settlement provides immediate funds to be used for paying a fair percentage of claims. Regardless, after the settling defendants have the claims against them dismissed, the case will proceed against other named defendants. This factor weighs towards approving the settlement.

2. Difficulties in collection: Collection will not be difficult because the lawsuit is against insurance companies or insured defendants. And since the court intends to approve the settlement in matters #9 above and #12 below, funds are currently being held in a trust account for equal distribution between the parties. This factor weighs towards approving the settlement.

3. Complexity of litigation: The litigation in the underlying lawsuit is very complex due to there being several plaintiffs and several defendants. Additionally, the Canchola and Guerra Estates have the burden of proving their claims, including damages. Since the court intends to approve the settlement in matters #8 above and #12 below, approval of this settlement will ease administration by equally dividing the proceeds amongst the parties. Therefore, this factor supports approval.

4. Interests of creditors: The settlement yields approximately \$20,054.40 each to the Canchola and Guerra Estates, Debtor, and Guerra. Trustee believes there will be funds available to pay a significant portion of administrative expenses, taxes, unsecured claims, and Debtor. Doc. #132, *Ex. A*. This factor weighs in favor of approving the settlement.

The settlement appears to be fair, equitable, and a reasonable exercise of Trustee's business judgment.

When a compromise of claims involves a sale, the compromise does not require analysis under § 363 if it resolves mutual claims and is not a one-way sale. *Spark Factor Design Inc. v. Hjelmeset*, Nos. NC-21-1233-FBS, NC-21-1234-FBS, 2022 Bankr. LEXIS 1511, at **19-24 (B.A.P. 9th Cir. May 26, 2022), citing *Goodwin v. Mickey Thompson Entm't Grp., Inc. (In re Mickey Thompson Entm't Grp., Inc.)*, 292 B.R. 415, 421-422 (B.A.P. 9th Cir. 2003).

No party in interest timely filed written opposition. Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. 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.* This motion will be GRANTED, and the settlement agreement will be approved.

Trustee shall separately file a copy of the settlement agreement as a stipulation. The proposed order shall attach the settlement agreement as an exhibit.

10. [21-12648](#)-B-7 **IN RE: LISA TOBAR**
[SAH-2](#)

OBJECTION TO CLAIM OF WBKL VACATION OWNERS ASSOCIATION,
INC., CLAIM NUMBER 1
7-6-2022 [[38](#)]

LISA TOBAR/MV
SUSAN HEMB/ATTY. FOR DBT.
WITHDRAWN

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

DISPOSITION: Withdrawn.

NO ORDER REQUIRED.

The debtor, through her attorney of record, withdrew this motion on July 18, 2022. Doc. #43. Accordingly, this matter will be taken off calendar pursuant to the withdrawal.

11. [21-11754](#)-B-7 **IN RE: MICHAEL ANARADIAN**
[JES-2](#)

MOTION FOR COMPENSATION FOR JAMES SALVEN, ACCOUNTANT(S)
7-25-2022 [\[51\]](#)

JAMES SALVEN/MV
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

James E. Salven ("Applicant"), the certified public accountant engaged by chapter 7 trustee Peter L. Fear ("Trustee"), seeks final compensation under 11 U.S.C. § 330 in the sum of \$1,693.83. Doc. #51. This amount consists of \$1,428.00 in fees as reasonable compensation for services rendered and \$265.83 in reimbursement for actual, necessary expenses from April 7, 2022 through July 15, 2022. *Id.*

Trustee has received and reviewed the application and supporting documents, states they are reasonable and necessary for estate administration, and has no objection to the proposed payment. Doc. #53.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Michael Peter Anaradian ("Debtor") filed chapter 7 bankruptcy on July 14, 2021. Doc. #1. Trustee was appointed as interim trustee on that same day and became permanent trustee at the first meeting of

creditors on August 9, 2021. Doc. #3; docket generally. Trustee moved to employ Applicant as the estate's accountant under 11 U.S.C. §§ 327, 330, and 331 on April 13, 2022. Doc. #46. The court approved employment on April 21, 2022, effective April 1, 2022. Doc. #50. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for accounting services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Acceptance of employment was deemed to be an irrevocable waiver by Applicant of all pre-petition claims, if any, against the bankruptcy estate. *Id.* Applicant's services here were within the time period prescribed by the employment order.

This is Applicant's first and final fee application. Doc. #51. Applicant performed 5.1 billable hours of accounting services at a rate of \$280.00 per hour, totaling **\$1,428.00** in fees. Doc. #55, *Ex. A*. Applicant also incurred **\$265.83** in expenses as follows:

Copies (199 @ \$0.20)	\$39.80
Envelopes (5 @ \$0.20)	+ \$1.00
Lacerte Tax Proc (1 @ \$87.00)	+ \$87.00
Fee App Service (107 @ \$1.29)	+ \$138.03
Total Costs	= \$265.83

Id., *Ex. B*. These combined fees and expenses total **\$1,693.83**.

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

Applicant's services included, without limitation: (1) conflict review and preparing the employment application (JES-1);³ (2) analyzing and inputting data into system and processing tax returns; (3) finalizing returns and prompt determination letters; and (4) preparing and filing this fee application (JES-2). Doc. #55, *Ex. A*. The court finds the services and expenses actual, reasonable, and necessary. As noted above, Trustee has reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #53.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$1,428.00 in fees and \$265.83 in expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized to pay applicant, in Trustee's discretion, \$1,693.83 for services rendered to and costs incurred for the benefit of the estate from April 7, 2022 through July 15, 2022.

³ Applicant waived fees for conflict review, preparing, and filing the employment application. Doc. #55, *Ex. A*.

12. [17-11365](#)-B-7 **IN RE: MARIO GUERRA**
[RWR-6](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH INFINITY INSURANCE COMPANIES AND/OR MOTION
FOR COMPENSATION FOR DAVID M. MOECK, SPECIAL COUNSEL(S)
7-19-2022 [[129](#)]

PETER FEAR/MV
JERRY LOWE/ATTY. FOR DBT.
RUSSELL REYNOLDS/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 redacted stipulation attached as an exhibit and shall separately file and docket the same as a stipulation.

Chapter 7 trustee Peter L. Fear ("Trustee") requests an order approving a settlement agreement between the estate ("Guerra Estate") and certain defendants involved in litigation against Infinity Insurance Companies ("Creditor"), and others, pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #129. Trustee also seeks approval to pay 40% of the settlement plus expenses to Special Counsel David M. Moeck ("Special Counsel"). *Id.*

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional

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

This motion affects the proposed disposition and Special Counsel. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion and allow the relief requested by the movant here as to Special Counsel and use the court's discretion to add a party under Civ. Rule 21.

Compensation is separate from approval of the compromise, so the court will allow their joinder in this motion under Civ. Rule 18 (Rule 7018) because it is economical to handle this motion in this manner absent objection. This rule is not incorporated in contested matters absent court order under Rule 9014(c) and affected parties are entitled to notice. Trustee, having requested this relief, is deemed to have notice. Since no party timely filed written opposition, defaulted parties are deemed to have consented to application of this rule.

Background

Mario Alberto Guerra ("Debtor") filed chapter 7 bankruptcy on April 12, 2017. Doc. #1. Trudi Manfredo was appointed as interim trustee that same day and became permanent trustee at the first § 341 meeting of creditors on May 22, 2017. Doc. #2; see docket generally. The § 341 meeting concluded on August 18, 2017 and Trustee Manfredo filed a *Notice to File Proof of Claim Due to Possible Recovery of Assets*. Doc. #33. Debtor received an order of discharge on September 5, 2017. Doc. #37. Trustee Manfredo subsequently retained Coleman & Horowitz, LLP as general counsel. Doc. #39; #42. Trustee Manfredo resigned from appointment of trustee on December 21, 2018. Doc. #43. Trustee Fear was appointed as successor trustee on December 26, 2018. Doc. #44.

Thereafter, Trustee moved to employ Special Counsel and compromise a controversy with James E. Salven, the chapter 7 successor trustee of the bankruptcy estate ("Canchola Estate") of Daniel M. Canchola ("Canchola") on March 28, 2019, but the motions were denied for procedural reasons. Docs. #50; #57; ##63-66.

On the next attempt, the court granted both motions. First, Special Counsel was employed under 11 U.S.C. § 327(e) and §§ 329-331 to represent the estate for a bad faith and/or tortious injury claim against Debtor's insurance, Infinity Insurance. Docs. #93; #96. The employment order was retroactively effective as of March 28, 2019 because the court found that Trustee satisfactorily explained the failure to obtain judicial approval for Special Counsel's employment sooner and demonstrated that Special Counsel's services benefited the bankruptcy estate in a significant manner. Doc. #93. The court further ordered that compensation, if any, shall be a 40% contingency fee, plus costs and expenses, as described in the Attorney-Client Contingent Fee Contract. Doc. #96, citing Doc. #71.

Second, the court approved an agreement between Trustee and James E. Salven, the chapter 7 trustee of the Canchola Estate, to hire one attorney (Special Counsel) to prosecute the bad faith and/or tortious injury action on behalf of both the Canchola and Guerra Estates. Docs. #92; #95. Approval of similar agreements between the Guerra and Canchola Estates and/or Creditor are the subjects of matters #8 (Case No. 17-11346, RWR-6) and #9 (Case No. 17-11346, RWR-7) above, and #13 (RWR-7) below.

Lawsuit

Special Counsel filed an action against Creditor, its agents, and attorneys in Fresno County Superior Court and entitled *Le Duc et al. v. Infinity et al.*, Case No. 19CECG01278, for claims of insurance bad faith and other tortious injury claims arising out of a motor vehicle accident and the handling of the claims arising from that accident. Doc. #131. Creditor provided Commercial Liability Insurance for Guerra, and by reason of additional insured provisions in the policy, Debtor was also covered. *Id.*

Special Counsel declares that he and other plaintiffs have been diligently prosecuting this claim since the spring of 2019. *Id.* Discovery has been taken and defended, the parties have mediated, and two of the defendants have offered to settle the lawsuit for \$150,000.00. *Id.*

Under the employment order, contingency fee agreement, and the Canchola and Guerra Estates' agreement, Trustee seeks approval of the settlement and authorization to pay Special Counsel 40% of the net proceeds, plus fees and costs.

Compensation

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

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

The court approved Special Counsel's employment under 11 U.S.C. § 327(e) and §§ 329-331 on July 8, 2019, effective March 28, 2019. Doc. #93; #96. Though § 328 is not cited in the employment order, the court fixed Special Counsel's compensation, if any, at 40% of the recovery, plus costs and expenses, as described in the Attorney-Client Fee Contract. Doc. #96, citing Doc. #71.

Special Counsel incurred the following fees and costs totaling **\$16,301.32**:

Opening File Charge	\$150.00
Court Filing Fees	+ \$141.75
Photocopies	+ \$2,160.75
Postage	+ \$570.38
Investigator's Fees	+ \$282.00
Process Server's Fees	+ \$44.71
Reporter's Fees/Depo Costs	+ \$7,497.24
Mediator's Fees	+ \$1,062.50
CourtCall	+ \$1,316.00
Travel Expenses	+ \$1,990.99
Expert Fees	+ \$935.00
Closing File Charges	+ \$150.00
Total Costs	= \$16,301.32

Doc. #132, *Ex. D*. The settlement amount of \$150,000 minus \$16,301.32 in costs leaves a net recovery of \$133,698.68. Forty percent (40%) of \$133,698.68 is **\$53,479.47** in contingency fees. The combined contingency fees and costs total **\$69,780.79**.

The court will authorize Special Counsel's compensation to be paid as prayed. Trustee will be authorized to pay Special Counsel \$69,780.79 in compensation for services rendered to the Canchola and Guerra Estates from the \$150,000 settlement for both Estates, which consists of \$53,479.47 in contingency fees (40% of \$133,698.68) and \$16,301.32 in costs. See also matter #8 above.

Approval of Settlement

Two of the several defendants offered to settle all claims against them for \$150,000 (inclusive of fees, costs, and expenses) in exchange for a dismissal with prejudice as to them only, and the action will continue as to the non-settling defendants. *Id.* Trustees Salven and Fear, on behalf of the Canchola and Guerra Estates, respectively, have accepted this settlement subject to court approval. *Id.*; Docs. #133; #135. The confidential settlement agreement was filed under seal. Docs. #128; #137. However, Trustee included a redacted version of the settlement agreement as an exhibit. See Doc. #132, *Ex. C*.

Under the terms of the settlement, the Canchola and Guerra Estates will dismiss with prejudice all claims against certain defendants in the action against Creditor and others in exchange for \$150,000. *Id.*

After payment of Special Counsel's \$69,780.79 in fees and expenses, \$80,219.21 will remain in net proceeds for the Canchola and Guerra Estates. Doc. #131. This amount will be split between both Estates, and each will receive approximately \$40,109.60. These amounts will be further split with the debtor of each case. As a result, both estates, Debtor, and Canchola will each receive approximately \$20,054.80. Approval of this arrangement is the subject of matters #9 above and #13 below.

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).

The court concludes that the *Woodson* factors balance in favor of approving the settlement. That is,

1. Probability of success in litigation: Though success in litigation is speculative, Trustee and Special Counsel believe that the case has merit. Docs. #131; #133. However, the defendants have vigorously defended the case of the last three years. Even if the plaintiffs prevail, it is difficult to determine whether the award would exceed the settlement amount. Trustee believes that after payment of Special Counsel's fees and costs, there will be funds available to pay a significant portion of administrative expenses, taxes, unsecured claims, and Debtor. Doc. #133. Regardless, after the settling defendants have the claims against them dismissed, the case will proceed against other named defendants. Docs. #130. This factor weighs in favor of approving the settlement.

2. Difficulties in collection: Collection will not be difficult because the lawsuit is against insurance companies or insured defendants. This factor weighs towards approving the settlement.

3. Complexity of litigation: The litigation in this case is very complex due to there being several plaintiffs and several defendants. Additionally, the Canchola and Guerra Estates have the burden of proving their claims, including damages. The settlement guarantees recovery and simplifies the remaining litigation that will proceed post-approval. Therefore, this factor supports approval.

4. Interests of creditors: The settlement yields approximately \$20,054.40 each to the Canchola and Guerra Estates, Debtor, and Canchola. Trustee believes there will be funds available to pay a significant portion of administrative expenses, taxes, unsecured claims, and Debtor. Doc. #133. This factor weighs in favor of approving the settlement.

The settlement appears to be fair, equitable, and a reasonable exercise of Trustee's business judgment.

When a compromise of claims involves a sale, the compromise does not require analysis under § 363 if it resolves mutual claims and is not a one-way sale. *Spark Factor Design Inc. v. Hjelmeset*, Nos. NC-21-1233-FBS, NC-21-1234-FBS, 2022 Bankr. LEXIS 1511, at **19-24 (B.A.P. 9th Cir. May 26, 2022), citing *Goodwin v. Mickey Thompson Entm't Grp., Inc. (In re Mickey Thompson Entm't Grp., Inc.)*, 292 B.R. 415, 421-422 (B.A.P. 9th Cir. 2003).

No party in interest timely filed written opposition. Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. 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.* This motion will be GRANTED, the settlement agreement will be approved, and Trustee will be authorized to pay Special Counsel as prayed.

Trustee shall separately file a copy of the redacted settlement agreement as a stipulation. The proposed order shall attach the redacted settlement agreement as an exhibit.

13. [17-11365](#)-B-7 **IN RE: MARIO GUERRA**
[RWR-7](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH DANIEL M. CANCHOLA AND MARIO ALBERTO GUERRA
7-20-2022 [[139](#)]

PETER FEAR/MV
JERRY LOWE/ATTY. FOR DBT.
RUSSELL REYNOLDS/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 and shall separately file and docket the same as a stipulation.

Chapter 7 successor trustee Peter L. Fear ("Trustee") requests an order approving a settlement agreement between the bankruptcy estate ("Guerra Estate") of Mario Alberto Guerra ("Debtor") and Peter L. Fear, chapter 7 trustee of the bankruptcy estate ("Canchola Estate") of Daniel M. Canchola ("Canchola") pursuant to Federal Rule of Bankruptcy Procedure ("Rule") 9019. Doc. #139. This motion seeks to divide between the two estates the proceeds from the settlement agreement in matter #12 above, which the court intends to grant.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(3). 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.

This motion affects Canchola and the Canchola Estate. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion and allow the relief requested by the movant here as to Canchola and the Canchola Estate and use the court's discretion to add a party under Civ. Rule 21. The court notes that Trustee Salven also seeks approval of the same agreement in matter #9 above.

Mario Alberto Guerra ("Debtor") filed chapter 7 bankruptcy on April 12, 2017. Doc. #1. Trudi Manfredo was appointed as interim trustee that same day and became permanent trustee at the first § 341 meeting of creditors on May 22, 2017. Doc. #2; see docket generally. The § 341 meeting concluded on August 18, 2017 and Trustee Manfredo filed a *Notice to File Proof of Claim Due to Possible Recovery of Assets*. Doc. #33. Debtor received an order of discharge on September 5, 2017. Doc. #37. Trustee Manfredo subsequently retained Coleman & Horowitz, LLP as general counsel. Doc. #39; #42. Trustee Manfredo resigned from appointment of trustee on December 21, 2018. Doc. #43. Trustee Fear was appointed as successor trustee on December 26, 2018. Doc. #44. Thereafter, Trustee retained David M. Moeck as special counsel pursuant to an agreement with the Canchola Estate by which the two

estates would hire one attorney to prosecute a bad faith and/or tortious injury action on behalf of both the Canchola and Guerra Estates against Infinity Insurance Companies and others. Docs. ##63-66.

Thereafter, Trustee moved to employ Special Counsel and compromise a controversy with James E. Salven, the chapter 7 successor trustee of the bankruptcy estate ("Canchola Estate") of Daniel M. Canchola ("Canchola") on March 28, 2019, but the motions were denied for procedural reasons. Docs. #50; #57; ##63-66.

Mr. Moeck received a \$150,000 offer to settle the adversary proceeding with respect to two of the defendants, with the litigation proceeding against the remaining defendants. The court intends to approve that settlement agreement in matters #8 and #12 above and award contingency fees and expenses totaling \$69,780.79 to the special counsel. After payment of those fees and expenses, \$80,219.21 will remain in net proceeds to be split between Debtor, Canchola, and the Canchola and Guerra Estates. The parties have agreed to split the net proceeds evenly with 25% to each party. Doc. #144, Ex. A. This will result in payment of approximately **\$20,054.80** each to Debtor, Canchola, the Canchola Estate, and the Guerra Estate. Trustee now seeks approval of that compromise. Docs. #139; #143.

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).

The court concludes that the *Woodson* factors balance in favor of approving the settlement. That is,

1. Probability of success in litigation: Trustee acknowledges that bad faith litigation is difficult because the plaintiff bears the burden of proof, however, Trustee says that there are undisputed facts in evidence that weigh in favor of Debtor's success against Infinity, its agents, and attorneys. However, the settlement provides immediate funds to be used for paying a fair percentage of claims. Regardless, after the settling defendants have the claims against them dismissed, the case will proceed against other named defendants. This factor weighs towards approving the settlement.

2. Difficulties in collection: Collection will not be difficult because the lawsuit is against insurance companies or insured defendants. And since the court intends to approve the settlement in

matters #8 and #12 above, funds are currently being held in a trust account for equal distribution between the parties. This factor weighs towards approving the settlement.

3. Complexity of litigation: The litigation in the underlying lawsuit is very complex due to there being several plaintiffs and several defendants. Additionally, the Canchola and Guerra Estates have the burden of proving their claims, including damages. Since the court intends to approve the settlement in matters #8 and #12 above, approval of this settlement will ease administration by equally dividing the proceeds amongst the parties. Therefore, this factor supports approval.

4. Interests of creditors: The settlement yields approximately \$20,054.40 each to the Canchola and Guerra Estates, Debtor, and Canchola. Trustee believes there will be funds available to pay a significant portion of administrative expenses, taxes, unsecured claims, and Debtor. Doc. #141. This factor weighs in favor of approving the settlement.

The settlement appears to be fair, equitable, and a reasonable exercise of Trustee's business judgment.

When a compromise of claims involves a sale, the compromise does not require analysis under § 363 if it resolves mutual claims and is not a one-way sale. *Spark Factor Design Inc. v. Hjelmeset*, Nos. NC-21-1233-FBS, NC-21-1234-FBS, 2022 Bankr. LEXIS 1511, at **19-24 (B.A.P. 9th Cir. May 26, 2022), citing *Goodwin v. Mickey Thompson Entm't Grp., Inc. (In re Mickey Thompson Entm't Grp., Inc.)*, 292 B.R. 415, 421-422 (B.A.P. 9th Cir. 2003).

No party in interest timely filed written opposition. Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. 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.* This motion will be GRANTED, and the settlement agreement will be approved.

Trustee shall separately file a copy of the settlement agreement as a stipulation. The proposed order shall attach the settlement agreement as an exhibit.

14. [21-10368](#)-B-7 **IN RE: SIMONA PASILLAS**
[FW-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR PETER L. FEAR, TRUSTEES ATTORNEY(S)
7-26-2022 [\[99\]](#)

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Fear Waddell, P.C. ("Applicant"), general counsel for chapter 7 trustee James E. Salven ("Trustee"), requests final compensation in the sum of \$24,121.48. Doc. #99. This amount consists of \$23,047.00 in fees as reasonable compensation and \$1,074.48 in reimbursement for actual, necessary expenses from April 22, 2021 through July 20, 2022. *Id.*

Trustee has reviewed the application and supporting documents, believes the fees and expenses represent a reasonable compensation for necessary services that benefited the estate, and consents to the proposed payment. Doc. #101.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Simona Pasillas ("Debtor") filed chapter 7 bankruptcy on February 12, 2021. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341 meeting of

creditors on March 11, 2021. Doc. #5; docket generally. Trustee moved to employ Applicant as general counsel on April 28, 2021, which the court granted on May 6, 2021, effective April 1, 2021. Docs. #36; #41. No compensation was permitted except upon court order following application pursuant to § 330(a) and compensation was set at the "lodestar rate" for legal services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). *Id.* Applicant's services were performed within the authorized time period.

This is Applicant's first and final fee application. The source of funds for payment will be from the funds currently held by the bankruptcy estate. Doc. #102, *Ex. A*. Applicant's firm provided 72.70 billable hours of legal services at the following rates, totaling **\$23,047.00** in fees:

Professional	Rate	Hours	Amount
Peter L. Fear (2021)	\$410	1.70	\$697.00
Peter L. Fear (2022)	\$425	0.50	\$212.50
Gabriel J. Waddell (2021)	\$330	45.40	\$14,982.00
Gabriel J. Waddell (2022)	\$345	11.70	\$4,036.50
Peter A. Sauer (2021)	\$245	1.10	\$269.50
Peter A. Sauer (2022)	\$260	2.60	\$676.00
Katie Waddell (2021)	\$230	1.50	\$345.00
Katie Waddell (2022)	\$245	6.90	\$1,690.50
Kayla Schlaak (2021)	\$110	0.80	\$88.00
Laurel Guenther (2022)	\$100	0.50	\$50.00
Total Hours & Fees		72.70	\$23,047.00

Id., *Exs. B, C*. Applicant also incurred **\$1,074.48** in expenses:

Copying	\$435.15
Court Fees	+ \$439.20
Postage	+ \$200.13
Total Costs	= \$1,074.48

Id., *Ex. B*. These combined fees and expenses total **\$24,121.48**.

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

Applicant's services included, without limitation: (1) preparing and filing the employment application (FW-1); (2) prosecuting an adversary proceeding to determine the estate's interest in real property and seeking its turnover (Adv. Proc. No. 21-01038); (3) seeking authorization to employ a real estate broker (FW-3); (4) preparing and prevailing on a motion to sell real property and pay brokers' commissions (FW-4); and (4) preparing and filing this fee application (RWR-5). Doc. #102, *Ex. A*. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Trustee has reviewed the application and consents to payment of the requested fees and expenses. Doc. #101.

No party in interest timely filed written opposition to this motion. Accordingly, this motion will be GRANTED. Applicant will be awarded \$23,047.00 in reasonable fees and \$1,074.48 in actual, necessary expenses on a final basis pursuant to § 330. Trustee will be authorized, in his discretion, to pay Applicant \$24,121.48 on the terms outlined above for services rendered and costs incurred from April 22, 2021 through July 20, 2022.

15. [22-10670](#)-B-7 **IN RE: DUSTIN DE SANTIAGO**
[JES-1](#)

MOTION TO EMPLOY BAIRD AUCTIONS AND APPRAISALS AS
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
7-14-2022 [\[23\]](#)

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

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

DISPOSITION: Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") seeks authorization to (i) employ Baird Auctions & Appraisals ("Auctioneer") under 11 U.S.C. § 328; (ii) sell the estate's interest in a 2008 Toyota 4 Runner SR5 ("Vehicle") at public auction under § 363(b)(1); and (iii) compensate Auctioneer under §§ 327(a) and 328. Doc. #23. The auction will be held on or after September 6, 2022 at Baird Auctions & Appraisals located at 1328 N. Sierra Vista, Suite B, Fresno, California. *Id.*

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

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

This motion affects the proposed disposition and the Auctioneer. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion and allow the relief requested by movant here as to the proposed auctioneer and use the court's discretion to add a party under Civ. Rule 21.

Compensation is separate from the sale. Since this relief and appointing the Auctioneer are separate claims, the court will allow their joinder in this motion under Civ. Rule 18 (Rule 7018) because it is economical to handle this motion in this manner absent an objection. This rule is not incorporated in contested matters absent court order under Rule 9014(c) and affected parties are entitled to notice. Trustee, having requested this relief, is deemed to have notice. Since no party timely filed written opposition, defaulted parties are deemed to have consented to application of this rule.

Dustin Christopher De Santiago ("Debtor") filed chapter 7 bankruptcy on April 19, 2022. Doc. #1. Trustee was appointed as interim trustee that same date and became permanent trustee at the first § 341 meeting of creditors on May 26, 2022. Doc. #5; docket generally. In the course of administering the estate, Trustee investigated Debtor's assets. Among those assets is Vehicle, which is listed in the schedules with approximately 180,500 miles and is valued at \$7,989.00. Doc. #1, *Sched. A/B*. Vehicle does not appear to be encumbered by any security interests. *Id.*, *Sched. D*. Debtor claimed a \$3,625.00 exemption in Vehicle pursuant to Cal. Code Civ. Proc. § 704.010. *Id.*, *Sched. C*.

Employment and Compensation

11 U.S.C. § 327 allows the trustee, with the court's approval, to employ one or more attorneys, accountants, auctioneers, or other professional persons to represent or assist the trustee in carrying out the trustee's duties. The professional is required to be a

disinterested person and neither hold nor represent interests adverse to the estate. § 327(a).

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

Under these sections, Trustee requests to employ and compensate Auctioneer by paying: (i) a 15% commission on the gross proceeds from the sale; and (ii) up to \$500.00 for anticipated storage and preparation for sale fees. Doc. #23. In addition to those fees and expenses, Auctioneer charges buyers an additional 10% premium on the purchase price. Doc. #25. Funds from the sale, minus Auctioneer's fees and expenses if this motion is granted, will be remitted to the bankruptcy estate within 30 days of the sale. *Id.*

Trustee and Jeffrey Baird, the owner and operator of Auctioneer, filed declarations attesting that Auctioneer is a disinterested person as defined in § 101(14) and does not hold any interests adverse to the estate in accordance with § 327(a). *Id.*; Doc. #26. Trustee and Mr. Baird declare that Auctioneer, with respect to Debtor, is not a creditor, equity security holder, insider, investment banker for a security of the debtor within the three years before the petition date, or an attorney for such investment banker, and within two years of the petition date was not a director, officer, or employee of the debtor or an investment banker. Doc. #25. Auctioneer does not have an interest materially adverse to the interest of the estate, creditors, Debtor, equity security holders, an investment banker for a security of the debtor, or any other party in interest, and had not served as an examiner in this case. *Id.* Auctioneer does not have any connection with any creditors, parties in interests, their attorneys, accountants, the U.S. Trustee, or anyone employed by the U.S. Trustee. *Id.*; Doc. #26. Additionally, no agreement exists between Auctioneer or any other person for the sharing of compensation received by Auctioneer in connection with the services rendered. *Id.*

Trustee declares that it is necessary to employ Auctioneer to liquidate Vehicle. Doc. #25. Trustee believes that the proposed fees and expenses for services are reasonable and customary for the services to be rendered by Auctioneer. *Id.* Auctioneer will assist Trustee by (1) actively advertising the sale of the property, (2) assisting in storing the property until sold, and (3) generally performing and assisting Trustee in matters customarily done and

performed by auctioneers in connection with an auction sale of property. *Id.*

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. §§ 327(a), 328 and authorize Trustee to pay the 15% commission and reimbursement of up to \$500.00 for preparation and storage fees as prayed.

Proposed Sale

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

Trustee wishes to sell Vehicle under § 363(b). Doc. #23. As noted above, Vehicle has a scheduled value of \$7,989.00 with no secured creditors and a \$19 exemption. Docs. #1, *Sched. A/B, C, D*. If sold at that price, Auctioneer's 15% commission would be \$1,198.35. After payment of up to \$500 for preparation and storage fees and Debtor's \$3,625.00 exemption, the net to the estate would be approximately \$2,665.65.

Trustee believes that using the auction process to sell Vehicle will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #25. Based on Trustee's experience, this will yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.*

Sale by auction under these circumstances should maximize potential recovery for the estate. The sale of the Vehicle appears to be in the best interests of the estate because it will provide liquidity to the estate that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion.

Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be authorized to employ Auctioneer, sell the Vehicle at public auction on or after September 6, 2022 and pay Auctioneer for its services as outlined above. Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale, and payment of up to \$500.00 for preparation and storage fees.

16. [22-11074](#)-B-7 **IN RE: ERIC MARQUEZ**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-26-2022 [\[17\]](#)

HENRY NUNEZ/ATTY. FOR DBT.
\$32.00 AMENDMENT FEE PAID 7/28/22

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the amendment fee of \$32.00 was paid on July 28, 2022. Therefore, the *Order to Show Cause* will be vacated.

17. [22-10580](#)-B-7 **IN RE: OLGA CELIO**
[TCS-3](#)

MOTION TO AVOID LIEN OF THE BEST SERVICE CO., INC.
7-21-2022 [\[35\]](#)

OLGA CELIO/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will be called as scheduled.

DISPOSITION: Denied without prejudice.

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

Olga Julie Celio ("Debtor") seeks to avoid a judicial lien in favor of The Best Service Co., Inc. ("Creditor") in the sum of \$13,356.74 and encumbering residential real property located at 2105 Dogwood Court, Atwater, CA 95301 ("Property").⁴

No party in interest timely filed written opposition. However, this motion will be DENIED WITHOUT PREJUDICE for failure to make a *prima facie* showing of entitlement to the relief sought. There is sufficient equity for Creditor's judicial lien to attach. This matter will be called and proceed as scheduled.

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

Here, a judgment was entered against Debtor in favor of Creditor in the amount of \$13,356.74 on April 14, 2021. Doc. #40, Ex. A. The abstract of judgment was issued on May 18, 2021 and recorded in Merced County on June 8, 2021. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #39.

As of the petition date, Property had an approximate value of \$511,400.00.⁵ *Id.*; Doc. #29, Am. Sched. A/B. Debtor claimed a homestead exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730 in the amount of \$230,000.00.⁶ *Id.*, Am. Sched. C.

Property is encumbered by a first deed of trust in favor of Chase Mortgage in the amount of \$267,482.00. Doc. #1, Sched. D. Property is also encumbered by a junior judgment lien in favor of Portfolio Recovery Associates, LLC ("PRA") in the amount of \$6,457.97, which was entered on June 7, 2021 and recorded in Kern County on June 29, 2021. Docs. #42; #43, Ex. A.

Property's security interests are illustrated with the following order of priority:

Creditor	Amount	Recorded	Status
1. Chase Bank	\$267,482.00	2016	Unavoidable
2. Creditor	\$13,356.74	06/08/21	This motion (TCS-3)
3. PRA	\$6,457.97	06/29/21	Avoidable; matter #18 (TCS-4)

Docs. #39; #40, Ex. A; #42; #43, Ex. A.

When a debtor seeks to avoid multiple liens under § 522(f)(1), the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens

already avoided are excluded from the exemption impairment calculation. *Ibid.*

PRA's lien has to be avoided first. In matter #18 below, the court intends to GRANT IN PART and DENY IN PART WITHOUT PREJUDICE the motion because the PRA lien partially impairs Debtor's exemption. Application of the § 522(f)(2) formula with respect to the PRA lien is as follows:

Amount of PRA's judicial lien	\$6,457.97
Total amount of unavoidable liens ⁷	+ \$280,838.74
Debtor's claimed exemption in Property	+ \$230,000.00
<i>Sum</i>	= \$517,296.71
Debtor's claimed value of interest absent liens	- \$511,400.00
Extent PRA lien impairs Debtor's exemption	= \$5,896.71

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property	\$511,400.00
Chase Bank deed of trust	- \$267,482.00
Homestead exemption	- \$230,000.00
Remaining equity for judicial liens	= \$13,918.00
Creditor's judgment lien	- \$13,356.74
Remaining equity for PRA's lien	= \$561.26
PRA's judicial lien	- \$6,457.97
Extend Debtor's exemption impaired	= (\$5,896.71)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is still \$561.26 in non-exempt equity for the PRA lien to attach. The court will grant that motion in part and avoid the lien in part but deny the motion in part as to the \$561.26 in equity.

With respect to Creditor's lien, there is \$13,918.00 of attachable equity, so the full \$13,356.74 may fix to Property without impairing Debtor's exemption. Accordingly, Debtor has not established the four elements necessary to avoid a lien under § 522(f)(1) because Debtor's exemption is not impaired. This matter will be called and proceed as scheduled. The court is inclined to DENY WITHOUT PREJUDICE.

⁴ Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving via regular U.S. mail Roger Milstein or the current Chief Executive Officer at Creditor's

Officer address on July 22, 2022. Doc. #41. However, Todd Allen Shields at the same address is the current CEO, Secretary, and CFO, and he should be served. See The Best Service Co., Inc., File No. BA20220514935 (July 14, 2022), <https://bizfileonline.sos.ca.gov/search/business> (visited Aug. 19, 2022).

⁵ The court notes that Debtor's *Amended Schedule A/B* increased the value of Property from \$509,500.00 to \$511,400.00. Doc. #29, *Am. Sched. A/B*; cf. Doc. #1, *Sched. A/B*.

⁶ Rather than claiming a \$312,600.00 homestead exemption under CCP § 704.730, as adjusted April 1, 2022, Debtor claimed \$230,000.00. The court previously denied Debtor's motions to avoid lien because Debtor's \$222,203.00 exemption under CCP § 704.730 was not impaired by either lien. See TCS-1; TCS-2. This \$7,497.00 increase still leaves unimpaired equity to which Creditor's lien may attach.

⁷ The unavoidable liens include the \$267,482.00 Chase Bank deed of trust and Creditor's \$13,356.74 judgment lien because it is unavoidable until all junior liens have been avoided.

18. [22-10580](#)-B-7 **IN RE: OLGA CELIO**
[TCS-4](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC.
7-21-2022 [\[37\]](#)

OLGA CELIO/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part; denied without prejudice in part.

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

Olga Julie Celio ("Debtor") seeks to avoid a judicial lien in favor of Portfolio Recovery Associates, LLC ("Creditor") in the amount of \$6,457.97 and encumbering residential real property located at 2105 Dogwood Court ("Property").⁸ Doc. #20.

No party in interest timely filed written opposition. However, Debtor's exemption is only partially impaired by Creditor's lien. This matter will be called and proceed as scheduled. The court intends to GRANT IN PART and DENY WITHOUT PREJUDICE IN PART the motion.

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

any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. 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).

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

Here, a judgment lien was entered against Debtor in favor of Creditor in the amount of \$6,457.97 on June 7, 2021. Doc. #43, Ex. A. The abstract of judgment was issued on June 15, 2021 and recorded in Merced County on June 29, 2021. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #42.

As of the petition date, Property had an approximate value of \$511,400.00.⁹ *Id.*; Doc. #29, Am. Sched. A/B. Debtor claimed a homestead exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730 in the amount of \$230,000.00.¹⁰ *Id.*, Am. Sched. C.

Property is encumbered by a first deed of trust in favor of Chase Mortgage in the amount of \$267,482.00. Doc. #1, Sched. D. Property is also encumbered by a senior judgment lien in favor of Best Service Co., Inc. ("BSC") in the amount of \$13,356.74, which was entered on April 14, 2021 and recorded in Merced County on June 8, 2021. Docs. #39; #40, Ex. A.

Property's security interests are illustrated with the following order of priority:

Creditor	Amount	Recorded	Status
1. Chase Bank	\$267,482.00	2016	Unavoidable
2. BSC	\$13,356.74	06/08/21	Avoidable; matter #17 (TCS-3)
3. Creditor	\$6,457.97	06/29/21	This matter (TCS-4)

Docs. #39; #40, Ex. A; #42; #43, Ex. A.

When a debtor seeks to avoid multiple liens under § 522(f)(1), the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens

already avoided are excluded from the exemption impairment calculation. *Ibid.*

This lien has to be avoided first because it is junior to the BSC lien. Application of the § 522(f)(2) formula is as follows:

Amount of Creditor's judicial lien	\$6,457.97
Total amount of unavoidable liens ¹¹	+ \$280,838.74
Debtor's claimed exemption in Property	+ \$230,000.00
<i>Sum</i>	= \$517,296.71
Debtor's claimed value of interest absent liens	- \$511,400.00
Extent PRA lien impairs Debtor's exemption	= \$5,896.71

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2006). The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market value of Property	\$511,400.00
Chase Bank deed of trust	- \$267,482.00
Homestead exemption	- \$230,000.00
Remaining equity for judicial liens	= \$13,918.00
Creditor's judgment lien	- \$13,356.74
Remaining equity for PRA's lien	= \$561.26
PRA's judicial lien	- \$6,457.97
Extend Debtor's exemption impaired	= (\$5,896.71)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), Debtor's exemption is impaired in the amount of \$5,896.71, but there is still \$561.26 in non-exempt equity for Creditor's lien to attach.

Debtor has established the four elements necessary to partially avoid Creditor's lien in the amount of \$5,896.71 under § 522(f)(1), but \$561.26 in equity remains to which Creditor's lien may attach. This motion will be called and proceed as scheduled. The court intends to GRANT IN PART the motion and DENY WITHOUT PREJUDICE IN PART. Creditor's claim will be bifurcated as follows: \$561.26 will remain secured by Property and the remaining \$5,896.71 will be unsecured.

⁸ Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving via regular U.S. mail Kevin P. Stevenson or current CEO at Creditor's Officer address on July 22, 2022. Doc. #24.

⁹ The court notes that Debtor's *Amended Schedule A/B* increased the value of Property from \$509,500.00 to \$511,400.00. Doc. #29, *Am. Sched. A/B*; cf. Doc. #1, *Sched. A/B*.

¹⁰ Rather than claiming a \$312,600.00 homestead exemption under CCP § 704.730, as adjusted April 1, 2022, Debtor claimed \$230,000.00. The court previously denied Debtor's motions to avoid lien because Debtor's \$222,203.00 exemption under CCP § 704.730 was not impaired by either lien. See TCS-1; TCS-2. This \$7,497.00 increase still leaves unimpaired equity to which Creditor's lien may attach.

¹¹ The unavoidable liens include the \$267,482.00 Chase Bank deed of trust and the \$13,356.74 BSC judgment lien. The BSC judgment lien is unavoidable until all junior liens have been avoided.

19. [22-10685](#)-B-7 **IN RE: MARCOS GALINDO**
[JES-1](#)

MOTION TO SELL
7-22-2022 [\[19\]](#)

JAMES SALVEN/MV
JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order after hearing.

Chapter 7 trustee James E. Salven ("Trustee") requests an order authorizing the sale of the estate's interest in a 2012 Dodge Journey ("Estate Asset") to Marcos Galindo ("Debtor") for \$7,004.00, subject to higher and better bids at the hearing. Doc. #19.

No party in interest timely filed written opposition. This motion will be GRANTED and proceed for higher and better bids only.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(a)(2). 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.

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

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

The Estate Asset is listed in the schedules as a 2012 Dodge Journey Sport Utility in fair condition with 95,000 miles, 2 row seating only. Doc. #1, *Sched. A/B*. Debtor listed the Estate Asset with a value of \$5,000.00 and it does not appear to be encumbered by any security interests. *Id.*, *Sched. D*. Debtor claimed a \$2,754.00 exemption in the vehicle under Cal. Code Civ. Proc. § 704.010. *Id.*, *Sched. C*. Trustee is giving Debtor a \$2,754.00 exemption credit. Therefore, the estate will receive **\$4,250.00** in net proceeds if the sale is completed as proposed.

Trustee declares that he received an offer from Debtors to purchase the Estate Asset at the sale price indicated, which he accepted subject to court approval and higher and better bids at the hearing. Doc. #21. Trustee has not agreed to pay a commission to any part in connection with the sale and believes the proposed sale is in the best interests of creditors and the estate because it is for the full and fair market value of the asset. *Id.* Trustee is in receipt of \$1,000.00 and Debtor will pay \$1,000.00 per month for the next three months, and a final payment of \$250 in the fourth month. Doc. #19.

The sale appears to be in the best interests of creditors and the estate, for a fair and reasonable price, supported by a valid exercise of Trustee's business judgment, and was proposed in good faith. The sale subject to higher and better bids will maximize estate recovery

and yield the best possible sale price. No party has filed opposition to the sale. Accordingly, this motion will be GRANTED, and the sale will proceed for higher and better bids only. Trustee will be authorized to sell the Estate Asset to the highest bidder as determined at the hearing.

Any party wishing to overbid must appear at the hearing and acknowledge that the sale is subject to all liens and encumbrances, known or unknown, and no warranties or representations are included with the sale; the Estate Asset is being sold "as-is, where-is."