



**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

**HONORABLE RENÉ LASTRETO II
Department B – Courtroom #13
Fresno, California**

Hearing Date: Thursday, August 24, 2023

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.

Parties in interest and members of the public may connect to ZoomGov, free of charge, using the information provided:

Video web address: <https://www.zoomgov.com/j/1606514265?pwd=Tkpxd2lXK1pZQ0RhRnZmVFY3MWw1UT09>
Meeting ID: 160 651 4265
Password: 866944
ZoomGov Telephone: (669) 254-5252 (Toll-Free)

Please join at least 10 minutes before the start of your hearing. You are required to give the court 24 hours advance notice on [Court Calendar](#).

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

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Review the court's [Zoom Procedures and Guidelines](#) for these and additional instructions.
3. Parties appearing through CourtCall are encouraged to review the [CourtCall Appearance Information](#).

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [19-10423](#)-B-12 **IN RE: KULWINDER SINGH AND BINDER KAUR**
[FW-10](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR PETER L. FEAR, DEBTORS ATTORNEY(S)
7-24-2023 [[335](#)]

DAVID JOHNSTON/ATTY. FOR DBT.
PETER FEAR/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.

Peter Fear ("Fear") on behalf of Fear Waddell, P.C. ("Applicant"), counsel for Debtor(s) in the above-styled Chapter 12 case ("Debtor"), comes before the court on Applicant's Final Application for Fees And Expenses Pursuant to 11 U.S.C. § 330. Doc. #335. The Application requests attorney fees in the amount of \$52,902.50 and expenses in the amount of \$574.90, for a total application of \$53,477.40. *Id.* Applicant brings this request pursuant to LBR 2016-1, 11 U.S.C. § 329 and 330, and Fed. R. Bankr. P, 2002, 2006, and 2017.

This is the Final Application brought by this Applicant, and it covers services rendered and actual, necessary expenses incurred from January 1, 2021, through discharge. Doc. #335. Included with the Application is a document signed by both Debtors stating their opinion that the fees and expenses are reasonable and that they do not object to the Application. Doc. #339.

This Application also requests that previous two fee applications granted on an interim basis be finalized. Doc. 335. Previously, this court granted interim compensation in the amount of \$30,683.30 in fees and \$375.60 in expenses on February 26, 2020 (Doc. #206) and in the amount of \$31,093.00 in fees and \$546.05 in expenses on June 3, 2021 (Doc. #285).

No party in interest timely filed written opposition. For the reasons outlined below, this Application is GRANTED.

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

opposition. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

As noted, no responses to the Application were filed, and so the defaults of the above-mentioned parties in interest are entered and the matter may 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.

Exhibits accompanying the Application include (A) a narrative summary, (B) itemized time entries by date and itemized costs, and (C) itemized time entries by "Task." Doc. #338.

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

The services provided by the Applicant described above and the expenses incurred were fully detailed in the exhibits accompanying the Application and have been reviewed by the court, which finds them to be reasonable, actual, and necessary. Accordingly, this motion will be GRANTED. Applicant will be awarded \$52,902.50 in attorney's fees and \$574.90 in expenses, for a total award of \$54,577.40. The Chapter 12 Trustee is authorized to pay the allowed fees and expenses as an administrative expense to the extent the plan provides sufficient funding to do so.

2. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**
NON-PROFIT CORPORATION
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY
PETITION
6-22-2023 [[1](#)]

RILEY WALTER/ATTY. FOR DBT.

NO RULING.

3. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**
NON-PROFIT CORPORATION
[WJH-12](#)

CONTINUED MOTION TO COMPEL
7-11-2023 [[88](#)]

TWILIGHT HAVEN, A CALIFORNIA
NON-PROFIT CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

This motion was originally heard on July 25, 2023. No opposition was presented, and a default was entered against Wolf Point, LLC (temporary manager). Doc. # 110_ The court granted the motion and ordered a further hearing on August 24, 2023, to determine Wolf Point, LLC's compliance with the turnover and accounting obligations under § 543. Doc. # 123 That order required compliance with those obligations by Wolf Point, LLC by August 16, 2023.

Debtor filed a required Status Report on August 17, 2023. Doc. # 150. Debtor reported Wolf Point provided a document "termed an accounting" and a check to Debtor on August 15, 2023. *Id.* The court notes no accounting was filed as required by § 543 (b)(2).

Debtor states in the status report that it has objections to the accounting and will request a continuance so Debtor can file any objections it may have.

The hearing will proceed to discuss the status of the turnover and accounting required by § 543.

4. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**
NON-PROFIT CORPORATION
[WJH-16](#)

MOTION TO EMPLOY IMPOSSIBLE SERVICES GROUP, INC. AS
CONSULTANT(S)
8-8-2023 [[127](#)]

TWILIGHT HAVEN, A CALIFORNIA
NON-PROFIT CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

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

Pursuant to 11 U.S.C. § 327(a)/(e), the trustee/debtor-in-possession ("DIP") may employ, with the court's approval/one or more professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title. 11 U.S.C. § 1107 gives the DIP all the rights and powers of a trustee and shall perform all the functions and duties, certain exceptions notwithstanding inapplicable here.

Here, Debtor requests authority to employ IMPOSSIBLE SERVICES GROUP, INC., dba CHAMBERS BUSINESS SOLUTIONS (the "Consultant"), as business consultant during the pendency of this case. Doc. #127. The Application avers that

It is necessary and essential for the Debtor to employ a business consultant because of the extensive nature of the Debtor's business operations. These services include, but are not limited to the following:

- a. Assisting the Debtor in the administrative and reporting aspects of this Chapter 11 case, including:
 - (i) Coordination of marketing with key constituencies.
 - (ii) Preparations of budgets and projections re cash collateral, borrowings, and the Plan.
 - (iii) Assistance with evaluation of sales and asset dispositions.
 - (iv) Assistance with compliance with regulatory compliance.
 - (v) Assistance with preparation of Monthly Operating Reports.
 - (vi) Assistance in reporting compliance re cash collateral orders.
- b. Assisting the Debtor in communications with the Sub V Trustee and secured creditors; and
- c. Other consulting and litigation services as necessary.

Id. After review of the filing, and in the absence of any objections at the hearing, the court is inclined to GRANT the Application to employ the Consultant.

5. [23-10244](#)-B-11 **IN RE: BEAM & COMPANY, INC**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V
VOLUNTARY PETITION
2-10-2023 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

6. [23-10244](#)-B-11 **IN RE: BEAM & COMPANY, INC**
[FW-4](#)

CONTINUED CONFIRMATION HEARING RE: CHAPTER 11 SMALL BUSINESS
SUBCHAPTER V PLAN
5-8-2023 [[88](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING

The motion was originally heard on July 11, 2023 (Doc. # 125). The parties (Debtor and Hanmi Bank) then stipulated to continue this hearing to August 24, 2023, at 9:30 am. *Id.* These agreements included provisions extending the time for Hanmi Bank to vote, object to confirmation, and make a section 1111 (b)(2) election. (Doc. # 136).

The parties have since stipulated that Hanmi Bank's security interest includes any Employee Retention Credits ("ERC") eventually awarded Debtor, Hanmi Bank's allowed unsecured claim ranges from \$1,130,968.74 to \$1,585,616.27 - depending on the ERC awarded Debtor, if any, Hanmi Bank's non-ERC secured claim is valued at \$254,114.73, and provided a minor notice provision regarding ERC funds is included in the Plan, Hanmi Bank's secured and unsecured claims will vote in favor of the Plan. (Doc. ## 148, 149).

The Plan has two impaired classes. Class 1 is Hanmi Bank's secured claim. With the stipulation, Hanmi Bank votes that class in support of the Plan. Class 4 is the allowed general unsecured claims. Three votes are cast by the class: one against and two in favor. Those in favor include Hanmi Bank's unsecured claim which is far more than two thirds in amount of claims voted in that class. Under § 1126 (c), all impaired classes have voted to accept the plan.

No party has objected to confirmation. Under § 1191 (a), the court shall confirm the Plan if all applicable provisions of § 1129 (a) except for paragraph (15) are met. Paragraph (15) does not apply since the debtor is not an individual.

It appears to the court that the applicable provisions of § 1129 have been complied with by the debtor. The court is inclined to CONFIRM the Plan under § 1191 (a).

7. [23-10244](#)-B-11 **IN RE: BEAM & COMPANY, INC**
[FW-5](#)

CONTINUED MOTION TO VALUE COLLATERAL OF HANMI BANK
6-13-2023 [[99](#)]

BEAM & COMPANY, INC/MV
PETER FEAR/ATTY. FOR DBT.

NO RULING.

It appears the parties (Debtor and Hanmi Bank) have agreed the motion to value shall be granted. See above # 6. The hearing is called to confirm that fact and discuss any order or Plan issues.

8. [16-13345](#)-B-11 **IN RE: JONATHAN/PATRICIA MAYER**
[FW-24](#)

MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7
7-25-2023 [[351](#)]

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION: GRANTED

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

Debtors Jonathan Joseph Mayer ("Jonathan") and Patricia Elizabeth Mayer ("Debtors") bring this motion to convert their Chapter 11 case to a case brought under Chapter 7 pursuant to 11 U.S.C. § 1112(a). Doc. #351. Debtors aver that this conversion is necessary because changes in Jonathan's employment situation, including a requirement that he pay approximately \$70,000.00 for tail medical malpractice insurance by the end of the year, renders his plan no longer feasible.

Rule 2002(a)(4) requires at least 21 days' notice by mail to the trustee and all creditors of the hearing on the conversion of a chapter 7 case to another chapter. Here, the motion was filed on July 25, 2023, and set for hearing on August 24, 2023.

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). Notice (of the hearing only) was served on all creditors and parties in interest, and no responses have been filed. 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.

As Debtors note, 11 U.S.C. § 1112(a) provides that a Chapter 11 debtor may convert a case to one under Chapter unless (1) the debtor is not a debtor in possession; (2) the case originally was commenced as an involuntary case under this chapter; or (3) the case was converted to a case under this chapter other than on the debtor's request. Doc. #351 (quoting 11 U.S.C. § 1112(a)). Debtors aver that they meet these requirements and so they may convert their case. The court agrees.

Based on the *prima facie* case shown by Debtors and the lack of response from any other party, the court finds that this motion should be GRANTED.

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

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

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

NO RULING.

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

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

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

NO RULING.

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

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

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

NO RULING.

12. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-3](#)

CONTINUED MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR
ADEQUATE PROTECTION
3-13-2023 [[18](#)]

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

NO RULING.

13. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-40](#)

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

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

NO RULING.

14. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-42](#)

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

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

NO RULING.

15. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-59](#)

MOTION TO EXTEND EXCLUSIVITY PERIOD FOR FILING A CHAPTER 11
PLAN AND DISCLOSURE STATEMENT FILED BY DEBTOR MADERA COMMUNITY
HOSPITAL

6-30-2023 [[644](#)]

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

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.

Madera Community Hospital, Debtor and DIP in this case ("Debtor") moves this court for an order extending by 90 days the exclusivity periods to file a plan of reorganization and solicit acceptances ("Motion") pursuant to 11 U.S.C. § 1121(d). No party has filed a response. Accordingly, this motion shall be GRANTED.

Debtor filed Chapter 11 on March 10, 2023. Section 1121 of the Code affords Debtor 120 days after filing the petition in which to file a plan of reorganization and 180 days after filing in which to solicit acceptances for a filed plan, during which time, no other party may propose competing plans. 11 U.S.C. § 1121. Here, the exclusivity periods terminate on July 8, 2023, and September 6, 2023, respectively. Doc. 644. Debtor proposes to extend the deadline for filing a plan of reorganization to October 6, 2023, and the exclusive period for soliciting acceptances of the plan to December 5, 2023.

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

Decisions as to whether cause exists to extend the exclusivity period are left to the court's discretion, and the court, in determining whether sufficient cause exists, is guided by the so-called *Dow Corning* factors:

1. The size and complexity of the case;
2. The necessity of sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information;
3. The existence of good faith progress toward reorganization;
4. The fact that the debtor is paying its bills as they come due;
5. Whether the debtor has demonstrated reasonable prospects for filing a viable plan;
6. Whether the debtor has made progress in negotiating with its creditors;
7. The amount of time which has elapsed in the case;
8. Whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands; and
9. Whether an unresolved contingency exists.

In re Dow Corning Corp., 208 B.R. 661, 663 (Bankr. E.D. Mich. 1997). See also *Official Comm. of Unsecured Creditors v. Henry Mayo Newhall Mem'l Hosp. (In re Henry Mayo Newhall Mem'l Hosp.)*, 282 B.R. 444, 452 (9th Cir. BAP 2002) (applying *Dow Corning* factors to motion to extend exclusivity). Debtor refers to these factors as the *Adelphia* factors, after *In re Adelphia Communs. Corp.*, 352 B.R. 578, 586 (Bankr. S.D.N.Y. 2006).

In its moving papers, Debtor goes through the *Dow Corning/Adelphia* factors and presents arguments as to how the motion passes muster under them. The court is satisfied that Debtor has made its prima facie case. Ultimately, the key question is whether the extension of exclusivity functions to facilitate movement to a fair and equitable resolution of the case taking into account the divergent interests involved. *Henry Mayo Newhall Mem'l Hosp.*, 282 B.R. at 453.

Given the many funding issues Debtor is facing, the parties appear to agree that more time is necessary to determine if and how much funding Debtor may receive. On the other hand, the extension requested is substantial - nearly three months. In the absence of any opposition though, the court exercises its discretion and GRANTS Debtor's motion

to extend the exclusivity period by 90 days. The Filing Exclusivity Expiration Date is hereby extended to October 6, 2023, and the Solicitation Exclusivity Expiration Date is extended until December 5, 2023.

11:00 AM

1. [23-11002](#)-B-7 **IN RE: MARILYN SERRANO**

REAFFIRMATION AGREEMENT WITH WESTLAKE SERVICES, LLC
7-7-2023 [\[17\]](#)

ERIC ESCAMILLA/ATTY. FOR DBT.
RESCINDED

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

DISPOSITION: Rescinded; taken off calendar.

NO ORDER REQUIRED.

Marilyn Serrano ("Debtor") has rescinded this reaffirmation agreement with Westlake Services, LLC pursuant to 11 U.S.C. 524(c)(4) on August 4, 2023. Doc. #21. Accordingly, this matter will be taken off calendar.

2. [23-11159](#)-B-7 **IN RE: CONNOR RODRIGUEZ**

REAFFIRMATION AGREEMENT WITH SNAP-ON CREDIT LLC
7-24-2023 [\[17\]](#)

SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order removing the matter from calendar.

Debtor's counsel shall notify the debtor that no appearance is necessary.

A Reaffirmation Agreement between debtor Connor Rodriguez and Snap-on Credit for various tools of trade was filed on July 24, 2023. Doc. #17.

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when entering into the agreement. The form of the reaffirmation agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the debtor's attorney with the appropriate attestations. *Id.* Pursuant to § 524(d), the court need not approve the agreement.

3. [23-10983](#)-B-7 **IN RE: JUSTON VONGPHACHANH**

REAFFIRMATION AGREEMENT WITH AMERICAN HONDA FINANCE
CORPORATION
7-17-2023 [[21](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

NO RULING

4. [23-10496](#)-B-7 **IN RE: MANUEL/KATHERINE CARDENAS**

REAFFIRMATION AGREEMENT WITH CAPITAL ONE AUTO FINANCE
6-23-2023 [[20](#)]

JERRY LOWE/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtors' counsel will inform debtors that no appearance is necessary.

A Reaffirmation Agreement between Manuel Cardenas and Katherine Cardenas ("Debtors") and Capital One Auto Finance ("Creditor") for a 2019 Toyota Corolla was filed on June 23, 2023. Doc. #20.

Creditor did not sign the Reaffirmation Agreement. Doc. #20. On July 9, 2023, Debtors properly refiled the Reaffirmation Agreement. Doc. 22.

Accordingly, this Reaffirmation Agreement Doc. #20 will be DENIED as moot.

1:30 PM

1. [23-10801](#)-B-7 **IN RE: GILBERT CABRERA**
[VAR-1](#)

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC
STAY
8-3-2023 [\[23\]](#)

JUAN VARGAS AND ROMELIA
VARGAS/MV
PETER BUNTING/ATTY. FOR DBT.
ROYCE STUTEVILLE/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: Order to be prepared by movant's counsel.

Juan and Romelia Vargas ("Movants") request the court approve a stipulation modifying the automatic stay to permit litigation pending in the Fresno County Superior Court to proceed so a claim can be liquidated but not enforced against Debtor or the estate.

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

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

Movants are plaintiffs in an action pending in the Fresno County Superior Court styled *Vargas, et al v. Cabrera, et al* 22CEC600229. Movants, Debtor, and the Trustee have signed the stipulation. It provides for the modification of the automatic stay so the litigation can proceed against Debtor and others to liquidate the claim. But no enforcement of the claim, if Movants are successful, will occur against the Debtor or the estate.

Movants also ask for authority to proceed against the other defendants, including a surety bond putatively protecting a corporate defendant, and "against" insurance polic(ies) covering the alleged loss. This court does not oppose such relief but can only grant stay relief as to this debtor and the estate.

Rule 4001 (d) permits this motion and directs service of the motion on "any other entity the court directs." The court finds service of this motion adequate here.

Absent any opposition, the motion will be GRANTED and the stipulation will be approved. The stipulation shall be attached to the order and separately filed as a stipulation.

2. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[DMG-15](#)

MOTION TO SELL
7-27-2023 [[1134](#)]

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.

DISPOSITION: Withdrawn; taken off calendar.

NO ORDER REQUIRED.

Movant Jeffrey Vetter, Trustee in this matter, withdrew this motion to sell on August 22, 2023. Doc. #1147. Accordingly, this matter will be dropped and taken off calendar pursuant to the withdrawal.

3. [22-11907](#)-B-7 **IN RE: FREON LOGISTICS**
[DMG-16](#)

MOTION FOR COMPENSATION FOR JEFFREY M. VETTER, CHAPTER 7
TRUSTEE(S)
7-27-2023 [[1139](#)]

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
D. GARDNER/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 Jeffrey M. Vetter ("Trustee") brings this motion seeking reimbursement of actual expenses incurred on behalf of the

Chapter 7 Debtor in the above-styled case. Doc. #139. No attorney's fees are sought in the instant 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 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 will be GRANTED. 11 U.S.C. § 330(a)(1) provides that after notice and hearing, this court may award to a trustee "reasonable compensation for actual, necessary services" rendered and for "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1).

Here, Trustee requests reimbursement in the amount of \$67,540.32 for administrative expenses alleged to have been necessary to maintain, protect, and administer property of the estate. During the course of this case, Trustee conducted sales of real property owned by Debtor and auctioned off personal property of Debtor. Trustee has overseen pending litigation to unwind pre- and postpetition transfers of real property. Trustee is in the process of examining Debtor's financial transactions which will like lead to demands for return of funds through Trustee's avoidance powers. Trustee avers that the estate is administratively solvent for payment of allowed Chapter 7 administrative claims. Trustee has also submitted an expense log and an itemized list of actual expenses in support of this motion. No party has responded, and the court finds that Trustee has satisfied his *prima facie* case.

The court finds Trustee's expenses were actual and necessary. The motion will be GRANTED and Trustee will be awarded the requested expense reimbursement of \$67,540.82.

4. [23-11412](#)-B-7 **IN RE: KRISTI CHADWELL**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-20-2023 [[14](#)]

FIRST TECH FEDERAL CREDIT
UNION/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

First Tech 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 2021 Tesla Model ("Vehicle"). Doc. #14. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). *Id.*

Kristi Chadwell ("Debtor") did not file opposition and the Vehicle was repossessed by Movant on June 1, 2023. Debtor's Statement of Intention indicated that the Vehicle would be surrendered. No other party in interest timely filed written opposition. This motion will be GRANTED.

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

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because Debtor has missed 7 pre-petition

payments totaling \$4,938.89. Docs. #16, 18. Additionally, Movant recovered possession of the Vehicle pre-petition on June 1, 2023. *Id.* Since the Vehicle has been recovered, the only issue is disposition of the collateral.

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. The Vehicle is valued at \$36,125.00 and Debtor owes \$55,830.66. Doc. #14.

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

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least seven pre-petition payments to Movant and the Vehicle is a depreciating asset.

5. [23-11228](#)-B-7 **IN RE: BELLA VINEYARD AG SERVICES, INC.**
[DMG-2](#)

MOTION TO EMPLOY GOULD AUCTION & APPRAISAL COMPANY AS
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
8-1-2023 [\[17\]](#)

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Jeffrey Vetter, Trustee in the above-styled case ("Trustee"), has filed this motion seeking (1) an Order Authorizing Employment of Auctioneer, (2) an Order Authorizing Sale of Property At Public Auction, and (3) an Order Authorizing Payment of Auctioneer Commission and Expenses. Doc. #17. The property at issue ("the Property") consists of seven (7) Chevrolet pickup trucks. *Id.* Trustee proposes to sell the Property at a public auction to be held on September 23, 2023, at 9:00 a.m., 6200 Price Way, Bakersfield, California, 93308, pursuant to 11 U.S.C. § 363(b)(1). *Id.* Trustee seeks to employ Jerry Gould of Gould Auction and Appraisal Company ("the Auctioneer"), who will be paid a commission of 15% of the gross proceeds from the sale of the Property and will receive an expense reimbursement of \$1700. *Id.*

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

This motion 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 Trustee 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 any objection. This rule is not incorporated in contested matters absent court order under Rule 9014(c) and affected parties are entitled to notice. Movant, 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.

11 U.S.C. § 327 provides:

(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

11 U.S.C. § 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).

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 Property under 11 U.S.C. § 363(b). Doc. #21. Property is listed in the petition with a combined value of \$105,154.00. Doc. #1, Schedule A/B, ¶47.1 through 47.7. None of the subject vehicles are encumbered. Doc. #1, Schedule D.

Trustee believes that using an auction process to sell Property will result in it being sold for the best possible price because it will be exposed to a large number of prospective purchasers. Doc. #20. Sale by auction under these circumstances should maximize potential recovery for the estate. Therefore, it is an appropriate exercise of Trustee's business judgment.

Trustee will be authorized to employ Auctioneer to sell Property at public auction. Trustee will also be authorized to compensate Auctioneer on a percentage collected basis, 15% of the gross proceeds from the sale, and reimbursement of reasonable expenses of up to \$1,500.00.

This motion will be GRANTED. Trustee will be authorized to employ and pay Auctioneer for his services as outlined above, and the proposed sale at auction of the Property will be approved.

6. [14-12051](#)-B-7 **IN RE: JOSE REYNA** [TMO-5](#)

MOTION TO AVOID LIEN OF SEQUOIA CONCEPTS, INC.
7-31-2023 [\[70\]](#)

JOSE REYNA/MV
T. O'TOOLE/ATTY. FOR DBT.
T. O'TOOLE/ATTY. FOR MV.

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

DISPOSITION: DENIED WITHOUT PREJUDICE.

ORDER: The court will enter the order.

Jose Reyna, Debtor in this Chapter 7 proceeding ("Debtor"), has filed this motion seeking to avoid a judicial lien on his homestead property. Doc. #70. However, while the moving papers and Certificate of Service indicate that the lienholder is Western Union Financial Services, the caption of the motion purports to avoid the lien of Sequoia Concepts, Inc. *Id.*

Local Rule 9004-2(b)(5) outlines the requirements for the caption page of any document filed with this court. LBR 9004-2(b)(5). This Rule requires *inter alia* that the title of every document describe the character of the paper and state the relief sought. LBR 9004-2(b)(5)(A). Debtor's error in listing the wrong party as lienholder, even if the correct name is used within the body of the motion, is misleading and raises an inference that proper notice and service was not effected. Accordingly, this motion is DENIED WITHOUT PREJUDICE.

7. [20-10357](#)-B-7 **IN RE: STEPHEN MEZA**
[FW-9](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
PC TRUSTEES ATTORNEY(S)
7-25-2023 [[149](#)]

MARK ZIMMERMAN/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.

Gabriel J. Waddell and the law firm of Fear Waddell, P.C. ("Applicant"), counsel for Chapter 7 Trustee Peter Fear ("Trustee") brings this Second Final Application for Payment of Fees and Expenses seeking attorney's fees and reimbursement of actual expenses incurred on behalf of the Chapter 7 Debtor in the above-styled case. Doc. #149.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46

F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliaplo)*, 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 provided legal services valued at \$6,619.00, and requests compensation for that amount. Doc. #149. Applicant requests reimbursement for expenses in the amount of \$232.47. Id. Exhibits accompanying the motion include a narrative, a fee statement with fees and expenses organized by date, and a fee statement organized by task code. Doc. 153. Applicant has submitted one prior fee application relating to this case, which the court granted on July 1, 2021. This is Applicant's second and final fee application, and the application also requests that the prior interim fee award be made a final award. Trustee reviewed Movant's fee application has no objection. Doc. #151.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). 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, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

The court finds Applicant's services were actual and necessary to the estate, and the fees are reasonable. No party has responded, and the court is satisfied that the Applicant has made his *prima facie* case. The motion will be GRANTED and Applicant will be awarded the requested attorney's fees in the amount of \$6,619.00, and the requested reimbursement for expenses in the amount of \$232.47. It is further ordered that the prior Interim Fee Application award entered on July 1, 2021, is now final.

8. 22-10060-B-7 IN RE: CURTIS/CHARTOTTE ALLEN
FW-5

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, TRUSTEES ATTORNEY(S)
7-20-2023 [142]

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.

Gabriel J. Waddell and the law firm of Fear Waddell, P.C. ("Applicant"), counsel for Chapter 7 Trustee Peter Fear ("Trustee") brings this Final Application for Payment of Fees and Expenses seeking attorney's fees and reimbursement of actual expenses incurred on behalf of the Chapter 7 Debtor in the above-styled case. Doc. #149. This is the Applicant's First and Final Fee Application and covers the period from September 8, 2022 (the date the order approving his employment was entered) through July 7, 2023. Doc. #142.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliaplo)*, 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 provided legal services valued at \$12,610.50, and requests compensation for that amount. Doc. #142. Applicant requests reimbursement for expenses in the amount of \$124.93. *Id.* Exhibits accompanying the motion include a narrative, a fee statement with fees and expenses organized by date, and a fee statement organized by task code. Doc. 153. Trustee reviewed Movant's fee application has no objection. Doc. #144.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). 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, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

The court finds Applicant's services were actual and necessary to the estate, and the fees are reasonable. No party has responded, and the court is satisfied that the Applicant has made his *prima facie* case. The motion will be GRANTED and Applicant will be awarded the requested

attorney's fees in the amount of \$12,610.50 reimbursement for expenses in the amount of \$124.93.

9. [22-11769](#)-B-7 **IN RE: PREMIER RAIL SERVICES, INC.**
[CAB-2](#)

MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC
STAY
7-26-2023 [\[70\]](#)

CENTRA FUNDING, LLC/MV
D. GARDNER/ATTY. FOR DBT.
CHRISTOPHER BEYER/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order with the stipulation attached as an exhibit and shall separately file the stipulation and docket it as a stipulation.

Centra Funding LLC ("Movant") requests an order approving a joint stipulation ("Stipulation") with Premier Rail Services, Inc. ("Debtor") and chapter 7 trustee Jeffrey M. Vetter ("Trustee") under U.S.C. §365(d)(1) and (d)(2). Doc. #70. The Stipulation also provides for waiver of the 14-day stay of Rule 4001(a)(3).

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

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

Movant is a secured creditor of Debtor with a perfected security interest in a Personnel Carrier - Railroad Crew Self Propelled and a Pettibone Speed Swing ("Equipment"). Ex. C, Doc. #72. As a result, Movant, Debtor and Trustee executed the Stipulation. The court notes that the Stipulation was filed as an exhibit to this motion and it has not been separately filed and docketed as a stipulation.

Under the terms of the Stipulation, Movant, Debtor and Trustee agreed to grant Movant relief from the automatic stay to enforce its remedies to repossess or otherwise obtain possession and dispose of the

Collateral in accordance with applicable non-bankruptcy law. *Ex. A*, Doc. #72. The Stipulation also provides for waiver of the 14-day stay of Rule 4001(a)(3). *Id.* Movant now requests approval of the Stipulation. *Id.*

Under Rule 4001(d)(1)(A)(iii), a party may file a motion for approval of an agreement to modify or terminate the stay provided in § 362. The motion contains the required contents outlined in Rule 4001(d)(1)(B) and was properly served on all creditors as required by Rule 4001(d)(1)(C). Pursuant to Rule 4001(d)(1), (2), and (3), a hearing was set on at least seven days' notice and the parties required to be served (Debtor and Trustee) were given at least 14 days to file objections or may appear to object at the hearing.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED, and the Stipulation approved. The court will also order the 14-day stay of Rule 4001(a)(3) waived because the parties have consented to stay relief.

Any proposed order shall attach the Stipulation as an exhibit. Movant shall also separately file the Stipulation and docket it as a stipulation.

10. [23-10793](#)-B-7 **IN RE: RAYMOND RODRIGUEZ**
[ICE-1](#)

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITORS
7-25-2023 [\[13\]](#)

OPPOSITION

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

Chapter 13 trustee Irma Edmonds ("Trustee") seeks dismissal of this case for the debtor's failure to appear and testify at the § 341(a) meeting of creditors held on July 25, 2023. Doc. #13.

Raymond Rodriguez ("Debtor") timely opposed. Doc. #15. Debtor intended to appear but lacked the expertise in the use of video conferencing. Debtor will be present for the continued meeting with the assistance of a person with the necessary expertise.

This motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for August 28, 2023 at 3:00 p.m. See, Doc. #13. If Debtor fails to appear and testify at the rescheduled meeting, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The times prescribed in Fed. R. Bankr. P. 1017(e)(1) and 4004(a) for the Chapter 7 Trustee and U.S. trustee to object to Debtor's discharge or file motions for abuse, other than presumed abuse under § 707, are extended to 60 days after the conclusion of the meeting of creditors.

11. [19-15396](#)-B-7 **IN RE: JUAN/MARYLOU BARRAGAN**
[ADJ-4](#)

MOTION TO SELL
8-2-2023 [[122](#)]

IRMA EDMONDS/MV
SCOTT LYONS/ATTY. FOR DBT.
ANTHONY JOHNSTON/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: Moving party to prepare order unless matter is continued.

Chapter 7 Trustee Irma Edmonds ("Movant") asks the court to approve the sale of a one third fee interest in real property commonly known as 12649 Ave. 406 Cutler, CA (APN. 032-105-003-000 ("Property")) to co-Debtor Juan Barragan's daughter, Malorie Barragan, subject to higher and better bids. Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED and the hearing will proceed for higher and better bids.

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

11 U.S.C. § 363(b)(1) allows the trustee to "sell or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3)

proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018), citing *240 North Brand Partners v. Colony GFP Partners, Ltd. P'Ship (In re 240 N. Brand Partners)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse 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, 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 co-debtor's daughter.

Though on its face such a proposed insider sale may cause one to pause, Trustee has supported the sale of the one third interest with an appraisal supporting the sale price. Doc. # 124 Further, this is a sale of a fractional interest which is difficult to liquidate.

Buyer here has deposited a \$2500 initial deposit and will pay the balance at close of escrow. Doc. # 122.

The sale is subject to higher and better bids. Trustee has requested a minimum overbid of \$1,000. Also, anyone wishing to bid shall contact the Trustee, tender a cashier's check for \$2500 or more, and sign a contract identical to that proposed to be used by Trustee here (except for the final sale price). Should the initial buyer not prevail in the bidding, the deposit will be returned. Doc. # 124.

The court finds the proposed sale subject to higher and better bids a proper exercise of Trustee's business judgment, for a fair price, in good faith, and appropriate under the circumstances.

The court is inclined to GRANT the motion and proceed with the sale subject to higher and better bids.