



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Department B – Courtroom #13
Fresno, California
Hearing Date: Tuesday, August 27, 2024**

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

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

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

Please also note the following:

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

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

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [24-10546](#)-B-12 **IN RE: MAXIMINIO/MARIE SILVEIRA**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY
PETITION
3-5-2024 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

2. [24-10546](#)-B-12 **IN RE: MAXIMINIO/MARIE SILVEIRA**
[FW-5](#)

CONTINUED MOTION TO CONFIRM CHAPTER 12 PLAN
6-6-2024 [[82](#)]

MARIE SILVEIRA/MV
PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Maximinio and Marie Silveira ("Debtors") seek an order confirming the *Chapter 12 Plan* dated May 31, 2024, 2023. Doc. ##71, 82. The 36-month plan proposes the following treatment of administrative claims and creditor claims:

Class	Description	Treatment
Class 1	Administrative Claims, including Debtors' attorney fees and Chapter 12 Trustee fees.	To be paid through Trustee or directly by Debtors, as the order approving Class 1 claims provides. Attorneys' fees estimated at \$60,000.00 above the pre-filing retainer paid by Debtors. Any attorneys' fees still owing after case completion will be non-dischargeable.
Class 2	Real Property Taxes owed to Merced County. An estimated \$46,729.37 that is fully secured by lien on Debtors' property.	To be paid in full through the liquidations described below.
Class 3	Bank of the Sierra. \$7,148,248.55 that is fully secured by a first deed of trust on 362 acres	To be paid in full through liquidation of the 362 Acres. See discussion of the Bank of Sierra claim and its attendant

	of farmland ("the 362 Acres").	adversary proceeding for nondischargeability below.
Class 4	Associated Feed and Supply. \$383,375.73 that is fully secured by a second deed of trust on the 362 Acres.	To be paid in full through the liquidation of the 362 Acres. Claim will continue to accrue interest at the Till rate until paid in full.
Class 5	Golden1 Credit Union. Security interest in a 2014 GMC Acadia Denali SUV. Debtor believes that value of the collateral is \$6,000.00 which is, therefore, the value of the secured claim, with any unsecured amount treated with general unsecureds.	To be paid at \$192.20 per month beginning in the month after the Effective Date and continuing until paid in full no later than 36 months after the Effective Date. Interest to accrue at the Till Rate.
Class 6	Valley First Credit Union. A security interest in a 2017 GMC Sierra 1600 SLE Crew Cab. Debtors estimates that the amount owed one the claim was \$2,079.77 as of the filing date and it is fully secured.	This claim is unmodified by the Plan.
Class 7	Kubota Credit Corp. A security interest in a Kubota S175 High Flow Skid Steer Loader. Per Claim #13, the amount of the claim is \$1,9401.27 and it is fully secured.	This claim is unmodified by the Plan. Debtors will sell the collateral to pay this claim no later than 60 days after the Effective Date.
Class 8	Marline Business Corporation. A security interest in a 2016 Peterbilt 375. According to Claim #21, the amount of the claim is \$4,375.80 and it is fully secured.	This claim is unmodified by the Plan. Debtors will sell the collateral to pay this claim no later than 60 days after the Effective Date.
Class 9	Wells Fargo Bank, N.A. A first deed of trust on real property located at 4492 E. Lingard Road, Merced, CA. According to Claim #11, the amount of the claim is \$233,808.91 and it is fully secured.	This claim is unmodified by the Plan. Debtors may sell collateral to satisfy the liquidation analysis. Debtors plan to timely pay regular mortgage payments as required by the note and deed of trust until such time as the collateral may need to be liquidated.
Class 10	First Citizens Bank. A security interest in a 2019 Hitachi Wheel Loader. According to Claim #16	This claim is unmodified by the Plan. On the Effective Date, the Debtors will surrender the collateral to the claimholder,

	(duplicated by Claim #20), the amount of the claim is \$86,785.13 and it is fully secured.	and the automatic stay will be modified to permit claimholder to exercise state law remedies to repossess and liquidate the collateral.
Class 11	Unsecured Priority Claims. Estimated at \$0.00.	To be paid in full under the Plan after all Class 1 claims have been paid.
Class 12	Unsecured Non-priority Claims.	To be paid any remaining net proceeds from the liquidations described below.

Doc. #71. To finance the plan, Debtors propose to sell real property and personal property as outlined in Section IV of the plan. Doc. #71, § IV. For all such property that is collateral for secured debts, the secured creditor will be paid off first. *Id.*

The real property which serves as Debtors' homestead, any proceeds remaining after satisfaction of the secured creditors will be distributed as follows: (1) Debtor's homestead exemption as applicable and (2) Chapter 12 Trustee compensation. *Id.* If the net sale proceeds are insufficient to pay both, sale shall be contingent on Debtors and Trustee agreeing to split the remainder 50/50 and waive any further claim to additional homestead/compensation from such sales. *Id.* If the net sale proceeds exceed the homestead exemption and the Chapter 12 Trustee compensation, any remaining sale proceeds will be turned over to the Chapter 12 Trustee who will pay unsecured administrative, priority, and general unsecured claims in their relative order of priority. *Id.* If Debtors receive sufficient funds on account of their homestead exemption, they may avoid sale of the homestead by paying \$203,191.09 to Trustee, that sum being the estimated net proceeds a Chapter 7 Trustee would receive under a liquidation. *Id.*

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

No party in interest has filed an objection, and the defaults of all non-responding parties are entered. The court notes that the Debtors have already stipulated to changes to the Plan to resolve potential

Trustee objections which the Debtors aver will not negatively affect any creditors. See Doc. #97. Nevertheless, for the reasons outlined below, this matter will proceed as scheduled.

Notwithstanding the absence of any formal objection, the court notes that Creditor Bank of the Sierra ("Sierra"), the Class 3 secured creditor, has filed an adversary proceeding alleging claims against Debtors for conversion arising from Debtors' sale of livestock which allegedly served as partial collateral for Sierra's loan. See Case No. 2024-01014 ("the Adversary") at Doc. #1. The Adversary sought a declaration of nondischargeability as to a portion of the debt owed to Sierra. *Id.* The court interprets the filing of this adversary to be a de facto objection to confirmation which must be addressed satisfactorily before the plan can be confirmed.

On August 5, 2024, the court approved a stipulation of the parties to the Adversary stating that the Adversary would be held in abeyance to provide time for the Debtors/Defendants to pay the class 3 claim of Sierra in full by February 1, 2025. Adversary Doc. #22. The Stipulation itself stated that the Debtors/Defendants were:

in the process of amending their proposed plan of reorganization to provide that if the Class 3 Claim of Plaintiffs is not paid in full by February 1, 2025, Plaintiffs shall have relief from the automatic stay to pursue their state law remedies to foreclose on its collateral.

Adversary Doc. #15. However, no such amendment has been formally sought in the underlying bankruptcy case. Accordingly, this matter will proceed as scheduled for an on-the-record determination of whether Sierra's de facto objection to confirmation has been resolved or not.

The requirements for confirmation of a Chapter 12 plan are outlined in 11 U.S.C. § 1225(a)-(b). The six requirements of § 1225(a) apply to all plans. The requirements of § 1225(b) are only applicable where the trustee or the holder of an allowed unsecured claims objects to confirmation. The Trustee does not object, and while there is ambiguity, it appears that Sierra does not object to confirmation. Sierra will have opportunity at the hearing to advise the court if it is incorrect in its impression. Consequently, only the § 1225(a) requirements need be considered at this time, those being:

- (1) the plan complies with the provisions of this chapter [11 USCS §§ 1201 et seq.] and with the other applicable provisions of this title;
- (2) any fee, charge, or amount required under chapter 123 of title 28 [28 USCS §§ 1911 et seq.], or by the plan, to be paid before confirmation, has been paid;
- (3) the plan has been proposed in good faith and not by any means forbidden by law;
- (4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount

that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title [11 USCS §§ 701 et seq.] on such date;

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the plan;

(B)

(i) the plan provides that the holder of such claim retain the lien securing such claim; and
(ii) the value, as of the effective date of the plan, of property to be distributed by the trustee or the debtor under the plan on account of such claim is not less than the allowed amount of such claim; or

(C) the debtor surrenders the property securing such claim to such holder;

(6) the debtor will be able to make all payments under the plan and to comply with the plan; and

(7) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation.

11 U.S.C. § 1225(a). Based on the moving papers it appears that all of these requirements have been met.

If the issues arising from Sierra's Adversary are resolved to the court's satisfaction, this motion will be GRANTED. The confirmation order shall include the docket control number of the motion and reference the plan by the date it was filed.

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

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

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

NO RULING.

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

CONTINUED MOTION FOR ADMINISTRATIVE EXPENSES
6-20-2024 [[1890](#)]

GLC-(CA) MADERA, LLC/MV
RILEY WALTER/ATTY. FOR DBT.
MICHAEL GOMEZ/ATTY. FOR MV.

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

DISPOSITION: Continued to September 24, 2024, at 9:30 a.m.

No order is required.

Pursuant to the court's approval of the *Stipulation* entered into between Liquidation Trustee; American Advanced Management, Inc.; Madera Community Hospital; and executory contract counterparty GLC-(CA) Madera, LLC (See Doc. #1980), the executory contract which is the subject of this motion will be deemed assumed and this motion to be withdrawn upon payment of the cure amount, which is to be performed within 21 days of the entry of the order approving the stipulation.

Accordingly, this matter will be CONTINUED to September 24, 2024, at 9:30 a.m. to confirm that the cure amount has been paid unless the parties advise the court of such payment earlier and confirm that this motion is withdrawn.

5. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[FWP-1](#)

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

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

NO RULING.

6. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[HRR-2](#)

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

AMERICAN ADVANCED MANAGEMENT,
INC./MV
RILEY WALTER/ATTY. FOR DBT.
HAMID RAFATJOO/ATTY. FOR MV.

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

DISPOSITION: Withdrawn.

No order is required.

On August 12, 2024, the court approved a stipulation between the parties in this matter, pursuant to which the executory contracts referenced in the original motion are deemed assumed and this motion is withdrawn. Doc. #1977. Accordingly, this motion is WITHDRAWN.

7. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[PSJ-50](#)

MOTION FOR ORDER APPROVING PROCEDURES FOR FILING OMNIBUS
OBJECTIONS TO CLAIMS AND/OR MOTION FOR ORDER APPROVING THE
FORM AND MANNER OF NOTICE OF OMNIBUS OBJECTIONS
7-30-2024 [\[1965\]](#)

NICHOLAS RUBIN/MV
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The moving party will prepare the order.

Nicholas Rubin of Force 10 Partners, LLC as Liquidation Trustee (the "Liquidation Trustee" or "Trustee" or "Movant") seeks entry of an order approving the Omnibus Claim Objection Procedures and Omnibus Claim Objection Notice attached to the motion. The moving papers aver that 352 proofs of claim have been filed in the above-styled case representing an aggregate face total amount of approximately \$60,858,062.69. Doc. #1965 *et seq.* The court notes that according to the Claims Register, the actual total for the 352 claims appears to be \$62,435,504.64. *See Claims Register, generally.* This is in addition to approximately, 1,545 scheduled claims. Doc. #1965.

By this motion, Trustee proposes to streamline the process for objecting to claims, presumably because the voluminous quantity of claims would make individualized objections impractical. Thus, Trustee seeks authority to object to multiple Proofs of Claim, up to

a maximum of 100 in a single filed objection document (an "Omnibus Objection"). Docs. #1965, #1966. While Rule 3007(d) contemplates several grounds under which an omnibus objection can be made (see Fed. R. Bankr. Pro. 3007(d)), Trustee seeks permission to file Omnibus Objections on other grounds as set forth below:

- a. the amount claimed contradicts the Debtor's books and records and the Debtor, after review and consideration of any information provided by the claimant, denies liability in excess of the amount reflected in the Debtor's books and records;
- b. the Claims fail to specify the asserted claim amount (or only list the claim amount as "unliquidated");
- c. the Claims do not comply with the requirements for proofs of claim set forth in the Bankruptcy Rules or otherwise do not meet the standards to constitute prima facie evidence of the validity and amount of the Claims, including for the reason that such Claims are not accompanied by required information or documents, the Debtor has no other information sufficient to support the Claims, and the Debtor denies liability on that basis;
- d. the Claims seek recovery of amounts for which the Debtor is not liable (the reason or reasons for which shall be stated in the objection);
- e. the Claims have been satisfied by payment in full or in part on account of such Claims from a non-Debtor party (which party shall be identified in the objection);
- f. the Claims are incorrectly or improperly classified;
- g. the Claims have been formally withdrawn by the claimant through the filing of a pleading or through entry of a Court order indicating the withdrawal of the Claims;
- h. the Claims are filed against a non-Debtor;
- i. the Claims are for reimbursement or contribution and are subject to disallowance under section 502(e)(1) of the Bankruptcy Code;
- j. the Claims are disallowable pursuant to section 502(d) of the Bankruptcy Code; or
- k. the Claims are objectionable on some other common basis under applicable bankruptcy or non-bankruptcy law (such as the statute of limitations) that applies to 10 or more Claims.

Doc. #1966. The motion and proposed order also propose other provisions regarding:

- a. the form of Omnibus Objections to be filed;
- b. the types of exhibits and supporting documentation that may be included with an Omnibus Objection;
- c. the form of the notice that will be provided to affected creditors (the "Omnibus Claim Objection Notice"), which will conform substantially to the notice attached to the Proposed Order as Exhibit 2; and
- d. information related to resolving or, if necessary, filing a formal reply to an Omnibus Claim Objection.

Id. The court notes that the motion calls for Omnibus Objections to comply with the 44-day notice requirement for objections to proofs

of claim required by LBR 3007-1(b). *Id.* Trustee argues that the court has the power to grant this motion under its general equitable powers contained in § 105 of the Code. *Id.* The court agrees that it has such power and sees no reason, in light of the sizeable number of proofs of claim filed in this case, that the relief requested should not be granted.

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

No party in interest timely filed written opposition, and the defaults of all nonresponding parties in interest are entered. This motion will be GRANTED.

8. [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.

9. [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.

10. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-42](#)

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

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

NO RULING.

11:00 AM

1. [24-11502](#)-B-7 **IN RE: JUBERTH PONCE CRUZ AND
MARTHA MORALES-GONZALEZ**

REAFFIRMATION AGREEMENT WITH TOYOTA MOTOR CREDIT CORPORATION
7-26-2024 [\[15\]](#)

JEFFREY ROWE/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

A Reaffirmation Agreement between Juberth Ponce Cruz and Martha Morales-Gonzalez ("Debtors") and Toyota Motor Credit Corporation for a 2023 Toyota ("Vehicle") was filed on July 26, 2024. Doc. #15.

11 U.S.C. § 524(c)(6)(A)(ii) states "An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable non-bankruptcy law, whether or not discharge of such debt is waived, only if the court approves such agreement as in the best interest of the debtor."

Here, the Vehicle is valued at \$21,436.00. The amount being reaffirmed by Debtors is \$20,206.76 with an 8.49% interest rate. Debtors have approximately 64 months (over five years) remaining on the loan and only \$6.50 remaining in the budget every month with six (6) dependents according to the Debtors' schedules.

Reaffirming this debt with its remaining term and the current value is not in the Debtor's best interest. There is insufficient income to support the Debtors' continued personal liability for this debt. Accordingly, approval of the Reaffirmation Agreement between Debtors and Toyota Motor Credit Corporation will be DENIED.

2. [24-11034](#)-B-7 **IN RE: IAN HOGAN**

REAFFIRMATION AGREEMENT WITH CENTRAL VALLEY FIREFIGHTERS
CREDIT UNION - - 2020 HYUNDAI IONIQ
7-30-2024 [\[30\]](#)

JANINE ESQUIVEL OJI/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

A Reaffirmation Agreement between Ian Patrick Hogan ("Debtor") and Central Valley Firefighters Credit Union for a 2020 Hyundai Ioniq ("Vehicle") was filed on July 30, 2024. Doc. #30.

11 U.S.C. § 524(c)(6)(A)(ii) states "An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable non-bankruptcy law, whether or not discharge of such debt is waived, only if the court approves such agreement as in the best interest of the debtor."

Here, the Vehicle is valued at \$15,157.00. The amount being reaffirmed by Debtor is \$20,312.10 with a 7.99% interest rate. Debtor has negative equity of \$5,155.10 with a minimum of over 48 months (4 years) remaining on the loan and only \$11.22 remaining in the budget every month according to the Debtor's schedules. Though there is no presumption of undue hardship because the lender is a Credit Union, reaffirming this debt is not in the Debtor's best interest.

Reaffirming this debt with its remaining term and the current value is not in the Debtor's best interest. Approval of the reaffirmation agreement is DENIED.

3. [24-11034](#)-B-7 **IN RE: IAN HOGAN**

REAFFIRMATION AGREEMENT WITH CENTRAL VALLEY FIREFIGHTERS
CREDIT UNION - - CROSS-COLLATERAL AS SET FORTH IN CREDIT
AGREEMENT
7-30-2024 [\[31\]](#)

JANINE ESQUIVEL OJI/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

A Reaffirmation Agreement between Ian Patrick Hogan ("Debtor") and Central Valley Firefighters Credit Union for a personal loan ("Loan") was filed on July 30, 2024. Doc. #31.

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.

4. [24-11034](#)-B-7 **IN RE: IAN HOGAN**

REAFFIRMATION AGREEMENT WITH CENTRAL VALLEY FIREFIGHTERS
CREDIT UNION - - 2019 FORD RANGER
7-31-2024 [\[33\]](#)

JANINE ESQUIVEL OJI/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

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

A Reaffirmation Agreement between Ian Patrick Hogan ("Debtor") and Central Valley Firefighters Credit Union for a 2019 Ford Ranger ("Vehicle") was filed on July 30, 2024. Doc. #33.

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.

5. [24-11034](#)-B-7 **IN RE: IAN HOGAN**

REAFFIRMATION AGREEMENT WITH CENTRAL VALLEY FIREFIGHTERS
CREDIT UNION - - 2007 CHAPPARAL BOAT AND CARRIER
7-30-2024 [\[32\]](#)

JANINE ESQUIVEL OJI/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

A Reaffirmation Agreement between Ian Patrick Hogan ("Debtor") and Central Valley Firefighters Credit Union for a 2007 Chaparral Boat and Carrier ("Boat and Carrier") was filed on July 30, 2024. Doc. #32.

11 U.S.C. § 524(c)(6)(A)(ii) states "An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable non-bankruptcy law, whether or not discharge of such debt is waived, only if the court approves such agreement as in the best interest of the debtor."

Here, the Vehicle is valued at \$14,080.00. The amount being reaffirmed by Debtor is \$17,338.57 with a 5.99% interest rate. Debtor has negative equity of \$3,258.57 with a minimum of over 60 months (five years) remaining on the loan and only \$11.22 remaining in the budget every month according to the Debtor's schedules.

Reaffirming this debt with its remaining term and the current value and age of the Boat and Carrier is not in the Debtor's best interest. Accordingly, approval of the Reaffirmation Agreement between Debtor and Central Valley Firefighters Credit Union will be DENIED.

6. [24-11599](#)-B-7 **IN RE: ALEJANDRO RODRIGUEZ**

REAFFIRMATION AGREEMENT WITH BMW BANK OF NORTH AMERICA
7-31-2024 [\[14\]](#)

JANINE ESQUIVEL OJI/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

A Reaffirmation Agreement between Alejandro F. Rodriguez ("Debtor") and BMW Bank of North America for a 2019 BMW X5 Utility ("Vehicle") was filed on July 31, 2024. Doc. #14.

11 U.S.C. § 524(c)(6)(A)(ii) states "An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable non-bankruptcy law, whether or not discharge of such debt is waived, only if the court approves such agreement as in the best interest of the debtor."

Here, the Vehicle is valued at \$28,940.00. The amount being reaffirmed by Debtor is \$43,456.54 with an 4.19% interest rate. Debtor has negative equity of \$14,516.54 with approximately 33 months (2.75 years) remaining.

Reaffirming this debt with its remaining term and the current value of the Vehicle is not in the Debtor's best interest. Accordingly, approval of the Reaffirmation Agreement between Debtor and BMW Bank of North America will be DENIED.

1:30 PM

1. [24-11108](#)-B-7 **IN RE: SAVANNAH GARCIA**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-23-2024 [\[16\]](#)

TOYOTA LEASE TRUST/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

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

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

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

Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2023 TOYOTA PRIUS, (VIN JTDADABU2P3005031) ("Vehicle"). Doc. #16.

This motion relates to an executory contract or lease of personal property. The case was filed on April 29, 2024, and the lease was not assumed by the chapter 7 trustee within the time prescribed in 11 U.S.C. § 365(d)(1). Pursuant to § 365 (p)(1), the leased property is no longer property of the estate and the automatic stay under § 362(a) has already terminated by operation of law.

Savannah Garcia ("Debtor") did not file opposition and the Vehicle was surrendered to the Movant on April 22, 2024. Debtor's Statement of Intention indicated that the Vehicle would be surrendered. Since there is no opposition from the Debtor, the court is unaware if Debtor exercised her option to assume the lease under § 365(p)(2).

This motion will be GRANTED as to the Debtor and DENIED AS MOOT as to chapter 7 trustee.

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).

Accordingly, the motion will be GRANTED as to the Debtor pursuant to 11 U.S.C. § 362(d)(1) to permit the Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. The motion will be DENIED AS MOOT as to the chapter 7 trustee pursuant to § 365(p)(1). The leased property is no longer property of the estate and the automatic stay under § 362(a) has already terminated by operation of law.

2. [23-11025](#)-B-7 **IN RE: SANJUANA COVARRUBIAS**
[FW-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. FOR GABRIEL J. WADDELL, TRUSTEES ATTORNEY(S)
7-22-2024 [\[51\]](#)

NEIL SCHWARTZ/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Fear Waddell, P.C. ("Applicant") seeks approval of a first and final allowance of compensation under 11 U.S.C. § 330 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as accountant for James Salven, Trustee in the above-styled case ("Trustee"). Doc. #51. The Debtor is Sanjuana Covarrubias ("Debtor").

Applicant was employed to perform services under § 327 of the Code pursuant to an order of this court dated February 26, 2024. Doc. #37. This is Applicant's first and final request for compensation.

Applicant seeks **\$6,390.50** in fees based on **18.4** billable hours from February 12, 2024, through July 19, 2024. Docs. #51, #53. Applicant billed **18.40** hours as follows:

Name	Hourly Rate	Hours Worked	Fees
Gabriel Waddell	\$380.00	13.40	\$5,092.00
Katie Waddell	\$280.00	4.30	\$1,204.00
Laurel Guenther	\$135.00	0.70	\$94.50
Total		18.4	\$6,390.50

Id. Applicant seeks expense reimbursement as follows:

Copies	\$88.27
Court Fees	\$11.90
Postage	\$78.27
Total	\$178.44

Id.

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

Applicant's services here included, without limitation: asset distribution, and fee/employment applications. Doc. #53. The court finds the services and expenses reasonable, actual, and necessary. The Trustee has reviewed the Application and finds the requested fees and expenses to be reasonable. Doc. #54.

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

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

This Application is GRANTED. The court will approve on a final basis under 11 U.S.C. § 330 compensation in the amount of **\$6,390.50** in

fees and **\$178.44** in expenses. The court grants the Application for a total award **\$6,568.94** as an administrative expense of the estate and an order authorizing and directing the Trustee to pay such to Applicant as funds become available.

3. [24-11234](#)-B-7 **IN RE: YESENIA CARROLL**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
7-11-2024 [[11](#)]

JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

Chapter 7 trustee Peter L. Fear ("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 11, 2024. Doc. #11.

Yesenia Carroll ("Debtor") timely opposed. Doc. #15. Debtor's attorney states Debtor did not appear due to his failure to remind Debtor of the 341 Meeting of Creditors as he was out of town. Debtor will be present for the continued meeting.

This motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for September 12, 2024, at 3:00 p.m. See, Doc. #11. 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.

4. [23-12637](#)-B-7 **IN RE: AUTOMATION ELECTRICAL AND INSTRUMENTATION
[JES-2](#)**

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
7-24-2024 [\[25\]](#)

JAMES SALVEN/MV
D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

James Salven ("Applicant") seeks approval of a final allowance of compensation under 11 U.S.C. § 330 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as accountant for Jeffrey M. Vetter, Trustee in the above-styled case ("Trustee"). Doc. #26.

Applicant was employed to perform services under § 327 of the Code pursuant to an order of this court dated June 17, 2024. Doc. #24. This is Applicant's first and final request for compensation.

Applicant seeks **\$2,212.00** in fees based on **7.9** billable hours from May 31, 2024, through July 23, 2024. Doc. #28. Based on the moving papers, it appears that James Salven was the only employee of Applicant to work on this case, and he billed at a rate of \$280.00 per hour. Id.

Applicant seeks an award **\$194.71** for expenses as follows:

Copies	\$42.00
Envelopes	\$1.25
Lacerte Tax Proc.	\$125.00
Postage	\$4.75
File and serve employment application	\$9.20
File and serve fee application	\$12.51
Total	\$194.71

Id.

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

Applicant's services here included, without limitation: conflict review and preparation of the employment application; preparing, filing, and serving the fee application (which was not charged to the estate); preparation and filing of tax returns for the estate; and inputting data to process the returns. Doc. #28. The court finds the services and expenses reasonable, actual, and necessary. The Trustee has reviewed the Application and finds the requested fees and expenses to be reasonable. Doc. #29,

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

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

This Application is GRANTED. The court will approve on a final basis under 11 U.S.C. § 330 compensation in the amount of **\$2,212.00** in fees and **\$193.71** in expenses. The court grants the Application for a total award **\$2,405.71** as an administrative expense of the estate and an order authorizing and directing the Trustee to pay such to Applicant from the first available estate funds.

5. [24-11440](#)-B-7 **IN RE: JENNIFER YANG AND LENG THAO**
[PFT-1](#)

MOTION TO EMPLOY GOULD AUCTION AND APPRAISAL COMPANY AS
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
7-30-2024 [\[14\]](#)

PETER FEAR/MV
LE'ROY ROBERSON/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Chapter 7 trustee Peter L. Fear ("Trustee") seeks authorization to
(a) employ Gould Auction and Appraisal Company ("Auctioneer") under
11 U.S.C. § 328; (b) sell the estate's interest in a 2008 Subaru
Impreza WRX STI ("the Vehicle") at public auction under § 363(b)(1);
and (c) compensate Auctioneer under §§ 327(a) and 328. Doc. #14. The
auction will be held on or after September 28, 2024, beginning at
9:00 a.m. at 6200 Price Way, Bakersfield, California. Id. The
Debtors ("Debtors") are Jennifer Yang and Leng Thao. Id.

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

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

Employment and Compensation

This motion affects the proposed disposition of estate assets and
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 to add Auctioneer as a party.

LBR 9014-1(d) (5) (B) (iii) permits joinder of requests for authorization to employ a professional, i.e., auctioneer, for sale of estate property at public auction, and allowance of fees and expenses for such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rules 6004-05.

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; (ii) an additional 10% premium to be paid by the buyer; (iii) the buyer may be required to pay a \$50.00 as a DMV fee, which will go directly to Auctioneer; (iv) estimated expenses for pickup and storage not to exceed \$250.00, and (v) reimbursement for "extraordinary expenses" not to exceed \$500.00 without court approval. Doc. #17.

Trustee and Jerry Gould, Auctioneer's owner, 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). Docs. ##16-17. With respect to Debtor, Auctioneer 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. *Id.* 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 debtors, 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.* 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. #17. 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 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 expenses up to \$250.00 for ordinary expenses and up to \$500.00 for "extraordinary expenses" without further court approval.

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).

Here, Vehicle is listed in the schedules as having 150,000 miles and is valued at \$9,000.00. Doc. #1 (*Sched. A/B*). Vehicle does not appear to have any encumbrances. *Id.* (*Sched. D*). Debtor has exempted up to \$1,857.00 in equity in the Vehicle under C.C.P. § 704.010. *Id.* (*Sched. C*).

The motion does not list a proposed sale price but rather seeks the best price that can be obtained at open auction. However, given the fact that total expenses are limited to an absolute maximum of \$750.00, that auctioneer fees are limited to 15%, and that Debtor's exemption is substantially less than the equity in the Vehicle, the court concludes that the auction will almost inevitably produce at least some net proceeds for the estate.

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. #17. Based on Trustee's experience, this could 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 such that the sale of the Vehicle would be in the best interests of the estate if 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. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

Conclusion

No party in interest objected to the instant motion, which is GRANTED. Trustee will be permitted to employ Auctioneer, sell the Vehicle at public auction, and pay Auctioneer for its services as outlined above. If the sale is completed, Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale and payment of up to \$250.00 for regular expenses and up to \$500.00 for "extraordinary expenses."

6. [24-11441](#)-B-7 **IN RE: RODRIGO MEMBRENO ZELAYA**
[PFT-1](#)

OPPOSITION RE: AMENDED TRUSTEE'S MOTION TO DISMISS FOR
FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
7-9-2024 [\[19\]](#)

RAYMOND PEREZ/ATTY. FOR DBT.

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

Chapter 7 trustee Peter L. Fear ("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 8, 2024. Doc. #19.

Rodrigo Membreno Zelaya ("Debtor") timely opposed. Doc. #22. Debtor's attorney also did not appear at the July 8, 2024, meeting of creditors. In the opposition Debtor's attorney failed to calendar the meeting properly taking full responsibility for the error. *Id.*

This motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for September 12, 2024, at 3:00 p.m. See, Doc. #19. 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.

7. [24-11843](#)-B-7 **IN RE: DAMIEN HERRERA AND BEATRIZ CANACA**
[RSA-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY (FEE PAID \$0.00)
(EFILINGID: 7381797)
7-30-2024 [\[16\]](#)

BEX PORTFOLIO, LLC/MV
CALVIN CLEMENTS/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

First, the notice did not contain the language required under LBR 9014-1(d)(3)(B)(i), which provides, "[t]he notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition." Doc. #17.

Second, the notice did not contain the language required under LBR 9014-1(d)(3)(B)(ii), which provides, "[i]f written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition." Doc. #17.

Third, the notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii), which requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing. Doc. #17.

Fourth, the notice did not state that written opposition was required and must be filed at least 14 days preceding the date of the hearing. Doc. #17.

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

declaration do not contain the DCN on the caption pages. Docs. #16, #18, #19.

The court urges movant to review the LBR before filing another motion.

8. [24-10146](#)-B-7 **IN RE: C.S. & S. BAKERY, LLC**
[LNH-3](#)

MOTION FOR ORDER CONFIRMING PERSONAL PROPERTY SALE AND/OR
MOTION TO PAY
8-5-2024 [\[35\]](#)

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Jeffrey M. Vetter ("Trustee"), Chapter 7 trustee in this case ("the CS&S Case") and the related case of *In re SLO Dough, LLC*, Case No. 23-12767 ("the SLO Dough Case"), moves for an order authorizing Trustee to sell certain personal property, specifically "bakery equipment" located at store location of the former C.S. & S. Bakery, LLC, which operated a Crumble Cookies™ franchise located at 550 Woollomes Ave. #105, Delano, CA ("the Delano Store"). Doc. #35. This matter is somewhat complicated by a similar motion entered in the SLO Dough Case, and for clarity, the bakery equipment which is the subject of this motion will be identified as "the Delano Equipment" and will consist exclusively of the bakery equipment that is at the Delano Store.

Trustee proposes to sell the Delano Equipment for \$50,000.00 subject to overbid and to pay \$5,000 (or 10% of the final sale) to Trustee's real estate broker/finder Michael S. Dawson ("Broker") as commission. *Id.* The proposed buyer is Amorim Entities, Inc., a California corporation ("the Buyer"). *Id.*

Written opposition was not required and may be presented at the hearing. One entity, SLO Promenade DE, LLC ("Promenade") has already filed an opposition. Doc. #42. Promenade is the landlord for the Crumble Cookies™ store that is the subject of the SLO Dough Case and which is located at 313 Madonna Road, San Luis Obispo, CA ("the San Luis Obispo Store"). *Id.* To the extent that it matters for the disposition of this motion, the bakery equipment located at the San Luis Obispo Store and which is the subject of a *Motion to Sell* filed in the SLO Dough Case will be referred to as "the San Luis Obispo Equipment."

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. If opposition other than that of Promenade 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.

BACKGROUND

For purposes of this motion, the court accepts as true the following facts and assertions as presented in the Trustee's Declaration (Doc. #40).

SLO Dough and C.S. & S. are both LLCs formed to own and operate Crumbl Cookie™ franchises. SLO Dough's storefront is the San Luis Obispo, California, and C.S. & S's store front is in Delano, California. SLO Dough filed its Chapter 7 petition on December 14, 2023, and filed its Schedules and statements that same day. C.S.&S. filed its Chapter 7 petition on January 23, 2023 (erroneously states as 3034 in the Declaration) and filed its Schedules and statements that same day.

SLO Dough and C.S.& S. have the same managing member, Julie Carvin, who has since filed her own personal Chapter 7 case which does not appear relevant to this matter. The two LLCs have the same members with the same ownership percentages. C.S.& S. listed creditors holding \$175,617.02 on its Schedule F. Approximately \$150,473.00 of those claims are held by Larry Don Smith II ("Smith"), who is a 12.5% equity security holder in C.S.& S. SLO Dough's Schedule E/F reflects a list of creditors holding \$194,771.83 in claims, of which Smith (who is also a 12.5% equity security holder in SLO Dough) holds \$153,954.00.

It appears that SLO Dough and C.S.& S. commingled their assets to some extent, and Trustee declares his belief that the San Luis Obispo Equipment was, in fact, purchased by C.S.& S., and title to the equipment was never transferred to SLO Dough.

The Delano Equipment, on the other hand, was listed on C.S.& S.'s Schedule A/B, and Trustee declares that his investigation reflects that this equipment was, in fact, purchased by C.S.& S. for use in the Delano Store.

It is the commingling of assets and the Trustee's apparent belief that the San Luis Obispo Equipment may represent assets of C.S.& S. and not SLO Dough that gave rise to Promenade's objection and opposition (See Doc. #42). By its terms, the Promenade Objection does not per se oppose the sale of the Delano Equipment. Rather, Promenade objects to the sale of any San Luis Obispo Equipment whether it is owned by C.S.& S. or by SLO Dough because Promenade presently asserts an administrative claim in the SLO Dough Case and understandably opposes any suggestion that the only assets in the SLO Dough Case which could be used to pay such an administrative claim actually belong to C.S.& S.

While the court is sensitive to Promenade's concerns, they are not germane to the instant motion, which the court interprets as applying solely to the sale of the Delano Equipment and which neither contemplates the sale of any equipment owned by C.S. & S. located in the San Luis Obispo Store or, indeed, anywhere outside the four corners of the Delano Store. The disposition of the San Luis Obispo Equipment is the subject of a separate motion which will be addressed below under *Item #11*. With the issues thus clarified, the court turns to the meat of the instant motion.

DISCUSSION

Sale of Property

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

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). There is nothing in the record suggesting that Buyer is an insider with respect to Debtor. Buyer is neither listed in the Schedules nor the master address list. Docs. #1; #3.

Property is listed in *Schedule A/B* with a value of \$155,069.37. Doc. #1 (*Sched. A/B*, line 50). Debtor is a corporation and is not entitled to exemptions. The Delano Equipment appears to be unencumbered.

Trustee entered into a contract ("Purchase Agreement") with Buyer to sell Property for \$50,000.00 subject to overbidding. Docs. #38, #40. The Delano Equipment is to be sold "wall to wall floor to ceiling, including exterior signs (except as limited by the lease for the removal of fixtures," and is being sold "as-is." *Id.* The court notes a requirement "to remove the inventory, equipment, and supplies by August 15, 2024," a date which has already passed prior to the hearing date. The court will inquire at the hearing as to whether

the Delano Equipment was removed by that deadline and, if not, how this will affect the sale.

If sold at the proposed sale price, the proceeds from the proposed sale could be illustrated as follows:

Sale price	\$50,000.00
Estimated broker fee (%)	(\$5,000.00)
Estimated net proceeds to estate	\$45,000.00

Doc. #40. Other than the Broker's fee, Trustee has not indicated that any of the net sale proceeds will go to anyone other than the estate.

The sale under these circumstances should maximize potential recovery for the estate. The sale of the Property appears to be in the best interests of the estate because it will provide liquidity that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion other than the one raised by Promenade which the court has already addressed. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

Real Estate Brokers' Compensation

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

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

On June 6, 2024, Trustee moved to employ Broker to assist the Trustee in carrying out the Trustee's duties by selling property of the estate. Doc. #24. The court authorized Broker's employment on July 16, 2024, under 11 U.S.C. §§ 327 and 328. Doc. #34.

Pursuant to the employment order, Trustee requests to compensate Broker with a commission of 10%. Doc. #44. Broker will receive \$5,000.00, if there are no overbidders and Property is sold at the proposed sale price. The court will authorize Trustee to pay broker commissions as prayed.

Overbid Procedure

Any party wishing to overbid shall, prior to the hearing, comply with the overbid procedures as outlined in the Notice of Hearing. See Doc. #30.

Waiver of 14-day Stay

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

Conclusion

If no further opposition is presented at the hearing, the court is inclined to GRANT this motion. Trustee will be authorized: (1) to sell the Delano Equipment to the prevailing bidder at the hearing, as determined at the hearing; (2) to execute all documents necessary to effectuate the sale of the Property; and (3) to pay broker commission in the amount of 10% of the total sale price to be paid to Broker, as determined at the hearing. The 14-day stay of Rule 6004(h) will not be waived.

9. [22-10760](#)-B-7 **IN RE: MATTHEW CRIPPEN**
[FW-4](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH MATTHEW LEE CRIPPEN
7-19-2024 [\[145\]](#)

JAMES SALVEN/MV
TIMOTHY SPRINGER/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 with a copy of the stipulation attached as an exhibit. The stipulation shall also be separately filed and docketed as a stipulation.

Chapter 7 trustee James Salven ("Trustee") requests an order approving a settlement agreement to resolve litigation over an alleged fraudulent transfer between the estate and Matthew Crippen ("Crippen" or "Debtor") pursuant to Fed. R. Bankr. P. ("Rule") 9019. Doc. #145.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned

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

The Debtor filed chapter 7 bankruptcy on May 3, 2022. Doc. #1. Trustee was appointed as the interim trustee on that same date and became permanent trustee at the 341 meeting of creditors on May 31, 2022. Doc. #6; docket generally.

During the administration of the bankruptcy, Trustee received a refund from the Chapter 13 Trustee's office in the amount of \$4,321.00 from payments made by the Debtor to the Chapter 13 Trustee prior to the conversion of this case to Chapter 7. Doc. #147. Trustee also identified several non-exempt items of personal property described more fully in the motion and moving papers ("the Assets"). Doc. #147. Trustee declares that his efforts to sell the Assets were thwarted by lack of clear title and by the actions of third parties to prevent the estate's auctioneer from taking possession of the Assets. *Id.* Accordingly, to maximize the recovery for the estate (and because Debtor wishes to avoid the sale of the Assets), Trustee and Debtor came to a settlement agreement whereby Debtor would waive any right to the Chapter 13 refund and also pay Trustee \$8,900.00 (which Debtor has already done), and in exchange, Trustee will abandon the estate's interest in the Assets. *Id.* A copy of the settlement agreement has been filed in this case. Doc. #149.

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

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

1. Probability of success in litigation: Trustee declares that, given the difficulties Trustee has experienced in liquidating the Assets thus far, Trustee does not believe that a sale of the Assets would result in a meaningful net recovery for the estate after deduction of sale expenses. Also, Debtor believes he is entitled to some or all of the Chapter 13 refund and resolving that issue would require litigation that would reduce or eliminate any net value to the estate.

2. Collection: The Trustee strongly believes that there are issues with collectability in this case which would preclude any funds for a distribution to non-administrative creditors absent the settlement agreement.

3. Complexity of litigation: The Trustee declares that, while the legal issues involved are simple, the factual challenges would make recovery of a settlement for the estate difficult.

4. Paramount interests of creditors: Trustee believes that the settlement will provides a guaranteed recovery for the estate while avoiding the risk and expense of litigation.

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

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

This ruling is not authorizing the payment of any fees or costs associated with the settlement. Trustee shall separately file the settlement agreement and docket it as a stipulation.

10. [24-11666](#)-B-7 **IN RE: JERRY/SHARYN RABINA**
[PFT-1](#)

MOTION TO EMPLOY GOULD AUCTION AND APPRAISAL COMPANY AS
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
7-30-2024 [\[15\]](#)

PETER FEAR/MV
SCOTT LYONS/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Chapter 7 trustee Peter L. Fear ("Trustee") seeks authorization to (a) employ Gould Auction and Appraisal Company ("Auctioneer") under 11 U.S.C. § 328; (b) sell the estate's interest in a 2007 Toyota Tacoma with 161,315 miles ("the Vehicle") at public auction under § 363(b)(1); and (c) compensate Auctioneer under §§ 327(a) and 328. Doc. #14. The auction will be held on or after September 28, 2024, beginning at 9:00 a.m. at 6200 Price Way, Bakersfield, California.

Id. The Debtors ("Debtors") are Jerry Don Rabina and Sharyn Sue Rabina. Id.

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

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

Employment and Compensation

This motion affects the proposed disposition of estate assets and 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 to add Auctioneer as a party.

LBR 9014-1(d)(5)(B)(iii) permits joinder of requests for authorization to employ a professional, i.e., auctioneer, for sale of estate property at public auction, and allowance of fees and expenses for such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rules 6004-05.

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; (ii) an additional 10% premium to be paid by the buyer; (iii) the buyer may be required to pay a \$50.00 as a DMV fee, which will go directly to Auctioneer; (iv) If the item is purchased online through Proxibid, the buyer will pay an additional 3% fee directly to Proxibid for their service; (vi) estimated expenses for pickup and storage not to exceed \$250.00, and (v) reimbursement for "extraordinary expenses" not to exceed \$500.00 without court approval. Doc. #18.

Trustee and Jerry Gould, Auctioneer's owner, 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). Docs. ##17-18. With respect to Debtor, Auctioneer 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. *Id.* 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 debtors, 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.* 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. #18. 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 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 expenses up to \$250.00 for ordinary expenses and up to \$500.00 for "extraordinary expenses" without further court approval.

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).

Here, Vehicle is listed in the schedules as having 161,315 miles and is valued at \$4,050.00. Doc. #1 (*Sched. A/B*). Vehicle does not appear to have any encumbrances. *Id.* (*Sched. D*). Debtor has not exempted the Vehicle. *Id.* (*Sched. C*).

The motion does not list a proposed sale price but rather seeks the best price that can be obtained at open auction. However, given the fact that total expenses are limited to an absolute maximum of \$750.00, that auctioneer fees are limited to 15%, that Debtor has not claimed an exemption in the Vehicle, and the Vehicle is unencumbered, the court concludes that the auction will almost inevitably produce at least some net proceeds for the estate.

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. #18. Based on Trustee's experience, this could 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 such that the sale of the Vehicle would be in the best interests of the estate if 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. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

Conclusion

No party in interest objected to the instant motion, which is GRANTED. Trustee will be permitted to employ Auctioneer, sell the Vehicle at public auction, and pay Auctioneer for its services as outlined above. If the sale is completed, Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale and payment of up to \$250.00 for regular expenses and up to \$500.00 for "extraordinary expenses."

11. [23-12767](#)-B-7 **IN RE: SLO DOUGH, LLC**
[LNH-3](#)

MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR MICHAEL S.
DAWSON, BROKER(S)
8-5-2024 [\[36\]](#)

JEFFREY VETTER/MV
LEONARD WELSH/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

12. [24-11969](#)-B-7 **IN RE: NEVZAT OZDER**
[BDB-1](#)

MOTION TO COMPEL ABANDONMENT
8-12-2024 [\[16\]](#)

NEVZAT OZDER/MV
BENNY BARCO/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.

Nevzat Ozder ("Debtor") moves for an order compelling chapter 7 trustee Irma C. Edmonds ("Trustee") to abandon the estate's interest in property used in the operation of Debtor's sole proprietorship, which consists of his role as an Uber driver. Doc. #16.

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

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

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

To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). *In re Galloway*, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at *16-17 (B.A.P. 9th Cir. 2014).

Debtor is an Uber driver and describes himself as a sole proprietorship. Doc. #18. The only asset of the sole proprietorship is a 2013 Chrysler Town & Country ("the Vehicle") which Debtor values at \$3,200.00. *Id.* The Vehicle is unencumbered, and Debtor has exempted its full value (\$3,200.00) pursuant to CC 703.140(b)(2). *Id.* See also Doc. #1 (Sched. A/B).

Debtor certifies that Debtor was qualified and eligible to claim the exemptions under applicable law and understands that if for any reason it is determined that Debtor is not qualified to claim an exemption in the property listed, or if there is some other error in the exemption claimed, Trustee may demand that Debtor compensate the estate for any damage caused by the claimed exemption. Debtor agrees to not amend the exemptions affecting the Business Assets unless Trustee stipulated to that amendment or such relief is granted by further order of the court. *Id.*

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court will find that the Vehicle is of inconsequential value and benefit to the estate. The Vehicle was accurately scheduled and is unencumbered and exempted in their entirety. Therefore, the court intends to GRANT this motion.

The order shall specifically include the property to be abandoned.

13. [24-11474](#)-B-7 **IN RE: JIMMY RELINGO**
[PFT-1](#)

OPPOSITION RE: AMENDED TRUSTEE'S MOTION TO DISMISS FOR
FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
7-9-2024 [\[16\]](#)

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

Chapter 7 trustee Peter L. Fear ("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 9, 2024. Doc. #16.

Jimmy A. Relingo ("Debtor") timely opposed. Doc. #18. Debtor attempted to appear but encountered technical difficulties and was unable to timely troubleshoot the issue. Debtor has resolved the issue and will be present for the continued meeting using a reliable cell phone.

This motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for September 12, 2024, at 3:00 p.m. See, Doc. #16. 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.

14. [24-12178](#)-B-7 **IN RE: KERRI REGERT**
[BDB-1](#)

MOTION TO COMPEL ABANDONMENT
8-12-2024 [\[12\]](#)

KERRI REGERT/MV
BENNY BARCO/ATTY. FOR DBT.

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

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.

Kerri Regert ("Debtor") moves for an order compelling chapter 7 trustee Irma C. Edmonds ("Trustee") to abandon the estate's interest in property used in the operation of Debtor's sole proprietorship, which consists of her role as a DoorDash driver. Doc. #12.

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

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

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

To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49

F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). *In re Galloway*, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at *16-17 (B.A.P. 9th Cir. 2014).

Debtor is a DoorDash driver and describes herself as a sole proprietorship. Doc. #14. The only asset of the sole proprietorship is a 2021 Hyundai Tucson ("the Vehicle") which Debtor values at \$14,000.00 *Id.* The Vehicle is encumbered with a lien held by America First Credit Union in the amount of \$26,650.00. Doc. #1 (*Sched. D*); Doc. #14. Debtor has not claimed an exemption in the Vehicle. Doc. #1 (*Sched. C*); Doc. #14.

Debtor certifies that Debtor was qualified and eligible to claim the exemptions under applicable law and understands that if for any reason it is determined that Debtor is not qualified to claim an exemption in the property listed, or if there is some other error in the exemption claimed, Trustee may demand that Debtor compensate the estate for any damage caused by the claimed exemption. Debtor agrees to not amend the exemptions affecting the Business Assets unless Trustee stipulated to that amendment or such relief is granted by further order of the court. *Id.*

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court will find that the Vehicle is of inconsequential value and benefit to the estate. The Vehicle was accurately scheduled and is fully encumbered (and, in fact, is underwater). Therefore, the court intends to GRANT this motion.

The order shall specifically include the property to be abandoned.

15. [19-15396](#)-B-7 **IN RE: JUAN/MARYLOU BARRAGAN**
[ADJ-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FORES MACKO
JOHNSTON & CHARTRAND FOR ANTHONY D. JOHNSTON, TRUSTEES
ATTORNEY(S)
7-17-2024 [[138](#)]

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

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

DISPOSITION: Granted.

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

Anthony D. Johnson ("Applicant") seeks approval of a final allowance of compensation under 11 U.S.C. §§ 330 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as attorney for Irma Edmonds, Trustee in the above-styled case ("Trustee"). Doc. #138. The debtors are Juan and Marylou Barragan ("Debtors").

Applicant was employed to perform services under § 327 of the Code pursuant to an order of this court dated July 6, 2022. Doc. #92. This is Applicant's first and final request for compensation.

Applicant seeks **\$10,125.00** in fees based on 6.3 billable hours from June 1, 2022, through July 17, 2024. Docs. #138, #142. From the moving papers, it appears that Applicant was the only attorney who worked on this matter, and he billed for a total of **27.00** hours at a rate of \$375.00 per hour. Doc. #138. Applicant also seeks compensation for expenses in the amount of **\$356.90**. *Id.*

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

Applicant's services here included, without limitation: asset dispositions and fee/employment applications. Doc. #138. The court finds the services and expenses reasonable, actual, and necessary. The Trustee has reviewed the Application and finds the requested fees and expenses to be reasonable. Doc. #140.

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

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

This Application is GRANTED. The court will approve on a final basis under 11 U.S.C. §330 compensation in the amount of **\$10,125.00** in fees and **\$356.90** in expenses. The court grants the Application for a total award **\$10,481.90** as an administrative expense of the estate and an order authorizing and directing the Trustee to pay such to Applicant from the first available estate funds.