



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Wednesday, August 30, 2023  
Department A – Courtroom #11  
Fresno, California**

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## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

**THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.**

1. [21-11814](#)-A-11     **IN RE: MARK FORREST**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION  
7-22-2021    [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

2. [21-11814](#)-A-11     **IN RE: MARK FORREST**  
[NCK-1](#)

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION TO SELL  
8-11-2023    [[473](#)]

MARK FORREST/MV  
LEONARD WELSH/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on August 16, 2023. Doc. #494.

3. [22-12016](#)-A-11     **IN RE: FUTURE VALUE CONSTRUCTION, INC.**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION  
11-28-2022    [[1](#)]

D. GARDNER/ATTY. FOR DBT.

NO RULING.

FINAL HEARING RE: MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR  
ADEQUATE PROTECTION  
8-2-2023    [\[23\]](#)

MATEO ENTERPRISE, INC. DBA EL MILAGRO MARKET/MV  
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted on a final basis through October 31, 2023.

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

This motion was set for hearing pursuant to an interim order authorizing use of cash collateral and the notice of the original hearing for use of cash collateral. Doc. ##24, 51. The motion was heard initially on August 10, 2023, and was granted on an interim basis through August 31, 2023. See Doc. #51. This motion was filed and served on at least 14 days' notice prior to the hearing date 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 use of cash collateral through October 31, 2023 on a final basis pursuant to the budget included with 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.

Mateo Enterprise, Inc. dba El Milagro Market ("Debtor" or "DIP") moves the court for an order authorizing DIP to use the cash collateral of secured creditor Newtek Small Business Finance, LLC ("Newtek") on a monthly basis subject to a proposed budget. Ex. C, Doc. #28. DIP asserts Newtek holds a duly perfected security interest in Debtor's bank accounts, monies held by DIP's President Salvador Carrera on behalf of Debtor, and Debtor's pre-petition inventory. Doc. #26, Decl. of Salvador Carrera at ¶ 4. Based on Debtor's schedules, Newtek is owed \$443,666.00 and the value of Newtek's collateral, as of the petition date, was \$197,375.29. Schedule D, Doc. #1. Based on Newtek's proofs of claim filed on August 17, 2023, Newtek was owed an aggregate of at least \$600,759.12 as of the petition date. Claim Nos. 4-1, 5-1. While there are other entities that may assert a security interest in Debtor's cash collateral, all other entities hold a junior security interest to the undersecured Newtek and are, thus, unsecured.

Pursuant to 11 U.S.C. § 363, a debtor in possession can use property of the estate that is cash collateral by obtaining either the consent of each entity that has an interest in such cash collateral or court authorization after notice and a hearing. 11 U.S.C. § 363(c)(2). "The primary concern of the court in determining whether cash collateral may be used is whether the secured creditors are adequately protected." In re Plaza Family P'ship, 95 B.R. 166 (E.D. Cal. 1989) (citing 11 U.S.C. § 363(e)). Pursuant to 11 U.S.C. § 363(p), DIP carries the burden of proof on the issue of adequate protection.

DIP owns and operates a supermarket and convenience store. Doc. #26, Carrera Decl. at ¶ 3. DIP seeks final court authorization to use cash collateral to pay income and costs incurred by DIP in the normal course of its business from

July 28, 2023 through confirmation of a chapter 11 plan. Doc. #23. However, the budgets attached to the motion only cover the petition date through October 31, 2023, so the court will only authorize final approval of use of cash collateral through October 31, 2023 because parties in interest have not had notice of a cash collateral budget beyond October 31, 2023. Ex. C, Doc. #28. As adequate protection for DIP's use of cash collateral, DIP will pay Newtek \$1,454.00 in adequate protection payments each month and Mr. Carrera will pay Newtek another \$7,586.00 in adequate protection payments each month, for a total adequate protection payment of \$9,040.00 per month. Doc. #26, Carrera Decl. at ¶ 8. In addition, Debtor will grant Newtek a replacement lien in Debtor's post-petition money on deposit as well as Debtor's post-petition inventory. Id. at ¶ 9.

The court finds DIP has met its burden of showing that Newtek is adequately protected for DIP's use of its cash collateral by the monthly adequate protection payments and the replacement liens in Debtor's post-petition money on deposit as well as Debtor's post-petition inventory. Moreover, DIP needs to use Newtek's cash collateral to continue its post-petition operations. Doc. #26, Carrera Decl. at ¶ 6.

Accordingly, pending any opposition at the hearing, the motion will be GRANTED on a final basis through October 31, 2023, consistent with the budget attached as Exhibit C to Doc. #28.

5. [23-11623](#)-A-11     **IN RE: MATEO ENTERPRISE, INC. DBA EL MILAGRO MARKET LKW-3**

MOTION TO VALUE COLLATERAL  
8-2-2023    [[30](#)]

MATEO ENTERPRISE, INC. DBA EL MILAGRO MARKET/MV  
LEONARD WELSH/ATTY. FOR DBT.  
CONT'D TO 9/27/23 PER ECF ORDER #53

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

DISPOSITION:     Continued to September 27, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

On August 16, 2023, the court issued an order continuing the motion to value collateral to September 27, 2023 at 9:30 a.m. Doc. #53.

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
8-2-2023    [\[36\]](#)

MATEO ENTERPRISE, INC. DBA EL MILAGRO MARKET/MV  
LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

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

Mateo Enterprise, Inc. dba El Milagro Market ("DIP"), the debtor and debtor in possession in this chapter 11 subchapter V case, moves the court for authorization to assume a nonresidential commercial lease located at 575 Panama Lane, Bakersfield, California 93307 with lessor Salvador Carrera (the "Assumed Lease"). Doc. #36; Ex. A, Doc. #39. The lessor is DIP's President, and the Assumed Lease was entered into shortly before the bankruptcy petition was filed. Decl. of Salvador Carrera, Doc. #38. The base lease payment is \$7,586.00 per month for ten years. Carrera Decl., Doc. #38; Ex. A, Doc. #39. The Assumed Lease commenced on August 1, 2023 and will extend through July 24, 2033. Ex. A, Doc. #39.

Section 365(a) of the Bankruptcy Code states that "subject to the court's approval, [the debtor in possession] may assume [any] unexpired lease of the debtor. In evaluating a decision under § 365(a) to assume an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." Agarwal v. Pomona Valley Med. Grp., Inc. (In re Pomona Valley Med. Grp., Inc.), 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted). The bankruptcy court should approve the assumption under § 365(a) unless the debtor in possession's conclusion is based on bad faith, whim, or caprice. Id.

Here, DIP states that assumption of the Assumed Lease is essential to DIP's successful reorganization. Carrera Decl., Doc. #38. DIP will be able to focus on reorganizing and use real property leased from Lessor for the operation of its convenience store business. Id. DIP believes that the rent required by the

Assumed Lease is reasonable and comparable to lease prices of commercial buildings on real property of comparable size, location and utility. Id. DIP has been performing according to the terms of the Assumed Lease. Id. The Assumed Lease requires DIP to pay the costs of making improvements and alterations to the leased premises (the "Build-Out") for use in DIP's business. Id. However, Mr. Carrera has paid the costs to complete the Build-Out except for the labor needed to complete the Build-Out, which will be paid for by DIP. Id. DIP believes the cost for the labor to complete the Build-Out will not be large and can be paid by DIP in the ordinary course of its business. Id. DIP believes assumption of the Assumed Lease is in the best interests of the estate and will enable a feasible plan of reorganization to repay creditors. Id. The court finds that DIP's decision to assume the Assumed Lease is based on its sound business judgment.

Accordingly, DIP is authorized to assume the Assumed Lease, as defined here, in conformance with DIP's motion. Doc. #36.

7. [23-10571](#)-A-11     **IN RE: NABIEKIM ENTERPRISES, INC.**

CONFIRMATION HEARING RE: CHAPTER 11 SMALL BUSINESS SUBCHAPTER V PLAN  
6-22-2023    [[67](#)]

PETER FEAR/ATTY. FOR DBT.

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

DISPOSITION:     Continued to September 27, 2023 at 9:30 a.m.

NO ORDER REQUIRED.

On August 17, 2023, the court issued an order continuing the confirmation hearing to September 27, 2023 at 9:30 a.m. Doc. #96.

8. [23-10571](#)-A-11     **IN RE: NABIEKIM ENTERPRISES, INC.**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION  
3-24-2023    [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

1. [23-10004](#)-A-7     **IN RE: SADIE OSBURN**

MOTION TO RECONSIDER EXTENDING DEADLINE TO TURNOVER OF PROPERTY  
7-27-2023    [[67](#)]

SADIE OSBURN/MV  
RESPONSIVE PLEADING

NO RULING.

2. [23-10004](#)-A-7     **IN RE: SADIE OSBURN**

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13  
7-25-2023    [[62](#)]

SADIE OSBURN/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.

3. [23-10004](#)-A-7     **IN RE: SADIE OSBURN**  
[PFT-1](#)

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
7-11-2023    [[51](#)]

RESPONSIVE PLEADING

NO RULING.



MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF  
THE DEBTOR AND/OR MOTION TO EXTEND TIME TO FILE A MOTION TO DISMISS  
CASE UNDER SEC. 707(B)  
8-7-2023    [\[75\]](#)

TRACY DAVIS/MV  
JORGE GAITAN/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.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. While not required, the debtor filed a written response to the motion on August 21, 2023 stating that the debtor does not oppose the motion. Doc. #81. The court intends to grant the motion and will not consider in connection with ruling on this motion the debtor's request for the court to extend the time to turn over property to the hearing on October 31, 2023, as requested in the debtor's written response. At the hearing, the court will consider additional 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.

Tracy Hope Davis ("UST"), the United States Trustee in the chapter 7 bankruptcy case of Sadie Bell Osburn ("Debtor"), moves the court for an order extending the time for filing a complaint objecting to Debtor's discharge under 11 U.S.C. § 727 and/or a motion to dismiss under § 707(b) to October 31, 2023. Doc. #75.

Federal Rule of Bankruptcy Procedure ("FRBP") 4004(b)(1) provides that, "[o]n motion of any party in interest, after notice and a hearing, the court may for cause extend the time to object to discharge." Similarly, FRBP 1017(e)(1) allows the court, "for cause" to extend the time for filing a motion to dismiss under 11 U.S.C. § 707(b). UST's first motion to extend the § 727 and § 707(b)(1) and (b)(3) deadlines to August 7, 2023 was filed on April 7, 2023, the sixtieth day after the first date set for the meeting of creditors and was granted on May 23, 2023. Mot., Doc. #28; Order, Doc. #34. This motion was filed on August 7, 2023, after Debtor failed to appear at two continued 341 meeting of creditors. Doc. #75.

After review of the included evidence, the court finds that "cause" exists to extend the filing deadlines because Debtor's 341 meeting of creditors was continued to June 2023. Mot., Doc. #75. A review of the court's docket indicates that Debtor failed to appear at the continued 341 meeting of creditors held on June 5, 2023 causing the chapter 7 trustee to continue the 341 meeting of creditors to July 10, 2023. See Docket Entry 6/6/2023. On July 10, 2023, Debtor again failed to appear at the 341 meeting of creditors. Doc. #51. UST needs additional time to investigate the extent of the nondisclosures on Debtor's schedules, the income of Debtor's non-filing spouse,

the veracity of Debtor's assets, and whether Debtor acted intentionally in omitting material information. Mot., Doc. #75.

Accordingly, this motion is GRANTED. The time for UST to file a complaint objecting to Debtor's discharge is extended to October 31, 2023, and the time for UST to file a motion to dismiss or convert Debtor's case for abuse under § 707(b) is extended to October 31, 2023.

5. 23-11106-A-7      **IN RE: SONIA OLIVERA**  
JES-1

MOTION TO EMPLOY BAIRD AUCTIONS & APPRISALS AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES  
7-21-2023    [16]

JAMES SALVEN/MV  
IRMA EDMONDS/ATTY. FOR DBT.

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

DISPOSITION:      Granted.

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

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

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Sonia Silva Olivera ("Debtor"), moves the court for an order authorizing: (1) the employment of Baird Auction & Appraisals ("Auctioneer"); (2) the sale of a 2014 Toyota Yaris (the "Property") at public auction on or after September 5, 2023<sup>1</sup>, at Auctioneer's location at 1328 N. Sierra Vista, Suite B, Fresno, California; and (3) the estate to pay Auctioneer commission and expenses. Tr.'s Mot., Doc. #16.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and

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<sup>1</sup> Trustee filed an amended notice of hearing on August 8, 2023 providing notice that Trustee seeks authority to sell the Property at public auction on or after September 5, 2023, not September 12, 2023, as stated in the motion. Am. Notice, Doc. #21.

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, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 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. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Decl. of James E. Salven, Doc. #19. Trustee's experience indicates that a sale of the Property at public auction will yield the highest net recovery to the estate. Salven Decl., Doc. #19. The proposed sale is made in good faith.

Section 327(a) of the Bankruptcy Code provides, in relevant part, "the trustee, with the court's approval, may employ . . . auctioneers . . . that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a). The trustee may, with the court's approval, employ an auctioneer 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. 11 U.S.C. § 328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

The court finds that Auctioneer is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Decl. of Jeffrey Baird, Doc. #18. Trustee requires Auctioneer's services to advertise the sale of the Property, assist in storing the Property until sold, and assist in other matters related to the auction sale of the Property. Salven Decl., Doc. #19. Trustee has agreed to pay Auctioneer a commission of 15% of the gross sale price and estimated expenses of \$500.00 for storage fees and preparation for sale. Id. Auctioneer will also receive a 10% buyer's premium. Id. Trustee unambiguously requests pre-approval of payment to Auctioneer pursuant to § 328. Doc. #16; Salven Decl., Doc. #19.

Accordingly, this motion is GRANTED. Trustee's business judgment is reasonable and the proposed sale of the Property at public auction is in the best interests of creditors and the estate. The arrangement between Trustee and Auctioneer is reasonable in this instance. Trustee is authorized to sell the Property on the terms set forth in the motion. Trustee is authorized to employ and pay Auctioneer for services as set forth in the motion. Trustee shall submit a form of order that specifically states that employment of Auctioneer has been approved pursuant to 11 U.S.C. § 328.

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-20-2023    [\[19\]](#)

FIRST TECHNOLOGY FEDERAL CREDIT UNION/MV  
WENDY LOCKE/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

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

The movant, First Technology Federal Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2021 Nissan Altima (the "Vehicle"). Doc. #19.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor failed to make at least three complete pre- and post-petition payments. Decl. of Jamie Kekaulua, Doc. #24. Movant has produced evidence that the debtor is delinquent by at least \$2,033.60. Kekaulua Decl., Doc. #24.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtor is in chapter 7. Further, the Vehicle is valued at \$32,175.00 and the debtor owes \$38,795.37. Kekaulua Decl., Doc. #24.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law

and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

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

7. [18-14920](#)-A-7      **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA GENERAL PARTNERSHIP**  
[SJS-7](#)

MOTION TO APPROVE SETTLEMENT AGREEMENT WITH FRED AND AUDREY SCHAKEL AS TRUSTEES OF THE SCHAKEL FAMILY TRUST, MANUEL RODRIGUES, PATRICIA RODRIGUES, RYAN SCHAKEL, KRISTIN SCHAKEL, FRED SCHAKEL, AUDREY SCHAKEL, SOUTH LAKES DAIRY, L.P., SLD GP, LLC, AND SCHAKEL FAMILY PARTNERSHIP, L.P.  
7-19-2023    [\[457\]](#)

DAVID SOUSA/MV  
JACOB EATON/ATTY. FOR DBT.  
SHANON SLACK/ATTY. FOR MV.

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

DISPOSITION:      Granted.

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

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

As an informative matter, the certificate of service filed in connection with this motion (Doc. #461) was filed as a fillable version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/2022) instead of being printed prior to filing with the court. The version that was filed with the court can be altered because it is still the fillable version. In the future, the declarant should print the completed certificate of service form prior to filing and not file the fillable version.

As a further informative matter, the movant incorrectly completed Section 7 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service would be effectuated on other parties in interest checked in Section 5. Doc. #461. However, the declarant failed to check the appropriate boxes in Section 7. Doc. #461. In Section 7, the declarant should have checked the appropriate box under "Section 7A, § 6B(2)(c): Other Parties in Interest § 5."

As a further informative matter, the movant did not attach a copy of the Clerk of the Court's Matrix of Creditors who have filed a Request for Special Notice applicable to this case with the court's mandatory Certificate of Service form (Doc. #461) filed in connection with the motion. Instead of using a copy of the Request for Special Notice List as required when service is made on parties who request special notice by U.S. Mail under Rule 5 and Rules 7005, 9036 Service, the movant attached another generated list of names and addresses served in attachment 6B4. In the future, the movant should attach a copy of the Clerk of the Court's Matrix of Creditors who have filed a Request for Special Notice applicable to this case instead of another generated list of names and addresses served.

David M. Sousa ("Trustee"), the Chapter 7 trustee of the bankruptcy estate of South Lakes Dairy Farm ("Debtor"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of all claims and disputes with Fred and Audrey Schakel as Trustees of the Schakel Family Trust Dated November 5, 1996, Manuel Rodrigues, Patricia Rodrigues, Ryan Schakel, Kristin Schakel, Fred Schakel, Audrey Schakel, South Lakes Dairy, L.P., SLD GP, LLC, and Schakel Family Partnership, L.P. (collectively "Defendants"). Doc. #457.

Among the assets of the estate are claims against Defendants for: (1) breach of fiduciary duty; (2) gross negligence; (3) conversion; (4) unjust enrichment; (5) avoidance and recovery of fraudulent transfers pursuant to 11 U.S.C. §§ 548(a)(1)(A) and (B); (6) determination of liability of general partners under 11 U.S.C. § 723; (7) declaratory relief; and (8) disallowance of proofs of Claim Nos. 33 and 34 filed by Schakel Family Partnership, L.P. (collectively, the "Claims"). Doc. #459, Decl. of Tr. at ¶ 6; Ex. 1, Doc. #460. In June 2020, Trustee filed an adversary proceeding in this Bankruptcy Case asserting the Claims against Defendants. Adv. Proc. No. 20-01034, Doc. #1. Trustee and Defendants have agreed to settle the estate's Claims against Defendants with a payment of \$910,000.00 to Trustee for deposit into the estate. Doc. #459, Tr.'s Decl. at ¶ 3; Ex. 1, Doc. #460. Further, Defendants have agreed to withdraw Claim No. 33 (amount claimed \$1,000,000) and Claim No. 34 (amount claimed \$189,000.00) filed in Debtor's bankruptcy case. Doc. #459, Tr.'s Decl. at ¶ 3.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (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. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #457. Although Trustee is confident in his legal and factual positions, litigation is inherently uncertain. Doc. #459, Tr.'s Decl. at ¶ 4. The probability of success in litigation and the complexity of litigation would require Trustee to engage in costly litigation, and the administrative expenses required to prevail would be significant. Id. These expenses would reduce amounts available to creditors, regardless of the outcome. Id. Trustee foresees no difficulties in collection. Id. at ¶ 5. The evidence and facts to be reviewed in preparation for trial on the Claims and to be presented at trial on the Claims are complex and would require extensive and

very costly further litigation. Id. at ¶ 6. The settlement agreement maximizes the recovery for unsecured creditors of the estate and avoids the risks of high administrative expenses and costly delays. Id. at ¶ 7. The two non-insider creditors holding more than one-third of the unsecured claims against Debtor have indicated their support of the settlement. Id. Trustee believes in his business judgment that the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Id. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a 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). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion is GRANTED, and the settlement between Trustee and Defendants is approved.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

8. [23-11125](#)-A-7     **IN RE: PORSCHA MYLES-COOK AND TYSON COOK**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
8-14-2023    [\[45\]](#)

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

DISPOSITION:     The order to show cause will be vacated.

ORDER:             The court will issue an order.

The record shows that the filing fees now due have been paid.

9. [23-11131](#)-A-7     **IN RE: JONATHAN/ALYSSA GUTIERREZ**  
[CAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-20-2023    [\[22\]](#)

FINANCIAL SERVICES VEHICLE TRUST/MV  
D. GARDNER/ATTY. FOR DBT.  
CHERYL SKIGIN/ATTY. FOR MV.

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

DISPOSITION:     Granted.

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

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

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

The movant, Financial Services Vehicle Trust ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2021 BMW X3 sDrive30i Sport Utility 4D ("Vehicle"). Doc. #22.

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

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least five complete pre- and post-petition payments. Decl. of Christopher Dick, Doc. #24. Movant has produced evidence that the debtors are delinquent by at least \$2,756.34. Id.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. Further, the debtors' possession of the Vehicle stems from a lease agreement with Movant that matures on November 19, 2023, according to which the debtors do not own the Vehicle. Ex. A, Doc. #25.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. Movant obtained possession of the Vehicle pre-petition on May 17, 2023.

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



MOTION TO EMPLOY BAIRD AUCTIONS & APPRAISALS AS AUCTIONEER, AUTHORIZING SALE  
OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES  
AND EXPENSES  
7-14-2023    [\[14\]](#)

JAMES SALVEN/MV

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

DISPOSITION:      Granted.

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

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

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Erica Melchor ("Debtor"), moves the court for an order authorizing: (1) the employment of Baird Auction & Appraisals ("Auctioneer"); (2) the sale of a 2016 GMC Yukon (the "Property") at public auction on or after September 5, 2023<sup>2</sup>, at Auctioneer's location at 1328 N. Sierra Vista, Suite B, Fresno, California; and (3) the estate to pay Auctioneer commission and expenses. Tr.'s Mot., Doc. #14.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 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, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)).

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<sup>2</sup> Trustee filed an amended notice of hearing on August 8, 2023 providing notice that Trustee seeks authority to sell the Property at public auction on or after September 5, 2023, not September 12, 2023, as stated in the motion. Am. Notice, Doc. #19.

"[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Decl. of James E. Salven, Doc. #17. Trustee's experience indicates that a sale of the Property at public auction will yield the highest net recovery to the estate. Salven Decl., Doc. #17. The proposed sale is made in good faith.

Section 327(a) of the Bankruptcy Code provides, in relevant part, "the trustee, with the court's approval, may employ . . . auctioneers . . . that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a). The trustee may, with the court's approval, employ an auctioneer 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. 11 U.S.C. § 328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

The court finds that Auctioneer is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Decl. of Jeffrey Baird, Doc. #16. Trustee requires Auctioneer's services to advertise the sale of the Property, assist in storing the Property until sold, and assist in other matters related to the auction sale of the Property. Salven Decl., Doc. #17. Trustee has agreed to pay Auctioneer a commission of 15% of the gross sale price and estimated expenses of \$500.00 for storage fees and preparation for sale. Id. Auctioneer will also receive a 10% buyer's premium. Id. Trustee unambiguously requests pre-approval of payment to Auctioneer pursuant to § 328. Doc. #14; Salven Decl., Doc. #17.

Accordingly, this motion is GRANTED. Trustee's business judgment is reasonable and the proposed sale of the Property at public auction is in the best interests of creditors and the estate. The arrangement between Trustee and Auctioneer is reasonable in this instance. Trustee is authorized to sell the Property on the terms set forth in the motion. Trustee is authorized to employ and pay Auctioneer for services as set forth in the motion. Trustee shall submit a form of order that specifically states that employment of Auctioneer has been approved pursuant to 11 U.S.C. § 328.

11. [23-11569](#)-A-7     **IN RE: KEITH RITTER**  
[BDB-1](#)

MOTION TO COMPEL ABANDONMENT  
8-15-2023    [\[14\]](#)

KEITH RITTER/MV  
BENNY BARCO/ATTY. FOR DBT.

NO RULING.

12. [23-11783](#)-A-7     **IN RE: BLANCA MARTINEZ**  
[FW-1](#)

MOTION TO EXTEND AUTOMATIC STAY  
8-16-2023    [\[6\]](#)

BLANCA MARTINEZ/MV  
GABRIEL WADDELL/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 court will issue an order.

This motion was filed and served on at least 14 days' notice prior to the hearing date 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.

Blanca Aurora Martinez ("Debtor"), the debtor in this chapter 7 case, moves the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B), and continuing the automatic stay provided under 11 U.S.C. § 362(a) as to all creditors and parties during the pendency of this chapter 7 bankruptcy proceeding. Doc. #6.

Debtor commenced this bankruptcy case on August 15, 2023. Doc. #1. Debtor had a chapter 13 case, see Case No. 19-13053, pending within the preceding one-year period that was dismissed (the "Prior Case"). The Prior Case was filed on July 18, 2019 and dismissed on February 24, 2023 for Debtor's default with respect to a term of the confirmed plan. See Case No. 19-13053; Order, Doc. #78. Under 11 U.S.C. § 362(c)(3)(A), if a debtor had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the current case. Debtor filed this case on August 16, 2023. The automatic stay will terminate in the present case on September 15, 2023.

Section 362(c)(3)(B) allows the court to extend the stay "to any or all creditors (subject to such conditions or limitations as the court may then

impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed[.]” 11 U.S.C. § 362(c) (3) (B) .

Section 362(c) (3) (C) (i) creates a presumption that the case was filed not in good faith if the debtor: (1) filed more than one prior case in the preceding year; (2) failed to file or amend the petition or other documents without substantial excuse, provide adequate protection as ordered by the court, or perform the terms of a confirmed plan; or (3) has not had a substantial change in his or her financial or personal affairs since the dismissal, or there is no other reason to believe that the current case will result in a discharge or fully performed plan. 11 U.S.C. § 362(c) (3) (C) (i) .

In this case, the presumption that this bankruptcy case was filed not in good faith arises under 11 U.S.C. § 362(c) (3) (C) (i) (II) (cc) because Debtor failed to perform the terms of a confirmed plan in the Prior Case. A review of the court’s docket in the Prior Case discloses that a second modified chapter 13 plan was confirmed on March 4, 2021, the chapter 13 trustee filed a Notice of Default and Intent to Dismiss Case on June 10, 2023, and the court dismissed the Prior Case based on Debtor’s failure to cure default. Order, Doc. #78. It also is possible that the presumption that this bankruptcy case was filed not in good faith arises in this case under § 362(c) (3) (C) (i) (III) were the court to find no substantial change in the financial or personal affairs of Debtor.

The presumption that this bankruptcy case was filed not in good faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c) (3) (C) . Under the clear and convincing standard, the evidence presented by the movant must “place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are ‘highly probable.’ Factual contentions are highly probable if the evidence offered in support of them instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition.” Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288 n.11 (B.A.P. 9th Cir. 2016) (citations omitted), vacated and remanded on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019).

In support of this motion to extend the automatic stay, Debtor declares that she filed her Prior Case at a time when she had significant income through her employment and was able to make her chapter 13 plan payments for multiple years. Decl. of Blanca Aurora Martinez, Doc. #8. In August 2022, Debtor lost her job and the income associated with it and was only receiving unemployment income until March 2023. Martinez Decl., Doc. #8. As a result of the loss of income, Debtor was unable to continue making her chapter 13 plan payments or propose an affordable modified plan. Id. Debtor’s Prior Case was dismissed after the chapter 13 trustee filed a Notice of Default. Id. Since losing her job, Debtor has been looking for work. Id. On August 14, 2023, Debtor was offered part-time employment where she will make \$16.00 per hour for 30 hours per week. Id. Due to the reduction in income, Debtor is unable to pay her debts as they come due and filed for chapter 7 to obtain a bankruptcy discharge. Id. Debtor filed a chapter 7 bankruptcy petition on August 16, 2023. Doc. #1.

The court is inclined to GRANT Debtor’s motion. The issue presented by Debtor’s motion is whether Debtor has rebutted by clear and convincing evidence the presumption that this bankruptcy case was filed not in good faith. That presumption arises either from the dismissal of Debtors’ Prior Case for failure to perform the terms of a confirmed chapter 13 plan, see 11 U.S.C. § 362(c) (3) (C) (i) (II) (cc), or from the court finding no substantial change in Debtors’ financial or personal affairs, see 11 U.S.C. § 362(c) (3) (C) (i) (III) .

The court is inclined to find that Debtor has overcome by clear and convincing evidence the presumption that this bankruptcy case was filed not in good faith. In the Prior Case, Debtor's chapter 13 case was dismissed for Debtor's failure to make plan payments and cure default. Debtor lost her job during the Prior Case and was unable to continue making plan payments. Here, Debtor testifies that her personal and financial affairs have changed since the Prior Case was dismissed since she makes significantly less with her part-time employment and filed for bankruptcy to seek a chapter 7 discharge.

Accordingly, the court is inclined to GRANT the motion and extend the automatic stay, for all purposes as to those parties that received notice of Debtor's motion, subject to the provisions of 11 U.S.C. § 362(c). If opposition is presented at the hearing, the court will consider the opposition and whether a further hearing is necessary.

13. [23-10888](#)-A-7     **IN RE: JUAN/LUZ MEDINA**  
[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  
8-1-2023    [\[17\]](#)

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

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

DISPOSITION:     Granted.

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

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

Peter L. Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Juan Medina, Jr. and Luz Angelica Medina (together, "Debtors"), moves the court for an order authorizing: (1) the employment of Gould Auction and Appraisal Company ("Auctioneer"); (2) the sale of a (i) 2006 Chevy Avalanche and (ii) 2003 Acura TL (together, the "Property") at public auction on or after September 23, 2023, at 9:00 a.m. at Auctioneer's location at 3062 Imperial Street, Shafter, California 93263; and (3) the estate to pay Auctioneer commission and expenses. Tr.'s Mot., Doc. #17.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 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, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 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. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Decl. of Peter L. Fear, Doc. #20. Trustee's experience indicates that a sale of the Property at public auction will yield the highest net recovery to the estate. Fear Decl., Doc. #20. The proposed sale is made in good faith.

Section 327(a) of the Bankruptcy Code provides, in relevant part, "the trustee, with the court's approval, may employ . . . auctioneers . . . that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." 11 U.S.C. § 327(a). The trustee may, with the court's approval, employ an auctioneer 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. 11 U.S.C. § 328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

The court finds that Auctioneer is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Decl. of Jerry Gould, Doc. #19. Trustee requires Auctioneer's services to advertise the sale of the Property, assist in storing the Property until sold, and assist in other matters related to the auction sale of the Property. Fear Decl., Doc. #20. Trustee has agreed to pay Auctioneer a commission of 15% of the gross sale price, estimated expenses of \$500.00, and a \$200.00 pickup fee per vehicle. Id. Auctioneer will also receive a 10% buyer's premium, which is on top of the bid price of the sale of personal property, paid directly from seller to Auctioneer. Id. If the buyer uses the online service Proxibid, Proxibid will receive an additional 3% commission. Id. Trustee unambiguously requests pre-approval of payment to Auctioneer pursuant to 11 U.S.C. § 328. Doc. #17; Fear Decl., Doc. #20.

Accordingly, this motion is GRANTED. Trustee's business judgment is reasonable and the proposed sale of the Property at public auction is in the best interests of creditors and the estate. The arrangement between Trustee and Auctioneer is reasonable in this instance. Trustee is authorized to sell the Property on the terms set forth in the motion. Trustee is authorized to employ and pay Auctioneer for services as set forth in the motion. Trustee shall submit a form of order that specifically states that employment of Auctioneer has been approved pursuant to 11 U.S.C. § 328.

MOTION TO COMPEL ABANDONMENT  
8-10-2023    [\[18\]](#)

ALFONSO ZAMORA/MV  
PETER BUNTING/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.

This motion was filed and served on at least 14 days' notice prior to the hearing date 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.

As an informative matter, the movant incorrectly completed Section 7 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service would be effectuated on other parties in interest checked in Section 5. Doc. #22. However, the declarant failed to check the appropriate boxes in Section 7. Doc. #22. In Section 7, the declarant should have checked the appropriate box under "Section 7A, § 6B(2)(c): Other Parties in Interest § 5."

Alfonso Enrique Zamora, Jr. ("Debtor"), the chapter 7 debtor in this case, is a disc jockey. Stmt. Of Fin. Affairs, Doc. #1. Debtor moves the court to order the trustee to abandon property of the estate related to Debtor's disc jockey business, including disc jockey sound equipment known as two 15" QSC, two 18" EV, two 12" EV, Shure item(s), lights, a music mixing board, stage lights, a 2023 interstate victory trailer, and the fictitious business name "DJ Throwback" (collectively, the "Property"). Mot., Doc. #18. Debtor asserts that he has no non-exempt equity in the Property and the Property therefore has no value to the bankruptcy estate. Id.

11 U.S.C. § 554(b) permits the court, on request of a party in interest and after notice and a hearing, to order the trustee to abandon property that is burdensome to the estate or of inconsequential value and benefit to the estate. Vu v. Kendall (In re Vu), 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). To grant a motion to abandon property, the bankruptcy court must find either that the property is (1) burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. Id. (citing In re K.C. Machine & Tool Co., 816 F.2d 238, 245 (6th Cir. 1987)). However, "an order compelling abandonment [under § 554(b)] 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." Id. (quoting K.C. Machine & Tool Co., 816 F.2d at 246).

Here, Debtor does not allege that the Property is burdensome to the estate. Mot., Doc. #18. Therefore, Debtor must establish that the Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Debtor's Property is valued at \$12,500.00, but Debtor believes the value of his business assets have decreased since the filing of his case. Schedule D, Doc. #1; Decl. of Alfonso Enrique Zamora, Jr., Doc. #20. There are encumbrances against Debtor's trailer, mixing board, stage lights, and speakers totaling \$9,512.34. Id. Under California Civil Procedure Code ("C.C.P.") § 704.060, Debtor claimed a combined tool of trade exemption of \$8,284.41<sup>3</sup> in the Property. Schedule C, Doc. #1. Debtor asserts that the Property has no value and benefit to the bankruptcy estate because Debtor has no employees and there is no good will value. Zamora Jr. Decl., Doc. #20. The court finds that Debtor has met his burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate.

Accordingly, pending opposition at the hearing, this motion will be GRANTED. The order shall specifically identify the property abandoned.

15. [23-11199](#)-A-7      **IN RE: HELEODORO CADENAS SANDOVAL**  
[PFT-1](#)

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
7-11-2023    [\[12\]](#)

VINCENT QUIGG/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:      Conditionally denied.

ORDER:              The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtor shall attend the meeting of creditors rescheduled for September 11, 2023 at 3:00 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Federal Rules of Bankruptcy Procedure 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.

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<sup>3</sup> In the motion and his declaration, Debtor states that he claimed a combined tool of trade exemption of \$9,525.00 pursuant to C.C.P. § 704.060 in the Property. Mot., Doc. #18; Zamora Jr. Decl., Doc. #20. However, based on Debtor's filed Schedule C, Debtor claimed a combined tool of trade exemption of \$8,284.41 pursuant to C.C.P. § 704.060 in the Property. Schedule C, Doc. #1. Therefore, the court will use the combined tool of trade exemption of \$8,284.41 from Debtor's Schedule C.



MOTION TO COMPEL ABANDONMENT  
8-15-2023    [\[17\]](#)

MARIA LARIOS/MV  
FLOR DE MARIA TATAJE/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.

This motion was filed and served on at least 14 days' notice prior to the hearing date 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.

As an informative matter, the movant incorrectly completed Section 6 of the court's mandatory Certificate of Service form. In Section 6, the declarant marked that service was effectuated by Rule 5 and Rules 7005, 9036 Service and checked boxes 6B1 and 6B2(a). Doc. #20. However, the declarant failed to attach attachment 6B1 showing that electronic service was effectuated on registered users of the court's electronic filing system. Because all creditors and parties in interest were served with the motion and related pleadings by mail, the court deems service of the motion to be proper notwithstanding the failure of the declarant to attach attachment 6B1 to the mandatory Certificate of Service form.

Maria T. Larios ("Debtor"), the chapter 7 debtor in this case, moves the court to order the trustee to abandon property of the estate that comprise the business assets of a sole proprietorship in Los Banos, California that Debtor operates as a licensed childcare provider for the Merced Office of Education (the "Property"). Mot., Doc. #17. Debtor asserts that the Property has no value and benefit to the bankruptcy estate because the Property has no monetary value, substantially all of the income from Debtor's business is the result of Debtor's labor and Debtor has no employees. Id.

11 U.S.C. § 554(b) permits the court, on request of a party in interest and after notice and a hearing, to order the trustee to abandon property that is burdensome to the estate or of inconsequential value and benefit to the estate. Vu v. Kendall (In re Vu), 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). To grant a motion to abandon property, the bankruptcy court must find either that the property is (1) burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. Id. (citing In re K.C. Machine & Tool Co., 816 F.2d 238, 245 (6th Cir. 1987)). However, "an order compelling abandonment [under § 554(b)] 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." Id. (quoting K.C. Machine & Tool Co., 816 F.2d at 246).

Here, Debtor does not allege that the Property is burdensome to the estate. Mot., Doc. #17. Therefore, Debtor must establish that the Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Debtor's Property is valued at \$0.00 and is not encumbered by any liens. Schedule D, Doc. #1; Decl. of Maria T. Larios, Doc. #19. Debtor has not claimed any exemptions in the Property. Schedule C, Doc. #1; Larios Decl., Doc. #19. The court finds that Debtor has met her burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate.

Accordingly, pending opposition at the hearing, this motion will be GRANTED. The order shall specifically identify the property abandoned.