



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Hearing Date: Tuesday, August 30, 2022  
Department B – Courtroom #13  
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.

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

9:30 AM

1. [19-10423](#)-B-12     **IN RE: KULWINDER SINGH AND BINDER KAUR**  
[MHM-2](#)

MOTION TO DISMISS CASE  
7-12-2022    [[297](#)]

MICHAEL MEYER/MV  
DAVID JOHNSTON/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Withdrawn.

NO ORDER REQUIRED.

Chapter 12 trustee Michael H. Meyer withdrew this motion on August 25, 2022 because the debtors are now current. Doc. #304. Accordingly, this matter will be taken off calendar pursuant to the withdrawal.

2. [16-13345](#)-B-11     **IN RE: JONATHAN/PATRICIA MAYER**  
[RBK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-1-2022    [[333](#)]

SHERI CABALLERO/MV  
PETER FEAR/ATTY. FOR DBT.  
RYAN KALASHIAN/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.

Sheri Caballero ("Movant") requests an order granting relief from the automatic stay for cause pursuant to 11 U.S.C. § 362(d)(1) to allow her to continue litigating to a final judgment a medical malpractice action in Madera County Superior Court, Action No. MCV086128 ("State Court Action"). Doc. #333. Movant also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3). *Id.*

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

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

Movant commenced the State Court Action against Madera Community Hospital and joint debtor Jonathan Mayer, M.D. ("Debtor"), on or about October 13, 2021. Docs. #335; #338, *Ex. A*. The case arises out of the alleged medical negligence of defendants during a hysterectomy performed on July 21, 2020. During this procedure, it is alleged that the defendants negligently injured Movant, which has resulted in significant and permanent injury. *Id.* After serving the complaint, Madera Community Hospital served and filed an Answer on February 14, 2022. *Id.*, *Ex. B*. Thereafter, Debtor filed and served a Notice of Stay pertaining to the instant bankruptcy. *Id.*, *Ex. C*. Movant now seeks relief from the automatic stay to proceed with the pending State Court Action.

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).

Movant seeks relief from the stay for cause based on abstention under 28 U.S.C. § 1334(c)(1). "Where a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues, cause may exist for lifting the stay as to the state court trial." *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990).

The Ninth Circuit in *Tucson Estates* set forth the following factors to consider when deciding whether to abstain from exercising jurisdiction:

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,
- (2) the extent to which state law issues predominate over bankruptcy issues,
- (3) the difficulty or unsettled nature of the applicable law,

(4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of the bankruptcy court's docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

*Id.*, at 1167 quoting *In re Republic Reader's Serv., Inc.*, 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987). The *Tucson Estates* factors support permissive abstention and stay relief as follows:

1. Effect on administration of the estate if the court abstains:

Modifying the stay to permit the state court to complete the malpractice action will permit final resolution of Movant's claim. Movant only seeks to enforce any such judgment against insurance proceeds that are available as to the Debtor and not enforcement against Debtor directly, so administration of the estate will not be hindered. This factor weighs in favor of abstention.

2. Extent to which state law issues predominate: All claims in the State Court Action are based upon state law and there are no bankruptcy issues. This factor weighs in favor of abstention.

3. Difficulty or unsettled nature of the applicable law: Though not unsettled, the State Court Action will likely be highly fact-intensive, require significant discovery, and likely a trial. This factor weighs in favor of abstention.

4. Presence of a related proceeding commenced in state court: The State Court Action is pending in Madera County Superior Court and could proceed if the automatic stay is modified. This factor weighs in favor of abstention.

5. Jurisdictional basis other than 28 U.S.C. § 1334: 28 U.S.C. § 1334 appears to be the only basis for jurisdiction here. This factor weighs in favor of abstention.

6. Degree of relatedness or remoteness to the bankruptcy case: The State Court Action is not related to any bankruptcy issues and is a personal injury claim. This factor weighs in favor of abstention.

7. Substance rather than form of the asserted "core" proceeding: Though administration of the estate and claim litigation are core proceedings, allowing the State Court Action to proceed in state court

would facilitate the resolution of Movant's claim. The substance of the State Court Action does not directly affect any core bankruptcy matters. This factor weighs in favor of abstention.

8. Feasibility of severing state law claims from core bankruptcy matters: There are no core bankruptcy issues in the State Court Action that could be severed. This factor weighs in favor of abstention.

9. Burden on the bankruptcy court's docket: Modifying the stay to permit Movant to proceed in state court would eliminate the need for this court to adjudicate any ongoing dispute between Movant and Debtor. This factor weighs in favor of abstention.

10. Likelihood of forum shopping: Movant's injury arose multiple years after this bankruptcy was filed, so there is no likelihood of any forum shopping. This factor weighs in favor of abstention.

11. Existence of a right to a jury trial: The right to a jury trial is implicated and may be necessary. This factor weighs in favor of abstention.

12. Presence of non-debtor parties in related proceedings: Madera Community Hospital and Movant are both non-debtor parties to the State Court Action. This factor weighs in favor of abstention.

The *Tucson Estates* factors weigh in favor of this court abstaining from exercising jurisdiction over the State Court Action. The court finds that cause exists to abstain from exercising jurisdiction, to modify the automatic stay to permit Movant to take necessary actions to proceed with the State Court Action to final judgment, and to allow Movant to seek recovery from the proceeds of Debtor's insurance carrier only.

When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court must consider the "Curtis factors" in making its decision. *Kronemyer v. Am. Contractors Indem. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). The relevant factors in this case include:

1. Whether the relief will result in a partial or complete resolution of the issues;
2. The lack of any connection with or interference with the bankruptcy case;
3. Whether the foreign proceeding involves the debtor as a fiduciary;
4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;

6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee, and other interested parties;
8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
12. The impact of the stay on the parties and the "balance of hurt."

*Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004), citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984); see also *Kronemyer*, 405 B.R. at 921.

Here, the *Curtis* factors support modification of the automatic stay:

1. Partial or complete resolution of the issues: The issues to be tried in the State Court Action are for medical negligence, which will be completely resolved in the State Court Action. This factor weighs in favor of modifying the automatic stay.
2. Lack of connection with or interference with the bankruptcy case: Movant only seeks available insurance proceeds from the Debtor, so no rights of creditors will be abridged by allowing the State Court Action to proceed in state court. This factor weighs in favor of modifying the automatic stay.
3. Debtor as a fiduciary: Debtor does not appear to be operating as a fiduciary, so this factor appears to be inapplicable.
4. Specialized tribunal: Madera County Superior Court has expertise in state court causes of action, including medical malpractice. Additionally, Movant has a right to a jury trial, so state court is preferable for trying the State Court Action. This factor weighs in favor of modifying the automatic stay.
5. Insurance carrier's assumption of responsibility in defending: Movant has not been able to confirm that Debtor has professional liability insurance. However, Debtor was practicing medicine in the State of California, so it is likely that he has professional liability insurance that will cover his defense and any potential judgment. This factor appears to weigh towards modifying the automatic stay.

6. Whether the action involves third parties and debtor functions only as a bailee for goods or proceeds: This action does involve third party Madera Community Hospital, but Debtor does not appear to be functioning as a bailee for goods or proceeds. This factor is either neutral and inapplicable, or slightly favors stay modification.

7. Prejudice to other creditors and interested parties: Movant only seeks recovery from Debtor's insurance proceeds, so the creditors and other parties will not be prejudiced if the stay is modified. This factor weighs in favor of modifying the automatic stay.

8. Equitable subordination: Equitable subordination appears to be inapplicable here.

9. Whether the outcome in the foreign proceeding would result in an avoidable judicial lien: Movant only seeks recovery from Debtor's insurance proceeds only, so the State Court Action will not result in an avoidable judicial lien. This factor supports modifying the automatic stay.

10. Interests of judicial economy and expeditious and economical determination of litigation for the parties: Judicial economy weighs in favor of allowing the State Court Action to proceed in Madera Superior Court. Also, since this bankruptcy was filed in 2016, Debtor does not need the automatic stay. This factor appears to favor modifying the automatic stay.

11. Progressed to the point of trial: The State Court Action has just commenced and is not ready for trial. This factor weighs against modifying the automatic stay.

12. Impact of the stay and the "balance of hurt": If the stay was not modified as requested, Movant's medical negligence claims would be delayed. Her injuries were sustained over two years ago, so additional delay would cause harm. Movant only seeks insurance proceeds, so Debtor would not be harmed if stay modification was granted. This factor supports modifying the automatic stay.

In sum, the *Curtis* factors appear to weigh in favor of modifying the automatic stay to permit the State Court Action to proceed in Madera County Superior Court.

Accordingly, the court finds that cause exists to modify the stay and this motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1). The automatic stay will be modified to permit the Madera County Superior Court to resolve the State Court Action. Movant is permitted to liquidate the claim and to seek relief against Debtor's insurance policy only. No action may proceed against the reorganized debtor or any remaining assets in the bankruptcy estate without further order of this court.



3. [22-10947](#)-B-11      **IN RE: FLAVIO MARTINS**

MOTION FOR REQUEST FOR ADDITIONAL ADEQUATE ASSURANCE OF  
PAYMENT FOR FUTURE UTILITY SERVICE  
8-9-2022    [\[134\]](#)

PACIFIC GAS AND ELECTRIC  
COMPANY/MV  
HAGOP BEDOYAN/ATTY. FOR DBT.  
MARTHA SIMON/ATTY. FOR MV.

NO RULING.

Pacific Gas and Electric Company ("PG&E") filed this request for additional adequate assurance of payment for future utility service. Doc. #134. It was neither set for hearing nor properly served on all affected parties under Federal Rule of Bankruptcy Procedure 7004. Doc. #135. Additionally, PG&E did not comply with LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), and LBR 9014-1(c) and (e)(3), which 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 and each new motion requires a new DCN.

Flavio Almeida Martins ("Debtor") set PG&E's motion for hearing on less than 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and the procedure specified in Paragraph 7(c) of the Motion, as incorporated by the *Final Order on Motion for Order (A) Prohibiting PG&E From Altering, Refusing, or Discontinuing Service, and (B) Determining Adequate Assurance of Payment for Future Utility Services* ("Final Order"). Docs. #10; #52. Opposition, if any, to the granting of the motion may be presented at the hearing pursuant to the Final Order. 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. The court notes that Debtor used DCN MB-02.

PG&E requests additional adequate assurance of payment for Debtor's future use of utility services. Doc. #134. The Final Order incorporates the Adequate Assurance procedure set forth in Paragraph 7 of Debtor's Motion – namely, Debtor will pay monthly deposits of \$40,000 for four months. Doc. #52. Any deposit requested by PG&E that is, in total, in excess of \$160,000, must be approved by Bank of the Sierra and Western Milling or this court. *Id.*

PG&E contends that the \$160,000 proposed does not constitute adequate assurance because Debtor had a pre-petition debt of \$1,837,922.72. Doc. #134. Additionally, PG&E says that Debtor, on average, paid utility bills 101 days after the bills were generated, so a one-month deposit is insufficient. PG&E suggests adequate assurance is a security deposit in the amount of twice the highest monthly bill in the last twelve months, which would be \$431,212.

In light of Debtor's current cash collateral budget, PG&E is willing to reduce its request for additional adequate assurance of future performance to \$220,432.28, which represents twice the average monthly billing, rather than twice the highest monthly billing, in the one year prior to the petition date. PG&E includes a table of Debtor's eight pre-petition accounts with average billings ranging from \$20.27 to \$72,266.79, with the sum of these averages totaling \$110,216.14.

Therefore, PG&E requests that Debtor be ordered to pay additional adequate assurance in the total amount of \$220,432.28, rather than the \$160,000 previously ordered.

The court notes PG&E did not contest the Debtor's earlier motion: (A) Prohibiting PG&E from Altering, Refusing or Discontinuing Service and (B) Determining Adequate Assurance of Payment for Future Utility Service. Doc. # 52. Also, PG&E has not challenged that order or sought relief from the order.

This matter will be called and proceed as scheduled.

4. [22-10061](#)-B-11     **IN RE: CALIFORNIA ROOFS AND SOLAR, INC.**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V  
VOLUNTARY PETITION  
1-17-2022    [[1](#)]

MICHAEL BERGER/ATTY. FOR DBT.

NO RULING.

5. [22-10061](#)-B-11     **IN RE: CALIFORNIA ROOFS AND SOLAR, INC.**  
[MJB-3](#)

MOTION TO CONFIRM CHAPTER 11 PLAN  
7-21-2022    [[94](#)]

CALIFORNIA ROOFS AND SOLAR,  
INC./MV  
MICHAEL BERGER/ATTY. FOR DBT.

NO RULING.

Subchapter V chapter 11 debtor-in-possession California Roofs and Solar, Inc. ("Debtor") moves for an order confirming the *Plan of Reorganization for Small Business Debtors Under Chapter 11* dated April 18, 2022, as modified August 23, 2022 (the "Plan"). Doc. #94; #96; #102.

Debtor's first attempt at confirmation of the Plan was set for hearing on June 14, 2022 by court order dated April 25, 2022 ("Deadline Order"). Doc. #58. The Deadline Order required transmission of the Plan, order, ballots, and notice of the hearing by April 27, 2022; acceptances or rejections of the Plan, and objections to confirmation of the Plan by May 20, 2022; and responses to objections, copies of all ballots and a tabulation of ballots not later than 7 days before the hearing. *Id.* Pursuant to the Deadline Order, Debtor filed a notice of hearing, exhibits, and proof of service on April 27, 2022; a motion and ballots on May 24, 2022; and ballot tabulations, plan treatment stipulations, and summaries of tabulations on June 8 and 9, 2022. Docs. ##59-60; ##67-69; ##75-83.

Debtor otherwise complied with the Deadline Order, but the first motion was denied without prejudice for procedural reasons. Doc. #89. The court's *Civil Minutes* dated June 14, 2022 note that further ballot solicitations are unnecessary if there are no modifications to the Plan. Doc. #86.

Debtor did not lodge a second Deadline Order. On July 21, 2022, Debtor reset confirmation of the Plan to be heard on August 30, 2022 on 28 days' notice under Local Rule of Practice ("LBR") 9014-1(f)(1) July 21, 2022 is 40 days before August 30, 2022. Under LBR 9014-1(f)(1), written opposition, if any, is due at least 14 days prior to the hearing and failure to timely file written opposition 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).

However, Federal Rule of Bankruptcy Procedure ("Rule") 2002(b) requires 28 days' notice to parties in interest of the time fixed for filing objections and the hearing to consider confirmation of a chapter 11 plan. While 28 days' notice was given of the confirmation hearing, since objections were due 14 days before the hearing, only 26 days of notice was given for the objection deadline. No requests for an order shortening time were filed.

No party in interest objected to the Plan prior to this hearing, nor objected to the Plan when it was initially set for hearing on June 14, 2022 and was properly noticed under Rule 2002(b).

Notwithstanding the failure of Debtor to lodge a second proposed Deadline Order, the court finds it would cause unnecessary and undue delay in confirmation of the Plan to require Debtor to submit another proposed order to set a new confirmation hearing and re-solicit plan confirmation. Further, Debtor remedied the deficiencies identified in the in the minutes - namely, Debtor filed this motion with a Docket Control Number and complied with the requirements of LBR 9014-1(d)(3)(B)(i) and (iii).

This matter will be called and proceed as scheduled. If the court finds that notice and service of the Plan and related documents was proper, this confirmation hearing may proceed.

The Plan appears to comply with 11 U.S.C. § 1190. Specifically, the Plan contains a brief history of Debtor's business operations, key events transpiring during the case, a liquidation analysis, and projections evidencing Debtor's ability to make payments as required by 11 U.S.C. § 1190(1). Docs. #50; #94. The Plan also provides for the submission of all or such portion of Debtor's future earnings or other future income to the supervision and control of the Subchapter V Trustee as is necessary for the execution of the Plan as required by § 1190(2). The court finds that § 1190(3) is inapplicable here.

#### Plan Confirmation

11 U.S.C. § 1191 governs plan confirmation in Subchapter V. In the *Memorandum of Points and Authorities in Support of Motion to Confirm Debtor's Subchapter V Chapter 11 Plan of Reorganization* ("Memorandum"), Debtor seeks confirmation as a consensual plan under § 1191(a) and does not seek confirmation on a non-consensual basis under § 1129(b) or 1191(b). Doc. #96; #102.

#### § 1129(a)(1)

The Plan satisfies the requirements of § 1129(a)(1) by complying with the applicable provisions of Chapter 11 and meets the applicable mandatory provisions of § 1122 and 1123. The Plan:

#### §§ 1122(a), 1123(a)

1. Designates classes of claims other than claims of a kind specified in §§ 507(a)(1) (administrative claims), 507(a)(7) (tax claims, and interest holder claims as required by § 1123(a)(1). Claims are classified as Class 2(A) (unimpaired secured claim of Outfront Media, LLC), Class 2(B) (impaired secured claim of SRS Distribution, LLC), Class 2(C) (which is not part of Debtor's filed Plan and is added as a modification to include a bifurcated secured portion of Northern California Collection's claim), Class 3 (general unsecured claims), and Class 4 (equity security holders). § 1123(a)(1).
2. Specifies any class of claims or interests that are not impaired under the Plan as required by § 1123(a)(2).
3. Specifies the treatment of any class of claims or interests that are impaired under the Plan as required by § 1123(a)(3).
4. Provides the same treatment for each claim or interest of a particular class, unless the holder of the particular claim or interest agrees to less favorable treatment of such particular claim or interest as required by § 1123(a)(4). Debtor's Plan provides for the same treatment for each claim or interest within a particular class.
5. Provides adequate means for implementation and execution of the Plan as required by § 1123(a)(5). Debtor will fund the Plan with its cash on hand and the revenue generated from the business,

which are projected to increase by the plan confirmation date reinstating Debtor's contractor's license since the case was filed.

6. Prohibits the issuance of non-voting shares and provisions relating to election of directors in the event of default in the payment of dividends. Debtor will make the necessary amendments to its Articles of Incorporation to satisfy this requirement.
7. Contains no provisions that violate public policy with respect to the selection of any officer, director, or trustee under the Plan as required by § 1123(a)(7).
8. The provisions of § 1123(a)(8) do not apply in a Subchapter V case. § 1181.

§ 1123(b)

The Plan includes the six permissive provisions of § 1123(b):

1. The Plan may impair or leave unimpaired any class of claims, secured or unsecured, or of interests under § 1123(b)(1). The Plan consists of impaired classes.
2. The Plan indicates that Debtor does not have any executory contracts and/or unexpired leases to assume as permitted by § 1123(b)(2). The Plan does provide a summary of the lease agreement that Debtor was a party to prior to the petition date with Ethan Conrad, which Debtor rejected in or about January 2020 when it vacated the premises.
3. The Plan states Debtor's principal, Carlos Colima, is designated as the representative of the estate and may enforce any claims or causes of action belonging to the estate after the Effective Date of the Plan as permitted by § 1123(b)(3).
4. The Plan does not propose any sale of all or part of the property of the estate as permitted by § 1123(b)(4).
5. § 1123(b)(5) permits a plan to modify the rights of secured claims, other than a claim secured only by real property that is Debtor's principal residence. Here, the Plan seeks to modify the rights of its secured creditor, Northern California Collection, which has a Notice of Judgment Lien against Debtor's personal property assets. But Debtor is a corporation and does not own any real property, so the provision regarding a personal residence is not applicable here.
6. The Plan contains other provisions not expressly referred to in § 1123, but none of these provisions are inconsistent with the Bankruptcy Code.

§ 1123(c)

Since Debtor proposed the Plan, § 1123(c) is inapplicable.

§ 1129(a) (2)

The Plan appears to comply with the applicable provisions of Chapter 11 as required by § 1129(a) (2). Since Debtor is the proponent of the Plan, Debtor is not required to comply with § 1125 before soliciting acceptances unless the court otherwise orders. § 1181 (b). The court did not here. Also § 1127 does not apply here. § 1181 (a). Debtor therefore complied with § 1129(a) (2).

§ 1129(a) (3)

The Plan has been proposed in good faith and not by any means forbidden by law as required by § 1129(a) (3). The sole purpose of the Plan is to resolve Debtor's obligations to its creditors in accordance with the provisions of the Bankruptcy Code.

§ 1129(a) (4)

Pursuant to § 1129(a) (4), the Plan provides that payment to holders of allowed administration claims, including payment of compensation and reimbursement of expenses to professionals, shall be made only after entry of an order by the Bankruptcy Court following notice and a hearing.

§ 1129(a) (5)

Pursuant to § 1129(a) (5) (A), the Plan discloses the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as an officer, director, or voting trustee of the Debtor. Specifically, the Plan identifies Carlos Colima, Martin Colima, and Miguel Colima as Debtor's shareholders and Carlos Colima as the principal of Debtor after confirmation of the Plan. Section 1129(a) (5) (B) appears to be inapplicable.

§ 1129(a) (6)

Section 1129(a) (6) appears to be inapplicable because no changes in regulatory rates are provided for in the Plan.

§ 1129(a) (7)

As required by § 1129(a) (7), each holder of a claim or interest in an impaired class has either accepted the Plan or will receive an amount equal to or greater than the amount such holder of a claim or interest would receive in a chapter 7 case:

- a. Class 2(A) consists entirely of the claim of secured creditor Outfront Media, LLC. Debtor says the claim has been satisfied prior to the petition date with only \$655.56 due. Debtor will make a one-time payment of \$655.56 to Outfront Media, LLC on the Effective Date.
- b. Class 2(B) consists entirely of the claim of the secured creditor SRS Distribution, LLC, which will be paid \$7,220.06 as a secured claim over 60 months from the Effective Date at 10% interest.

- c. Class 2(C), which was not part of the filed Plan, is being proposed to be added to include a bifurcated claim of Northern California Collection for \$16,188.95. Debtor proposes to pay \$16,188.95 as a secured claim at 10% interest at a rate of \$343.97 per month, with the first payment due on the Effective Date followed by 59 consecutive payments in the same amount until the \$16,188.95 is paid in full. Based on the value of Debtor's assets, the balance of the claim is treated as a general unsecured claim in Class 3, which is scheduled to receive a 2% distribution on its allowed claim.
- d. Class 3 consists of Debtor's general unsecured non-priority claims. Debtor is paying unsecured creditors more than they would receive in a chapter 7 liquidation: 2% of their allowed claims, which is more than they would receive in a chapter 7.

§ 1129(a) (8)

Section 1129(a) (8) requires that each class of claims or interests either accept the plan or not be impaired. Here,

- a. Class 2(A) consisting of Outfront Media, LLC was satisfied prior to the petition date other than an outstanding \$655.56 that will be paid on the Effective Date. Therefore, Outfront Media, LLC is not impaired and not entitled to vote. No ballot has been submitted by Outfront Media, LLC.
- b. Class 2(B) consists entirely of the impaired secured claim of SRS Distribution, LLC. SRS Distribution, LLC submitted a ballot voting in favor of the Plan on May 24, 2022, but it was submitted after the May 20, 2022 ballot return deadline.
- c. Class 2(C) did not exist at the time of filing Debtor's Plan. However, creditor Northern California Collection submitted an amended ballot as a secured creditor accepting the Plan.
- d. Class 3 consisted entirely of impaired general unsecured claims, which submitted a late ballot accepting the Plan. Further, the Plan does not discriminate unfairly with respect to holders of Class 3 general unsecured claims because the Plan offers to pay the same pro rata distribution to all Class 3 claimants and the General Unsecured Creditor class voted to accept the Plan.

Since all impaired classes voted to accept the Plan, it satisfies § 1191(a) and an analysis of § 1191(b) is unnecessary.

§ 1129(a) (9)

Section 1129(a) (9) requires that the Plan treat all priority claims consistent with the requirements of § 507(a), which means that administrative claimants who have not agreed to accept other treatment and holders of non-priority tax claims that have rejected the Plan must be paid in full on the effect date, and § 507(a) (8) tax claims

must be paid over a period not exceeding 5 years after the date of the order for relief and on terms that are not less favorable than the most favored nonpriority unsecured claim. Here, Debtor has employed one professional in this case - its bankruptcy counsel. The bankruptcy counsel will be paid as soon as its fees are approved by the court.

The other administrative claimant is the Subchapter V Trustee, Lisa Holder. The Subchapter V Trustee will be paid in ten monthly installments. The first payment is due on the Effective Date and the remaining installments will be paid over nine consecutive monthly payments until the Subchapter V Trustee's fees are paid in full.

Section 1129(a)(9)(B) requires that wage claimants (§ 507(a)(3)), employee benefit priority claimants (§ 507(a)(4)), certain farmer and fisherman priority claimants (§ 507(a)(5)), and consumer deposit priority claimants (§ 507(a)(6)) receive full payment of the allowed amount of their respective priority claims in cash on the effective date of the plan if the class has not voted to accept the plan, or deferred cash payments of a value as of the effective date of the plan equal to such allowed claims if the class has accepted the plan. Debtor does not have any such claims, so § 1129(a)(9)(B) is not implicated.

Section 1129(a)(9)(C) requires tax claims entitled to priority under § 507(a)(8) to be paid on account of such claim regular installment payments in cash of a total value as of the effective date of the plan equal to the allowed amount of such claim, over a period ending not later than 5 years after the order for relief, and in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan. Debtor also has two such claimants: the Internal Revenue Service and Employment Development Department, which will be paid in full within five years after the petition date at the applicable interest rate. The Plan therefore complies with § 1129(a)(9).

#### § 1129(a)(10)

Section 1129(a)(10) requires that if a class of claims is impaired under the plan, at least one class of claims that is impaired has accepted the plan, which is determined without including the acceptance by any insider. Here, the Plan has been accepted by SRS Distribution, LLC and Northern California Collection in Classes 2(B) and 2(C). Although ballots were submitted after the ballot submission deadline, these impaired classes have voted to accept the class.

#### § 1129(a)(11)

As required by § 1129(a)(11), the court finds that the Plan is feasible and confirmation of the Plan is not likely to be followed by the liquidation, or need for further financial reorganization, of Debtor or any successor to Debtor under the Plan. The Plan projects that all of the projected disposable income of Debtor to be received in the five-year period beginning on the date that the first payment is due under the Plan will be applied to make the payments under the



Plan. Debtor's income and expense projects, which are attached as Exhibit C, show that Debtor has sufficient income from its cash on hand and the revenue generated from its business operations to fund the Plan. Debtor's reinstating its contractor's license after the filing of the case further support feasibility because Debtor has prospects for securing new projects.

§ 1129(a) (12)

Section 1129(a) (12) has been satisfied because all fees due under 28 U.S.C. § 1930 have been paid. However, since Debtor is a Subchapter V Chapter 11 debtor, quarterly fees due to the Office of the United States Trustee are not required, so this section is inapplicable.

§ 1129(a) (13)

Section 1129(a) (13) is not applicable because Debtor does not have any obligations for retiree benefits as defined in § 1114.

§ 1129(a) (14)

Section 1129(a) (14) is not applicable because Debtor does not have any domestic support obligations.

§ 1129(a) (15)

Section 1129(a) (15) is not applicable. § 1181(a).

§ 1129(a) (16)

Section 1129(a) (16) is not applicable because Debtor is a business, or commercial corporation.

§ 1191(c)

Pursuant to § 1191(c) (1), the Plan meets the requirements of § 1129(b) (2) (A) with respect to secured claims. The Plan does not discriminate unfairly with respect to each class of claims or interests impaired under the Plan and did not accept the Plan. Northern California Collections submitted an amended ballot accepting the Plan.

With respect to § 1191(c) (2), all projected disposable income received in the five years of the Plan will be applied to make payments under the Plan. The plan projects all disposable income received by Debtor during the term of the Plan will be applied to make payments under the Plan.

With respect to § 1191(c) (3) (A), the court finds there is a reasonable likelihood Debtor will be able to make all payments under the Plan.

Minor Modifications

Debtor requests to make minor modifications to the Plan that were filed on August 23, 2022. Doc. #116. Specifically, Debtor wishes to (i) clarify treatment of the Class 2(A) claim held by Outfront Media, LLC, (ii) add Class 2(C) for the claim held by Northern California

Collection, and (iii) to specify treatment of the Employment Development Department's priority tax claim of \$125,675.34. Doc. #115.

Debtor clarifies that Outfront's claim was satisfied prior to the petition date other than a small remaining balance of \$655.56, which will be paid on the Effective Date of the Plan.

The Northern California Collection claim will be reclassified as Class 2(C) and paid in accordance with the plan treatment stipulation filed on June 8, 2022 (Doc. #79) and approved on June 13, 2022 (Doc. #84). Northern California Collection shall have an allowed secured claim of \$16,188.95, which will be paid over 60 months at 10% interest at \$343.97 per month until paid in full. The balance of \$443,429.34 will be treated as a general unsecured claim.

The Employment Development Department will be treated pursuant to a stipulation filed June 8, 2022 (Doc. #77) and approved on June 13, 2022 (Doc. #85) wherein Debtor will pay a \$25,000 priority claim over 60 months from the petition date in monthly payments of \$504.23 per month. There will also be a balloon payment in month 60 for any outstanding balance in the event that the results of a pending audit reflect a final non-appealable priority claim in excess of \$25,000. Debtor's contention disputing the priority claim asserted by the Employment Development Department has been removed from the Plan.

Pursuant to Rule 3019(a), the court will find that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification and deem it accepted by all creditors and equity security holders who have previously accepted the plan. Debtor also promptly filed an updated version of the Plan to reflect the above changes and separately filed a corresponding "redlined" version with tracked changes. Doc. #115.

#### Conclusion

The Plan appears to satisfy the requirements of § 1191(a). This matter will be called as scheduled to discuss the procedural issues specified above.

6. [22-10885](#)-B-11     **IN RE: SYNCHRONY OF VISALIA, INC.**  
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY  
PETITION  
5-25-2022    [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

1:30 PM

1. [22-10209](#)-B-7     **IN RE: NOREEN GUZMAN**  
[BDB-2](#)

MOTION TO AVOID LIEN OF PHILLIP ERKENBRACK  
8-11-2022    [[42](#)]

NOREEN GUZMAN/MV  
BENNY BARCO/ATTY. FOR DBT.

**Since posting the original pre-hearing dispositions, the court has changed its intended ruling on this matter.**

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:                This matter will proceed as a scheduling conference.

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

Noreen Jone Guzman ("Debtor") seeks to avoid a judicial lien in favor of Phillip Erkenbrack dba Hassle Free Small Claims & Collection Service ("Creditor") in the sum of \$4,146.00 and encumbering residential real property located at 346 Buena Vista Court, Merced, CA 95348 ("Property").<sup>1</sup> Doc. #19.

Though not required, Creditor filed written opposition on August 29, 2022. Doc. #48. Creditor opposes the motion on the basis that Property is investment property rather than Debtor's residence or domicile, and Debtor lives in San Jose, California, not Merced, California. Creditor requests the court to set a briefing schedule so Creditor can further apprise the court of the issues regarding Debtor's claimed homestead exemption.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as a scheduling conference. Written opposition was not required and may be presented at the hearing.

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

*Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of Creditor on April 27, 2004, which was renewed on April 28, 2014 in the amount of \$4,146.00. Doc. #45, *Ex. A*. The renewed abstract of judgment was issued on August 10, 2021 and recorded in Merced County on November 22, 2021. *Id.* That lien attached to Debtor's interest in Property and appears to be the only non-consensual judgment lien encumbering Property. Docs. #13, *Sched. D*; #46. Property is also not encumbered by any consensual liens.

As of the petition date, Property had an approximate value of \$325,000.00. Doc. #13, *Sched. A/B*. Debtor claimed a \$325,000.00 exemption in Property pursuant to Cal. Code. Civ. Proc. ("CCP") § 704.730. Section 704.730 provides:

(a) The amount of the homestead exemption is the greater of the following:

(1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).

(2) Three hundred thousand dollars (\$300,000).

(b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers for the prior fiscal year, published by the Department of Industrial Relations.

C.C.P. § 704.730. On January 1, 2022, this exemption was automatically updated to increase the minimum exemption to \$312,600.00 and the countywide median sale price for a single-family home maximum to \$625,200.00 based on the change in the annual California Consumer Price Index (4.2%).

The Eastern District of California has held that "the debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under [California law] and the extent to which that exemption applies." *In re Pashenee*, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015). Since Debtor is asserting a homestead exemption exceeding the \$312,600.00 minimum, Debtor bears the burden of proof on showing that the claimed exception is within the county-wide median sales price for single-family homes in Merced County in the calendar year 2021 (which is the calendar year before the 2022 calendar year in which Debtor filed this bankruptcy).

Debtor's attorney, Benny D. Barco, retrieved the monthly median home sales prices for Merced County from the California Association of Realtors' website ("CAR").<sup>2</sup> Doc. #44. The median sales data is as follows:

Month-Year	Merced	Ascending
Jan-21	\$307,000	\$307,000
Feb-21	\$318,750	\$318,000
Mar-21	\$318,000	\$318,750
Apr-21	\$325,000	\$325,000
May-21	\$350,000	\$350,000
Jun-21	\$360,000	<b>\$357,500</b>
Jul-21	\$357,500	<b>\$360,000</b>
Aug-21	\$369,250	\$369,250
Sep-21	\$370,000	\$370,000
Oct-21	\$370,000	\$370,000
Nov-21	\$375,000	\$375,000
Dec-21	\$375,000	\$375,000

*Id.* The median sales price of single-family homes in Merced County for calendar year 2021 is the average of \$357,500 and \$360,000, the two middle points in the data set, which results in \$358,750. Therefore, Debtor appears to be entitled to claim up to \$358,750 in equity for the homestead exemption pursuant CCP 704.730(a)(1). As noted above, Debtor has only claimed \$325,000.00, which is within the amount she is entitled to exempt.

Declarant, Mr. Barco, does not state that he is an expert in residential real property pricing in Merced County. The basis for the claimed exemption is information gleaned from a website. This is hearsay. There is also no foundation for allowing the evidence as an exception to the hearsay rule. See Fed. R. Evid. 803(17). Yet, there is no objection to the admission of the evidence. In the absence of objection, the court will admit the evidence.

Strict application of the § 522(f)(2) formula is as follows:

Amount of Creditor's judicial lien	\$4,146.00
Total amount of unavoidable liens	+ \$0.00
Amount of Debtor's claimed exemption in Property	+ \$325,000.00
<i>Sum</i>	= \$329,146.00
Debtor's claimed value of interest absent liens	- \$325,000.00
Amount Creditor's lien impairs Debtor's exemption	= \$4,146.00

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

Fair market value of Property	\$325,000.00
Total amount of unavoidable liens	- \$0.00
Homestead exemption	- \$325,000.00
Remaining equity for judicial liens	= \$0.00
Creditor's judicial lien	- \$4,146.00
Extent Debtor's exemption impaired	= (\$4,146.00)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there appears to be insufficient equity to support the judicial lien such that its fixing would be subject to avoidance under § 522(f)(1).

However, Creditor filed opposition claiming that Debtor does not actually reside at Property and is therefore not entitled to claim a homestead exemption with respect to Property. Doc. #48.

The hearing on this motion will be called as scheduled and will proceed as a scheduling conference. This matter is now deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

Based on the record, the sole factual issue appears to be whether Property is Debtor's residence or domicile.

The sole legal issue appears to be whether Debtor is entitled to claim a homestead exemption with respect to Property.

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<sup>1</sup> Debtor appears to have complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor via regular U.S. mail at PO Box 1202, San Jose, CA 95108 on August 11, 2022. Doc. #47.

<sup>2</sup> Mr. Barco included the CAR Historical Housing Data webpage at which countywide median prices for single family homes can be downloaded. Doc. #45, Ex. E; <https://www.car.org/en/marketdata/data/housingdata> (Aug. 25, 2022). As of this writing, the *MedianPricesofExistingDetachedHomesHistoricalData.xls* file was last updated on August 17, 2022.

2. [22-10975](#)-B-7     **IN RE: MIRALDA GOMEZ**  
[SL-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13  
7-22-2022    [\[17\]](#)

SCOTT LYONS/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.

Miralda Gomez ("Debtor") seeks to convert this case from chapter 7 to chapter 13 under 11 U.S.C. § 706(a).

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

This motion was originally filed on July 22, 2022 and set for hearing on September 20, 2022. Doc. #18. Debtor filed an amended notice and then a corrected amended notice setting the hearing for August 30, 2022 at 1:30 p.m. Docs. #24; #26. On August 17, 2022, the court granted an advancement of hearing pursuant to the corrected amended notice.

The corrected amended notice of hearing was filed and served pursuant 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. § 706(a) allows a debtor in chapter 7 to convert to chapter 13 "at any time," unless the case was previously converted to chapter 7 from another chapter.

The Supreme Court in *Marrama v. Citizens Bank*, 549 U.S. 365, 371-72 (2007), held that a debtor does not have an absolute right to convert a chapter 13 under § 706, but also must be eligible to be a debtor under chapter 13. The Supreme Court stated, "[i]n practical effect, a ruling that an individual's Chapter 13 case should be dismissed or converted to Chapter 7 because of prepetition bad-faith conduct, including fraudulent acts committed in an earlier Chapter 7 proceeding, is tantamount to a ruling that the individual does not qualify as a debtor under Chapter 13." Therefore, the court must find



that Debtor is eligible to be a debtor under chapter 13 such that the case would not be converted or dismissed under 11 U.S.C. § 1307(c).

11 U.S.C. § 109(e) sets forth the eligibility requirements for Chapter 13 relief. According to the schedules and summary of assets and liabilities, Debtor falls within the limits for total debts. Doc. #1. The question then is whether Debtor has regular income. *Schedule I* indicates that Debtor has worked for 22 years in Banquet Services with Wyndham Visalia. *Id.*, *Sched. I*. Through this and other regularly received assistance, Debtor earns \$4,412.42 in monthly income and incurs \$4,375.93 in monthly expenses, leaving a monthly net income of \$36.49 per month. *Id.*, *Sched. J*. Though Debtor does have regular income, it is unclear whether Debtor will be able to propose and confirm a chapter 13 plan.

Debtor declares that the chapter 7 trustee has taken an interest in selling Debtor's 2020 Toyota Rav4, which is non-exempt property. Doc. #19. As this is Debtor's only vehicle, it is needed to commute to and from work. *Id.* Debtor was offered an opportunity to buy it back but cannot afford to pay the value of the non-exempt property. As a result, Debtor wishes to convert to chapter 13 to pay off the maximum amount to which creditors are entitled over a chapter 13 plan term. *Id.* Debtor expresses confidence in having the ability to maintain plan payments for an extended period of time, that the plan will be confirmed, and all necessary payments will be made to the chapter 13 trustee in a timely manner. *Id.* Debtor is also willing to accept any restrictions or orders placed by the court on this chapter 13 filing and requests that any order entered by the court be effective on the date that it is entered. *Id.*

Written opposition was not required but may be presented at the hearing. There is no indication that this bankruptcy was filed in bad faith. Debtor does not appear to have any previous bankruptcy filings in this district.

The court finds that this case has not been previously converted to chapter 7 from another chapter. If Debtor provides sufficient clarification regarding intentions to file a chapter 13 plan and pay off unsecured claims, Debtor may be eligible to be a debtor under chapter 13 in conformance with 11 U.S.C. §§ 101, 109, and 1328(f) such that the case would not be immediately converted or dismissed under § 1307(c). In the absence of opposition at the hearing, this motion may be GRANTED.

3. [22-10676](#)-B-7     **IN RE: LORENA VEGA**  
[JES-1](#)

MOTION TO SELL  
7-27-2022    [[19](#)]

JAMES SALVEN/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
JAMES SALVEN/ATTY. FOR MV.

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

DISPOSITION:                Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") requests an order authorizing the sale of the estate's interest in a 2001 Ford F-150 ("Estate Asset") to Lorena Vega ("Debtor") for \$7,025.00, subject to higher and better bids at the hearing. Doc. #19.

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

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

11 U.S.C. § 363(b)(1) allows the trustee to "sell or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners v. Colony GFP Partners, Ltd. P'Ship (In re 240 N. Brand Partners)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only

whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference." *Id.*, citing *In re Psychometric Sys.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

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

The Estate Asset is listed in the schedules as a 2001 Ford F150 with 295,136 miles. Doc. #1, *Sched. A/B*. Debtor listed the Estate Asset with a value of \$1,522.00 and it does not appear to be encumbered by any security interests. *Id.*, *Sched. D*. Debtor claimed a \$3,325.00 exemption in the vehicle under Cal. Code Civ. Proc. ("CCP") § 704.010. *Id.*, *Sched. C*. But Trustee is giving Debtor a \$3,625.00 exemption credit, which is the maximum allowable exemption available to Debtor under CCP § 704.010. Therefore, the estate will receive **\$3,400.00** in net proceeds if the sale is completed as proposed.

Trustee declares that he received an offer from Debtor to purchase the Estate Asset at the sale price indicated, which he accepted subject to court approval and higher and better bids at the hearing. Doc. #21. Trustee has not agreed to pay a commission to any party in connection with the sale and believes the proposed sale is in the best interests of creditors and the estate because it is for the full and fair market value of the asset. *Id.* Trustee is in receipt of the funds and is awaiting court approval.

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

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