



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Department B – Courtroom #13
Fresno, California**

Hearing Date: Tuesday, September 17, 2024

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

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

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

Please also note the following:

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

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

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

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [24-11015](#)-B-11 **IN RE: PINNACLE FOODS OF CALIFORNIA LLC**
[KCO-3](#)

MOTION TO EMPLOY CRAIG R. TRACTENBERG AS SPECIAL COUNSEL
8-16-2024 [\[213\]](#)

PINNACLE FOODS OF CALIFORNIA
LLC/MV
MICHAEL BERGER/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.

Pinnacle Foods of California, LLC, debtor corporation in the above-styled Sub-V Chapter 11 case ("Debtor" or "Pinnacle"), moves the court for an order authorizing Debtor to retain Fox Rothschild LLP ("the Firm") and specifically Craig R. Tractenberg (admitted *pro hac vice* pending) ("Tractenberg") (collectively "Applicant") as special franchise counsel for the Debtor effective as of July 7, 2024, pursuant to 11 U.S.C. § 327(e) and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure, with compensation pursuant to §§ 330 and 331. Doc. #213.

Previously, this court entered an order denying the Debtor's prior application to employ Applicant as Special Franchise Counsel without prejudice because failure to comply with LBR 9014-1. Doc. #210. The instant motion avers that this filing is in all respects the same as the prior filing except for the correction of the improper noticing. *Id.* Because the prior motion was dismissed due to improper notice, the court did not proceed further and assess whether there were any other procedural errors in the motion. The court does so now and notes several procedural issues which, in the ordinary course, would doom this motion as well.

LBR 9004-2(c)(1) requires that motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.

LBR 9004-2(d) requires (1) exhibits to be filed as a separate exhibit document, (2) an exhibit index stating the page number at which each exhibit is found within the exhibit document, and (3) use of consecutively numbered exhibit pages throughout the exhibit document, including any separator, cover, or divider sheets.

Federal Rule of Bankruptcy Procedure 2014(a) requires *inter alia* that a motion for the employment of professional persons be accompanied by a "verified statement" from the person to be employed setting for the person's connections with the debtor, creditors, any

other party in interest, their respective attorneys and accountants, the United States Trustee, and any person employed in the office of the United States Trustee.

Relatedly, LBR 2014-1(a) requires that the Verified Statement shall, after disclosure of any actual connections, close with the statement:

Except as set forth above, I have no connection with the debtor, creditors, or any other party in interest, their respective attorneys and accountants, the United States Trustee, and any person employed in the office of the United States Trustee.

Here, a memorandum of points and authorities, the Declaration of Craig R. Tractenberg, and a set of exhibits are all attached to the motion as a single document in contravention of LBR 9004-2(c)(1). Doc. #213. Furthermore, the exhibits, in addition to being improperly attached to another document, do not contain an exhibit index and while they are consecutively numbered, that is not particularly helpful in the absence of an index with page numbers. *Id.*

The 2014(a) verified statement is also incorporated into Tractenberg's Declaration, and he does include the required LBR 2014-1(a) language. The court finds this acceptable.

Nevertheless, the court elects to overlook these procedural errors as no party has objected to the motion and the court perceives no prejudice to any parties from the error other than inconvenience to the court. The court encourages Mr. Tractenberg, who is not a California attorney, to be more attentive to the Local Rules of this District in the future. With that, the court turns to the substance of the motion.

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

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

11 U.S.C. § 1107 gives a chapter 11 debtor in possession ("DIP") all rights and powers of a trustee, other than the right to compensation under § 330, and requires the debtor in possession to perform all the functions and duties of a trustee, except those specifically mentioned in § 1106(a)(2), (3), and (4).

Under 11 U.S.C. § 327(a), a professional person, such as special counsel, can be employed by the estate with the court's approval to represent or assist the trustee [or, in this case, the DIP] in carrying out its duties provided that the proposed professional does not hold or represent an interest adverse to the estate and is a "disinterested person." In a chapter 11 case, a person is not disqualified for employment solely because of such person's employment by or representation of a creditor, unless there is an objection from the creditor or the UST. 11 U.S.C. § 327(c).

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

The following factual representations are taken from the motion and Tractenberg's Declaration except where noted otherwise. See Doc. #213. The motion begins on page 1, with Memorandum of Points and Authorities beginning on page 2, Tractenberg's Declaration beginning on page 7, Tractenberg's Rule 2014(a) Verified Statement incorporated into the Declaration beginning on page 11, and the Exhibits beginning on page 14. *Id.*

Pinnacle filed chapter 11 bankruptcy on April 22, 2024. Doc. #1. Pinnacle is one of three entities who are debtors in related Chapter 11 cases, the other two being Tyco Group LLC ("Tyco") and California QSR Management, Inc. ("QSR"). Pinnacle and Tyco are both franchisees of Popeyes Louisiana Kitchen, Inc. ("Popeyes™"), while QSR is a company set up by Imran Damani ("Damani"), the principal of all three business entities to manage the two franchisees. In this motion, Pinnacle seeks to hire the Firm and specifically Tractenberg to provide franchise-related advice and representation in connection with and prosecution of one or more motions to assume or reject the Franchise Agreements entered into between Pinnacle and Popeyes™. Tractenberg's Declaration indicates that motions similar to this one

which seek authorization of the Firm as special franchise counsel for Tyco and QSR are pending, but they are not presently before the court.

Tractenberg avers that Pinnacle selected the Firm because of Applicant's experience and knowledge in the arena of franchise-related legal services. Applicant appears to be well-qualified to provide such services in this case.

Tractenberg further declares that Damani and Damani's father, Badruddin Damani ("Guarantor") have jointly provided Applicant with a \$20,000.00 retainer ("the Retainer"), with Guarantor personally guaranteeing payment of all the Firm's fees and expenses. Applicant will not draw down from the Retainer absent court approval.

The Firm will render services to Pinnacle at its regular hourly rates, currently \$960 per hour for Tractenberg, who is a partner in the Firm, and \$895 per hour for Keith C. Owens. The Firm may make use of other partners, associates, or paralegals as it deems appropriate. Applicant proposes to seek compensation and reimbursement in conformity with 11 U.S.C. §§ 330 and 331, and the Firm will file interim fee applications no more often than every 120 days.

Beyond these disclosures, no copy of any representation agreement is included in the moving papers.

While there is no separate verified statement setting forth Applicant's connections with the debtor, creditors and other entities set for in Rule 2014(a), it appears that the relevant information was made a part of Tractenberg's Declaration. The Declaration also contains the statement required by LBR 2014-1(a), with Tractenberg declaring that Applicant has "no connection with the debtor, creditors, or any party in interest, their respective attorneys, accountants, or the U.S. Trustee, or any employee of the U.S. Trustee."

Notwithstanding that statement, Applicant discloses the following connections to creditors in matters unrelated to Pinnacle or this bankruptcy case:

- a. Chase - Current client in matters unrelated to Debtor or this Chapter 11 Case;
- b. Flagstar - Former client in matters unrelated to Debtor or this Chapter 11 Case;
- c. Andy Lu - Former client in matters unrelated to Debtor or this Chapter 11 Case;
- d. Northstar Management - Former client in matters unrelated to Debtor or this Chapter 11 Case;
- e. Signature Financial - Former client in matters unrelated to Debtor or this Chapter 11 Case; and
- f. Tyco - Former client in matters unrelated to Debtor or this Chapter 11 Case.

The court finds that the Declaration satisfied Rule 2014(a) and LBR 2014-1(a).

Debtor through Applicant avers in the motion that:

Debtor desires to employ the Firm as Special Franchise Counsel for the limited purpose of providing franchise-related advice and representation in connection with the preparation and prosecution of one or more motions to assume or reject the Franchise Agreements and related Plan formulation. Debtor represents that employment of the Firm is in the best interests of the estate. Debtor has selected Applicant as its proposed Special Franchise Counsel because of Mr. Tractenberg's and the Firm's extensive experience representing franchisors and franchisees in various matters including bankruptcy cases. One of the key issues in this case is whether certain of the Franchise Agreements can be assumed by the Debtor under section 365 of the Bankruptcy Code and applicable non-bankruptcy law. The Debtor has determined that it is necessary to retain the Firm as Special Franchise Counsel to deal with the unique franchise issues affecting the Debtor, the outcome of which may have a material impact on the Debtor's ability to reorganize.

Doc. #213 at pg. 3-4. The motion further avers that:

As the Debtor's proposed Special Franchise Counsel, the Firm will provide all legal services reasonably required to represent Debtor in its Chapter 11 bankruptcy proceeding with respect to franchise-related issues including the preparation and filing of one or more motions to assume or reject certain Franchise Agreements entered into by and between the Debtor and Franchisor under 11 U.S.C. § 365, and in compliance with applicable California franchise law. Unless otherwise agreed to in writing by the Firm and approved by the Court, the retention does not include the Firm's representation of Debtor on appeal or in any other litigation.

Id. Based on the Application, the record before the court, and Tractenberg's Declaration (and the recitations therein that are required by Bankruptcy Rule 2014(a)), it appears that Applicant is eligible to be employed.

Under LBR 2014-1(b), it is presumed the effective date of employment will be thirty days prior to the filing of the application. Here, Applicant seeks approval of the Firm and Tractenberg's employment as July 7, 2024. However, the thirtieth day before the filing date would be July 16, 2024, the requested date is nine days earlier than the date set by LBR 2014-1(b). Nothing in the application or declaration shows any exceptional circumstances, or satisfactory explanation for failure to receive prior judicial approval, or significant benefit to the bankruptcy estate justifying the earlier effective date of employment. The court, however, is aware that an earlier application was made and denied for procedural reasons. Mr. Tractenberg meaningfully participated in a hearing on Popeyes™

motion to remove the DIP and for other relief. The court finds that there is a satisfactory explanation of proposed counsel's failure to achieve earlier court approval and that Mr. Tractenberg's participation significantly benefitted the estate since the motion was a critical early crossroads in the case. But the circumstances are not exceptional and can be explained simply by inattention to applicable local rules. Nevertheless, in this instance since the request for an effective date just over one week earlier than the presumptive date seems *de minimis*, the court will overlook proposed counsel and general counsel's collective errors.

No party in interest has opposed the retention. This application will be GRANTED. Pinnacle will be permitted to employ Applicant, subject to the following reasonable terms and conditions and to the applicable provisions of 11 U.S.C. § 327 and §§ 329-331 set forth below.

Reasonable terms and conditions of employment include the following matters related to compensation:

1. No compensation is permitted except upon court order following application with notice and a hearing pursuant to 11 U.S.C. § 330(a).
2. Compensation will be at the "lodestar rate" applicable at the time that services are rendered in accordance with the Ninth Circuit decision in *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). No hourly rate referred to in the application is approved unless unambiguously so stated in this order or in a subsequent order of this Court.

2. [23-10224](#)-B-11 **IN RE: WILLIAM MILLER**
[JM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY , MOTION TO CONFIRM
TERMINATION OR ABSENCE OF STAY
8-16-2024 [\[185\]](#)

DEERE & COMPANY/MV
PETER FEAR/ATTY. FOR DBT.
JAMES MACLEOD/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

LBR 7005-1(a) and (d) require, unless six or fewer parties are served, the certificate to include an attached, official Matrix of Creditors from the Clerk of the Court, which shall be downloaded not more than seven days prior to the date of serving the pleadings and other documents and shall reflect the date of download. Here, the

matrices attached to the certificate were custom matrices. Official matrices can be downloaded from the court's website or from PACER.

For the above reason(s), this motion will be DENIED WITHOUT PREJUDICE.

11:00 AM

1. [24-12245](#)-B-7 **IN RE: DELORES RODRIGUEZ**

PRO SE REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
8-27-2024 [[23](#)]

NO RULING.

1:30 PM

1. [23-11025](#)-B-7 **IN RE: SANJUANA COVARRUBIAS**
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG,
ACCOUNTANT(S)
8-2-2024 [\[57\]](#)

RATZLAFF TAMBERI & WONG/MV
NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Ratzlaff Tamberi & Wong ("Applicant") seeks approval of a final allowance of compensation under 11 U.S.C. §§ 330 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as accountant for Jeffrey M. Vetter, Trustee in the above-styled case ("Trustee"). Doc. #57.

Applicant was employed to perform services under § 327 of the Code pursuant to an order of this court dated July 2, 2024. Doc. #50. This is Applicant's first and final request for compensation. *Id.* The application covers the period from June 17, 2024, through July 31, 2024. *Id.*

Applicant seeks **\$1,598.11** in fees based on **6.1** billable hours from October 24, 2023, through May 14, 2024. Doc. ##59-60. Based on the moving papers, it appears that Chris Ratzlaff was the only employee of Applicant to work on this case, and he billed at a rate of \$260.00 per hour. *Id.* Applicant does not seek an award for expenses.

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

Applicant's services here included, without limitation, accounting work on behalf of the estate and reparation and filing of state and federal tax returns for the estate for the tax period ending on June 6, 2024. Doc. #60. The court finds the services and expenses reasonable, actual, and necessary. The Trustee has reviewed the Application and finds the requested fees and expenses to be reasonable. Doc. #61.

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

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

This Application is GRANTED. The court will approve on a final basis under 11 U.S.C. § 330 compensation in the amount of **\$1,598.11** in fees and **\$0.00** in expenses. The court grants the Application for a total award **\$1,598.11** as an administrative expense of the estate and an order authorizing and directing the Trustee to pay such to Applicant from the first available estate funds.

2. [24-10726](#)-B-7 **IN RE: RODNEY/AMIE WOLFORD**
[MJ-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-23-2024 [\[17\]](#)

ACAR LEASING LTD/MV
D. GARDNER/ATTY. FOR DBT.
MEHRDAUD JAFARNIA/ATTY. FOR MV.
DISCHARGED 7/8/24

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2). ACAR Leasing Ltd. ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2024 GMC Sierra 1500 Denali ("Vehicle"). Doc. #17.

This matter will be DENIED WITHOUT PREJUDICE for failure to comply with the federal and local rules.

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

Second, Rule 4001(a) requires motions for relief from the automatic stay to be "made in accordance with Rule 9014[.]" Rule 9014(b) requires motions in contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. Meanwhile, Rule 9036 governs notice and service generally, and provides:

Whenever these rules require or permit sending a notice or serving a paper by mail, the clerk, or some other person as the court or these rules may direct, may send the notice to—or serve the paper on—a registered user by filing it with the court's electronic-filing system. Or it may be sent to any person by other electronic means that the person consented to in writing. In either of these events, service or notice is complete upon filing or sending but it is not effective if the filer or sender receives notice that it did not reach the person to be served. ***This rule does not apply to any pleading or other paper required to be served in accordance with Rule 7004.***

Rule 9036 (emphasis added). Rule 7004 allows service in the United States by first class mail by "mailing a copy of the summons and complaint to . . . the place where the individual regularly conducts a business" and "by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 7004(b)(1), (b)(3). Though not applicable here, if the United States trustee is acting solely as trustee, then "by mailing a copy of the summons and complaint to an office of the United States trustee or another place designated by the United States trustee in the district where the case under the Code is pending." Rule 7004(b)(10). And if the United States trustee is sued or otherwise a party to litigation unrelated to its capacity as trustee, then the requirements of 7004(b)(5) also apply. 10 Collier on Bankruptcy App. 7004[3] (16th 2020).

Debtors' attorney must be served by mail in accordance with Rule 7004. Because this motion will affect property of the estate, the chapter 7 trustee must also be served in accordance with Rule 7004. Rule 7004, which is applicable for relief from stay motions under Rules 4001 and 9014, is specifically precluded from electronic service by Rule 9036. This service requirement is not subject to waiver under Civil Rule 4(d). See Rule 7004(a)(1). Thus, the Movants must serve the Debtors, their attorney, and the chapter 7 trustee in conformance with Rule 7004.

Here, the certificate of service indicates that chapter 7 trustee Jeffrey M. Vetter and Debtors' bankruptcy attorney, D. Max Gardner, were served electronically. Doc. #24.

On September 13, 2024, an Amended Notice of Hearing was filed accompanied by a certificate of service indicating that the Chapter 7 Trustee was served by first class mail, but the certificate still indicates that the Debtors' counsel was only served electronically.

For the foregoing reasons, this motion will be DENIED WITHOUT PREJUDICE.

3. [14-14529](#)-B-7 **IN RE: DAVID/CRYSTAL GONZALEZ**
[WPT-1](#)

MOTION TO AVOID LIEN OF ALTAONE FEDERAL CREDIT UNION
8-12-2024 [\[27\]](#)

CRYSTAL GONZALEZ/MV
SUNDEE TEEPLE/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

David and Crystal Gonzalez ("Debtors") move to avoid a lien on their real property in favor of Altaone Federal Credit Union. Doc. #27. This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9004-2(c)(1) requires that motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents. Here, all supporting documents filed by Debtors except for the Notice were attached directly to the motion instead of filed separately. See Doc. #27. Debtors did file a Notice but then again attached a number of documents which should have been filed separately directly to the Notice. See Doc. #28.

LBR 9004-2(d) requires (1) exhibits to be filed as a separate exhibit document, (2) an exhibit index stating the page number at which each exhibit is found within the exhibit document, and (3) use of consecutively numbered exhibit pages throughout the exhibit document, including any separator, cover, or divider sheets. Here, the exhibits are attached to the motion and do not contain an exhibit index. See Doc. ##27,28.

LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Here, the Notice does not contain the required language

directing respondents to the pre-hearing dispositions on the court's website, or that parties appearing telephonically are required to view the pre-hearing dispositions prior to appearing at the hearing. Doc. #28.

For the foregoing reasons, this matter will be DENIED WITHOUT PREJUDICE.

4. [23-10450](#)-B-7 **IN RE: MARK/THERESA PARKER**
[DMG-3](#)

MOTION FOR COMPENSATION FOR D. MAX GARDNER, TRUSTEES
ATTORNEY(S)
8-14-2024 [\[60\]](#)

GABRIEL WADDELL/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Max Gardner ("Applicant" or "Gardner") seeks approval of a first and final allowance of compensation under 11 U.S.C. §§ 330 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as attorney for James Salven, Trustee in the above-styled case ("Trustee"). Doc. #60.

Applicant was employed to perform services under § 327 of the Code pursuant to an order of this court dated June 17, 2024. Doc. #48. This is Applicant's first and final request for compensation. Doc. #60.

Applicant seeks **\$6,121.50** in fees based on **15.90** billable hours from June 4, 2024, through August 13, 2024. Doc. #60 et seq. Based on the moving papers, it appears that Gardner was the only employee of Applicant to work on this case, and he billed at a rate of \$385.00 per hour. Doc. #64. Applicant seeks an award for expenses in the amount of **\$160.75**, consisting of \$85.85 for postage and \$74.90 for photocopies. *Id.*

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

Applicant's services here included, without limitation: preparing the employment motion and fee application and preparing a motion to approve the compromise and adjudication of the Chapter 7 estate's share in claims arising from a probate case. Doc. #62. The court finds the services and expenses reasonable, actual, and necessary. The Trustee has reviewed the Application and finds the requested fees and expenses to be reasonable. Doc. #63.

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

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

This Application is GRANTED. The court will approve on a final basis under 11 U.S.C. § 330 compensation in the amount of **\$6,121.50** in fees and **\$160.75** in expenses. The court grants the Application for a total award **\$6,282.25** as an administrative expense of the estate and an order authorizing and directing the Trustee to pay such to Applicant from the first available estate funds.

5. [23-11953](#)-B-7 **IN RE: LINDSEY CUDE**
[MJ-1](#)

MOTION TO APPLY INSURANCE PROCEEDS
8-26-2024 [\[31\]](#)

ACAR LEASING LTD/MV
STEVEN ALPERT/ATTY. FOR DBT.
MEHRDAUD JAFARNIA/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

For motions filed on less than 28 days' notice, LBR 9014-1(f)(2)(C) requires the movant to notify respondents written opposition is not required and any opposition to the motion must be presented at the hearing.

This motion was filed and served on August 26, 2024, and set for hearing on September 17, 2024, which is only 22 days after service. Docs. #32. Therefore, this motion was set for hearing on less than 28 days' notice under LBR 9014-1(f)(2). Nevertheless, the notice stated:

PLEASE TAKE FURTHER NOTICE THAT opposition to this Motion, if any, must be in writing, must be filed with the Clerk of the above-captioned Court and served upon Movant and/or its counsel and all other relevant parties entitled to receive notice thereof at least fourteen (14) calendar days preceding the hearing date or continued hearing date on this Motion pursuant to Local Bankruptcy Rule 9014-1(f)(1)(B).

Id. This is incorrect. Motions noticed less than 28 days before the hearing are deemed brought pursuant to LBR 9014-1(f)(2). The notice should have informed respondents that written opposition was not required, and opposition, if any, shall be presented at the hearing. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs. Therefore, the notice was materially deficient because the respondents were told to file and serve written opposition even though it was not necessary. Thus, interested parties may be deterred from opposing the motion or from appearing at the hearing.

6. [24-11160](#)-B-7 **IN RE: ALLYN GOODALL TRUCKING, INC**
[ICE-1](#)

MOTION TO EMPLOY BAIRD AUCTION & APPRAISAL AS AUCTIONEER(S)
8-16-2024 [\[17\]](#)

IRMA EDMONDS/MV
PETER FEAR/ATTY. FOR DBT.
IRMA EDMONDS/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Chapter 7 trustee Irma Edmonds ("Trustee") seeks authorization to (a) employ Baird Auction and Appraisal Company ("Auctioneer") under 11 U.S.C. § 328; and (b) compensate Auctioneer under §§ 327(a) and 328 for the eventual sale of the estate's interest in a **2019 Chevrolet Colorado** ("the Vehicle"), currently in Auctioneer's possession at public auction under § 363(b)(1). Doc. #17. There is a separate motion to sell which is the subject of *Item #7*, below. The Debtor corporation is Allyn Goodall Trucking, Inc. ("Debtor"). *Id.*

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

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

Employment and Compensation

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

LBR 9014-1(d)(5)(B)(iii) permits joinder of requests for authorization to employ a professional, i.e., auctioneer, for sale

of estate property at public auction, and allowance of fees and expenses for such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rules 6004-05.

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

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

Under these sections, Trustee requests to employ and compensate Auctioneer by paying: (i) a 15% commission on the gross proceeds from the sale, and (ii) reimbursement of estimated expenses in the amount of \$500.00 for transportation, storage, labor, and repairs. Doc. #19.

Jerry Gould, Auctioneer's owner, declares that Auctioneer is a disinterested person as defined in § 101(14) and does not hold any interests adverse to the estate in accordance with § 327(a). Doc. #12-19. Auctioneer does not have any connection with any creditors, parties in interests, their attorneys, accountants, the U.S. Trustee, or anyone employed by the U.S. Trustee. *Id.*

Trustee states in the motion that it is necessary to employ Auctioneer to liquidate Vehicle. Doc. #17. Trustee believes that the proposed fees and expenses for services are reasonable and customary for the services to be rendered by Auctioneer. *Id.* Auctioneer will assist Trustee by generally performing and assisting Trustee in matters customarily done and performed by auctioneers in connection with an auction sale of property. *Id.*

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. §§ 327(a), 328 and authorize Trustee to pay the 15% commission, and expenses up to \$500.00 for expense reimbursement without further order of the court.

7. [24-11160](#)-B-7 **IN RE: ALLYN GOODALL TRUCKING, INC**
[ICE-2](#)

MOTION TO SELL AND/OR MOTION TO PAY
8-16-2024 [\[21\]](#)

IRMA EDMONDS/MV
PETER FEAR/ATTY. FOR DBT.
IRMA EDMONDS/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order.

Chapter 7 trustee Irma Edmonds ("Trustee") seeks authorization to sell the estate's interest in a **2019 Chevrolet Colorado** ("the Vehicle"), currently in the possession of Gould Auction and Appraisal Company ("Auctioneer"), at public auction under § 363(b)(1). Doc. #21. Trustee's motion to employ and pay Auctioneer is the subject of *Item 6*, above. Trustee proposes to sell the Vehicle at auction on an "as-is" basis at a public auction to be held on or after September 17, 2024, through Baird Auction & Appraisal, 1328 North Sierra Vista Avenue, Suite B, Fresno, California 93703. Doc. #21.

No party in interest timely filed written opposition. This motion will be GRANTED, and the hearing will proceed for overbid solicitations only.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(2) and (a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

BACKGROUND

Allyn Goodall Trucking, Inc. ("Debtor") filed chapter 7 bankruptcy on May 1, 2024. Doc. #1. Trustee was appointed as interim trustee on that same day and became permanent trustee at the first § 341 meeting of creditors on June 27, 2024. Doc. 4; Docket generally.

Contemporaneously with the instant motion, Trustee has filed a motion to employ Auctioneer to sell the Vehicle which the court has granted. See *Item #6*, above. Neither this motion nor the *Motion to*

Employ speculate as to the eventual sale price beyond stating that "Trustee intends to accept the highest reasonable bids." Doc. #21.

Trustee now requests court approval to sell the Vehicle at public auction to be held on or after September 17, 2024, through Auctioneer at Auctioneer's place of business. *Id.* Trustee also seeks approval of Auctioneer's compensation on the terms set for this the instant motion and the *Motion to Employ* which the court has already granted (to wit: 15% commission on the gross proceeds of sale, plus reasonable expenses currently estimated to be \$500.00). See *Item #5*, above.

DISCUSSION

Sale of Property

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

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). The Vehicle is to be sold at public auction. There is nothing in the record suggesting that the eventual buyers are or will be insiders with respect to debtor.

Property is listed in *Schedule A/B* with a value of \$21,609.00. Doc. #1 (Line 47.7. Debtor is a corporation, so exemptions do not apply. The Vehicle is encumbered by a lien held by Ally Bank in the amount of \$6,801.51. Doc. #1 (*Sched. D, Line 2.1*).

If the Vehicle is sold at its estimated value of \$21,609.00, the proceeds from the proposed sale could be illustrated as follows:

Sale price	\$21,609.00
Estimated Auctioneer fee	(\$3,241.35)
Estimated Expenses	(\$500.00)
Ally Bank lien	(\$6,801.51)
Estimated net proceeds to estate	\$11,566.14

The sale under these circumstances should maximize potential recovery for the estate. The sale of the Property appears to be in the best interests of the estate because it will pay off Ally Bank's lien with significant funds left over to provide liquidity that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

Auctioneer's Compensation

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

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

Contemporaneously with this motion, the Trustee moved to employ Auctioneer to assist the trustee in carrying out the trustee's duties by selling property of the estate. Doc. #17. The court has authorized Auctioneer's employment under 11 U.S.C. §§ 327 and 328. *See Item #5, above.*

Pursuant to the employment order, Trustee requests to compensate Auctioneer with a commission of 15%. Doc. #17. Auctioneer will receive a commission of 15% the eventual sale price. The court will authorize Trustee to pay commissions as prayed.

Waiver of 14-day Stay

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

Conclusion

No party in interest objected to the instant motion, which is GRANTED. Trustee will be permitted to employ Auctioneer, sell the Vehicle at public auction, and pay Auctioneer for its services as outlined above. If the sale is completed, Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale and payment of up to \$500.00 for expenses without further approval of the court.

8. [24-11160](#)-B-7 **IN RE: ALLYN GOODALL TRUCKING, INC**
[ICE-3](#)

MOTION TO EMPLOY GOULD AUCTION & APPRAISAL CO., LLC AS
AUCTIONEER(S)
8-19-2024 [\[25\]](#)

IRMA EDMONDS/MV
PETER FEAR/ATTY. FOR DBT.
IRMA EDMONDS/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Chapter 7 trustee Irma Edmonds ("Trustee") seeks authorization to (a) employ Gould Auction and Appraisal Company ("Auctioneer") under 11 U.S.C. § 328; and (b) compensate Auctioneer under §§ 327(a) and 328 for the eventual sale of the estate's interest in fourteen (14) trailers, motor vehicles, and equipment ("the Assets") owned by the estate. Doc. #25. Trustee proposes to sell the Assets at public auction under § 363(b)(1). *Id.* There is a separate motion to sell which is the subject of *Item #9*. The Debtor corporation is Allyn Goodall Trucking, Inc. ("Debtor"). *Id.*

The Assets described in the Motion include the following:

Asset	Schedule A/B Value	A/B Line
1995 Ford F-350 Chassis 2D	\$2,000.00	47.2
2012 Western Star-4900	\$0.00	47.3
2014 Western Star	\$25,000.00	47.4
2014 Western Star 4700 SF	\$0.00	47.5
1990 Fruehauf Trailer	\$0.00	48.1
1997 Fruehauf 16A Trailer	\$10,000.00	48.2
1994 Western Construction Hydraulic End Dump	\$15,000.00	47.1
2015 Freightliner Cascadia Semi-Trailer	\$10,000.00	47.8
1999 Reliance Trailer	\$0	48.3
Bobcat	\$5,000.00	48.4
1995 Aluminum 402 Axle Flatbed		n/a
Hyundai 4 Wheel Loader		n/a
Cozad Detachable Lo Bed		n/a
Misc. Pallets of parts		n/a
Total (Excluding Assets not on Sch. A/B)	\$67,000.00	

Doc. #29; Doc. #1 (*Sched. A/B*). Four of the Assets which Trustee proposes to sell (the 1995 Aluminum 402, the Hyundai, the Lo Bed, and the Miscellaneous Pallets) are not listed in the Schedules.

Based on Debtor's Schedule A/B, the aggregate value of the Assets which are scheduled is \$67,000.00.

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

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

Employment and Compensation

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

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

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

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

Under these sections, Trustee requests to employ and compensate Auctioneer by paying: (i) a 15% commission on the gross proceeds from the sale, and (ii) reimbursement of estimated expenses in the amount of \$8,000.00 for transportation, storage, labor, and repairs. Doc. #27. The court notes that the motion itself seeks "8,00.00" [sic] for expenses but assumes this to be a scrivener's error. See Doc. #25.

Trustee states in the motion that it is necessary to employ Auctioneer to liquidate the Vehicles. Doc. #27. Trustee believes that the proposed fees and expenses for services are reasonable and customary for the services to be rendered by Auctioneer. *Id.* Auctioneer will assist Trustee by generally performing and assisting Trustee in matters customarily done and performed by auctioneers in connection with an auction sale of property. *Id.*

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. §§ 327(a), 328 and authorize Trustee to pay the 15% commission, and expenses up to \$8,000.00 for expense reimbursement without further order of the court.

9. [24-11160](#)-B-7 **IN RE: ALLYN GOODALL TRUCKING, INC**
[ICE-4](#)

MOTION TO SELL AND/OR MOTION TO PAY
8-19-2024 [\[29\]](#)

IRMA EDMONDS/MV
PETER FEAR/ATTY. FOR DBT.
IRMA EDMONDS/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order.

Chapter 7 trustee Irma Edmonds ("Trustee") seeks authorization to sell the estate's interest in fourteen (14) trailers, vehicles, and equipment (collectively "the Assets") through Gould Auction and Appraisal Company ("Auctioneer"), at public auction under § 363(b)(1). Doc. #21. Trustee's motion to employ and pay Auctioneer is the subject of *Item 8*, above. Trustee proposes to sell the Assets at auction on an "as-is" basis at a public auction to be held on or after September 17, 2024, through Gould Auction & Appraisal Co., LLC, 6200 price Way, Bakersfield, California 93308. Doc. #31. The Debtor corporation is Allyn Goodall Trucking, Inc. ("Debtor"). *Id.*

The Assets described in the Motion include the following:

Asset	Schedule A/B Value	A/B Line
1995 Ford F-350 Chassis 2D	\$2,000.00	47.2
2012 Western Star-4900	\$0.00	47.3

2014 Western Star	\$25,000.00	47.4
2014 Western Star 4700 SF	\$0.00	47.5
1990 Fruehauf Trailer	\$0.00	48.1
1997 Fruehauf 16A Trailer	\$10,000.00	48.2
1994 Western Construction Hydraulic End Dump	\$15,000.00	47.1
2015 Freightliner Cascadia Semi-Trailer	\$10,000.00	47.8
1999 Reliance Trailer	\$0	48.3
Bobcat	\$5,000.00	48.4
1995 Aluminum 402 Axle Flatbed		n/a
Hyundai 4 Wheel Loader		n/a
Cozad Detachable Lo Bed		n/a
Misc. Pallets of parts		n/a
Total (Excluding Assets not on Sch. A/B)	\$67,000.00	

Doc. #29; Doc. #1 (*Sched. A/B*). Four of the Assets which Trustee proposes to sell (the 1995 Aluminum 402, the Hyundai, the Lo Bed, and the Miscellaneous Pallets) are not listed in the Schedules. Based on Debtor's Schedule A/B, the aggregate value of the Assets which are scheduled is \$67,000.00.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(2) and (a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

BACKGROUND

Allyn Goodall Trucking, Inc. ("Debtor") filed chapter 7 bankruptcy on May 1, 2024. Doc. #1. Trustee was appointed as interim trustee on that same day and became permanent trustee at the first § 341 meeting of creditors on June 27, 2024. Doc. Doc. 4; Docket generally.

Contemporaneously with the instant motion, Trustee has filed a motion to employ Auctioneer to sell the Assets which the court has granted. See *Item #8, above*. Neither this motion nor the *Motion to Employ* speculate as to the eventual sale price beyond stating that "Trustee intends to accept the highest reasonable bids." Doc. #29.

Trustee now requests court approval to sell the Assets at public auction to be held on or after September 17, 2024, through Auctioneer at Auctioneer's place of business. *Id.* Trustee also seeks approval of Auctioneer's compensation on the terms set for this the instant motion and the *Motion to Employ* which the court has already granted (to wit: 15% commission on the gross proceeds of sale, plus reasonable expenses currently estimated to be \$8,000.00). See *Item #7, above.*

DISCUSSION

Sale of Property

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

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). The Vehicle is to be sold at public auction. There is nothing in the record suggesting that the eventual buyers are or will be insiders with respect to debtor.

As noted, the Assets that were listed in *Schedule A/B* under Line 47 have an aggregate value of \$67,000.00. Doc. #1. Debtor is a corporation, so exemptions do not apply. It is unclear whether any of the Assets are encumbered, as Debtor's *Schedule D* lists a number of secured creditors but does not describe the property that is subject to a lien. Doc. #1 (*Sched. D, generally*). The moving papers give no indication that the Assets are encumbered.

Assuming that the Assets are unencumbered and are sold at their estimated aggregate value of \$67,000.00, the proceeds from the proposed sale could be illustrated as follows:

Sale price	\$67,000.00
Estimated Auctioneer fee	(\$10,050.00)
Estimated Expenses	(\$8,000.00)
Estimated net proceeds to estate	\$48,950.00

The sale under these circumstances should maximize potential recovery for the estate. The sale of the Property appears to be in the best interests of the estate because it will Ally Bank's lien with significant funds left over to provide liquidity that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

Auctioneer's Compensation

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

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

Contemporaneously with this motion, the Trustee moved to employ Auctioneer to assist the trustee in carrying out the trustee's duties by selling property of the estate. Doc. #17. The court has authorized Auctioneer's employment under 11 U.S.C. §§ 327 and 328. *See Item #8, above.*

Pursuant to the employment order, Trustee requests to compensate Auctioneer with a commission of 15%. Doc. #17. Auctioneer will receive a commission of 15% of the eventual sale price. The court will authorize Trustee to pay commissions as prayed.

Waiver of 14-day Stay

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

Conclusion

No party in interest objected to the instant motion, which is GRANTED. Trustee will be permitted to employ Auctioneer, sell the Assets at public auction, and pay Auctioneer for its services as outlined above. If the sale is completed, Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale and payment of up to \$8,000.00 for expenses without further approval of the court.

10. [24-12183](#)-B-7 **IN RE: ANDY/SUSAN RAMIREZ**
[DWE-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-20-2024 [\[18\]](#)

FREEDOM MORTGAGE
CORPORATION/MV
ERIC ESCAMILLA/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.
FREEDOM MORTGAGE CORPORATION VS.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will enter the order.

Freedom Mortgage Corporation ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to 1248 Rich Ellen Drive, Palmyra, Tennessee ("Property"). Doc. #18.

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

LBR 4001-1 states that motions for relief from the automatic stay of 11 U.S.C. § 362(a) shall be set for hearing in accordance with LBR 9014. LBR 9014, in turn, states that, under LBR 9014-1(d)(3)(B)(i), the Notice of the motion must include the names and addresses of the persons who must be served with such opposition. Here, the Notice only directed that written opposition should be served upon Movant's counsel. *See Doc. #19*. However, as the motion to lift stay implicates assets of the estate, the chapter 7 trustee and U.S. Trustee are included among "the persons who must be served with such opposition."

Accordingly, the Notice is deficient, and this motion must be DENIED WITHOUT PREJUDICE.

11. [18-12189](#)-B-7 **IN RE: DEE DINKEL**
[FW-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH A CIVIL CLAIM AND/OR MOTION FOR COMPENSATION
BY THE LAW OFFICE OF JOHNSON LAW GROUP FOR DANA LIZIK,
SPECIAL COUNSEL(S)
8-13-2024 [\[59\]](#)

JAMES SALVEN/MV
PETER FEAR/ATTY. FOR MV.

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. Responsibility for the order will be determined after the hearing.

Chapter 7 trustee James E. Salven ("Trustee"), pursuant to pursuant to Fed. R. Bankr. P. ("Rule") 9019, requests an order approving a settlement agreement to approve compromise of a product liability claim brought by Dee. D. Dinkel ("Debtor" or "Dinkel") against the manufacturer of an allegedly defective medical product ("the Lawsuit"). Doc. #59.

No party in interest timely filed written opposition. Nevertheless, for the reasons outlined below, the hearing in this matter will proceed.

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

Background

The facts outlined below are drawn from the motion, the accompanying exhibits, and the declaration of Dana Lizik ("Lizik"), the attorney who represented Debtor in the Lawsuit. Doc. ##59,61,63.

Dinkel was injured prepetition by an allegedly defective medical device. She filed a voluntary petition under Chapter 7 on May 31, 2018. The Chapter 7 trustee in that case filed a report of no distribution, and in due course, Dinkel obtained her discharge. The Chapter 7 case was closed on September 21, 2018.

Later, on or about December 29, 2018, Dinkel retained the Johnson Law Group ("JLG") to pursue a product liability claim against the manufacturer of the allegedly defective device, pursuant to a contingency fee agreement that would pay JLG 40% of any gross recovery plus reimbursement of fees and costs incurred in pursuing the litigation. Lizik was the attorney at JLG who handled the Lawsuit for Dinkel.

The U.S. Trustee subsequently learned of Dinkel's failure to schedule her products liability claim and moved to reopen the Chapter 7 case, which the court granted. Lizik agreed to serve as special purpose counsel for the estate, and the court approved that appointment on the same terms as the agreement between Dinkel and JLG, namely a 40% contingency fee and reimbursement of costs incurred.

The Lawsuit eventually joined other such claims into a multi-district litigation ("MDL"). In an effort to resolve the MDL, the manufacturer (who has disclaimed all liability) set up a fund from which qualified claimants could submit claims for analysis. Lizik declares that she has obtained an offer of settlement in the sum of \$252,750.00, which amount is subject to several deductions for fees and costs which reduce the gross settlement down to a balance of \$141,773.19, which is due to Dinkel's bankruptcy estate.

Trustee now seeks approval of this settlement.

The court notes that a copy of the settlement agreement has not been filed in this case. The motion will only be granted if Trustee separately files the settlement agreement and docket it as a stipulation.

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

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

1. Probability of success in litigation: Trustee avers that it is uncertain whether the Lawsuit would prevail at trial. Trustee avers that the facts indicate that Dinkel's claim is meritorious, it is speculative at this juncture to know whether a products liability claim would succeed at trial. This factor supports approval of the settlement.
2. Collection: Trustee foresees no problem with collection but notes that the funds to pay for the settlement are already being handled by a third-party settlement handler. The Trustee argues that said funds are already in the hands of an "already-established, reputable and [] readily available source tips in favor of approving the compromise." The court agrees.
3. Complexity of litigation: The case is factually complicated and involves an allegedly defective medical device implanted many years ago. Dinkel began pursuing this claim over five years ago, and it is not joined with many other similar claims in MDL. If the settlement is rejected, Trustee does not foresee a trial scheduled for a considerable length of time. JLG, the Trustee's special counsel, believes that the settlement is better than the results likely to be obtained at trial, so much so that JGL has indicated they would not even proceed on to trial if the settlement were not approved, and Trustee would have to find another attorney competent to handle the complex issues who would have to start over from scratch. JGL would also be in a position to pursue a lien on any proceeds. These factors support Trustee's business judgment that settlement on the terms offered is a better resolution than rejecting it.
4. Paramount interests of creditors: Trustee notes that this was originally closed as a "no asset" case. If the settlement is approved, the estate will receive a net payout of \$141,773.19 to pay to creditors with allowed claims who would otherwise receive nothing.

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

Accordingly, the court is inclined to GRANT this motion. However, counsel for one of the parties has contacted the court after publication of the pre-hearing disposition and raised concerns about a possible ambiguity in the PHD. Assuming those ambiguities are resolved to the satisfaction of all parties, and upon the separate filing of the proposed settlement agreement as a Stipulation, the

court will approve the settlement. This ruling is not authorizing the payment of any fees or costs associated with the settlement except the proposed contingency fee to special counsel. Additionally, Trustee shall attach a copy of the settlement agreement as an exhibit to the proposed order.