



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

Hearing Date: Tuesday, September 24, 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. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[WF-22](#)

MOTION TO SELL
9-3-2024 [[733](#)]

TERRENCE LONG/MV
PETER FEAR/ATTY. FOR DBT.
DANIEL EGAN/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order after hearing.

Terence J. Long, the duly appointed Plan Administrator in the above-styled Chapter 11 proceeding ("Plan Administrator" or "Long") seeks authorization to sell the estate's interest in two parcels of vacant land, one 3.3-acre parcel and 2.71-acre parcel, both located in San Andreas, California (identified in the moving papers as "the Calaveras Properties"). Doc. #733. Long also seeks authorization to pay broker commissions from the sale proceeds as well as the usual closing costs and property taxes. *Id.* The sale will be subject to higher and better bids at the hearing. *Id.* Long does not seek waiver of the 14-day stay. *Id.*

Written opposition was not required and may be heard at the hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and GRANT the motion subject to any overbids at the hearing. 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.

BACKGROUND

Stephen William Sloan ("Debtor") filed Chapter 11 bankruptcy on March 2, 2020. Doc. #1. On February 2, 2022, the plan of reorganization was confirmed which, *inter alia*, appointed Long as Plan Administrator. Doc. #483. Pursuant to provisions of the plan, Long has authority to liquidate the assets of Emerald California Investments, LLC ("Emerald"), which include the Calaveras Properties. *Id.*

On or about April 15, 2024, the court approved the motion to retain Pearson Realty to market the Calaveras Properties. Doc. #674. The motion avers that the Plan Administrator has received an offer to purchase the Calaveras Properties from MACT Health Board, Inc.

("Buyer"), which the Plan Administrator has accepted subject to the approval of this court. Doc. #733.

DISCUSSION

Sale of Property

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

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). There is nothing in the record suggesting that Buyer is an insider with respect to Debtor. Buyer is neither listed in the schedules nor the master address list. Docs. #1; #2; #16; #19.

Property is not explicitly listed in *Schedule A/B*, but Debtor's 100% ownership of Emerald is listed on line 19 as having a value of \$4,000,000.00. Doc. #1. In Section 4.01.9 of the Plan, Emerald is described as owning two properties: (1) approximately 140 acres in Calaveras County (estimated value of \$3 million), and (2) Debtor's personal residence located at 317 Kingsbury Drive, Aptos, California (estimated value of \$3 million with approximately \$1.5 million in debt on the property. Doc. #483 (*Exhib. A*).

It appears that the Calaveras Properties represent a subset of the 140 acres owned by Emerald and are being sold separately according to the Plan Administrator's prior *Motion to Employ*. See Doc. #652. That motion identified three parcels to be marketed and sold by Pearson Realty: (1) "the Almond Orchard," (2) "the Pistachio Orchard," and (3) "the Adjacent Vacant Land." *Id.* Thus, there is some ambiguity as to what portions of the Emerald property (which has a total estimated value of \$3 million) are being sold pursuant to this motion. The Plan Administrator will have opportunity to clarify the issue at the hearing.

Debtor did not exempt Property in *Schedule C*. Doc. #1.

The Plan Administrator has entered into a contract ("Purchase Agreement") with Buyer to sell the Calaveras Properties for \$60,000.00, with a deposit of \$3,000.00 and a close of escrow on or before October 17, 2024. Doc. #736 (*Exhib. A*). The sale contract is subject to various terms and conditions outlined in Addendum No. 1 to the contract, most notably that (1) the sale of Property is as-is, where-is, with no warranties and (2) the sale is subject to overbid and the final approval of this court. Doc. #736, pg. 20. The Plan Administrator estimates that, after closing costs, the sale will generate approximately \$50,700.23 for the estate. Doc. #733; see also Doc. #736 (*Exhib. D*).

There is no indication that the Calaveras Properties are encumbered. The motion also proposes to pay a 6% commission to the realtors, to be split between Pearson Realty and buyer's realtor. Doc. #736 (*Exhib. A*).

The sale under these circumstances should maximize potential recovery for the estate. The sale of the Property appears to be in the best interests of the estate because it will provide liquidity that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. Therefore, this sale is an appropriate exercise of Trustee's business judgment and, assuming no opposition is presented at the hearing, will be given deference.

Real Estate Brokers' Compensation

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

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

On March 19, 2024, the Plan Administrator moved to employ Pearson Realty to assist in carrying out the Plan Administrator's duties by selling the assets of Emerald, including the Calaveras Properties. Doc. #652. The court authorized Broker's employment on April 15, 2024, under 11 U.S.C. §§ 327 and 328. Doc. #674.

Pursuant to the employment order, the Plan Administrator requests to compensate Pearson Realty and the Buyer's broker with a commission of 6%, which will be split equally between Broker and the buyer's real estate broker. Doc. #733. Buyer's broker is Berkshire Hathaway HomeServices Drysdale Properties ("Berkshire Hathaway"). Pearson Realty and Berkshire Hathaway would each receive a 3% commission or \$1,800.00 each, if there are no overbidders and Property is sold at the proposed sale price. The court will authorize Plan Administrator to pay broker commissions as prayed.

Overbid Procedure

Any party wishing to overbid shall, prior to the hearing, comply with the overbid procedures as outlined in the motion beginning on page 3. See Doc. #733, pg. 3.

Waiver of 14-day Stay

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

Conclusion

Written opposition to this motion was not required. If no such opposition is presented at the hearing, this motion will be GRANTED. The Plan Administrator will be authorized: (1) to sell the Property to the prevailing bidder at the hearing, as determined at the hearing; (2) to execute all documents necessary to effectuate the sale of the Property; (3) to pay broker commission in the amount of 6% of the total sale price to be split evenly between seller's broker and the buyer's broker, as determined at the hearing; and (4) to pay all costs, commissions, and real property taxes directly from escrow.

2. [24-10546](#)-B-12 **IN RE: MAXIMINIO/MARIE SILVEIRA**
[CAE-1](#)

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

PETER FEAR/ATTY. FOR DBT.

NO RULING.

3. [24-10546](#)-B-12 **IN RE: MAXIMINIO/MARIE SILVEIRA**
[FW-5](#)

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

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Maximinio and Marie Silveira ("Debtors") seek an order confirming the *Chapter 12 Plan* dated May 31, 2024. Doc. ##71, 82.

This matter was originally set for August 27, 2024. Doc. #126. The court set a deadline of September 17, 2024, for Debtors to submit any modified or redlined plan. *Id.* The confirmation deadline was extended to October 8, 2024. *Id.* On September 17, 2024, Debtors, Chapter 12 Trustee Lilian Tsang ("Trustee"), and Bank of the Sierra ("BotS") submitted a *Stipulation* by which those parties have agreed to redline changes to the plan to resolve potential objections, none of which changes (they aver) negatively affect any other creditors. Doc. #137. With such changes, BotS and Trustee indicate they have no objection to confirmation of the plan. *Id.*

The 36-month plan (as modified by the redlines) proposes the following treatment of administrative claims and creditor claims:

Class	Description	Treatment
Class 1	Administrative Claims, including Debtors' attorney fees and Chapter 12 Trustee fees.	To be paid through Trustee or directly by Debtors, as the order approving Class 1 claims provides. Attorneys' fees estimated at \$60,000.00 above the pre-filing retainer paid by Debtors. Any attorneys' fees still owing after case completion will be non-dischargeable. Class 1 claims are unaffected by the redlines.
Class 2	Real Property Taxes owed to Merced County. An estimated \$46,729.37 that is fully secured by lien on Debtors' property.	To be paid in full through the liquidations described below. Class 2 claims are unaffected by the redlines.
Class 3	Bank of the Sierra. \$7,148,248.55 that is fully secured by a first deed of trust on 362 acres of farmland ("the 362 Acres"), as well as certain personal property and its proceeds.	The claim and the loan documents filed in support thereof shall not be modified and the Plan shall not be deemed a cure of the pre-petition default. BotS will retain its lien until all payments owed to it are paid in full, including post-petition interest, fees, costs and expenses. The treatment of this creditor is altered by the redlines.
Class 4	Associated Feed and Supply. \$383,375.73 that is fully secured by a second deed of trust on the 362 Acres.	To be paid in full through the liquidation of the 362 Acres. Claim will continue to accrue interest at the Till Rate (as defined by the Plan) until paid in full. Class 4 claims are unaffected by the redlines.
Class 5	Golden1 Credit Union. Security interest in a 2014	To be paid at \$192.20 per month beginning in the month

	GMC Acadia Denali SUV. Debtor believes that value of the collateral is \$6,000.00 which is, therefore, the value of the secured claim, with any unsecured amount treated with general unsecureds.	after the Effective Date and continuing until paid in full no later than 36 months after the Effective Date. Interest to accrue at the Till Rate (as defined by the Plan). Class 5 claims are unaffected by the redlines.
Class 6	Valley First Credit Union. A security interest in a 2017 GMC Sierra 1600 SLE Crew Cab. Debtors estimates that the amount owed on the claim was \$2,079.77 as of the filing date and it is fully secured.	This claim is unmodified by the Plan or the redlines.
Class 7	Kubota Credit Corp. A security interest in a Kubota S175 High Flow Skid Steer Loader. Per Claim #13, the amount of the claim is \$1,940.27 and it is fully secured.	This claim is unmodified by the Plan or the redlines. Debtors will sell the collateral to pay this claim no later than 60 days after the Effective Date.
Class 8	Marline Business Corporation. A security interest in a 2016 Peterbilt 375. According to Claim #21, the amount of the claim is \$4,375.80 and it is fully secured.	This claim is unmodified by the Plan or the redlines. Debtors will sell the collateral to pay this claim no later than 60 days after the Effective Date.
Class 9	Wells Fargo Bank, N.A. A first deed of trust on real property located at 4492 E. Lingard Road, Merced, CA. According to Claim #11, the amount of the claim is \$233,808.91 and it is fully secured.	This claim is unmodified by the Plan or the redlines. Debtors may sell collateral to satisfy the liquidation analysis. Debtors plan to timely pay regular mortgage payments as required by the note and deed of trust until such time as the collateral may need to be liquidated.
Class 10	First Citizens Bank. A security interest in a 2019 Hitachi Wheel Loader. According to Claim #16 (duplicated by Claim #20), the amount of the claim is \$86,785.13 and it is fully secured.	This claim is unmodified by the Plan or the redlines. On the Effective Date, the Debtors will surrender the collateral to the claimholder, and the automatic stay will be modified to permit claimholder to exercise state law remedies to repossess and liquidate the collateral.
Class 11	Unsecured Priority Claims. Estimated at \$0.00.	To be paid in full under the Plan after all Class 1 claims have been paid. Class 11 claims are unaffected by the redlines.

Class 12	Unsecured Non-priority Claims.	To be paid any remaining net proceeds from the liquidations described below. Class 12 claims are unaffected by the redlines.
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Doc. #71. To finance the plan, Debtors propose to sell real property and personal property as outlined in Section IV of the plan. Doc. #71, Section IV. For all such property that is collateral for secured debts, the secured creditor will be paid off first. *Id.*

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

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

No party in interest has filed an objection, and the defaults of all non-responding parties are entered. Previously, the court interpreted the actions of BotS in filing an adversary proceeding alleging conversion claims against Debtors for the sale of BotS's collateral to represent an implicit objection to confirmation and, on that basis, set this matter for hearing despite the absence of any formal objection. With the Stipulation mentioned above, BotS has made it plain that it does not oppose confirmation. The court notes that the Debtors have already stipulated to changes to the Plan to

resolve potential Trustee objections which the Debtors aver will not negatively affect any creditors. See Doc #97. Thus, the court will view this motion for confirmation as unopposed.

The requirements for confirmation of a Chapter 12 plan are outlined in 11 U.S.C. § 1225(a)-(b). The six requirements of § 1225(a) apply to all plans. The requirements of § 1225(b) are only applicable where the trustee or the holder of an allowed unsecured claims objects to confirmation. There are no objections to confirmation. Consequently, only the § 1225(a) requirements need be considered at this time, those being:

- (1) the plan complies with the provisions of this chapter [11 USCS §§ 1201 *et seq.*] and with the other applicable provisions of this title;
- (2) any fee, charge, or amount required under chapter 123 of title 28 [28 USCS §§ 1911 *et seq.*], or by the plan, to be paid before confirmation, has been paid;
- (3) the plan has been proposed in good faith and not by any means forbidden by law;
- (4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title [11 USCS §§ 701 *et seq.*] on such date;
- (5) with respect to each allowed secured claim provided for by the plan—
 - (A) the holder of such claim has accepted the plan;
 - (B)
 - (i) the plan provides that the holder of such claim retain the lien securing such claim; and
 - (ii) the value, as of the effective date of the plan, of property to be distributed by the trustee or the debtor under the plan on account of such claim is not less than the allowed amount of such claim; or
 - (C) the debtor surrenders the property securing such claim to such holder;
- (6) the debtor will be able to make all payments under the plan and to comply with the plan; and
- (7) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation.

11 U.S.C. § 1225(a). Based on the moving papers it appears that all these requirements have been met. Accordingly, this motion for confirmation will be GRANTED. The confirmation order shall include the docket control number of the motion and reference the plan by the date it was filed.

4. [24-10546](#)-B-12 **IN RE: MAXIMINIO/MARIE SILVEIRA**
[FW-9](#)

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION FOR
COMPENSATION FOR EXIT REALTY, BROKER(S)
9-3-2024 [[130](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order
after hearing.

Maximinio Silveira and Marie Madalena Silveira ("Debtors") seek authorization to sell, pursuant to 11 U.S.C. § 363(f), a tract of farmland as described below ("the Property"). Doc. #130. The proposed sale price is \$3,400,000.00, and the proposed buyers are James C. Wolf and Regina R. Wolf ("the Buyers"). *Id.* Debtors also request authorization to pay a three percent (3%) commission to the real estate brokers, split evenly between Debtors' broker and Buyers' broker.

Written opposition was not required and may be heard at the hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing (and provided that certain ambiguities about the nature of the Property as discussed below are resolved), the court intends to enter the respondents' defaults and GRANT the motion subject to any overbids at the hearing. 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.

It appears that Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving Creditor's registered agent for service of process via first class mail on June 15, 2023. Doc. #17. Debtor also complied with Rule 7004(h), which requires service to be made by certified mail and addressed to an officer, unless one of three exceptions specified in subsections (h)(1) to (3) have been met.

BACKGROUND

The Debtors filed chapter 12 bankruptcy on March 5, 2024. Doc. #1. Pursuant to 11 U.S.C. § 1206, a Chapter 12 trustee is authorized to sell free and clear of any interest in property if such property is "farmland," provided that the proceeds of the sale are subject to such interest. Debtors in chapter 12 have the same rights and shall perform the functions and duties of a trustee and thus may also sell farmland property free and clear of liens pursuant to § 1206. 11 U.S.C. § 1203.

On June 13, 2024, the court granted Debtors' Application to Employ Exit Realty ("Exit") to market and sell the Property. Doc. #90. Debtors, by and through Exit, have entered into a contract to sell the Property to Buyers for \$3,400,000.00. Doc. #130 et seq. Buyers now requests approval under 11 U.S.C. § 363 to complete the sale. *Id.* Debtors proposed to use the sale proceeds to reduce their indebtedness to creditor Bank of the Sierras ("Bots"), which holds a lien on the Property (estimated at \$6,934,921.73 on Debtors' Schedule D) and which presently objects to the Debtors' Chapter 12 Plan.

The court notes some ambiguities in the moving papers and other filings which must be addressed at the hearing. Specifically, the plan contemplates the sale of two farms owned by Debtors identified in the Plan as "the 204-Acre Farm" and the "158-Acre Farm." Doc. #71 (Plan at 4.02 "Description of Assets"). Based on the information about the Property in the moving papers, this appears to be the 158-Acre Farm, but it is unclear to the court whether the sale is for the entire 158-Acre Farm or just a portion thereof. Included with the moving papers are a copy of the Sales Agreement and a Preliminary Title Report. *See Doc. ##134-35.* The Sales Agreement identifies the property with the Assessor's Parcel No. ("APN") 066-130-002-000, "further described as 3301 Thrift rd. Mecred [sic]". Doc. #134, pg. 6. However, the Preliminary Title Report addresses a property located at "3465 Thrift Road, Merced" consisting of two parcels bearing APNs 066-130-008-000 and 066-130-002-000. Doc. #135, pp. 4-5. It appears that neither the Sales Agreement nor the Preliminary Title Report identify the subject property by its acreage. Debtors will have opportunity to clear this apparent murkiness at the hearing.

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).

11 U.S.C. § 1206 states:

After notice and a hearing, in addition to the authorization contained in section 363(f), the trustee in a case under this chapter may sell property under section 363(b) and (c) free and clear of any interest in such property of an entity other than the estate if the property is farmland, farm equipment, or property used to carry out a commercial fishing operation (including a commercial fishing vessel), except that the proceeds of such sale shall be subject to such interest.

11 U.S.C. § 1206. Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). There is nothing in the record suggesting that Proposed Buyers are insiders with respect to Debtor. Proposed Buyers are neither listed in the schedules nor the master address list. Docs. #15, 18.

Property is listed in *Schedule A/B* with a value of \$6,000,000.00. Doc. #15 (*Sched. A/B*). Debtors claim an exemption in the Property in the amount of \$420,000.00 in *Schedule C. Id.*

Debtors entered into a contract ("Purchase Agreement") with Buyers to sell Property for \$3,400,000.00, subject to terms as outlined in the Purchase Agreement. See *Doc. #134, pg. 3.*

Buyers included a copy of the preliminary title report as an exhibit, which is incorporated by reference in Mr. Silveira's declaration. Doc. #133, Doc. #135 (*Exhib. B*). According to the report, encumbrances on the Property include:

1. Past due taxes in amounts totaling \$28,000.98, plus late penalties.
2. Past due taxes in amounts totaling \$2,684.72, plus late penalties.
3. Three deeds of trust in favor of BotS in the amounts (in chronological order) of \$4,320,000.00, \$1,500,000.00, and \$500,000.00, for a total lien in favor of BotS in the amount of \$6,320,000.00.
4. A deed of trust in favor of Associated Feed and Supply Company ("AFSC") in the original principal amount of \$541,446.85.

Doc. #135 (*Exhib. B*). The moving papers aver that BotS is owed a total of \$7,148,248.55, which is cross-collateralized against other assets of the Debtor. Doc. #130. AFSC is owed \$383,375.73, which is also cross-collateralized. *Id.* Debtors argue that they are entitled to sell the Property free and clear of those liens because the Property is farmland as permitted by § 1206. *Id.* The liens will instead be attached to the sale proceeds in order of priority. Costs and property taxes will be paid first out of escrow, as well as Chapter 12 Trustee compensation for constructive disbursements. *Id.* Debtors anticipate that the bulk of the sale proceeds will be consumed by BotS's first deed of trust. *Id.* As BotS's first deed of

trust alone (in the amount of \$4,320,000.00) exceeds the proposed sale price (\$3,400,000.00), this seems likely to be the case.

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 substantially reduce BotS's lien such that liquidation of Debtors' other assets may be result in a pay-out to AFSC and other creditors, whereas a foreclosure by BotS likely would not. The sale appears to be supported by a valid business judgment and proposed in good faith. Therefore, unless an objection is raised at the hearing, the court is inclined to find that this sale is an appropriate exercise of Debtors' business judgment and will be given deference.

Real Estate Brokers' Compensation

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

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

The court authorized Exit's employment as Debtors' broker on June 13, 2024, under 11 U.S.C. §§ 327 and 328. Doc. #90.

Pursuant to the employment order, Trustee requests to compensate Broker with a commission of 3%, all of which will go to Exit, which is representing both Debtors and Buyers. Doc. #134. Exit will thus receive a commission in the amount of \$102,000.00 if there are no overbidders and Property is sold at the proposed sale price. The court will authorize Debtors to pay broker commissions as prayed.

Overbid Procedure

Any party wishing to overbid shall, prior to the hearing, comply with the overbid procedures as outlined in the motion. *See Doc. #130 beginning on pg. 6.*

Waiver of 14-day Stay

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

Conclusion

Written opposition to this motion was not required. If no such opposition is presented at the hearing, this motion will be GRANTED. The Debtors will be authorized: (1) to sell the Property, free and clear of the undisputed interest of Bank of the Sierra and Associated Feed and Supply pursuant to 11 U.S.C. § 1206, to the prevailing bidder at the hearing, as determined at the hearing; (2) to execute all documents necessary to effectuate the sale of the

Property; (3) to pay broker commission in the amount of 3% of the total sale price Exit, as determined at the hearing; and (4) to pay all costs, commissions, and real property taxes directly from escrow.

The remaining proceeds are subject to the respective interests of BotS and AFSC (in that order of priority) under § 1206. Unless the final bid is remarkably higher than anticipated, the proceeds will only pay a portion of the BotS lien, with AFSC receiving nothing from this sale. As the amount of proceeds that will be available to pay the Class 3 and 4 debts is not ascertainable prior to the auction, the Trustee shall not disburse any proceeds of this sale to either BotS or AFSC without court approval.

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

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

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

NO RULING.

6. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[FRB-1](#)

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

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

NO RULING.

7. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[FWP-1](#)

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

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

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

DISPOSITION: Withdrawn pursuant to Stipulation.

ORDER: The court will prepare the order.

On September 16, 2024, Madera Community Hospital ("MCH"), movant County of Madera ("the County"), party in interest American Advanced Management, Inc. ("AAM"), and Nicholas Rubin, in his capacity as Liquidation Trustee ("Trustee" or "Rubin"), entered a Stipulation resolving this motion. Doc. #2040. The court approved the Stipulation on September 17, 2024. Doc. #2044.

Pursuant to the Stipulation, the instant motion is withdrawn with prejudice. Doc. #2040. Accordingly, this motion is WITHDRAWN.

8. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[HRR-2](#)

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

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

NO RULING.

9. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-21](#)

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

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

NO RULING.

10. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-40](#)

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

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

NO RULING.

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

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

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

NO RULING.

12. [24-12162](#)-B-11 **IN RE: VALDOR LLC**
[ALG-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-4-2024 [[43](#)]

MV FUND I, LLC/MV
ARNOLD GRAFF/ATTY. FOR MV.
MV FUND I, LLC VS.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

MV Fund I, LLC, et al. ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(4) with respect to real property located at 1305 Avenida Sabia, Bakersfield, CA 93309 ("Property") so that it may take all steps necessary under state and federal law to commence or complete its foreclosure sale. Doc. #43. Movant requests that the order be binding and effective under § 362(d)(4) in any other bankruptcy purporting to affect Property for a period of two years after entry of the order. Movant also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3) and Cal. Civ. Code § 3924g(d).

Written opposition was not required and may be presented at the hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults. 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. § 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).

An order entered under § 362(d)(4) is binding in any other bankruptcy case purporting to affect such real property filed not later than two years after the date of entry of the order.

To obtain relief under § 362(d)(4), Movant must show and the court must affirmatively find the following three elements: (1) the debtor's' bankruptcy filing must have been part of a scheme; (2) the object of the scheme must have been to delay, hinder, or defraud creditors, and (3) the scheme must have involved either the transfer of some interest in the real property without the secured creditor's consent or court approval, or multiple bankruptcy filings affecting the property. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (B.A.P. 9th Cir. 2012).

A scheme is an intentional construct - it does not happen by misadventure or negligence. *In re Duncan & Forbes Dev., Inc.*, 368 B.R. 27, 32 (Bankr. C.D. Cal. 2007). A § 362(d)(4)(A) scheme is an "intentional artful plot or plan to delay, hinder or defraud creditors." *Id.* It is not common to have direct evidence of an artful plot or plan to deceive others - the court must infer the existence and contents of a scheme from circumstantial evidence. *Id.* Movant must present evidence sufficient for the trier of fact to infer the existence and content of the scheme. *Id.*

With those principles in mind, the court turns to the matter at hand.

The debtor in this case is Valdor LLC ("Valdor" or "Debtor"), a corporation whose business, according to its filings, consists of single asset real estate. Doc. #1. Valdor's principal is Amir Sarbaz ("Sarbaz"). *Id.* See also Doc. #45 (*Decl. of Sandy MacDougall*). Within the last five months, Valdor and Sarbaz have accumulated four bankruptcies between them, three of which have been dismissed and the latest of which is on the cusp of dismissal. All four cases were filed as a *pro se* debtor.

1. Case No. 24-11136 ("Sarbaz I"). This Chapter 7 petition was brought by Sarbaz in his individual capacity on April 30, 2024. *Sarbaz I* at Doc. #1. It was dismissed on May 29, 2024, for failure to file required documents with the court after receiving a notice of incomplete filing. *Id.* at Doc. #18. In

- Sarbaz I*, Sarbaz listed the Property as his residence in the skeletal petition.
2. Case No. 24-11528 ("*Sarbaz II*"). On June 3, 2024, a few weeks after dismissal of *Sarbaz I* and on the eve of foreclosure, Sarbaz filed this second petition, now under Chapter 13. *Sarbaz II* at Doc. #1. Sarbaz again listed the Property as his residence in the skeletal petition, and like its predecessor, was dismissed on June 14, 2024, for failure to file nearly all the required documents. *Sarbaz II* at Doc. #14.
 3. Case No. 24-11751 ("*Valdor I*"). On June 25, Sarbaz, in his capacity as principal for Valdor, filed a Chapter 11 petition in the name of Valdor. *Valdor I* at Doc. #1. In the course of *Valdor I*, Valdor was the subject of an *Order to Show Cause* why the case should not be dismissed because Local Rule 183(a) of the U.S. District Court for the Eastern District of California, incorporated into the Local Bankruptcy Rules by LBR 1001-1(b), states that "a corporation or other entity may appear only by an attorney," and Valdor was not represented by counsel but simply by Sarbaz in a *pro se* capacity. *Valdor I* at Doc. #6. This case was also the subject of a Notice of Incomplete Filing, and at the hearing conducted on July 30, 2024, *Valdor I* was dismissed. Doc. #46, #48. The court advised Sarbaz at that time that the corporation would not be able to proceed in bankruptcy without an attorney to represent it. *Valdor I* was dismissed on July 31, 2024. *Valdor I* at Doc. #48.
 4. Case No. 24-12162 ("*Valdor II*" or "the Instant Case"). Despite the court's admonishment that a corporate Chapter 11 could not be maintained without an attorney representative, Sarbaz filed *Valdor II* on July 30, 2024, again without an attorney representative. Doc. #1. *Valdor II* was filed the same day as the hearing on the *Order to Show Cause* and one day before the dismissal of *Valdor I*. In addition to the instant motion, *Valdor II* is also the subject of an *Order to Show Cause* why *Valdor II* should not be dismissed for lack of an attorney representative and why Valdor should not be barred from filing another bankruptcy proceeding for 180 days from the entry of the order without permission from the Chief Judge of this district. Doc. #31.

Movant is the secured creditor holding a promissory note secured by Deed of Trust ("the Note") in favor of Movant and signed on behalf of Valdor by Sarbaz. Doc. #46 (*Exhib. 1*). The amount owed under the Note was \$900,000.00 to be paid back in twenty-three (23) interest-only payments of \$8,992.50 each, followed by a balloon payment of \$908,992.50 on October 1, 2024. *Id.*; Doc. #45. The Note was secured by the Property. *Id.* The instant motion includes a declaration that Movant's business records show that Valdor defaulted under the loan and has made no payments to Movant since August 25, 2023, with the result that Valdor is delinquent in loan payments by twelve (12) months for a total of \$107,910.00 as of the date this motion was filed. Doc. #45. Movant declares that the total payoff on the loan had grown to \$1,112,186.64 as of June 26, 2024. *Id.* Movant has sought to initiate foreclosure proceedings against the Property but has been continually stymied by the succession of bankruptcies filed by Sarbaz and/or Valdor, all of which were swiftly dismissed for failure to comply with court orders and local rules. *Id.*

Written opposition was not required and opposition, if any, will be considered at the hearing. In the absence of any valid opposition, the court is inclined to GRANT this motion for the following reasons:

First, after review of the included evidence, the court finds that "cause" exists to lift the stay because debtor has failed to make post-petition payments. It is unclear how many post-petition payments have been missed in the context of the current bankruptcy case, as Valdor and Sarbaz have been in bankruptcy continuously since April 30, 2024, only to have the case dismissed and then a new one filed. The court accepts that Valdor has missed at least twelve payments (and likely more) and is delinquent by an amount in excess of \$107,910.00.

As an aside, the court notes that Movant has not sought to have the stay lifted under § 362(d)(2), and the court will not consider lifting the stay on that basis even though it appears that the Property is seriously underwater.

Turning to § 362(d)(4), the court finds that the debtor's filing of the petition was part of a scheme to delay, hinder, or defraud creditors. There have clearly been "multiple filings affecting the same property," as Sarbaz and Valdor collectively have filed four bankruptcies in a five-month span, with all but the latest swiftly dismissed for failure to comply with court orders and with the Local Rules. Indeed, the latest bankruptcy, *Valdor II*, will likely be dismissed contemporaneously with this order because it is the subject of a show cause hearing based on the exact same issue which led to the dismissal of *Valdor* on the same day that *Valdor II* was filed. The failure of Sarbaz and of Valdor through Sarbaz to provide required documentation in support of any of these cases speaks to their status as abuses of the Bankruptcy Code. It is appropriate to lift the automatic stay under § 362(d)(4).

The Court having rendered findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52, as incorporated by Federal Rule of Bankruptcy Procedure 7052:

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is hereby lifted as to the property located at 1305 Avenida Sabia, Bakersfield, CA 93309. The 14-day stay of Rule 4001(a)(3) will be ordered waived because Debtor has failed to make pre- and post-petition payments to Movant.

IT IS FURTHER ORDERED, pursuant to 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval; or multiple bankruptcy filing affecting such real property. The order shall be binding in any other case under Title 11 of the United States Code purporting to affect the real property described in the motion not later than two years after the date of entry of the order. A debtor in a subsequent case under Title 11 may move for

relief from this order based on changed circumstances or for good cause shown after notice and a hearing.

13. [24-12162](#)-B-11 **IN RE: VALDOR LLC**
[CAE-1](#)

CONTINUED CORRECTED ORDER TO SHOW CAUSE
8-21-2024 [[31](#)]

NO RULING.

14. [24-12162](#)-B-11 **IN RE: VALDOR LLC**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
7-30-2024 [[1](#)]

VALDOR LLC/ATTY. FOR MV.

NO RULING.

1:30 PM

1. [23-11003](#)-B-7 IN RE: GIOVANNI FERGUSON
[DMG-3](#)

MOTION FOR COMPENSATION FOR D. MAX GARDNER, TRUSTEES
ATTORNEY(S)
8-27-2024 [58]

NEIL SCHWARTZ/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.

D. Max Gardner, Attorney at Law ("Applicant") seeks approval of a first and final allowance of compensation under 11 U.S.C. §§ 330 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as attorney for Jeffrey M. Vetter, Trustee in the above-styled case ("Trustee"). Doc. #58.

Applicant was employed to perform services under § 327 of the Code pursuant to an order of this court dated August 10, 2023. Doc. #30. This is Applicant's first and final request for compensation.

Applicant seeks **\$6,314.00** in fees based on **16.40** billable hours from June 14, 2023, through July 25, 2024. Doc. #60. Based on the moving papers, it appears that no one other than Applicant has billed for any work performed on this case, and Applicant billed at a rate of \$385.00. *Id.* Applicant also seeks **\$202.90** in expenses, consisting of \$128.00 for postage and \$74.90 for copies. *Id.* The total compensation sought is **\$6,516.90**.

While the figures quoted above are generally consistent across the moving papers, the court notes that the motion itself erroneously states that Applicant worked a total of 20.50 hours and incurred fees of \$7,892.50. *See Doc. #52, pg.2, line 15.* The court interprets this to be a scrivener's error and will accept the \$6,314.00 fee request as the correct amount.

The court also notes that the court's order authorizing Applicant's retention carried an effective start date of July 2, 2023. Doc. 30. Applicant candidly acknowledges that \$616.00 of the fees, which were incurred for the time period of June 14, 2023, through June 28, 2023, predated Applicant's July 2, 2023, effective start date. Doc. #61. Applicant further declares as follows:

The Court will note that I incurred \$616 of attorney's fees for the time period of June 14, 2023 through June 28, 2023, which is outside the 30 days' grace period of

the Court's order authorizing my employment. Due to an above average schedule I had during that time period and because we had not obtained a settlement under terms that would justify employing counsel to seek Court approval, I ask the Court to allow the payment of the \$616 amount. If the Court declines I ask the Court to allow full payment minus the \$616 amount.

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 providing general counsel to the Chapter 7 Trustee, assisting with the negotiation of the sale of the Debtor's interest in an insurance liability claim, obtaining a Court order of employment, and preparing this fee application. Doc. #58 *et seq.* 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 **\$6,314.00** in fees and **\$202.90** in expenses. The court grants the Application for a total award **\$6,516.90** as an administrative expense of the estate and an order authorizing and directing the Trustee to pay such to

Applicant from the first available estate funds. The court notes that \$616.00 of the fees requested were outside the 30-day grace period, but Applicant has forthrightly explained the reason those fees were incurred (i.e. Applicant was working towards a settlement that did not come to fruition until later). The \$616.00 requested represents 1.6 hours of work and is both de minimis and of benefit to the estate, and those fees will be approved as part of the total award.

2. [24-11842](#)-B-7 **IN RE: CRYSTAL GOMEZ**

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITOR
8-6-2024 [\[18\]](#)

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue an order.

Chapter 7 trustee Peter L. Fear ("Trustee") seeks dismissal of this case for the debtor's failure to appear and testify at the § 341(a) meeting of creditors held on August 5, 2024. Doc. #18.

Crystal Gomez ("Debtor") has not filed an opposition nor communicated any reason for her failure to appear. Notwithstanding Debtor's failure to respond, this motion to dismiss will be **CONDITIONALLY DENIED**.

Debtor shall attend the meeting of creditors rescheduled for October 9, 2024, at 3:00 p.m. See Doc. #18. If Debtor fails to appear at testify at the rescheduled meeting, Trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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

3. [24-12453](#)-B-7 **IN RE: KEITH/JULIE HUFFMAN**
[YW-1](#)

MOTION TO WAIVE FINANCIAL MANAGEMENT COURSE REQUIREMENT, AND
WAIVE REQUIREMENT TO RECEIVE CREDIT COUNSELING AND WAIVE
REQUIREMENT TO ATTEND MEETING OF CREDITORS AS TO DEBTOR
8-26-2024 [10]

JULIE HUFFMAN/MV
LEONARD WELSH/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.

Keith ("Mr. Huffman") and Julie Huffman ("Ms. Huffman") (collectively "Debtors") move for an order waiving the requirement that Keith (1) receive credit counseling, (2) attend the 341 meeting of creditors, and (3) complete a debtor education course. Doc. #10 *et seq.* Debtors aver that this waiver is necessary because Keith suffers from Alzheimer's disease and "in incapable of realizing and making financial decisions with respect to his financial responsibilities." Doc. #10 (quoting 11 U.S.C. § 109(h)(4)).

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 responding parties are entered.

An individual may not be a debtor under Chapter 7 unless that individual has satisfied the credit counseling requirement as outlined in 11 U.S.C. § 109(h). However, that requirement shall not apply

with respect to a debtor whom the court determines, after notice and hearing, is unable to complete those

requirements because of incapacity, disability, or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and "disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).

11 U.S.C. § 109(h) (4) .

11 U.S.C. § 343 requires a debtor to appear and submit to examination under oath at the meeting of creditors called for under 11 U.S.C. § 341.

11 U.S.C. § 727(a) (11) states that a Chapter 7 discharge will not be granted "if the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply with respect to a debtor who is a person described in section 109(h) (4)."

First, as to the Credit Counseling and Debtor Education waivers sought for Mr. Huffman, his incapacity is established by Ms. Huffman's declaration stating that she cares for him daily. Ms. Huffman, as Mr. Huffman's spouse, can perceive incapacity and her testimony is unchallenged.

Also, a letter is presented from Mr. Huffman's cardiologist who has been treating him for many years. Though the physician's letter describes Mr. Huffman's incapacity, cardiology is not psychiatry or neurology. At best, it is hearsay lay opinion-albeit very informed lay opinion. It could perhaps be admitted under FRE 803(4); it is not a diagnosis, but it is descriptive of a medical condition. But it is unchallenged and since there is corroborating evidence from Ms. Huffman, the court will consider the letter.

Turning to the meeting of creditors, Mr. Huffman's incapacity means he is very unlikely a competent witness and unable to accurately interpret the Trustee's questions or give coherent answers.

The court will GRANT the motion. If there are further issues involving participation of Mr. Huffman, more specific competent expert testimony will be needed to be presented to excuse Mr. Huffman.

4. [23-12477](#)-B-7 **IN RE: CHRISTINE COREA**
[FW-4](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,
P.C. TRUSTEES ATTORNEY(S)
8-23-2024 [72]

ADELE SCHNEIDEREIT/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

Fear Waddell P.C. ("Applicant") seeks approval of a final allowance of compensation under 11 U.S.C. §§ 330 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as accountant for James Salven, Trustee in the above-styled case ("Trustee"). Doc. #72.

Applicant was employed to perform services under § 327 of the Code pursuant to an order of this court dated March 12, 2024. Doc. #32. This is Applicant's first and final request for compensation.

Applicant seeks **\$6,642.50** in fees based on **18.80** billable hours from March 1, 2024, through August 22, 2024, as follows:

Name	Hourly Rate	Hours	Fees
Gabriel Waddell	\$380.00	14.80	\$5,624.00
Katie Waddell	\$280.00	3.30	\$924.00
Laurel Guenther	\$135.00	0.70	\$94.50
Total		18.8	\$6,642.50

Doc. #76. Applicant also seeks **\$216.64** in expense reimbursement as follows:

Copying	\$116.06
Court Fees	\$5.40
Postage	\$95.18
Total	\$216.64

Id. The total amount of compensation sought is **\$6,859.14**. *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: providing legal services to Trustee relating to an objection to the debtor's claim of exemptions and obtaining approval of the sale of non-exempt equity in both real and personal property back to the debtor. Doc. #76. 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. #75.

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 **\$6,642.50** in fees and **\$216.64** in expenses. The court grants the Application for a total award **\$6,859.14** 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.