

UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Wednesday, September 28, 2022  
Place: Department A – Courtroom #11  
Fresno, California

*Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.*

**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

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

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

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

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

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

9:30 AM

1. [20-10010](#)-A-11 IN RE: EDUARDO/AMALIA GARCIA

CONTINUED STATUS CONFERENCE RE: OBJECTION TO CLAIM OF NINO GLOBAL, LLC, CLAIM NUMBER 13 AND/OR OBJECTION TO CLAIM OF NINO GLOBAL, LLC, CLAIM NUMBER 14, OBJECTION TO CLAIM OF PLATINUM FARMS SERVICES, LLC, CLAIM NUMBER 16, OBJECTION TO CLAIM OF NINO GLOBAL, LLC, CLAIM NUMBER 17 5-24-2021 [[593](#)]

AMALIA GARCIA/MV  
LEONARD WELSH/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

2. [20-10010](#)-A-11 IN RE: EDUARDO/AMALIA GARCIA  
[LKW-42](#)

MOTION TO BORROW  
8-30-2022 [[1152](#)]

AMALIA GARCIA/MV  
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. This matter will proceed as scheduled to: (1) permit the debtors to address the requirements of LBR 4001-1(c)(3); (2) confirm the court's understanding of the proposed allocation of loan proceeds; and (3) confirm which loan proceeds are to be impounded pending confirmation of a plan of reorganization.

By this motion, Eduardo Zavala Garcia and Amalia Perez Garcia (collectively, "Debtors" or "DIP") seek to borrow \$3 million from RoBott Land Company, Inc. ("RoBott") secured by a first deed of trust against approximately 2,950 acres of DIP's real property. Doc. #1152; Ex. A, Doc. #1158. The borrowers on the new note are DIP and their son, Rene Garcia. Ex. A, Doc. #1158. The three parcels of real property that will secure the new loan are commonly referred to as: (1) Pole Barn Ranch; (2) Banana Lakes; and (3) Rancheria. Id.

DIP has previously obtained an order authorizing DIP to borrow \$4 million from RoBott. Doc. #1133. Once the \$4 million loan is funded, the holder of the deed of trust in the Pole Barn Ranch and Grazing Land will be paid \$375,000 in

exchange for a reconveyance of that deed of trust. Ex. C to disclosure statement dated February 18, 2021, Doc. #523; Doc. #1111. To the court's knowledge, this is the only existing deed of trust on the real property that will serve as collateral for the \$3 million loan.

The interest rate on the \$3 million loan is 13.5% and the term of the loan is 24 months. Ex. A, Doc. #1158. DIP proposes to use the proceeds of the \$3 million loan to pay: loan origination and other fees related to the borrowing; all unpaid real property taxes on DIP's real properties; the claim of the United States Small Business Administration ("SBA") secured by a lien against personal property; and certain unpaid administrative claims. Decl. of Eduardo Garcia, Doc. #1154. In addition, DIP proposes to impound \$405,000 to make interest payments due to RoBott during the first 12 months of the loan, impound a portion of the funds to pay general unsecured creditors and use the surplus loan proceeds to permit DIP to make capital improvements on DIP's real property and diversifying DIP's business operations. Garcia Decl., Doc. #1154.

Section 364(c) provides:

If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

. . .

(2) secured by a lien on property of the estate that is not otherwise subject to a lien[]; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c). In a chapter 11 case, the debtor in possession has the rights and powers of a trustee. 11 U.S.C. § 1107(a). Debtors in possession must obtain the approval of the bankruptcy court when they wish to incur secured debt. 11 U.S.C. § 364(c)(2) and (3); In re Harbin, 486 F.3d 510, 521 (9th Cir. 2007). Section 364(c)(2) and (3) provide exceptions to the general prohibition against creating post-petition encumbrances on property of the bankruptcy estate. Harbin, 486 F.3d at 521.

Courts generally give debtors in possession considerable deference to determine, in their business judgment, the terms under which they obtain post-petition secured credit. See, e.g., In re Los Angeles Dodgers LLC, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender."); In re Ames Dep't Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.").

To determine whether a debtor in possession has met this business judgment standard, a court need only "examine whether a reasonable business person would make a similar decision under similar circumstances." In re Exide Techs., 340 B.R. 222, 239 (Bankr. D. Del. 2006); see also In re Curlew Valley Assocs., 14 B.R. 506, 513-14 (Bankr. D. Utah 1981) (recognizing the court should not entertain objections to a trustee's business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the [Bankruptcy] Code").

Before granting the motion, the court has a few issues that need to be addressed. First, DIP has not complied with LBR 4001-1(c)(3). LBR 4001-1(c)(3) requires DIP to identify and provide substantial justification if certain provisions are contained in the post-petition financing transaction with RoBott. Second, DIP should provide legal authority to permit DIP to pay SBA's secured claims on personal property prior to the effective date of a confirmed chapter 11 plan. Finally, the court has concerns about releasing the surplus loan proceeds to Debtors prior to the effective date of a confirmed chapter 11 plan.

Assuming DIP can adequately satisfy the court's concerns at the hearing, the court is inclined to grant the motion as follows:

- (1) DIP is authorized to borrow \$3 million from RoBott Land Company on the terms set forth in the term sheet, proposed note and proposed deed of trust. Ex. A-C, Doc. #1158.
- (2) DIP is authorized to make the distributions set forth in the following chart from the proposed borrowing, with the provisions that: (a) line a. [marked with an "\*\*\*"] is only an estimate and may be higher based on the accrual of interest needed to be paid to close escrow; (b) line e. [marked with an "\*\*\*"] is only an estimate and may be higher or lower depending upon the actual fees incurred; and (c) line j. [marked with an "\*\*\*"] is only an estimate and may be higher or lower depending upon the actual amounts paid with respect to other distributions.

a.	Kern County Tax Collector (tax liens)*	\$ 334,100.00
b.	Loan origination fees	150,000.00
c.	Loan documentation fee	15,000.00
d.	Proposed lender impound for interest	405,000.00
e.	Escrow fees, title fees, recording fees**	21,144.00
f.	DIP's attorneys' fees	40,000.00
g.	Reserve for SBA	145,000.00
h.	Impounded for GUCs	700,000.00
i.	Reserve for UST fees	18,888.00
j.	Surplus funds retained by Debtors***	1,170,868.00
	Total	\$3,000,000.00

- (3) The impounded funds to pay the secured claim of SBA and pre-petition general unsecured claims of DIP as well as the surplus funds to be paid to Debtors will be placed in a segregated debtor-in-possession account to be retained by Debtors pending confirmation of a plan of reorganization.

3. [21-11814](#)-A-11 **IN RE: MARK FORREST**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION  
7-22-2021 [\[1\]](#)

LEONARD WELSH/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

4. [21-11814](#)-A-11     **IN RE: MARK FORREST**  
[DJP-1](#)

CONTINUED PRELIMINARY HEARING MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-2-2022    [[246](#)]

MEGAN KILGORE/MV  
LEONARD WELSH/ATTY. FOR DBT.  
DON POOL/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.

At the hearing, counsel for the moving party should be prepared to explain to the court why a status report with respect to the motion for relief from stay was not filed and served on or before September 21, 2022, as required by the order continuing the hearing on the motion for relief from stay that was filed on September 6, 2022 and served the same day on counsel for the moving party. Doc. ##302-304.

5. [21-11814](#)-A-11     **IN RE: MARK FORREST**  
[LKW-16](#)

CONTINUED MOTION TO CONFIRM CHAPTER 11 PLAN  
7-22-2022    [[238](#)]

MARK FORREST/MV  
LEONARD WELSH/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

6. [22-10416](#)-A-11     **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION  
3-18-2022    [[1](#)]

RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                   Continued to October 26, 2022 at 9:30 a.m.

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

Based on the debtor's request to continue the hearing to confirm the debtor's plan of reorganization to October 26, 2022 at 9:30 a.m., see matter #8 below, the court is inclined to continue the chapter 11 status conference to October 26, 2022 at 9:30 a.m.

CONTINUED MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT  
6-7-2022    [\[112\]](#)

KR CITRUS, INC., A CALIFORNIA CORPORATION/MV  
RILEY WALTER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Continued to permit the moving party to supplement the record.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). On August 30, 2022, the debtor and the lessor of the lease to be assumed filed a stipulation for assumption of the lease. Doc. #229. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. This matter will proceed as scheduled to permit the debtor to supplement the record in light of the recent opinion from the Ninth Circuit Smart Capital Invs. I, LLC v. Hawkeye Entm't, LLC (In re Hawkeye Entm't, LLC), -- F.4th --, 2022 WL 4393579 (9th Cir. Sept. 23, 2022). The Hawkeye Entm't opinion sets forth the requirements that a debtor-in-possession needs to show in order to assume a lease where there has been a default. These requirements are not addressed in the debtor's moving papers.

KR Citrus, Inc. ("DIP"), the debtor and debtor in possession in this chapter 11 subchapter V case, moves the court for authorization to assume an amended and restated agricultural lease dated January 1, 2009, including all modifications and amendments (the "Assumed Lease"), by and between DIP and Gary J. Icardo and Cynthia C. Icardo, as trustee of the Gary and Cynthia Icardo 2009 Revocable Trust, Elvin G. Berchtold and Ida E. Berchtold, as trustees of the Berchtold Family Trust dated September 23, 1998, Richard Alan Harrison (collectively, "Lessors"). Doc. #112; Ex. A, Doc. #116. The Assumed Lease is for 100 acres of farmland located in Kern County, California on which DIP grows organic citrus fruit, including navel oranges, organic valencia oranges, and organic lemons. Decl. of James Reed ("Reed Decl."), Doc. #115. The Assumed Lease terminates on December 31, 2027, unless there is fruit to be harvested in the citrus orchards, in which case the lease will expire on June 1, 2028. Id. Annual rent on the leased agricultural property in the amount of \$94,018.00 is due twice a year: one-half on July 15 and the balance on December 31 of each year. Id. At the time the bankruptcy petition was filed, DIP was not current on payment due under the Assumed Lease. Id.

Section 365(a) of the Bankruptcy Code states that "subject to the court's approval, [the debtor in possession] may assume [any] unexpired lease of the debtor." In evaluating a decision under § 365(a) to assume an executory contract or unexpired lease in the Ninth Circuit, "the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in

good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." Agarwal v. Pomona Valley Med. Grp., Inc. (In re Pomona Valley Med. Grp., Inc.), 476 F.3d 665, 670 (9th Cir. 2007) (citations omitted). The bankruptcy court should approve the assumption under § 365(a) unless the debtor in possession's conclusion is based on bad faith, whim, or caprice. Id.

In addition, if there has been a default in the lease to be assumed, § 365(b)(1) "imposes several preconditions that must be met before assumption may be allowed." Hawkeye Entm't, -- F.4th --, 2022 WL 4393579 at \*3. The Ninth Circuit summarized these requirements as follows:

[A] debtor-in-possession may assume a lease only if it: (A) cures the default (or provides adequate assurances that it will); (B) provides compensation for any actual pecuniary loss resulting from the default (or provides adequate assurances that it will); and (C) provides adequate assurances of future performance under the lease.

Id. (emphasis in original) (citing 11 U.S.C. § 365(b)(1)(A)-(C)). The Ninth Circuit held that a debtor-in-possession must meet the requirements of 11 U.S.C. § 365(b)(1) before the bankruptcy court can approve an assumption "where a default has occurred regardless of whether that default has been resolved or is ongoing." Hawkeye Entm't, -- F.4th --, 2022 WL 4393579 at \*4.

Here, DIP's motion concedes that DIP is in default under the Assumed Lease but the motion does not address how DIP meets the requirements of 11 U.S.C. § 365(b)(1). Because a default has occurred in the Assumed Lease and DIP has not addressed how DIP meets the requirements of 11 U.S.C. § 365(b)(1), the court is inclined to continue the hearing on this motion to permit DIP to supplement the record in light of the recent Ninth Circuit decision.

8. [22-10416](#)-A-11      **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**  
[WJH-9](#)

CONFIRMATION OF AMENDED CHAPTER 11 SMALL BUSINESS SUBCHAPTER V PLAN  
8-17-2022    [\[221\]](#)

RILEY WALTER/ATTY. FOR DBT.  
ERESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Continued to October 26, 2022 at 9:30 a.m.

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

Pursuant to the debtor's status report filed on September 19, 2022, the hearing to confirm the debtor's plan of reorganization will be continued to October 26, 2022 at 9:30 a.m. Doc. #258. On or before October 14, 2022, the debtor shall file and serve a status report letting the court and parties in interest know whether the confirmation hearing will proceed on the merits at the October 26 hearing.

9. [20-10945](#)-A-12     **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**  
[LKW-4](#)

MOTION FOR ORDER AUTHORIZING DEBTORS TO ENTER INTO AGRICULTURAL LEASE  
9-7-2022    [[239](#)]

JATINDERJEET SIHOTA/MV  
LEONARD WELSH/ATTY. FOR DBT.  
LENDEN WEBB/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 matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice of the hearing on this motion was sent by mail on September 7, 2022 with a hearing date set for September 28, 2022. Because the notice was sent on less than 28 days' notice, notice is governed by Local Rule of Practice ("LBR") 9014-1(f)(2). Pursuant to LBR 9014-1(f)(2), written opposition is not required, and any opposition may be raised at the hearing. However, the notice of hearing requires written opposition to be filed and does not comply with LBR 9014-1(d)(3)(B)(i).

10. [20-10569](#)-A-12     **IN RE: BHAJAN SINGH AND BALVINDER KAUR**  
[LKW-4](#)

MOTION FOR ORDER AUTHORIZING DEBTORS TO ENTER INTO LEASE  
9-7-2022    [[476](#)]

BALVINDER KAUR/MV  
LEONARD WELSH/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:     Denied without prejudice.

ORDER:             The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice of the hearing on this motion was sent by mail on September 7, 2022 with a hearing date set for September 28, 2022. Because the notice was sent on less than 28 days' notice, notice is governed by Local Rule of Practice ("LBR") 9014-1(f)(2). Pursuant to LBR 9014-1(f)(2), written opposition is not required, and any opposition may be raised at the hearing. However, the notice of hearing requires written opposition to be filed and does not comply with LBR 9014-1(d)(3)(B)(i).



11. [22-10778](#)-A-11     **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**  
[CAE-1](#)

STATUS CONFERENCE CONTINUED RE: AMENDED CHAPTER 11 VOLUNTARY PETITION  
5-8-2022 [[1](#)]

NOEL KNIGHT/ATTY. FOR DBT.

NO RULING.

12. [22-10778](#)-A-11     **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**  
[FW-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY  
7-13-2022 [[58](#)]

DAKOTA NOTE, LLC/MV  
NOEL KNIGHT/ATTY. FOR DBT.  
PETER FEAR/ATTY. FOR MV.  
RESPONSIVE PLEADING

NO RULING.

13. [22-10778](#)-A-11     **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**  
[NCK-7](#)

CONTINUED CHAPTER 11 CHAPTER 11 DISCLOSURE STATEMENT FILED  
BY DEBTOR COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC  
8-3-2022 [[113](#)]

NOEL KNIGHT/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

14. [22-10778](#)-A-11     **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**  
[NCK-8](#)

CONTINUED AMENDED MOTION TO INCUR DEBT  
8-3-2022 [[115](#)]

COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC/MV  
NOEL KNIGHT/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

Counsel for the debtor should be prepared to address the following issues at the hearing:

- (1) Based on Doc. ##190 and 191, it appears that a further declaration of David Sowels in support of the motion was served on September 21,

2022. However, that declaration has not been filed with the bankruptcy court.

- (2) Doc. #190 shows that an Exhibit 5, Draw Schedule, was served on September 21, 2022. However, the exhibits filed in support of David Sowels' declaration do not include an Exhibit 5. Doc. #188.
- (3) The declaration of Doug Boyer was filed with the bankruptcy court on September 21, 2022. Doc. #185. However, it does not appear that document was served on September 21, 2022. Doc. ##190, 191.
- (4) Doc. #190 shows that an Exhibit 1, GC Contract, was served on September 21, 2022. However, that document was not filed with the bankruptcy court and it does not appear that document was served on September 21, 2022. Doc. #191.

11:00 AM

1. [22-11246](#)-A-7      **IN RE: DIANA FLOREZ**

PRO SE REAFFIRMATION AGREEMENT WITH AMERICAN HONDA FINANCE CORPORATION  
9-8-2022    [[15](#)]

NO RULING.

1. [22-10800](#)-A-7     **IN RE: HARSIMRANJIT BRAR**  
[PSC-1](#)

MOTION TO AVOID LIEN OF FRESNO TRUCK CENTER DBA LEE FINANCIAL SERVICES  
8-4-2022    [\[23\]](#)

HARSIMRANJIT BRAR/MV  
PATRICIA CARRILLO/ATTY. FOR DBT.

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

DISPOSITION:     Granted.

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

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

Harsimranjit S. Brar ("Debtor"), the debtor in this chapter 13 case, moves pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Fresno Truck Center dba Lee Financial Services ("Creditor") on the residential real property commonly referred to as 6623 E. Cetti Avenue, Fresno, CA 93727 (the "Property"). Doc. #23; Schedule C & D, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtor filed the bankruptcy petition on May 12, 2022. Doc. #1. A judgment was entered against Harsimranjit S. Brar in the amount of \$106,452.72 in favor of Creditor on November 16, 2021. Ex. A, Doc. #26. The abstract judgment was recorded pre-petition in Fresno County on December 3, 2021, as document number 2021-0199090. Ex. A, Doc. #26. The lien attached to Debtor's interest in the Property located in Fresno County. Doc. #26. The Property also is encumbered by a deed of trust in favor of Specialized Loan Servicing in the amount \$265,000.00. Schedule D, Doc. #1. Debtor claimed an exemption of \$200,000.00 in

the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtor asserts a market value for the Property as of the petition date at \$465,000.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

Amount of Creditor's judicial lien		\$106,452.72
Total amount of all other liens on the Property (excluding junior judicial liens)	+	\$265,000.00
Amount of Debtor's claim of exemption in the Property	+	\$200,000.00
		\$571,452.72
Value of Debtor's interest in the Property absent liens	-	\$465,000.00
Amount Creditor's lien impairs Debtor's exemption		\$106,452.72

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtor's exemption in the Property and its fixing will be avoided.

Debtor has established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

2. [22-10808](#)-A-7     **IN RE: ISRAEL/MARGARITA FERNANDEZ**  
[JES-1](#)

MOTION TO SELL  
8-17-2022    [\[15\]](#)

JAMES SALVEN/MV  
NEIL SCHWARTZ/ATTY. FOR DBT.

TENTATIVE RULING:        This matter will proceed as scheduled for higher and better offers.

DISPOSITION:                Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled for higher and better offers. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). 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 amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Israel Fernandez and Margarita Fernandez (together, "Debtors"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the bankruptcy estate's interest in a 2007 Chevy Silverado and a 2012 Buick Verano

(collectively, the "Vehicles") to Debtors for the purchase price of \$11,000.00, subject to higher and better bids at the hearing. Doc. #15.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale of the Vehicles to Debtors on the terms set forth in the motion is in the best interests of creditors and the estate. Doc. #15; Decl. of James Salven, Doc. #17. Trustee's proposed sale to Debtors is made in consideration of the full and fair market value of the Vehicles less claimed exemptions in the aggregate amount of \$3,625.00. Salven Decl., Doc. #17. Debtors offered to buy the Vehicles for the net purchase price of \$11,000.00, subject to overbid at the hearing. Id. Debtors have deposited \$2,000 with Trustee and will pay \$1,500 per month for each of the next 6 months. Id. The court recognizes that no commission will need to be paid because the sale is to Debtors.

It appears that the sale of the estate's interest in the Vehicles is in the best interests of the estate, the Vehicles will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith.

Accordingly, subject to overbid offers made at the hearing, the court is inclined to GRANT Trustee's motion and authorize the sale of the estate's interest in the Vehicles to Debtors on the terms set forth in the motion.

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JCCP AND/OR MOTION FOR COMPENSATION BY THE LAW OFFICE OF AARONSON & RASH FOR D. CHAD AARONSON, SPECIAL COUNSEL(S), MOTION FOR COMPENSATION BY THE LAW OFFICE OF SCHNEIDER HAMMERS FOR ROBERT M. HAMMERS, JR., SPECIAL COUNSEL(S), MOTION/APPLICATION FOR COMPENSATION BY THE LAW OFFICE OF FIBICH LEEBRON COPELAND BRIGGS FOR ERIN K. COPELAND, SPECIAL COUNSEL(S)  
8-24-2022    [\[40\]](#)

JAMES SALVEN/MV  
LAYNE HAYDEN/ATTY. FOR DBT.  
PETER FEAR/ATTY. FOR MV.

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

DISPOSITION:      Granted.

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

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

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of George Saldate and Elisa Saldate (collectively, "Debtors"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019 approving the compromise of a pre-petition product liability claim asserted by debtor Elise Saldate relating to being implanted with an allegedly defective product (the "Claim"). Doc. #40. Debtors retained the Law Office of Aaronson & Rash, the Law Office of Schneider Hammers and the Law Offices of Fibich Leebron Copeland and Briggs (together, "Special Purpose Counsel") to represent debtor Elisa Saldate with respect to the Claim. Doc. #40. The court authorized the employment of Special Purpose Counsel on July 14, 2022. Order, Doc. #39. Trustee also requests authorization of final compensation for Special Purpose Counsel pursuant to 11 U.S.C. § 328 as required by the Order. Doc. #40; Order, Doc. #39.

#### Settlement Agreement

Among the assets of the estate is the Claim, for which the manufacturer has offered to settle for a gross amount of \$100,000.00. Decl. of Erin K. Copeland, Doc. #43. Deducted from the gross award are the contingency fees to be paid to Special Purpose Counsel in the amount of \$35,000.00, a 5% court ordered deduction to be paid out of the attorneys' fee portion for each claimant in the

amount of \$5,000.00, a 3% court ordered deduction from each claimant's share in the amount of \$3,000.00, and case specific costs in the amount of \$1,940.95. Id. The court has previously authorized the employment of Special Purpose Counsel pursuant to a contingency fee agreement. See Order, Doc. #39. The projected amount to the bankruptcy estate is \$55,059.05. Copeland Decl., Doc. #43.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #40. Special Purpose Counsel represent that the resolution of the Claim would be uncertain because of those involved in the injury claims and it is too speculative at this juncture to know whether or not the claim would prevail at trial. Copeland Decl., Doc. #43. Trustee believes that accepting the offer of \$100,000.00 is in the best interests of the estate and its creditors. Decl. of James Salven, Doc. #42. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion is GRANTED, and the settlement of the Claim is approved.

#### Final Compensation

Trustee requests an allowance of final compensation and reimbursement for expenses payable to Special Purpose Counsel for services rendered in connection with the Claim. Doc. #40. Trustee was authorized to employ Special Purpose Counsel on a contingency basis whereby Special Purpose Counsel would receive 40% of any settlement plus fees and costs incurred. Order, Doc. #39. The contingency fee to be awarded to Special Purpose Counsel will be apportioned as follows: 41.25% of the contingency fee award allocated to Fibich Leebron Copeland Briggs in the amount of \$14,437.50 and Schneider Hammers in the amount of \$14,437.50, and 17.5% of the contingency fee award allocated to Aaronson & Rash in the amount of \$6,125.00. Doc. #40. The total fees to be awarded to Special Purpose Counsel is \$35,000.00 plus reimbursement of costs in the amount of \$1,940.95. Doc. #40.

The trustee may, with the court's approval, employ a professional person on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. 11 U.S.C. §328(a). An application to employ a professional on terms and conditions to be pre-approved by the court must unambiguously request approval under §328. See Circle K Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).



Here, the court previously authorized the employment of Special Purpose Counsel expressly under 11 U.S.C. §§ 327(e) and 328. Order, Doc. #39. The Order authorized Trustee to pay Special Purpose Counsel subject to final review by the court. Order, Doc. #39.

The court finds the compensation and reimbursement sought by Special Purpose Counsel is reasonable, actual, and necessary. Trustee is authorized to pay Special Counsel in a manner consistent with Trustee's motion and the court's Order Granting Trustee's Motion for Order Authorizing Employment of Special Counsel to the Estate Pursuant to 11 U.S.C. § 328(a). Doc. ##39, 40.

Accordingly, Trustee's motion is GRANTED. The settlement is approved, Trustee is authorized to enter into, execute, and deliver any releases and other documents as may be required to effectuate the settlement, payment to Special Purpose Counsel is authorized, and Trustee is authorized to pay deductions related to the Claim as required by the settlement.

4. [22-11019](#)-A-7      **IN RE: CATHRYN SMITH**  
[JES-2](#)

MOTION TO EMPLOY BAIRD AUCTION AND APPRAISALS AS AUCTIONEER,  
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND  
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES  
8-19-2022    [[24](#)]

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

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

DISPOSITION:      Granted.

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

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

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Cathryn Smith ("Debtor"), moves the court for an order authorizing: (1) the employment of Baird Auctions & Appraisals ("Auctioneer"); (2) the sale of a 2014 Hyundai Elantra (the "Property") at public auction on or after October 4, 2022 at Auctioneer's location at 1328 N. Sierra Vista, Suite B, Fresno,

California; and (3) the estate to pay Auctioneer commission and expenses. Tr.'s Mot., Doc. #24.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Decl. of James E. Salven, Doc. #26. Trustee's experience indicates that a sale of the Property at public auction will yield the highest net recovery to the estate. Salven Decl., Doc. #26. The proposed sale is made in good faith.

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

The court finds that Auctioneer is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Decl. of Jeffrey Baird, Doc. #27. Trustee requires Auctioneer's services to advertise the sale of the Property, assist in storing the Property until sold, and assist in other matters related to the auction sale of the Property. Salven Decl., Doc. #26. Trustee has agreed to pay Auctioneer a commission of 15% of the gross sale price and estimated expenses of \$500.00. Salven Decl., Doc. #26. Trustee unambiguously requests pre-approval of payment to Auctioneer pursuant to § 328. Doc. ##24, 26.

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

5. [18-14920](#)-A-7      **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA  
[SJS-4](#)                      GENERAL PARTNERSHIP**

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SLACK LAW GROUP APC  
FOR SHANON J. SLACK, TRUSTEES ATTORNEY(S)  
7-19-2022    [\[428\]](#)

JACOB EATON/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:                      Dropped from calendar.

NO ORDER REQUIRED.

Movant withdrew the motion on September 9, 2022. Doc. #446.

6. [18-14920](#)-A-7      **IN RE: SOUTH LAKES DAIRY FARM, A CALIFORNIA  
[SJS-5](#)                      GENERAL PARTNERSHIP**

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SLACK LAW GROUP APC  
FOR SHANON J. SLACK, TRUSTEES ATTORNEY(S)  
8-31-2022    [\[439\]](#)

JACOB EATON/ATTY. FOR DBT.

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

DISPOSITION:                      Granted.

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

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

Slack Law Group APC ("Movant"), general counsel for chapter 7 trustee David M. Sousa ("Trustee"), requests allowance of interim compensation and reimbursement for expenses for services rendered from February 7, 2022 through July 13, 2022. Doc. #439. Movant provided legal services valued at \$113,009.50, and requests compensation for that amount. Id. Movant requests reimbursement for expenses in the amount of \$1,795.00. Id. This is Movant's first fee application.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). 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, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) preparing and filing interim fee application for accountant for the estate; (2) preparing and filing employment application for Movant as general counsel; (3) reviewing adversary proceeding against the debtor's insiders and drafting pre-trial statement regarding same; (4) drafting opposition to motion to withdraw the reference of the adversary proceeding; (5) drafting motion to re-open discovery in the adversary proceeding based on newly discovered transfer account; (6) preparing for trial in the withdrawn adversary proceeding; (7) preparing for mediation and drafting mediation brief in the withdrawn adversary proceeding; (8) traveling to and from and attending mediation in the withdrawn adversary proceeding; and (9) general case administration. Doc. #443; Exs. 1-3, Doc. #444. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on an interim basis. The court allows interim compensation in the amount of \$113,009.50 and reimbursement for expenses in the amount of \$1,795.00. Trustee is authorized to make a combined payment of \$114,804.50, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

7. [21-11034](#)-A-7     **IN RE: ESPERANZA GONZALEZ**  
[DMG-4](#)

CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT  
WITH TED AND IRIS JACOBSON AND/OR MOTION TO SELL, MOTION APPROVE  
CORPORATION LIQUIDATION  
7-13-2022    [\[152\]](#)

JAMES SALVEN/MV  
D. GARDNER/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor, Esperanza Hansen Gonzalez ("Debtor"), filed a late opposition to the motion on September 7, 2022. Doc. #176. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

Therefore, the defaults of the above-mentioned parties in interest are entered. The matter will proceed as scheduled.

James Salven ("Trustee"), as chapter 7 trustee of Debtor's bankruptcy estate, moves to approve the compromise of claims and interests in state court litigation, sell the estate's assets in property, and authorize Trustee to enter into the settlement agreement on behalf of two corporations for which Debtor was the sole shareholder ("Motion"). Doc. #152. The proposed sale is subject to higher and better offers. Doc. ##152, 167. To overbid on the proposed sale of the bankruptcy estate's interest in a lawsuit against Ted Jacobson and Iris Jacobson (together, the "Jacobsons"), the proposed overbidder was required, among other things, to provide certified funds to the chapter 7 trustee in the amount of \$15,000 plus the initial over-bid amount no later than the close of business on September 7, 2022. Doc. #167.

Without complying with the noticed requirements to overbid, a potential overbidder sent a representative to a hearing on the Motion held on September 14, 2022. With the consent of Trustee, the court continued the hearing on the Motion to permit the potential overbidder to comply with the noticed overbid requirements on or before September 21, 2022, and, if there was compliance, to conduct an auction of the interest in litigation at the continued hearing set for September 28, 2022.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Debtor filed a voluntary petition under chapter 7 of the Bankruptcy Code on April 23, 2021. Doc. #1. Debtor scheduled a 100% ownership interest in The Magnolia Group, Inc., a Delaware corporation ("Magnolia Group"), valued at \$0. Schedule A/B, Doc. #21. Debtor scheduled a 100% ownership interest in Magnolia

Park, a Nevada corporation ("Magnolia Park"), valued at \$0.<sup>1</sup> Id. Debtor also scheduled, as a contingent and unliquidated claim, a lawsuit against the Jacobsons as well as others pending in Tulare County Superior Court as case number VCU284145, valued at \$5 million ("State Court Litigation"). Id. Debtor also scheduled a verified cross-complaint for damages against the Jacobsons pending in San Luis Obispo County Superior Court as case number 17CVP-0145 in an unknown amount ("Jacobson Litigation"). Id. Debtor did not exempt either the State Court Litigation or Jacobson Litigation. Schedule C, Doc. #21.

Debtor scheduled the Jacobsons as having a contingent, unliquidated and disputed unsecured claim of \$379,890.16 based on a lawsuit for damages for breach of lease, presumably the Jacobson Litigation. Schedule E/F, Doc. #21. On October 18, 2021, the Jacobsons filed two proofs of claim, each proof of claim asserting a claim of \$302,640.54. Claim 5 and 6.

Trustee testifies that Magnolia Group's business consisted of the ownership of real properties located at 2948 and 2950 East Douglas Ave., Visalia, CA, and 1331 Lewis Lane, Tulare, CA. Tr. Decl. ¶ 11, Doc. #154. Trustee testifies that the East Douglas property was foreclosed in November 2019, and the Lewis Lane property was foreclosed on June 30, 2020. Id. Trustee states that Magnolia Group has no assets and no value. Id. ¶¶ 4, 14. Trustee does not believe Magnolia Park has any value. Id. ¶ 4.

The Settlement Agreement involves the State Court Litigation and the Jacobson Litigation. Decl. of Trustee ¶ 10, Doc. #154.

Trustee states that the main points of the settlement agreement are:

- a. Payment of \$15,000 to the estate. Tr. Decl., ¶ 13.a, Doc. #154.
- b. A stipulated judgment in both the State Court Litigation and the Jacobson Litigation in favor of Jacobsons in the amount of \$379,890.16 that is discharged in Debtor's chapter 7 case and is unenforceable. Tr. Decl., ¶ 13.b, Doc. #154; Stipulated Judgment, Ex. D, ¶ 1, Doc. #155.
- c. The Jacobsons will have a judgment against Debtor but will waive any claim against the chapter 7 bankruptcy estate. Tr. Decl., ¶ 12.c, Doc. #154.
- d. Trustee and the Jacobsons will file requests for dismissal of all Debtor's claims in both the State Court Litigation and the Jacobson Litigation. Settlement Agreement, Ex. D, ¶ 2, Doc. #155.

The sale of the estate's interest in the Jacobson Litigation to the Jacobsons for \$15,000 is subject to higher and better offers. Doc. ##152, 167.

### **A & C Properties Analysis**

As stated above, approval of a compromise must be based upon considerations of fairness and equity. A & C Properties, 784 F.2d at 1381. 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

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<sup>1</sup> Debtor scheduled Magnolia Park as a Nevada corporation while Trustee's motion identifies Magnolia Park as an LLC. It does not appear that the specific corporate structure is at issue.

interest of the creditors with a proper deference to their reasonable views. Woodson, 839 F.2d at 620.

Probability of success. Trustee testifies that the facts giving rise to the State Court Litigation and Jacobson Litigation are complicated and span several years in time. Tr. Decl. ¶ 16(a), Doc. #154. Trustee also is faced with trying to find qualified counsel to take the case on a contingency fee. Id. Trustee testifies that he consulted with two experienced attorneys and a fellow chapter 7 trustee about finding representation but was unable to find any attorneys willing to take the case. Id. ¶ 18. Trustee also testifies that Trustee likely would be responsible for costs of litigation if the estate lost the case and, in Trustee's estimation, the estate should not risk the \$50,000 in hand to pay for litigation costs at the expense of other administrative claims and the claims of general unsecured creditors. Id. ¶ 18.a. Further, ABLP Properties Visalia LLC ("ABLP Properties") had successfully completed two non-judicial foreclosures that would need to be set aside in order for Trustee to succeed on the merits in the State Court Litigation, and Trustee's experience, as well as the experience of those he spoke with, indicates that would create a heavy evidentiary burden. Id. ¶ 18.b. Additionally, Debtor would be Trustee's primary witness in any litigation undertaken on behalf of the estate, and Trustee has substantial concerns about Debtor's credibility as a witness given a state-led investigation into Debtor's accounting of funds received by Debtor from potential assisted living or elderly nursing care residents. Id. ¶ 4.c.

Difficulties of collection. Trustee testifies that collection would not be difficult were he to prevail. Tr. Decl. ¶ 16(b), Doc. #154.

Complexity of the litigation. Trustee "view[s] the litigation to be difficult involving multiple witnesses, transactions and documentation to present at the time of trial." Tr. Decl. ¶ 16(c), Doc. #154. As stated above, ABLP Properties had successfully completed two non-judicial foreclosures that would need to be set aside, which would be fact intensive and burdensome to prove. Id. ¶ 18.b.

Interest of the creditors. Trustee believes "that the settlement serves the interests of the creditors because it obtains a sum certain for the estate without the expenditure of attorneys' fees that would be paid out as administrative expenses." Tr. Decl. ¶ 16(d), Doc. #154. Trustee is unaware of any contingency fee attorneys who would not require the payment of costs if the estate lost the State Court Litigation and/or the Jacobson Litigation. Id. ¶ 18.a. Trustee does not believe the estate should risk the approximately \$50,000 in funds available to the estate to pay for litigation costs at the expense of other administrative claims and the claims of general unsecured creditors. Id. Because the Jacobsons waive their claims against the chapter 7 bankruptcy estate as part of the settlement, the resulting share of funds distributed to the other general unsecured creditors increases. Id. ¶ 16(d).

The court is satisfied with Trustee's evidence in support of the Motion and is inclined to find that Trustee has demonstrated that the compromise is fair and equitable under A & C Properties. Trustee adequately explains his attempts to find competent counsel to represent the estate and the difficulties in succeeding on the merits of the State Court Litigation and the Jacobson Litigation. Trustee also explains why the settlement is in the best interests of creditors and the estate.

### **Debtor's Opposition**

Although filed late, the court will consider Debtor's opposition. From what the court can glean, Debtor opposes the Motion on the following two grounds.

First, Magnolia Group and Magnolia Park cannot be dissolved because those two corporations "made and renewed new contracts with the elderly who are to receive life care after November 15, 2021." Debtor's Opp'n 2:21-22, Doc. #176. While the caption of the Motion purports to seek approval of corporate liquidation, the Motion itself only seeks authority for Trustee to act on behalf of Magnolia Group and Magnolia Park to enter into the settlement agreement with the Jacobsons. Motion, Doc. #152. To the extent that Debtor is concerned with the ongoing operations of the business operated by Magnolia Group and Magnolia Park, the business is being operated by a licensed nursing home operator and neither Magnolia Group nor Magnolia Park will be dissolved until the business being operated by them is transferred to an operational entity that will operate and maintain the business. Tr. Decl. ¶ 19, Doc. #154. Debtor's objection on this ground is not a reason to deny the Motion.

Second, Debtor asserts new information suggests wrongdoing and breach of fiduciary duty by Trustee. Debtor alleges that Trustee has breached a fiduciary duty owed to Debtor "by acting collusively with counsel for a creditor." Debtor's Opp'n 3:1-2, Doc. #176. As an initial matter, Trustee does not owe a fiduciary duty to Debtor. Wisdom v. Gugino (In re Wisdom), 490 B.R. 412, 417 (D. Idaho 2013), aff'd sub nom. Wisdom v. Gugino, 649 F. App'x 583 (9th Cir. 2016). "Rather, a Chapter 7 trustee is 'the 'legal representative' and 'fiduciary' of the estate.'" Wisdom, 490 B.R. at 417 (emphasis in original) (quoting In re AFI Holding, Inc., 530 F.3d 832, 844 (9th Cir. 2008)). "As such, the trustee's primary job is to marshal and sell assets for the benefit of creditors." Wisdom, 490 B.R. at 417.

Debtor asserts that Trustee had agreed to sell the Jacobson Litigation to Debtor for \$20,000.00 on or about June 2, 2022, but failed to perfect the transaction and instead agreed to enter into the transaction with the Jacobsons for \$5,000.00 less. While Debtor asserts Trustee should have informed Debtor that the state court trial set to commence on June 27, 2022 was not going to proceed, that is not necessarily the case. When Debtor filed her chapter 7 bankruptcy petition on April 23, 2021, Debtor's alleged claims in the State Court Litigation and the Jacobson Litigation became property of the chapter 7 bankruptcy estate and Trustee became the representative of those claims. 11 U.S.C. § 323(a); 11 U.S.C. § 541(a)(1); Jones v. Harrell, 858 F.2d 667, 669 (11th Cir. 1988) ("A trustee in bankruptcy succeeds to all causes of action held by the debtor at the time the bankruptcy petition is filed."). Trustee could sell Debtor's claims to Debtor or to the Jacobsons, subject to bankruptcy court approval. 11 U.S.C. § 363(b). The proposed sale of Debtor's claims in the State Court Litigation and the Jacobson Litigation to the Jacobsons is subject to a higher and better offer, which Debtor could have done by September 7, 2022. Notice, Doc. #167. Contrary to Debtor's assertions in her opposition, Debtor was not excluded from purchasing Debtor's claims against the Jacobsons in the State Court Litigation and the Jacobson Litigation from Debtor's bankruptcy estate. Debtor's objection on this ground is not a reason to deny the Motion.

## **Conclusion**

It appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id.

It appears that the sale of the estate's interest in the State Court Litigation and the Jacobson Litigation is in the best interests of the estate and the sale



is supported by a valid business judgment and proposed in good faith. The sale is subject to auction upon compliance with the overbid requirements.

Accordingly, subject to qualified overbids made at the hearing, the court will GRANT Trustee's motion and authorize the sale of the estate's interest in the State Court Litigation and Jacobson Litigation to the Jacobsons on the terms set forth in the Motion.

8. 22-11134-A-7      **IN RE: TERESA CAZARES AND CHALLO MUNOZ**  
JES-1

MOTION TO EMPLOY BAIRD AUCTIONS & APPRAISALS AS AUCTIONEER,  
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND  
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES  
8-22-2022    [19]

JAMES SALVEN/MV  
MARIO LANGONE/ATTY. FOR DBT.  
JAMES SALVEN/ATTY. FOR MV.

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

DISPOSITION:      Granted.

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

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

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Teresa Cazares and Challos Munoz (collectively, "Debtors"), moves the court for an order authorizing: (1) the employment of Baird Auctions & Appraisals ("Auctioneer"); (2) the sale of a 2015 Jeep Patriot LPN 7LLZ594 (the "Property") at public auction on or after October 4, 2022 at Auctioneer's location at 1328 N. Sierra Vista, Suite B, Fresno, California; and (3) the estate to pay Auctioneer commission and expenses. Tr.'s Mot., Doc. #19.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners,

L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Decl. of James E. Salven, Doc. #22. Trustee's experience indicates that a sale of the Property at public auction will yield the highest net recovery to the estate. Salven Decl., Doc. #22. The proposed sale is made in good faith.

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

The court finds that Auctioneer is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Decl. of Jeffrey Baird, Doc. #21. Trustee requires Auctioneer's services to advertise the sale of the Property, assist in storing the Property until sold, and assist in other matters related to the auction sale of the Property. Salven Decl., Doc. #22. Trustee has agreed to pay Auctioneer a commission of 15% of the gross sale price and estimated expenses of \$500.00. Id. Trustee unambiguously requests pre-approval of payment to Auctioneer pursuant to § 328. Doc. ##19, 22.

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

9. [22-11177](#)-A-7     **IN RE: AURELIO RAMIREZ**  
[JES-1](#)

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A)  
MEETING OF CREDITORS  
9-9-2022    [\[24\]](#)

T. O'TOOLE/ATTY. FOR DBT.  
JAMES SALVEN/ATTY. FOR MV.

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

DISPOSITION:     Conditionally denied.

ORDER:             The court will issue the order.

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

The debtor shall attend the meeting of creditors rescheduled for September 28, 2022 at 3:00 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

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

10. [22-10891](#)-A-7     **IN RE: WILSON/SUSAN CURTIS**  
[ICE-1](#)

MOTION TO EMPLOY BAIRD AUCTION AND APPRAISAL AS AUCTIONEER(S)  
8-18-2022    [\[21\]](#)

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

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

DISPOSITION:     Granted.

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

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

damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Irma Edmonds ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Wilson Paul Curtis and Susan Carole Leger Curtis (collectively, "Debtors"), moves the court for an order authorizing the employment of Baird Auctions & Appraisals ("Auctioneer") to assist in the sale of a 2008 Cadillac CTS (the "Property") at public auction. Tr.'s Mot., Doc. #21.

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

The court finds that Auctioneer is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Decl. of Jeffrey Baird, Doc. #24. Trustee requires Auctioneer's services to advertise the sale of the Property, assist in storing the Property until sold, and assist in other matters related to the auction sale of the Property. Decl. of Irma Edmonds, Doc. #23. Trustee has agreed to pay Auctioneer a commission of 20% of the gross sale price and estimated expenses of \$500.00. Edmonds Decl., Doc. #23. Trustee unambiguously requests pre-approval of payment to Auctioneer pursuant to § 328. Doc. ##21, 23.

Accordingly, this motion is GRANTED. Trustee shall submit a form of order that specifically states that employment of Auctioneer has been approved pursuant to 11 U.S.C. § 328.

11. [22-10891-A-7](#) **IN RE: WILSON/SUSAN CURTIS**  
[ICE-2](#)

MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR BAIRD  
AUCTIONS AND APPRAISALS, AUCTIONEER(S)  
8-18-2022 [[25](#)]

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

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors,

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

Irma Edmonds ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Wilson Paul Curtis and Susan Carole Leger Curtis (collectively, "Debtors"), moves the court for an order authorizing: (1) the sale of a 2008 Cadillac CTS VIN 1G6DV57VX80135731 ("Personal Property") at public auction on or after September 28, 2022 by Baird Auctions & Appraisals ("Auctioneer") located at 1328 N. Sierra Vista, Suite B, Fresno, California 93703; (2) the estate to pay Auctioneer commission and expenses; and (3) a waiver of the 14-day stay of Fed. R. Bankr. P. 6004(h). Tr.'s Mot., Doc. #25.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Decl. of Irma Edmonds, Doc. #27. Trustee's experience indicates that a sale of the Personal Property at public auction will yield the highest net recovery to the estate. Edmonds Decl., Doc. #27. The proposed sale is made in good faith.

The court will authorize the employment of Auctioneer pursuant to 11 U.S.C. § 328. See, DCN ICE-1, Calendar Matter No. 10 above. Trustee requires Auctioneer's services to advertise the sale of the Property, assist in storing the Property until sold, and assist in other matters related to the auction sale of the Property. Doc. #21. Trustee has agreed to pay Auctioneer a commission of 20% of the gross sale price and estimated expenses of \$500.00. Doc. #21. Trustee unambiguously requested pre-approval of payment to Auctioneer pursuant to § 328. Doc. ##21, 25.

Accordingly, this motion is GRANTED. Trustee's business judgment is reasonable and the proposed sale of the Personal Property at public auction is in the best interests of creditors and the estate. The arrangement between Trustee and Auctioneer is reasonable in this instance. Trustee is authorized to sell the

Property on the terms set forth in the motion. Trustee is authorized to pay Auctioneer for services as set forth in the motion.

The 14-day stay of Fed. R. Bankr. P. 6004(h) will be ordered waived because the Personal Property is to be sold at public auction and permitting the sale of the Personal Property at public auction will benefit creditors and the estate.

12. [22-10696](#)-A-7     **IN RE: RAMIRO/ARACELY GONZALEZ**  
[JES-1](#)

MOTION TO SELL  
8-15-2022    [\[22\]](#)

JAMES SALVEN/MV  
GRISELDA TORRES/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled for higher and better offers.

DISPOSITION:                  Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled for higher and better offers. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). 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 amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Ramiro Gonzalez and Aracely Gonzalez (collectively, "Debtors"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of the bankruptcy estate's interest in a 2013 BMW Model Series 3 (the "Vehicle") to Debtors for the purchase price of \$4,375.00, subject to higher and better bids at the hearing. Doc. #22.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON

BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale of the Vehicle to Debtors on the terms set forth in the motion is in the best interests of creditors and the estate. Doc. #22; Decl. of James Salven, Doc. #24. Trustee's proposed sale to Debtors is made in consideration of the full and fair market value of the Vehicle. Salven Decl., Doc. #24. There are no claimed exemptions in the Vehicle. Id. Debtors offered to buy the Vehicle for the net purchase price of \$4,375.00, subject to overbid at the hearing. Doc. #22. The court recognizes that no commission will need to be paid because the sale is to Debtors.

It appears that the sale of the estate's interest in the Vehicle is in the best interests of the estate, the Vehicle will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith.

Accordingly, subject to overbid offers made at the hearing, the court is inclined to GRANT Trustee's motion and authorize the sale of the estate's interest in the Vehicle to Debtors on the terms set forth in the motion.