



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Thursday, October 13, 2022  
Department B – Courtroom #13  
Fresno, California**

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in 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.

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## **INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

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

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

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

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

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

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

9:30 AM

1. [22-11403](#)-B-11     **IN RE: STANFORD CHOPPING, INC.**  
[CAE-1](#)

STATUS CONFERENCE RE: VOLUNTARY PETITION  
8-17-2022    [[1](#)]

DAVID JOHNSTON/ATTY. FOR DBT.

NO RULING.

The court is in receipt of *Debtor's Status Report* dated October 11, 2022. This status conference will be called and proceed as scheduled.

2. [22-11540](#)-B-11     **IN RE: VALLEY TRANSPORTATION, INC.**  
[TES-1](#)

MOTION FOR APPROVAL OF STIPULATION FOR ADEQUATE PROTECTION  
INCLUDING RELIEF FROM STAY UPON FUTURE DEFAULT  
9-22-2022    [[47](#)]

BANC OF AMERICA LEASING & CAPITAL, LLC/MV  
RILEY WALTER/ATTY. FOR DBT.  
THOMAS SHUCK/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

Secured creditor Banc of America Leasing & Capital, LLC ("Creditor") moves for an order approving a joint stipulation with debtor-in-possession Valley Transportation, Inc. ("Debtor") under Federal Rule of Bankruptcy Procedure ("Rule") 4001(d). Doc. #47.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion may be GRANTED provided that Trustee consents to the stipulation.

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

further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

As a preliminary matter, the motion does not comply with the local rules. LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determine (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. This necessary language was omitted from the notice of hearing here. Doc. #48. Counsel is advised to review the local rules on the court's website and ensure procedural compliance in subsequent matters. Future violations of the local rules will result in a motion being denied without prejudice.

Debtor owns three Kenworth Tractors Model T370 ("Tractors"), which are needed by Debtor, in which Creditor has a first position security interest and holds titles. Docs. ##49-50; #51, *Ex. 1*. Debtor and Creditor entered into an Equipment Security Note and Loan Agreement for the Tractors in the principal sum of \$319,868.85, payable over sixty months at 4.5% interest with monthly payments of \$5,964.78 each. Subject to Creditor's retention of Debtor's replacement of the payment made by ACH on September 6, 2022, Debtor is current on pre- and post-petition payments as of September 15, 2022. *Id.*

Debtor is indebted to Creditor in the total sum of \$319,869.00 as of September 15, 2022, exclusive of any recoverable future interest and attorney's fees and costs. The Tractors are collectively worth approximately \$244,715.00 on an orderly liquidation value basis, so there is no equity in the Tractors. Values continue to decline at approximately 10% per year and each unit has approximately 30 years of useful life from new, under normal usage. *Id.* Debtor believes the tractors are necessary to an effective reorganization and agrees that Creditor's security interests will not be adequately protected absent this stipulation, and that the stipulation is in the best interests of Debtor and the estate. *Id.* The parties agree that cause would exist to terminate the automatic stay if adequate protection payments are not made pursuant to the stipulation.

Therefore, the parties stipulated that Debtor shall continue to make monthly adequate protection payments under 11 U.S.C. § 361(3) and the contracts in the amount of \$5,964.78 beginning October 1, 2022 assuming retention of the September 2022 payment made post-petition on September 6, 2022. Payments shall continue through confirmation of Debtor's plan of reorganization, which shall provide for the payment arrangements contained in the stipulation and the first payment on Creditor's claim has been made under the plan. Thereafter, Debtor shall continue to make the payments under the contracts until the debt is satisfied in full. Debtor shall make the payments by ACH withdrawal from Debtor's operating account and shall keep the Tractors fully

insured in accordance with the contracts, state law, and the rules of the U.S. Trustee. Failure to do so shall constitute default. *Id.*

In the event of default under the stipulation, Creditor shall send notice of the default to Debtor through Debtor's counsel by email and regular mail. Debtor shall have five days from the date of the default notice to cure the default. Debtor shall be entitled to a maximum of two default notices with opportunities to cure. Once Debtor has defaulted and received two default notices, Creditor shall be relieved of any further obligation to serve additional default notices with an opportunity to cure. If Debtor fails to cure the default, Creditor may file and serve on an *ex parte* basis a declaration specifying the default with a proposed order to terminate the automatic stay, which the court may grant without further notice or hearing five days after the date of filing. *Id.*

If Creditor obtains stay relief based on an uncured default, the order granting shall contain a waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). *Id.*

Creditor also separately filed the stipulation and docketed it as a stipulation, but it is not signed by the subchapter V trustee. Doc. #49. Creditor now seeks approval of the stipulation. Doc. #47.

Under Rule 4001(d)(1)(A)(iii), a party may file a motion for approval of an agreement to modify or terminate the stay provided in § 362. The motion contains the required contents outlined in Rule 4001(d)(1)(B) and was properly served on all creditors as required by Rule 4001(d)(1)(C). Pursuant to Rule 4001(d)(1), (2), and (3), a hearing was set on at least seven days' notice and the parties required to be served (Debtor and Trustee) were given at least 14 days to file objections or may appear to object at the hearing.

This matter will be called as scheduled to inquire whether any party in interest opposes. In the absence of opposition at the hearing, this motion will be GRANTED, and the stipulation approved provided that the Trustee consents to the stipulation. Any proposed order shall attach the stipulation as an exhibit.

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<sup>1</sup> Since the stipulation relates to relief from the automatic stay, 21 days' notice is not necessary. See Rules 2002(a)(3), 4001(d). However, Creditor has provided more than 21 days' notice here.

3. [22-11540](#)-B-11     **IN RE: VALLEY TRANSPORTATION, INC.**  
[WJH-2](#)

MOTION TO EMPLOY SUSAN K. HATMAKER AS SPECIAL COUNSEL  
9-29-2022    [[65](#)]

VALLEY TRANSPORTATION, INC./MV  
RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

Debtor-in-possession Valley Transportation, Inc. ("Debtor") asks the court to approve the Debtor's retention of Susan K. Hatmaker of Hatmaker Law Group ("Special Counsel") as special counsel of the subchapter V estate for general business and employment matters and representing the estate in ongoing state court litigation pending in Fresno County Superior Court. Doc. #65. Debtor filed this motion pursuant to 11 U.S.C. §§ 327(a), (c), and (e), 328, and 330, and Fed. R. Bankr. P. 2013, 2014, 2016, 5002, 5004, and 9001.

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

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. 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. § 1184 gives the subchapter V debtor all rights, except the right to compensation under § 330, and powers of a trustee serving under this chapter, including operating the business of the debtor, and requires it to perform all functions and duties of a trustee, except those specified in § 1106(a)(2), (3), or (4).

Under 11 U.S.C. § 327(e), an attorney that has represented the debtor can be employed by the estate for a specified special purpose other than to conduct the case, with the court's approval if it is in the best interest of the estate, the proposed attorney does not hold or represent an interest adverse to the estate with respect to the matter on which such attorney is to be employed.

LBR 2014-1(a) provides that an application for an order approval employment pursuant to Rule 2014(a) shall be presumed to relate back

to the later of 30 days before the filing of the application or the order for relief. The order approving employment shall state the effective date on or after which the employment is authorized and effective for services rendered.

Debtor claims that it is necessary and essential to employ Special Counsel because of the non-bankruptcy transactions services required, which include:

1. serving as general counsel for Debtor and providing consultation regarding general business and employment matters;
2. representing Debtor in and addressing issues arising from actions taken by the plaintiff in *Mendoza v. Valley Transportation, Inc.*, Fresno County Superior Court Case No. 22CECG01786, as stayed in that court, including but not limited to appearing at the State Court Status Conference scheduled for March 10, 2023;
3. Serving as litigation counsel in defense of Debtor with regard to the dispute in *Mendoza v. Valley Transportation, Inc.*, Fresno County Superior Court Case No. 22CECG01786, whether that disputes as an action in bankruptcy court or in state court; and
4. Serving as litigation counsel in defense of Debtor's employees, Deborah Simpson and Rodney Heintz, in the dispute as alleged in *Mendoza v. Deborah Simpson, Rodney Heints, and Barrett Business Services, Inc., et al*, Fresno County Superior Court Case No. 22CECG02752, whether that dispute proceeds in bankruptcy court or in state court.

Doc. #65. Debtor selected Special Counsel because Debtor needed legal representation in non-bankruptcy matters and requests authority to pay Special Counsel for services rendered from the assets of the estate on an hourly basis at the respective hourly rates of Special Counsel's billable professionals, subject to court approval. Further, Debtor requests that monthly applications for interim compensation pursuant to 11 U.S.C. § 331 will be entertained if the combined fees and expenses sought exceed \$5,000.00. *Id.*

Debtor asserts that Special Counsel holds no interest adverse to the Debtor and is a disinterested person within the meaning of § 327. *Id.*

Applicant's *Verified Statement of Connections* provides that Special Counsel has represented Debtor since January 4, 2021, as general counsel, and as litigation counsel in the cases styled (a) *Mendoza Valley Transportation, Inc., et al.*, Fresno County Superior Court Case No. 21CECG03163 ("Original Fresno Action"), (b) *Mendoza v. Valley Transportation, Inc., et al.*, Eastern District of California Case No. 1:21-cv-01786-DAD-SAB ("Federal Action"), (c) *Mendoza v. Valley Transportation, Inc.*, Los Angeles County Superior Court Case No. 22STCV07997, and *Mendoza v. Valley Transportation, Inc.*, Fresno County Superior Court Case No. 22CECG01786. Doc. #68, *Ex. A*. In the Original Fresno Action and Federal Action, Special Counsel also represented employee, officer, director, and sole shareholder of Debtor, Debtor Simpson, and employee and officer of Debtor, Rodney Heintz. Special

Counsel has advised Debtor on numerous business, transactional, and litigation matters affecting Debtor's operations. *Id.* Additionally, Special Counsel is serving as litigation of Debtor's employees, Deborah Simpson and Rodney Heintz, in the recently filed *Mendoza v. Deborah Simpson, Rodney Heintz, and Barrett Business Services, Inc.*, Fresno County Case No. 22CECG02752. *Id.*

Special Counsel has no connections with creditors on current or previous totally unrelated matters, no connections with any other parties in interest, or their attorneys or accountants. Special Counsel has worked with and against Wanger Jones Helsley, who is the general bankruptcy counsel, on previous unrelated matters. *Id.*; *cf.* Doc. #53. Special Counsel has no connections with the accountants for any other parties in interest, nor any connections with the U.S. Trustee, or anyone employed in the U.S. Trustee's office. Doc. #68, *Ex. A*. Special Counsel is not owed any fees as of the petition date and has no connection to the United States Bankruptcy Judge presiding over this case. *Id.*

Written opposition was not required and may be presented at the hearing. If opposition is presented, or if there is other good cause, the court may continue the hearing to accommodate submission of any further briefing or evidence. In the absence of opposition, the court finds that Applicant does not hold or represent an interest adverse to the estate and is disinterested. The conditions of § 327(e) have been met. The motion will be GRANTED, and the application will be APPROVED. If granted, Applicant is retained effective August 30, 2022.

4. [22-11540](#)-B-11      **IN RE: VALLEY TRANSPORTATION, INC.**  
[WJH-4](#)

MOTION TO EMPLOY ANTHONY P. RAIMONDO AS SPECIAL COUNSEL  
9-29-2022    [[70](#)]

VALLEY TRANSPORTATION, INC./MV  
RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

Debtor-in-possession Valley Transportation, Inc. ("Debtor") asks the court to approve the Debtor's retention of Raimondo Miller, a Law Corporation ("Special Counsel"), as special counsel of the subchapter V estate for representing Debtor's employees in a suit brought by Andrew Mendoza. Doc. #70. Debtor filed this motion pursuant to



pursuant to 11 U.S.C. §§ 327(a), (c), and (e), 328, and 330, and Fed. R. Bankr. P. 2013, 2014, 2016, 5002, 5004, and 9001.

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

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. 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. § 1184 gives the subchapter V debtor all rights, except the right to compensation under § 330, and powers of a trustee serving under this chapter, including operating the business of the debtor, and requires it to perform all functions and duties of a trustee, except those specified in § 1106(a)(2), (3), or (4).

Under 11 U.S.C. § 327(e), an attorney that has represented the debtor can be employed by the estate for a specified special purpose other than to conduct the case, with the court's approval if it is in the best interest of the estate, the proposed attorney does not hold or represent an interest adverse to the estate with respect to the matter on which such attorney is to be employed.

LBR 2014-1(a) provides that an application for an order approval employment pursuant to Rule 2014(a) shall be presumed to relate back to the later of 30 days before the filing of the application or the order for relief. The order approving employment shall state the effective date on or after which the employment is authorized and effective for services rendered.

Debtor claims it is necessary and essential to employ Applicant because of the non-bankruptcy transactions services required, which include representation of Debtor's employees in a suit brought by Andrew Mendoza because Labor Code § 2802 necessitates that the Debtor provide indemnity of defense. Doc. #70. Debtor selected Special Counsel because Debtor needed legal representation in non-bankruptcy matters and Special Counsel has experience and knowledge in the field of employment law. Debtor requests authority to pay Special Counsel for services rendered from the assets of the estate on an hourly basis at the respective hourly rates of Special Counsel's billable professionals, subject to court approval. Further, Debtor requests that monthly applications for interim compensation pursuant to 11 U.S.C. § 331 will be entertained if the combined fees and expenses sought exceed \$5,000.00. *Id.*

Debtor asserts that Special Counsel holds no interest adverse to the Debtor and is a disinterested person within the meaning of § 327. *Id.*

Applicant's *Verified Statement of Connections* provides that Special Counsel has represented the Debtor since August 18, 2022 as employment law counsel representing the Debtor and its employees in connection with 60+ noticed depositions set by Andrew Mendoza in *Mendoza v. Valley Transportation, Inc.*, Fresno County Superior Case No. 22CECG01786. Doc. #72, Ex. A. Special Counsel has no connections with creditors on current or previous totally unrelated matters, no connections with any other parties in interest, or their attorneys or accountants. Special Counsel has worked with and against Wanger Jones Helsley, who is the general bankruptcy counsel, on previous unrelated matters. *Id.*; cf. Doc. #53. Special Counsel has no connections with the accountants for any other parties in interest, nor any connections with the U.S. Trustee, or anyone employed in the U.S. Trustee's office. Doc. #72, Ex. A. Special Counsel is not owed any fees as of the petition date and has no connection to the United States Bankruptcy Judge presiding over this case. *Id.*

Written opposition was not required and may be presented at the hearing. If opposition is presented, or if there is other good cause, the court may continue the hearing to accommodate submission of any further briefing or evidence. In the absence of opposition, the court finds that Applicant does not hold or represent an interest adverse to the estate and is disinterested. The conditions of § 327(e) have been met. The motion will be GRANTED, and the application will be APPROVED. If granted, Applicant is retained effective August 30, 2022.

5. [22-11540](#)-B-11     **IN RE: VALLEY TRANSPORTATION, INC.**  
[WJH-6](#)

MOTION TO EMPLOY DRITSAS GROOM MCCORMICK, LLP AS ACCOUNTANT(S)  
9-29-2022    [[75](#)]

VALLEY TRANSPORTATION, INC./MV  
RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

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

Debtor-in-possession Valley Transportation, Inc. ("Debtor") asks the court to approve the Debtor's retention of Dritsas Groom McCormick, LLP ("Accountant"), as the subchapter V estate's certified public accountant during the pendency of this case. Doc. #75. Debtor filed this motion pursuant to 11 U.S.C. §§ 327, 328, and 330, and Fed. R. Bankr. P. 2013, 2014, 2016, 5002, 5004, and 9001.

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

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. 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. § 1184 gives the subchapter V debtor all rights, except the right to compensation under § 330, and powers of a trustee serving under this chapter, including operating the business of the debtor, and requires it to perform all functions and duties of a trustee, except those specified in § 1106(a)(2), (3), or (4).

Under 11 U.S.C. § 327(a), a professional person, such as an accountant, may be employed by the estate with the court's approval if the proposed professional does not hold or represent an interest adverse to the estate and is "disinterested."

LBR 2014-1(a) provides that an application for an order approval employment pursuant to Rule 2014(a) shall be presumed to relate back to the later of 30 days before the filing of the application or the order for relief. The order approving employment shall state the effective date on or after which the employment is authorized and effective for services rendered.

Debtor claims it is necessary and essential to employ Accountant because of the extensive accounting services required. Doc. #75. These services include, without limitation:

1. Preparation of adjusting entries, working papers, and depreciation calculations in connection with preparing, reporting on, or estimating financial statements, financial reports, federal income and state tax returns and/or liabilities, and federal income and state tax deposits, including monthly operating reports;
2. Review of correspondence received, preparation of correspondence in response to and representation services as needed in connection with federal, state, and county taxing authorities; and
3. Consulting, tax advice, and litigation services as required by the Debtor.

*Id.* Debtor has selected Accountant because it needs accounting services in this case and Accountant has experience and knowledge in the field of accounting and financial consulting. *Id.* Debtor believes that Accountant is competent and skilled in connection with these matters and well qualified to provide the services in this case.

Debtor requests authority to pay Special Counsel for services rendered from the assets of the estate on an hourly basis at the respective hourly rates of Special Counsel's billable professionals, subject to court approval. Further, Debtor requests that monthly applications for interim compensation pursuant to 11 U.S.C. § 331 will be entertained if the combined fees and expenses sought exceed \$5,000.00. *Id.*

Debtor asserts that on the petition date, Debtor owed \$900.00 to Applicant. *Id.* Under 11 U.S.C. § 1195, a person is not disqualified for employment under § 327 by a debtor solely because that person holds a claim of less than \$10,000 that arose prior to the commencement of the case.

Applicant's *Verified Statement of Connections* provides that Accountant has represented the Debtor and two of Debtor's employees, Deborah Simpson and Rodney Heintz, since 1991 as a certified public accountant. Doc. #78, *Ex. A*. Accountant has advised the Debtor on numerous consulting, tax advice, and litigation services affecting Debtor's operations. Accountant has no connections with creditors on current or previous totally unrelated matters, no connections with any other parties in interest, or their attorneys or accountants. Accountant has no connection with any attorneys in this case, or any accountants for any parties in interest, nor any connections with the U.S. Trustee, or anyone employed in the U.S. Trustee's office. *Id.* Accountant has no connection to the United States Bankruptcy Judge presiding over this case. Applicant is owed \$900.00 in fees for pre-petition services, which is within the limitation provided in § 1195.

Written opposition was not required and may be presented at the hearing. If opposition is presented, or if there is other good cause, the court may continue the hearing to accommodate submission of any further briefing or evidence. In the absence of opposition, the court finds that Applicant does not hold or represent an interest adverse to the estate and is disinterested. The conditions of § 327(a) have been met. The motion will be GRANTED, and the application will be APPROVED. If granted, Applicant is retained effective August 30, 2022.

6. [22-10947](#)-B-11      **IN RE: FLAVIO MARTINS**

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

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

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

DISPOSITION:      Withdrawn; taken off calendar.

NO ORDER REQUIRED.

On September 6, 2022, Pacific Gas & Electric Company withdrew its request for additional adequate assurance of payment for future utility service. Doc. #161. Accordingly, the hearing on this motion will be dropped and taken off calendar pursuant to the withdrawal.

7. [22-10947](#)-B-11      **IN RE: FLAVIO MARTINS**  
[MB-13](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF MCCORMICK,  
BARSTOW, SHEPPARD, WAYTE & CARRUTH LLP FOR HAGOP T. BEDOYAN,  
DEBTORS ATTORNEY(S)  
9-22-2022    [\[190\]](#)

HAGOP BEDOYAN/ATTY. FOR DBT.

TENTATIVE RULING:      This matter will proceed as scheduled.

DISPOSITION:      Granted.

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

McCormick, Barstow, Sheppard, Wayte & Carruth, LLP ("Applicant"), the law firm representing debtor-in-possession Flavio Almeida Martins dba Top Line Dairy ("Debtor"), seeks interim compensation under 11 U.S.C. §§ 330 and 331 in the sum of \$33,515.10. Doc. #190. This amount consists of \$32,965.00 in attorneys' fees as reasonable compensation and \$550.10 in reimbursement for actual, necessary expenses from August 1, 2022 through August 31, 2022. *Id.*

Debtor has reviewed the application and statement for fees and costs, has no objection to the same, and declares that the budget presented to the court as part of Debtor's *Second Motion for Further Use of Cash Collateral and Grant Adequate Protection* ("Second CC Motion") dated September 9, 2022 (Doc. #174, Ex. A) provides for the payment of professional fees and costs in the amounts of \$45,000.00 in October, \$50,000.00 in November, and another \$60,000.00 in December. Doc. #193. On September 30, 2022, the court issued an *Interim Order Authorizing Further Use of Cash Collateral, Granting Adequate Protection and Setting Final Hearing* ("Second Interim CC Order"), which authorized use of cash collateral through October 29, 2022 and set a final hearing on the Second CC Motion to take place on October 27, 2022 at 9:30 a.m. Doc. #202.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion.

This motion was filed and served on 21 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Fed. R. Bankr. P. 2002(a)(6) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Applicant's employment as general bankruptcy counsel was authorized pursuant to 11 U.S.C. §§ 327(a) and 329-331 on June 22, 2022, effective June 1, 2022.<sup>2</sup> Doc. #60. No compensation was permitted except upon court order following application under § 330(a) and will be paid at the "lodestar rate" for attorney services applicable at the time that services are rendered in accordance with *In re Manoa Fin. Co., Inc.*, 853 F.2d 687 (9th Cir. 1988). All funds received by Applicant from Debtor are deemed to be an advanced payment of fees and shall be maintained in a trust account until prevailing on an application for compensation and the issuance of an order authorizing disbursement of a specific amount. *Id.* Monthly applications for interim compensation exceeding \$5,000.00 will be entertained under § 331.

Prior to filing bankruptcy, Applicant received a \$50,000.00 retainer. Doc. #190. Applicant was paid \$45,261.75 from the retainer prior to commencement of the case, so \$4,738.25 remained in trust at the time of Applicant's first interim fee application. *Id.*

On August 9, 2022, the court awarded \$37,132.50 in fees and \$4,960.00 in expenses, for a total first interim award of \$42,092.50 for services rendered and costs incurred from June 1, 2022 through June 30, 2022. Docs. ##131-32. Applicant was allowed to draw down the \$4,738.25 retainer and Debtor was authorized to pay Applicant \$30,000.00 pursuant to the current cash collateral order (Doc. #80), as modified September 21, 2022 (Doc. #189). *Id.* The remaining

\$7,354.25, which remained outstanding, was not authorized until further funds became available under the current cash collateral order.

On September 8, 2022, the court awarded \$15,752.50 in fees and \$1,259.75 in expenses, for a total second interim award \$17,012.25 for services rendered and costs incurred between July 1, 2022 through July 31, 2022. Doc. #169. Debtor was authorized to pay Applicant \$17,012.25 pursuant to the current cash collateral order (Doc. #80), as modified September 21, 2022 (Doc. #189). *Id.* Debtor was further authorized to pay the outstanding balance of \$7,354.25 from the first interim award.

In sum, Applicant has been awarded a total of \$59,104.75 in fees and expenses in this case. Of that amount, \$4,738.25 was paid from the pre-petition retainer, leaving \$54,366.50 to be paid from cash collateral pursuant to Debtor's submitted budgets attached to the cash collateral orders.

This is Applicant's third interim fee application. Attorney Hagop T. Bedoyan performed 69.40 billable hours of legal services at a rate of \$475.00 per hour, totaling **\$32,965.00** in fees. Docs. #190; #192; #194, *Exs. A, B.* Applicant also incurred **\$550.10** in expenses:

First Legal Network LLC Filing Fees	\$111.00
Photocopies	+ \$439.10
<b>Total Costs</b>	<b>= \$550.10</b>

*Id.* These combined fees and expenses total **\$33,515.10**. Under the First Final Cash Collateral entered July 7, 2022, Debtor was authorized to pay \$30,000.00 in attorney's fees through August 14, 2022 and an additional \$60,000.00 through September 18, 2022, for a total of \$90,000.00. Doc. #80, *Ex. A.* The First Cash Collateral Order was modified September 21, 2022 to provide for payment of attorney fees of \$25,000.00 through September 11, 2022, reducing the total fees through September 18, 2022 to \$55,000.00. This amount covered the \$54,366.50 required to be paid from cash collateral from the first two interim compensation orders. Docs. #132; #169.

Under the Second Interim CC Order, Debtor is authorized to pay an \$45,000.00 in professional fees in the week of October 23, 2022, for a total of \$100,000.00 authorized for professional fees thus far, which will be sufficient to fund this fee application. Doc. #202, *Ex. A.* Two additional allocations of \$60,000.00 will be available for payment of professional fees on November 20, 2022, and December 16, 2022. *Id.* If approved, the total amount of fees paid from cash collateral (excluding the \$4,738.25 paid from the retainer) will be \$87,881.60.

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).

Applicant's services included, without limitation: (1) continued communicating with PG&E and its attorney with respect to the amount of Debtor's proposed adequate assurance deposit; (2) preparing a motion to allow and pay certain creditor claims, totaling \$114,552.25, as administrative expense claims under 11 U.S.C. § 503(b) (9) (MB-8); (3) communicating with Western Milling ("WM") to resolve payment problems for the purchase of feed on a weekly basis; (4) attending the hearing on Bank of the Sierra's ("BOTS") motion to approve relief from stay stipulation (DJP-2); (5) preparing second interim fee application and supporting papers for the time period July 1, 2022 through July 31, 2022 (MB-9); (6) communicating with Debtor and opposing counsel regarding the sale of Vaca Linda dairy, reviewing offers, and negotiating counter-offers for the sale of all dairies, and began drafting motion for sale regarding the same; (7) communicating with Debtor regarding sale of dry cows to his brother and preparing motion regarding the same (MB-11); (8) reviewing offers and counter-offers presented by Debtor's brokers for the sale of Vaca Linda Dairy, Top Line West Dairy, and Top Line East Dairy, and Pedro Dairy, and preparing counter-offers with respect to separate purchase offers; (9) preparing a motion to modify the existing cash collateral order to provide for \$279,011.00 adequate protection payment to BOTS in September of this year, which was granted on September 20, 2022 (MB-10); and (10) preparing the Second CC Motion (MB-12); and (11) preparing for and attending the hearing on PG&E's request for additional adequate assurance (MB-2). Docs. #192; #194, *Exs. A, B*. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Debtor reviewed the fee application and consents to payment of the requested compensation. Doc. #193.

Written opposition was not required and may be presented at the hearing. In the absence of opposition at the hearing, the court is inclined to GRANT this motion. Applicant will be awarded \$32,965.00 in fees and \$550.10 in expenses on an interim basis under 11 U.S.C. § 331, subject to final review pursuant to § 330. Debtor will be authorized to pay Applicant \$33,515.10 from cash collateral when authorized under the Second Interim CC Order, as may be modified in subsequent cash collateral orders, for services rendered and/or costs incurred between August 1, 2022 through August 31, 2022. This ruling is not permitting any unauthorized use of cash collateral.

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<sup>2</sup> The court notes that the order authorizing employment says that employment is effective as of June 1, 1022. Doc. #60. This is a typographical error and will be construed as June 1, 2022, which is the petition date.



8. [22-10885](#)-B-11     **IN RE: SYNCHRONY OF VISALIA, INC.**  
[UST-1](#)

CONTINUED MOTION TO APPOINT A PATIENT CARE OMBUDSMAN  
8-16-2022    [[64](#)]

TRACY DAVIS/MV  
LEONARD WELSH/ATTY. FOR DBT.  
JASON BLUMBERG/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Denied as moot.

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

Tracy Hope Davis, the United States Trustee for Region 17 (the "UST"),  
moved for an order directing the appointment of a patient care  
ombudsman pursuant to 11 U.S.C. § 333. Doc. #64.

Synchrony of Visalia, Inc. ("Debtor") timely filed written opposition  
and a supplemental declaration. Docs. #69; #88. Debtor claims that  
appointment of a patient care ombudsman is not necessary because  
Debtor does not provide any inpatient services.

UST responded. Doc. #98.

Debtor filed a second supplemental declaration in reply. Doc. #100.

This motion was originally heard on September 20, 2022. The court  
entered the defaults of all non-responding parties except Debtor and  
continued the matter to October 13, 2022 so that Debtor could file and  
serve a further declaration not later than October 6, 2022.  
Docs. ##104-05.

Since then, Debtor filed supplemental opposition, a supporting  
declaration from Debtor's attorney, Leonard K. Welsh, a third  
supplemental declaration from Debtor's Executive Officer, Maria Ortiz-  
Nance, and an exhibit published by the American Association of  
Psychiatry. Docs. ##122-25.

Debtor filed chapter 7 bankruptcy on May 25, 2022. Doc. #1. On July  
11, 2022, the court granted Debtor's motion and converted the case to  
a case under subchapter V of chapter 11 of the Bankruptcy Code.  
Doc. #40. Lisa Holder was appointed as subchapter V trustee on July  
14, 2022. Doc. #46.

Debtor is a small business and debtor in possession under 11 U.S.C.  
§§ 1182(2), 1184, and has described itself in the petition as a

"health care business" under 11 U.S.C. § 101(27A). Doc. #1. According to Debtor's *Statement of Financial Affairs*, Debtor operates a "Mental Health and Wellness Clinic." Doc. #23. Since Debtor initially described itself as a "health care business," the UST argued that the court should order the appointment of a patient care ombudsman unless the Debtor could demonstrate that such appointment is not necessary for the protection of patients under the specific circumstances of this case. Doc. #64.

In chapters 7, 9, or 11 cases in which the debtor is a health care business, Fed. R. Bankr. P. ("Rule") 2007.2(a) requires the court to order the appointment of a patient care ombudsman under 11 U.S.C. § 333(a)(1), unless, on motion of the UST or another party in interest filed within 21 days of the petition date or another time fixed by the court, the court finds that appointment of a patient care ombudsman is not necessary under the specific circumstances of the case and for the protection of patients. Under § 333(a)(1), the court shall order within 30 days of the petition the appointment of an ombudsman to monitor the quality of patient care and represent the interests of the patients, unless such appointment is not necessary for the protection of patients under the circumstances of the case.

The term "health care business" is broadly defined under 11 U.S.C. § 101(27A) as:

- (A) . . . any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for—
  - (i) the diagnosis or treatment of injury, deformity, or disease; and
  - (ii) surgical, drug treatment, psychiatric, or obstetric care; and
- (B) includes—
  - . . .

§ 101(27A) (A) (emphasis added).

Debtor's original response acknowledged that it was a health care business but contended that a patient care ombudsman was not necessary for a variety of reasons. In considering the nine-factor *Alternate Family Care* test when considering whether appointment of a patient care ombudsman is necessary, it appeared that many factors suggested that such appointment was not necessary. Doc. #104, *In re Valley Health Sys.*, 381 B.R. 756, 761 (Bankr. C.D. Cal. 2008), citing *In re Alternate Family Care*, 377 B.R. 754, 758 (Bankr. S.D. Fla. 2007); see also *In re Flagship Franchises of Minn., LLC*, 484 B.R. 759, 762 (Bankr. D. Minn. 2013) (collecting cases). But due to unanswered questions about Debtor's business, the court continued the hearing on this motion for further briefing.

Since then, Debtor has re-examined 11 U.S.C. § 101(27A) and has determined that the petition is wrong, and Debtor is not a "health care business." Doc. #122. Debtor emphasizes the definition of a "health care business": a public or private entity that is primarily engaged in offering to the general public facilities and services for the diagnosis or treatment of injury, deformity, or disease and surgical, drug treatment, psychiatric, or obstetric care. Since § 101(27A) is written in the conjunctive and not the disjunctive, Debtor must be engaged in offering facilities and services for both the diagnosis or treatment of injury, deformity, or disease and surgical, drug treatment, psychiatric, or obstetric care. *Id.* Debtor operates a mental health and wellness clinic, but it does not offer facilities or services for surgical, drug treatment, psychiatric, or obstetric care, so it is not a health care business. Its services are limited to "psychological" and mental health services, not those listed in § 101(27A) (A) (ii)

Ortiz-Nance, Debtor's Executive Officer, declares that Debtor does not offer facilities or services for surgical, drug treatment, psychiatric, or obstetric care. Doc. #124. None of Debtor's clinicians are "medical doctors" as is required for the clinicians to qualify as "psychiatrists" and, for that reason, Debtor's services do not qualify as "psychiatric care" as required by law. *Id.*

Debtor's attorney, Leonard K. Welsh, declares that the original response to this motion assumed that § 101(27A) (A) (i) and (ii) were written in the disjunctive, not conjunctive, which resulted in the petition stating that Debtor operates a "health care business." Doc. #123. After re-examining § 101(27A), Mr. Welsh indicates that Debtor is not a health care business, and Debtor intends to amend the petition to delete any references to Debtor being a health care business. *Id.*

As evidence, Debtor provided as an exhibit an article entitled "What is Psychiatry" published by the American Association of Psychiatry. Doc. #125, *Ex. A*. Since none of Debtor's clinicians are medical doctors, they do not qualify as psychiatrists under the American Psychiatrist Association's definition of a psychiatrist.

It appears that Debtor is not a "health care business" as defined in § 101(27A). This matter will be called and proceed as scheduled to inquire about UST's response to Debtor's supplemental opposition. The court is inclined to DENY AS MOOT the motion because appointment of a patient care ombudsman is moot if Debtor is not a health care business.

11:00 AM

1. [22-11436](#)-B-7     **IN RE: SANDRA VALDIVIA**

PRO SE REAFFIRMATION AGREEMENT WITH KINECTA FEDERAL CREDIT  
UNION  
9-20-2022     [[11](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION:     Taken off calendar.

ORDER:     The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when she entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor(s)' counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable. The debtor(s) shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

2. [22-11263](#)-B-7     **IN RE: JUANITA TOPETE**

PRO SE REAFFIRMATION AGREEMENT WITH FAST FEDERAL CREDIT  
UNION  
9-13-2022     [[12](#)]

NO RULING.

1:30 PM

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

FURTHER SCHEDULING CONFERENCE RE: MOTION TO AVOID LIEN OF  
PHILLIP ERKENBRACK  
8-11-2022     [[42](#)]

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

TENTATIVE RULING:     This matter will proceed as scheduled.

DISPOSITION:     This matter will proceed as a scheduling  
conference.

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

This matter will proceed as a scheduling conference. The court will  
issue a scheduling order.

This matter was previously deemed to be a contested matter, so the  
federal rules of discovery are applicable. Fed. R. Bankr. P. 9014(c).

The sole factual issue appears to be whether the subject real property  
is the debtor's residence.

The sole legal issue appears to be whether the debtor is entitled to  
claim a homestead exemption in the subject real property.

2. [20-10024](#)-B-7     **IN RE: SUKHJINDER SINGH**  
[RTW-2](#)

MOTION FOR COMPENSATION FOR RATZLAFF TAMBERI & WONG,  
ACCOUNTANT(S)  
9-8-2022    [[69](#)]

RATZLAFF TAMBERI & WONG,  
ACCOUNTANCY CORPORATION/MV  
LAYNE HAYDEN/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.

Ratzlaff Tamberi & Wong ("Applicant"), the certified public accountancy firm engaged by chapter 7 trustee James E. Salven ("Trustee"), seeks final compensation under 11 U.S.C. § 330 in the sum of \$1,499.10. Doc. #69. This amount consists of \$1,480.50 in fees as reasonable compensation for services rendered and \$18.60 in reimbursement for actual, necessary expenses from May 12, 2022 through August 4, 2022. *Id.*

Trustee has received and reviewed the application and supporting documents, states they are reasonable and necessary for estate administration, and has no objection to the proposed payment. Doc. #73.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. 2002(a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Sukhjinder Singh ("Debtor") filed chapter 7 bankruptcy on January 4, 2020. Doc. #1. Trustee was appointed as interim trustee on that same day and became permanent trustee at the first meeting of creditors on February 13, 2020. Doc. #2; docket generally. Trustee moved to employ Applicant as the estate's accountant under 11 U.S.C. §§ 327, 330, and 331 on May 4, 2022. Doc. #56. The court approved employment on May 12, 2022, effective April 4, 2022. Doc. #59. No compensation was permitted except upon court order following application pursuant to § 330(a). Compensation was set at the "lodestar rate" for accounting services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). Acceptance of employment was deemed to be an irrevocable waiver by Applicant of all pre-petition claims, if any, against the bankruptcy estate. *Id.* Applicant's services here were within the time period prescribed by the employment order.

This is Applicant's first and final fee application. Doc. #69. Applicant performed 6.3 billable hours of accounting services at a rate of \$235.00 per hour, totaling **\$1,480.50** in fees. Doc. #72, *Ex. A*. Applicant also incurred **\$18.60** in expenses for postage to notice creditors. *Id.* These combined fees and expenses total **\$1,499.10**.

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" 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).

Applicant's services included, without limitation: (1) reviewing the petition and trustee's accounting for information relating to tax matters; (2) preparing preliminary estimates owing as the result of recoveries related to real property; (3) preparing the federal and state fiduciary income tax returns and underlying workpapers for the period ending July 31, 2022; and (4) preparing and filing the final fee application. Docs. #71; #72, *Ex. A*. The court finds the services and expenses actual, reasonable, and necessary. As noted above, Trustee has reviewed the fee application and consents to payment of the requested fees and expenses. Doc. #73.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded \$1,480.50 in fees and \$18.60 in expenses on a final basis pursuant to 11 U.S.C. § 330. Trustee will be authorized to pay applicant, in Trustee's discretion, \$1,499.10 for services rendered to and costs incurred for the benefit of the estate from May 12, 2022 through August 4, 2022.

3. [20-10024](#)-B-7     **IN RE: SUKHJINDER SINGH**  
[RWR-5](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF COLEMAN &  
HOROWITT, LLP FOR RUSSELL W. REYNOLDS, TRUSTEES ATTORNEY(S)  
9-8-2022    [\[63\]](#)

LAYNE HAYDEN/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.

Russell W. Reynolds of Coleman & Horowitt, LLP ("Applicant"), general counsel for chapter 7 trustee James E. Salven ("Trustee"), requests final compensation in the sum of \$56,264.98. Doc. #63. This amount consists of \$55,147.00 in fees as reasonable compensation for services rendered and \$1,117.98 in reimbursement for actual, necessary expenses from March 6, 2020 through September 8, 2022. *Id.*

Trustee has reviewed the fee application, believes the fees and expenses represent a reasonable compensation for actual and necessary services and expenses that benefitted the estate, and has no objection to approval and payment of the same. Doc. #67.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Sukhjinder Singh ("Debtor") filed chapter 7 bankruptcy on January 4, 2020. Doc. #1. Trustee was appointed as interim trustee on that same day and became permanent trustee at the first meeting of creditors on



February 13, 2020. Doc. #2; docket generally. Trustee moved to employ Applicant as general counsel on March 24, 2020, which the court granted on April 1, 2020, effective March 2, 2020. Docs. #11; #14. No compensation was permitted except upon court order following application pursuant to § 330(a) and compensation was set at the "lodestar rate" for legal services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). *Id.* Applicant's services were performed within the authorized time period.

This is Applicant's first and final fee application. The source of funds for payment will be from the funds currently held by the bankruptcy estate. Applicant's firm provided 165.8 billable hours of legal services at the following rates, totaling **\$55,147.00** in fees:

Professional	Rate	Hours	Total
Russell W. Reynolds	\$350	115.80	\$40,530.00
Kelsey A. Seib	\$275	3.20	\$880.00
C. Fred Meine	\$335	7.70	\$2,579.50
Janet Sheen	\$165	2.90	\$478.50
Rob K. Ashley	\$295	36.20	\$10,679.00
<b>Total Hours &amp; Fees</b>		<b>165.80</b>	<b>\$55,147.00</b>

Docs. #63; #66, *Ex. B.* Applicant also incurred **\$1,117.98** in expenses:

Photocopies	\$76.05
Postage	+ \$115.93
Complaint filing fee	+ \$350.00
CourtCall	+ \$123.00
Process service fee	+ \$248.50
Travel Expenses	+ \$2.50
Recorder fees	+ \$202.00
Total Costs	= \$1,117.98

*Id.* These combined fees and expenses total **\$56,264.98**.

11 U.S.C. § 330(a)(1)(A) and (B) permits 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).

Applicant's services included, without limitation: (1) filing an adversary proceeding (Adv. Proc. No. 20-01036) to avoid fraudulent transfers against Debtor and others after learning that Debtor had

owned real property located in Chowchilla, California, which was transferred to Debtor's cousin, and then to Debtor's parents, for no consideration; (2) conducting discovery in the adversary proceeding and ultimately filing two motions for sanctions for failure to comply with discovery, resulting in \$9,070.00 in monetary sanctions, \$6,630.00 for interpreter and court reporter costs, and \$2,450.00 in attorney fees; (3) locating and retaining a banking expert in India, gathering and analyzing evidence, preparing motions in limine and trial binders, and attending an initial pre-trial conference; (4) settling the adversary proceeding and obtaining approval of the same; and (5) preparing and filing employment and fee applications. Doc. #66, Exs. A, B. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Trustee has reviewed the application and consents to payment of the requested fees and expenses. Doc. #67.

No party in interest timely filed written opposition to this motion. Accordingly, this motion will be GRANTED. Applicant will be awarded \$55,147.00 in reasonable fees and \$1,117.98 in actual, necessary expenses on a final basis pursuant to § 330. Trustee will be authorized, in his discretion, to pay Applicant \$56,264.98 on the terms outlined above for services rendered and costs incurred from March 6, 2020 through September 8, 2022.

4. [22-11327](#)-B-7     **IN RE: MARIA SOTO**  
[JES-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO  
APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
9-9-2022    [\[19\]](#)

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

DISPOSITION:     Conditionally denied.

ORDER:             The court will issue an order.

Chapter 7 trustee James E. Salven ("Trustee") seeks dismissal of this case for the debtor's failure to appear and testify at the § 341(a) meeting of creditors held on September 8, 2022. Doc. #19.

Maria Del Carmen Soto ("Debtor") timely filed written opposition. Doc. #22. Debtor did not attend the hearing because Debtor did not receive the Zoom ID and password in time. *Id.* Debtor will be ready to attend the next meeting on October 20, 2022. *Id.*

This motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for October 20, 2022 at 1:00 p.m. See Doc. #20. 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.

5. [22-11031](#)-B-7     **IN RE: ALEJANDRO ACOSTA-ZUNIGA AND ADRIANA ACOSTA**  
[JES-1](#)

MOTION TO EMPLOY BAIRD AUCTIONS AND APPRAISALS AS  
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION  
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES  
AND/OR MOTION TO EXTEND AUTOMATIC STAY  
9-7-2022    [\[15\]](#)

JAMES SALVEN/MV  
TIMOTHY SPRINGER/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.

Chapter 7 trustee James E. Salven ("Trustee") seeks authorization to (i) employ Baird Auctions & Appraisals ("Auctioneer") under 11 U.S.C. § 328; (ii) sell the estate's interest in a 2020 Ford F-150 truck ("Vehicle") at public auction under § 363(b)(1); and (iii) compensate Auctioneer under §§ 327(a) and 328. Doc. #15. The auction will be held on or after November 1, 2022 beginning at 5:30 p.m. at Baird Auctions & Appraisals located at 1328 N. Sierra Vista, Suite B, Fresno, California. *Id.*

Additionally, to the extent that the Vehicle is collateral for a debt, Trustee requests a determination that Trustee has satisfied the hanging paragraph of 11 U.S.C. § 521(a)(6) because the Vehicle is of consequential value or benefit to the estate, the secured creditor is adequately protected, and Debtors have previously delivered possession of the Vehicle to Trustee.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(2) and (a)(6). The failure of the creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required

by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion affects the proposed disposition and the Auctioneer. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion and allow the relief requested by movant here as to the proposed auctioneer and use the court's discretion to add a party under Civ. Rule 21.

Compensation is separate from the sale. Since this relief and appointing the Auctioneer are separate claims, the court will allow their joinder in this motion under Civ. Rule 18 (Rule 7018) because it is economical to handle this motion in this manner absent an objection. This rule is not incorporated in contested matters absent court order under Rule 9014(c) and affected parties are entitled to notice. Trustee, having requested this relief, is deemed to have notice. Since no party timely filed written opposition, defaulted parties are deemed to have consented to application of this rule.

#### BACKGROUND

Alejandro Acosta-Zuniga and Adriana Acosta ("Debtors") filed chapter 7 bankruptcy on June 21, 2022. Doc. #1. Trustee was appointed as interim trustee that same date and became permanent trustee at the first § 341 meeting of creditors on July 28, 2022. Doc. #5; docket generally. In the course of administering the estate, Trustee investigated Debtor's assets. Among those assets is Vehicle, which is listed in the schedules with approximately 48,000 miles and is valued at \$33,004.00. Doc. #1, *Sched. A/B*. Vehicle is encumbered by a purchase money security interest in favor of Lincoln Automotive Fin. in the amount of \$37,292.00. *Id.*, *Sched. D*. However, Ford Motor Credit Company, LLC ("Ford") filed Proof of Claim No. 5 on August 5, 2022 asserting a \$36,751.24 claim secured by Vehicle. Claim 5. Debtors did not exempt any equity in the Vehicle. Doc. #1, *Sched. C*.

Trustee has reviewed the Vehicle and believes that Vehicle will sell for between \$55,000 to \$60,000 based on discussions with Auctioneer. Doc. #17. This is substantially more than the approximately \$38,000 owing to the secured lender. To the extent that the Vehicle is collateral for a debt, Trustee requests a finding that Trustee has satisfied the hanging paragraph of 11 U.S.C. § 521(a)(6) because the personal property is of consequential value or benefit to the estate,

the secured creditor is adequately protected, and Debtors have previously delivered possession of the Vehicle to Trustee.

#### Consequential Value or Benefit to the Estate

The caption of this motion requests an extension of the automatic stay, but Trustee requests a determination under § 521(a)(6) and (a)(\*) (the hanging paragraph) that Vehicle, to the extent it is collateral for a debt, is of consequential value to the estate, the secured creditor is adequately protected because the Vehicle is in possession of the auctioneer, the creditor will be paid in full once the vehicle is sold at auction, and Debtors have already delivered possession of the vehicle to the possession of the Trustee.

11 U.S.C. § 521(a)(6) provides that a chapter 7 case in which the debtor is an individual and is not retaining personal property secured in whole or in part by a secured claim, the automatic stay is terminated unless the debtor, within 45 days, enters into a reaffirmation agreement with the creditor under § 524(c), or redeems property from the security interest under § 722.

§ 521(a)(\*) (the hanging paragraph) provides:

(\*) If the debtor fails to so act within the 45-day period referred to in paragraph (6), the stay under section 362(a) is terminated with respect to the personal property of the estate or of the debtor which is affected, such property shall no longer be property of the estate, and the creditor may take whatever action as to such property as is permitted by applicable nonbankruptcy law, unless the court determines on the motion of the trustee filed before the expiration of such 45-day period, and after notice and a hearing, that such property is of consequential value or benefit to the estate, order appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee.

Here, Debtors' *Statement of Intention* provides that they intend to retain Vehicle and enter into a reaffirmation agreement. Doc. #1. But Debtors did not enter into a reaffirmation agreement within 45 days of the first date set for the meeting of creditors (July 28, 2022), which was September 11, 2022. Instead, Debtors delivered possession of the Vehicle to Trustee, who in turn delivered it to Auctioneer.

Trustee timely filed this motion on September 7, 2022 before expiration of the 45-day deadline referred to in § 521(a)(6) and (a)(\*). The court will find that Vehicle is of consequential value and benefit to the estate because Trustee anticipates selling it for \$55,000-\$60,000, the secured creditor will be adequately protected because it will be paid in full once Vehicle is sold at public auction, and Debtors have already delivered possession of the Vehicle to Trustee.

## Employment and Compensation

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

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

Under these sections, Trustee requests to employ and compensate Auctioneer by paying: (i) a 15% commission on the gross proceeds from the sale; and (ii) up to \$500.00 for anticipated storage and preparation for sale fees. Doc. #15. In addition to those fees and expenses, Auctioneer charges buyers an additional 10% premium on the purchase price. Doc. #17. Funds from the sale, minus Auctioneer's fees and expenses if this motion is granted, will be remitted to the bankruptcy estate within 30 days of the sale. *Id.*

Trustee and Jeffrey Baird, the owner and operator of Auctioneer, filed declarations attesting that Auctioneer is a disinterested person as defined in § 101(14) and does not hold any interests adverse to the estate in accordance with § 327(a). *Id.*; Doc. #18. Trustee and Mr. Baird declare that Auctioneer, with respect to Debtors, is not a creditor, equity security holder, insider, investment banker for a security of the debtor within the three years before the petition date, or an attorney for such investment banker, and within two years of the petition date was not a director, officer, or employee of the debtors or an investment banker. *Id.* Auctioneer does not have an interest materially adverse to the interest of the estate, creditors, Debtors, equity security holders, an investment banker for a security of the debtors, or any other party in interest, and had not served as an examiner in this case. *Id.* Auctioneer does not have any connection with any creditors, parties in interests, their attorneys, accountants, the U.S. Trustee, or anyone employed by the U.S. Trustee. *Id.*; Doc. #17. Additionally, no agreement exists between Auctioneer or any other person for the sharing of compensation received by Auctioneer in connection with the services rendered. *Id.*

Trustee declares that it is necessary to employ Auctioneer to liquidate Vehicle. *Id.* Trustee believes that the proposed fees and expenses for services are reasonable and customary for the services to be rendered by Auctioneer. *Id.* Auctioneer will assist Trustee by (1) actively advertising the sale of the property, (2) assisting in storing the property until sold, and (3) generally performing and assisting Trustee in matters customarily done and performed by auctioneers in connection with an auction sale of property. *Id.*

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. §§ 327(a), 328 and authorize Trustee to pay the 15% commission and reimbursement of up to \$500.00 for preparation and storage fees as prayed.

### Proposed Sale

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

Trustee wishes to sell Vehicle under § 363(b). Doc. #15. As noted above, Vehicle has a scheduled value of \$33,004.00, which would make it undersecured, but Trustee believes it will sell for between \$55,000.00 to \$60,000.00. Docs. #1; #17. If Property sold for \$55,000.00, Auctioneer's 15% commission would be \$8,250.00. After payment of the \$500 preparation and storage fees and \$36,751.24 to Ford (Claim 5), the net to the estate would be approximately \$9,498.76.

Trustee believes that using the auction process to sell Vehicle will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #17. Based on Trustee's experience, this will yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.*

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

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be authorized to employ Auctioneer, sell the Vehicle at public auction on or after November 1, 2022 and pay Auctioneer for its services as outlined above. Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale, and payment of up to \$500.00 for preparation and storage fees. Under 11 U.S.C. § 521(a)(\*), the court will find that Vehicle is of consequential value and benefit to the estate, the secured creditor is adequately protected because it will be paid in full after the Vehicle is sold at public auction, and Debtors have already delivered possession of the Vehicle to the Trustee.

6. [20-12037](#)-B-7     **IN RE: GURDIAL SINGH**  
[ADJ-3](#)

MOTION FOR COMPENSATION FOR ANTHONY D. JOHNSTON, TRUSTEES  
ATTORNEY(S)  
9-15-2022    [[57](#)]

MARK HANNON/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.

Anthony D. Johnston of Fores▪Macko▪Johnston, Inc. ("Applicant"), general counsel for chapter 7 trustee James E. Salven ("Trustee"), requests final compensation in the sum of \$6,975.00. Doc. #57. This amount consists of \$8,125.00 in fees reduced by \$1,150.00, as reasonable compensation, and no expenses, from October 26, 2020 through September 9, 2022. *Id.*

Trustee has reviewed the fee application and supporting documents, believes the fees and expenses represent a reasonable compensation for necessary services that benefited the estate, and consents to the proposed payment. Doc. #60. The bankruptcy estate current has funds on hand in the amount of \$9,673.00.



This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Gurdial Singh ("Debtor") filed chapter 7 bankruptcy on June 15, 2020. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341 meeting of creditors on July 9, 2020. Doc. #5; docket generally. Trustee moved to employ Applicant as general counsel on October 30, 2020, which the court granted on November 9, 2020, effective October 26, 2020. Docs. #43; #46. No compensation was permitted except upon court order following application pursuant to § 330(a) and compensation was set at the "lodestar rate" for legal services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). *Id.* Applicant's services were performed within the authorized time period.

This is Applicant's first and final fee application. The source of funds for payment will be from the funds currently held by the bankruptcy estate. Doc. #60. Applicant's firm provided 25.0 billable hours at a rate of \$325.00 per hour, totaling \$8,125.00. However, Applicant has agreed to reduce fees by \$1,150.00, resulting in a total request of **\$6,975.00** here. Docs. #59; #61, *Ex. B*. Applicant is not requesting payment for any expenses.

11 U.S.C. § 330(a)(1)(A) and (B) permits 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).

Applicant's services included, without limitation: (1) assisting Trustee in administration of the case; (2) pre-petition review of documents and correspondence concerning the Gurpreet Singh and Latino, Law, Inc. matters; (3) prosecution of respective adversary proceedings

against Gurpreet Singh (Adv. Proc. No. 21-01017) and Latino Law, Inc. (Adv. Proc. No. 21-01018); (4) preparation and filing of the Trustee's application to employ (ADJ-1) Applicant; (5) preparation and filing of the Trustee's motion to compromise controversy in the related adversary proceedings (ADJ-2); and (6) preparing and filing this fee application (ADJ-3). Docs. #59; #61, Ex. A. The court finds the services and expenses reasonable, actual, and necessary. As noted above, Trustee has reviewed the application and consents to payment of the requested fees and expenses. Doc. #60.

No party in interest timely filed written opposition to this motion. Accordingly, this motion will be GRANTED. Applicant will be awarded \$6,975.00 in reasonable fees on a final basis pursuant to § 330. Trustee will be authorized, in his discretion, to pay Applicant \$6,975.00 on the terms outlined above for services rendered and costs incurred from October 26, 2020 through September 9, 2022.

7. [22-11245](#)-B-7     **IN RE: DAWSON/RAYNIE HARRIS**  
[KR-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-28-2022    [[42](#)]

THE GOLDEN 1 CREDIT UNION/MV  
D. GARDNER/ATTY. FOR DBT.  
KAREL ROCHA/ATTY. FOR MV.

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

DISPOSITION:     Resolved by stipulation.

NO ORDER REQUIRED.

The Golden 1 Credit Union ("Movant") seeks relief from the automatic stay with respect to a 2020 GMC Sierra 1500 pursuant to 11 U.S.C. § 362(d) (1) and (d) (2). Doc. #42.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f) (1) and Fed. R. Bankr. P. ("Rule") 2002(a) (6). The failure of the creditors, the debtors, the U.S. Trustee, the chapter 7 trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f) (1) (B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys.*,

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

As a preliminary matter, the motion does not procedurally comply with the local rules. First, LBR 9004-2(a)(6), (b)(5), (b)(6), (e)(3), LBR 9014-1(c), and (e)(3) are the rules about Docket Control Numbers ("DCN"). These rules require a DCN to be in the caption page on all documents filed in every matter with the court and each new motion requires a new DCN. The DCN shall consist of not more than three letters, which may be the initials of the attorney for the moving party (e.g., first, middle, and last name) or the first three initials of the law firm for the moving party, and the number that is one number higher than the number of motions previously filed by said attorney or law firm in connection with that specific bankruptcy case. Each separate matter must have a unique DCN linking it to all other related pleadings.

Here, on August 13, 2022, Movant filed a motion for relief from the automatic stay, which was set for hearing on September 27, 2022. Docs. ##29-30. That motion was denied without prejudice for procedural reasons. Docs. ##56-57. The DCN for that motion was KR-1.

On September 28, 2022, Movant filed this motion for relief from the automatic stay. Doc. #47. The DCN for this motion is also KR-1 and therefore does not comply with the local rules. Each new motion requires a different, unused DCN. Movant filed a *Notice of Errata* on October 7, 2022, stating that the motion documents erroneously contained DCN KR-1 and attempting to change the DCN to KR-2. Doc. #52. However, the correction does not resolve the issue because each document is still categorized on the docket as KR-1.

Second, the notice of hearing was not signed. Doc. #43. LBR 9004-1(c) requires all pleadings and non-evidentiary documents to be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing *in propria persona*. The name of the person signing the document shall be typed underneath the signature.

Typically, these deficiencies would result in the motion being denied without prejudice. However, the parties filed a stipulation for relief from the automatic stay on October 11, 2022, which is signed by the debtors' attorney, D. Max Gardner, and chapter 7 trustee Jeffrey M. Vetter. Doc. #54. The court approved the stipulation on October 12, 2022. Doc. #56.

Accordingly, this matter has been resolved by stipulation.

8. [18-13678](#)-B-7      **IN RE: VERSA MARKETING, INC.**

OPPOSITION/OBJECTION TO TRUSTEE'S FINAL REPORT  
8-30-2022    [[595](#)]

RILEY WALTER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

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

DISPOSITION:      Withdrawn; taken off calendar.

NO ORDER REQUIRED.

Coleman & Horowitz, Terence J. Long, and Wanger Jones Helsley jointly withdrew this objection to the chapter 7 trustee's final report on October 12, 2022. Accordingly, this objection will be dropped and taken off calendar pursuant to the withdrawal.

9. [22-10580](#)-B-7      **IN RE: OLGA CELIO**  
[TCS-5](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC.  
8-29-2022    [[52](#)]

OLGA CELIO/MV  
TIMOTHY SPRINGER/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.

Olga Julie Celio ("Debtor") seeks to avoid a judicial lien in favor of Portfolio Recovery Associates, LLC ("Creditor"), in the sum of \$6,457.97 and encumbering residential real property located at 2105 Dogwood Court, Atwater, CA 95301 ("Property").<sup>3</sup> Doc. #52.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party

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

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment lien was entered against Debtor in favor of Creditor in the amount of \$6,457.97 on June 7, 2021. Doc. #55, Ex. A. The abstract of judgment was issued on June 15, 2021 and recorded in Merced County on June 29, 2021. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #42.

As of the petition date, Property had an approximate value of \$511,400.00.<sup>4</sup> *Id.*; Doc. #29, Am. Sched. A/B. Property is encumbered by a first deed of trust in favor of Chase Mortgage in the amount of \$267,482.00. Doc. #1, Sched. D. Property is also encumbered by a senior judgment lien in favor of Best Service Co., Inc. ("BSC") in the amount of \$13,356.74, which was entered on April 14, 2021 and recorded in Merced County on June 8, 2021. Docs. #59; #60, Ex. A. Debtor claimed a homestead exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730 in the amount of \$312,000.00. Doc. #45, Am. Sched. C.

When a debtor seeks to avoid multiple liens under § 522(f)(1), the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*

Property's security interests are illustrated with the following order of priority:

Creditor	Amount	Recorded	Status
1. Chase Bank	\$267,482.00	2016	Unavoidable
2. BSC	\$13,356.74	06/08/21	Avoidable; matter #10 (TCS-6)
<b>3. Creditor</b>	<b>\$6,457.97</b>	<b>06/29/21</b>	<b>This motion (TCS-5)</b>

Docs. #54; #55, *Ex. A*; #59; #60, *Ex. A*. This lien has to be avoided first because it is junior to the BSC lien. Application of the § 522(f)(2) formula is as follows:

Amount of PRA's judicial lien	\$6,457.97
Total amount of unavoidable liens <sup>5</sup>	+ \$280,838.74
Debtor's claimed exemption in Property	+ \$312,000.00
<i>Sum</i>	= \$599,296.71
Debtor's claimed value of interest absent liens	- \$511,400.00
Extent PRA lien impairs Debtor's exemption	= \$87,896.71

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

Fair market value of Property	\$511,400.00
Chase deed of trust	- \$267,482.00
Remaining equity	= \$243,918.00
Debtor's homestead exemption	- \$312,000.00
Remaining equity for judicial liens	= (\$68,082.00)
BSC's judicial lien	- \$13,356.74
Extent Debtor's exemption impaired	= (\$81,438.74)
PRA's judicial lien	- \$6,457.97
Extent exemption impaired by both liens	= (\$87,896.71)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the 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 § 522(f)(1). This motion will be GRANTED. The proposed order shall state that the subject lien is avoided from the subject property only and include a copy of the abstract of judgment attached as an exhibit.

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<sup>3</sup> Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving via regular U.S. mail Kevin P. Stevenson or the current Chief Executive Officer on August 29, 2022. Doc. #56.

<sup>4</sup> The court notes that Debtor's *Amended Schedule A/B* increased the value of Property from \$509,500.00 to \$511,400.00. Doc. #29, *Am. Sched. A/B*; cf. Doc. #1, *Sched. A/B*.

<sup>5</sup> The unavoidable liens include the \$267,482.00 Chase deed of trust and BSC's \$13,356.74 judgment lien because it is unavoidable until all junior liens have been avoided.

10. [22-10580](#)-B-7      **IN RE: OLGA CELIO**  
[TCS-6](#)

MOTION TO AVOID LIEN OF THE BEST SERVICE CO., INC.  
8-29-2022    [\[57\]](#)

OLGA CELIO/MV  
TIMOTHY SPRINGER/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.

Olga Julie Celio ("Debtor") seeks to avoid a judicial lien in favor of The Best Service Co., Inc. ("Creditor") in the sum of \$13,356.74 and encumbering residential real property located at 2105 Dogwood Court, Atwater, CA 95301 ("Property").<sup>6</sup> Doc. #57.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that

they are entitled to the relief sought, which the movant has done here.

To avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered against Debtor in favor of Creditor in the amount of \$13,356.74 on April 14, 2021. Doc. #60, *Ex. A*. The abstract of judgment was issued on May 18, 2021 and recorded in Merced County on June 8, 2021. *Id.* That lien attached to Debtor's interest in Property. *Id.*; Doc. #59.

As of the petition date, Property had an approximate value of \$511,400.00.<sup>7</sup> Property is encumbered by a first deed of trust in favor of Chase Mortgage in the amount of \$267,482.00. Doc. #1, *Sched. D*. Property is also encumbered by a junior judgment lien in favor of Portfolio Recovery Associates, LLC ("PRA") in the amount of \$6,457.97, which was entered on June 7, 2021 and recorded in Kern County on June 29, 2021. Docs. #54; #55, *Ex. A*. Debtor claimed a homestead exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730 in the amount of \$312,000.00. Doc. #45, *Am. Sched. C*.

When a debtor seeks to avoid multiple liens under § 522(f)(1), the liens must be avoided in the reverse order of their priority. *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999). Liens already avoided are excluded from the exemption impairment calculation. *Ibid.*

Property's security interests are illustrated with the following order of priority:

Creditor	Amount	Recorded	Status
1. Chase Bank	\$267,482.00	2016	Unavoidable
<b>2. Creditor</b>	<b>\$13,356.74</b>	<b>06/08/21</b>	<b>This motion (TCS-6)</b>
3. PRA	\$6,457.97	06/29/21	Avoidable; matter #9 (TCS-5)

Docs. #54; #55, *Ex. A*; #59; #60, *Ex. A*. Here, the PRA lien has to be avoided first because it is junior to Creditor's lien. After avoiding the PRA lien in matter #9 above, application of the § 522(f)(2) formula with respect to Creditor's lien is as follows:



Amount of judgment lien	\$13,356.74
Total amount of unavoidable liens	+ \$267,482.00
Debtor's claimed exemption in Property	+ \$312,000.00
Sum	= \$592,838.74
Debtor's claimed value of interest absent liens	- \$511,400.00
Extent lien impairs exemption	= \$81,438.74

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

Fair market value of Property	\$511,400.00
Chase deed of trust	- \$267,482.00
Remaining equity	= \$243,918.00
Debtor's homestead exemption	- \$312,000.00
Remaining equity for judicial liens	= (\$68,082.00)
Creditor's judicial lien	- \$13,356.74
Extent Debtor's exemption impaired	= (\$81,438.74)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the 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 § 522(f)(1). This motion will be GRANTED. The proposed order shall state that the subject lien is avoided from the subject property only and include a copy of the abstract of judgment attached as an exhibit.

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<sup>6</sup> Debtor complied with Fed. R. Bankr. P. 7004(b)(3) by serving via regular U.S. mail Todd Allen Shields or the current Chief Executive Officer on August 29, 2022. Doc. #61.

<sup>7</sup> The court notes that Debtor's *Amended Schedule A/B* increased the value of Property from \$509,500.00 to \$511,400.00. Doc. #29, *Am. Sched. A/B*; cf. Doc. #1, *Sched. A/B*.

11. [22-11288](#)-B-7     **IN RE: ERIC BAILEY**  
[PFT-1](#)

MOTION TO EMPLOY GOULD AUCTION AND APPRAISAL COMPANY AS  
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION  
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES  
9-8-2022    [[19](#)]

PETER FEAR/MV  
MARK ZIMMERMAN/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.

Chapter 7 trustee Peter L. Fear ("Trustee") seeks authorization to (i) employ Gould Auction & Appraisal Company ("Auctioneer") under 11 U.S.C. § 328; (ii) sell the estate's interest in a 2014 Honda Odyssey Touring ("Vehicle") at public auction under 11 U.S.C. § 363(b)(1); and (iii) compensate Auctioneer under 11 U.S.C. §§ 327(a) and 328. Doc. #19. The auction will be held on or after October 22, 2022 at 9:00 a.m. at Gould Auction & Appraisal Company located at 6200 Price Street, Bakersfield, California. *Id.*

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

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

This motion affects the proposed disposition and the Auctioneer. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion and allow the relief requested by movant here as to the proposed

auctioneer and use the court's discretion to add a party under Civ. Rule 21.

Compensation is separate from the sale. Since this relief and appointing the Auctioneer are separate claims, the court will allow their joinder in this motion under Civ. Rule 18 (Rule 7018) because it is economical to handle this motion in this manner absent an objection. This rule is not incorporated in contested matters absent court order under Rule 9014(c) and affected parties are entitled to notice. Trustee, having requested this relief, is deemed to have notice. Since no party timely filed written opposition, defaulted parties are deemed to have consented to application of this rule.

#### BACKGROUND

Eric W. Bailey ("Debtor") filed chapter 7 bankruptcy on July 28, 2022. Doc. #1. Trustee was appointed as interim trustee that same date and became permanent trustee at the first § 341 meeting of creditors on August 29, 2022. Doc. #6; docket generally. In the course of administering the estate, Trustee investigated Debtor's assets. Among those assets is Vehicle, which is listed in the schedules with approximately 66,000 miles and is valued at \$23,037.00. Doc. #1, Sched. A/B. Vehicle does not appear to have any encumbrances. *Id.*, Sched. D. Debtor claimed a \$3,250.00 exemption in vehicle pursuant to Wash. Rev. Code § 6.15.010(1)(d)(iii), and a \$2,867.89 exemption pursuant to Wash Rev. Code § 6.15.010(1)(d)(ii). Trustee has given Debtor an exemption credit of \$6,106.89. Doc. #22.

#### Employment and Compensation

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

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

Under these sections, Trustee requests to employ and compensate Auctioneer by paying (i) a 15% commission on the gross proceeds from the sale; and (ii) up to \$500.00 for extraordinary expenses (e.g., if

a truck needs a large battery) and a \$200.00 pick-up fee without further order of the court. Doc. #19. In addition to those fees and expenses, Auctioneer charges buyers an additional 10% premium on the purchase price. Doc. #22. Necessary expenses will be included in the commission and buyer's premium, including but not limited to inventory, advertising, and other costs of sale. Auctioneer will be responsible for collecting and paying any and all sales tax in relation to this auction. Auctioneer holds a \$150,000.00 bond that is required by the U.S. Trustee, the original of which is in the possession of the U.S. Trustee. *Id.*

Trustee and Jerry Gould, the owner and operator of Auctioneer, filed declarations attesting that Auctioneer is a disinterested person as defined in § 101(14) and does not hold any interests adverse to the estate in accordance with § 327(a). *Id.*; Doc. #21. Trustee and Mr. Gould declare that Auctioneer, with respect to Debtor, is not a creditor, equity security holder, insider, investment banker for a security of the debtor within the three years before the petition date, or an attorney for such investment banker, and within two years of the petition date was not a director, officer, or employee of the debtor or an investment banker. *Id.* Auctioneer does not have an interest materially adverse to the interest of the estate, creditors, Debtor, equity security holders, an investment banker for a security of the debtor, or any other party in interest, and had not served as an examiner in this case. *Id.* Auctioneer does not have any connection with any creditors, parties in interests, their attorneys, accountants, the U.S. Trustee, or anyone employed by the U.S. Trustee. *Id.*; Doc. #22. Additionally, no agreement exists between Auctioneer or any other person for the sharing of compensation received by Auctioneer in connection with the services rendered. Doc. #21.

Trustee declares that it is necessary to employ Auctioneer to liquidate Vehicle. *Id.* Trustee believes that the proposed fees and expenses for services are reasonable and customary for the services to be rendered by Auctioneer. *Id.* Auctioneer will assist Trustee by (1) actively advertising the sale of the property, (2) assisting in storing the property until sold, and (3) generally performing and assisting Trustee in matters customarily done and performed by auctioneers in connection with an auction sale of property. *Id.*

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. §§ 327(a), 328 and authorize Trustee to pay the 15% commission and reimbursement of up to \$500.00 for extraordinary expenses, and a \$200.00 pick-up fee.

#### Proposed Sale

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business

judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., 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).

Trustee wishes to sell Vehicle under § 363(b). Doc. #19. If Vehicle sells for its scheduled value of \$23,037.00, Auctioneer's 15% commission would be \$3,455.55. After payment of up to \$500 for extraordinary expenses, \$200 for a pick-up fee, and the commission, the net to the estate would be approximately \$18,881.45.

Trustee believes that using the auction process to sell Vehicle will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #22. Based on Trustee's experience, this will yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.*

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

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be authorized to employ Auctioneer, sell the Vehicle at public auction on or after November 1, 2022 and pay Auctioneer for its services as outlined above. Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale, and payment of up to \$500.00 for extraordinary expenses and \$200.00 for pick-up fees.

12. [22-10094](#)-B-7     **IN RE: POWERTECH ENGINES, INC.**  
[FW-3](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL,  
P.C. FOR GABRIEL J. WADDELL, TRUSTEES ATTORNEY(S)  
9-13-2022    [\[66\]](#)

HAGOP BEDOYAN/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.

Gabriel J. Waddell of Fear Waddell, P.C. ("Applicant"), general counsel for chapter 7 trustee Peter L. Fear ("Trustee"), requests final compensation in the sum of \$2,581.38. Doc. #67. This amount consists of \$2,456.00 in fees as reasonable compensation and \$125.38 in reimbursement for actual, necessary expenses from March 9, 2022 through September 9, 2022. *Id.*

Trustee has reviewed the application and supporting documents, believes the fees and expenses requested are reasonable and necessary for the administration of the estate, and has no objection to those fees. Doc. #69.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Powertech Engines, Inc. ("Debtor") filed chapter 7 bankruptcy on January 25, 2022. Doc. #1. Trustee was appointed as interim trustee on that same date and became permanent trustee at the first § 341 meeting

of creditors on February 28, 2022. Doc. #4; docket generally. Trustee moved to employ Applicant as general counsel on March 15, 2022, which the court granted on March 23, 2022. Docs. #14; #19. Under LBR 2014-1(b)(1), the employment order is presumptively effective February 13, 2022. No compensation was permitted except upon court order following application pursuant to § 330(a) and compensation was set at the "lodestar rate" for legal services at the time that services are rendered in accordance with *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). *Id.* Applicant's services were performed within the authorized time period.

This is Applicant's first and final fee application. The source of funds for payment will be from the funds currently held by the bankruptcy estate. Applicant's firm provided 9.9 billable hours of legal services at the following rates, totaling **\$2,456.00** in fees:

Professional	Rate	Billed	Total
Gabriel J. Waddell (2022)	\$345	2.50	\$862.50
Katie Waddell (2022)	\$245	6.30	\$1,543.50
Laurel Guenther (2022)	\$100	0.50	\$50.00
<b>Total Hours &amp; Fees</b>		<b>9.30</b>	<b>\$2,456.00</b>

Doc. #70, *Ex. B.* Applicant also incurred **\$125.38** in expenses:

Copies	\$60.60
Postage	+ \$64.78
<b>Total Costs</b>	<b>= \$125.38</b>

*Id.* These combined fees and expenses total **\$2,581.38**.

11 U.S.C. § 330(a)(1)(A) and (B) permits 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).

Applicant's services included, without limitation: (1) seeking approval of Trustee's employment of Applicant (FW-1); (2) preparing a motion for approval to pay the taxes as an administrative expense (FW-2), which was granted; (3) reviewing claims filed in this case, preparing a memorandum regarding the filed claims, and communicating with Trustee and Trustee's accountant regarding the same; and (4) preparing and filing this fee application (FW-3). Doc. #70, *Ex. A.* The court finds the services and expenses reasonable, actual, and necessary. As noted above, Trustee has reviewed the application and consents to payment of the requested fees and expenses. Doc. #69.

No party in interest timely filed written opposition to this motion. Accordingly, this motion will be GRANTED. Applicant will be awarded \$2,456.00 in reasonable fees and \$125.38 in actual, necessary expenses on a final basis pursuant to § 330. Trustee will be authorized, in his discretion, to pay Applicant \$2,581.38 on the terms outlined above for services rendered and costs incurred from March 9, 2022 through September 9, 2022.

13. [22-11587](#)-B-7     **IN RE: CARY SHAKESPEARE**  
[LNH-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-29-2022    [\[19\]](#)

JAN SHAKESPEARE/MV  
LEONARD WELSH/ATTY. FOR DBT.  
LISA HOLDER/ATTY. FOR MV.

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:                This matter will proceed as a scheduling  
conference.

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

Jan Shakespeare ("Movant") seeks (1) confirmation that the stay does not stay a state court marital dissolution proceeding's ability to set spousal support or terminate marital status and (2) relief from the automatic stay or abstention to complete a state court marital dissolution case, including determining the division of community property, but not to enforce any orders regarding the community property division. Doc. #19. Movant also requests waiver of the 14-day stay of Federal Rule of Bankruptcy Procedure ("Rule") 4001(a)(3). *Id.*

Though not required, Cary Scott Shakespeare ("Debtor") filed a response on October 11, 2022. Doc. #38. Debtor requests an opportunity to brief the issues raised in the motion and asks for this motion to be continued to a date convenient to all parties.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") filed a response on October 12, 2022. Doc. #40. Trustee seeks to examine Debtor at the first meeting of creditors on October 21, 2022 prior to relief from the automatic stay being granted. *Id.* Trustee opposes stay relief at this time and may further oppose stay relief if more than dissolution and support issues are sought by Movant to be adjudicated by the state court. Trustee requests further time to brief the matter with a further response being due no earlier than October 28, 2022.



Movant's attorney, Lisa Holder, subsequently filed a declaration in support of the motion with supporting exhibits on October 13, 2022.

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

Additionally, Movant initially failed to file a *Relief from Stay Summary Sheet*, EDC 3-468, as required under LBR 4001-1(a)(3). On October 3, 2022, Movant sought and obtained an order shortening time to file and serve the summary sheet on 10 days' notice. Docs. #28; #32. Movant appears to have timely filed and served the summary sheet pursuant to the order shortening time. Doc. #31.

Debtor filed a petition to dissolve his marriage with Movant on September 19, 2017, Case No. BFL-17-003918 ("State Court Action"). Doc. #21, *Ex. A*. At the time of filing this chapter 7 petition on September 13, 2022, trial dates to complete the State Court Action were set for the end of October and beginning of November 2022. *Id.*, *Ex. B*. Outstanding issues for trial included dissolving marital status, temporary and permanent spousal support, spousal support arrearages, attorney's fees, sanctions, and the division of community property. Doc. #19. Upon filing the bankruptcy, the State Court Action became subject to the automatic stay of 11 U.S.C. § 362(a). Movant now seeks relief from the stay. *Id.*

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

Movant seeks relief from the stay for cause based on abstention under 11 U.S.C. § 1334(c)(1). "Where a bankruptcy court may abstain from deciding issues in favor of an imminent state court trial involving the same issues, cause may exist for lifting the stay as to the state court trial." *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990).

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

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,
- (2) the extent to which state law issues predominate over bankruptcy issues,
- (3) the difficulty or unsettled nature of the applicable law,
- (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court,
- (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,
- (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case,
- (7) the substance rather than form of an

asserted "core" proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of the bankruptcy court's docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

*Id.*, at 1167 quoting *In re Republic Reader's Serv., Inc.*, 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987).

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

1. Whether the relief will result in a partial or complete resolution of the issues;
2. The lack of any connection with or interference with the bankruptcy case;
3. Whether the foreign proceeding involves the debtor as a fiduciary;
4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
5. Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee, and other interested parties;
8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
9. Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
12. The impact of the stay on the parties and the "balance of hurt."

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

Here, Movant contends that the *Tucson Estates* and *Curtis* factors weigh in favor of this court abstaining from exercising jurisdiction and modifying the automatic stay so that the State Court Action can proceed in state court. Doc. #19.

Debtor responded, requesting a continuance for further briefing. Doc. #38. Debtor identifies the following issues that must be analyzed and resolved before this motion is decided:

1. Whether the relief requested by Movant constitutes an "advisory opinion" under the law when the motion admits that Movant is seeking a "comfort order" through the motion;
2. Whether the court has the power to enter an "advisory opinion" under the law;
3. Whether the Bankruptcy Court can consider the motion and grant the relief requested by Movant when provisions of the Bankruptcy Code "say what they say" about the interplay between the Federal Bankruptcy Law and the California Family Law;
4. Whether the Family Law Court has the power to divide property of the Chapter 7 estate including the parties' community property under the law; and
5. Whether the doctrine of abstention applies in Debtor's chapter 7 case.

*Id.* Additionally, Trustee opposes stay relief at this time, wishes to examine Debtor at the § 341 meeting on October 21, 2022, and requests time to further brief the matter with a response due no earlier than October 28, 2022. Doc. #40. Trustee may oppose stay relief if Debtor seeks to have the state court determine more than dissolution and support issues.

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

Based on the record, the legal issues appear to include:

1. Whether the *Tucson Estates* factors support this court's abstention from exercising jurisdiction in favor of the family law court.
2. Whether the *Curtis* factors support this court modifying the automatic stay to allow the family law court to proceed.