



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Tuesday, November 8, 2022
Department B – Courtroom #13
Fresno, California**

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [22-10947](#)-B-11 IN RE: FLAVIO MARTINS
[MB-12](#)

CONTINUED AMENDED MOTION TO USE CASH COLLATERAL, AMENDED
MOTION FOR ADEQUATE PROTECTION
10-6-2022 [[204](#)]

FLAVIO MARTINS/MV
HAGOP BEDOYAN/ATTY. FOR DBT.

NO RULING.

On October 31, 2022, the court issued an order authorizing further use of cash collateral from Week 22 starting October 23, 2022 through Week 24 (beginning November 6, 2022). Doc. #232. The order authorized further use of cash collateral pursuant to the attached budget with a 10% weekly variance. *Id.* Adequate protection in the form of replacement liens were granted to Bank of the Sierra ("BOTS") and Western Milling ("WM"). *Id.*

On October 6, 2022, Debtor amended the underlying motion upon discovering a third entity with a security interest in the cash collateral: the Internal Revenue Service ("IRS"). Doc. #204.

At the final hearing on this motion, Debtor intends to provide adequate protection to BOTS, WM, and the IRS by caring for and maintaining the collateral, granting replacement liens on accounts receivable and other property generated by the Debtor of the same type and nature as existed when Debtor filed this case, and by making payments of \$279,117.00 per month to BOTS as provided in the Budget, as well as the December installment of 2022-23 real property taxes. *Id.*

Debtor seeks (1) authorization to use cash collateral through December 31, 2022 in the total weekly amounts set forth in the attached budget, as may be modified, with a 10% weekly variance; (2) authorization to use cash collateral on an interim, revolving weekly basis in the total weekly amount set forth in the budget with a 10% weekly variance; (3) an order granting adequate protection to BOTS, WM, and the IRS; and (4) either continuing the interim hearing on this motion to a date certain for further interim cash collateral use and the filing of a revised budget as may be necessary to reflect sales of estate assets, or setting a final hearing on the motion.

The hearing on this motion will be called and proceed as scheduled.

2. [22-10947](#)-B-11 **IN RE: FLAVIO MARTINS**
[MB-16](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF MCCORMICK,
BARSTOW, SHEPPARD, WAYTE AND CARRUTH, LLP FOR HAGOP T.
BEDOYAN, DEBTORS ATTORNEY(S)
10-18-2022 [\[224\]](#)

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 \$25,670.15. Doc. #224. This amount consists of \$25,167.50 in attorneys' fees as reasonable compensation and \$502.65 in reimbursement for actual, necessary expenses from September 1, 2022 through September 30, 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), which 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. #226. On October 31, 2022, the court issued a *Further Interim Order Authorizing Further Use of Cash Collateral, Granting Adequate Protection and Setting Further Hearing* ("Further Interim CC Order"), which authorized use of cash collateral through November 6, 2022 (Week 24) and set a further hearing on the Second CC Motion in matter #1 above. Doc. #232.

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, 2022.¹ 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.

First Interim Award

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 then-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.

Second Interim Award

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 for fees and/or costs from July 1, 2022 through July 31, 2022 pursuant to the then-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.

Third Interim Award

On October 14, 2022, the court awarded \$32,965.00 in fees and \$550.10 in expenses, for a total third interim award of \$33,515.10 for services and/or costs incurred from August 1, 2022 through August 31, 2022 pursuant to the operative interim cash collateral order (Doc. #202), which has since been modified on October 31, 2022 (Doc. #232). Doc. #223.

In sum, Applicant has been awarded a total of \$92,619.85 in fees and expenses in this case. Of that amount, \$4,738.25 was paid from the pre-petition retainer, leaving \$87,881.60 to be paid from cash collateral pursuant to submitted budgets.

This is Applicant's fourth interim fee application. Applicant's firm performed 58.60 billable hours of legal services at the following rates, totaling **\$25,167.50** in fees:

Professional	Rate	Hours	Fees
Hagop T. Bedoyan	\$475	47.30	\$22,467.50
Hagop T. Bedoyan (no charge)	\$0	0.30	\$0.00
Garrett R. Leatham	\$250	10.80	\$2,700.00
Garrett R. Leatham (no charge)	\$0	0.20	\$0.00
Total Hours & Fees		58.60	\$25,167.50

Docs. #228; #227, Exs. A, B. Applicant also incurred **\$502.65** in expenses:

Filing fees (MB-11)	\$188.00
Photocopies (1387 @ \$0.225)	\$314.65
Total Costs	\$502.65

Id. These combined fees and expenses total **\$25,670.15**.

As noted above, previous cash collateral orders have authorized payment of up to \$100,000.00 in attorney's fees through October 23, 2022. Docs. #80, Ex. A; #189, Ex. A; #202, Ex. A. Under the current cash collateral order dated October 31, 2022, additional allocations of \$50,000 and \$100,000 are proposed for the weeks of November 20, 2022, and December 16, 2022. Doc. #232, Ex. A. If approved, the total amount of fees paid from cash collateral (excluding the \$4,738.25 retainer) will be \$113,551.75.

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) analyzing financial statements for potential avoidable preferential transfers against PG&E and CPT Capital Group, Inc.; (2) successfully prosecuting the motion for the sale of dry cows (MB-11); (3) reviewing financial documents and other information and revising the August monthly operating report; (4) preparing motion to employ Schuil & Associates

to sell the Debtor's residence; (5) preparing for and attending status conferences; (6) communicating with Bank of the Sierra regarding payments for adequate protection; (7) preparing the third interim fee application and supporting papers (MB-13); (8) continuing to communicate with Debtor and opposing counsel regarding the sale of the Vaca Linda dairy, reviewing offers, and negotiating counter-offers for the sale of all dairies, and continuing drafting motion for sale regarding the same; and (9) continuing to review 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. Doc. #228. 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. #226.

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 \$25,167.50 in fees and \$505.65 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 \$25,670.15 from cash collateral when authorized under the operative cash collateral order, as may be modified in subsequent cash collateral orders, for services rendered and/or costs incurred between September 1, 2022 through September 30, 2022. This ruling is not permitting any unauthorized use of cash collateral.

¹ 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.

11:00 AM

1. [22-11170](#)-B-7 **IN RE: DOUA YANG**

REAFFIRMATION AGREEMENT WITH LES SCHWAB TIRE CENTERS OF
CENTRAL CA, INC.
9-28-2022 [[37](#)]

TIMOTHY SPRINGER/ATTY. FOR DBT.

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

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

A Reaffirmation Agreement between debtor Doua Yang and Les Schwab Tire Centers of Central CA, Inc. for tires was filed on September 28, 2022. Doc. #37. Both the reaffirmation agreement and the bankruptcy schedules show that reaffirmation of this debt creates a presumption of undue hardship, which has not been rebutted in the reaffirmation agreement.

Debtor was represented by counsel when entering 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). In this case, the debtor's attorney affirmatively represented that the agreement established a presumption of undue hardship, but that in his opinion, Debtor is able to make the required payments. Therefore, the agreement does not meet the requirements of § 524(c)(3)(B).

Accordingly, the Reaffirmation Agreement between debtor Doua Yang and Les Schwab Tire Centers of Central CA, Inc. will be DENIED.

2. [22-11071](#)-B-7 **IN RE: WILLIAM HARRIS**

PRO SE REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA,
INC.
9-28-2022 [[29](#)]

NO RULING.

1:30 PM

1. [22-10816](#)-B-7 **IN RE: ROBERTO RENTERIA AND ERIKA ARTEAGA**
[DWE-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-6-2022 [[27](#)]

U.S. BANK NATIONAL
ASSOCIATION/MV
FLOR DE MARIA TATAJE/ATTY. FOR DBT.
DANE EXNOWSKI/ATTY. FOR MV.
DISCHARGED: 8/26/2022

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

DISPOSITION: Granted in part and denied as moot in part.

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

The movant, U.S. Bank National Association ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 208 Jayco T30F Toy Hauler ("Vehicle"). Doc. #27.

No party in interest timely filed written opposition. This motion will be GRANTED IN PART and DENIED AS MOOT IN PART.

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

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The debtors' discharge was entered on August 26, 2022. Doc. #23. Therefore, the automatic stay terminated with respect to the debtors on August 26,

2022. This motion will be DENIED AS MOOT IN PART as to the debtors' interest and will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

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).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtors do not have an equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtors' Statement of Intention shows their intent to surrender the Vehicle. Doc. #31.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtors are in chapter 7. *Id.* The Vehicle is valued at \$43,000.00 and debtors owe \$43,347.41. Docs. #27, #29, #32.

Accordingly, the motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtors' interest under § 362(c)(2)(C).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the Vehicle is a depreciating asset.

2. [20-10024](#)-B-7 **IN RE: SUKHJINDER SINGH**
[JES-1](#)

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, CHAPTER 7
TRUSTEE(S)
10-10-2022 [\[86\]](#)

JAMES SALVEN/MV
LAYNE HAYDEN/ATTY. FOR DBT.
RUSSELL REYNOLDS/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 James E. Salven ("Trustee") requests statutory compensation of \$32,065.92 under 11 U.S.C. §§ 326, 330. Doc. #86. This amount consists of \$13,703.50 as statutory fees for services rendered

to the estate and \$18,362.42 in actual, necessary expenses from January 4, 2020 through case closing. *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. 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. Applicant was appointed as interim trustee on that same date and became permanent trustee at the first § 341 meeting of creditors on February 13, 2020. Doc. #2; docket generally. Trustee administered the estate, submitted the final report to the U.S. Trustee on or about September 29, 2022, and now seeks final compensation. Doc. #86. The final report was approved by the U.S. Trustee and filed on October 4, 2022. Doc. ##80-82.

11 U.S.C. § 326 permits the court to allow reasonable compensation to the chapter 7 trustee under § 330 for the trustee's services. Section 326(a) states:

In a case under chapter 7 or 11, other than a case under subchapter V of chapter 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including all holders of secured claims.

11 U.S.C. § 326(a). Here, Trustee has requested:

- (a) \$1,250.00 (25%) of the first \$5,000.00;
- (b) \$4,500.00 (10%) of the next \$45,000.00; and
- (c) \$7,953.50 (5%) of the next \$159,070.00.

Docs. #82; #89, Ex. A. These percentages comply with the restrictions imposed by § 326(a) and total **\$13,703.50**. The total disbursements in this case were \$209,070.00. *Id.* Trustee also incurred **\$18,362.42** in expenses as follows:

Copies (550 @ \$0.20)	\$110.00
CourtCall	\$22.50
Distribution	\$9.00
Court Recorder-Sukhjinder Singh Depo (no show)	\$250.00
Court Recorder-Lakvhir Singh Depo (no show)	\$530.00
Interpreter-Sukhjinder Singh Depo (no show)	\$2,925.00
Interpreter-Lakvhir Singh Depo (no show)	\$2,925.00
Manjinder Singh Depo	\$1,161.97
Lakvhir Singh Depo	\$1,223.63
Interpreter-Lakhvir Singh Depo	\$2,925.00
Transcription-Sukhjinder Singh Depo	\$1,827.32
Serve Gananpreet Mangat	\$149.50
Serve Yadwinder Singh	\$149.50
Serve Kirandeep Kaur	\$59.50
Serve Sukhjinder Singh	\$119.50
Sukhjinder Singh Depo	\$2,925.00
Trial Prep-Expert Witness	\$1,050.00
Total Costs	\$18,362.42

Doc. #89, Ex. A. These combined fees and expenses total **\$32,065.92**. The primary reason that the costs are high is the result of deposition costs in the Trustee's adversary proceeding against the debtor and others, which were paid by the Trustee because its counsel's legal firm did not wish to advance the costs. Doc. #86. Some of these fees have been recovered through sanctions imposed against and paid by Debtor.

11 U.S.C. § 330 requires the court to find that the fees requested are reasonable and for actual and necessary services to the estate, as well as reimbursement for actual and necessary expenses. 11 U.S.C. § 330(a)(1)(A) & (B). 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).

Trustee's services included but were not limited to: (1) conducting the meeting of creditors; (2) employing general counsel and an

accountant (RWR-1; RTW-1); (3) filing an adversary proceeding to recover property of the estate against Debtor and third parties (Adv. Proc. No. 20-01036); (4) seeking and obtaining sanctions against the defendants in the adversary proceeding for failing to comply with discovery orders (Adv. Proc. RWR-2; Adv. Proc. RWR-3); (5) negotiating a settlement of the claims at issue in the adversary proceeding preparing for \$200,000 (RWR-4); (6) preparing the Final Report; and (7) preparing and filing this fee application (JES-1). The court finds Trustee's services and expenses actual, reasonable, and necessary to the estate.

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be awarded \$32,065.92 as final compensation pursuant to §§ 326 & 330.

3. [22-11356](#)-B-7 **IN RE: ARTURO MUNOZ HERNANDEZ**
[ICE-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
10-6-2022 [\[13\]](#)

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue an order.

Chapter 7 trustee Irma C. Edmonds ("Trustee") seeks dismissal of this case for the debtor's failure to appear and testify at the § 341(a) meeting of creditors held on October 3, 2022. Doc. #13.

Arturo Munoz Hernandez ("Debtor") timely filed a form opposition. Doc. #15. However, the form opposition did not include a declaration explaining Debtor's failure to appear at the 341 meeting or stating the reasons this case should not be dismissed.

Notwithstanding Debtor's failure to include those reasons, this motion to dismiss will be CONDITIONALLY DENIED.

Debtor shall attend the meeting of creditors rescheduled for November 14, 2022 at 12:00 p.m. See Doc. #12. 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.

4. [22-11359](#)-B-7 **IN RE: LARRY SPANKE**
[MAZ-1](#)

MOTION TO COMPEL ABANDONMENT
9-28-2022 [\[18\]](#)

LARRY SPANKE/MV
MARK ZIMMERMAN/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.

Larry J. Spanke ("Debtor") moves for an order compelling chapter 7 trustee Irma C. Edmonds ("Trustee") to abandon the estate's interest in property used in the operation of Debtor's business, "JSC." Doc. #18. JSC is a building contractor business and its assets (collectively "Business Assets") consist of a vehicle, business inventory, and accounts receivable.

Neither the Trustee nor any other 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.

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate."

To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re*

Vu, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). *In re Galloway*, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at *16-17 (B.A.P. 9th Cir. 2014).

Debtor seeks to compel Trustee to abandon the Business Assets, which are listed in the schedules as follows:

Asset	Value	Exempt	Lien	Net
Business Inventory ²	\$2,150.00	\$2,150.00	\$0.00	\$0.00
Business Checking/Savings EECU	\$6,507.23	\$6,507.23	\$0.00	\$0.00
2003 Carson Enclosed Trailer	\$3,000.00	\$3,000.00	\$0.00	\$0.00
1997 Flat Bed Trailer	\$2,000.00	\$2,000.00	\$0.00	\$0.00
TOTAL	\$13,657.23	\$13,657.23	\$0.00	\$0.00

Doc. #1, *Scheds. A/B, C, D*. None of the Business Assets are encumbered by any secured creditors. *Id.* Debtors exempted all of the Business Assets for their full value under Cal. Code Civ. Proc. ("CCP") § 703.140(b)(5). *Id.*

Debtor declares that he is the owner of JSC and a building contractor. Doc. #20. Further, Debtor certified that he was qualified and eligible to claim the exemptions under applicable law and understands that if for any reason it is determined that he is not qualified to claim an exemption in the property listed, or if there is some other error in the exemption claimed, Trustee may demand that he compensate the estate for any damage caused by the claimed exemption. Debtor agrees not to amend the exemptions affecting the Business Assets unless Trustee stipulated to that amendment or such relief is granted by further order of the court. *Id.*

No party in interest filed opposition to this motion. Accordingly, the court finds that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately scheduled and exempted in their entirety. Therefore, this motion will be GRANTED.

The order shall specifically include the property to be abandoned.

² Per the attached exhibit, the Business Inventory consists of a ridged tile saw (\$300), DeWalt chop saw (\$250), table saw (\$100), misc. ladders (9 x \$50 each = \$450), texture gun (\$500), pressure washer (\$100), vacuums (3 x \$50 each = \$150), cordless drills (2 x \$50 each = \$100), and misc. hand tools (\$200), totaling \$2,150.00. Doc. #21, *Ex. A*, at 9.

5. [22-10262](#)-B-7 **IN RE: NAVDEEP KANG AND HARVINDER KAUR**
[PSC-3](#)

CONTINUED MOTION TO AVOID LIEN OF CAPITAL ONE BANK N.A.
8-4-2022 [\[40\]](#)

HARVINDER KAUR/MV
PATRICIA CARRILLO/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Navdeep S. Kang and Harvinder Kaur (collectively "Debtors") seek to avoid a judicial lien in favor of Capital One Bank, N.A. ("Creditor") in the sum of \$22,822.99 and encumbering residential real property located at 6044 N. McCaffrey Ave., Fresno, CA 93722 ("Property").³ Doc. #40.

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

This motion was originally set for hearing on September 27, 2022 on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Doc. #41. The matter was continued to November 8, 2022 because this lien could not be avoided until all junior liens had been avoided, and the related motion avoiding a junior lien was denied without prejudice for procedural reasons. Docs. #48; #50.

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.

PROCEDURAL ISSUES

As a preliminary matter, Debtors' refiled motion to avoid the junior lien held by ENGS Commercial Finance, Co. ("ENGs") – the subject of matter #6 below – causes this motion to no longer comply with the local rules. LBR 9004-2(a)(6), (b)(5), (b)(6), & (e) and LBR 9014-1(c) & (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.

Debtors filed this motion on August 4, 2022 using DCN PSC-3, the initials of Debtors' attorney, Patricia S. Carrillo. Docs. ##40-45. At the time of filing, this DCN was not in use, so the motion complied with the local rules.

On October 5, 2022, Debtor filed a motion to avoid the lien of ENGS in matter #6 below. Docs. ##53-57. The DCN for that motion was also PSC-3. This is incorrect. Because the PSC-3 DCN had already been used, Debtors should have used a different DCN not already in use. For example, Debtors could have used DCN PSC-4, or any other unused iteration of the PSC DCN.

As a result of the subsequent motion, the PSC-3 DCN now relates to multiple, separate matters, thereby muddling the docket. Typically, this procedural discrepancy would result in both motions being denied without prejudice. When a bankruptcy court operates within its local rules, there is no abuse of discretion in application of those local rules. *In re Thao Tran Nguyen*, 447 B.R. 268, 281 (B.A.P. 9th Cir. 2011) (*en banc*).

LBR 1001-1(f) allows the court *sua sponte* to suspend provisions of the LBR not inconsistent with the Federal Rules of Bankruptcy Procedure to accommodate the needs of a particular case or proceeding. Since the subsequently filed motion to avoid the ENGS lien is Debtors' third attempt at avoiding that lien, denying both motions on this ground would unduly delay Debtors in the prosecution of their case. See PSC-1; PSC-2. Further, no party in interest has opposed either motion, or earlier motions seeking the same relief. Accordingly, the court will overlook this procedural deficiency in this instance under LBR 1001-1(f) by suspending LBR 9004-2(a)(6), (b)(5), (b)(6), & (e) and LBR 9014-1(c) & (e)(3), which require each separate motion to contain a

new DCN. Debtors' counsel is advised to thoroughly review this court's local rules to ensure procedural compliance in subsequent matters.⁴ Future violations of the local rules will result in a motion being denied without prejudice.

BACKGROUND

Here, a judgment was entered against joint debtor Navdeep S. Kang in favor of Creditor in the sum of \$22,822.99 on January 2, 2019. Doc. #43, *Ex. A*. The abstract of judgment was issued on June 10, 2019 and recorded in Fresno County on September 11, 2019. *Id.* That lien attached to Debtors' interest in Property. Doc. #42.

As of the petition date, Property had an approximate value of \$388,000.00. *Id.*; Doc. #1, *Sched. A/B*. Debtor claimed a homestead exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730(a)(2) in the amount of \$148,000.00. *Id.*, *Sched. C*.

Property is encumbered by a first deed of trust in the approximate amount of \$175,000.00 in favor of Chase Mortgage, and a second deed of trust in the approximate amount of \$65,000.00 in favor of Kanail Sidhu. *Id.*, *Sched. D*. As previously noted, Property is also encumbered by a junior judgment lien in the amount of \$58,683.60 in favor of ENGS, which is the subject of matter #6 below.

Property appears to be subject to the following encumbrances with the following priorities:

Creditor	Amount	Recorded	Status
1. Chase Mortgage	\$175,000.00	?	Unavoidable deed of trust
2. Kanail Sidhu	\$65,000.00	?	Unavoidable deed of trust
3. Creditor	\$22,822.99	09/11/19	Avoidable judgment lien
4. ENGS	\$58,683.60	11/14/19	Avoided (matter #6; PSC-3)

Doc. #43, *Ex. A*; *cf.* Doc. #56, *Ex. A*. In this motion, Debtors seek to avoid Creditor's lien.

DISCUSSION

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)).

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*.

The ENGS lien has to be avoided first because it is junior to Creditor's lien at issue here. In matter #6 below, the court intends to GRANT Debtors' motion to avoid ENGS's judicial lien because it impairs Debtors' exemption. After the ENGS judgment lien is avoided, Creditor's lien becomes the most the junior lien and may be avoided. Strict application of the § 522(f)(2) formula with respect to Creditor's lien is as follows:

Amount of judgment lien	\$22,822.99
Total amount of unavoidable liens	+ \$240,000.00
Debtors' claimed exemption in Property	+ \$148,000.00
<i>Sum</i>	= \$410,822.99
Debtors' claimed value of interest absent liens	- \$388,000.00
Extent lien impairs exemption	= \$22,822.99

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	\$388,000.00
Total amount of unavoidable liens	- \$240,000.00
Homestead exemption in Property	- \$148,000.00
Remaining equity for judicial liens	= \$0.00
Creditor's judicial lien	- \$22,822.99
Extent Debtors' exemption impaired	= (\$22,822.99)

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 Debtors' exemption in the Property and its fixing will be avoided.

CONCLUSION

Debtors have 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 lien is avoided from the subject Property only and include a copy of the abstract of judgment attached as an exhibit.

³ Debtors have complied with Fed. R. Bankr. P. 7004(h) by serving via certified mail Richard D. Fairbank, Creditor's Chair, and the President, CEO, and Chairman of Capital One Financial Corporation, Creditor's parent company, on August 4, 2022. Doc. #44.

⁴ See LBR, United States Bankruptcy Court, Eastern District of California, <https://www.caeb.uscourts.gov/documents/Forms/LocalRules/LocalRulesSeptember2022.pdf> (Eff. Sept. 2, 2022).

6. [22-10262](#)-B-7 **IN RE: NAVDEEP KANG AND HARVINDER KAUR**
[PSC-3](#)

MOTION TO AVOID LIEN OF ENG COMMERCIAL FINANCE CO.
10-5-2022 [\[53\]](#)

HARVINDER KAUR/MV
PATRICIA CARRILLO/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Navdeep S. Kang and Harvinder Kaur (collectively "Debtors") seek to avoid a judicial lien in favor of ENGS Commercial Finance Co. ("Creditor") in the sum of \$58,683.60 and encumbering residential real property located at 6044 N. McCaffrey Ave., Fresno, CA 93722 ("Property").⁵ Doc. #53.

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). Doc. #54. 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.

PROCEDURAL ISSUES

As a preliminary matter, this motion does not comply with the local rules. LBR 9004-2(a)(6), (b)(5), (b)(6), & (e) and LBR 9014-1(c) & (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.

Debtors filed a motion to avoid the lien of Capital One Bank, N.A. ("Capital One") on August 4, 2022, which was set for hearing on September 27, 2022. Docs. ##40-45. That motion was continued to November 8, 2022 and is the subject of matter #5 above. The DCN for that motion was PSC-3.

On October 5, 2022, Debtor filed this motion to avoid Creditor's lien. Docs. ##53-57. The DCN for this motion is also PSC-3 and therefore it does not comply with the local rules. Since this is a separate motion for a different lien, it is a separate matter that should have contained a different DCN. For example, Debtors could have used DCN PSC-4, the initials of Debtors' attorney, Patricia S. Carrillo with a number that is one higher than the number of motions previously filed using the PSC DCN, or any other unused iteration of the PSC DCN.

The PSC-3 DCN now relates to multiple, separate matters, thereby muddling the docket. Typically, this procedural discrepancy would result in both motions being denied without prejudice. When a bankruptcy court operates within its local rules, there is no abuse of discretion in application of those local rules. *In re Thao Tran Nguyen*, 447 B.R. 268, 281 (B.A.P. 9th Cir. 2011) (*en banc*).

LBR 1001-1(f) allows the court *sua sponte* to suspend provisions of the LBR not inconsistent with the Federal Rules of Bankruptcy Procedure to accommodate the needs of a particular case or proceeding. Since the subsequently filed motion to avoid Creditor's lien is Debtors' third attempt at avoiding this lien, denying both motions on this ground would unduly delay Debtors in the prosecution of their case. See PSC-1; PSC-2. Further, no party in interest has opposed either motion, or earlier motions seeking the same relief. Accordingly, the court will overlook this procedural deficiency in this instance under LBR 1001-1(f) by suspending LBR 9004-2(a)(6), (b)(5), (b)(6), & (e) and LBR 9014-1(c) & (e)(3), which require each separate motion to contain a new DCN. Debtors' counsel is advised to thoroughly review this court's local rules to ensure procedural compliance in subsequent matters.⁶

Future violations of the local rules will result in a motion being denied without prejudice and without a hearing.

BACKGROUND

Here, a judgment was entered against 75th Regiment, Inc., a California Corporation, and joint debtor Navdeep Singh Kang, in favor of Creditor in the sum of \$58,683.60 on September 3, 2019.⁷ Doc. #56, Ex. A. The abstract of judgment was issued on November 8, 2019 and recorded in Fresno County on November 14, 2019. *Id.* That lien attached to Debtors' interest in Property. Doc. #55.

As of the petition date, Property had an approximate value of \$388,000.00. *Id.*; Doc. #1, Sched. A/B. Debtor claimed a homestead exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730(a)(2) in the amount of \$148,000.00. *Id.*, Sched. C.

Property is encumbered by a first deed of trust in the approximate amount of \$175,000.00 in favor of Chase Mortgage, and a second deed of trust in the approximate amount of \$65,000.00 in favor of Kanail Sidhu. *Id.*, Sched. D. As previously noted, Property is also encumbered by a senior judgment lien in the amount of \$22,822.99 in favor of Capital One, which is the subject of matter #5 above.

Property appears to be subject to the following encumbrances with the following priorities:

Creditor	Amount	Recorded	Status
1. Chase Mortgage	\$175,000.00	?	Unavoidable deed of trust
2. Kanail Sidhu	\$65,000.00	?	Unavoidable deed of trust
3. Capital One	\$22,822.99	09/11/19	Avoidable (matter #5; PSC-3)
4. Creditor	\$58,683.60	11/14/19	Avoidable (this matter)

Doc. #56, Ex. A; cf. Doc. #43, Ex. A. In this motion, Debtors seek to avoid Creditor's lien.

DISCUSSION

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)).

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*.

Creditor's lien has to be avoided first because it is junior to the Capital One lien subject to matter #5 above. There do not appear to be any other avoidable judgment liens more junior than this lien. Strict application of the § 522(f)(2) formula with respect to Creditor's lien is as follows:

Amount of judgment lien	\$58,683.60
Total amount of unavoidable liens ⁸	+ \$262,822.99
Debtors' claimed exemption in Property	+ \$148,000.00
Sum	= \$469,506.59
Debtors' claimed value of interest absent liens	- \$388,000.00
Extent lien impairs exemption	= \$81,506.59

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	\$388,000.00
Total amount of unavoidable liens	- \$262,822.99
Homestead exemption in Property	- \$148,000.00
Remaining equity for judicial liens	= (\$22,822.99)
Creditor's judicial lien	- \$58,683.60
Extent Debtors' exemption impaired	= (\$81,506.59)

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 Debtors' exemption in the Property and its fixing will be avoided.

CONCLUSION

Debtors have 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 lien is avoided from the subject Property only and include a copy of the abstract of judgment attached as an exhibit.

⁵ Debtors have complied with Fed. R. Bankr. P. 7004(b)(3) by serving via first class mail C T Corporation System, Creditor's registered agent for service of process, on October 5, 2022. Doc. #57.

⁶ See LBR, United States Bankruptcy Court, Eastern District of California, <https://www.caeb.uscourts.gov/documents/Forms/LocalRules/LocalRulesSeptember2022.pdf> (Eff. Sept. 2, 2022).

⁷ Debtors appear to be the 100% owners of this corporation, which operated from January 1, 2013 to October 5, 2018. Doc. #1, *Stmt. Fin. Affairs*.

⁸ This amount consists of the sum of the two unavoidable deeds of trust totaling \$240,000 and the \$22,822.99 Capital One lien, which remains unavoidable until all junior liens have been avoided.

7. [22-11769](#)-B-7 **IN RE: PREMIER RAIL SERVICES, INC.**
[HRH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-25-2022 [\[12\]](#)

BMO HARRIS BANK N.A./MV
D. GARDNER/ATTY. FOR DBT.
RAFFI KHATCHADOURIAN/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.

The movant, BMO Harris Bank N.A. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2109 International HX Series "HX620 6SX4 tractor truck ("Vehicle"). Doc. #12.

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

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because debtor is 2 payments past due in the amount of \$5,996.78 plus late fees of \$149.92. Doc. #17.

The court also finds that the debtor does not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because debtor is in chapter 7. Movant values the Vehicle at \$102,450.00 and the amount owed to Movant is \$106,928.58. Doc. #12, 17.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. Adequate protection is unnecessary in light of the relief granted herein.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because debtor has failed to make at least one post-petition payment and the Vehicle is a depreciating asset.

8. [22-11170](#)-B-7 **IN RE: DOUA YANG**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-7-2022 [[41](#)]

TOYOTA MOTOR CREDIT
CORPORATION/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
AUSTIN NAGEL/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

LBR 9014-1(e)(2) requires a proof of service, in the form of a certificate of service, to be filed with the Clerk of the court concurrently with the pleadings or documents served, or not more than three days after the papers are filed.

In this case, no proof of service was filed. Therefore, this motion is DENIED WITHOUT PREJUDICE.

9. [21-12473](#)-B-7 **IN RE: BLAIN FARMING CO., INC.**
[FW-8](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JAMES PUTNAM AND/OR MOTION TO AUTHORIZE
DISTRIBUTION OF PROCEEDS
10-11-2022 [\[161\]](#)

JAMES SALVEN/MV
RILEY WALTER/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order
after hearing with a copy of the stipulation
attached as an exhibit and shall separately file
and docket the same as a stipulation.

Chapter 7 trustee James E. Salven ("Trustee") moves for an order:
(1) approving a settlement agreement between the bankruptcy estate of
Blain Farming Co., Inc. ("Debtor") and James Putnam ("Putnam")
relating to Putnam's lien claim on the proceeds of the sale of 15013
Ivanhoe Drive, Visalia, CA ("Property") pursuant to Federal Rule of
Bankruptcy Procedure ("Rule") 9019; and (2) authorizing the
distribution of proceeds from the sale. Doc. #161.

Ben King, the Managing Principal of Pacific Gold Agriculture, LLC
("PGA") timely filed written opposition. Docs. ##168-71.

Trustee replied to PGA's opposition. Doc. #172.

Besides Mr. King/PGA, no other party in interest timely filed written
opposition. This matter will be called and proceed as scheduled. The
court is inclined to STRIKE PGA's opposition and GRANT the motion.

This motion was filed and served on at least 28 days' notice pursuant
to Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(3).
The failure of the creditors, the U.S. Trustee, or any other party in
interest to file written opposition at least 14 days prior to the
hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of
any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46
F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-
mentioned parties in interest are entered. Upon default, factual

allegations will be taken as true (except those relating to 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, PGA appears to be a limited liability company that is not represented by counsel. Under applicable Ninth Circuit legal authority, a limited liability company cannot appear in this bankruptcy case without the assistance of legal counsel. *Licht v. Am. W. Airlines (In re Am. W. Airlines)*, 40 F.3d 1058, 1059 (9th Cir. 1994) ("Corporations and other unincorporated associations must appear in court through an attorney."); see also *Orsini v. Interiors of Yesterday, LLC (In re Interiors of Yesterday, LLC)*, 284 B.R. 19, 23-26 (Bankr. D. Conn. 2002) (requiring limited liability company to file bankruptcy petition through counsel).

Here, Ben King signed PGA's response as PGA's Managing Principal. However, there is no indication that Mr. King is authorized to practice law before this court. To the extent Mr. King is attempting to represent PGA in this bankruptcy case, "[a] person not an active member of the State Bar who practices law commits a misdemeanor." *Gerhard v. Stephens*, 68 Cal. 2d 864, 917-18 (1968); Cal Bus. & Prof. Code § 6126(a). If PGA wishes to oppose a motion in this bankruptcy case, PGA must appear through an attorney.

Even if PGA is properly represented by counsel with respect to this motion, the court would be inclined to overrule PGA's opposition for the reasons stated below and grant this motion.

BACKGROUND

Debtor filed chapter 7 bankruptcy on October 22, 2021. Doc. #1. Trustee was appointed as interim trustee on that same day and became permanent trustee at the first § 341(a) meeting of creditors on November 18, 2021. Doc. #4; docket generally.

One of the assets of the bankruptcy estate was Property. On the petition date, Putnam held the senior deed of trust secured by Property in the original principal balance of \$272,000, which was recorded on February 13, 2019. See Doc. #164, *Ex. A*. Attached to the Note Secured by Deed of Trust contains calculations relating to principal advances in October 2004 in the amount of \$42,000, and subsequent advances of \$76,000 and \$85,000 in September 2013 and May 2014, respectively. *Id.*, *Ex. B*. The ledger further shows interest at 7%, calculated at \$69,042.82 over the relevant time periods. Between the referenced principal advantages and calculated interest, the ledger shows a balance owed of \$272,042.82, which was apparently rounded for the purpose of the deed of trust to \$272,000.00.

In providing these documents to Trustee, Putnam attached a cover letter explaining the advances noted on the ledger accompanying the

Note. *Id.*, *Ex. C.* In sum, Putnam asserted that the original \$42,000 advance was for tractors and row crop implements for which he has no current records, and the following two advances were for fan sprayers that he purchased and sold to Blain Farming. *Id.* A copy of the invoice for one of the fan sprayers, an Air-O-Fan sprayer, was purchased by Putnam Farms, LLC for \$87,641.00 on November 8, 2013. *Id.*, *Ex. D.*

Trustee says that one creditor of the bankruptcy estate contacted him and expressed his belief that Putnam provided either no value to the estate, or significantly less value than noted in the ledger supporting the Note. Doc. #163. After reviewing and analyzing the documentation provided by this creditor, as well as conducting his own due diligence, Trustee found significant concerns that the amount of the value provided by Putnam to support the Note and Deed of Trust. As a result, Trustee disputes the validity of Putnam's claimed lien on Property and believes that it can be avoided in whole or in part as a fraudulent transfer. *Id.*

On March 30, 2022, the court authorized the sale of Property to Robin Martella free and clear of certain interests, including the Putnam deed of trust, under 11 U.S.C. § 363(f)(4) with the liens attaching to the proceeds. Doc. #131. The other liens encumbering Property consisted of a deed of trust held by Williams, Brodersen, Pritchett & Burke, LLP ("Williams"), a tax lien held by the State of California, and a judgment lien held by Mechanics Bank. Doc. #163.

Putnam asserts that he was entitled to payment of \$385,635.14 from the proceeds of the sale of the Property pursuant to his lien, which Trustee disputes. *Id.* To avoid the expense and delay of litigation, Trustee negotiated with Putnam to resolve the dispute relating to the validity and amount of Putnam's claimed in the proceeds from the sale of the Property. Under the terms of the settlement agreement,

- a. From the proceeds of the sale of Property, Putnam shall be entitled to a payment of \$259,500.00. Trustee shall release this amount to Putnam within a reasonable amount of time after the order approving this settlement becomes final and non-appealable.
- b. The parties agree that the remaining balance of Putnam's claim based on the deed of trust, totaling \$126,135.14, is avoided for the benefit of the bankruptcy estate.
- c. The parties understand and agree that this agreement is subject to bankruptcy court approval. Trustee shall bring the necessary motion for approval. If the agreement is not approved, it shall have no force and effect.

Doc. #164, *Ex. E.* The settlement also contains other terms and conditions not stated here. The court notes that the settlement is filed as an exhibit to the motion and is not separately filed as a stipulation.

Trustee now seeks approval of the parties' settlement agreement.
Doc. #161.

DISCUSSION

King/PGA Opposition

As noted above, Mr. King, the Managing Principal of PGA, filed written opposition. Docs. ##168-71. Mr. King urges the court to reject the settlement, or in the alternative, stay consideration of the settlement until the Williams' lien can be included with the Putnam settlement. Doc. #168. Mr. King also urges the court to direct Trustee to release the Legal Services Agreement executed February 13, 2019 on which the Williams' lien is based. *Id.* Due to the complexity of the facts in this case and the nature of the relationship between Debtor, the bankruptcy estate of Atlas World Food & Ag., Inc. (Case No. 21-11448) ("Atlas"), the corporate officers of both Atlas and the Debtor, the two properties owned by Atlas, and Williams as corporate counsel for both Atlas and Debtor, Mr. King says that it is in the best interests of the estate to either reject this motion or stay its consideration.

Mr. King also alleges that Putnam is a non-statutory insider based on a decades-long personal friendship, business and vintage racing car ventures between Putnam, Brian Blain, the Debtor, and Blain Motorsports Foundation. Docs. #169; #170, *Exs. A-1, A-2, A-3, & A-4.* Further, Brody Blain advocated for Putnam in the three 341 Meetings and Putnam, Brian Blain as Trustee, and Brody and Sheridyn Blain share the same counsel in this proceeding. Doc. #169. Since Putnam is an insider, Mr. King says that it is important to determine if Putnam had actual knowledge that his friend, Brian Blain, was the actual authority of Debtor at the time the note was signed. At that time, Brody Blain was Debtor's secretary and had no actual authority to execute the Putnam Note under Cal. Corp. Code § 313.

Mr. King states that Trustee has not analyzed Putnam's claim as part of five related legal agreements that were all executed in Williams' office in February of 2019, shortly after the City of Visalia filed a lawsuit against Debtor and others. *Id.* Further, PGA believes it is a mistake to settle Putnam's claim for such a high amount without considering the potential outcome, or all of the facts and circumstances of the related parties and their agreements. If the Putnam Note is actually void, then the legal fees reimbursement clause is also void.

Further, Mr. King says that Trustee failed to address the issue of whether there is a possibility that no consideration was given for the Putnam Note and subsequent deed of trust. Since all of the equipment that Putnam claimed ownership in was already pledged to Rabobank under a five-year equipment financing agreement, there was no legal basis for Putnam to have claimed any security interest in such property.

Mr. King questions whether an independent appraisal is necessary to evaluate the equipment that Putnam claims to have purchased since all of the equipment owned by Debtor at the time of the Putnam Note was appraised a couple of months before the date of the Putnam Note for financing from Rabobank and was included in the prorated sales price for the sale of all of Debtor's farming equipment to PGA.

Specifically, the sprayer purchased by Putnam was valued at \$35,000 in both instances (Doc. #170, Exs. G-1, G-3). Meanwhile, the sprayer allegedly purchased by Putnam that was actually purchased by Debtor was valued at \$32,000 in 2013 and \$30,000 in 2016, and the older row equipment owned by Putnam had a fair market value from \$500 to \$5,000 (Doc. #170, Exs. G-2, G-3).

Mr. King does not believe that Trustee reasonably pursued the facts. Instead, Mr. King and PGA believe that Putnam has a claim for \$35,000.00, which is the appraised price for the sprayer purchased by Putnam in 2013. Further, the Putnam Note should be void because it was not signed by an authorized officer of the Debtor, and there was no lien relinquished by Putnam to Rabobank under the Rabobank financing agreement.

In response, Trustee addresses the claims made in Mr. King's opposition. Doc. #172. For instance, the opposition argues that Putnam cannot have provided any value to Debtor because the items he claims to have provided as value to support the debt were later sold, and that the value provided by Putnam must be calculated on the basis of later appraisals, not the purchase price at the time Putnam claims to have purchased them. *Id.*, citing Doc. #168, at ¶¶ 16, 20. But these arguments, Trustee says, would not give him the ability to prevail in litigation with Putnam.

The remaining factual assertions in the opposition highlight the reason that this settlement agreement should be approved. If forced to litigate, significant discovery would be required to obtain the documentation to meet Trustee's burden of proof and avoid the Putnam deed beyond what is avoided by the settlement. Administrative expenses would substantially reduce or even eliminate any recovery for general unsecured creditors of the estate.

Similarly, the opposition dismisses the risks of litigation inherent in the attorneys' fees clause of the deed of trust, arguing that they should simply be "deemed void because of the lack of consideration." *Id.*, ¶ 17. However, later, the opposition concedes that there was at least some consideration for the Putnam deed of trust. *Id.*, ¶ 20.

Secondarily, the opposition seeks to delay considering the approval of this settlement on the basis that other remaining issues in the bankruptcy case. Trustee contends that these other issues are unrelated to this proposed compromise, which only relates to Putnam's deed of trust on the Ivanhoe Property. The issues relating to the distribution of the real property located on Caldwell Avenue and Arlen Avenue, as well as the Williams' deed of trust, are currently being

litigated. These issues cannot be resolved by this motion. The settlement only seeks to resolve Putnam's right under the deed of trust, which is only on Property's proceeds. Putnam has no right to the proceeds from the other properties. Furthermore, the compromise does not resolve the junior lien claims of Williams on either property, which will have to be resolved later.

Lastly, Trustee raises the above issue that Mr. King does not appear to be an attorney, and therefore cannot appear on behalf of PGA. The court is inclined to agree. Since Mr. King cannot represent PGA in this bankruptcy case, the court intends to STRIKE Mr. King's opposition, declaration, and supporting exhibits.

Approval of the Settlement Agreement

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

The court concludes that the *Woodson* factors balance in favor of approving the compromise. That is,

1. Probability of success in litigation: Given the information revealed by Trustee's investigation, it is unlikely that his lien could be removed in its entirety because Putnam appears to have provided at least some value to support the Note and Deed of Trust. However, the lack of records and documentation gives rise to Trustee's belief that there is a factual and legal basis to reduce the lien held by Putnam. Trustee believes he would prevail in reducing the lien to some extent based on the values provided by Putnam. Docs. #163; #165.

Trustee notes that there are significant risks of litigation. Even if he succeeded in reducing the lien by demonstrating that the value actually provided by Putnam was lower than stated in support of the deed of trust, it is possible that the result could actually increase Putnam's claim. If Putnam successfully defended his lien to any extent, he may be able to recover reasonable attorneys' fees in that defense, increasing his claim, and decreasing the proceeds available to unsecured creditors.

Trustee has outlined the reasons PGA's arguments, even if considered, would not change this analysis. Those reasons are summarized above.

Additionally, Trustee says that the work required for Trustee to prevail in litigation would necessitate significant administrative expenses. Thus, litigation poses the risk of both increasing Putnam's claim while also significantly increasing administrative expenses. As a result, Trustee believes that the settlement maximizes distribution to unsecured creditors and minimizes the risks inherent to litigation and Putnam's potential for additional attorneys' fees. This factor supports approval of the settlement.

2. Difficulties in collection: The funds from the sale of Property are currently being held by Trustee. Trustee therefore believes that there would be no issues relating to collection, and that this prong is neutral, neither supporting nor opposing approval of the settlement. *Id.*

3. Complexity of litigation: The litigation required to reduce Putnam's lien would require significant and wide-ranging discovery. Records dating back to 2004, which could be minimal and difficult to find, would be required to determine the value of Putnam's lien. Though many of the documents in Trustee's possession indicate that Putnam's lien should be reduced, "connecting the dots" necessary to satisfy Trustee's burden of proof would require significant work uncovering old records from a variety of sources. Further, there is a significant chance that Trustee would not be able to obtain the documentation necessary to carry his burden of proof that Putnam provided no or reduced value to Debtor. The difficulty in obtaining the documents, to the extent they are available, would only be the beginning. After obtaining all documents, expert opinion would be necessary for Trustee to demonstrate the actual value of the machinery provided by Putnam to support the deed of trust. Therefore, litigation, including expert witness fees and costs, would be very expensive and complex and necessitate significant delay to the administration of the estate. This factor supports approval of the settlement.

4. Interests of creditors: Trustee says that approval of the settlement maximizes the return to unsecured creditors. Specifically, it avoids his lien as to over \$125,000 (approximately one third) of his claim, preserves that amount for the benefit of unsecured claims, and eliminates the risk of reducing or eliminating any proceeds through administrative expenses or Putnam's reasonable attorneys' fees. This factor supports approving the settlement.

The settlement appears to be fair, equitable, and a reasonable exercise of Trustee's business judgment.

Other than Mr. King's stricken opposition, no other parties in interest have opposed the settlement. Accordingly, this motion will be GRANTED. The court concludes that the compromise is in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. *In*

re *Blair*, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. *Id.*

The proposed order shall include an attached copy of the stipulation as an exhibit. A copy of the stipulation shall also be filed separately and docketed as a stipulation.

Distribution of Proceeds to Putnam and the Bankruptcy Estate

The proceeds from the sale of Property are currently being held in a blocked account pending further court order. Doc. #131, ¶ 7. After approval of the settlement, Trustee says that it will be appropriate to disburse \$385,635.14 from the proceeds of the sale of Property as follows:

First, Trustee will distribute the agreed-upon amount of \$259,500 to Putnam as a result of the deed of trust. Putnam's lien is the senior lien on Property and no party has a higher claim to the proceeds. Thus, no party will be prejudiced by this disbursement.

Second, Trustee says that it is appropriate to release from the blocked account the remaining \$126,135.14 that was avoided for the benefit of the bankruptcy estate. 11 U.S.C. § 551 provides that any transfer avoided by the trustee as a fraudulent transfer is preserved for the benefit of the bankruptcy estate. Since Trustee exercised his strong-arm powers to avoid \$126,135.14 as a fraudulent transfer, the transfer is avoided for the benefit of the estate, and not for the benefit of junior lienholders. Thus, the remaining avoided amount should be distributed from the blocked account to the bankruptcy estate's unblocked account.

Third, the remainder of the proceeds from the Property sale beyond the \$385,635.14 should remain in the blocked account pending resolution of Trustee's disputes with the junior lienholders.

The court intends to allow the disbursement of the proceeds from the sale of Property as prayed only after the order approving this compromise becomes final and non-appealable. If appealed, the parties will need to exercise their remedies to prevent disbursement.

10. [22-11181](#)-B-7 **IN RE: RICARDO GIL AND RAMONA DE CALIXTRO**
[JES-1](#)

MOTION FOR TURNOVER OF PROPERTY AND/OR MOTION TO EXTEND
AUTOMATIC STAY
9-30-2022 [\[19\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice in part; denied as moot
in part; and granted in part.

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

Chapter 7 trustee James E. Salven ("Trustee") moves for an order:
(i) requiring Ricardo Calixtro Gil and Ramona Lopez De Calixtro
(collectively "Debtors") to turnover to the estate's auctioneer, Baird
Auctions & Appraisals ("Auctioneer"), the 2017 Ford Explorer
("Explorer") and the 2019 Ford Mustang GT ("Mustang" or collectively
"Vehicles") listed in the schedules; (ii) to the extent that the
Vehicles are collateral for a debt, determining that Trustee has
satisfied the hanging paragraph of 11 U.S.C. § 521(a)(6) because the
Vehicles are of consequential value or benefit to the estate, the
secured creditors are adequately protected, and the Debtors are
required to surrender the Vehicles; and (iii) extending the automatic
stay through January 31, 2023. Doc. #19.

Debtors timely filed written opposition, including an objection,
declarations, and exhibits. Docs. ##32-38.

This matter will be called and proceed as scheduled. The court is
inclined to DENY WITHOUT PREJUDICE IN PART the request for an order
requiring turnover of the Mustang and extension of the automatic stay
with respect to the Mustang, DENY AS MOOT IN PART the request for an
order requiring turnover the Explorer, and GRANT IN PART the extension
of the automatic stay through January 31, 2023 with respect to the
Explorer.

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 U.S. Trustee, or any other party in interest except
Debtors to file written opposition at least 14 days prior to the
hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of
any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46
F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-
mentioned parties in interest except Debtor 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).

BACKGROUND

Debtors filed chapter 7 bankruptcy on July 11, 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 18, 2022. Doc. #7; docket generally. In the course of administering the estate, Trustee investigated Debtors' assets. Among those assets are the Vehicles, which were listed in the original and amended schedules as follows:

	Original Schedules		Amended Schedules	
Vehicle	Explorer	Mustang	Explorer	Mustang
Mileage	60,000	40,000	77,000	50,000
Value	\$17,565.00	\$28,806.00	\$16,069.00	\$27,420.00
Lien	\$18,497.61	\$30,610.07	\$18,497.61	\$30,635.07
Exemption	\$0.00	\$0.00	\$0.00	\$0.00
Net Value	(\$932.61)	(\$1,804.07)	(\$2,428.61)	(\$3,215.07)

Docs. #1, *Scheds. A/B, C, D*; #16, *Am. Sched. A/B*; Claim 1-1. The Explorer and Mustang are encumbered by purchase money security interests in favor of Noble Credit Union ("NCU") and Ford Motor Credit ("FMC") in the amounts of \$18,497.61 and \$30,610.07, respectively. Doc. #1, *Sched. D*. FMC filed Proof of Claim No. 1 in the secured amount of \$30,635.07 on October 4, 2022. Claim 1-1. As of this writing, NCU does not appear to have filed a Proof of Claim in this case. Debtors did not exempt any equity in either of the Vehicles. Doc. #1, *Sched. C*. The amended schedules also indicate that Debtors are co-signers on the Mustang, which is their son's car and is located in Vallejo, California. Doc. #16, *Am. Scheds. A/B, H*.

Debtors' *Statement of Intention* indicates that they intend to retain both Vehicles and enter into reaffirmation agreements. Doc. #1. However, Debtors did not enter into reaffirmation agreements with either of the secured creditors. Debtors' discharge was entered on October 25, 2022. Doc. #31. A reaffirmation agreement with the creditors is now untimely.

Trustee has demanded the turnover of the Vehicles, which resulted in the continuing of the 341 Meeting of Creditors at least three separate times. Recently, Debtors turned over the Explorer to the Auctioneer due to great stress and uncertainty, and fear that Debtors would get into trouble, or that their son's Mustang would be taken. Doc. #33. Debtors have not made payments on the loan or the vehicle insurance since the vehicle was turned over to the Auctioneer, but Debtors wish to contest the sale of the Explorer. *Id.*

DISCUSSION

Debtors' Objections

As part of the opposition, Debtors object to Trustee's declaration opining on the values of the Vehicles because he is not an expert witness qualified to testify on the sales prices of automobiles at an auction. Doc. #32. That objection is arguable given the court's knowledge of Trustee Salven's experience as a bankruptcy trustee. Debtors also object to Trustee's reliance on conversations with Auctioneer as hearsay. The first objection will be **OVERRULED** since as applied here, Trustee's statement goes to weight. The hearsay objection will be **SUSTAINED** under Fed. R. Evid. 801-03. Though Trustee Salven has a great deal of experience as a trustee and generally can testify about auction prices, as applied here, the Auctioneer's statement about the Vehicles in question are hearsay.

Turnover

Under 11 U.S.C. § 541(a), Debtors created a bankruptcy estate on July 11, 2022. The estate "is comprised of all of the following property, wherever located and by whomever held: . . . all legal or equitable interests of the debtor in property as of the commencement of the case." § 541(a)(1).

As trustee of the bankruptcy estate, Trustee has a duty to "collect and reduce to money the property of the estate . . . and close such estate as expeditiously as is compatible with the best interests of parties in interest." § 704. In furtherance of those duties, a bankruptcy trustee has the power to use, sell, or lease property of the estate under § 363. The trustee is empowered by § 542(a) to compel the debtors to "deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." § 542(a); *In re Gerwer*, 898 F.2d 730, 733 (9th Cir. 1990).

In the Ninth Circuit, the Trustee must prove by a preponderance of the evidence that the estate is entitled to turnover. *Wolfe v. Jacobsen* (*In re Jacobsen*), 676 F. 3d 1193, 1201 (9th Cir. 2012).

Trustee requests an order requiring Debtors to turnover the Vehicles because Auctioneer has investigated the Vehicles and determined that the Explorer has a retail value of \$27,000 and a sales value of approximately \$24,000, and the Mustang has a retail value of \$38,000 and an approximate sales value of \$34,000. Doc. #21. As a result, Trustee believes that the sales of these vehicles will net in excess of \$9,000 after loan payoff and costs of sale. *Id.* However, Auctioneer's statements to Trustee are hearsay. Fed. R. Evid. 801-03.

Debtors oppose. Doc. #32. First, Debtors say that the reason they have not turned over the Explorer is because it is Debtors' only vehicle

and joint debtor Ricardo Calixtro Gil needs it for transportation to and from work. Doc. #33.

Joint debtor Gil declares that the fair market value of the Explorer is \$20,000.00. *Id.* As its owner, the joint debtor is competent to testify as to the value of the Explorer. *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004), *cert denied*, 543 U.S. 1021 (2004).

Joint debtor Gil also declares that the Mustang belongs to their adult son, Ricardo Calistro Lopez, who lives in the bay area and is in medical school. *Id.* Debtors have never driven the Mustang and hold title only; it is driven by their son who also makes all of the payments. *Id.*

These claims are supported by a declaration from Lopez, who adds that the Mustang was purchased in his father's name but is his car, his father has never driven the car, and he has made all payments, including registration and insurance. Doc. #35. Included as exhibits are Lopez's bank statements showing payments to FMC from February to July 2022. Doc. #37, *Ex. E*.

Debtors also included the expert declaration of Angel Garcia, the manager of Freeway Motors who has been employed there for 10 years. Doc. #34. Garcia, or his father-in-law who owns the business, attends automobile auctions to stock their inventory approximately three times per week. *Id.* Garcia declares that an auction sale would draw bids of no more than \$18,000 for the Explorer and \$25,000 for the Mustang. This valuation is based on Garcia's experience, through looking up the specifications of the Vehicles and their accessories using their license plates, considering the mileage and condition of each, and researching the prices listed on Kelley Blue Book. *Id.* Although Kelley Blue Book may be used as a starting place for determining automobile valuations, such methods are less reliable for determining whether the Vehicles are of consequential value and benefit to the estate. *In re DaRosa*, 442 B.R. 173, 175 (Bankr. D. Mass. 2010); *Young v. Camelot Homes, Inc. (In re Young)*, 390 B.R. 480, 493 (Bankr. D. Me. 2008) ("[B]ecause [the debtor] used Kelley trade-in listings as the starting point of his analysis, his opinions will not be taken as convincing evidence of replacement value."). Mr. Garcia has not inspected the Mustang or the Explorer.

Since the Mustang is in the possession of Lopez, Debtors' adult son, Trustee will have to file a separate adversary proceeding to recover the Mustang. Fed. R. Bankr. P. 7001(1). Therefore, this motion will be DENIED WITHOUT PREJUDICE IN PART as to the request for an order requiring the turnover of the Mustang.

Though the value of the Explorer is in dispute, if it sold for \$18,000, \$20,000, or \$24,000, the sale could be illustrated as follows:

Sale price	\$18,000.00	\$20,000.00	\$24,000.00
Buyer's premium (10%)	\$1,800.00	\$2,000.00	\$2,400.00
Buyer pays	\$19,800.00	\$22,000.00	\$26,400.00
Auctioneer's commission (15%)	\$2,700.00	\$3,000.00	\$3,600.00
Expenses	\$500.00	\$500.00	\$500.00
NCU security interest	\$18,497.61	\$18,497.61	\$18,497.61
Estimated net proceeds	(\$3,697.61)	(\$1,997.61)	\$1,402.39

However, as noted above, Debtors recently turned over the Explorer to the Auctioneer. Doc. #33. As a result, this motion will be DENIED AS MOOT IN PART as to the request for an order requiring the turnover of the Explorer.

Extension of Automatic Stay

Trustee also requests a determination under § 521(a)(6) and (a)(*) (the hanging paragraph) that Vehicles, to the extent they are collateral for a debt, are of consequential value to the estate, the secured creditors are adequately protected because they will be paid in full once the Vehicles are sold at public auction, and to order the Debtors to deliver the Vehicles to the Trustee. Delivery of the Vehicles has already been discussed above.

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, the *Statement of Intention* provides that Debtors intend to retain both Vehicles. Doc. #1. However, Debtors have not entered into a reaffirmation agreement with either of the secured creditors within

45 days of the first meeting of creditors (August 18, 2022), which was October 2, 2022.

Here, Trustee timely filed this motion on September 30, 2022, which was before the 45-day deadline. Although the values of the Vehicles are in dispute, whether they are of consequential value or benefit to the estate is speculative and remains to be seen. But since Debtors have not exempted any equity interest in the Vehicles, permitting the Trustee to attempt to maximize liquidity to the estate by selling the Vehicles could potentially result in value to the estate.

The Mustang is in the possession of Lopez, Debtors' adult son, so Trustee will have to file an adversary proceeding if he seeks to recover it. For that reason, the court will DENY WITHOUT PREJUDICE IN PART the motion as to its request to extend the automatic stay to the Mustang.

Debtors have already turned over the Explorer to the Auctioneer, but they have also stopped making its monthly loan and insurance payments. Therefore, cause exists to extend the automatic stay with respect to the Explorer to prevent its repossession by NCU because it could potentially be of consequential value and benefit to the estate. The court will find that secured creditor NCU is adequately protected because the Explorer is not currently in use and it will either be paid in full on account of its claim when the Explorer is sold at public auction, or the Explorer will be returned to Debtors who presumably will resume making the required payments, or else NCU will be able to enforce its rights and remedies under applicable law to recover the Explorer upon expiration of the stay. For this reason, the motion will be GRANTED IN PART as to the request for an extension of the automatic stay January 31, 2023

CONCLUSION

In sum, Debtors' objection to Trustee's declaration will be OVERRULED IN PART with respect to Trustee's opinion of value due to his experience as a chapter 7 trustee, but it will also be SUSTAINED IN PART as to the hearsay valuation of Auctioneer.

The motion will be DENIED WITHOUT PREJUDICE IN PART as to the request for turnover of and extension of the automatic stay to the Mustang because it is in the possession of Debtors' adult son, Ricardo Calistro Lopez. Trustee will have to file an adversary proceeding to recover possession of the Mustang if he wishes to pursue it further. Fed. R. Bankr. P. 7001(1).

The motion will be DENIED AS MOOT IN PART as to the request for turnover of the Explorer because Debtors have already turned it over to Auctioneer. For the reasons stated above, the motion will be GRANTED IN PART to extend the automatic stay to the Explorer through January 31, 2023 because, although its value is in dispute, it may be of consequential value and benefit to the estate, the secured

creditor's interest is adequately protected, and Debtors have already turned over the Explorer to the Auctioneer.

11. [22-11181](#)-B-7 **IN RE: RICARDO GIL AND RAMONA DE CALIXTRO**
[JES-2](#)

MOTION TO EMPLOY BAIRD AUCTIONS AND APPRAISALS AS
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
10-7-2022 [\[25\]](#)

JAMES SALVEN/MV
T. O'TOOLE/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.

Chapter 7 trustee James E. Salven ("Trustee") seeks authorization to (i) employ Baird Auctions & Appraisals ("Auctioneer") under 11 U.S.C. § 328; (2) sell the estate's interest in a 2017 Ford Explorer ("Vehicle") at public auction under § 363(b)(1); and (iii) compensate Auctioneer under §§ 327(a) and 328. Doc. #25. The auction will be held on or after December 6, 2022 beginning at 5:30 p.m. at 1328 N. Sierra Vista, Suite B, Fresno, California. *Id.*

No party in interest timely filed written opposition. However, Ramona Lopez De Calixtro and Ricardo Calixtro Gil (collectively "Debtors") oppose the turnover of Vehicle in matter #10 above. See JES-1. Since the Debtors contest Trustee's alleged valuation of the Vehicle in Trustee's related moot motion to require turnover of Vehicle, the court will construe it as opposition to the proposed sale of Vehicle here. For the reasons stated below, the court is inclined to GRANT this motion.

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 U.S. trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

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, including the Debtors as this issue, defaulted parties are deemed to have consented to application of this rule.

BACKGROUND

Debtors filed chapter 7 bankruptcy on July 11, 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 18, 2022. Doc. #7; docket generally. In the course of administering the estate, Trustee investigated Debtors' assets. Among those assets is Vehicle, which was listed in the original schedules with approximately 60,000 miles in "fair" condition and was valued at \$17,565.00. Doc. #1, *Sched. A/B*. Debtors amended the schedules on September 7, 2022 to update Vehicle's mileage to 77,000 miles in fair condition with an adjusted valuation of \$16,069.00. Doc. #16, *Am. Sched. A/B*. Vehicle is encumbered by a purchase money security interest in favor of Noble Credit Union ("NCU") in the amount of \$18,497.61. Doc. #1, *Sched. A/B*. As of this writing, NCU does not appear to have filed a Proof of Claim in this case. Debtors did not exempt any equity in the Vehicle. Doc. #1, *Sched. C*.

Under 11 U.S.C. § 541(a), Debtors created a bankruptcy estate on July 11, 2022 by filing the petition. The estate "is comprised of all of the following property, wherever located and by whomever held: . . . all legal or equitable interests of the debtor in property as of the commencement of the case." § 541(a)(1).

As trustee of the bankruptcy estate, Trustee has a duty to "collect and reduce to money the property of the estate . . . and close such estate as expeditiously as is compatible with the best interests of parties in interest." § 704. In furtherance of those duties, a bankruptcy trustee has the power to use, sell, or lease property of the estate under § 363. The trustee is empowered by § 542(a) to compel the debtors to "deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." § 542(a); *In re Gerwer*, 898 F.2d 730, 733 (9th Cir. 1990).

Trustee believes it is necessary to sell the Vehicle at public auction, which will require the employment of a licensed auctioneer and authority to sell the Vehicle.

DISCUSSION

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. #28. In addition to those fees and expenses, Auctioneer charges buyers an additional 10% premium on the purchase price. *Id.* 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. #27. 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.* 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. #25. As noted above, Vehicle has a scheduled value of \$16,069.00, which would make it undersecured. Doc. #16, *Am. Sched. A/B*. Trustee says in the motion that the sale of Vehicle is necessary for the best and highest net recovery to the estate. Doc. #25. The motion and supporting documents do not speculate as to Vehicle's value or the estimated net recovery to the estate. In Trustee's related motion to turnover Vehicle, Trustee declares that he has been informed by Auctioneer, who inspected the Vehicle, that its retail value is \$27,000, but it will sell for approximately \$24,000. Doc. #21. However, Auctioneer's declaration in support of this motion does not reiterate the same.

Doc. #27. Thus, Auctioneer's valuation of Vehicle is hearsay. Fed. R. Evid. 801-03.

In Debtors' opposition to Trustee's related motion to turnover Vehicle, joint debtor Ricardo Calixtro Gil declares his belief that the fair market vehicle is \$20,000.00. Doc. #33. As its owner, the joint debtor is competent to testify to the value of the Explorer. In the absence of contrary evidence, the joint debtor's opinion of value may be persuasive. *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004), *cert denied*, 543 U.S. 1021 (2004).

Debtors' opposition to the motion to turnover Vehicle also includes the expert declaration of Angel Garcia, the manager of Freeway Motors who has been employed there for 10 years. Doc. #34. Garcia, or his father-in-law who owns the business, attends automobile auctions to stock their inventory approximately three times per week. *Id.* Garcia declares that an auction sale would draw bids of no more than \$18,000, and with the 10% buyer's premium, any buyer would have to pay approximately \$20,000 for the Vehicle. *Id.* This valuation is based on Garcia's experience, through looking up the specifications of the Vehicle and its accessories using its license plate, considering the mileage and condition, and researching the prices listed on Kelley Blue Book. *Id.* Though the value of Vehicle is in dispute, if it sold for \$18,000, \$20,000, or \$24,000, the sale could be illustrated as follows:

Sale price	\$18,000.00	\$20,000.00	\$24,000.00
Buyer's premium (10%)	\$1,800.00	\$2,000.00	\$2,400.00
Buyer pays	\$19,800.00	\$22,000.00	\$26,400.00
Auctioneer's commission (15%)	\$2,700.00	\$3,000.00	\$3,600.00
Expenses	\$500.00	\$500.00	\$500.00
NCU security interest	\$18,497.61	\$18,497.61	\$18,497.61
Estimated net proceeds	(\$3,697.61)	(\$1,997.61)	\$1,402.39

It is conceivable that the sale of Vehicle could provide liquidity to the estate, but it also may not. 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. #28. Based on Trustee's experience, this could 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.*

Although Debtors object to the motion to turnover Vehicle and dispute Trustee's valuation, the Debtors have not exempted any equity in the Vehicle. If Debtors had claimed an exemption in Vehicle, they would have to be paid the exempted amount from the net proceeds before liquidity would become available to unsecured claims, which would decrease the likelihood of Vehicle being of consequential value and benefit to the estate.

Debtors' and Trustee's submitted valuations are speculative. At this time, it is impossible to know the ultimate auction sale price of Vehicle until such auction actually occurs. Trustee has a duty to liquidate and distribute the non-exempt, unencumbered equity in the Vehicle, which may or may not exist depending on the outcome of the sale. Trustee's business judgment is that there is liquidity available in the Vehicle that could be sold at public auction. Since Vehicle is not exempted, the court is inclined to defer to Trustee's business judgment.

Sale by auction under these circumstances could maximize potential recovery for the estate such that the sale of the Vehicle would be in the best interests of the estate if it will provide liquidity to the estate that can be distributed for the benefit of unsecured claims. The sale would appear to be supported by a valid business judgment and proposed in good faith. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

This matter will be called and proceed as scheduled. No party in interest timely filed written opposition other than Debtors' opposition to the mooted-in-part motion to turnover Vehicle. For the reasons stated above, the court is inclined to GRANT this motion and permit Trustee to employ Auctioneer, sell the Vehicle at public auction on or after December 6, 2022, and pay Auctioneer for its services as outlined above. If the sale is completed, Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale, and payment of up to \$500.00 for preparation and storage fees.

12. [22-11182](#)-B-7 **IN RE: LEONARDO GUTIERREZ**
[JES-1](#)

MOTION TO COMPEL
9-30-2022 [\[18\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part; continued in part for an evidentiary hearing.

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

Chapter 7 trustee James E. Salven ("Trustee") moves for an order compelling Leonardo Gabriel Gutierrez ("Debtor") to turnover within

seven days to the estate's auctioneer, Baird Auctions & Appraisals ("Auctioneer"), the following assets of the estate (collectively "Estate Assets"): (i) the 2003 Hummer J3 ("Hummer"), (ii) the 2007 Toyota FJ Cruiser ("Toyota"), and (iii) 2001 Bayliner Capri boat and trailer ("Boat" and "Trailer"). Doc. #18.

Debtor timely filed written opposition, including an objection, declarations, and exhibits. Docs. ##27-32.

This matter will be called and proceed as scheduled. The court is inclined to GRANT IN PART the motion as to requiring the Debtor, within seven days, to turnover the Boat, Trailer, and Toyota to the Auctioneer, or to provide proof to the Trustee that they have been transferred to Debtor's brother(s), Ivan and/or Joel Nunez.

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 U.S. Trustee, or any other party in interest except Debtors to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Debtor 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).

BACKGROUND

Debtor filed chapter 7 bankruptcy on July 11, 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 18, 2022. Doc. #6; docket generally. In the course of administering the estate, Trustee investigated Debtor's assets. Among those assets are the Estate Assets, which were listed in the amended schedules as follows:

Estate Asset	Hummer	Toyota	Boat & Trailer
Mileage	120,000	130,000	N/A
Value	\$3,625	\$5,500	\$750
Lien	\$0	\$0	\$0
Exemption	\$3,625	\$0	\$0
Net Value	\$0	\$5,500	\$750

Debtors' amended schedules increase the value and claimed exemption of the Hummer from \$2,985 to \$3,625. Doc, #1, *Scheds. A/B*, cf. Docs. #13, *Am. Sched. A/B*; #15, *Am. Sched. C*. Likewise, the value of the Toyota is decreased from \$12,824 to \$5,500. The only exempt equity in the Estate Assets is the \$3,625 exemption in the Hummer. *Id.* None of the

Estate Assets appear to be encumbered by any security interests.
Doc. #1, *Sched. D*.

The amended schedules also state that the Hummer is in poor condition with salvage title. Doc. #13, *Sched. A/B*. The Hummer needs a new transmission, all of the seats have to be replaced, there is paint damage consisting of scratches and dents, the back bumper is broken, and the air conditioner does not work. *Id.*

The Toyota is also in poor condition, has a salvage title, and needs a new transmission and paint. *Id.* It was apparently purchased as a project and is now in the possession of Debtor's brother, Ivan Nunez. *Id.*

The Boat and Trailer are also in poor condition, have an electric problem, were purchased as a project, and are also in possession of Nunez, Debtor's brother. *Id.*

Debtor's discharge was entered on October 25, 2022. Doc. #26.

Trustee has demanded the turnover of the Estate Assets, which resulted in the continuing of the 341 Meeting of Creditors at least three separate times. Since Debtor refused to turnover the Estate Assets, the Trustee filed the instant motion. Doc. #18. Debtor wishes to contest the turnover and sale of the Estate Assets. Doc. #29.

DISCUSSION

Debtor's Objections

As part of the opposition, Debtor objects to Trustee's declaration opining on the values of the Estate Assets because he is not an expert witness qualified to testify on the sales prices of automobiles at an auction. Doc. #27. That objection is arguable given the court's knowledge of Trustee Salven's experience as a bankruptcy trustee. Debtor also objects to Trustee's reliance on conversations with Auctioneer as hearsay. The first objection will be OVERRULED since as applied here, Trustee's statement goes to weight. The hearsay objection will be SUSTAINED under Fed. R. Evid. 801-03. Though Trustee Salven has a great deal of experience as a trustee and generally can testify about auction prices, as applied here, the Auctioneer's statement about the Estate Assets in question are hearsay.

Turnover

Under 11 U.S.C. § 541(a), Debtor created a bankruptcy estate on July 11, 2022. The estate "is comprised of all of the following property, wherever located and by whomever held: . . . all legal or equitable interests of the debtor in property as of the commencement of the case." § 541(a)(1).

As trustee of the bankruptcy estate, Trustee has a duty to "collect and reduce to money the property of the estate . . . and close such estate as expeditiously as is compatible with the best interests of parties in interest." § 704. In furtherance of those duties, a bankruptcy trustee has the power to use, sell, or lease property of the estate under § 363. The trustee is empowered by § 542(a) to compel the debtors to "deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." § 542(a); *In re Gerwer*, 898 F.2d 730, 733 (9th Cir. 1990).

In the Ninth Circuit, the Trustee must prove by a preponderance of the evidence that the estate is entitled to turnover. *Wolfe v. Jacobsen* (*In re Jacobsen*), 676 F. 3d 1193, 1201 (9th Cir. 2012).

Trustee requests an order requiring Debtor to turnover the Estate Assets because Auctioneer has investigated the Estate Assets and determined in their current conditions that: (1) the Hummer has a retail value of \$14,000 and estimated sales value of \$8,000; (2) the retail and sales value of the Toyota has not been estimated, but it is fully non-exempt and unencumbered; and (3) the Boat and Trailer have a retail value of \$16,000 and estimated sales value of \$6,000. Doc. #20. As a result, Trustee believes that the sales of the Estate Assets will net in excess of \$10,000 after payment of Debtor's claimed exemption in the Hummer and costs of sale. *Id.* However, Auctioneer's statements to Trustee are hearsay. Fed. R. Evid. 801-03.

Debtor opposes. Doc. #27. Debtor says the reason he has not turned over the Hummer is because he is attending Truck Driving school, living on cash aid, is single, and has two young children that he has to transport to school. Doc. #29. The Hummer is Debtor's only vehicle. *Id.*

Debtor's declaration says that he has attempted to sell the Hummer to a used automobile dealer for \$3,000 on three separate occasions, but each time they have refused the offer. *Id.* Debtor's declaration does not include a valuation of the Hummer, however.

Debtor further declares that the Toyota, Boat, and Trailer were listed in the schedules, but those items belong to his brother, Joel Nunez, and Debtor holds title in his name as a constructive trustee only. *Id.*, ¶ 8. However, the schedules say that Debtor's brother is named Ivan Nunez. *Cf.* Doc. #13. Is Joel Nunez the same individual?

Debtor says that he transferred title of these items before the bankruptcy was filed because they did not belong to him and were never kept at his house. *Id.* Further, Debtor claims to have never used the Toyota or Boat and no longer talks to his brother, so he does not know where the items are located. *Id.* As evidence, the declaration cites to copies of two letters that Debtor's counsel sent to Trustee on September 24, 2022 and August 30, 2022. Doc. #31, *Exs. A, B.* But these

do not prove that title to the Toyota, Boat, and Trailer were transferred to Messrs. Ivan or Joel Nunez.

Debtor also included the expert declaration of Angel Garcia, the manager of Freeway Motors who has been employed there for 10 years. Doc. #28. Garcia, or his father-in-law who owns the business, attends automobile auctions to stock their car inventory approximately three times per week. *Id.* Garcia declares that an auction sale would draw bids of no more than \$4,500.00 for the Hummer. *Id.*, ¶ 14. This valuation is based on Garcia's experience, through looking up the specifications of the Hummer and its accessories using its license plates, and considering the mileage, condition, and salvage title. *Id.* Auctioneer says that the prices listed on Kelley Blue Book are irrelevant because the vehicle has junk title. *Id.* Mr. Garcia has not inspected the Hummer.

Debtor also included the declaration of Kathy Alvaraz, an employee of Debtor's attorney. Doc. #30. However, this declaration relates to the meeting of creditors for Ricardo Gil, Case No. 22-11181, which is the subject of matters #10-11. Ms. Alcaraz's testimony does not appear to be relevant to this case.

Though the value of Hummer is in dispute, if it sold for \$4,500 or \$8,000, the sale could be illustrated as follows:

Asset	Hummer	Toyota	Boat and Trailer
Sale price	\$4,500.00 - \$8,000.00	\$5,500.00	\$750.00 - \$6,000.00
<i>Buyer's premium (10%)</i>	<i>\$450.00 - \$800.00</i>	<i>\$550.00</i>	<i>\$75.00 - \$600.00</i>
<i>Buyer pays</i>	<i>\$4,900.00 - \$8,800.00</i>	<i>\$6,050.00</i>	<i>\$825.00 - \$6,600.00</i>
Commission (15%)	\$675.00 - \$1,200.00	\$825.00	\$112.50 - \$900.00
Expenses (≤ \$500)	\$500.00 - \$500.00	\$500.00	\$500.00 - \$500.00
Exemption	\$3,625.00 - \$3,625.00	\$0.00	\$0.00 - \$0.00
Est. net proceeds	(\$300.00) - \$2,675.00	\$4,175.00	\$137.50 - \$4,600.00

It is conceivable that the sale of the Estate Assets could provide liquidity to the estate, but such liquidity may be *de minimis* for the Hummer and Boat and Trailer. Trustee believes that using the auction process to sell the Estate Assets will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #20. Based on Trustee's experience, this could 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.*

Since Debtor did exempt equity in the Hummer and it has not already been turned over, the court is inclined to deem this matter to be a contested matter and CONTINUE IN PART this motion pending the outcome of an evidentiary hearing. 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 evidentiary hearing on the value of the Hummer.

With respect to the Toyota, Boat, and Trailer, Debtor has not offered any alternate valuations besides those scheduled. If sold for their scheduled or speculated values, the sales would generate \$4,175.00 for the Toyota and between \$137.50 and \$4,600.00 for the Boat and Trailer. The sale of both could result in proceeds to the estate for unsecured claims.

The opposition says that "[m]any Hispanic debtors traditionally hold the title to automobiles and houses for relatives because of credit reasons, immigration status, lack of social security card, etc." Doc. #27, citing *Johnson v. Johnson*, 192 Cal. App. 3d 551 (1987) & *Siegel v. Boston (In re Sale Guaranty Corp.)*, 220 B.R. 660 (B.A.P. 9th Cir. 1998). The opposition cites to Debtor's declaration in support, but such tradition or custom is not discussed there. Doc. #29.

The Toyota, Boat, and Trailer could be of consequential value and benefit to the estate. However, Debtor says that these items belong to his brother, Ivan or Joel Nunez, and Debtor no longer speaks with him. No evidence of this transfer has been presented. The court is inclined to GRANT IN PART the motion and require Debtor to deliver to Trustee within seven days either: (1) the Toyota, Boat, and Trailer, or (2) evidence of the transfer of the Toyota, Boat, and Trailer. If Debtor submits evidence that the Toyota, Boat, and Trailer have been transferred to a third party, then Trustee will be required to initiate an adversary proceeding to pursue these items further. Fed. R. Bankr. P. 7001(1).

CONCLUSION

For the reasons stated above, Debtor's objection to Trustee's declaration will be OVERRULED IN PART with respect to Trustee's opinion of value due to his experience as a chapter 7 trustee, but it will also be SUSTAINED IN PART as to the hearsay valuation of Auctioneer. Further, the court intends to GRANT IN PART this motion with respect to the Toyota, Boat, and Trailer. Within seven days of entry of the order on this motion, Debtor shall turnover to Trustee either (1) the Toyota, Boat, and Trailer, or (2) evidence of the transfer of the Toyota, Boat, and Trailer. The court intends to CONTINUE the motion as to the Hummer and set an early evidentiary hearing.

Based on the record, the only outstanding factual issue appears to be:

1. The value of the Hummer.

The only legal issue appears to be

1. Whether Trustee has met his burden that the Hummer is of consequential value and benefit to the estate.

13. [22-11183](#)-B-7 **IN RE: AGUSTIN RANGEL**
[JES-1](#)

MOTION FOR TURNOVER OF PROPERTY AND/OR MOTION TO EXTEND
AUTOMATIC STAY
10-3-2022 [\[14\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

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

Chapter 7 trustee James E. Salven ("Trustee") moves for an order (i) directing Agustin Cortes Rangel ("Debtor") to turnover within two days to the estate's auctioneer, Baird Auctions & Appraisals ("Auctioneer"), the 2019 Chevy Colorado ("Vehicle") listed in the schedules; (ii) to the extent that the Vehicle is collateral for a debt, determining 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 Debtor is required to surrender the Vehicle; and (iii) extending the automatic stay through January 31, 2022. Doc. #14.

Secured creditor Golden 1 Credit ("Creditor") and Debtor timely filed separate oppositions. Docs. ##21-29. The Debtor's opposition included declarations, exhibits, and objection to Trustee's evidence.

This matter will be called and proceed as scheduled. The court is inclined to DENY WITHOUT PREJUDICE this motion.

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 U.S. Trustee, or any other party in interest except Debtor and Creditor to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Debtor 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).

BACKGROUND

Debtor filed chapter 7 bankruptcy on July 11, 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 18, 2022. Doc. #6; docket generally. In the course of administering the estate, Trustee investigated Debtor's assets. Among those assets is the Vehicle, which was listed in the schedules as follows:

Mileage	48,000
Value	\$20,642.00
Lien	\$20,938.62
Exemption	\$0.00
Net Value	(\$296.62)

Doc. #1, *Scheds. A/B, C, D*. The schedules say that the Vehicle is in fair condition. Debtor did not exempt the Vehicle, but it was encumbered by Creditor in the amount of \$20,938.62 on the petition date. On this basis, Debtor alleges in the schedules that the vehicle is undersecured.

The court notes that, as of this writing, Creditor has not filed a Proof of Claim in this case. However, Karl Williams, Creditor's Litigation Specialist, declares that the current payoff on its claim is \$18,673.29, but if repossession fees and estimated expenses are included, the payoff would be approximately \$20,797.00. Doc. #22.

Debtor's *Statement of Intention* indicates that he intends to retain the Vehicle and enter into a reaffirmation agreement. Doc. #1. However, Debtor did not enter into a reaffirmation agreements with Creditor. Debtor's discharge was entered on October 25, 2022. Doc. #20. A reaffirmation agreement with Creditor is now untimely.

Trustee has demanded the turnover of the Vehicle, which resulted in the continuing the 341 Meeting of Creditors at least three separate times. Since Debtor refused to turnover the Vehicle, the Trustee filed the instant motion. Doc. #14. Debtor wishes to contest the turnover and sale of the Vehicle. Doc. #25.

DISCUSSION

Debtor's Objections

As part of the opposition, Debtor objects to Trustee's declaration opining on the values of the Vehicle because he is not an expert witness qualified to testify on the sales prices of automobiles at an auction. Doc. #32. That objection is arguable given the court's knowledge of Trustee Salven's experience as a bankruptcy trustee. Debtors also object to Trustee's reliance on conversations with Auctioneer as hearsay. The first objection will be OVERRULED since as

applied here, Trustee's statement goes to weight. The hearsay objection will be SUSTAINED under Fed. R. Evid. 801-03. Though Trustee Salven has a great deal of experience as a trustee and generally can testify about auction prices, as applied here, the Auctioneer's statement about the Vehicles in question are hearsay.

Turnover

Under 11 U.S.C. § 541(a), Debtor created a bankruptcy estate on July 11, 2022. The estate "is comprised of all of the following property, wherever located and by whomever held: . . . all legal or equitable interests of the debtor in property as of the commencement of the case." § 541(a)(1).

As trustee of the bankruptcy estate, Trustee has a duty to "collect and reduce to money the property of the estate . . . and close such estate as expeditiously as is compatible with the best interests of parties in interest." § 704. In furtherance of those duties, a bankruptcy trustee has the power to use, sell, or lease property of the estate under § 363. The trustee is empowered by § 542(a) to compel the debtors to "deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." § 542(a); *In re Gerwer*, 898 F.2d 730, 733 (9th Cir. 1990).

In the Ninth Circuit, the Trustee must prove by a preponderance of the evidence that the estate is entitled to turnover. *Wolfe v. Jacobsen* (*In re Jacobsen*), 676 F. 3d 1193, 1201 (9th Cir. 2012).

Trustee requests an order requiring Debtor to turnover the Vehicle because Auctioneer has investigated the Vehicle and determined in its current condition that it has a retail value of \$31,000.00 and estimated sales value of \$28,000.00. Doc. #16. As a result, Trustee believes that the sales of the Vehicle will net in excess of \$3,000 after payment of Creditor's secured claim. Doc. #14. However, Auctioneer's statements to Trustee are hearsay. Fed. R. Evid. 801-03.

Creditor opposes this motion because it has a valid first-priority lien over the Vehicle, it has not consented to the sale of the Vehicle, and Debtor is current on payments. Docs. ##21-22. Williams, Creditor's Litigation Specialist, estimates that the value of the Vehicle is \$21,147.00 based on Kelley Blue Book, and it is owed \$18,673.29. Doc. #22. However, Williams is not an expert and cannot rely on Kelley Blue Book a reliable method of determining the vehicles value. See Fed. R. Evid. 702;

Debtor opposes. Doc. #24. Debtor says the reason he has not turned over the Vehicle is because it is his sole transportation, he needs it for transporting his grandchild to school, and to get to work. Doc. #25.

Debtor's declaration estimates the fair market value of the Vehicle to be approximately \$20,000.00. *Id.* As its owner, Debtor is competent to testify as to the value of the Vehicle. *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004), cert denied, 543 U.S. 1021 (2004).

Debtor also included the expert declaration of Angel Garcia, the manager of Freeway Motors who has been employed there for 10 years. Doc. #27. Garcia, or his father-in-law who owns the business, attends automobile auctions to stock their inventory approximately three times per week. *Id.* Garcia declares that an auction sale would draw bids of no more than \$21,000 for the Vehicle. This valuation is based on Garcia's experience, through looking up the specifications of the Vehicle and its accessories using its license plate, considering the mileage and condition of the Vehicle, and researching the prices listed on Kelley Blue Book. *Id.* Although Kelley Blue Book may be used as a starting place for determining automobile valuations, such methods are less reliable for determining whether the Vehicle is of consequential value and benefit to the estate. *In re DaRosa*, 442 B.R. 173, 175 (Bankr. D. Mass. 2010); *Young v. Camelot Homes, Inc. (In re Young)*, 390 B.R. 480, 493 (Bankr. D. Me. 2008) ("[B]ecause [the debtor] used Kelley trade-in listings as the starting point of his analysis, his opinions will not be taken as convincing evidence of replacement value."). Mr. Garcia has not inspected the Vehicle.

Debtor also included the declaration of Kathy Alvaraz, an employee of Debtor's attorney. Doc. #26. However, this declaration relates to the meeting of creditors for Ricardo Gil, Case No. 22-11181, which is the subject of matters #10-11. Ms. Alcaraz's testimony does not appear to be relevant to this case.

The value of the Vehicle is in dispute. If it sold for \$20,000, \$21,000 or \$28,000, the sale could be illustrated as follows:

Sale price	\$20,000.00	\$21,000.00	\$28,000.00
<i>Buyer's premium (10%)</i>	\$2,000.00	\$2,100.00	\$2,800.00
<i>Buyer pays</i>	\$22,000.00	\$23,100.00	\$30,800.00
Auctioneer's commission (15%)	\$3,000.00	\$3,150.00	\$4,200.00
Expenses	\$500.00	\$500.00	\$500.00
Creditor's security interest	\$18,673.29	\$18,673.29	\$18,673.29
Estimated net proceeds	(\$2,173.29)	(\$1,323.29)	\$4,626.71

It is conceivable that the sale of the Vehicle could provide liquidity to the estate, but such liquidity may be *de minimis*. Trustee believes that using the auction process to sell the Vehicle will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #16. Based on Trustee's experience, this could 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.*

If Debtor had exempted any equity in the Vehicle, Debtor would have been paid the exempted amount from the net proceeds before liquidity would become available to unsecured claims, which would decrease the likelihood that of Vehicle being of consequential value and benefit to the estate.

Debtor's, Trustee's, and Creditor's submitted valuations are speculative, and it is impossible to know the ultimate auction sale price of Vehicle until such auction actually occurs. Trustee does have a duty to liquidate and distribute the non-exempt, unencumbered equity in the Vehicle, which may or may not exist depending on the outcome of the sale. Trustee's business judgment is that there is liquidity available in the Vehicle that could be sold at public auction.

Although Debtor has no equity interest in Vehicle, Creditor does have a significant security interest in Vehicle. Creditor does not consent to the sale of its Vehicle. Based on Creditor's lack of consent and the speculative evidence of Vehicle's value, the court is inclined to find that the Trustee has failed to prove that it is of consequential value and benefit to the estate.

Extension of Automatic Stay

Trustee also requests a determination under § 521(a)(6) and (a)(*) (the hanging paragraph) that Vehicle, to the extent they are collateral for a debt, is of consequential value to the estate, the secured creditor is adequately protected because it will be paid in full once the Vehicle are sold at public auction, and order the Debtor to deliver the Vehicle to the Trustee. Delivery and turnover of the Vehicle has already been discussed above.

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, the *Statement of Intention* provides that Debtor intends to retain the Vehicle and enter into a reaffirmation agreement. Doc. #1. However, Debtor has not entered into a reaffirmation agreement with Creditor within 45 days of the first meeting of creditors (August 18, 2022), which was October 2, 2022. Since October 2, 2022 was a Sunday, the deadline is extended to Monday, October 3, 2022 under Fed. R. Bankr. P. 9006(a)(1)(C).

Although Trustee timely filed this motion before expiration of the 45-day deadline on October 3, 2022, Creditor does not consent to extension of the automatic stay and disputes whether the Vehicle is of consequential value and benefit to the estate.

Further, Trustee has not alleged any grounds for selling the Vehicle free and clear of liens and interests under 11 U.S.C. § 363(f), such as a *bona fide* dispute, or any other reason.

For the reasons stated above, the court intends to DENY WITHOUT PREJUDICE Trustee's request for extension of the automatic stay.

CONCLUSION

This matter will be called and proceed as scheduled. Debtor's objection to Trustee's declaration will be OVERRULED IN PART with respect to Trustee's opinion of value due to his experience as a chapter 7 trustee, which goes to weight of the testimony, but it will be SUSTAINED IN PART as to the hearsay valuation of Auctioneer.

The court intends to DENY WITHOUT PREJUDICE the motion as to the request for turnover of the Vehicle, and for extension of the automatic stay to the Vehicle because Creditor does not consent to its sale.

14. [22-11488](#)-B-7 **IN RE: ROGER HERNANDEZ**
[BDB-1](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
10-14-2022 [\[18\]](#)

BENNY BARCO/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.

Roger Hernandez ("Debtor") seeks to convert this case from chapter 7 to chapter 13 under 11 U.S.C. § 706(a). Doc. #18.

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 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. § 706(a) allows a debtor in chapter 7 to convert to chapter 13 "at any time," unless the case was previously converted to chapter 7 from another chapter.

The Supreme Court in *Marrama v. Citizens Bank*, 549 U.S. 365, 371-72 (2007), held that a debtor does not have an absolute right to convert a chapter 13 under § 706, but also must be eligible to be a debtor under chapter 13. The Supreme Court stated, "[i]n practical effect, a ruling that an individual's Chapter 13 case should be dismissed or converted to Chapter 7 because of prepetition bad-faith conduct, including fraudulent acts committed in an earlier Chapter 7 proceeding, is tantamount to a ruling that the individual does not qualify as a debtor under Chapter 13." Therefore, the court must find that Debtor is eligible to be a debtor under chapter 13 such that the case would not be converted or dismissed under 11 U.S.C. § 1307(c).

11 U.S.C. § 109(e) sets forth the eligibility requirements for Chapter 13 relief. According to the schedules and summary of assets and liabilities, Debtor falls within the limits for total debts. Doc. #1. The question then is whether Debtor has regular income. *Amended Schedule I* indicates that Debtor has worked for 3 months as a Field Safety Observer with AERI in Sacramento, California. Doc. #17. Through this, Debtor earns \$7,386.94 in monthly income and incurs \$5,874.00 in monthly expenses, leaving a monthly net income of \$1,549.94 per month. *Id.* Debtor's regular monthly net income suggests he may be able to propose and complete a chapter 13 plan.

Debtor declares and asserts that there is sufficient disposable income to pay creditors under a chapter 13 plan. Doc. #20. Further, Debtor declares that he is eligible for relief under chapter 13 in all respects and requests conversion in good faith. *Id.*

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

In the absence of opposition, this motion will be GRANTED. The court will find that this case has not been previously converted to chapter 7 from another chapter and appears to be eligible to be a debtor under chapter 13 in conformance with 11 U.S.C. §§ 101, 109, and 1328(f) such that the case should not be immediately converted or dismissed under § 1307(c).