

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, December 1, 2021
Place: Department A – Courtroom #11
Fresno, California

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

1. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-28](#)

MOTION TO SELL FREE AND CLEAR OF LIENS
11-3-2021 [[788](#)]

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

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED.

The motion was resolved at a hearing on November 17, 2021. Order, Doc. #838.

2. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-29](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
11-10-2021 [[821](#)]

LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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.

The Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtors and debtors in possession Eduardo Zavala Garcia and Amalia Perez Garcia (collectively, "DIP"), requests allowance of interim compensation in the amount of \$5,282.50 and reimbursement for expenses in the amount of \$436.70 for services rendered from October 1, 2021 through October 31, 2021. Doc. #821.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a professional person. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order,

Doc. #33. In determining the amount of reasonable compensation to be awarded to counsel, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing general case administration; (2) working with DIP and real estate broker to sell 480 acres of real property identified as the "Hacienda 1 Ranch" and "Hacienda West Ranch"; (3) consulting with DIP regarding chapter 11 financing options; (4) preparing and prosecuting fee and employment applications; (5) advising DIP and accountant regarding tax issues; and (6) assisting DIP and special counsel in prosecuting objections to allowance of claims. Decl. of Leonard K. Welsh, Doc. #825; Ex. B, Doc. #823. DIP reviewed the compensation application and has no objections to the court granting this motion. Doc. #824. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$5,282.50 and reimbursement of expenses in the amount of \$436.70. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

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

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
7-22-2021 [\[1\]](#)

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Continued to December 15, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

On November 15, 2021, the court issued an order continuing the hearing on the motion to confirm the chapter 11 plan to December 15, 2021 at 9:30 a.m. (matter #4 below) Doc. #93. Therefore, this status conference will be continued to coincide with the hearing on the motion to confirm the chapter 11 plan.

4. [21-11814](#)-A-11 **IN RE: MARK FORREST**
[LKW-6](#)

MOTION TO CONFIRM CHAPTER 11 PLAN
10-19-2021 [\[66\]](#)

MARK FORREST/MV
LEONARD WELSH/ATTY. FOR DBT.
CONT'D 12/15/21, ORDER DOC. # 93

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

DISPOSITION: Continued to December 15, 2021 at 9:30 a.m.

NO ORDER REQUIRED.

On November 15, 2021, the court issued an order continuing the hearing on the motion to confirm the chapter 11 plan to December 15, 2021 at 9:30 a.m. Doc. #93.

5. [21-11814](#)-A-11 **IN RE: MARK FORREST**
[LKW-7](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
11-10-2021 [\[83\]](#)

LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and 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.

The Law Offices of Leonard K. Welsh ("Movant"), counsel for the debtor and debtor in possession Mark Alan Forrest ("DIP"), requests allowance of interim compensation in the amount of \$9,597.50 and reimbursement for expenses in the amount of \$222.53 for services rendered from September 1, 2021 through October 31, 2021. Doc. #83.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a professional person. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order,

Doc. #33. In determining the amount of reasonable compensation to be awarded to counsel, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) providing general case administration; (2) advising DIP on duties in chapter 11 and assisting with monthly operating reports; (3) consulting with DIP regarding filed claims; (4) preparing and prosecuting fee and employment applications; (5) preparing and filing DIP's plan of reorganization; and (6) conferring with creditors and the subchapter V trustee to further plan confirmation. Decl. of Leonard K. Welsh, Doc. #86; Ex. B, Doc. #87. DIP reviewed the compensation application and has no objection to the court granting this motion. Doc. #85. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$9,597.50 and reimbursement of expenses in the amount of \$222.53. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. DIP is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

6. [21-12348](#)-A-11 **IN RE: JUAREZ BROTHERS INVESTMENTS, LLC**
[IJL-1](#)

MOTION TO EMPLOY IGNACIO J. LAZO AS ATTORNEY(S)
10-29-2021 [26]

JUAREZ BROTHERS INVESTMENTS, LLC/MV
IGNACIO LAZO/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted as of October 5, 2021 and only if the moving party affirmatively waives any amount owed by the debtor for pre-petition services.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

Juarez Brothers Investments LLC ("DIP"), the debtor and debtor in possession in this chapter 11 case, moves the court for authorization to employ Ignacio J.

Lazo (the "Professional") of the law firm Cadden & Fuller LLP (the "Firm") as general bankruptcy counsel. Doc. #26. DIP filed the bankruptcy petition on October 5, 2021 and asks the court to approve employment effective October 1, 2021 "because that is the date on which the Debtor first requested that [the Firm] render legal services on behalf of the Debtor, in connection with this chapter 11 bankruptcy case. The Professional and the Firm have been actively advising the Debtor since that date." DIP's Mot. 3:3-7, Doc. #26. For the purposes of this application, Professional and the Firm will be referred to jointly as "Professionals."

The filing of a voluntary chapter 11 petition creates the bankruptcy estate. 11 U.S.C. § 541(a). The debtor in possession is a representative of the estate. 11 U.S.C. §§ 1107, 323(a). The Bankruptcy Code allows the debtor in possession to employ attorneys "that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor in possession.]" 11 U.S.C. § 327(a).

The bankruptcy petition was filed October 5, 2021. Doc. #1. DIP requests authorization to employ Professionals effective October 1, 2021. Doc. #26. Neither DIP nor Professionals cite to any legal authority, and the court is not aware of any legal authority, that would enable this court to authorize employment of general bankruptcy counsel for a chapter 11 debtor in possession under 11 U.S.C. § 327 prior to the filing of the bankruptcy petition and the creation of the bankruptcy estate. If the court chooses to authorize Professionals' employment, such authorization will only be effective as of October 5, 2021.

Section 327 of the Bankruptcy Code governs the employment of an attorney for the debtor in possession in a chapter 11 case and requires court approval for the attorney's employment. 11 U.S.C. § 327(a); Kun v. Mansdorf (In re Woodcraft Studios), 464 B.R. 1, 6 (N.D. Cal. 2011). "Under § 327, an attorney for a debtor cannot 'hold or represent an interest adverse to the estate'; he or she must be a 'disinterested person.'" Id. at 7 (quoting 11 U.S.C. § 327(a)). Any creditor of the estate is not a disinterested person, and a creditor includes any entity that has a right to payment against the debtor that arose before the filing of the bankruptcy petition. Id.; 11 U.S.C. § 101(10), (14).

It is unclear whether DIP owes Professionals for services rendered from October 1, 2021 through October 4, 2021. The application states that Professionals have been actively advising DIP since October 1, 2021, but there is no indication that DIP has paid Professionals for pre-petition services rendered. To the extent Professionals are owed for pre-petition services and do not affirmatively waive that debt, Professionals are not disinterested and are not eligible to be employed by DIP pursuant to § 327.

Accordingly, the application to employ Professionals will be GRANTED effective as of October 5, 2021 only if Professionals affirmatively waive any amount owed to Professionals by the debtor for unpaid pre-petition services.

7. [20-12258](#)-A-11 **IN RE: JARED/SARAH WATTS**
[JWC-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-26-2021 [[260](#)]

BMO HARRIS BANK N.A./MV
LEONARD WELSH/ATTY. FOR DBT.
CHRISTOPHER CROWELL/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

1. [21-12014-A-7](#) **IN RE: YADWINDER SINGH**
[JES-1](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-18-2021 [\[20\]](#)

JAMES SALVEN/MV
JERRY LOWE/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Overruled.

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

This objection to the debtor's claim of exemption was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtor timely filed written opposition on November 16, 2021. Doc. #29. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the sustaining the objection to the debtor's claim of exemption. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

James E. Salven ("Trustee"), the chapter 7 trustee in the bankruptcy case of Yadwinder Singh ("Debtor"), objects to Debtor's claim of exemptions under California Code of Civil Procedure ("C.C.P.") § 704.010 et seq. Tr.'s Obj., Doc. #20; see Am. Schedule C, Doc. #7. On September 23, 2021, Debtor filed a document titled "Spousal Waiver of Right to Claim Exemptions Pursuant to C.C.P. § 703.140(a)(2)" (the "Waiver"). Doc. #14. Trustee contends that the Waiver prohibits Debtor from claiming anything other than exemptions under C.C.P. § 703.140. Debtor contends first that the Waiver is not effective and, in the event the Waiver is effective, that Debtor should be able to withdraw the Waiver. Doc. #29.

California has opted out of the federal system and the validity of exemptions are controlled by California law. Cal. Civ. Proc. Code ("C.C.P.") § 703.130; Phillips v. Gilman (In re Gilman), 887 F.3d 956, 964 (9th Cir. 2018); Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). "A California debtor in bankruptcy must elect between two sets of exemptions under California law, one which applies to debtors generally and the other which applies to debtors in bankruptcy." Wolfson v. Watts (In re Watts), 298 F.3d 1077, 1080 (9th Cir. 2002); C.C.P. § 703.140(a).

Under C.C.P. § 703.140(a), a married bankruptcy debtor who does not file bankruptcy with the debtor's spouse "may not claim the special bankruptcy exemptions of section 703.140(b) unless both spouses effectively waive in writing the right to claim, during the pendency of the debtor's bankruptcy case," the exemptions provided under C.C.P. § 704.010 et seq. In re Geisenheimer, 530 B.R. 747, 750 (Bankr. E.D. Cal. 2015).

"A waiver under section 703.140(a)(2) has three elements: (1) both the bankruptcy debtor and the non-filing spouse must waive the right to claim the regular exemptions; (2) each waiver must be effective; and (3) the waiver must arise from a written instrument." In re Gomez, 530 B.R. 751, 756-57 (Bankr. E.D. Cal. 2015) (citing Geisenheimer, 530 B.R. at 750). An effective waiver "is the intentional relinquishment of a known right after knowledge of the facts." Geisenheimer, 530 B.R. at 750.

Debtor first argues that the Waiver was not effective. The court is inclined to agree because the Waiver does not satisfy the waiver requirements set out in Gomez and Geisenheimer. The Waiver was signed by Debtor Yadwinder Singh and Debtor's non-filing spouse Geetinder Kaur and arises from a written instrument. Doc. #14. However, the Waiver was not effective because the evidence demonstrates that Debtor did not understand the impact of the Waiver and did not intend to relinquish a legal right. Debtor Yadwinder Singh testifies that he never intended to waive his homestead exemption. Singh Decl., Doc. #30. Debtor signed the Waiver after his attorney's assistant asked him to sign it but never intended to change his exemptions. Id. Debtor's counsel did not advise Debtor to file the Waiver and only became aware of the Waiver at the meeting of creditors held on September 27, 2021. Id. Debtor filed the Waiver on September 23, 2021, and Debtor's counsel sought to withdraw the Waiver on September 28, 2021, stating that the Waiver was mistakenly filed. Doc. #16. Debtor never amended his Schedule C exemptions to conform with the Waiver. See Am. Schedule C, Doc. #7.

Accordingly, the court is inclined to find the Waiver ineffective. However, even if the Waiver were effective, the court would allow Debtor to withdraw the Waiver pursuant to Federal Rule of Civil Procedure ("Civil Rule") 60(b).

"Unlike the substantive nature of the statutory waiver provision under section 703.140(a)(2), the method of requesting relief from a waiver executed pursuant to that provision is procedural [citation omitted] and is governed by federal law." Gomez, 530 B.R. at 757. Civil Rule 60(b) allows the court to relieve a party from a proceeding for "mistake, inadvertence, surprise, or excusable neglect[.]" Civil Rule 60(b)(1); Gomez, 530 B.R. at 757. The court should also consider prejudice to the opposing party. Gomez, 530 B.R. at 758.

Here, Debtor filed the Waiver on September 23, 2021, and Debtor's counsel sought to withdraw the Waiver on September 28, 2021, stating that the Waiver was mistakenly filed. Doc. #16. Debtor's counsel testifies that a legal assistant asked Debtor to complete the Waiver and filed the Waiver with the court. Decl. of Jerry L. Lowe, Doc. #32. The legal assistant is new in the office and was trying to be helpful. Id. Debtor's counsel did not advise Debtor to file the Waiver and only became aware of the Waiver at the meeting of creditors held on September 27, 2021. Id. Immediately after the meeting of creditors, Debtor and Debtor's counsel agreed to file a withdrawal of the Waiver. Id. Debtor's counsel accepts responsibility for documents filed with the court and admits error in allowing the Waiver to be filed. Id. It does not appear that Trustee will suffer any prejudice in allowing Debtor's claimed exemptions to stand.

Accordingly, the court is inclined to OVERRULE Trustee's objection. The Waiver is ineffective.

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-22-2021 [\[24\]](#)

BANK OF THE OZARKS/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.
NON-OPPOSITION

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

DISPOSITION: Granted.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). On November 2, 2021, counsel for the debtor filed written non-opposition. Doc. #34. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Bank of the Ozarks ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2019 Jayco 321RSTS ("Vehicle"). Doc. #24. The debtor does not oppose the motion. Doc. #34

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 any 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 the debtor has failed to make at least two complete pre- and post-petition payments. Movant has produced evidence that the debtor is delinquent by at least \$1,122.00 including late charges of \$27.36. Doc. #26.

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 the debtor is in chapter 7. The Vehicle is valued at \$47,450.00 and the debtor owes \$68,048.40. Doc. #26.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit 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. According to the debtor's Statement of Intention, the Vehicle will be surrendered. Doc. #1.

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

3. [19-11430](#)-A-7 **IN RE: VINCENT/CAROL HERNANDEZ**
[THA-1](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH
CAROL COLMENERO HERNANDEZ, CRYSTAL MARIE PLASCENCIA AND OSCAR RIOS
10-21-2021 [\[28\]](#)

JAMES SALVEN/MV
GABRIEL WADDELL/ATTY. FOR DBT.
IRMA EDMONDS/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Vincent Hernandez and Carol Colmenero Hernandez ("Debtor") (together, "Debtors"), moves the court for an order, pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of claims and disputes against Trustee, Debtor, Crystal Marie Plasencia ("Plasencia"), and Oscar Rios ("Rios") arising in Adversary Proceeding No. 20-1055 (the "Adversary Proceeding"). Doc. #28; Ex. A, Doc. #31.

Trustee commenced the Adversary Proceeding on August 27, 2020, seeking a judgment authorizing Trustee to sell co-owned real property pursuant to 11 U.S.C. § 363(h). Trustee Decl., Doc. #30. The real property subject of the Adversary Proceeding is generally described as 1952 S. Woodrow, Fresno, CA 93702 (the "Property"). *Id.* The Property has been Plasencia's home for years and is owned one-half by Debtor, one-quarter by Plasencia and one-quarter by

Rios. Trustee Decl., Doc. #30. Debtors valued the Property at \$158,000 in their bankruptcy schedules. Sched. A/B, Doc. #1.

Debtor's default in the Adversary Proceeding was entered on November 4, 2020. Trustee Decl., Doc. #30. The remaining defendants filed answers in the Adversary Proceeding and discovery is largely completed. Id. Trustee, Plasencia, and Rios have agreed to settle the claims of the bankruptcy estate asserted in the Adversary Proceeding for a payment to Trustee of \$80,000 in exchange for Trustee dismissing the Adversary Proceeding. Doc. #30. Upon receipt of the \$80,000, Trustee will be able to satisfy all claims and costs of administration of Debtors' bankruptcy case in full. Id.

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

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #30. The proposed settlement allows for payment in full of all claims and costs of administration of Debtors' bankruptcy case. Tr.'s Decl., Doc. #30. In return, Trustee will move to dismiss the Adversary Proceeding. Ex. A, Doc. #31. Settlement will avoid the unnecessary expenses of litigation, will resolve the Adversary Proceeding, and will provide the most expeditious payment to creditors. Doc. #30. Trustee believes in his business judgment that the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Doc. #30. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

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

Accordingly, the motion is GRANTED, and the settlement of claims arising in the Adversary Proceeding is approved.

This ruling is not authorizing the payment of any fees or costs associated with the litigation.

MOTION TO EMPLOY BAIRD AUCTION & APPRAISAL AS AUCTIONEER(S)
10-28-2021 [\[19\]](#)

IRMA EDMONDS/MV
MATTHEW GRECH/ATTY. FOR DBT.
IRMA EDMONDS/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Irma Edmonds ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Jose Luis Flores and Cyntia S. Flores (together, "Debtors"), moves the court for an order authorizing the employment of Baird Auctions & Appraisals ("Auctioneer") to assist in the sale of a 2014 Chevrolet Traverse (the "Property") at public auction. Doc. #19.

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

The court finds that Auctioneer is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Decl. of Jeffrey Baird, Doc. #21. Trustee requires Auctioneer's services to advertise the sale of the Property, assist in storing the Property until sold, and assist in other matters related to the auction sale of the Property. Doc. #19. Trustee has agreed to pay Auctioneer a commission of 20% of the gross sale price and estimated expenses of \$500.00. Doc. #19. Trustee

unambiguously requests pre-approval of payment to Auctioneer pursuant to § 328. Doc. #19; Doc. #21.

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

5. 21-11741-A-7 **IN RE: JOSE/CYNTIA FLORES**
ICE-2

MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR BAIRD AUCTION &
APPRAISAL, AUCTIONEER(S)
10-28-2021 [23]

IRMA EDMONDS/MV
MATTHEW GRECH/ATTY. FOR DBT.
IRMA EDMONDS/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

Irma Edmonds ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Jose Luis Flores and Cyntia S. Flores (together, "Debtors"), moves the court for an order authorizing Baird Auctions & Appraisals ("Auctioneer") to sell a 2014 Chevrolet Traverse VIN 1GNKRGKDXEJ344225 (the "Property") at public auction on or after December 1, 2021 at Auctioneer's location at 1328 N. Sierra Vista, Suite B, Fresno, California and authorizing the estate to pay Auctioneer commission and expenses. Tr.'s Mot., Doc. #23.

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

court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Decl. of Irma Edmonds, Doc. #25. Trustee believes that a sale of the Property at public auction will yield the highest net recovery to the estate. Doc. #25. The proposed sale is made in good faith.

The court will authorize the employment of Auctioneer pursuant to 11 U.S.C. § 328. See, DCN ICE-1, Calendar Matter No. 4 above. Trustee requires Auctioneer's services to advertise the sale of the Property, assist in storing the Property until sold, and assist in other matters related to the auction sale of the Property. Doc. #19. Trustee has agreed to pay Auctioneer a commission of 20% of the gross sale price and estimated expenses of \$500.00. Doc. #19. Trustee unambiguously requested pre-approval of payment to Auctioneer pursuant to § 328. Doc. #19; Doc. #21.

Accordingly, this motion is GRANTED. Trustee's business judgment is reasonable and the proposed sale of the Property at public auction is in the best interests of creditors and the estate. The arrangement between Trustee and Auctioneer is reasonable in this instance. Trustee is authorized to sell the Property on the terms set forth in the motion. Trustee is authorized to pay Auctioneer for services as set forth in the motion.

6. [12-11548](#)-A-7 **IN RE: DANIEL/ELISAVET MERCADO**
[SDM-4](#)

MOTION TO AMEND ORDER GRANTING JUDICIAL LIEN
10-22-2021 [\[40\]](#)

ELISAVET MERCADO/MV
SCOTT MITCHELL/ATTY. FOR DBT.

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

DISPOSITION: Dropped from calendar

ORDER: The court will issue an order.

A duplicate motion to amend the order granting judicial lien was filed on November 11, 2021 (Doc. #53) and is set for hearing on December 21, 2021 at 1:30 p.m. Therefore, this hearing will be dropped from calendar.

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-2-2021 [\[18\]](#)

THE GOLDEN 1 CREDIT UNION/MV
MONICA ROBLES/ATTY. FOR DBT.
NICHOLAS COUCHOT/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

As a procedural matter, the Notice of Hearing filed in connection with this motion does not comply with LBR 9014-1(d)(3)(B)(i), which requires the notice include the names and addresses of persons who must be served with any opposition. The court encourages counsel for the moving party to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.
<http://www.caeb.uscourts.gov/documents/Forms/LocalRules/LocalRules2021.pdf>

The movant, The Golden 1 Credit Union ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) with respect to a 2017 Ford 150 Supercrew Cab ("Vehicle"). Doc. #18.

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).

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least four complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$2,451.64. Doc. ##20, 22.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit 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. According to the debtors' Statement of Intention, the Vehicle will be surrendered. Doc. #1.

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

8. [21-11657](#)-A-7 **IN RE: JOSE DIAZ SERRANO AND SUSANA DIAZ**
[JES-1](#)

MOTION TO EMPLOY BAIRD AUCTIONS & APPRAISALS AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING
PAYMENT OF AUCTIONEER FEES AND EXPENSES
11-1-2021 [\[23\]](#)

JAMES SALVEN/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Jose Diaz Serrano and Susana Diaz (together, "Debtors"), moves the court for an order authorizing (1) the employment of Baird Auctions & Appraisals ("Auctioneer"); (2) the sale of a 2001 Ford F-150 truck VIN 1FTRW07W11KE06648 (the "Property") at public auction on or after December 7, 2021 at Auctioneer's location at 1328 N. Sierra Vista, Suite B, Fresno, California; and (3) the estate to pay Auctioneer commission and expenses. Tr.'s Mot., Doc. #23.

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

court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Decl. of James E. Salven, Doc. #25. Trustee's experience indicates that a sale of the Property at public auction will yield the highest net recovery to the estate. Doc. #25. The proposed sale is made in good faith.

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

The court finds that Auctioneer is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate. Decl. of Jeffrey Baird, Doc. #26. Trustee requires Auctioneer's services to advertise the sale of the Property, assist in storing the Property until sold, and assist in other matters related to the auction sale of the Property. Doc. #25. Trustee has agreed to pay Auctioneer a commission of 15% of the gross sale price and estimated expenses of \$500.00. Doc. #25. Trustee unambiguously requests pre-approval of payment to Auctioneer pursuant to § 328. Doc. #23; Doc. #25.

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

MOTION TO COMPEL ABANDONMENT
11-1-2021 [\[35\]](#)

JUDITH DIMODANA/MV
STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion will be DENIED WITHOUT PREJUDICE.

11 U.S.C. § 554(b) permits the court, on request of a party in interest and after notice and a hearing, to order the trustee to abandon property that is burdensome to the estate or of inconsequential value and benefit to the estate. Vu v. Kendall (In re Vu), 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). To grant a motion to abandon property, the bankruptcy court must find either that the property is (1) burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. Id. (citing In re K.C. Machine & Tool Co., 816 F.2d 238, 245 (6th Cir. 1987)). However, "an order compelling abandonment [under § 554(b)] 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." Id. (quoting K.C. Machine & Tool Co., 816 F.2d at 246).

Here, the debtor contends that the property to be abandoned is of inconsequential value to the estate, evidenced by the exemptions claimed in an amended Schedule C filed on November 1, 2021, the same day as this motion. See Am. Schedule C, Doc. #39.

Federal Rule of Bankruptcy Procedure ("Rule") 4003(b)(1) allows a party in interest to object to a claim of exemption within 30 days after the conclusion of the § 341 meeting of creditors or 30 days after the filing of an amended Schedule C, whichever is later. In this case, an amended Schedule C was filed on November 1, 2021 that, for the first time, asserts exemptions under California Code of Civil Procedure 703.140(b). Am. Schedule C, Doc. #39.

Because parties in interest can still object to the debtor's claimed exemption under Rule 4003, the debtor cannot yet establish that the property is of inconsequential value to the estate. This motion is therefore premature and not ripe for hearing because the debtor cannot satisfy the requirements of 11 U.S.C. § 544(b).

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-18-2021 [\[18\]](#)

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained, the debtors' exemption will be limited to
\$4,850.

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

This objection to the debtors' claim of exemption was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The debtors timely filed written opposition on November 16, 2021. Doc. #23. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the sustaining of the objection to the debtors' claim of exemption. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

James E. Salven ("Trustee"), the chapter 7 trustee in the bankruptcy case of Felipe Ayon Reynoso and Hilda I. Ayon (together, "Debtors"), objects to Debtors' claim of a \$17,450 exemption in Debtors' 2011 Freightliner Cascadia (the "Truck"). Tr.'s Obj., Doc. #18; see Am. Schedule C, Doc. #16. Debtors claim an exemption in the Truck under California Code of Civil Procedure ("C.C.P.") § 704.060, commonly referred to as the tools of the trade exemption. E.g., In re Rawn, 199 B.R. 733 (Bankr. E.D. Cal. 1996). Debtors oppose Trustee's objection.

"[T]he debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under California Code of Civil Procedure § [704.060] and the extent to which the exemption applies." In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); see Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016) (concluding "that where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation.").

Debtors filed their chapter 7 petition on August 16, 2021. At the time of filing, C.C.P. § 704.060 allowed for a debtor to exempt up to \$4,850 in one commercial motor vehicle "reasonably necessary to and actually used by the judgment debtor" to earn a living, or \$9,700 if the commercial motor vehicle was reasonably necessary to and actually used by both the debtor and the debtor's spouse in the same trade. C.C.P. § 704.060(d). "[T]he evident purpose and policy of the exemption is to protect the basic tools and utensils necessary to aid the debtor in continuing in his means of livelihood." Kono v. Meeker, 196 Cal. App. 4th 81, 89 (2011) (citation omitted).

Trustee objects to Debtors' exemption of the Truck on the grounds that Debtors do not use the Truck in the exercise of a trade or business. Doc. #18. To support this objection, Trustee points to Debtors' schedules, which demonstrate that joint debtor Felipe Ayon Reynoso ("Reynoso") was unemployed on the petition date and joint debtor Hilda I. Ayon ("Ayon") worked as a laborer. Schedule I, Doc. #1. Prior to filing the bankruptcy petition, Reynoso used the Truck to operate a freight hauling business as a sole proprietorship. That business closed in 2020. See Statement of Financial Affairs, Doc. #1.

In response, Reynoso testifies that that he used the Truck in both 2019 and 2020, as evidenced by tax returns for those years. Reynoso Decl., Doc. #24; Ex. A, Doc. #25. Reynoso required eye surgery in 2020 that prevented him from driving at night, and hauling jobs were hard to find because COVID-19. Doc. #24. Reynoso contends that he stated that the trucking business was temporarily not operating for these reasons. Id. Reynoso states that he always intended to begin using the Truck again to make a living and has recently been hauling loads for payment using the Truck. Id.; Ex. B, Doc. #25.

Trustee does not point to any specific authority demonstrating that assets temporarily not in use by a sole proprietor at the time of filing the bankruptcy petition do not qualify for the tools of the trade exemption, and it appears from the evidence before the court that the Truck is reasonably necessary to and actually used by Reynoso to earn a livelihood.

However, as Trustee indicates, Debtors are not entitled to claim an exemption of \$17,450. Section 704.060(d)(1) limits the amount of the tools of the trade exemption for a commercial motor vehicle to \$4,850, or \$9,700 if used by the debtor and the debtor's spouse "in the exercise of the same trade, business, or profession by which both earn a livelihood." C.C.P. § 704.060(a)(3), (d)(2). Debtors have not offered any evidence demonstrating that Ayon participates in the freight hauling business. Reynoso's declaration states only that he has been hauling loads with the Truck to make a living, and Debtors' Schedule I states that Ayon is employed by VF Outdoor LLC. Reynoso Decl., Doc. #24; Schedule I, Doc. #1.

The court finds that the Truck is reasonably necessary to and actually used by Reynoso in the exercise of Reynoso's trade and may be exempted under C.C.P. § 704.060. However, the Truck is not used by Ayon in the exercise of the same trade as Reynoso. Therefore, Debtors' exemption in the Truck under C.C.P. § 704.060 will be limited to \$4,850.

Accordingly, this objection SUSTAINED and Debtors' exemption in the Truck under C.C.P. § 704.060 will be limited to \$4,850.