



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
HONORABLE RENÉ LASTRETO II  
Department B – Courtroom #13  
Fresno, California**

**Hearing Date: Tuesday, December 19, 2023**

Unless otherwise ordered, all hearings before Judge Lastreto are simultaneously: (1) **IN PERSON** in Courtroom #13 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [20-10809](#)-B-11     **IN RE: STEPHEN SLOAN**  
[WF-7](#)

MOTION TO SELL  
11-21-2023    [[621](#)]

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

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

DISPOSITION:                    Withdrawn.

No order is required.

On December 14, 2023, the Plan Administrator withdrew this *Motion to Sell*. Accordingly, this motion is WITHDRAWN

2. [19-10423](#)-B-12     **IN RE: KULWINDER SINGH AND BINDER KAUR**  
[FW-9](#)

MOTION FOR ENTRY OF DISCHARGE  
11-17-2023    [[349](#)]

BINDER KAUR/MV  
DAVID JOHNSTON/ATTY. FOR DBT.

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

DISPOSITION:                    Granted.

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

Chapter 12 Debtors Kulwinder Singh and Binder Kaur (collectively "Debtors") move for entry of Chapter 12 discharge pursuant to 11 U.S.C. § 1228(f). Doc. #349.

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). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely

respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

11 U.S.C. § 1228(a) states "as soon as practicable after completion by the debtor of all payments under the plan . . . the court shall grant a discharge of all debts provided for by the plan."

The court finds that debtor has made all payments under the confirmed chapter 12 plan and notes that no opposition has been filed. The court further finds that there is no reasonable cause to believe that 11 U.S.C. § 522(q)(1) may be applicable to the debtor and there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in § 522(q)(1)(A) or liable for a debt of the kind described in § 522(q)(1)(B). In any event, the Debtors aver in the moving papers that they have not claimed homestead exemption exceeding \$160,375.00 and therefore § 522(q) does not apply.

This motion shall be GRANTED. Pursuant to § 1228(a), debtor's discharge shall be entered.

3. [23-11332](#)-B-11     **IN RE: TWILIGHT HAVEN, A CALIFORNIA  
NON-PROFIT CORPORATION**  
[WJH-2](#)

FURTHER HEARING RE: MOTION TO USE CASH COLLATERAL  
6-23-2023    [\[18\]](#)

TWILIGHT HAVEN, A CALIFORNIA  
NON-PROFIT CORPORATION/MV  
RILEY WALTER/ATTY. FOR DBT.

NO RULING.

4. [23-11332](#)-B-11     **IN RE: TWILIGHT HAVEN, A CALIFORNIA**  
NON-PROFIT CORPORATION  
[WJH-21](#)

MOTION FOR ORDER FIXING DEADLINE FOR FILING REQUESTS FOR  
ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSES AND  
DESIGNATING FORM AND MANNER OF NOTICE THEREOF  
11-22-2023    [[332](#)]

TWILIGHT HAVEN, A CALIFORNIA  
NON-PROFIT CORPORATION/MV  
RILEY WALTER/ATTY. FOR DBT.  
OST 11/27/23

TENTATIVE RULING:                      This matter will proceed as scheduled.

DISPOSITION:                              Granted, subject to the modification  
outlined below.

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

Twilight Haven, debtor in the above-styled case ("DIP"), moves the court pursuant to 11 U.S.C. § 503 for an order fixing an administrative bar deadline (i.e., "the Cut-off Date") for any administrative expense requests made in this case for expenses incurred between June 22, 2023, ("the Petition Date") and December 31, 2023. Doc. #332.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and an order shortening time ("OST") (see Docs. ##305, 329) and will proceed as scheduled. The OST reduced the period of notice to permit the hearing to take place on December 19, 2023. Doc. #329. Pursuant to the OST, Debtor was required to give notice to all creditors, Debtor, the Subchapter V Trustee, and the U.S. Trustee's Office via ECF or email, if known, and first-class mail by November 22, 2023. *Id.* Debtor appears to have complied with the OST by serving notice on all requisite parties by that date. Doc. #337.

Hearings conducted on shortened notice are governed by LBR 9014-1(f)(3), and written opposition is not required "[u]nless otherwise ordered." LBR 9014-1(f)(3). In this instance, the OST and the Notice directed that written opposition was required no later than 2 days before the hearing date. Doc. #337. No written responses have been filed and the defaults of all noticed parties are entered.

Nevertheless, this hearing will proceed as scheduled because the court has detected an ambiguity in the filings, specifically that the moving papers generally request a Cut-off Date of December 31, 2023, but in the *Memorandum of Authorities* accompanying the moving papers, DIP appears to request a Cut-off Date of January 31, 2024, in one paragraph. Doc. #336. The court might forgive this as a scrivener's error but for the fact that the court is already

reticent to set a Cut-off Date a mere 10 days after the hearing on the motion.

Accordingly, this matter will be heard as scheduled and, notwithstanding the procedural defaults entered *supra*, the court will entertain arguments from all parties for an appropriate Cut-off Date. Unless persuasive arguments are presented at the hearing, the court is inclined to GRANT the motion but MODIFY it to set a Cut-off Date of January 31, 2024.

5. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**  
NON-PROFIT CORPORATION  
[WJH-25](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WAGNER JONES  
HELSLEY FOR RILEY C. WALTER, DEBTORS ATTORNEY(S)  
11-21-2023 [[309](#)]

RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

Wanger Jones Helsley PC ("Applicant") seeks approval of a first interim allowance of compensation under 11 U.S.C. §§ 330 and 331 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as counsel for Twilight Haven, Debtor-In-Possession in the above-styled case ("Twilight Haven"). Doc. #309. The motion is accompanied by a statement of client approval executed by Kristine Williams, representative of the DIP. Doc. #313.

Applicant was employed to perform services under § 327 of the Code pursuant to an order of this court dated July 14, 2023. Doc. #96. Applicant seeks \$184,605.00 in fees based on 509.90 billable hours and \$7,569.38 in expenses from April 25, 2023, through November 15, 2023, for a total interim compensation award of \$192,174.38. Doc. #309. This is reflected in the following chart:

Professional	Hours	Rate	Amount
West, Benjamin	2.60	\$257.00	\$715.00
Bethel, Danielle J.	0.40	\$0.00	\$0.00
Bethel, Danielle J.	90.30	\$325.00	\$29,347.50
Castro, Hunter C.	0.30	\$0.00	\$0.00
Quinn, Ian J.	90.70	\$325.00	\$29,477.50
Helsley, Michael S.	0.50	\$0.00	\$0.00
Walter, Riley C.	1.70	\$0.00	\$0.00

Walter, Riley C.	186.50	\$550.00	\$102,575.00
Ravizza, Hannah L.	0.50	\$0.00	\$0.00
Ravizza, Hannah L.	11.30	\$220.0	\$2,486.00
Summers, April J	3.80	\$0.00	\$0.00
Summers, April J	1.20	\$70.00	\$84.00
Medina, Nicole A.	0.50	\$0.00	\$0.00
Medina, Nicole A.	5.20	\$0.00	\$0.00
Medina, Nicole A.	0.40	\$170.00	\$0.00
Medina, Nicole A.	87.00	\$170.00	\$14,790.00
Medina, Nicole A.	27.00	\$190.00	\$5,130.00
<b>Total</b>	<b>509.9</b>		<b>\$184,605.00</b>

Doc. #312.

Applicant also incurred **\$7,569.38** in expenses as follows:

<b>Type of Expense</b>	<b>Amount</b>
Postage	\$1,791.70
Reproduction	\$3,296.40
FedEx	\$35.66
Electronic Research	\$196.50
Filing Fees	\$2,088.00
Telephone Charges	\$36.00
Mileage	\$16.12
Recording Fee	\$109.00
<b>Total</b>	<b>\$7,569.38</b>

*Id.*

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3). The previous interim compensation awards under 11 U.S.C. § 331 are subject to final review under § 330.

Applicant's services here included, without limitation: (1) work pertaining to the assumption or rejection of Twilight Haven's leases and contracts, (2) case administration, (3) claims administration and objections, (4) work pertaining to estate and business operations, (5) fee and employment applications, (6) work on financing, (7) litigation and other contested matters, (8) work on the plan, (9) work pertaining to stay relief and adequate protection, and (10) work pertaining to sales and transfers. Doc. #309. The court finds the services and expenses reasonable, actual, and necessary. The DIP representative declares that she has reviewed the Application and approves. Doc. #313.





Applicant was employed by the Trustee to perform accounting services under § 327 of the Code pursuant to an order of this court dated July 14, 2023. Doc. #97. Applicant seeks \$6,766.00 in fees based on 25.9 billable hours and \$0.00 in expenses from June 22, 2023, through November 17, 2023, for a total interim compensation award of \$6,766.00, as outlined by the following chart:

Professional	Hours	Rate	Amount
Roland Roos, CPA.	24.4	\$265.00	\$6,466.00
Heidi Roos, Accountant	.50	\$210.00	\$105.50
Gary Ohanian, Accountant	1.0	\$195.00	\$195.00
<b>Total</b>	<b>25.9</b>		<b>\$6,766.50</b>

Doc. #315. Applicant does not seek compensation for expenses incurred. *Id.*

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3). The previous interim compensation awards under 11 U.S.C. § 331 are subject to final review under § 330.

Applicant's services here included, without limitation: (1) general accounting services, and (2) tax preparation. Docs. ## 315, 318. The court finds the services and expenses reasonable, actual, and necessary. The DIP representative declares that she has reviewed the Application and approves. Doc. #319.

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

No party in interest has responded, and the defaults of all such parties are entered. Accordingly, this motion is GRANTED. The court will approve on an interim basis under 11 U.S.C. §331 compensation

in the amount of **\$6,766.50** in fees and **\$0.00** in expenses. The court grants, on an interim basis, the Application for a total award **\$6,766.50** as an administrative expense of the estate and an order authorizing and directing the DIP to pay such to Applicant from the first available estate funds.

7. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**  
NON-PROFIT CORPORATION  
[WJH-27](#)

MOTION FOR COMPENSATION FOR GREGORY J. SMITH, SPECIAL  
COUNSEL(S)  
11-21-2023 [[321](#)]

GREGORY SMITH/MV  
RILEY WALTER/ATTY. FOR DBT.  
GREGORY SMITH/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

The Law Office of Gregory J. Smith ("Applicant") seeks approval of a first interim allowance of compensation under 11 U.S.C. §§ 330 and 331 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as counsel for Twilight Haven, the Debtor-In-Possession in the above-styled case ("Twilight Haven"). Doc. #321. The motion is accompanied by a statement of client approval executed by Kristine Williams, representative of the DIP. Doc. #325.

Applicant was employed by the Trustee to perform services under § 327 of the Code pursuant to an order of this court dated August 22, 2023. Doc. #356. Applicant seeks \$21,103.50 in fees based on 97.4 billable hours and \$89.36 in expenses from June 22, 2023, through October 31, 2023, for a total interim compensation award of \$21,192.86, as reflected in the following chart:

Professional	Hours	Rate	Amount
Gregory Smith, Attorney	47,30	\$375.00	\$17,737.50
Danielle Luna, Paralegal	20.40	\$165.00	\$3,366.00
<b>Total</b>	<b>67.7</b>		<b>\$21,103.50</b>

Doc. #321. Applicant also incurred **\$89.36** in expenses as follows:

Type of Expense	Amount
Reproduction	\$87.30
Legal Research	\$2.06
<b>Total</b>	<b>\$89.36</b>

*Id.*

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3). The previous interim compensation awards under 11 U.S.C. § 331 are subject to final review under § 330.

Applicant's services here included, without limitation: (1) work ON "general employment matters" and (2) work specific to the Castellanos litigation. Doc. #321. The court finds the services and expenses reasonable, actual, and necessary. The DIP representative declares that she has reviewed the Application and approves. Doc. #325.

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

No party in interest has responded, and the defaults of all such parties are entered. Accordingly, this motion is GRANTED. The court will approve on an interim basis under 11 U.S.C. §331 compensation in the amount of **\$21,103.50** in fees and **\$89.36** in expenses for a total award **\$21,192.86** as an administrative expense of the estate and an order authorizing and directing the DIP to pay such to Applicant from the first available estate funds.

8. [23-12041](#)-B-11 **IN RE: BALJINDER/RITU SINGH**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V  
VOLUNTARY PETITION  
9-13-2023 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

9. [23-12041](#)-B-11 **IN RE: BALJINDER/RITU SINGH**  
[LKW-8](#)

MOTION TO CONFIRM CHAPTER 11 PLAN  
11-7-2023 [[91](#)]

RITU SINGH/MV  
LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

Debtors Baljinder Singh and Ritu Singh ("Debtors") move for confirmation of their *Plan of Reorganization dated November 7, 2023*, ("the Plan") pursuant to 11 U.S.C. §§ 1190 and 1191, the Federal Rules of Bankruptcy Procedure, and the Local Rules of Practice for the United States Bankruptcy Court for the Eastern District of California. Doc. #91. Debtors aver that a copy of the Plan, the motion to confirm, has been properly served on all necessary parties and that the plan satisfies the requirements of §§ 1190 and 1191 and all other applicable rules of law. *Id.*

On November 7, 2023, Debtors transmitted the Plan, motion to confirm, declaration, exhibits, ballots, a Form 006-202 Deadline Order, and a notice of the confirmation hearing to all parties in interest.

On December 12, 2023, Debtors filed a modification to the plan, (Doc. #112), and on December 13, Debtors filed supplemental declarations, a memorandum of points and authorities, and exhibits, and ballot tabulations. Docs. ##113-119.

No party in interest timely filed written opposition to the Plan as it was originally filed on November 7, 2023. On December 12, 2023, Debtors filed a *Modification of Debtors' Plan of Reorganization Dated November 7, 2023, before Confirmation* ("the Modification"). Doc. #112. The modification only alters Section 6.06 of the plan, and the court has reviewed the Modification and determined that it affects no creditors or parties except for the Class Five claim of Farmers Business Network ("FBN"). *Id.* Therefore, the defaults of all parties in interest other than FBN will be entered. The default of FBN may also be entered if the court concludes that the modification is permissible under § 1193 of the Code, which states:

(a) The debtor may modify the plan at any time before confirmation but may not modify the plan so that the plan as modified fails to meet the requirements of section 1222 of this title [11 USCS § 1222].

(b) After the debtor files a modification under this section, the plan as modified becomes the plan.

(c) Any holder of a secured claim that has accepted or rejected the plan is deemed to have accepted or rejected, as the case may be, the plan as modified, unless the modification provides for a change in the rights of such holder from what such rights were under the plan before modification, and such holder changes such holder's previous acceptance or rejection.

11 U.S.C. § 1193.

Here, the only affected creditor is Farmers Business Network ("FBN") which is the sole member of Class V. Doc. #112. The court has reviewed both the original plan and the modification and intends to rule that the modification is permissible under § 1223. FBN did not vote either for acceptance or rejection of the pre-modification plan, and so § 1223(c) does not apply. However, this hearing will proceed as scheduled so that FBN will have opportunity to present arguments and evidence to the contrary.

The court next turns to the issue of confirmation itself.

The Plan appears to comply with 11 U.S.C. § 1190. Specifically, the Plan contains a brief history of Debtor's business operations, a liquidation analysis, and projections evidencing Debtor's ability to make payments as required by 11 U.S.C. § 1190(1). Docs. #95. The Plan also provides for the submission of all or such portion of "Debtor's future income **to the Plan** as is necessary for execution of the Plan" as required by § 1190(2). Plan at 2:1-2, Doc. #72 (emphasis added). The court finds that § 1190(3) is inapplicable here.

#### **Plan Confirmation**

11 U.S.C. § 1191 governs plan confirmation in subchapter V. Under § 1191(a), the court shall confirm a plan if all of the requirements of § 1129(a), other than paragraph (15), are met. However, under § 1191(b), the court shall confirm a plan if all of the requirements of § 1129(a) are met except for paragraphs (8), (10), and (15), and the plan does not discriminate unfairly and is fair and equitable with respect to each impaired class that has not accepted the plan.

Under § 1191(c), a plan is "fair and equitable" if (a) the requirements of § 1129(b)(2)(A) are met, (b) the plan provides for payment of Debtor's projected disposable income for a 3- to 5-year period, and (c) the plan is feasible and provides appropriate remedies to protect the interests of creditors and other parties in interest if plan payments are not made.

Debtors argue that the plan satisfies the requirements of § 1129(a) and should be confirmed on that basis. Doc. #117. As part of that

argument, Debtors take the position that no creditor has either objected to confirmation or returned a ballot rejecting the plan. *Id.* Debtors acknowledge that no ballots at all have been returned either accepting or rejecting the plan from seven of the affected classes, but Debtors assert that those claimants and parties who have not returned a ballot should be deemed as having accepted the plan. *Id.* This is so because the ballots themselves contain conspicuous language stating: "If your ballot is not received by Leonard K. Walsh on or before December 5, 2023, and such deadline is not extended, your vote will count as an acceptance of the plan." Doc. #94.

Debtors rely on *In re Trenton Ridge Inv'rs, LLC*, 461 B.R. 440 (Bankr. S.D. Ohio 2011) and *In re Adelphia Communs. Corp.*, 368 B.R. 140 (Bankr. S.D. NY 2007) for the proposition that a non-voting class is presumed to have accepted a plan. Doc. #117. Both of those cases, in turn, rely on *Heins v. Ruti-Sweetwater (In re Sweetwater)*, which held that a non-voting, non-objecting creditor who is a member of a class that casts no votes is deemed to have accepted the plan of reorganization for the purposes of section 1129(a)(8) and 1129(b). 57 B.R. 748, 750 (D. Utah 1985), *aff'd* 836 F.2d 1263 (10th Cir.1988).

Unfortunately for Debtors, the Ninth Circuit BAP declined to follow *Ruti-Sweetwater* and its progeny in *In re M. Long Arabians*, 103 B.R. 211 (B.A.P. 9th Cir. 1989).

A class has accepted a plan if the plan "has been accepted" by the requisite number and amount of the claims in the class. The holder of a claim must affirmatively accept the plan. Since Bell Road, the only Class C claim holder, did not vote affirmatively to accept the debtor's Plan (since Bell Road failed to obtain a temporary allowance of its claim), Class C could not have voted to accept the Plan. Therefore, the bankruptcy court erred in holding that Class C accepted the Plan.

*In re M. Long Arabians*, 103 B.R. at 215-16 (citations omitted).

In light of *M. Long Arabians*, the court rejects Debtors' arguments for holding that the seven non-voting classes should be deemed to have accepted the plan. Thus, because seven classes did not submit a ballot at all, seven classes did not vote to accept the plan, and the plan cannot satisfy §1129(a)(8), which requires that each impaired class must accept the plan before confirmation under §1191(a) is permissible. To confirm the plan, the Debtors must instead look to § 1129(b), which requires all the § 1129(a) elements except for (8), (10), and (15) be met *and* that the plan does not discriminate unfairly and is fair and equitable with respect to non-accepting impaired classes.

With that, the court turns to the § 1129(a) requirements.

**§ 1129(a) (1)**

The Plan appears to satisfy the requirements of § 1129(a) (1) by complying with the applicable provisions of chapter 11 and meets most of the applicable mandatory provisions of § 1122 and 1123.

**§ 1129(a) (2)**

The Plan appears to comply with the applicable provisions of chapter 11 as required by § 1129(a) (2). Since Debtor is the proponent of the Plan, Debtor is not required to comply with § 1125 before soliciting acceptances unless the court otherwise orders. § 1181(b). The court did not here. Also, even though Debtor modified the plan before confirmation, § 1127 does not apply in subchapter V. § 1181(a). Debtor therefore complied with § 1129(a) (2).

**§ 1129(a) (3)**

A plan is required to be proposed in good faith and not by any means forbidden by law. § 1129(a) (3). A plan is filed in "good faith" if it will achieve a result consistent with the objectives and purposes of the Bankruptcy Code. *In re Stolrow's Inc.*, 84 B.R. 167, 172 (B.A.P. 9th Cir. 1991); *In re Kemp*, 134 B.R. 413, 415 (Bankr. E.D. Cal. 1991) (plan satisfies this requirement if it promotes two primary objectives of chapter 11: (1) resolution of disputes and (2) payment of creditors). Here, the Plan resolves disputes and provides for payment of allowed claims as required by law. The purpose of the Plan is to restructure and repay debts owed to creditors while retaining ownership and possession of the business. The Plan appears to have been proposed in good faith and not by any means forbidden by law.

**§ 1129(a) (4)**

Pursuant to § 1129(a) (4), the Plan provides that payment to holders of allowed administrative claims, including payment of compensation and reimbursement of expenses to professionals, shall be made only after entry of an order by the Bankruptcy Court following notice and a hearing.

**§ 1129(a) (5)**

The Plan provides that Debtors will manage their own financial affairs and implement the Plan after confirmation. Therefore, § 1129(a) (5) is satisfied.

**§ 1129(a) (6)**

Section 1129(a) (6) appears to be inapplicable because no changes in regulatory rates are provided for in the Plan.

**§ 1129(a) (7)**

Section 1129(a) (7) requires each holder of a claim or interest in an impaired class to either accept the Plan or receive an amount equal to or greater than the amount such holder of a claim or interest would receive in a chapter 7 case. Debtor contends the Plan complies with § 1129(a) (7) and the standard set forth in *Kane v. Johns-Manville Corps.*, 843 F.2d 636, 649 (2d Cir. 1988). Doc. #117. Debtors aver that, under the Plan, holders of claims in every impaired class have either accepted the Plan or will be paid an amount equal to or greater than the amount such creditor would receive in liquidation. No creditor has objected to their treatment

under the plan. Per the court's review of the Plan, it appears that the best interests of the creditors test is satisfied.

The court has reviewed the plan terms as they apply to each class/claimant and is persuaded that, in the absence of any objection, their respective treatments satisfy the requirements of § 1129(a)(7).

**§ 1129(a)(8)**

Section 1129(a)(8) requires that each class of claims or interests either accept the plan or not be impaired under the Plan. However, under a §1191(b) analysis, it is not necessary to satisfy this requirement provided that the plan "does not discriminate unfairly" and is "fair and equitable." This analysis will be discussed below.

**§ 1129(a)(9)**

Debtors aver that they have no priority unsecured claims, and so this requirement has been satisfied.

**§ 1129(a)(10)**

If the Plan is confirmed under § 1191(b), compliance with § 1129(a)(10) is not required.

**§ 1129(a)(11)**

Section 1129(a)(11) requires that the court find that the Plan is feasible and confirmation of the Plan is not likely to be followed by the liquidation, or need for further financial reorganization, of Debtor or any successor to Debtor under the Plan. The Plan projects that all the projected disposable income of Debtor to be received in the five-year period beginning on the date that the first payment is due under the Plan will be applied to make the payments under the Plan. Debtor's income and expense projections, which are attached as Exhibit B, show that Debtors project they will have sufficient income from the revenue generated from its business operations to fund the Plan. The Declaration of Baljinder Singh asserts that Debtors believe the business will be profitable during the term of the plan, so there the Plan has a "reasonable probability of success" and is not a "visionary scheme." Doc. #105.

On the record before it, and absent objections, the court finds that this requirement is satisfied.

**§ 1129(a)(12)**

Section 1129(a)(12) has been satisfied because all fees due under 28 U.S.C. § 1930 have been paid. However, since Debtor is a subchapter V chapter 11 debtor, quarterly fees due to the Office of the United States Trustee are not required, so this section is inapplicable.

**§ 1129(a)(13)**

Section 1129(a)(13) is inapplicable because Debtor does not provide retiree benefits.

**§ 1129(a)(14)**

Section 1129(a)(14) is not applicable because Debtor does not have any domestic support obligations.



**§ 1129(a) (15)**

Section 1129(a) (15) is not applicable in subchapter V. § 1181(a). Further, if the Plan is confirmed under § 1191(b), compliance with § 1129(a) (15) is not required.

**§ 1129(a) (16)**

Section 1129(a) (16) is not applicable because Debtor is a business or commercial corporation.

**§ 1191(b) and (c)**

Although Debtor cannot meet all of the requirements to confirm the Plan under § 1191(a), the Plan may still be confirmable under § 1191(b). The requirements under this subsection are that the Plan does not discriminate unfairly and is fair and equitable with respect to each class of claims or interests that is impaired under and has not accepted the Plan. As noted above, this Plan impairs several classes of creditors: Classes Three, Five, Six, Seven, Eight, and Ten. Two classes have accepted by affirmative vote: equity holders (Class Eleven) and unsecured claims (Class Ten). With regard to Class Ten, only Helena Agribusiness returned a ballot which accepted the plan. The other classes chose not to vote so have not accepted the Plan.

**Fair Discrimination**

The Plan here does not treat creditors differently that are in the same class. Secured claimants keep their liens but those who are under secured or unsecured will receive *pro rata* distributions from the "unsecured claim pool" under the Plan plus funds from the liquidation of the "Patterson Apricot Partnership. All unsecured claimants are treated the same with *pro rata* distributions.

**Fair and Equitable**

Whether a plan is fair and equitable includes three requirements. First, secured claims must be treated as set forth in § 1129(b) (2) (A) of the Bankruptcy Code. Second, Debtor must provide for payment of projected disposable income over the period of the plan or property distributed under the plan must be the equivalent of that projected disposable income. Third, there must at least be a reasonable likelihood that the debtor will be able to make payments under the plan, and the plan must provide appropriate remedies to protect holders of claims or interests if payments are not made. § 1191(c).

Upon review of the plan and accompanying documents, the court is satisfied that the plan meets the fair and equitable standard. Debtors have submitted declarations and documentary evidence attesting to their ability to perform under the Plan, and no secured creditor has objected to the treatment or challenged Debtor's valuation. There is no order valuing secured claims either nor a request to value claims.

The Monthly Operating Reports (there are only a few in this case because of its' short duration) reflect the expected seasonality of cash flow experienced by virtually all farmers. The reports do not show any negative balances. These debtors are motivated to maintain current payments given their desire to keep the farm operation. The



for a total interim compensation award of \$1,065.74. Doc. #1137. This requested compensation is equal to the retainer currently held by Applicant. *Id.* The fee summary is as follows:

Professional	Hours	Rate	Amount
Daniel Wainwright, Attorney	4.0	\$250.0	\$1,000.00
Hagop T. Bedoyan	0.1	\$250.00	\$25.00
Savana S. Ciavatta	9.4	\$200.00	\$1,880.00
<b>Total</b>	<b>13.5</b>		<b>\$2,905.00</b>

Doc. #1137. Applicant also incurred **\$267.75** in expenses as follows:

Type of Expense	Amount
Copies	\$267.75
<b>Total</b>	<b>\$267.75</b>

*Id.* Although Applicant has incurred billable hours and fees well in excess of the requested amount, Applicant avers that he seeks to use the remaining retainer balance of \$1,065.74 to cover the expenses and a portion (only \$797.99) of the incurred fees. *Id.* at FN2.

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). The previous interim compensation awards under 11 U.S.C. § 331 are subject to final review under § 330.

Applicant's services here included, without limitation: (1) analysis of the Chapter 11 bankruptcy filing and requirements and (2) analysis of and investigation/discovery into a related civil matter. Doc. ## 1137, 1139. The court finds the services and expenses reasonable, actual, and necessary. Karen Paolinelli, the DIP representative, declares that she has reviewed the Application and approves. Doc. #1141.

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

hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest has responded, and the defaults of all such parties are entered. Accordingly, this motion is GRANTED. The court will approve on an interim basis under 11 U.S.C. §331 compensation in the amount of **\$797.99** in fees and **\$267.75** in expenses. The court grants the Application for a total award **\$1,065.74** as an administrative expense of the estate and an order authorizing Applicant to claim the remaining retainer in satisfaction of this award. The court only approves the use of the retainer as prayed. The court neither approves nor disapproves payment of the alleged balance of fees as the court has not been asked to do so and it appears that the source of any payment of those fees is other than the estate.

11. 23-10457-B-11      **IN RE: MADERA COMMUNITY HOSPITAL**  
WJH-73

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WANGER JONES  
HELSEY FOR RILEY C WALTER, DEBTORS ATTORNEY(S)  
11-17-2023 [1109]

RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION:                      Granted.

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

Wanger Jones Helsley PC("Applicant") seeks approval of a fifth interim allowance of compensation under 11 U.S.C. §§ 330 and 331 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as counsel for Madera Community Hospital, the Debtor-In-Possession in the above-styled case ("DIP"). Doc. #1109.

Applicant was employed to perform legal services under § 327 of the Code pursuant to an order of this court dated April 18, 2023. Docs. #259, 1109. This motion covers fees and costs incurred from June 1, 2023, through October 15, 2023. Doc. #1109. The court has previously authorized fees as follows:

Date	Fees Allowed	Costs Allowed	Payment Date
6/1/23	\$166,909.50	\$5,048.45	6/7/23
7/11/23	\$138,517.00	\$9,586.84	7/19/23
8/25/23	\$163,311.50 (80% payable)	\$3,194.26	10/13/23
10/25/23	\$149,606.00 (80% payable)	\$2,583.93	11/14/23

While presented to the court in a somewhat confusing manner, the Application requests \$311,917.50 in attorney's fees and \$5,778.19 in expenses, for a total award of \$317,695.69. *Id.*

Applicant seeks \$311,917.50 in fees and \$5,778.19 in expenses from June 1, 2023, through October 15, 2023, for a total interim compensation award of \$317,695.69. Doc. #1109. The billing records in the exhibits accompanying the motion appear to break the fees and expenses occurred into two tranches, with one covering fees and expenses from June 1 through August 15 and the other covering from August 15 through October 15. Do. #1111. In the interests of brevity, the court will not repeat the summaries contained in the exhibits, but the court has reviewed them and ascertained that the fee and expense reports appear to be accurate.

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). The previous interim compensation awards under 11 U.S.C. § 331 are subject to final review under § 330.

Applicant's services here included, without limitation: (1) work pertaining to the assumption/rejection of Debtor's leases and contracts, (2) case administration, (3) claim administration and objections, (4) estate and business operations, (5) financing, (6) litigation and other contested matters, (7) work on the plan and disclosure statement, (8) relief from stay and adequate protection motions, and (9) sales and transfers. The court finds the services and expenses reasonable, actual, and necessary. Karen Paolinelli, the DIP representative, declares that she has reviewed the Application and approves. Doc. #1141.

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

No party in interest has responded, and the defaults of all such parties are entered.

This motion is GRANTED. The court will approve on an interim basis under 11 U.S.C. §331 compensation in the amount of **\$311,915.70** in fees and **\$5,778.19** in expenses. The court grants the Application for a total award **\$317,695.69** as an administrative expense of the estate and an order authorizing Applicant to claim any remaining retainer fees in satisfaction of this award. Finally, the court approves a payment of **\$62,383.50** in fees which had been previously awarded but not paid due to the 20% holdback from amounts sought in Applicant's monthly fee statements. Payment is permitted to the extent allowed under the court's Compensation Procedures Order.

12. 23-10457-B-11      **IN RE: MADERA COMMUNITY HOSPITAL**  
WJH-74

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WARD LEGAL INC.  
FOR ROBERT WARD, SPECIAL COUNSEL(S)  
11-20-2023 [1131]

ROBERT WARD/MV  
RILEY WALTER/ATTY. FOR DBT.

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

DISPOSITION:                      Granted.

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

Ward Legal, Inc. ("Applicant") seeks approval of a second interim allowance of compensation under 11 U.S.C. §§ 330 and 331 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as counsel for Madera Community Hospital, the Debtor-In-Possession in the above-styled case ("DIP"). Doc. #1131.

Applicant was employed to perform services under § 327 of the Code pursuant to an order of this court dated April 18, 2023. Doc. #260. Applicant was previously awarded \$7,880.00 on an interim basis pursuant to an order of the court entered on September 28, 2023. Doc. #986. Applicant now seeks \$12,440.00 in fees based on 31.10 billable hours and \$0.00 in expenses from August 1, 2023, through November 15, 2023, for a total interim compensation award of \$12,440.00. Doc. #1137. The fee summary is as follows :

Professional	Hours	Rate	Amount
Robert Ward	31.10	\$400.00	\$12,440.00
<b>Total</b>	<b>31.10</b>		<b>\$12,440.00</b>

Doc. #1137. Applicant does not seek any award for expenses.

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). The previous interim compensation awards under 11 U.S.C. § 331 are subject to final review under § 330.

Applicant's services here included, without limitation: assisting Debtor with matters relating to corporate procedural guidance, business transaction advice, and healthcare transaction matters relating to a proposed sale. Doc. #1133. The court finds the services and expenses reasonable, actual, and necessary. Karen Paolinelli, the DIP representative, declares that she has reviewed the Application and approves. Doc. #1131.

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

No party in interest has responded, and the defaults of all such parties are entered. Accordingly, this motion is GRANTED. The court will approve on an interim basis under 11 U.S.C. §331 compensation in the amount of **\$12,440.00** in fees and **\$0.00** in expenses. The court grants the Application for a total award **\$12,440.00** as an administrative expense of the estate and an order authorizing and directing the DIP to pay such to Applicant from the first available estate funds.

11:00 AM

1. [23-12468](#)-B-7      **IN RE: HENDRA GOZALI**

PRO SE REAFFIRMATION AGREEMENT WITH PACIFIC SERVICE CREDIT  
UNION

11-27-2023    [[10](#)]

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 Hendra Gozali ("Debtor") and Pacific Service Credit Union for a 2018 Audi Q3 was filed on November 27, 2023. Doc. # 10. Debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), "if the debtor is represented by counsel, the agreement *must* be accompanied by an affidavit of the debtor's attorney' attesting to the referenced items before the agreement will have legal effect." *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok. 2009). In this case, the debtor's attorney affirmatively represented that he could not recommend the reaffirmation agreement. Therefore, the agreement does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.



1:30 PM

1. 23-10719-B-7      **IN RE: SONIA MALDONADO**  
JES-3

MOTION FOR COMPENSATION FOR JAMES SALVEN, ACCOUNTANT(S)  
11-20-2023 [62]

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

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

DISPOSITION:                      Granted.

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

James Salven, C.P.P. ("Applicant") seeks approval of a final allowance of compensation under 11 U.S.C. §§ 330 and 331 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as accountant for James Salven, Trustee in the above-styled case ("Trustee'). Doc. #62.

Applicant was employed to perform services under § 327 of the Code pursuant to an order of this court dated November 9, 2023. Doc. #61. This is Applicant's first and final request for compensation. Applicant now seeks \$1,484.00 in fees based on 5.3 billable hours and \$209.50 in expenses from November 9, 2023 through November 20, 2023, for a final interim compensation award of \$1,484.00. Doc. #62. The fee summary is as follows :

Professional	Hours	Rate	Amount
James E. Salven, CPA	5.3	\$280.00	\$1,484.00
<b>Total</b>	<b>5.3</b>		<b>\$1,484.00</b>

Doc. #1137. Applicant seeks an award for expenses in the amount of \$209.50, as follows:

Type of Expense	Amount
Copies	\$40.60
Envelopes	\$1.25
Lacerte Tax Proc.	\$91.00
Service of fee application	76.65
<b>Total</b>	\$209.50

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). The previous interim compensation awards under 11 U.S.C. § 331 are subject to final review under § 330.

Applicant's services here included, without limitation: accounting services, tax preparation analysis, and matters pertaining to this fee application. Doc. #64.

The court finds the services and expenses reasonable, actual, and necessary. The Trustee has reviewed the Application and finds the requested fees and expenses to be reasonable. Doc. #65.

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

No party in interest has responded, and the defaults of all such parties are entered.

This Application is GRANTED. The court will approve on a final basis under 11 U.S.C. §330 compensation in the amount of **\$1,484.00** in fees and **\$209.50** in expenses. The court grants the Application for a total award **\$1,693.50** as an administrative expense of the estate and an order authorizing and directing the DIP to pay such to Applicant from the first available estate funds.

2. [17-11346](#)-B-7      **IN RE: DANIEL CANCHOLA**  
[RWR-11](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF COLEMAN &  
HOROWITT, LLP FOR RUSSELL W. REYNOLDS, TRUSTEES ATTORNEY(S)  
11-21-2023 [185]

JERRY LOWE/ATTY. FOR DBT.  
RUSSELL REYNOLDS/ATTY. FOR MV.

After posting the original pre-hearing dispositions, the court has supplemented its intended ruling on this matter.

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

DISPOSITION: Granted.

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

Russell W. Reynolds ("Applicant") seeks approval of a final allowance of compensation under 11 U.S.C. §§ 330 and 331 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as accountant for James Salven, Trustee in the above-styled case ("Trustee'). Doc. #185.

Applicant was employed to perform services under § 327 of the Code pursuant to an order of this court dated February 26, 2018. Docs. ##32, 185. This is Applicant's first and final request for compensation. Applicant now seeks \$\$30,762.00 in fees based on 97.60 billable hours and \$1,281.21 in expenses from February 6, 2018, through December 19, 2023, for a total compensation award of \$32,043.21. Doc. #185.

However, the moving papers aver that Applicant was hired to work on this case and a separate bankruptcy case ("the Companion Case") which were being administered together in the course of certain civil litigation in which both were involved. Doc. #187. Thus, for this Application, Applicant requests \$16,021.60 in compensation to be paid by each of the two estates. *Id.* The Trustee concurs in this request and has submitted a Declaration averring his review and approval of this Application. Doc. #189.

The fee summary for Applicant's work on behalf of both cases is as follows :

Professional	Hours	Rate	Amount
Russell W. Reynolds	88.30	\$325.00	\$28,697.50
Kelsey A. Seib, Law Clerk	4.00	\$165.00	\$660.00
Kelsey A. Seib, Associate	5.30	\$265.00	\$1,404.50
<b>Total</b>	<b>97.6</b>		<b>\$30,762.00</b>

Doc. #1137. Applicant also seeks an award for expenses in the amount of \$1,281.21, as follows:

Type of Expense	Amount
Copies	\$320.10
Postage	\$152.11
CourtCall services fees	\$135.00
Process Server - 2004 Exam	\$139.00
Court Reporting - 2004 Exam	\$535.00
<b>Total</b>	<b>\$1281.21</b>

*Id.* The total award requested is for \$32,043.21. *Id.*

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3). The previous interim compensation awards under 11 U.S.C. § 331 are subject to final review under § 330.

Applicant's services here included, without limitation, work on the following projects: (1) analysis of potential claims of the debtors and their estates and employment of special counsel, (2) settlement of the second state court action, (3) allowance and payment of administrative expenses, and (4) employment and fee applications. Doc. #188. The court finds the services and expenses reasonable, actual, and necessary. The Trustee has reviewed the Application and finds the requested fees and expenses to be reasonable. Doc. #187. Trustee concurs in the proposal to split the total compensation award between this case and the Companion Case as discussed above. *Id.*

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.

If there is no opposition at the hearing, this Application is GRANTED. The court will approve on a final basis under 11 U.S.C. §330 total compensation in the amount of **\$30,762.00** in fees and **\$1,281.21** in expenses for a total award **\$32,043.21**. The court grants the Applicant an order that the Trustee pay Applicant one-half of this amount (**\$16,021.60**) out of estate funds as they become

available. The other half of the fee award shall be addressed by separate order.

3. 17-11365-B-7      **IN RE: MARIO GUERRA**  
RWR-11

MOTION FOR COMPENSATION BY THE LAW OFFICE OF COLEMAN &  
HOROWITT, LLP FOR RUSSELL W. REYNOLDS, CHAPTER 7 TRUSTEE(S)  
11-21-2023 [194]

JERRY LOWE/ATTY. FOR DBT.  
RUSSELL REYNOLDS/ATTY. FOR MV.

After posting the original pre-hearing dispositions, the court has supplemented its intended ruling on this matter.

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

DISPOSITION:                      Granted.

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

Russell W. Reynolds ("Applicant") seeks approval of a final allowance of compensation under 11 U.S.C. §§ 330 and 331 of the Bankruptcy Code for professional services rendered and reimbursement for expenses incurred as accountant for James Salven, Trustee in the above-styled case ("Trustee'). Doc. #185.

Applicant was employed to perform services under § 327 of the Code pursuant to an order of this court dated February 26, 2018. Docs. ##32, 185. This is Applicant's first and final request for compensation. Applicant now seeks \$\$30,762.00 in fees based on 97.60 billable hours and \$1,281.21 in expenses from February 6, 2018, through December 19, 2023, for a total compensation award of \$32,043.21. Doc. #185.

However, the moving papers aver that Applicant was hired to work on this case and a separate bankruptcy case ("the Companion Case") which were being administered together in the course of certain civil litigation in which both were involved. Doc. #187. Thus, for this Application, Applicant requests \$16,021.60 in compensation to be paid by each of the two estates. *Id.* The Trustee concurs in this requests and has submitted a Declaration averring his review and approval of this Application. Doc. #189.

The fee summary for Applicant's work on behalf of both cases is as follows:

Professional	Hours	Rate	Amount
Russell W. Reynolds	88.30	\$325.00	\$28,697.50

Kelsey A. Seib, Law Clerk	4.00	\$165.00	\$660.00
Kelsey A. Seib, Associate	5.30	\$265.00	\$1,404.50
<b>Total</b>	<b>97.6</b>		<b>\$30,762.00</b>

Doc. #1137. Applicant also seeks an award for expenses in the amount of \$1,281.21, as follows:

<b>Type of Expense</b>	<b>Amount</b>
Copies	\$320.10
Postage	\$152.11
CourtCall services fees	\$135.00
Process Server - 2004 Exam	\$139.00
Court Reporting - 2004 Exam	\$535.00
<b>Total</b>	<b>\$1281.21</b>

*Id.* The total award requested is for \$32,043.21. *Id.*

11 U.S.C. § 330(a)(1)(A) and (B) permit approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or attorney" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3). The previous interim compensation awards under 11 U.S.C. § 331 are subject to final review under § 330.

Applicant's services here included, without limitation, work on the following projects: (1) analysis of potential claims of debtors and their estates and employment of special counsel, (2) settlement of the second state court action, (3) allowance and payment of administrative expenses, and (4) employment and fee applications. Doc. #188. The court finds the services and expenses reasonable, actual, and necessary. The Trustee has reviewed the Application and finds the requested fees and expenses to be reasonable. Doc. #187. Trustee concurs in the proposal to split the total compensation award between the two companion cases as discussed above. *Id.*

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.

If there is no opposition at the hearing, this Application is GRANTED. The court will approve on a final basis under 11 U.S.C. §330 total compensation in the amount of **\$30,762.00** in fees and



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). The previous interim compensation awards under 11 U.S.C. § 331 are subject to final review under § 330.

Applicant's services here included, without limitation: (1) conflict review, (2) matters pertaining to the employment and fee applications, (3) review of the docket and other documents to determine the nature of the settlement and any outstanding tax effects, (4) input data and process the tax returns, and (5) finalize the tax returns and determination letters. Doc. # 76. The court finds the services and expenses reasonable, actual, and necessary. The Trustee has reviewed the Application and finds the requested fees and expenses to be reasonable. Doc. #76.

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

No party in interest has responded, and the defaults of all such parties are entered.

This Application is GRANTED. The court will approve on a final basis under 11 U.S.C. §330 compensation in the amount of **\$1,425.00** in fees and **\$285.41** in expenses. The court grants the Application for a total award **\$1,710.41** as an administrative expense of the estate and an order authorizing and directing the DIP to pay such to Applicant from the first available estate funds.

5. [18-12189](#)-B-7      **IN RE: DEE DINKEL**  
[FW-2](#)

MOTION TO EMPLOY DANA LIZIK AS SPECIAL COUNSEL  
11-21-2023    [\[39\]](#)



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

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

DISPOSITION: Granted.

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

Chapter 7 trustee James E. Salven ("Trustee") seeks authorization to employ The Johnson Law Group ("JLG") pursuant to 11 U.S.C. §§ 327 and 328 to represent the estate in a products liability case currently pending in a Multi-District Litigation proceeding in New Hampshire ("the MDL Proceeding"). Doc. #39. In so moving, the Trustee categorizes JLG as a "special purpose" counsel within the meaning of 11 U.S.C. § 327(e). *Id.*

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

No party in interest has responded, and the defaults of all such parties are entered. This motion will be GRANTED.

The moving papers aver the following facts (see Docs. ##39, 41, 42). Dee Dinkel ("Debtor"), debtor in this Chapter 7 case, suffered a prepetition injury arising from a defective surgical implant, and her claims against the manufacturer became an asset of the estate. Debtor filed this case as a *pro se* debtor on May 31, 2018, and received her discharge on September 17, 2018. She did not list her potential claim on Schedule A/B, but instead hired JLG to represent her after the bankruptcy case was closed. While working on a settlement, JLG discovered the existence of this bankruptcy and disclosed it to Trustee, who moved to reopen the case by order dated October 11, 2023. Trustee now seeks to employ JLG to continue the work JLG was already performing for Debtor, but with any proceeds (after JLG's contingency fee is paid) being used to pay a distribution to unsecured creditors.

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).

11 U.S.C. § 327(e) allows the trustee, with court approval, to employ and attorney for "a specified special purpose" other than represent the trustee in conducting the case even if that attorney that has represented the debtor, provided that doing so is "in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed." 11 U.S.C. § 327(e).

Under these sections, Trustee requests to employ and compensate JLG by paying a contingency fee of forty (40%) percent, plus costs incurred, but only after the settlement is approved by this court. Doc. #39. Also, Dana Lizik (who is authorized to make a declaration on behalf of JLG) filed a declaration attesting that neither Lizik nor JLG have any connection with the Debtor, creditors, or any party in interest, their respective attorneys, accountants, or the U.S. Trustee or any employee of the U.S. Trustee that would prevent them from being disinterested persons as defined in § 101(14) and that JLG does not hold any interests adverse to the estate in accordance with § 327(a). Doc. #41.

While the moving papers do not contain an express statement by Trustee that employing JLG is "in the best interest of the estate," Trustee does state that hiring JLG as special purpose counsel is necessary to enable Trustee to liquidate Debtor's claims in the MDL Proceeding for the benefit of the estate and to close the case. Doc. #39. The court finds that adequate to meet the requirements of § 327(e).

This motion will be GRANTED. The court will authorize JLG's employment pursuant to 11 U.S.C. §§ 327(a), 327(e), and 328 and authorize Trustee to pay JLG a 40% contingency fee (plus costs incurred), but only once the court approves the settlement.

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-21-2023 [24]

TOYOTA MOTOR CREDIT  
CORPORATION/MV  
MARK ZIMMERMAN/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/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.

Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2017 Toyota Camry ("Vehicle"). Doc. #24.

Kenneth Wicker and Lexie Wicker ("Debtors") did not file opposition. Debtors' Statement of Intention indicated that the Vehicle would be surrendered. No 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 debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, 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(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 Debtors have failed to make at least three pre-petition payments and one post-petition payment. The Movant has produced evidence that Debtors are delinquent at least \$1,066.30. Docs. ##26, 28. Additionally, Debtors have failed to maintain insurance coverage.

The court declines finding that Debtors do not have any equity in the Vehicle. Although this is a chapter 7 case and the Vehicle is not necessary for an effective reorganization, the moving papers indicate that Debtors have approximately \$5,349.42 in equity in the Vehicle. Doc. #28. Relief under § 362(d)(2) is moot because there is "cause" to grant the motion under § 362(d)(1).

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. According to the Debtors' Statement of Intention, the Vehicle will be surrendered.