



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, December 21, 2022
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.

Unless otherwise ordered, all hearings before Judge Niemann are simultaneously: (1) via **ZOOM.GOV VIDEO**, (2) via **ZOOM.GOV TELEPHONE**, and (3) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

Prior to the hearing, parties appearing via Zoom or CourtCall are encouraged to review the court's [Zoom Procedures and Guidelines](#) or [CourtCall Appearance Information](#).

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided:

Video web address:

<https://www.zoomgov.com/j/1607522389?pwd=by9yUGVTTmFDQ3IvQ2pqVS91M3RxZz09>

Meeting ID: 160 752 2389

Password: 090498

Zoom.Gov Telephone: (669) 254-5252 (Toll Free)

Please join at least 5 minutes before the start of your hearing and wait with your microphone muted until your matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screenshots" or other audio or visual copying of a hearing, is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

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. [22-10416](#)-A-11 IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION
[WJH-13](#)

MOTION TO ABANDON
11-17-2022 [[301](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if record sufficiently supplemented.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date 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 the record is sufficiently supplemented. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

As a procedural matter, the motion fails to comply with LBR 9014-1(d)(3)(A). LBR 9014-1(d)(3)(A) provides in relevant part: "The application, motion, contested matter or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor." Here, the motion fails to specify with particularity the property to be abandoned. The motion seeks to abandon "unneeded grow lights[,] " which is the same description used in a companion motion on this calendar, WJH-14. Compare Doc. #301 with Doc. #306. It is unclear by reading only the motion exactly what property the debtor seeks to abandon and how that property differs from the property the debtor seeks to abandon in the companion motion, WJH-14.

As an informative matter, counsel for the movant effectuated Rule 5 Service but incorrectly completed the court's mandatory certificate of service form. In Section 6 of the form, the declarant failed to fill out box 2(b) for Request for Special Notice list even though the declarant accomplished service on a list that requested special notice and provided Attachment 6B3. In addition, the declarant accomplished service on other parties in interest checked in Section 5 of the form and attached a list but labeled the list Attachment 6A1 instead of Attachment 6B4. The declarant also failed to check the box for § 6B(2)(b): Request for Special Notice in Section 7 of the form.

KR Citrus, Inc. ("Debtor"), the chapter 11 debtor in this case, moves the court to authorize Debtor to abandon property of the estate described as California Light Works MegaDrive 400 grow lights (the "Property"). Memo. P&A, Doc. #303. Debtor asserts that the Property is collateral for a debt owed to Regents Capital Corporation ("Regents"). Id. Based on Claim 15 filed by Regents based on the debt secured by the grow lights, it appears that the Property Debtor seeks to abandon by this motion consists of 112 Mega Drive MDF-400 Commercial Led Grow Light Fixtures, 4 MegaDrive SolarSystem Controller Module, and

1 SolarSystem/MegaDrive Controller. Claim 15. Debtor asserts that Debtor no longer needs the Property and the Property has a value that is less than the amount owed to Regents based on this collateral. Memo. P&A, Doc. #303.

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, Debtor does not allege that the Property is burdensome to the estate. Memo. P&A, Doc. #303. Therefore, Debtor must establish that the Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Debtor no longer needs the Property. Decl. of James Reed, Doc. #304. Debtor values the Property at \$25,590.00 on which \$65,808.60 is owed to Regents. Reed Decl. ¶ 6, Doc. #304. Debtor believes that Regents consents to the abandonment of the Property. Reed Decl. ¶ 7, Doc. #304. Assuming that Debtor can sufficiently supplement the record at the hearing to clarify exactly what property comprises the Property to be abandoned by this motion, the court finds that Debtor has met its burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate.

Accordingly, this motion is GRANTED if the record is sufficiently supplemented to clarify the Property that Debtor seeks to abandon by this motion. The order shall specifically identify the property abandoned.

2. [22-10416](#)-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**
[WJH-14](#)

MOTION TO ABANDON
11-17-2022 [[306](#)]

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

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted if record sufficiently supplemented.

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

This motion was filed and served on at least 14 days' notice prior to the hearing date 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 the record

is sufficiently supplemented. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f) (2). The court will issue an order if a further hearing is necessary.

As a procedural matter, the motion fails to comply with LBR 9014-1(d) (3) (A). LBR 9014-1(d) (3) (A) provides in relevant part: "The application, motion, contested matter or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor." Here, the motion fails to specify with particularity the property to be abandoned. The motion seeks to abandon "unneeded grow lights[,] " which is the same description used in a companion motion on this calendar, WJH-13. Compare Doc. #301 with Doc. #306. It is unclear by reading only the motion exactly what property the debtor seeks to abandon and how that property differs from the property the debtor seeks to abandon in the companion motion, WJH-13.

As an informative matter, counsel for the movant effectuated Rule 5 Service but incorrectly completed the court's mandatory certificate of service form. In Section 6 of the form, the declarant failed to fill out box 2(b) for Request for Special Notice list even though the declarant accomplished service on a list that requested special notice and provided Attachment 6B3. In addition, the declarant accomplished service on other parties in interest checked in Section 5 of the form and attached a list but labeled the list Attachment 6A1 instead of Attachment 6B4. The declarant also failed to check the box for § 6B(2) (b): Request for Special Notice in Section 7 of the form.

KR Citrus, Inc. ("Debtor"), the chapter 11 debtor in this case, moves the court to authorize Debtor to abandon property of the estate described as California Light Works MegaDrive 400 grow lights (the "Property"). Memo. P&A, Doc. #308. Debtor asserts that the Property is collateral for a debt owed to Huntington National Bank ("Huntington"). Id. Based on Claim 22 filed by Huntington, it appears that the Property Debtor seeks to abandon by this motion consists of 100 SolarSystem 550 Veg Programmable Spectrum LED Grow Light and SolarSystem Controller since that is the collateral that secures a debt owed to Huntington. Claim 22. Debtor asserts that Debtor no longer needs the Property and the Property has a value that is less than the amount owed to Huntington based on this collateral. Memo. P&A, Doc. #308.

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, Debtor does not allege that the Property is burdensome to the estate. Memo. P&A, Doc. #308. Therefore, Debtor must establish that the Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Debtor no longer needs the Property. Decl. of James Reed, Doc. #309. Debtor values the Property at \$25,590.00 on which \$38,526.42 is owed to Huntington. Reed Decl. ¶ 6, Doc. #309. Debtor believes that Huntington

consents to the abandonment of the Property. Reed Decl. ¶ 7, Doc. #309. Assuming that Debtor can sufficiently supplement the record at the hearing to clarify exactly what property comprises the Property to be abandoned by this motion, the court finds that Debtor has met its burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate.

Accordingly, this motion is GRANTED if the record is sufficiently supplemented to clarify the Property that Debtor seeks to abandon by this motion. The order shall specifically identify the property abandoned.

3. [22-11541](#)-A-11 **IN RE: STRATEGIC INNOVATIONS LLC**
[DCJ-3](#)

MOTION TO EXTEND TIME
11-30-2022 [\[50\]](#)

STRATEGIC INNOVATIONS LLC/MV
DAVID JOHNSTON/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

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 filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. On December 18 and 19, 2022, numerous creditors filed declarations in support of the motion. Doc. ##67-83. Notwithstanding the numerous declarations in support of the motion and even though opposition may be presented at the hearing, the court nevertheless intends to deny the motion because the debtor has not met the stringent burden to permit this court to grant an extension under 11 U.S.C. § 1189.

Strategic Innovations LLC ("Debtor" or "DIP") moves the court to extend the time period to file its Chapter 11 Subchapter V plan pursuant to 11 U.S.C. § 1189. Doc. #50. DIP's Chapter 11 Subchapter V plan was due on November 30, 2022. DIP seeks a 31-day extension to file its plan to December 31, 2022. Based on the language of § 1189, the court is inclined to deny the motion.

Section 1189 of the Bankruptcy Code governs the filing of a Chapter 11 subchapter V plan. 11 U.S.C. § 1189. Section 1189(b) states that "the court may extend the period [for filing a plan] if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable." 11 U.S.C. § 1189(b). The burden of proof is on DIP to establish that additional time is justified under § 1189. In re Online King LLC, 629 B.R. 340, 349 (Bankr. E.D.N.Y. 2021).

As DIP notes, the language in § 1189 is nearly identical to the language in § 1221, which provides that "the court may extend such period if the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable." 11 U.S.C. § 1221. Accordingly, the court will look to cases analyzing § 1221 to interpret § 1189. Cf. Gustafson v. Alloyd Co., 513 U.S. 561, 570 (1995) (applying the "normal rule of statutory construction"

that "identical words used in different parts of the same act are intended to have the same meaning" (citations omitted)).

Under § 1221, "the bankruptcy court may grant an extension only if the debtor's inability to file a timely plan is due to circumstances beyond the debtor's control." First Sec. Bank & Tr. Co. v. Vander Vegt, 511 B.R. 567, 585 (N.D. Iowa 2014); Davis v. United States Bank N.A. (In re Davis), BAP No. CC-16-1390-KuLTa, 2017 Bankr. LEXIS 2169, at *6 (B.A.P. 9th Cir. Aug. 2, 2017). "The standard set forth in § 1221 is more stringent than the ordinary 'for cause shown' standard set forth in [Bankruptcy] Rule 9006(b)." Davis, 2017 Bankr. LEXIS 2169 at *6-7. Under this standard, the court's focus is centered on "the cause for the delay and whether the debtor reasonably and justly could have been expected to have prevented it." Id. at *8.

Here, the court finds the main circumstances that DIP asserts to qualify it for the requested 31-day extension are circumstances of DIP's own making and for which DIP reasonably and justly should be held accountable and preclude this court from granting the requested extension. While DIP and the Subchapter V Trustee have made progress towards a consensual plan of reorganization, a plan could not be filed by November 30, 2022 because: (1) DIP had a serious lack of accounting for Debtor's pre-petition activities for at least five years before Debtor filed its voluntary Chapter 11 Subchapter V case as well as for Debtor's post-petition activities, which makes it difficult for Debtor to determine the facts needed to formulate a plan as well as prepare and file monthly operating reports; (2) DIP no longer has an office or place of business so all of DIP's records are in storage and are not organized; (3) DIP's managing member has been in Oregon for almost the entire time DIP has been in chapter 11 negotiating two major contracts on behalf of an entity that is 80% owned by DIP (presumably instead of addressing the lack of accounting and disorganization of DIP's records); (4) DIP is having issues accessing its bank records, including for closed bank accounts; and (5) there remain complicated issues the DIP asserts need to be addressed before a plan can be filed. Motion, ¶ 6, Doc. #50.

The court finds that the delay in filing a plan based on the state of DIP's business records and the lack of accounting for Debtor's pre- and post-petition activities as well as DIP's managing member spending a significant amount of the first 90 days of DIP's bankruptcy case in Oregon instead of addressing issues that needed to be addressed in California so a Chapter 11 Subchapter V plan could have been filed timely by November 30, 2022 are circumstances within DIP's control and which DIP reasonably and justly could have been expected to have prevented. As such, DIP has not met the stringent burden to permit this court to grant an extension under § 1189.

Accordingly, this motion is DENIED.

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)
11-30-2022 [\[527\]](#)

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"), successor counsel for Bhajan Singh and Balvinder Kaur (collectively, "Debtors"), the debtors in this chapter 12 case, requests allowance of interim compensation in the amount of \$3,552.50 and reimbursement for expenses in the amount of \$167.65 for services rendered from September 1, 2022 through October 31, 2022. Doc. #527. 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. #449. Movant requests that the fees and expenses to be paid by Debtors from wages earned by Debtors and income generated from the operation of their business. Doc. #527; Decl. of Bhajan Singh, Doc. #529; Decl. of Leonard K. Welsh, Doc. #530.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 12 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 12 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, 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) communicating with the chapter 12 trustee and creditors; (2) conducting legal research regarding the use, sale, or lease of property of the estate in a chapter 12 case; (3) preparing motion for order authorizing Debtors to enter into agriculture lease; (4) advising Debtors regarding an adversary proceeding; and (5) general case administration. Ex. B, Doc. #531. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$3,552.50 and reimbursement for expenses in the amount of \$167.65 to be paid in a manner consistent with the terms of the confirmed plan. 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 trust account held.

5. [22-11541](#)-A-11 **IN RE: STRATEGIC INNOVATIONS LLC**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
9-1-2022 [[1](#)]

DAVID JOHNSTON/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to January 11, 2023 at 9:30 a.m.

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

The court is inclined to continue the chapter 11 status conference to be heard in conjunction with the motion to dismiss or convert (UST-1) that is set for hearing on January 11, 2023 at 9:30 a.m.

1. [21-12810](#)-A-7 **IN RE: RENEWABLE LEGACY LLC**
[FW-8](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF FEAR WADDELL FOR
PETER A. SAUER, TRUSTEES ATTORNEY(S)
11-23-2022 [\[96\]](#)

JUSTIN HARRIS/ATTY. FOR DBT.
PETER SAUER/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

As an informative matter, the certificates of service filed in connection with this motion for compensation (Doc. ##101, 102) used an older version of the court's Official Certificate of Service form (EDC Form 7-005, New 09/2022) instead of the most updated version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/22). The correct form can be accessed on the court's website at <http://www.caeb.uscourts.gov/Forms/FormsAndPublications>.

As a further informative matter, the movant filed two mandatory certificates of service (EDC Form 7-005, Rev. 10/22) with respect to service of the motion that counsel was required to use starting on November 1, 2022 pursuant to General Order 22-03. Doc. ##101, 102. However, the movant could have shown all service of the motion on one certificate of service form. The movant served notice of the hearing on all creditors and parties in interest and served the notice and motion papers on a smaller list. Instead of filing a separate certificate of service with respect to the notice of hearing on all creditors and parties in interest, the movant could have, in addition to indicating service of all pleadings on Debtor(s), Debtor attorney(s), Trustee, U.S. Trustee, and Persons who have filed a Request for Notice, checked the "All creditors and parties in interest (Notice of Hearing Only)" in section 5 of Doc. #101 and attached the list of creditors and parties in interest receiving notice as Attachment 6B2. The mandatory certificate of service form is designed so that all pleadings served can be listed and, if the "All creditors and parties in interest (Notice of Hearing Only)" or "Only creditors that have filed claims (Notice of Hearing

Only)" boxes are checked, then that indicates that those creditors and parties in interest were served with only a copy of the notice of hearing and were not served with the other pleadings.

Renewable Legacy, LLC ("Movant"), special counsel for Chapter 7 trustee Peter L. Fear ("Trustee"), requests allowance of interim compensation and reimbursement for expenses for services rendered from December 29, 2021 through November 18, 2022. Doc. #96. Movant provided legal services valued at \$44,375.00, and requests compensation for that amount. Doc. #96. Movant requests reimbursement for expenses in the amount of \$990.16. Doc. #96.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a "professional person." 11 U.S.C. § 330(a)(1). In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) researching and analyzing issues related to civil and criminal forfeiture; (2) preparing a memorandum for Trustee regarding criminal and civil forfeiture and implications on the bankruptcy estate; (3) preparing a stipulation regarding sale free and clear of criminal attachment lis pendens; (4) preparing a memorandum for Trustee on rights of third parties in civil asset forfeiture cases; (5) drafting and revising proposed stipulation with the United States regarding Porterville property; (6) preparing and revising a motion to sell real property in Porterville and supporting documents based on additional changes to a stipulation with the United States; (7) preparing a stipulation for sale of Montana property; and (8) drafting final fee application and related documents. Exs. B & C, Doc. #100. The court finds the compensation and reimbursement sought are reasonable, actual, and necessary.

This motion is GRANTED on an interim basis. The court allows interim compensation in the amount of \$44,375.00 and reimbursement for expenses in the amount of \$990.16. Trustee is authorized to make a combined payment of \$45,365.16, representing compensation and reimbursement, to Movant. Trustee is authorized to pay the amount allowed by this order from available funds only if the estate is administratively solvent and such payment is consistent with the priorities of the Bankruptcy Code.

2. [22-11095](#)-A-7 **IN RE: SEAN/KRISTINA MOSS**
[FW-3](#)

MOTION TO SELL AND/OR MOTION TO PAY
11-29-2022 [\[71\]](#)

PETER FEAR/MV
SCOTT LYONS/ATTY. FOR DBT.
GABRIEL WADDELL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted subject to higher and better offers.

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 subject to higher and better offers. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

As an informative matter, the certificates of service filed in connection with this motion for compensation (Doc. ##75, 76) used an older version of the court's Official Certificate of Service form (EDC Form 7-005, New 09/2022) instead of the most updated version of the court's Official Certificate of Service form (EDC Form 7-005, Rev. 10/22). The correct form can be accessed on the court's website at <http://www.caeb.uscourts.gov/Forms/FormsAndPublications>.

As a further informative matter, the movant filed two mandatory certificates of service (EDC Form 7-005, Rev. 10/22) with respect to service of the motion that counsel was required to use starting on November 1, 2022 pursuant to General Order 22-03. Doc. ##75, 76. However, the movant could have shown all service of the motion on one certificate of service form. The movant served notice of the hearing on all creditors and parties in interest and served the notice and motion papers on a smaller list. Instead of filing a separate certificate of service with respect to the notice of hearing on all creditors and parties in interest, the movant could have, in addition to indicating service of all pleadings on Debtor(s), Debtor attorney(s), Trustee, U.S. Trustee, Persons who have filed a Request for Notice, and Other Party(ies) in interest, checked the "All creditors and parties in interest (Notice of Hearing Only)" in section 5 of Doc. #76 and attached the list of creditors and parties in interest receiving notice as Attachment 6B2. The mandatory certificate of service form is designed so that all pleadings served can be listed and, if the "All creditors and parties in interest (Notice of Hearing Only)" or "Only creditors that have filed claims (Notice of Hearing Only)" boxes are checked, then that indicates that those creditors and parties in interest were served with only a copy of the notice of hearing and were not served with the other pleadings.

Peter L. Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Sean Michael Moss and Kristina Jenine Moss (together, "Debtors"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of real property located at 1609 W. Evergreen Court, Visalia, CA 93277-6303 (the "Property") to Wenbo Liu ("Buyer") for the purchase price of \$359,000.00, subject to higher and better bids at the hearing. Doc. #71. Trustee states that the Property is subject to a deed of trust in favor of Mortgage Electronic Registration System, Inc. (MERS), solely as a nominee for Freedom Mortgage Corporation, and subsequently assigned to Freedom Mortgage Company, and subsequently assigned to Nestor Trustee Services, LLC, with an approximate principal balance of \$297,317.00 and this deed of trust will be paid in full through escrow. Doc. #71; Decl. of Peter L. Fear, Doc. #73. Trustee states a preliminary title report shows that there are real property taxes currently owed or in default on the Property and these taxes will be paid through escrow. Fear Decl., Doc. #73, Ex. B, Doc. #74. Additionally, Trustee states a preliminary title report shows a solar energy production lease and Buyer has acknowledged that the sale of the Property does not include any solar contract or solar system(s). Fear Decl., Doc. #73. Buyer is responsible to negotiate a new contract with the solar company or face removal of the solar system(s). *Id.* Further, Trustee states a preliminary title report shows a judgement for installment payments of spousal and/or child support owed to the County of Kings Department of Child Support Services with an approximate balance of \$6,788.10, which will be paid through escrow. Fear Decl., Doc. #73; Ex. B,

Doc. #74. Additionally, the preliminary title report shows a co-owner on the title to the Property named Aurora Cotta, and she has been identified as debtor Kristina Moss's mother. Doc. #71; Fear Decl., Doc. #73; Ex. B, Doc. #74. Further, Debtors have claimed an exemption in the Property pursuant to C.C.P. § 703.140(b)(5) in the amount of \$15,250. Doc. #71; Fear Decl., Doc. #73. Debtors have stipulated to limit their claimed exemption so that the bankruptcy estate will retain the first \$10,000 of the net proceed of the sale, and any net proceeds above the first \$10,000 will be divided equally between Debtors and the bankruptcy estate, up to the total of the Debtors' claimed exemption. Doc. #71; Fear Decl., Doc. #73. Trustee also seeks authorization to pay a commission for the sale to Berkshire Hathaway Homeservices California Realty ("Broker"). Doc. #71.

Selling Property of Estate under 11 U.S.C. § 363(b)(1) Permitted

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. Fear Decl., Doc. #73. The sale is "as is, where is" with no warranties or representations of any nature. Id. Based upon estimates obtained from the preliminary title report, the sales contract, and charges common in the industry, Trustee estimates a benefit to the estate of \$16,125.28. Id. Property taxes will be paid through escrow, and there are liens or encumbrances that will also be paid through escrow. Id. Trustee expects to pay a \$21,540.00 commission to Broker and \$7,180.00 in costs of sale. Id.

Trustee requests that the court approve the following overbid procedures:

- (1) Deposit with counsel for Trustee certified monies in the amount of \$10,770.00 prior to the time of the sale motion hearing. Any unsuccessful bidder's deposit shall be returned at the conclusion of the hearing;
- (2) Provide proof in the form of a letter of credit, or some other written prequalification for any financing that may be required to complete the purchase of the Property sufficient to cover the necessary overbid amount;
- (3) Provide proof that any successful over bidder can and will close the sale within 15 days of delivery of a certified copy of the court's order approving the sale and execute a purchase agreement for the Property;

- (4) Any successful overbid shall have the \$10,770.00 deposit applied to the successful overbid;
- (5) In the event a successful overbidder fails to close the sale within 15 days of delivery of a certified copy of the court's order approving the sale and execute a purchase agreement for the Property, the \$10,770.00 deposit shall become non-refundable, and the next highest bidder shall become the buyer;
- (6) Any party wishing to overbid may do so by making an appearance at the hearing or having an authorized representative with written proof of authority to bid on behalf of the prospective overbidder;
- (7) All overbids shall be in the minimum amount of \$1,000.00 cash such that the first of any overbid shall be in the minimum amount of \$360,000.00; and
- (8) The sale of the Property does not include any solar energy system(s) and is for "As-Is" condition with no warranty or representation, express, implied or otherwise by the bankruptcy estate, the Debtors or their representatives.

Trustee also requests that the 14-day stay of Federal Bankruptcy Procedure 6004(h) is waived.

The Property will be sold at a price greater than the aggregate value of all liens on the Property. Based on the evidence before the court, it appears that the sale of the estate's interest in the Property is in the best interests of the estate, the Property will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith.

Accordingly, subject to overbid offers made at the hearing, the court will GRANT Trustee's motion and authorize the sale of the Property pursuant to 11 U.S.C. § 363(b)(1). The motion does not specifically request, nor will the court authorize, the sale free and clear of any liens or interests. Trustee indicates that all liens or encumbrances on the Property will be paid through escrow. Buyer has acknowledged that the sale of the Property does not include any solar contract or solar system(s). The court also will waive the 14-day stay of Federal Bankruptcy Procedure 6004(h).

Compensation to Broker

Trustee also seeks authorization to pay Broker a commission for the sale of the Property. This court has determined that employment of Broker is in the best interests of the estate and has previously authorized a percentage commission payment structure pursuant to 11 U.S.C. § 328. Order, Doc. #62.

Trustee seeks to pay Broker a 6% commission on the sale of the Property as the real estate broker for the sale, with the commission to be split equally with Buyer's broker. Fear Decl., Doc. #73. Trustee estimates that Broker's commission for the sale of the Property will equal \$21,540.00. Id. The court finds the compensation sought is reasonable, actual, and necessary.

Conclusion

Accordingly, subject to overbid offers made at the hearing, the court will GRANT Trustee's motion and authorize the sale of the Property pursuant to 11 U.S.C. § 363(b)(1). Trustee is authorized to pay Broker for services as set forth in the motion.