

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Thursday, May 6, 2021
Place: Department A - 510 19th Street
Bakersfield, California

**ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)**

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court until further notice. All appearances of parties and attorneys shall be telephonic through CourtCall. The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.

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. [19-14310](#)-A-13 **IN RE: TRACY FLAHERTY**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
3-11-2021 [[159](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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 court will issue an order after the hearing.

Tracy Susanne Flaherty ("Debtor") filed her chapter 13 bankruptcy petition on October 13, 2019. Doc. #1. On December 26, 2019, Debtor voluntarily converted her chapter 13 case to chapter 7. Doc. #32. On December 7, 2020, the court granted the United States Trustee's motion to dismiss for abuse under 11 U.S.C. § 707(b)(2). Doc. ##120, 121. The court gave Debtor the opportunity to reconvert her case to chapter 13 rather than have her case dismissed, and on January 5, 2021, Debtor's case was reconverted to chapter 13. Doc. #126.

Michael H. Meyer ("Trustee"), the chapter 13 trustee, filed and served this motion to dismiss pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and set for hearing on April 8, 2021. Doc. ##159-62. Trustee moved to dismiss for unreasonable delay by the debtor that is prejudicial to creditors (11 U.S.C. § 1307(c)(1)) because Debtor failed to file forms required by the court's Order on Extension of Deadline to File Missing Documents and Extension of Time for Dismissal of Case. Tr.'s Mot., Doc. #159; Order, Doc. #148.

Debtor filed an opposition to Trustee's motion, contending that Debtor was not required to file additional forms. Doc. #166. Trustee replied, highlighting facts uncovered in Debtor's chapter 7 case that were inconsistent with Debtor's original chapter 13 documents and contending that Debtor's likely disposable income would require \$82,316.40 to unsecured creditors as opposed to the 0% plan proposed by Debtor. Doc. #168.

At the hearing on April 8, 2021, the court continued the hearing on this motion to May 6, 2021 and ordered Debtor to file amended forms 122C-1 and 122C-2 no later than April 22, 2021 ("Order"). Order, Doc. #177. By the Order, the court stated that Trustee's motion to dismiss would be granted if Debtor did not timely file the required forms. Order, Doc. #177.

Having reviewed the docket in this case, the court finds Debtor has not filed the required documents and Trustee's motion has not been withdrawn.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth), 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for

dismissal under 11 U.S.C. § 1307(c)(1) for unreasonable delay by Debtor that is prejudicial to creditors.

Accordingly, this motion is GRANTED. The case will be dismissed.

2. [19-14310](#)-A-13 **IN RE: TRACY FLAHERTY**
[RSW-7](#)

CONTINUED MOTION TO CONFIRM PLAN
2-26-2021 [[151](#)]

TRACY FLAHERTY/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor Tracy Susanne Flaherty ("Debtor") filed and served this motion to confirm the first modified Chapter 13 plan pursuant to Local Rule of Practice ("LBR") 3015-1(d)(1) and set for hearing on April 8, 2021. Doc. ##151-56. The Chapter 13 trustee ("Trustee") filed an opposition to Debtor's motion. Doc. #163. The court continued this matter to May 6, 2021 and ordered Debtor to file and serve a written response to Trustee's objection by April 22, 2021; or if Debtor elected to withdraw this plan, then Debtor had to file, serve, and set for hearing a confirmable modified plan by April 29, 2021. Doc. #176.

Having reviewed the docket in this case, the court finds Debtor has not dismissed this case, and Trustee's objection has not been withdrawn. Further, Debtor has not filed and served any written response to Trustee's objection. Debtor has not filed, served, and set for hearing a confirmable modified plan by the time set by the court.

Accordingly, Debtor's motion to confirm the first modified Chapter 13 plan is DENIED on the grounds set forth in Trustee's opposition.

3. [20-13524](#)-A-13 **IN RE: KYLE/NATALIE SINGLEY**
[CJK-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
12-8-2020 [[17](#)]

BANK OF AMERICA, N.A./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
CHRISTINA KHIL/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Sustained.

4. [20-12439](#)-A-13 **IN RE: RAFAEL/BLANCA RIVERA**
[PK-4](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS ATTORNEY(S)
4-14-2021 [\[56\]](#)

PATRICK KAVANAGH/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 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 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.

Patrick Kavanagh ("Movant"), counsel for the Chapter 13 debtor, requests allowance of interim compensation in the amount of \$8,000.00 for services rendered March 16, 2020 through December 28, 2020. Doc. #56. Movant received a retainer of \$1,100.00 and is requesting \$6,900.00 payable through the plan. Ex. A, Doc. #58. Movant is not requesting reimbursement for expenses.

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 13 case. 11 U.S.C. § 330(a)(1), (4)(B). 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). Here, Movant's services in the relevant period included, without limitation: (1) pre-petition consultation and fact gathering; (2) preparing, filing, and amending the petition, schedules, and forms; (3) hearings; and (4) claim administration. Doc. #58. The court finds that the compensation reimbursement sought is reasonable, actual, and necessary, and the court will approve the motion on an interim basis.

This motion will be GRANTED. The court allows interim compensation in the amount of \$8,000.00 to be paid in a manner consistent with the terms of the confirmed plan.

5. [15-13649](#)-A-13 **IN RE: TY RAWLES**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
11-16-2020 [[22](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

NO RULING.

6. [15-13649](#)-A-13 **IN RE: TY RAWLES**
[PK-2](#)

MOTION TO MODIFY PLAN
3-30-2021 [[51](#)]

TY RAWLES/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

7. [19-13251](#)-A-13 **IN RE: OSCAR/MELISSA GARZA**
[RSW-1](#)

MOTION TO MODIFY PLAN
3-12-2021 [[70](#)]

MELISSA GARZA/MV
WILLIAM OLCOTT/ATTY. FOR DBT.
ROBERT WILLIAMS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). Oscar Edward Garza and Melissa Richer Garza (together, "Debtors") move the court to confirm Debtors' first modified chapter 13 plan (the "Plan"). Doc. #70. Although no opposition was properly filed in connection with this motion, on April 23, 2021, secured creditor Wilmington Fund Savings Society, FSB ("Creditor") filed a Stipulation Resolving Limited Objection to Confirmation Of Debtors' First Modified Chapter 13 Plan (the "Stipulation"). Doc. #79. This matter will proceed as scheduled.

The Stipulation, signed by and through counsel for both Debtors and Creditor, states that Debtors have entered into a trial loan modification with Creditor. Stipulation ¶ 3, Doc. #79. Debtors' Plan accurately reflects the payments to be made by Debtors to Creditor under the terms of the trial loan modification and, if successful, the final loan modification. Stip. ¶ 4, Doc. #79. A final loan modification agreement between Debtors and Creditor will not be consummated until Debtors complete the trial loan modification payments. Stip. ¶ 5, Doc. #79. Because the trial loan modification payments may not be completed by Debtors, the Stipulation provides that:

[T]he Order confirming the Modified Plan shall reflect that terms proposed in the Trial Loan Modification Agreement are not final, and [Creditor's] loan documents and right to ongoing payments and cure of all arrears pre and post-petition are not modified by the Modified Plan until a Final Loan Modification Agreement is entered into between Debtors and [Creditor]. [Creditor] agrees to amend its Proof of Claim no. 7, within 90 days, of the event a Final Loan Modification Agreement is reached.

Stip. ¶ 6, Doc. #79. The Stipulation further states that neither the chapter 13 trustee ("Trustee") or Creditor "waive their rights to file any objections to further modification of the Chapter 13 Plan pending the outcome of the pending Trial Loan Modification payment plan." Stip. ¶ 7, Doc. #79.

Although the Stipulation states that Debtor, Creditor and Trustee have consulted each other regarding the best possible way to proceed, Trustee is not a signatory to the Stipulation.

The court is inclined to GRANT this motion if Trustee confirms on the record that Trustee consents to the terms of the Stipulation. The confirmation order shall be consistent with the Stipulation filed at Doc. #79.

8. [21-10051](#)-A-13 **IN RE: JUAN/DENICE VASQUEZ**
[KMM-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY MOUNTAIN WEST
FINANCIAL, INC.
1-29-2021 [[11](#)]

MOUNTAIN WEST FINANCIAL, INC./MV
ROBERT WILLIAMS/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.

NO RULING.

9. [21-10453](#)-A-13 **IN RE: ROY ABUEG**
[MHM-1](#)

MOTION TO DISMISS CASE
4-2-2021 [[20](#)]

MICHAEL MEYER/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING, WITHDRAWN

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion on April 29, 2021. Doc. #33.

10. [21-10453](#)-A-13 **IN RE: ROY ABUEG**
[PK-1](#)

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK N.A.
3-17-2021 [[13](#)]

ROY ABUEG/MV
PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be

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

Roy Prudente Abueg ("Debtor"), the debtor in this Chapter 13 case, moves the court for an order valuing the Debtor's 2013 BMW 535i ("Property"), which is the collateral of Wells Fargo Bank, N.A. d/b/a Wells Fargo Auto ("Creditor"). Doc. #13.

11 U.S.C. § 1325(a) (*) (the hanging paragraph) permits the debtor to value personal property acquired for the personal use of the debtor at its current value, as opposed to the amount due on the loan, if the loan was a purchase money security interest secured by the property and the debt was not incurred within the 910-day period preceding the date of filing. 11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim." Section 506(a)(2) of the Bankruptcy Code states that the value of personal property securing an allowed claim shall be determined based on the replacement value of such property as of the petition filing date. "Replacement value" where the personal property is "acquired for personal, family, or household purposes" means "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." 11 U.S.C. § 506(a)(2).

Debtor asserts the Property was purchased more than 910 days before the filing of this case. Doc. #15. Debtor asserts a replacement value of the Property of \$11,000.00 and asks the court for an order valuing the Property at \$11,000.00. Doc. #13; Doc. #15. Debtor is competent to testify as to the value of the Property. Creditor filed a proof of claim on March 8, 2021, which valued the Property at \$13,000.00. Claim 1. However, Creditor has not responded to this motion. Given the absence of contrary evidence, Debtor's opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at \$11,000.00. The proposed order shall specifically identify the collateral, and if applicable, the proof of claim to which it relates. The order will be effective upon confirmation of the Chapter 13 plan.

CONTINUED MOTION TO CONFIRM PLAN
2-3-2021 [[44](#)]

BARBARA KIRKEGAARD-JENSEN/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

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 set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The chapter 13 trustee ("Trustee") timely opposed this motion. Opp'n, Doc. #54. The court continued this matter to May 6, 2021 and ordered the debtors to file and serve a written reply no later than April 22, 2021. Civil Minutes, Doc. #56. The debtors timely filed their written reply on April 22, 2021. Doc. #59. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered. This matter will proceed as scheduled.

Ulf Jensen and Barbara Ann Kirkegaard-Jensen (together, "Debtors"), the above-median income chapter 13 debtors, move the court to confirm Debtors' first modified chapter 13 plan. Doc. #44. Trustee initially objected to confirmation of Debtors' modified plan because the modified plan will take over 83 months to fund and the modified plan does not provide for all of Debtors' projected disposable income to be applied to unsecured creditors. Doc. #54.

By their reply, Debtors propose to increase plan payments to \$4,707.00 per month starting in September 2021 through February 2022, then further increase their plan payments to \$5,338.53 for the remainder of the plan. Doc. #59.

On April 30, 2021, Trustee filed a withdrawal of the opposition to confirmation of Debtors' chapter 13 plan. However, it is unclear to the court whether Trustee's withdrawal was made conditioned on the court approving the modified chapter 13 plan consistent with the new terms set forth in Debtors' reply or if Trustee's withdrawal renders Debtors' new proposition moot and the original terms of Debtors' modified plan are unopposed.

At the hearing, Trustee will be asked to clarify whether Trustee's withdrawal was based on the court approving the modified chapter 13 plan consistent with the new terms set forth in Debtors' reply or if confirmation is to be approved consistent with the original terms of Debtors' modified plan. Upon Trustee's clarification, the court will GRANT this motion if Debtors agree. If the motion is granted, the confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed. If necessary, the proposed order shall also reflect the increase in plan payments.

12. [19-10791](#)-A-13 **IN RE: JASON/RANDI PATTERSON**
[RSW-5](#)

MOTION TO INCUR DEBT
4-22-2021 [[74](#)]

RANDI PATTERSON/MV
ROBERT WILLIAMS/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 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 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.

Jason Randall Patterson and Randi Jaylene Patterson (together, "Debtors"), the chapter 13 debtors in this case, move the court for an order authorizing Debtors to incur new debt. Doc. #74. Debtors state that they need to purchase a vehicle because their current vehicle needs work done that would cost more than the vehicle is worth and because the vehicle is not dependable enough to get Debtors to their necessary engagements. Decl. of Randi Patterson, Doc. #76. Debtors are looking for a model year 2015 or newer truck for a purchase price around \$33,000. Decl., Doc. #76. Debtors have \$4,000 for a down payment and expect the monthly payments on the vehicle to be around \$650 per month for 60 months with an annual percentage rate of 18.88%. Decl., Doc. #76.

LBR 3015-1(h)(1)(E) provides that "if the debtor wishes to incur new debt . . . on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

The court is inclined to GRANT this motion. This motion was properly served and noticed, and opposition may be presented at the hearing. There is no indication that Debtors are not current on their chapter 13 plan payments or that the chapter 13 plan is in default. Debtors filed amended Schedules I and J that demonstrate an ability to pay future plan payments, projected living and business expenses, and the new debt. The new debt is a single loan incurred to purchase a motor vehicle that is reasonably necessary for the maintenance or support of Debtors. The only security for the new debt will be the motor vehicle to be purchased by Debtors.

Accordingly, subject to opposition raised at the hearing, this motion is GRANTED. Debtors are authorized, but not required, to purchase a vehicle in a manner consistent with the motion.

13. [19-12394](#)-A-13 **IN RE: JUAN/CONSUELO ARZATE**
[RSW-2](#)

MOTION TO MODIFY PLAN
3-26-2021 [46]

CONSUELO ARZATE/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

1. [21-10110-A-7](#) **IN RE: RONALD/ESTHER MELENDREZ**
[RSW-1](#)

MOTION TO AVOID LIEN OF FIRST NATIONAL BANK OF OMAHA
4-8-2021 [16]

ESTHER MELENDREZ/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

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

Ronald Melendrez and Esther Marie Melendrez (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of First National Bank of Omaha ("Creditor") on their residential real property commonly referred to as 311 Faber St., Shafter, CA 93263 (the "Property"). Doc. #16; Schedules C and D, Doc. #1. Debtors filed their chapter 7 case on January 16, 2021. Doc. #1.

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

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt

equity in sight." Meyer, 373 B.R. at 88. "Judicial liens are avoided in reverse order until the marginal lien, i.e. the junior lien supported in part by equity, is reached." Id.

Debtors filed their bankruptcy petition on January 16, 2021. A judgment was entered against Esther M. Melendrez in the amount of \$13,915.21 in favor of Creditor on July 27, 2020. Ex. 4, Doc. #19. The abstract of judgment was recorded pre-petition in Kern County on October 2, 2020. Ex. 4, Doc. #19. The lien attached to Debtors' interest in the Property located in Kern County. Doc. #19. The Property also is encumbered by a lien in favor of Quicken Loans in the amount \$180,362.00. Schedule D, Doc. #1. Debtors claimed an exemption of \$300,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at \$241,000.00. Schedule A/B, Doc. #1.

Because the lien sought to be avoided in this motion is the most senior, and the court disposes of the more junior lien in matter number 2, below, the statutory formula is applied as follows:

| | | |
|---|-----|--------------|
| Amount of Creditor's judicial lien | | \$13,915.21 |
| Total amount of all other liens on the Property (excluding junior judicial liens) | + | \$180,362.00 |
| Amount of Debtors' claim of exemption in the Property | + | \$300,000.00 |
| | sum | \$494,277.21 |
| Value of Debtors' interest in the Property absent liens | - | \$241,000.00 |
| Amount Creditor's lien impairs Debtors' exemption | = | \$253,277.21 |

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is GRANTED.

2. [21-10110](#)-A-7 **IN RE: RONALD/ESTHER MELENDREZ**
[RSW-2](#)

MOTION TO AVOID LIEN OF CITIBANK, N.A.
4-8-2021 [[21](#)]

ESTHER MELENDREZ/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not

materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Ronald Melendrez and Esther Marie Melendrez (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Citibank, N.A. ("Creditor") on their residential real property commonly referred to as 311 Faber St., Shafter, CA 93263 (the "Property"). Doc. #21; Schedules C and D, Doc. #1. Debtors filed their chapter 7 case on January 16, 2021. Doc. #1.

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

Where the movant seeks to avoid multiple liens as impairing the debtor's exemptions, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." Meyer, 373 B.R. at 88. "[J]udicial liens are avoided in reverse order until the marginal lien, i.e. the junior lien supported in part by equity, is reached." Id.

Debtors filed their bankruptcy petition on January 16, 2021. A judgment was entered against Esther M. Melendrez in the amount of \$4,306.98 in favor of Creditor on October 8, 2020. Ex. 4, Doc. #23. The abstract of judgment was recorded pre-petition in Kern County on December 15, 2020. Ex. 4, Doc. #23. The lien attached to Debtors' interest in the Property located in Kern County. Doc. #23. The Property is further encumbered by a senior judicial lien in favor of First National Bank of Omaha recorded on October 2, 2020. Ex. 4, Doc. #23. The Property also is encumbered by a lien in favor of Quicken Loans in the amount \$180,362.00. Schedule D, Doc. #1. Debtors claimed an exemption of \$300,000.00 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1. Debtors assert a market value for the Property as of the petition date at \$241,000.00. Schedule A/B, Doc. #1.

Applying the statutory formula to Creditor's junior judicial lien first:

//

//

//

| | | |
|---|-----|--------------|
| Amount of Creditor's judicial lien | | \$4,306.98 |
| Total amount of all other liens on the Property (excluding junior judicial liens) | + | \$194,277.21 |
| Amount of Debtors' claim of exemption in the Property | + | \$300,000.00 |
| | sum | \$498,584.19 |
| Value of Debtors' interest in the Property absent liens | - | \$241,000.00 |
| Amount Creditor's lien impairs Debtors' exemption | = | \$257,584.19 |

After application of the arithmetical formula required by § 522(f) (2) (A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f) (1). Accordingly, this motion is GRANTED.

3. [20-13821](#)-A-7 **IN RE: MICHAEL WARD**
[ASW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-30-2021 [14]

U.S. BANK NA/MV
LEONARD WELSH/ATTY. FOR DBT.
CAREN CASTLE/ATTY. FOR MV.
DISCHARGED 4/14/21

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

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

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f) (1). The failure of creditors, the 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 a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The motion will be GRANTED IN PART as to the trustee's interest and DENIED AS MOOT IN PART as to the debtor's interest pursuant to 11 U.S.C. § 362(c) (2) (C). The debtor's discharge was entered on April 14, 2021. Doc. #20. The motion will be GRANTED IN PART for cause shown as to the chapter 7 trustee.

The movant, U.S. Bank NA ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d) (1) and (d) (2) with respect to a piece of real property

located at 1401 Alta Vista Drive, Bakersfield, California ("Property").
Doc. #14.

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

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtor has been in default since October 2020.
Doc. ##16, 17.

The court also finds that the debtor does not have any equity in the property and the property is not necessary to an effective reorganization because the debtor is in chapter 7. The debtor has valued the Property at \$335,810.00. Doc. #1. The amount owed to Movant is \$393,882.51. Doc. #17. The debtor's statement of intention indicates that the debtor intends to surrender the property. Doc. #1.

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

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtor intends to surrender the property.

4. [21-10728](#)-A-7 **IN RE: DEMECIO SANDOVAL GARCIA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
4-9-2021 [[11](#)]

SYDELL CONNOR/ATTY. FOR DBT.
\$338.00 FILING FEE PAID 4/10/21

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

DISPOSITION: The OSC will be vacated.

ORDER: The court will issue an order.

The record shows that the filing fee has been paid in full. The case shall remain pending.

MOTION TO AVOID LIEN OF TBF FINANCIAL I, LLC
4-22-2021 [\[43\]](#)

TERESA WILLIAMS/MV
ROBERT WILLIAMS/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 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 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.

Christopher David Carlson and Teresa Ann Williams (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of TBF Financial I, LLC ("Creditor") on their residential real property commonly referred to as 24450 Hart Dr., Tehachapi, CA 93561 (the "Property"). Doc. #43; Am. Schedules C and D, Doc. #19. Debtors filed their chapter 7 case on October 2, 2019. Doc. #1.

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

Debtors filed their bankruptcy petition on October 2, 2019. A judgment was entered against Christopher D. Carlson in the amount of \$19,476.34 in favor of Creditor on August 13, 2019. Ex. 4, Doc. #46. The abstract of judgment was recorded pre-petition in Kern County on September 30, 2019. Ex. 4, Doc. #46. The lien attached to Debtors' interest in the Property located in Kern County. Doc. #46. The Property also is encumbered by a lien in favor of Mr. Cooper in the amount \$270,661.68. Am. Schedule D, Doc. #19. Debtors claimed an exemption of \$17,338.32 in the Property under California Code of Civil Procedure § 703.140(b)(5). Am. Schedule C, Doc. #19. Debtors assert a market value for the Property as of the petition date at \$288,000.00. Schedule A/B, Doc. #1.

Applying the statutory formula:

//

| | | |
|---|-----|--------------|
| Amount of Creditor's judicial lien | | \$19,476.34 |
| Total amount of all other liens on the Property (excluding junior judicial liens) | + | \$270,661.68 |
| Amount of Debtors' claim of exemption in the Property | + | \$17,338.32 |
| | sum | \$307,476.34 |
| Value of Debtors' interest in the Property absent liens | - | \$288,000.00 |
| Amount Creditor's lien impairs Debtors' exemption | = | \$19,476.34 |

After application of the arithmetical formula required by § 522(f)(2)(A), the court finds there is insufficient equity to support Creditor's judicial lien. Therefore, the fixing of this judicial lien impairs Debtors' exemption in the Property and its fixing will be avoided.

Debtors have established the four elements necessary to avoid a lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion will be GRANTED.

10:30 AM

1. [20-11367](#)-A-11 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
4-9-2020 [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED

On May 5, 2021, this case was converted to one under Chapter 7. Doc. #326.
Therefore, this status conference will be dropped as moot.

2. [20-11367](#)-A-11 **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**
[LKW-15](#)

CONTINUED AMENDED CHAPTER 11 DISCLOSURE STATEMENT FILED BY
DEBTOR TEMBLOR PETROLEUM COMPANY, LLC
2-3-2021 [[273](#)]

LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Dropped as moot.

NO ORDER REQUIRED

On May 5, 2021, this case was converted to one under Chapter 7. Doc. #326.
Therefore, the hearing on the disclosure statement will be dropped as moot.

1. [20-13641](#)-A-7 **IN RE: MATTHEW/ERIN BACHARA**
[21-1008](#)

STATUS CONFERENCE RE: COMPLAINT
2-25-2021 [1]

BACHARA ET AL V. ALTA ONE FEDERAL CREDIT UNION
NICHOLAS WAJDA/ATTY. FOR PL.

NO RULING.

2. [19-12047](#)-A-7 **IN RE: ROBERT FLETCHER**
[19-1097](#) [DRJ-7](#)

CONTINUED MOTION FOR SANCTIONS
3-24-2021 [118]

FLETCHER V. FLETCHER ET AL
DAVID JENKINS/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted on a final basis.

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.

On April 8, 2021, the court entered an Order Conditionally Granting and Continuing Hearing on Plaintiff's Motion for Discovery Sanctions continuing the hearing on this motion to May 6, 2021. Doc. #129. The court is inclined to GRANT Plaintiff's motion on a final basis. This matter will proceed as scheduled.

Robert John Fletcher ("Defendant") is a Chapter 7 debtor and the defendant in this adversary proceeding. Russell Remington Fletcher ("Plaintiff") alleges that certain debt, arising from Defendant's role as trustee for the Marion D. and Thelma F. Fletcher Family Revocable Trust of 1989 ("Trust"), is nondischargeable.

On March 24, 2021, Plaintiff filed the instant motion for sanctions, requesting that Defendant's answer to Plaintiff's complaint be stricken (the "Motion"). Doc. #118. Plaintiff argued that the severe sanction of striking Defendant's answer is warranted because Defendant has not complied with the court's order compelling further answers to interrogatories and because Defendant has not produced documents. Doc. #118.

At the hearing on April 8, 2021, after finding Defendant's amended discovery responses inadequate and his opposition to Plaintiff's Motion without merit, this court provided Defendant one final opportunity to comply with the court's order before imposing sanctions under Rule 37(b) in the form of striking Defendant's answer. See Civil Minutes, Doc. #127; Order, Doc. #129.

The Order Conditionally Granting and Continuing Hearing on Plaintiff's Motion for Discovery Sanctions (the "Order") required Defendant to complete two tasks on or before April 22, 2021. Order, Doc. #129. First, Defendant was to supplement responses to Plaintiff's First Set of Interrogatories to Defendant Nos. 1-4, 6, 8, 40, and 41. Order ¶ 1(a), Doc. #129. Second, Defendant was to provide "via scan and email to Plaintiff's counsel . . . all outstanding documents for the years 2004 through 2018 necessary for an Accounting of the Marion D and Thelma F. Fletcher Family Revocable Trust of 1989, including but not limited to bank statements and cancelled checks." Order ¶ 1(b), Doc. #129. The Order then instructed Plaintiff's counsel, on or before April 29, 2021, to "file an affidavit attesting to whether Defendant complied with" the Order. Order ¶ 2, Doc. #129. The court continued the hearing on Plaintiff's Motion to May 6, 2021, "for a determination of whether the Defendant has complied with these requirements." Order ¶ 3, Doc. #129. The Order expressly stated that "Defendant's answer will be stricken in its entirety" if Defendant did not comply with the Order. Order ¶ 3, Doc. #129.

As required by the Order, on April 29, 2021, Plaintiff submitted an affidavit and supporting exhibits detailing Defendant's compliance with the Order. Doc. #130, 131. According to the sworn affidavit of Plaintiff's counsel, Defendant failed to comply with the Order by failing to respond to interrogatory nos. 3, 4, 6, and 8. Affidavit ¶ 7, Doc. #130. Further, the affidavit states that "Defendant did not provide any additional bank statements or cancelled checks necessary for an Accounting" and "Defendant did not provide any bank statements for the critical period." Affidavit ¶ 7, Doc. #130.

Having reviewed Plaintiff's affidavit and exhibits showing the correspondence and documents produced by Defendant, the court finds that Defendant did not comply with the Order. Defendant did not produce any bank statements for the years 2004 through 2018. See Exs. 9-13, Doc. #131. While Plaintiff states that Defendant's amended responses to interrogatory nos. 1, 40, and 41 comply with the Order, the remaining interrogatories are either unanswered by Defendant or fail to specify the records in which Plaintiff might find the answer. See Defendant's Supplemental Responses to Interrogatories, Ex. 12, Doc. #131.

Under Rule 37(b), the court has broad discretion to impose sanctions as a remedy for non-compliance with a discovery order. See Roadway Express v. Piper, 447 U.S. 752, 763 (1980). Where the drastic sanctions of dismissal or default are imposed "the range of discretion is narrowed and the losing party's noncompliance must be due to willfulness, fault, or bad faith." Henry v. Gill Indus., Inc., 983 F.2d 943, 946 (9th Cir. 1993) (citations omitted). All that is required to demonstrate willfulness, bad faith, or fault is disobedient conduct not shown to be outside the control of the litigant. Id. at 948; see also Sigliano v. Mendoza 642 F.2d 309 (9th Cir. 1981) (affirming dismissal under Rule 37 despite the non-compliant party's representations that work on interrogatories, although burdensome, was proceeding).

The court finds Defendant's noncompliance is due to willfulness, fault, and bad faith. Since at least 2018, Defendant has consistently stated that his health issues prevent him from finalizing an accounting of Trust records. In this adversary proceeding, Defendant first asserted a need for more time on October 31, 2019. Doc. #15. Then, on December 17, 2019, Defendant requested an additional 120 days to complete the accounting. Doc. #18. An accounting had yet to be completed by May 5, 2020, when the court ordered fact and expert discovery to close on October 13, 2020. Doc. #47. On October 29, 2020, the discovery deadline was extended to December 11, 2020 because Defendant refused to participate in discovery. On November 25, 2020, Plaintiff was forced to move to compel amended discovery responses from Defendant because Defendant refused to meaningfully participate in discovery, continuing to cite his multitudinous

health issues and the need to finalize the accounting before Defendant could adequately respond to discovery. The parties again stipulated to extend the discovery deadline to April 30, 2021. Doc. #116. Defendant failed to comply with that stipulation, and Plaintiff filed the instant Motion for sanctions on March 24, 2021. Doc. #118. As explained above, rather than impose drastic sanctions at the hearing on this Motion held April 8, 2021, this court gave Defendant another opportunity to answer interrogatories and produce documents - requests first propounded on Defendant in June of 2020. See Ex. 10, Doc. #82; Ex. 6, Doc. #90. Defendant did not comply with the Order.

The court must weigh five factors before imposing drastic sanctions for failure to comply with discovery, including striking an answer: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its dockets; (3) the risk of prejudice to the party seeking sanctions; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions. E.g., Henry v. Gill Indus., Inc., 983 F.2d at 948. The first two factors favor the imposition of sanctions, whereas the fourth factor cuts against drastic sanctions, "[t]hus the key factors are prejudice and the availability of lesser sanctions." Id.

"A [plaintiff] suffers prejudice if the [defendant's] actions impair the [plaintiff's] ability to go to trial or threaten to interfere with the rightful decision of the case." Adriana Int'l Corp. v. Lewis & Co., 913 F.2d 1406, 1412 (9th Cir. 1990). Delay alone may be insufficient, but the failure to produce documents as ordered is considered sufficient prejudice. Id. Plaintiff's claims in this adversary proceeding arise from Plaintiff's allegations of defalcation and fraudulent appropriation against Defendant in Defendant's role as sole trustee of the Trust and were asserted against Defendant pre-petition in state court. Plaintiff's claims require, among other things, a review of bank records and cancelled checks during the period of time Defendant was the trustee of the Trust. Since before the inception of this adversary proceeding, however, Defendant has claimed he needs the relevant records in order to complete Defendant's own accounting before Defendant can properly defend any action against himself or produce the records in discovery. See Answer, Doc. #15. Defendant's timeline for completing the accounting has repeatedly required extensions, as have the discovery timelines requiring Defendant to turn over the requested documents. See Doc. #15, 18, 62, 101, 114-116. As a result, Plaintiff is unable to prosecute his claims against Defendant because Defendant, the sole trustee of the Trust during the time when trust funds allegedly disappeared, willfully and repeatedly disobeys court orders. Defendant has been given ample opportunity to produce documents and comply with previous court orders but has repeatedly failed to do so. Because Plaintiff needs the requested documents to support and prosecute his claims, Defendant's refusal to comply with court-ordered discovery and the refusal to turn over the documents required by the Order is prejudicial to Plaintiff.

The fifth factor, the availability of less drastic sanctions, requires the court to consider three sub-factors: (a) the availability of less drastic sanctions; (b) the prior use of less drastic sanctions; and (c) whether the party was adequately warned of the possibility of termination. Adriana, 913 F.2d at 1412-13. Here, the court's previous discovery order issued December 14, 2021 warned Defendant that failure to comply "will result in sanctions pursuant to Rule 37(b)." Order ¶ 5, Doc. #115. More recently, the April 8 Order warned that if Defendant did not comply with the Order, "Defendant's answer will be stricken in its entirety." Order ¶ 3, Doc. #129. Defendant was repeatedly offered less drastic sanctions and warned of more severe sanctions yet continued to disobey this court's orders.

Accordingly, the striking of Defendant's pleadings is appropriate in this case. The court's Order Conditionally Granting Plaintiff's Motion for Discovery Sanctions is hereby GRANTED on a final basis and Defendant's answer is stricken for Defendant's failure to comply with this court's discovery orders.

3. [20-12873](#)-A-7 **IN RE: KEVIN/DELAINE MCNAMARA**
[20-1066](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-10-2020 [[1](#)]

MCNAMARA ET AL V. AMERICAN CONTRACTORS INDEMNITY COMPANY
PATRICK KAVANAGH/ATTY. FOR PL.

NO RULING.

4. [19-13783](#)-A-7 **IN RE: MARK/SUSAN CHAGOYA**
[19-1129](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
7-6-2020 [[40](#)]

BROWN V. CHAGOYA ET AL
JEFF BEAN/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.