

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Thursday, October 17, 2019
Place: Department B - Courtroom #13
Fresno, 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. 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.

9:30 AM

1. [18-11651](#)-B-11 IN RE: GREGORY TE VELDE
[MB-68](#)

RESCHEDULED HEARING RE: MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH SOLESECO, LLC, LINEONE POTATO SOLUTIONS AND WYATT ENTERPRISES
9-10-2019 [[2715](#)]

RANDY SUGARMAN/MV
MICHAEL COLLINS
JOHN MACCONAGHY/ATTY. FOR MV.

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

DISPOSITION: Granted.

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

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

This motion is GRANTED. It appears from the moving papers that the chapter 11 trustee ("Trustee") has considered the standards of In re Woodson, 839 F.2d 610, 620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

a. the probability of success in the litigation;

- b. the difficulties, if any, to be encountered in the matter of collection;
- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of the Trustee's business judgment. The order should be limited to the claims compromised as described in the motion.

Trustee requests approval of a settlement agreement between the estate the claimant Soleseco, LLC and its affiliates LinkOne Potato Solutions, LLC and Wyatt Enterprises.

The settlement was reached through mediation conducted by the Honorable Randall Newsome, a retired bankruptcy judge from the Northern District of California.

Under the terms of the compromise, (1) Proof of Claim No. 69 filed by LinkOne's predecessor in interest shall be allowed as filed as an administrative priority claim in the amount of \$129,276.00; (2) Soleseco shall be deemed to have an allowed Chapter 11 administrative priority claim in the amount of \$32,547.60 arising from post-petition deliveries of feed to the Debtor; (3) Soleseco shall be deemed to have an allowed Chapter 11 administrative priority claim in the amount of \$620,000, arising out of the matters alleged in the Adversary Proceeding and the Motion to Reject Executory Contract filed in the Main Case. This sum shall be payable to one installment of \$220,000 on the Effective Date of the Plan, and the balance of \$400,000, payable no later than ten business days following the close of escrow of the sale of the Pacific Rim Dairy; (4) Soleseco shall be deemed to have an allowed general unsecured claim in the amount of \$2,701,403.74, payable in the same manner as all other general unsecured claims, arising out of the matters alleged in the Adversary Proceeding and the Motion to Reject Executory Contract filed in the Main Case, and; (5) The Parties will exchange mutual releases. This is only a summary of the agreement.

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

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is far from assured as the claims are complex and factually intensive; collection is not a factor in the proposed settlement; the

litigation is incredibly complex and moving forward would decrease the net to the estate due to the legal fees; and the creditors will greatly benefit from the net to the estate, that would otherwise not exist; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

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

2. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[MB-69](#)

RESCHEDULED HEARING RE: MOTION FOR ORDER ESTABLISHING PROCEDURES FOR CONFIRMATION OF MODIFICATION TO PLAN REORGANIZATION
9-17-2019 [[2732](#)]

RANDY SUGARMAN/MV
MICHAEL COLLINS
JOHN MACCONAGHY/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 preparation of the order determined at the hearing.

Rulings on Trustee's Objections to Committee's Exhibits

Foundation objection is sustained. The other objections overruled.

Merits

The chapter 11 Trustee ("Trustee") asks the court to set procedures for any creditor to change its vote due to post-disclosure and post-balloting modifications to a Plan of Reorganization proposed by the trustee.

After the bankruptcy court (J. Clement) approved a disclosure statement, the plan and ballots were served. Then Trustee negotiated with "the institutional creditors" and submitted a modified Plan and this motion on September 17, 2019. Many ballots were received in favor of the Plan before and after the modifications were proposed. The court notes the declaration and exhibits of John MacConaghy (doc. ##2817, 2818), the declaration of Robyn Sokol, counsel for creditor Soleseco (doc. #2819), and the declaration of Jim Conway

(doc. #2820). Neither Soleseco nor Conway Hay Sales apparently have an objection to the proposed modifications.

There are three modifications proposed: 1. There are changes in interest and amortization rates, maturity dates and collateral characterization of Rabobank and Golden State Farm Credit's claims. 2. Trustee has concluded that he should reduce his commission rate to 1.5%, limit commissions to asset sales and litigation recoveries and waive commissions from operating disbursements. 3. Limit eligibility to serve on the post-confirmation Liquidating Trust Governing Board to creditors with allowed claims.

Trustee contends the court should set November 1, 2019 as the date when any creditor who timely voted on the original Plan may change their vote if they find the modifications unacceptable. The Official Committee of Unsecured Creditors ("the Committee") opposes and contends the modifications dealing with treatment of Rabobank and Golden State Farm Credit's claims justify a new Disclosure Statement and re-solicitation process. Trustee's voluntary commission cap and composition of post-confirmation governing board is not at issue.

11 U.S.C. § 1127(a) permits a proponent of a plan to modify the plan before confirmation. But the disclosure requirements of § 1125 are applicable to the modified Plan. See Section 1127(c). The court may fix a time within which a holder of a claim or interest can change the holder's vote. § 1127(d). Though the modified Plan becomes the Plan, that only occurs after there has been a disclosure under section 1125 *as the court may direct*, notice and a hearing and such modification is approved. See § 1129 (f) (2) (emphasis added).

These provisions are implemented by Federal Rule of Bankruptcy Procedure 3019(a). The modified plan will be deemed accepted by creditors who previously accepted the plan if, after notice and a hearing, the court finds that the proposed modification does not adversely change the treatment of any creditor who has not accepted in writing the modification. Id. So the court has discretion to determine whether the proposed modification adversely changes the treatment of those creditors who have not accepted the modifications in writing. The court then may determine that additional disclosure is necessary. If so, the court may direct the disclosure.

The statute (§ 1127) permits modifications that might technically have a negative impact on claimant's where the modifications are not substantial. In re Am. Solar King Corp., 90 B.R. 808, 826 (Bankr. W.D. Tex. 1988). The rule (Fed. R. Bankr. Proc. 3019) should be interpreted to bring effect to not undermine the statute. Id. A creditor who has voted to reject a plan lacks standing to oppose a plan's modification. In re Simplot, No. 06-00002-TLM, 2007 Bankr. LEXIS 2936, at *43 (Bankr. D. Idaho Aug. 28, 2007). To come within Rule 3019, the modification should not be one that changes the rights of a creditor as fixed in the plan before modification. 1983 Advisory Committee Note to Rule 3019. See In re Hawaiian Telecom Communs., Inc., 430 B.R. 564, 600 (Bankr. D. Haw. 2009) (notice to creditors of the modifications and modifications on the record at the confirmation hearing were sufficient notice of modification without allowing creditors to change votes).

The Committee argues the proposed modifications to the treatment of Golden State Farm Credit and Rabobank are too significant to be minor changes and they require new disclosures and solicitation. The Committee relies on increases in interest rates and changing the amortization rates for these large loans would negatively impact the unsecured creditors and likely reduce what they will receive. Notably, in the exhibit to John MacConaghy's declaration, Gloria Oates (Farm Credit's counsel) stated that the "facts in the Creditor's Committee opposition [to this motion] re the Golden State Farm Credit loans are incorrect." Doc. #2818. Nevertheless, Committee argues the inclusion of some default interest differs from Trustee's previous position on default interest. Committee also claims these creditors' attorney's fees cannot be contested as unreasonable and reduction of a marketing time frame for the Pacific Rim Ranch necessitates further disclosure.

Committee disputes "blanket releases" given these creditors eliminating "Chapter 5" challenges or surcharges. Committee also is concerned about a subordinate deed of trust proposed to be given Rabobank to secure cash collateral use on the Pacific Rim Ranch.

The court disagrees with the Committee.

First, it appears the unsecured creditors are satisfied with the modifications. Two large creditors with unsecured claims have indicated their support for the modifications. Also, several creditors voted in favor of the Plan after the modification was circulated. This supports the notion that accepting creditors were not affected such that the creditors would be likely to reconsider the acceptance. See In re G-1 Holdings Inc., 420 B.R. 216, 256 (Bankr. D.N.J. 2009).

Second, the modifications have been circulated for nearly a month and the proposed relief asks that the court set a date of November 1 (two weeks away) for creditors to change their votes. That is consistent with court discretion regarding necessity of and type of disclosure, if any, needed for plan modifications.

Third, this proposed date by which votes can be changed does not disenfranchise the creditors who previously voted for the Plan. In U.S. v. Frontier Airlines, Inc., 93 B.R. 1014, 1024 (Bankr. D. Colo. 1988) the concern was that unless the changes to treatment were *de minimis* creditors should have the chance to reconsider and change their vote. That is precisely what has been done here. The Committee has not convinced the court that a brand new disclosure statement approval and Plan solicitation process is necessary or appropriate here.

Fourth, the modifications proposed are not materially adverse from the position the unsecured creditors had when the Disclosure Statement was approved. See Enron Corp. v. New Power Co. (In re New Power Co.), 438 F.3d 1113, 1117-18 (11th Cir. 2006). Interest rates were "in flux" when the Disclosure Statement was approved. The resolution of the dispute between Trustee and the secured creditors at least narrows the plan confirmation issues. The unsecured creditors were always at risk there. The "blanket releases" can be

disputed at the confirmation hearing as being too broad. That said, no party has made a concrete and specific showing of any viable claims against the creditors, so far.

True enough, fees charged by over secured creditors must be reasonable. That was the law when the Disclosure Statement was approved and now. If there is a contested confirmation hearing in this case and the fees are at issue, the court would need to be persuaded then one way or the other. The fee issue is also a confirmation question and if it is a basis for an objection to confirmation, it can be explored then.

Fifth, the Committee's issues about accuracy of projections is a feasibility question. That is also a confirmation issue. Any affected party can present their witnesses that Trustee's projections are faulty when the time is appropriate.

Though the modifications may have a negative impact on unsecured creditors, that is not the test. The creditors here can change their vote, if they want. They need to change by November 1, 2019. The Committee's concerns with the modifications need to be litigated at confirmation. To be sure, they raise significant issues but need a different forum for consideration.

The motion is GRANTED.

3. [18-11651](#)-B-11 **IN RE: GREGORY TE VELDE**
[MB-70](#)

RESCHEDULED HEARING RE: MOTION TO EMPLOY A&A LIVESTOCK AUCTION, INC. AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES AND/OR MOTION TO SELL FREE AND CLEAR OF LIENS
9-17-2019 [[2737](#)]

RANDY SUGARMAN/MV
MICHAEL COLLINS
JOHN MACCONAGHY/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part and denied in part.

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

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

Yards, Inc. and the Committee of Unsecured Creditors, are entered. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

Under 11 U.S.C. § 363(f), the chapter 11 trustee ("Trustee") may sell estate property outside the ordinary course of business, after notice and a hearing, free and clear of "any interest in such property of an entity other than the estate, only if such entities consent" and "such interest is in bona fide dispute."

"The purpose of § 363(f) (4) is to permit property of the estate to be sold free and clear of interests that are disputed by the representative of the estate so that liquidation of the estate's assets need not be delayed while such disputes are being litigated." Moldo v. Clark (In re Clark), 266 B.R. 163, 171 (B.A.P. 9th Cir. 2001) (citations omitted). The sale proceeds are then usually held subject to the disputed interest. Id. Once the dispute is resolved, the proceeds are then distributed pursuant to the court's order and judgment. Id.

"In ruling on a motion to sell estate property free and clear under § 363(f) (4), 'a court need not determine the probable outcome of the dispute, but merely whether one exists.' In re Kellogg-Taxe, No. 2:12-bk-51208-RN, 2014 Bankr. LEXIS 1033, at *22-23 (Bankr. C.D. Cal. Mar. 17, 2014) (citing In re Octagon Roofing, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991)). The parties must establish factual grounds to show an objective basis for the dispute. Id. (citing In re Gaylord Grain L.L.C., 306 B.R. 624, 627 (8th Cir. B.A.P. 2004)).

OSY's lien is currently the subject of an adversary proceeding, case no. 19-1091. Trustee filed the adversary proceeding to value and determine the validity, priority, and extent of OSY's, and other's, liens on estate property. OSY answered the complaint, both admitting and denying the allegations in the complaint (though the answer appears to have only been partially filed, see doc. #9 in case no. 19-1091).

11 U.S.C. § 328(a) permits employment of "professional persons" on "reasonable terms and conditions" including "contingent fee basis."

Trustee wishes to sell approximately 4800 Holstein dry and milking cows ("the Herd") located at G.J. te Velde Ranch ("GJT") at auction free and clear of the liens of Rabo Agrifinance, LLC ("Rabo"), J.D. Heiskell Holdings, LLC ("JDHH") and Overland Stock Yards, Inc. ("OSY"). Doc. #2737.

Rabo has a UCC-1 financing lien in the current approximate amount of \$57,000,000.00 and is believed to consent to the sale. JDHH has a UCC-1 financing lien in the current approximate amount of \$9,100,000.00 and is believed to consent to the sale. OSY has a UCC-1 financing lien allegedly in the amount of \$1,700,000.00 and is believed to not consent to the sale, but OSY's lien "on this herd is

'strippable' and wholly unsecured on this asset . . . as is more particularly alleged in [a pending adversary proceeding and] is thus in 'bona fide dispute' as the term is used in [11 U.S.C.] Section 363(f)(4)." Doc. #2737. The court has not seen any declarations or other evidence from Rabo or JDHH consenting to the sale free and clear of their liens.

Trustee proposes to employ A&M Livestock Auction, Inc. ("AMA") as auctioneer to sell the Herd at a public auction, which is set for November 15, 2019 at G.J. te Velde Ranch. Other details of the auction can be found at doc. #2740.

Trustee proposes to compensate AMA on a percentage collected basis. The percentage is 4% of the gross proceeds from the sale, including \$1.00 a head for yardage, \$2.25 a head for Beef Promo and Brand Inspection, and potential other inspections such as feed. Id.

OSY timely filed limited opposition, objecting to Trustee's use of AMA as auctioneer because a "significant material connection" to Rabo and because AMA is inexperienced in conducting sales of this size and complexity and charges a higher commission, "thus thwarting the requirements of Section 326." Doc. #2786. OSY states that AMA's custodial account (similar to a trust account, holding proceeds in trust until such time as the sale is closed) is with Rabo, and alleges that this is a conflict of interest and has not been disclosed.

The Committee of Unsecured Creditors ("Committee") also filed limited opposition, albeit one day late. See doc. #2798. Committee never sought leave to file the opposition late and would normally be stricken under LBR 9014-1(1). However, Rabo has responded to the late opposition and the court will take it into consideration. Committee does not oppose the Herd liquidation, "but that the herd should be liquidated only after the sale to Maricopa, or some other party closes." Doc. #2797.

Trustee responded to OSY's objection. Doc. #2808. The court is persuaded that OSY is unable to serve as auctioneer for this sale because OSY is not a "disinterested person" as required under 11 U.S.C. § 327(a). OSY has a claim for over \$1.5 million. Claim #53. A "'disinterested person' means a person that is not a creditor" 11 U.S.C. § 101(14)(A). OSY cannot serve as the auctioneer because they are not a "disinterested person."

As to OSY's argument that AMA is not disinterested because it held a bank account at Rabo is not persuasive. First, AMA did disclose this connection. See doc. #1148. Second, the court does not believe that AMA has "an interest materially adverse to the interest" of Rabo. AMA had a trust account with Rabo - that is the extent of it. As Trustee explains, OSY's argument would prevent attorneys with Wells Fargo home mortgages, debit cards, or credit cards from representing debtors where Wells Fargo was a creditor. There must be something more for a materially adverse interest. That something is not present in this case. OSY's limited objection is overruled.

As to Committee's opposition, both Trustee and Rabo responded. Doc. ##2811, 2825 respectively. Trustee points out that Committee provided no evidence that Trustee's judgment was uninformed or dubious. Committee merely speculated that November may not be the best time to sell the Herd. Rabo's response, and the declaration of Frank Oliver (doc. #2826) suggest otherwise. Trustee's judgment is given great deference, and that deference has not been meaningfully rebutted. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 889-90 (Bankr. D. Alaska 2018) (citations and internal quotations omitted).

As to Committee's request that "any [payment from any sale proceeds of the Herd to Rabo] be made without prejudice to those monies being recalled by the Debtor's estate under Chapter 5 of the Bankruptcy Code," (doc. #2797) the court is persuaded that Committee has not met its burden. Committee did not identify any chapter 5 claims and as Trustee's response explains, any potential chapter 5 claims are either unlikely or may have been released. Doc. #2811. Nevertheless, if any "Chapter 5 claims" can be brought against Rabo, there is no evidence that Rabo could not pay damages if awarded against Rabo.

Because Committee could not meaningfully rebut Trustee's business judgment nor specifically identify any chapter 5 claims, Committee's limited objection is overruled.

However, the court cannot unconditionally grant the relief Trustee seeks. The court must be presented with evidence that Rabo and JDHH have in fact consented. The court is convinced that the sale free and clear of OSY's liens is permitted under § 363(f)(4).

If evidence is produced that Rabo and JDHH have consented, then the motion will be granted in part and denied in part.

The motion is denied as to the relief requesting authorization "to pay the balance of the sales proceeds to Rabo AgriFinance, LLC on account of its secured claim" because adversary proceeding 19-1091 has not yet been resolved, and the validity, priority and extent of OSY's lien has not been determined. Though Rabo has been dismissed from the adversary proceeding, the remaining disputes must be resolved in the adversary proceeding or by plan confirmation.

The court will authorize the sale and is inclined to continue the hearing to determine the status of the disputes which still exist. Notably, there does not appear to be a dispute between the creditors as to priorities.

1:30 PM

1. [17-12900](#)-B-13 **IN RE: PAUL/TERESA YAMASHITA**
[ALG-6](#)

MOTION TO MODIFY PLAN
9-4-2019 [[80](#)]

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

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.

2. [19-13902](#)-B-13 **IN RE: HEZEKIAH SHERWOOD**
[JMM-2](#)

MOTION TO VALUE COLLATERAL OF WESTLAKE FINANCIAL SERVICES
9-17-2019 [13]

HEZEKIAH SHERWOOD/MV
JEFFREY MEISNER

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

First, the notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

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

In this case, a proof of service was filed, albeit after three days after the papers were filed. Doc. #19. The proof of service only shows that the notice of motion was served by eservice on consenting parties and certified mail. But the motion, declaration, and exhibits must also be served on the chapter 13 trustee and creditor.

Local Rule of Practice ("LBR") 9014-1(e)(1) requires "[s]ervice of all pleadings and documents filed in support of, or in opposition to, a motion shall be made on or before the date they are filed with the court."

Though the notice was served, the parties who are directly affected by the relief requested are to be served with all necessary documents. LBR 9014-1(d)(3)(B)(iv). That was not done here.

Third, the declaration is ambiguous as to the debtor's opinion of the relevant value. 11 U.S.C. § 506(a)(2) requires the valuation to be "replacement value," (doc. #15, p.2, ¶7) which is used in the declaration but so is "fair market value," (doc. #15, p.2, ¶4) which is incorrect. The declaration is also silent as to whether the debt incurred was a purchase-money security interest, as required by 11 U.S.C. § 1325(a)*.

Fourth, Debtor states that his opinion is based on "look[ing] at comparable vehicles and having accessed www.kbb.com" Doc.

#15. Debtor has not established himself as an expert, and cannot rely on Kelly Blue Book in determining the replacement value of the vehicle. See Federal Rules of Evidence 701, 702, and 703. Therefore, this motion is DENIED WITHOUT PREJUDICE.

3. [19-12403](#)-B-13 **IN RE: MARK ROKKE**
[MHM-1](#)

MOTION TO DISMISS CASE
9-16-2019 [[26](#)]

MICHAEL MEYER/MV
SCOTT LYONS

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #30.

4. [19-12515](#)-B-13 **IN RE: ALICE CAMERON**
[MHM-1](#)

MOTION TO DISMISS CASE
9-12-2019 [[18](#)]

MICHAEL MEYER/MV
ROBERT WILLIAMS
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 will submit a proposed order after hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

This motion is GRANTED. 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.

The chapter 13 trustee ("Trustee") asks the court to dismiss this case because debtor is delinquent in her plan payments in the amount of \$6,420.00. Doc. #18. Before this hearing, another payment in the amount of \$3,210.00 will also come due.

Debtor timely responded, stating that they would be current by the time of the hearing. Doc. 22.

This matter will be called to confirm whether debtor is current. If debtor is current on plan payments, the motion will be denied. If debtor is not current, the motion will be granted.

5. [19-12622](#)-B-13 **IN RE: JULIE MARTINEZ**
[MHM-1](#)

MOTION TO DISMISS CASE
9-13-2019 [[13](#)]

MICHAEL MEYER/MV
GABRIEL WADDELL

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion. Doc. #31.

6. [19-13650](#)-B-13 **IN RE: ANTHONY ESTACIO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-30-2019 [[35](#)]

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: The minutes of the hearing will be the court's findings and conclusions.

ORDER: The court will issue an order.

This matter will proceed as scheduled. If the fees due at the time of the hearing have not been paid prior to the hearing, the case will be dismissed on the grounds stated in the OSC.

If the installment fees due at the time of hearing are paid before the hearing, the order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

7. [19-13152](#)-B-13 **IN RE: GUILLERMO DE LA ISLA**
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-11-2019 [[31](#)]

MICHAEL MEYER/MV
JAMES CANALEZ
DISMISSED 9/30/19

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: An order dismissing the case has already been
entered. Doc. #39.

8. [19-11357](#)-B-7 **IN RE: ROBERTO/VERONICA AYALA**
[MHM-3](#)

CONTINUED MOTION TO DISMISS CASE
7-16-2019 [[56](#)]

MICHAEL MEYER/MV
THOMAS GILLIS
CONVERTED 9/17/19

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The debtor converted to chapter 7. Doc. #82.

9. [19-11357](#)-B-7 **IN RE: ROBERTO/VERONICA AYALA**
[TOG-3](#)

CONTINUED MOTION TO CONFIRM PLAN
7-29-2019 [[60](#)]

ROBERTO AYALA/MV
THOMAS GILLIS
CONVERTED 9/17/19

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

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: The debtor converted to chapter 7. Doc. #82.

10. [19-12058](#)-B-13 **IN RE: RICHARD/DAWN MARTINES**
[MHM-4](#)

MOTION TO DISMISS CASE
9-16-2019 [[42](#)]

MICHAEL MEYER/MV
TIMOTHY SPRINGER

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

DISPOSITION: Continued to November 14, 2019 at 1:30 p.m.

ORDER: The court will issue an order.

The chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c) for debtor's failure to confirm a chapter 13 plan. Doc. #42. Debtor timely responded, stating that they would be filing a motion to confirm a modified plan, which will be set for hearing on November 14, 2019. Doc. #46. The motion to confirm a modified plan was filed on October 11, 2019. See doc. #48, TCS-1. Therefore this motion to dismiss will be continued to November 14, 2019 at 1:30 p.m. to be heard in conjunction with the motion to confirm modified plan. The court notes that the motion to confirm a modified plan is set for hearing on November 17, 2019, which is not a date the court is hearing matters.

11. [19-10965](#)-B-13 **IN RE: GUADALUPE RAMIREZ**
[MHM-2](#)

MOTION TO DISMISS CASE
9-16-2019 [[32](#)]

MICHAEL MEYER/MV
SCOTT LYONS

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

DISPOSITION: Continued to November 8, 2019 at 10:30 a.m.

ORDER: The court will issue an order.

The chapter 13 trustee ("Trustee") asks the court to dismiss this case under 11 U.S.C. § 1307(c) for debtor's failure to confirm a chapter 13 plan. Doc. #32. Debtor timely responded, stating that a motion to confirm a plan is set for hearing on November 8, 2019 at 10:30 a.m. See SL-1, doc. #38. Therefore this motion to dismiss will be continued to that date to be heard in conjunction with the motion to confirm plan.

12. [19-11472](#)-B-13 **IN RE: IGNACIO DALUDDUNG**
[AF-3](#)

MOTION TO APPROVE LOAN MODIFICATION
9-17-2019 [\[73\]](#)

IGNACIO DALUDDUNG/MV
ARASTO FARSAD

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order signed by the Chapter 13 trustee 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 the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The court first notes movant's failure to comply with LBR 9004-2(c)(1).

LBR 9004-2(c)(1) requires that declarations, exhibits, *inter alia*, to be filed as separate documents. Here, the declarations and exhibits were combined into one document and not filed separately. Failure to comply with this rule in the future, including the local rules on exhibits, will result in the motion being denied without prejudice.

This motion is GRANTED. Debtor is authorized, but not required, to enter into the loan modification with RTR as proposed in the motion and as contained in the exhibit in doc. #82. Namely, that the principal balance owed on the loan will be reduced from its current amount of \$83,575.88 to \$54,493.45; the interest rate will be fixed at 5%, and; the payment amount will be \$762.64/month paid directly to RTR. Doc. #73.

The Chapter 13 Trustee shall sign the order approving as to form. Payments under the confirmed Plan shall continue unless a modified Plan is approved by the court.

13. [19-13075](#)-B-13 **IN RE: JOHN MONTERO**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
9-25-2019 [\[25\]](#)

BENNY BARCO
\$100.00 INSTALLMENT FILING FEE PAID 9/27/19

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 installment fees now due were paid on September 27, 2019. Therefore, the Order to Show Cause will be vacated.

The order permitting the payment of filing fees in installments will be modified to provide that if future installments are not received by the due date, the case will be dismissed without further notice or hearing.

14. [19-12280](#)-B-13 **IN RE: MARGARITO/GUADALUPE VILLEGAS**
[JCW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-16-2019 [\[51\]](#)

NEW RESIDENTIAL MORTGAGE LOAN TRUST 2017-3/MV
THOMAS GILLIS
JENNIFER WONG/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling conference.

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

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

This matter is now deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

Based on the record, the factual issues appear to include: whether debtors are delinquent. Debtors timely opposed the motion, stating that on September 17, 2019 (one day after this motion was filed) they paid \$1,158.74 and are therefore current. Doc. #58.

15. [19-12886](#)-B-13 **IN RE: RAYMOND/DEBORAH MARTIN**
[RS-1](#)

MOTION TO CONFIRM PLAN
9-12-2019 [[31](#)]

RAYMOND MARTIN/MV
RICHARD STURDEVANT

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

16. [14-10193](#)-B-13 **IN RE: MARTA MATA AND GUSTAVO SEGURA**
[TCS-6](#)

CONTINUED MOTION FOR CONTEMPT AND/OR MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION
8-14-2019 [[114](#)]

MARTA MATA/MV
TIMOTHY SPRINGER

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: This matter will proceed as a scheduling conference.

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

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

This matter is now deemed to be a contested matter. Pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the federal rules of discovery apply to contested matters. The parties shall be prepared for the court to set an early evidentiary hearing.

Based on the record, the factual issues appear to include: the nature of respondent's communications with debtor; the true balance of the debt owed to respondent.

The legal issues appear to include: whether respondent's communications to debtor violated the discharge injunction.

17. [17-14293](#)-B-13 **IN RE: ERIC/MEREDITH KURTZ**
[NES-7](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS ATTORNEY
9-16-2019 [[80](#)]

NEIL SCHWARTZ

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

DISPOSITION: Denied without prejudice.

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

This motion is DENIED WITHOUT PREJUDICE. In accordance with the court's ruling on NES-6, issued on July 18, 2019 (see 7/18/19 pre-hearing disposition, matter #7 at 1:30 p.m.), "failure to comply with [LBR 9004-2(c)(1)] in the future will result in the motion being denied without prejudice."

This motion does not comply with LBR 9004-2(c)(1). The motion and exhibits were combined into one document and not filed separately. Therefore the motion is DENIED WITHOUT PREJUDICE.

18. [18-12979](#)-B-13 **IN RE: WILLIAM/SHERRY ALLEN**
[TCS-1](#)

MOTION TO SELL
10-3-2019 [[24](#)]

WILLIAM ALLEN/MV
TIMOTHY SPRINGER
OST 10/4/19

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice unless satisfactory proof of service is presented.

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

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless

opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The order granting the motion for an order shortening time stated that "debtors shall serve and file this motion no later than October 4, 2019." Doc. #27. As of October 8, 2019, there has been no evidence that the motion and other papers were served. Unless the debtor can show that the motion and other papers were served not later than October 4, 2019, the court intends to deny the motion without prejudice.

If service conforming to the court order is satisfactorily established, the following shall be the ruling:

11 U.S.C. § 363(b)(1) allows the debtor-in-possession ("DIP") to "sell, or lease, other than in the ordinary course of business, property of the estate."

11 U.S.C. § 1303 states that the "debtor shall have, exclusive of the trustee, the rights and powers of a trustee under sections . . . 363(b) . . . of this title." 11 U.S.C. § 1302(b)(1) excludes from a chapter 13 trustee's duties the collection of estate property and reduction of estate assets to money. Therefore the debtor has the authority to sell estate property under § 363(b).

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, No. 16-00327-GS, 2018 WL 6584772, at *2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 2018 WL 6584772, at *4, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" Id., citing In re Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

The DIP asks this court for authorization to sell 1361 N. Adler in Fresno, CA 93727 ("Property"), subject to higher and better bids at the hearing, for \$212,000.00. The motion did not name a buyer.

It appears that the sale of the Property is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith. Selling the property

will result with a 100% dividend to unsecured creditors under the plan.