

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, February 2, 2022
Place: Department B – 510 19th Street
Bakersfield, California

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

Pursuant to District Court General Order 631, courthouses for the Eastern District of California will be reopened to the public effective June 14, 2021.

At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. 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.

9:00 AM

1. [18-13203](#)-B-13 **IN RE: JAMES BALLARD**
[PLG-1](#)

MOTION TO MODIFY PLAN
12-17-2021 [\[28\]](#)

JAMES BALLARD/MV
RABIN POURNAZARIAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

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.

James Francis Ballard ("Debtor") seeks an order confirming the First Modified Chapter 13 Plan. Doc. #28.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objected under 11 U.S.C. § 1325(a)(1) because Debtor has failed to file updated *Amended Schedules I and J* evidencing an ability to afford plan payments. Doc. #35.

Debtor replied, saying the schedules would be filed before the hearing. Doc. #37. On January 28, 2022, Debtor filed amended schedules demonstrating that his combined monthly income with non-filing spouse Pamela Ballard is \$11,457.86. Doc. #39, *Am. Sched. I*. Debtor included two bi-weekly paystubs for both himself and Ms. Ballard. Debtor's monthly expenses are \$7,287.13, leaving a combined net monthly income of \$4,170.73. This is sufficient to fund the proposed plan payment of \$1,225.00 per month. *Cf.* Doc. #30. Debtor appears to have resolved Trustee's objection. The plan proposes to pay a 100% dividend to allowed unsecured claims. *Id.*

On January 21, 2022, Trustee withdrew the objection. Doc. #29.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of the creditors, the chapter 13 trustee, 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 amounts of damages). *Televideo Sys., 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 will be GRANTED. The confirmation order shall be approved as to form by Trustee, include the docket control number of the motion, and shall reference the plan by the date it was filed.

2. [20-11914](#)-B-13 **IN RE: ROSA GODOY**
[RSW-4](#)

MOTION TO MODIFY PLAN
12-17-2021 [\[65\]](#)

ROSA GODOY/MV
ROBERT WILLIAMS/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to March 2, 2022 at 9:00 a.m.

ORDER: The court will issue an order.

Rosa Elena Huezo Godoy ("Debtor") seeks an order confirming the Second Modified Chapter 13 Plan. Doc. #65.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objects under 11 U.S.C. § 1325(a)(6) because Debtor will not be able to make all payments under the plan and comply with the plan. Doc. #73. The plan proposes to resume in December 2021, but Trustee has not received the payment for September 2021 and will be unable to resume making payments as called in the plan. *Id.*

This motion will be CONTINUED to March 2, 2022 at 9:00 a.m.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, Debtor shall file and serve a written response not later than February 16, 2022. The response shall specifically address each issue raised in the

opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtor's position. Trustee shall file and serve a reply, if any, by February 23, 2022.

If Debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 23, 2022. If Debtor does not timely file a modified plan or amended schedules demonstrating an ability to afford plan payments, this motion will be denied on the grounds stated in the opposition without a further hearing.

3. [21-12223](#)-B-13 **IN RE: KENNETH MCMILLON**
[RSW-1](#)

CONTINUED OBJECTION TO CLAIM OF MR. COOPER, CLAIM NUMBER 2
12-6-2021 [\[16\]](#)

KENNETH MCMILLON/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Resolved by stipulation.

NO ORDER REQUIRED.

This objection was previously continued so that (1) the parties could include the chapter 13 trustee in the stipulation resolving the claim objection; and (2) Aldridge Pite LLP could file a declaration that it has authority to accept service under Fed. R. Bankr. P. 7004(h) on behalf of U.S. Bank. Docs. ##24-25.

Aldridge Pite filed a declaration that it had authority to accept Rule 7004(h) service. Doc. #28.

The parties filed an updated stipulation to include the chapter 13 trustee's consent. Doc. #27. The court approved the stipulation on January 18, 2022. Doc. #30. Accordingly, the claim objection has been RESOLVED BY STIPULATION.

4. [20-10444](#)-B-13 **IN RE: DAVID/LATUNJIA JOHNSON**
[PK-10](#)

MOTION TO MODIFY PLAN
12-12-2021 [\[165\]](#)

LATUNJIA JOHNSON/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
RESPONSIVE PLEADING

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

DISPOSITION: Continued to March 2, 2022 at 9:00 a.m.

ORDER: The court will issue an order.

David Deshawn Johnson and Latunjia Monia Johnson ("Debtors") seek an order confirming their Fourth Modified Chapter 13 Plan. Doc. #165.

Chapter 13 trustee Michael H. Meyer ("Trustee") timely objects because (1) the plan provides for payment of fees in excess of the fixed compensation allowed under Local Rule of Practice ("LBR") 2016-1(c); (2) the Debtors will not be able to make all payments under the plan and comply with the plan as required by 11 U.S.C. § 1325(a)(6); and (3) the plan was not proposed in good faith and/or the petition was filed in bad faith in violation of § 1325(a)(3) and (a)(7). Doc. #178.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of the creditors, the U.S. Trustee, or any other party in interest except Trustee 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 motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest except Trustee are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

Debtors filed bankruptcy on February 6, 2020. Doc. #1. The original plan filed with the petition was not confirmed. Debtors' First, Second, and Third Modified Plans were confirmed on December 7, 2020, April 12, 2021, and October 18, 2021. Docs. #106; #138; #159. The Third Modified Plan is the operative plan in this case. Doc. #148. Across the three modifications, Debtors' total payment has been reduced as follows:

Plan	First	Second	Third	Fourth
Total payments	\$55,599.00	\$50,764.00	\$49,774.00	\$32,024.00
Reduction		(\$4,835.00)	(\$990.00)	(\$17,750.00)
Total reduction				(\$23,575.00)

Docs. #178. The distribution to creditors is modified to reduce Global Lending Services, LLC's ("Global Lending") Class 2 claim from \$17,185.00 to \$0.00 and omits the total attorney fees paid in this case. The plan says, "[i]n addition to the attorney fees paid by the debtors, additional attorney fees have been paid by creditors." Doc. #174, § 7.3.05. Global Lending gets no payment but does obtain stay relief.

The plan reduces the plan payment for the remaining duration of the plan, from \$929.00 to \$535.00 per month for months 22-60, to remove an auto loan for a vehicle that was totaled. The plan keeps a 0% distribution to unsecured creditors and retains a 60-month duration. Doc. #174. Trustee says that if Debtors kept the same monthly plan payment, unsecured creditors would receive a 100% dividend for the remaining term of the plan. Doc. #178.

Trustee objects, first, because the plan provides for payment of fees and expenses in excess of the fixed compensation of LBR 2016-1(c). Section 3.05 indicates that Debtors' counsel will both comply with LBR 2016-1(c) to receive the no-look fee and file a motion for approval of fees under 11 U.S.C. §§ 329, 330. Doc. #174, § 3.05. As noted above, the additional provisions indicate that additional attorney fees have been paid by creditors but omits the names of the creditors and the amounts paid. Section 7 also amends the attorney fee dividend in Section 3.06 by adjusting the monthly attorney fee dividend by a total of \$3,424.91. Trustee requests that future plans, if any, specify the total amount to be paid, from whom the payments will be made, the amounts, and any and all payments by creditors. Doc. #178.

Second, Trustee contends that Debtors will not be able to make all payments under the plan and comply with the plan as required by § 1325(a)(6). *Id.* The additional provisions provide that Debtors have paid an aggregate of \$11,694.00 through November 2021 (month 21), but Trustee says that Debtors have only paid \$11,614.00 through November 2021. Under the proposed language, Debtors are delinquent \$80.00 through November 2021. The plan also provides that payments will resume in December 2021, but Trustee indicates the last payment was made by Debtors on October 15, 2021, so the plan is already delinquent for the month of December. If the January 2022 payment is not made before this hearing, Debtors will be delinquent \$80.00 through November, plus two full payments for December 2021 and January 2022.

Lastly, Trustee questions whether the plan or case were proposed or filed in good faith. *Id.* Debtors' overall household income has decreased, but Debtors seek to lower the plan payment by nearly half

after surrendering a Class 2 automobile that was totaled. As noted above, if Debtors' payment remains the same, there could be a 100% distribution to unsecured creditors.

This motion will be CONTINUED to March 2, 2022 at 9:00 a.m.

Unless this case is voluntarily converted to chapter 7, dismissed, or Trustee's opposition to confirmation is withdrawn, Debtor shall file and serve a written response not later than February 16, 2022. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support Debtor's position. Trustee shall file and serve a reply, if any, by February 23, 2022.

If Debtor elects to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than February 23, 2022. If Debtor does not timely file a modified plan or amended schedules demonstrating an ability to afford plan payments, this motion will be denied on the grounds stated in the opposition without a further hearing.

5. [21-12176](#)-B-13 **IN RE: JAIME/MIREYA MURILLO**
[RSW-1](#)

MOTION TO VALUE COLLATERAL OF CONNEXUS CREDIT UNION
1-5-2022 [\[17\]](#)

MIREYA MURILLO/MV
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Jaime Aceves Murillo and Mireya Ileana Murillo ("Debtors") request an order valuing a water treatment system ("Property") at \$500.00. Doc. #17. Property is collateral securing a debt owed to Connexus Credit Union ("Creditor"). *Id.*

This motion will be DENIED WITHOUT PREJUDICE for failure to comply with the Federal Rules of Bankruptcy Procedure ("Rules") and failure to make a *prima facie* showing that Debtors are entitled to the relief sought.

Service on Creditor was insufficient. Rule 3012(a) governs security amount determinations made pursuant to 11 U.S.C. § 506(a). Rule 3012(b) provides that a request to determine the amount of a secured

claim may be made by motion, in a claim objection, or in a plan filed in a chapter 13 case. When the request is made in a chapter 13 plan, the plan must be served in the manner provided in Rule 7004.

Rule 7004(h) requires that service on an insured depository institution in a contested matter to be made by certified mail addressed to an officer of the institution unless certain exceptions are satisfied. Rule 7004(h)(1)-(3). There is no indication that any of those exceptions are met.

Creditor is a non-federal credit union with National Credit Union Share Insurance Fund ("NCUSIF") insurance administered by the National Credit Union Administration ("NCUA").¹ Thus, Creditor is an insured depository institution for the purposes of Rule 7004 under 11 U.S.C. § 101(34), (35)(B), 12 U.S.C. §§ 1752(7), and 1781-1790e (an "insured depository institution" includes an "insured credit union," which is any credit union with NCUSIF insurance, except in limited circumstances).

The court notes that the proposed chapter 13 plan is consistent with this motion and lists Creditor as a Class 2(B) creditor that will have its claim reduced based on the value of the collateral. Doc. #4. The original plan was filed with the petition in accordance with Local Rule of Practice ("LBR") 3015-1(c)(1), which Debtors served on the chapter 13 trustee ("Trustee") pursuant to LBR 3015-1(c)(2). LBR 3015-1(c)(3) required Trustee to serve the plan on all creditors. The docket indicates that the chapter 13 plan was transmitted to the Bankruptcy Noticing Center ("BNC") for service on September 24, 2021. Doc. #11. The BNC served the plan on all parties in interest on September 26, 2021. Doc. #14. However, the BNC certificate of notice indicates that Creditor was notified by email. *Id.* Creditor did not receive a copy of the chapter 13 plan by mail until this motion was filed.

Creditor is listed in the *Master Address List* with the following address:

Connexus CU
Attn: Bankruptcy
Po Box 8026
Wausau, WI 54402

Doc. #2. So, even if the BNC had mailed the chapter 13 plan to creditor, the mailing address provided in the *Master Address List* would have been insufficient for Rule 7004 service as required by Rule 3012(b).

Rule 3012(b) is silent as to whether a determination of value by motion or claim objection requires Rule 7004 service. However, Rule 9014(b) requires all contested matters to be served upon the parties against whom relief is being sought pursuant to Rule 7004. "Valuations pursuant to 11 U.S.C. § 506(a) and [Rule] 3012 are contested matters

and do not require the filing of an adversary proceeding." *In re Well*, 2009 Bankr. LEXIS 5679, at *4 (Cal. E.D. Bankr. May 7, 2009); see also *In re Johnson*, 2020 Bankr. LEXIS 1730, at *1 (Bankr. D.D.C. July 2, 2020) (denying motion to value a motor vehicle because the debtor did not affect proper service under Rule 7004, which is required under Rule 9014); *In re Kelley*, 2020 Bankr. LEXIS 1276, at **1-2 (Bankr. D.D.C. May 11, 2020) (reasoning that a motion to redeem a vehicle under § 722 implicated § 506(a)(2) to the extent the vehicle was secured, and therefore initiated a contested matter requiring Rule 7004 service). Electronic service under Rule 9036 is precluded because it "does not apply to any pleading or other paper required to be served in accordance with Rule 7004."

The Ninth Circuit interprets Rule 7004 to require service upon a named officer, rather than to just the title of the office. *In re Schoon*, 153 B.R. 48, 49 (Bankr. N.D. Cal. 1993) ("By addressing the envelope 'Attn: President' the debtors did not serve an officer, they served an office.") (emphasis in original); see also *Beneficial Cal. Inc. v. Villar (In re Villar)*, 317 B.R. 88, 94 (B.A.P. 9th Cir. 2004) (strictly construing the named officer requirement with respect to Rule 7004(b)(3)).

Here, Debtors made two attempts to serve Creditor at the following addresses:

- [regular U.S. mail]
1. Connexus CU
Attention: Bankruptcy
PO Box 8026
Wausau, WI 54402
- [via certified mail]
2. Connexus
Attention: CEO
2000 Westwood Dr
Wausau, WI 54401

Doc. #20. The first service attempt was sent to Creditor's "general mail" address according to its website, but the name of any officer is omitted.² Further, Creditor was served at the first address by regular U.S. mail, which is insufficient under Rule 7004.

The second service attempt was sent to an address of unknown origin and directed to "Attention: CEO." While defective because no CEO or other officer was named, at least this attempt used certified mail.

The court notes, according to the NCUA "Research a Credit Union" tool, Creditor's main office address is located at 1 Corporate Dr., Wausau, WI 54401; Boyd Gustke is the CEO/Manager.³ Mr. Gustke is also Creditor's President and appears authorized to accept service under Rule 7004(h).⁴

Second, the motion and supporting declaration do not contain the Debtors' opinion of the relevant value. Since Debtors appear to use Property for personal, family, or household purposes, 11 U.S.C. § 506(a)(2) says that "[r]eplacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time the value is determined." Joint debtor Mireya Murillo's declaration says she believes Property "is currently worth about \$500.00 if we were to try and sell it, as an online search did not disclose that there is any market for this." The value standard is not the amount in which Debtors would sell Property; it is what a merchant would have charged Debtors to purchase a replacement for Property of the same age and condition as Property. § 506(a)(2).

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE.

¹ Creditor is FCUSIF insured as of October 1, 1985. NCUA Charter No. 66538, <https://mapping.ncua.gov/SingleResult.aspx?ID=66538> (Jan. 27, 2022).

² Contact Us, Connexus CU, <https://www.connexuscu.org/about/contact-us/> (Jan. 27, 2022).

³ <https://mapping.ncua.gov/ResearchCreditUnion.aspx> (Jan. 27, 2022).

⁴ Leadership, Connexus CU, <https://www.connexuscu.org/about/leadership/> (Jan. 27, 2022).

6. [21-12176](#)-B-13 **IN RE: JAIME/MIREYA MURILLO**
[RSW-2](#)

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
1-5-2022 [\[21\]](#)

MIREYA MURILLO/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.

Jaime Aceves Murillo and Mireya Ileana Murillo ("Debtors") seek to partially avoid a judicial lien in favor of Portfolio Recovery Associates, LLC ("Creditor") in the sum of \$6,204.42 and encumbering residential real property located at 427 Gray Ct., Bakersfield, CA 93307 ("Property").⁵ Doc. #21.

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 13 trustee, 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 amounts of damages). *Televideo Sys., 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.

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 § 522(b); (2) the property must be listed on the debtor's 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 § 522(f)(1)(B). § 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), *aff'd*, 24 F.3d 247 (9th Cir. 1994)).

Here, a judgment was entered in favor of Creditor against joint debtor Mireya Murillo in the sum of \$6,204.42 on December 23, 2020. Doc. #24, Ex. 3. The abstract of judgment was issued on January 7, 2021 and recorded in Kern County on January 15, 2021. *Id.* That lien attached to Debtors' interest in Property and appears to be the only non-consensual judgment lien encumbering Property. Docs. #1, *Sched. D*; #23.

As of the petition date, Property had an approximate value of \$624,000.00. Docs. #23; #26, *Am. Sched. A/B*. The only unavoidable lien encumbering Property on the petition date was a first deed of trust in favor of Kinecta Federal Credit Union. It is listed in *Schedule D* in the amount of \$324,088.00. Doc. #1, *Sched. D*. Debtors declare that the amount owed on the petition date is \$322,072.81, which is consistent with Creditor's Amended Proof of Claim filed November 8, 2021. Doc. #23; Claim #10-2. Debtors claimed a "homestead" exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$300,000.00. Doc. #1, *Sched. C*.

Strict application of the § 522(f)(2) formula is as follows:

Creditor's judicial lien	\$6,204.42
Total amount of all other unavoidable liens	+ \$322,072.81
Debtors' homestead exemption	+ \$300,000.00
Sum	= \$628,277.23
Value of Debtors' interest absent liens	- \$624,000.00
Amount Creditor's lien impairs Debtors' exemption	= \$4,277.23
Subtract above from Creditor's judicial lien	\$6,204.42
Amount Creditor's lien impairs exemption	\$4,277.23
Amount Creditor's lien does not impair exemption	= \$1,927.19

All Points Capital Corp. v. Meyer (In re Meyer), 373, B.R. 84, 91 (B.A.P. 9th Cir. 2006). Except as to \$1,927.19, Creditor's judgment lien partially impairs the exemption. The § 522(f)(2) formula can be simplified by going through the same order of operations in the reverse, provided that determinations of fractional interests, if any, and lien deductions are completed in the correct order. Property's encumbrances can be re-illustrated as follows:

Fair market Value of Property	\$624,000.00
Total amount of unavoidable liens	- \$322,072.81
Remaining equity	= \$301,927.19
Debtors' homestead exemption	- \$300,000.00
Remaining equity for judicial liens	= \$1,927.19
Creditor's judgment lien	- \$6,204.42
Extent Debtor's exemption impaired	= (\$4,277.23)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is only \$1,927.19 in equity to support the judicial lien. In accordance with the Bankruptcy Appellate Panel's decision in *Bank of Am. Nat'l Trust & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 597-98 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999), the fixing of this judicial lien partially impairs Debtors' exemption in the Property in the amount of \$4,277.23. The lien will be partially avoided in the impaired amount and Creditor will retain a \$1,927.19 secured claim.

Accordingly, Debtors have established the four elements necessary to avoid a lien in part under § 522(f)(1). This motion will be GRANTED. Debtors shall attach the abstract of judgment to the proposed order as an exhibit.

⁵ Debtors complied with Fed. R. Bankr. P. 7004(b)(3) by serving CSC - Lawyers Incorporating Service, Creditor's registered agent for service of process, by regular U.S. mail at the registered agent address on January 5, 2022. Doc. #25.

7. [17-10884](#)-B-13 **IN RE: MANUEL GALLEGOS**
[PK-2](#)

MOTION FOR COMPENSATION FOR PATRICK KAVANAGH, DEBTORS
ATTORNEY(S)
12-22-2021 [\[58\]](#)

PATRICK KAVANAGH/ATTY. FOR DBT.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

Patrick Kavanagh ("Applicant"), counsel for Manuel Gallegos ("Debtor"), requests final compensation under 11 U.S.C. § 330 in the sum of \$500.00 for services rendered from September 14, 2017 through the close of the case. Doc. #58. Applicant also seeks final approval of interim compensation previously awarded on October 5, 2017 in the sum of \$5,160.00. *Id.*

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

First, for motions filed on 28 days' notice, LBR 9014-1(f)(1)(B) requires the movant to notify respondents that any opposition to the motion must be in writing and filed with the court at least 14 days preceding the date of the hearing.

Here, the motion was filed and served on December 22, 2021 and set for hearing on February 2, 2022. Doc. #59. December 22, 2021 is 42 days before February 2, 2022. Therefore, this motion was set for hearing on 28 days' notice under LBR 9014-1(f)(1). However, the notice stated:

No written opposition is required. Opposition, if any, shall be presented at the hearing. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.

Doc. #59, at 2. This is incorrect. Because the hearing was set on 28 days' notice, LBR 9014-1(f)(1) is applicable and the notice should have stated that written opposition was required, must be filed 14 days before the hearing, and failure to file written opposition may be deemed a waiver of any opposition to the granting of the motion. Instead, the respondents were told not to file and serve written opposition even though it was necessary. Therefore, the notice was materially deficient. If the movant gives 28 days or more of notice of the hearing, there is no option to simply pretend that the motion was set for hearing on less than 28 days of notice to dispense with the court's requirement that any opposition must be in writing and filed with the court. Additionally, under LBR 9014-1(d)(3)(B)(i), the motion

must include the names and addresses of the persons who must be served with such opposition.

Second, the notice omits language directing respondents to the court's website. *Id.* LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determinate (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

For the above reasons, this motion will be DENIED WITHOUT PREJUDICE.

8. [16-13240](#)-B-13 **IN RE: EDWARD/SHARON RODGERS**
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE
11-18-2021 [\[56\]](#)

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.

The matter was originally scheduled for January 5, 2022 and continued to January 26, 2022. Docs. ##62-63. The court ordered one final continuance because (1) Edward Henry Rodgers' and Sharon Jean Rodgers' ("Debtors") counsel represented at the hearing that a certified check in the full amount due was in the mail; (2) chapter 13 trustee Michael H. Meyer's ("Trustee") counsel was in possession of an image of the certified check; and (3) Debtors' 60-month plan will be complete with this final payment of \$3,756.61. Docs. ##69-70.

At the previous hearings, Debtors had not cured a \$3,756.61 plan payment delinquency. Docs. #62; #69. Debtors' 60-month plan term ended September 2021 and the \$3,756.61 represents the amount needed to complete the case. Doc. #58. At the request of Debtors' counsel, the motion was continued to give Debtors an opportunity to bring the plan to completion or else have the case dismissed. *Id.*

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)(6) for being delinquent in making plan payments.

This matter will be called to confirm whether Debtors have cured the outstanding delinquency. If Debtors have cured the \$3,756.61 delinquency, the motion will be denied. If not, the motion may be granted unless the Debtors can, with competent evidence, establish a material factual dispute.

According to the schedules, it appears there are no non-exempt assets in the estate to be administered for the benefit of unsecured claims. All of Debtors' property is either fully encumbered or exempted in its entirety. Doc. #1. Accordingly, dismissal serves the interests of creditors and the estate.

10:00 AM

1. [21-12702](#)-B-7 **IN RE: GABRIEL/GINA BENAVIDES**
[PK-2](#)

MOTION TO CONVERT CASE FROM CHAPTER 7 TO CHAPTER 13
1-10-2022 [\[33\]](#)

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 hearing.

Gabriel Benavides and Gina Michelle Benavides ("Debtors") seek to
convert this case from chapter 7 to chapter 13 under 11 U.S.C.
§ 706(a).

In the absence of opposition, the court may GRANT this motion.

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.

First, the court notes that the motion and supporting documents lists
an incorrect address for the U.S. Courthouse in Bakersfield. Doc. #37.
Debtors corrected this error on January 28, 2022. Doc. #38.

11 U.S.C. § 706(a) allows a debtor in chapter 7 to convert to chapter
13 "at any time," unless the case was previously converted to chapter
7 from another chapter.

However, the Supreme Court in *Marrama v. Citizens Bank*, 549 U.S. 365,
371-72 (2007), held that a debtor does not have an absolute right to
convert a chapter 13 under § 706(a), but also must be eligible to be a
debtor under chapter 13. The Supreme Court stated, "[i]n practical
effect, a ruling that an individual's Chapter 13 case should be
dismissed or converted to Chapter 7 because of prepetition bad-faith
conduct, including fraudulent acts committed in an earlier Chapter 7
proceeding, is tantamount to a ruling that the individual does not
qualify as a debtor under Chapter 13." Therefore, the court must find

that Debtors are eligible to be debtors under chapter 13 in conformance with 11 U.S.C. § 1307(c).

11 U.S.C. § 109(e) sets forth the eligibility requirements for Chapter 13 relief. Debtors fall within the limits for total debts according to the schedules and amended summary of assets and liabilities. Docs. #1; #15. The question is whether Debtors have regular income. The schedules indicate an approximate combined income of \$6,942.03 per month from their Locomotive Engineer and Bakery Clerk/Cake Decorator occupations, with \$7,229.33 in expenses, leaving a monthly net deficit of \$287.30. Docs. ##16-17, *Am. Scheds. I, J*. Despite this, Debtors want to convert because joint debtor Gabriel Benavides wages were attached at the time of filing and Debtors did not have all of the information available to see if they qualified for chapter 7 under the means test. Doc. #35. Since then, the United States Trustee ("UST") filed a statement of presumed abuse under 11 U.S.C. § 704(b)(1)(A). Doc. #25. Joint debtor Gina M. Benavides declares that Debtors have regular income, and they believe it is appropriate to be in a chapter 13.

Written opposition was not required but may be presented at the hearing. Other than the UST's statement of presumed abuse, there is no indication that this bankruptcy was filed in bad faith. Debtors each have two previous filings, but they date back to 2008 and 2009.⁶ Nevertheless, there appear to be feasibility issues. Debtors would need to file amended schedules, amended Forms 122C-1 and -2, and propose a confirmable chapter 13 plan. The court will inquire at the hearing about Debtors' intentions as to these issues.

The court finds that this case has not been previously converted to chapter 7 from another chapter. If Debtors provide sufficient clarification, they may be eligible to be debtors under chapter 13 in conformance with 11 U.S.C. § 1307(c). In the absence of opposition at the hearing, this motion may be GRANTED.

⁶ See Case Nos. 08-14569, 09-12580. Chapter 7 discharges were entered in both cases, and both were subsequently closed by final decree.

2. [21-10607](#)-B-7 **IN RE: AZRREL HERREJON**
[RDW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-10-2022 [[54](#)]

PERITUS PORTFOLIO SERVICES II,
LLC/MV
PATRICK KAVANAGH/ATTY. FOR DBT.
REILLY WILKINSON/ATTY. FOR MV.

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

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

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

The *Notice of Hearing* does not procedurally comply with the requirements of LBR 9014-1(d)(3). Doc. #55. LBR 9014-1(d)(3)(B)(iii) requires the movant to notify respondents that they can determinate (a) whether the matter has been resolved without oral argument; (b) whether the court has issued a tentative ruling that can be viewed by checking the pre-hearing dispositions on the court's website at <http://www.caeb.uscourts.gov> after 4:00 p.m. the day before the hearing; and (c) parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Here, the above notice language was entirely omitted.

3. [21-11517](#)-B-7 **IN RE: MATTHEW ESCALANTE**
[JMV-1](#)

MOTION TO SELL
1-10-2022 [[19](#)]

JEFFREY VETTER/MV
D. GARDNER/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 hearing.

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") requests an order authorizing the sale of the bankruptcy estate's interest in a 2007 Vespa GT 60 ("Vehicle") to Matthew Mark Escalante ("Debtor") for

\$5,000.00, subject to higher and better bids at the hearing. Doc. #19. Trustee also asks for authorization to execute all necessary documents to complete the sale and waiver of the 14-day stay of Fed. R. Bankr. P. 6004(h).

Written opposition was not required and may be presented at the hearing. In the absence of opposition, the court is inclined to GRANT this motion and proceed with the sale subject to higher and better bids.

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.

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

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*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., 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*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference." *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887, citing *Mission Prod. Holdings, Inc. v. Old Cold, LLC (In re Old Cold, LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This sale is to Debtor. Doc. #19. Trustee indicates that Vehicle is not listed in the listed in the schedules, so any claimed exemption would not protect Vehicle's equity as exempt property. *Id.*; cf. Doc. #1, *Sched. A/B*. Debtor did not claim an exemption in Vehicle, nor indicate the existence of any encumbrances. *Id.*, *Scheds. C, D*. No party in interest filed a proof of claim for Vehicle; the only secured proof of claim is for Debtor's 2016 GMC. Claim No. 4.

Debtor wishes to retain Vehicle and offered to purchase it for \$5,000.00. Doc. #21. Trustee accepted subject to court approval and

believes that Vehicle is valued at \$5,000.00 based on comparable vehicles of similar make, model, age, mileage, and condition. *Id.* Trustee considered the costs of taking possession of Vehicle, holding a public sale with the risk of receiving a lesser amount, and believes that the \$5,000.00 sale price is fair and reasonable. Trustee is in possession of proof of insurance and a partial payment of \$1,500.00 toward the purchase price and indicates that there will be no significant tax consequences for the sale. *Id.*

The sale appears to be in the best interests of the estate and creditors because it will provide \$5,000.00 in liquidity to the estate. The sale subject to higher and better bids will maximize estate recovery and yield the best possible price. The sale appears to be supported by a valid business judgment, proposed in good faith, and for a fair and reasonable price. Trustee's business judgment appears to be reasonable and will be given deference.

This matter will be called and proceed as scheduled to inquire whether any parties in interest oppose the sale. In the absence of opposition, this motion will be GRANTED, and the sale will proceed for higher and better bids. Trustee will be authorized to sell Vehicle to the highest bidder as determined at the hearing.

The request to waive the 14-day stay of Fed. R. Bankr. P. 6004(h) will be GRANTED provided that there are no successful overbids made for the Vehicle and Debtor is the highest bidder. Debtor is already in possession of Vehicle and is only purchasing non-exempt equity from the estate.

Any party wishing to overbid must appear at the hearing and send a \$1,500.00 refundable deposit in certified funds to Trustee at P.O. Box 2424, Bakersfield, California 93303, and must be received by Trustee not later than January 31, 2022 at 5:00 p.m. Non-winning bidders' deposits will be returned after the hearing. Overbids will be in \$500.00 increments, starting with the first overbid of \$5,500.00. Failure to timely pay the balance within 10 days after the order approving the sale is signed will result in forfeiture of the \$1,500.00 deposit.

Prospective overbidders must acknowledge that the only document of sale provided by the Trustee will be the order granting the motion, but Trustee will execute other reasonable documents requested by the buyer to expedite and facilitate the sale. No warranties or representations are included with the property; it is sold "as is, where is."

4. [21-12552](#)-B-7 **IN RE: GREGORIO LUNA**
[JMV-2](#)

MOTION TO SELL AND/OR MOTION FOR COMPENSATION FOR GOULD
AUCTION AND APPRAISAL COMPANY, AUCTIONEER(S)
1-3-2022 [\[19\]](#)

JEFFREY VETTER/MV
VINCENT GORSKI/ATTY. FOR DBT.

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

DISPOSRTITION: Granted.

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

Chapter 7 trustee Jeffrey M. Vetter ("Trustee") seeks authorization to sell the estate's interest in a 2003 Toyota Sequoia and a 2004 Nissan Frontier (collectively "Vehicles") at public auction under 11 U.S.C. § 363(b)(1). Doc. #19. The auction will be held by Gould Auction and Appraisal Company ("Auctioneer") on February 19, 2022 at 9:00 a.m. at 6100 Price Way, Bakersfield, CA 93308.

Trustee requests to pay Auctioneer 15% commission on the gross proceeds from the sale as compensation under 11 U.S.C. §§ 327(a) and 328, along with reimbursement of extraordinary expenses, such as repair work, not to exceed \$150.00 as Trustee deems necessary and beneficial to the estate. *Id.*

No party in interest timely filed written opposition. The motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(2). 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 are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). 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 affects the proposed disposition and the auctioneer. Under Fed R. Civ. P. 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion and allow the

relief requested by movant here as to both requests. Though compensation is separate from the sale, it is economical to handle this motion in this manner and there is no objection.

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." 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*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., 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*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Trustee wishes to sell Vehicles under § 363(b). Doc. #19. Gregorio Herrera Luna ("Debtor") listed Vehicles in the schedules with the following values:

2003 Toyota Sequoia	\$3,375.00
\$2004 Nissan Frontier	\$3,900.00
Sum	\$7,275.00

Doc. #1, *Sched. A/B*. Debtor did not exempt Vehicles, and they are not encumbered by any security interests. *Id.*, *Scheds. C, D*. Trustee believes that Vehicles can be sold for a combined value of \$8,000.00. If sold for \$8,000.00, the sale would be illustrated as follows:

Vehicles	\$8,000.00
Auctioneer compensation (15%)	- \$1,200.00
Extraordinary expenses (≤ \$150)	- \$150.00
Debtor's exemption	- \$0.00
Net to the estate	≥ \$6,650.00

Trustee believes that using the auction process to sell Vehicles will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #21. Based on Trustee's experience, this will yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.*

Sale by auction under these circumstances should maximize potential recovery for the estate. Therefore, this sale is an appropriate exercise of Trustee's business judgment.

Trustee also wishes to compensate Auctioneer with a 15% commission on the gross proceeds, along with reimbursement of extraordinary expenses not to exceed \$150.00. Doc. #19. Auctioneer's responsibilities include collecting and paying all sales tax in relation to the sale and bearing the cost of all ordinary expenses incidental to the sale, including security, advertising, and other costs of sale. Doc. #21. Auctioneer also charges a 10% buyer's premium to be paid by the buyer. Buyer is responsible for any transfer fee to cover the Department of Motor Vehicle's transfer of title expenses. *Id.*

Auctioneer's employment was authorized pursuant to 11 U.S.C. §§ 327(a), 328, on January 10, 2022. Doc. #24. The court also authorized Trustee to pay the 15% commission and reimbursement of up to \$150.00 in extraordinary expenses within 10 days of any order approving the sale. The court will allow payment of Auctioneer's compensation as prayed.

No party in interest timely filed written opposition. This motion will be GRANTED. Trustee will be authorized to sell Property at public auction and pay Auctioneer for its services as outlined above. Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale, and reimbursement of reasonable expenses of up to \$100.00.

5. [21-12598](#)-B-7 **IN RE: YINGCHUN LOU**
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-4-2022 [\[31\]](#)

FORD MOTOR CREDIT COMPANY
LLC/MV
SAM WU/ATTY. FOR DBT.
JOHN KIM/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.

Ford Motor Credit Company ("Movant") seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2020 Ford T250 ("Vehicle"). Doc. #31. Movant also requests waiver of the 14-day stay under Fed. R. Bankr. P. 4001(a)(3).

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the chapter 7 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). 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.

Yingchun Lou ("Debtor") executed a contract to finance the purchase of Vehicle on February 22, 2020. Doc. #36, *Ex. A*. The contract provided that Debtor would make 59 monthly payments of \$598.63 beginning April 2, 2020. *Id.* That contract was assigned to Movant in the normal course of business. *Id.*, *Ex. B*; Doc. #35. Debtor's last payment on Vehicle was received on June 7, 2021 and applied to the amount due June 2, 2021. *Id.* As of December 28, 2021, Debtor is indebted to Movant under the contract in the amount of \$22,147.50 and is in default \$3,578.22 from July 2, 2021 through December 2, 2021, plus late fees of \$119.28. *Id.* Additional payments of \$596.37 became due January and February 2, 2022.

Debtor is still in possession of Vehicle and received the benefit of the automatic stay upon filing bankruptcy on November 9, 2021 but has stated an intent to surrender Vehicle. Doc. #1. Movant now seeks relief from the automatic stay to exercise its rights and remedies under the contract. Doc. #31.

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

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds "cause" exists to modify the stay under § 362(d)(1) because Debtor has failed to make at least six payments. Docs. #33; #35. Movant has produced evidence that Debtor is delinquent at least \$3,578.22, plus late fees of \$119.28, plus fees and costs of \$688.00. *Id.*; Doc. #36, *Ex. C*.

The court also finds that Debtor does not have any equity in Vehicle and Vehicle is not necessary to an effective reorganization because Debtor is in chapter 7. Movant cites to Debtor's *Schedule D*, which, consistent with *Schedule A*, lists Vehicle as having a value of \$15,000.00. Docs. #1; #35. The total amount owed to Movant is \$22,147.50, so Debtor does not have an equity interest in Vehicle, and relief under § 362(d)(2) is also appropriate.

Accordingly, the motion will be GRANTED pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim.

The 14-day stay under Rule 4001(a)(3) will be ordered waived because Vehicle is a depreciating asset and Debtor intends to surrender Vehicle. No other relief is awarded.

11:00 AM

1. [20-11657](#)-B-7 **IN RE: MARICEL/CHRISTOPHER LOCKE**
[20-1049](#)

CONTINUED PRE-TRIAL CONFERENCE RE: AMENDED COMPLAINT
10-28-2020 [\[25\]](#)

GUILLERMO V. LOCKE ET AL
GILBERT ZAVALA/ATTY. FOR PL.
RESPONSIVE PLEADING

NO RULING.

2. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[19-1123](#) [WJH-2](#)

ORDER SETTING HEARING ON SUMMARY JUDGMENT ORDER
8-31-2021 [\[166\]](#)

TULARE LOCAL HEALTHCARE
DISTRICT V. MEDLINE
MICHAEL WILHELM/ATTY. FOR MV.

NO RULING.

The court specially set this hearing because the parties cannot agree on a proposed order regarding Tulare Local Healthcare District's ("Plaintiff") motion for summary judgment against Medline Industries, Inc. ("Defendant"). *Order Setting Hearing on Summary Judgment Order*, Doc. #166.

Written briefing was not permitted, but the parties may appear telephonically at the scheduled time to be heard. This matter will be called and proceed as scheduled.

At the January 12, 2022 hearing, Plaintiff's motion for summary judgment was heard. *Jan. 12, 2022 Minutes*, Doc. #161. Amanda G. Hebesha appeared for Plaintiff, and John D. Elrod appeared for Defendant. The court adopted its tentative ruling granting in part and denying in part.

Under Fed. R. Civ. P. ("Civ. Rule") 56(g) (Fed. R. Bankr. P. 7056), the court may enter an order stating any material fact that is not genuinely in dispute and treat such fact as established in the case. Due to the numerous undisputed facts in the parties' separate statements, the court directed Plaintiff's counsel to prepare an order, approved as to form by Defendant's counsel, that is consistent with the ruling to set forth any undisputed material facts. *Id.*

Plaintiff's counsel prepared a proposed order ("Original Order") and submitted it to Defendant. Doc. #166. Defendant's counsel made redline changes and returned it to Plaintiff's counsel ("Redlined Order"). Plaintiff accepted many changes but claims those remaining are inappropriate because they do not identify undisputed facts contained in the separate statements. Plaintiff revised the order ("Revised Order") and submitted it Defendant for review. Having received no response, Plaintiff lodged: (1) Revised Order; (2) Redlined Order; and (3) correspondence with Defendant outlining its objections to Redlined Order and Plaintiff's request for input from the court. All of these documents were circulated via email and U.S. mail to Mr. Elrod.

Plaintiff asks the court to approve the Revised Order if it is acceptable and Plaintiff will prepare a *Joint Stipulation of Undisputed Facts*. If the Revised Order needs additional revision, Plaintiff requests input on how to proceed.

The minutes (Doc. #161) reflect the court's effort to permit the parties to use the provisions of Civ. Rule 56(g) to narrow the facts disputed at trial, but the parties dispute which facts are disputed. So, the court ordered this hearing. Civ. Rule 56(g) is permissive. Under Civ. Rule 56(a), the court has stated on the record the reasons for granting in part and denying in part.

The differences between the Redlined Order and Revised Order are largely inconsequential for Paragraphs 1 to 4(g). Plaintiff's Revised Order adopts Defendant's stylistic changes, naming conventions, the ordering of the parties on the signature page, and additional clarification about the nature of the adversary proceeding. Plaintiff's assent continues through Paragraphs 1-3, 4(a)-(g), (m), and (o). At Paragraph 4, subparagraphs (h)-(l), (n), and (p)-(r), the orders deviate. Plaintiff objects to Defendant's changes because (1) the language is inconsistent with that used in the *Statements of Disputed and Undisputed Facts* (Docs. #74; #97; #116; ##126-27; #153); (2) subparagraph 4(q) is duplicative; and (3) bad faith because Defendant is aware that the court found a genuine dispute as to whether the payments to Defendant during the preference period were made in the ordinary course of business.

This matter will be called and proceed as scheduled.

11:30 AM

1. [21-12607](#)-B-7 **IN RE: ALFONSO/DIANA MARTINEZ**

REAFFIRMATION AGREEMENT WITH WILSHIRE CONSUMER CREDIT
12-30-2021 [\[15\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION: Dropped.

NO ORDER REQUIRED.

The Debtors rescinded the reaffirmation agreement on January 27, 2022.
Doc. #20. Accordingly, this hearing will be dropped from calendar.

2. [21-12482](#)-B-7 **IN RE: CYNTHIA LADOANO AND MARISELA JUAREGUI-
LADOANO**

REAFFIRMATION AGREEMENT WITH ARMY AND AIR FORCE EXCHANGE SVC
12-30-2021 [\[16\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

NO RULING.