



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

Hearing Date: Tuesday, February 13, 2024

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

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INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

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

9:30 AM

1. [20-10809](#)-B-11 **IN RE: STEPHEN SLOAN**
[WF-8](#)

MOTION TO EXTEND TIME
1-24-2024 [\[631\]](#)

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

NO RULING.

2. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**
NON-PROFIT CORPORATION
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V
VOLUNTARY PETITION
6-22-2023 [\[1\]](#)

RILEY WALTER/ATTY. FOR DBT.

NO RULING.

3. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**
NON-PROFIT CORPORATION
[WJH-22](#)

CONTINUED CONFIRMATION HEARING RE: CHAPTER 11 SUBCHAPTER V
SMALL BUSINESS PLAN
11-29-2023 [\[353\]](#)

RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Motion granted. Plan confirmed.

ORDER: Moving party to prepare order.

Subchapter V, chapter 11 debtor Twilight Haven ("Debtor") moves for an order confirming the *Subchapter V Plan of Reorganization, Dated November 29, 2023* (the "Plan"). Docs. ##339, 353. All references to specific plan provisions will be cited as "Plan," followed by the relevant Article number ("Art.").

This motion was set for hearing on 42 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. Proc. 2002(b). The failure of any party in interest, including but not limited to the creditors, the debtors, 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). 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).

On January 23, 2024, the court conducted a hearing on this matter to enter defaults for non-response as to all parties except the California Attorney General's Office ("the Attorney General"). Doc. #449. The court noted that Debtor and the Attorney General had entered into a stipulation whereby the Attorney General would have until February 6, 2024, in which to file any objection to confirmation. *Id.*

On February 5, 2024, the Debtor and the Attorney General filed a *Joint Stipulation to (1) Approve Attorney General Conditions Pursuant to Settlement and (2) Enter Order*. Doc. 464. This stipulation resolved all objections of the Attorney General, and so there are presently no objections to confirmation.

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 matter will be called and proceed as scheduled.

On November 30, 2023, the court issued an order (the "Deadline Order") setting the Plan for hearing on January 23, 2024. Doc. #356. The Deadline Order required: (1) transmission of the Plan, Deadline Order, ballots, and a notice of hearing to all parties in interest not later than December 12, 2023; (2) parties in interest to transmit to Debtor acceptances or rejections of the Plan and/or to file objections to confirmation of the Plan by January 9, 2024; (3) Debtor to file responses to objection to confirmation and copies of all ballots and a tabulation of ballots not later than seven days before the hearing. *Id.* Pursuant to the Deadline Order, Debtor transmitted the Plan, notice of hearing, and the Deadline Order to all parties in interest on December 12, 2024. Doc. #373.

Debtor timely filed copies of the ballots, a ballot tabulation, summary of ballots, and a statement demonstrating compliance with 11 U.S.C. § 1191 on January 16 and 17, 2024. Docs. ##428-435.

The Plan appears to comply with 11 U.S.C. § 1190. Specifically, the Plan contains a brief history of Debtor's business operations, a liquidation analysis, and financial projections and feasibility analysis evidencing Debtor's ability to make payments as required by 11 U.S.C. § 1190(1). *Plan, Arts. 2-5 and Exhibits A-C.*

Plan Confirmation

11 U.S.C. § 1191 governs plan confirmation in subchapter V. Under § 1191(a) ["consensual plans"], the court shall confirm a plan if all

the requirements of § 1129(a), other than paragraph (15), are met. For the reasons outlined below, the Plan satisfies the requirements of § 1191(a) for a consensual plan.

§ 1129(a) (1)

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

§ 1122

The Plan provides for division of creditors and interest holders into classes and provides for equal treatment within each given class as required by § 1122.

§ 1123(a)

(a)(1): A plan shall designate classes of claims other than claims of a kind specified in § 507(a)(2), (a)(3), or (a)(8), as required by § 1123(a)(1), subject to § 1122.

Here, the classes and their proposed treatments are as follows:

- i. Administrative Claims (Unclassified): The plan calls for all Administrative Claims (including § 503 (b)(9) claims) to be paid on the Effective Date. Debtor estimates it will have \$8,000.00-\$20,000.00 § 503(b)(9) claims as of the Petition Date. The administrative expense claims bar date was January 31, 2024 (the Debtor originally requested December 31, 2023). Doc. #394. All claims for Professional Fees (including the Sub V Trustee and Ombudsman) must file a final application for compensation within thirty (30) days of the Effective Date and will be paid in full pursuant to an order of the court unless they agree to a different treatment.
- ii. Class 1.1 (Allowed Priority Claims-§ 507(a)(4)): Each allowed claim, if any, will be paid cash within 30 days of the Effective Date.
- iii. Class 1.2 (Allowed Priority Claims-§507(a)(7), Security Deposits): Each allowed claim, if any, will be paid cash within 30 days of the Effective Date.
- iv. Class 2 (Allowed Priority Tax Claims-§507(a)(8)): Each allowed claim, if any, will be paid cash within 30 days of the Effective Date.
- v. Class 3.1 (Secured Claim-U.S. Small Business Administration ("SBA")): This claim is unimpaired and will be paid in full pursuant to an agreement whereby the SBA will subordinate its lien position on certain real property to the new deed of trust granted to Bayshire Valley, LLC dba Jericho Care Group, LLC ("Jericho") in Class 3.2. The SBA will be paid in full.

- vi. Class 3.2 (Secured Claim-Jericho): This claim is unimpaired and will be paid in full.
- vii. Class 3.3 (Secured Claim-Pacific Gas & Electric): This claim is entirely disputed. Nothing will be paid on this claim.
- viii. Class 3.4 (Secured Claim-USDHUD): This claim is entirely disputed. Nothing will be paid on this claim.
- ix. Class 3.5 (USDHUD as successor to US Housing & Home Finance): This claim is entirely disputed. Nothing will be paid on this claim.
- x. Class 4 (Administrative Convenience): This class consists of Allowed Unsecured Claims (a) of \$2,000.00 or less, or (b) holders of Class 5 claims for greater than \$2,000.00 who elect to reduce their claims to \$2,000.00 or less when completing the ballot. All these claims will be paid in full and are unimpaired.
- xi. Class 5 (General Unsecured Creditors): This class consists of all Allowed Unsecured Claims to fitting into Class 4. This class is impaired and entitled to vote on the Plan. According to Debtor, every Class 5 creditor who voted on the plan approved it. Each holder of a Class 5 Allowed Claim will receive a pro rata share of the operating proceeds remaining after payment of higher priority claims from the Sale of Debtor' assets up to the amount of all such claims, with distributions commencing no later than 30 days after the Effective Date.
- xii. Class 6 (Subordinated Creditors): The plan asserts that there are no subordinated unsecured claims.
- xiii. Class 7 (Ownership Interests): Equity holders will receive nothing from the operating funds until all Class 5 and Class 6 claimants are paid in full. This class is unimpaired. The equity holders will retain equity interests but receive no distribution until Class 5 is paid.

Plan, Art. 6 and 7. The court finds that this classification of Debtor's claims satisfies § 1123(a)(1).

(a)(2): A plan shall specify any class of claims or interests that are not impaired under the Plan as required by § 1123(a)(2). The Plan specifies the classes that are not impaired as described above, which is every Class except for Class 5. *Id.* The court finds that § 1123(a)(2) is satisfied.

(a)(3): A plan shall specify the treatment of any class of claims or interests that are impaired under the plan as required by

§ 1123(a)(3). The plan identifies Class 5 as the only impaired class. *Id.* The court finds that § 1123(a)(3) is satisfied.

(a)(4): A plan shall provide the same treatment for each claim or interest of a particular class unless the holder of the particular claim or interest agrees to less favorable treatment of such particular claim or interest as required by § 1123(a)(4). The Plan provides for the same treatment for each claim or interest within a particular class. The court finds that § 1123(a)(4) is satisfied.

(a)(5): A plan shall provide adequate means for implementation and execution of the Plan as required by § 1123(a)(5). The Plan provides that creditors with Allowed Claims be paid in order of priority from the proceeds of the sale of Debtor's assets (specifically, real property for \$5.5 million, Debtor's assisted living license for \$1.5 million, and Debtor's SNF license for \$350,000.00). *Plan, Subsection V.* The court finds that the plan satisfies § 1123(a)(5).

(a)(6): Section 1123(a)(6) is not applicable because Debtor is a non-profit corporation and issues no stock.

(a)(7): A plan shall contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan, and any successor to such officer, director, or trustee. Here, the Plan does not contain any provisions that violate public policy with respect to the selection of any officer, director, or trustee under the Plan as required by § 1123(a)(7).

(a)(8): The provisions of § 1123(a)(8) do not apply in a subchapter V case. See 11 U.S.C. § 1181(a).

§ 1123(b)

The Plan includes the six permissive provisions of § 1123(b) as follows:

(b)(1): A plan may impair or leave unimpaired any class of claims, secured or unsecured, or of interests under § 1123(b)(1). The impaired/unimpaired classes have been discussed above.

(b)(2): A plan may provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the Debtor not previously rejected under 11 U.S.C. § 365. § 1123(b)(2). The Plan includes a list of executory contracts and/or unexpired leases to be assumed. *Plan, Art. 8, ¶ 18.9.* On the Effective Date of the plan all executory contracts and unexpired leases not expressly assumed will be deemed rejected. *Id.* Unless the court sets an earlier date, claims arising from rejection shall be filed no later than 30 days after receiving written notice of the rejection or 30 days after entry of the Confirmation Order, whichever is later. *Id.*

(b)(3): A plan may provide for settlement or adjustment of any claim or interest belonging to the Debtor or the estate. § 1123(b)(3)(A). Alternatively, a plan may provide for the retention and enforcement by the debtor, by the trustee, or by a representative of the estate

appointed for such purpose, of any such claim or interest. § 1123(b) (3) (B). Here, the Plan provides that Debtor will have power and authority to settle and compromise a disputed claim with court approval. *Plan*, Art. 8, ¶ 8.3.

(b) (4): A plan may provide for the sale of all or substantially all the property of the estate and the distribution of proceeds of such sale among holders of claims or interests. § 1123(b) (4). Here, the Plan provides that Debtor will sell certain real property assets and two licenses to Jericho. *Plan*, *Exhibit A*. All proceeds received from any such sale will be paid to creditors holding liens against the assets sold and costs of sale, which shall be paid according to priority by Debtor or the Subchapter V Trustee.

(b) (5): A plan may modify the rights of holders of secured claims unless the claim is secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims. § 1123(b) (5). All Classes of secured creditors are unmodified and unimpaired.

(b) (6): A plan may include any other provision not inconsistent with the applicable provisions of this title. § 1123(b) (6). Here, the Plan contains other provisions not expressly referred to in § 1123, but it does not appear that any of these provisions are inconsistent with the Bankruptcy Code. The court finds that § 1123(b) is satisfied.

§ 1123(c)

Since Debtor proposed the Plan, § 1123(c) is inapplicable. Further, § 1123(c) does not apply in subchapter V cases. § 1181(a).

§ 1129(a) (2)

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

§ 1129(a) (3)

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

§ 1129(a) (4)

Pursuant to § 1129(a) (4), the Plan provides that payment to holders of allowed administrative claims, including payment of compensation and reimbursement of expenses to professionals, shall be made only after entry of an order by the Bankruptcy Court following notice and a hearing. The court finds that § 1123(a) (4) is satisfied.

§ 1129(a) (5)

Pursuant to § 1129(a) (5) (A), the Plan discloses that Debtor will be responsible for implementation of the Plan. Plan, Art. 8, ¶ 8.01-8.02, *id.* Therefore, the Plan complies with § 1129(a) (5).

§ 1129(a) (6)

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

§ 1129(a) (7)

Section 1129(a) (7) requires each holder of a claim or interest in an impaired class to either accept the Plan or receive an amount equal to or greater than the amount such holder of a claim or interest would receive in a chapter 7 case. Here, only Class 5 is impaired. The Ballot Summary reflects that sixteen ballots were returned, all of which voted to accept the plan. Doc. #433. This includes (a) five (5) ballots received for Class 4, consisting of Class 5 Unsecured Creditors who elected to Class 4, representing 100% of the ballots received in both number and dollar amount for class 4, and (b) sixteen (16) ballots received for class 5 accepting the Plan, representing 100% of the ballots received in both number and dollar amount for Class 5. *Id.*

The court finds that § 1129(a) (7) is satisfied.

§ 1129(a) (8)

Section 1129(a) (8) requires that each class of claims or interests either accept the plan or not be impaired under the Plan. As noted previously, the only impaired class is Class 5, and the ballots returned for that class unanimously accepted the Plan. The court finds that § 1129(a) (8) is satisfied.

§ 1129(a) (9)

The plan provides for all claims under § 1129(a) (9), if any, to be paid in full. No objections were raised as to § 1129(a) (9) as to any creditor. The court finds that § 1129(a) (9) is satisfied.

§ 1129(a) (10)

Section 1129(a) (10) requires that if a class of claims is impaired under the Plan, at least one class of claims that is impaired has accepted the plan, which is determined without including the acceptance by any insider. Here, the only impaired class has accepted the Plan. The court finds that § 1129(a) (10) is satisfied.

§ 1129(a) (11)

Section 1129(a) (11) requires that the court find that the Plan is feasible and confirmation of the Plan is not likely to be followed by the liquidation, or need for further financial reorganization, of Debtor or any successor to Debtor under the Plan. Here, the evidence

accompanying the plan, including the Declaration of Kristine Williams indicates that the proceeds from the sale to Jericho will fully fund the plan. Doc. #429. Williams believes the Plan is feasible and has a "reasonable probability of success." *Id.*; cf. *In re Pizza of Hawaii, Inc.*, 761 F.2d 1374, 1382 (9th Cir. 1985).

No party has challenged the feasibility of the Plan. The court finds that § 1129(a)(11) is satisfied.

§ 1129(a)(12)

Debtor is a subchapter V chapter 11 debtor, and quarterly fees due to the Office of the United States Trustee are not required, so this section is inapplicable.

§ 1129(a)(13)

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

§ 1129(a)(14)

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

§ 1129(a)(15)

Section 1129(a)(15) is not applicable in subchapter V. § 1181(a).

§ 1129(a)(16)

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

§ 1191(b) and (c)

Because this is a consensual plan, these provisions are not relevant.

Based on the foregoing analysis, the court concludes that the Plan satisfies the requirements for confirmation. This confirmation hearing will be called and proceed as scheduled. The court is inclined to GRANT the motion.

4. [23-11332](#)-B-11 **IN RE: TWILIGHT HAVEN, A CALIFORNIA**
NON-PROFIT CORPORATION
[WJH-24](#)

CONTINUED MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
10-30-2023 [\[271\]](#)

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

NO RULING.

5. [23-10457](#)-B-11 **IN RE: MADERA COMMUNITY HOSPITAL**
[WJH-77](#)

MOTION FOR ENTRY OF AN ORDER PURSUANT TO SECTIONS 105(A) AND
363(B) OF THE BANKRUPTCY CODE AUTHORIZING THE DEBTOR TO
ENTER INTO A MASTER TRANSITION AGREEMENT AND A MANAGEMENT
SERVICES AGREEMENT WITH AMERICAN ADVANCED MANAGEMENT, INC.
1-19-2024 [[1298](#)]

MADERA COMMUNITY HOSPITAL/MV
RILEY WALTER/ATTY. FOR DBT.
PAUL JASPER/ATTY. FOR MV.

NO RULING.

11:00 AM

1. [23-12695](#)-B-7 **IN RE: JOANN AVILA**

PRO SE REAFFIRMATION AGREEMENT WITH SANTANDER CONSUMER USA
INC.

1-16-2024 [[19](#)]

NO RULING.

1:30 PM

1. [22-11614](#)-B-7 **IN RE: NANCY JERKOVICH**
[ADJ-04](#)

ORDER TO SHOW CAUSE
12-6-2023 [\[49\]](#)

LAYNE HAYDEN/ATTY. FOR DBT.

NO RULING.

On November 30, 2023, the court issued an order to show cause why Nancy Jerkovich ("Debtor") should not be held in contempt for failing to comply with the court's July 14, 2023, order (Doc. #37; "the July Order) that Debtor turn over information to the Trustee. Doc. #49. Pursuant to the July Order, Debtor was ordered to immediately turn over to Trustee various documents related to the Super Suds Laundry:

- a. Federal tax returns for the time period of January 1, 2019 through December 31, 2022;
- b. Any real property lease;
- c. Any equipment lease;
- d. Any partnership or similar agreement;
- e. All payroll tax returns for the time period of January 1, 2019 through
 1. December 3, 2022;
- f. Schedule showing owner salaries, including benefits, for the time period
 2. of January 1, 2019 through December 31, 2022;
- g. Annual income statements for the time period of 2019 through 2022;
- h. Balance sheet for the first day of January for 2019 through 2023; and
- i. All bank statements for the time period of January 1, 2019 through December 31, 2022.

Id.

Based on the record, it appears that Debtor failed to comply with the court's order to turn over the listed documents. *See Docket generally.* The court received a letter from Debtor's spouse February 9, 2024, explaining certain issues. The court will consider these developments at the hearing.

2. [23-11761](#)-B-7 **IN RE: ALEENE WILCOX**
[GT-1](#)

CONTINUED MOTION TO AVOID LIEN OF RESURGENCE FINANCIAL, LLC
11-13-2023 [\[16\]](#)

ALEENE WILCOX/MV
GRISELDA TORRES/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

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

Aileen Pappin Wilcox ("Debtor") moves for an order avoiding a judicial lien pursuant to 11 U.S.C. § 522(f) in favor of Resurgence Financial, LLC ("Resurgence") in the sum of \$31,179.79 and encumbering residential real property located at 41769 Auberry Road, Auberry, California ("Property"). Doc. #16.

In February 2013, Resurgence assigned its rights under the judgment lien to Creditor Collect Access ("CCS"). Doc. #21. On November 27, 2023, CCS filed a *Response* to this motion. *Id.*

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 (except CCS), 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.

Other than CCS, no party in interest has responded, and so the defaults of all such parties in interest will be entered.

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 against Debtor in favor of Resurgence (and later assigned to CSS) in the amount of \$31,190.79 on February 24, 2020. Doc. #16. The judgment was entered on January 18, 2007, and renewed on October 16, 2016. Doc. # 19. It was recorded in Fresno County on November 10, 2019, with Resurgence listed as Plaintiff and CCS listed as judgment creditor. *Id.* That lien attached to Debtor's interest in Property. *Id.* Debtor estimates that

the current amount owed on account of this lien is \$31,190.79. Doc. #1 (*Schedule D*).

As of the petition date, Debtor assigned the Property an approximate value of \$153,000.00. Doc. #1 (*Schedule A/B*). Debtor claimed a \$153,000.00 exemption in Property pursuant to Cal. Code Civ. Proc. ("CCP") § 704.730. Doc. #1 (*Schedule C*). Other than the lien at issue here, the Property is unencumbered.

"Under the full avoidance approach, as used in *Brantz*, the only way a lien would be avoided 'in full' was if the debtor's gross equity were equal to or less than the amount of the exemption." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger)*, 217 B.R. 592, 596 (B.A.P. 9th Cir. 1997), *aff'd*, 196 F.3d 1292 (9th Cir. 1999), citing *In re Brantz*, 106 B.R. 62, 68 (Bankr. E.D. Pa. 1989) ("Avoidance of all judicial liens results unless (3) [the result of deducting the debtor's allowable exemptions and the sum of all liens not avoided from the value of the property] is a positive figure."), citing *In re Magosin*, 75 B.R. 545, 547 (Bankr. E.D. Pa. 1987) (judicial lien was avoidable in its entirety where equity is less than exemption).

Strict application of the § 522(f)(2) formula with respect to CCS's lien is illustrated as follows:

Amount of judgment lien	\$31,190.79
Total amount of unavoidable liens	+ \$0.00
Debtor's claimed exemption in Property	+ 153,000.00
Sum	= \$184,190.79
Debtor's claimed value of interest absent liens	- \$153,000.00
Extent lien impairs exemption	= \$31,190.79

All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 91 (B.A.P. 9th Cir. 2007); *accord. Hanger* 217 B.R. at 596, *Higgins v. Household Fin. Corp. (In re Higgins)*, 201 B.R. 965, 967 (B.A.P. 9th Cir. 1996); *cf. Brantz*, 106 B.R. at 68, *Magosin*, 75 B.R. at 549-50, *In re Piersol*, 244 B.R. 309, 311 (Bankr. E.D. Pa. 2000). Since there is no equity for liens to attach and this case does not involve fractional interests or co-owned property with non-debtor third parties, the § 522(f)(2) formula can be re-illustrated using the *Brantz* formula with the same result:

Fair market value of Property	\$153,000.00
Total amount of unavoidable liens	- \$0.00
Homestead exemption	- \$153,000.00
Remaining equity for judicial liens	= \$0.00
Creditor's judicial lien	- \$31,190.79
Extent Debtor's exemption impaired	= (\$31,190.79)

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), it appears there is insufficient equity to support any judicial liens. Therefore, the fixing of Creditor's judicial lien impairs Debtor's exemption in the Property and its fixing should be subject to avoidance.

The court's analysis was complicated, however, by CCS's assertion that Debtor is not entitled to an exemption at all because the Property is a vacant lot and not Debtor's homestead, an assertion seemingly supported by the declaration of Kimberly Barrientos, CCS's counsel, and an exhibit in the form of a Property Profile generated by Site X which was a part of the moving papers. Doc. #22.

On December 4, 2023, Debtor filed a reply to CCS's opposition and presented evidence that the Property is indeed Debtor's homestead property that is subject to avoidance. Doc. #24.

On December 12, 2023, the court conducted a hearing in this matter, in the course of which counsel for CCS conceded that the Property is Debtor's homestead, but CCS nevertheless objected to Debtor's valuation of the Property. CCS requested a continuance to seek an appraisal of the Property and Debtor acquiesced, and so this matter was continued to February 13, 2024. The court instructed counsel to submit any additional evidence as to valuation to both the court and to Debtor on or before February 6, 2024.

CCS did not submit any additional valuation evidence. In the absence of any such evidence, the court must accept Debtor's own valuation as accurate, and Debtor has therefore established the four elements necessary to avoid a lien under § 522(f)(1).

The court will call this matter as scheduled. Unless CCS can present persuasive evidence the hearing that the Property is worth less than Debtor's valuation by an amount sufficient to leave some non-exempt equity (and also a valid reason for failing to timely submit such evidence to the Debtor and the court), the court is inclined to GRANT this motion. If the motion is granted, the proposed order shall state that Creditor's lien is avoided from the subject Property only and include a copy of the abstract of judgment as an exhibit.

3. [23-12881](#)-B-7 **IN RE: ANAIT/KAREN SARGSYAN**
[SLL-1](#)

MOTION TO COMPEL ABANDONMENT
1-2-2024 [\[10\]](#)

KAREN SARGSYAN/MV
STEPHEN LABIAK/ATTY. FOR DBT.

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

DISPOSITION: Granted.

ORDER: The Movant will prepare the order.

Anait and Karen Sargsyan ("Debtors") move for an order compelling chapter 7 trustee James E. Salven ("Trustee") to abandon the estate's interest in certain property (collectively, the "Business Assets"). Doc. #10.

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

No such party in interest has responded to the motion, and the default of all such parties in interest will be entered.

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate."

To grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. *In re Vu*, 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." *In re K.C. Mach. & Tool Co.*, 816 F.2d 238, 246 (6th Cir. 1987). In evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. *In re Johnson*, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). *In re Galloway*, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at *16-17 (B.A.P. 9th Cir. 2014).

Debtors own and operate a jewelry store with the trade name THE RITZ JEWELRY. Doc. #10. Debtor seeks to compel Trustee to abandon the Business Assets, which are listed as follows:

Asset	Value	Exempt	Lien	Net
Value of the name of the Business: THE RITZ JEWELRY	\$0.00	\$0.00	\$0.00	\$0.00
Inventory: An extensive itemized list of 112 jewelry items with an aggregate value of \$23,185. (See Doc.	\$23,185.00	\$23,185.00 (703.140(b)(5))	\$0.00	\$23,185.00

#12, Exh A ("Inventory List")				
Business Bank Accounts (3 accounts ending in 6614, 5260, and 0396.	\$504.29	\$504.29 (703.140(b)(5)	\$0.00	\$504.29
Office Equipment, Furnishings and Supplies	\$7,870.00	\$7,870.00 (703.140(b)(6)	\$0.00	\$7,870.00

Id.; Sched. A/B ¶ 40, Doc. #1. In their motion, Debtors list \$7,870.00 as the collective value of all the office equipment listed on line 39 of Schedule A/B. *Id.* The jewelry is listed as inventory on Schedule A/B on line 41. *Id.* None of the Business Assets are encumbered by any secured creditors. Sched. D, *id.* Debtor exempted all the office equipment for their full value (\$7,870.00) as tools of the trade under Cal. Code Civ. Proc. § 703.140(b)(6). Debtors exempted the jewelry as inventory for its full value (\$23,185.00) under Cal. Code Civ. Proc. § 703.140(b)(5). *Id.* Debtors also exempted the three bank accounts with a collective value of \$504.29 under 703.140(b)(5).

The Debtors assert that the value of the goodwill of THE RITZ JEWELRY is \$0.00 and that it is exempted under "CCP Section 703" but without citation to any specific exemption statute. *Id.* "The value of the name of the business" or anything similar is not listed on Schedule A/B or Schedule C. Debtors do list 100 shares of "The Ritz" on line 19 of Schedule A/B (non-publicly traded stocks), but it these shares are not listed on Schedule C. Doc. 1.

Debtors certify that Debtors are qualified and eligible to claim the exemptions under applicable law and understands that if for any reason it is determined that Debtor is not qualified to claim an exemption in the property listed, or if there is some other error in the exemption claimed, Trustee may demand that Debtor compensate the estate for any damage caused by the claimed exemption. Doc. #12. Debtor agrees to not amend the exemptions affecting the Business Assets unless Trustee stipulates to that amendment or such relief is granted by further order of the court. *Id.*

There being no opposition, the court Finds that the Business Assets are of inconsequential value and benefit to the estate. The Business Assets were accurately scheduled and are encumbered or exempted in their entirety. Therefore, the motion is GRANTED. The order shall specifically include the property to be abandoned.

4. [23-10794](#)-B-7 **IN RE: HOMERO MENDIOLA**
[ADJ-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH TOMAS MENDIOLA
1-3-2024 [\[24\]](#)

IRMA EDMONDS/MV
ANTHONY JOHNSTON/ATTY. FOR MV.

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

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order with a copy of the stipulation attached as an exhibit. The stipulation shall also be separately filed and docketed as a stipulation.

Chapter 7 trustee Irma C. Edmonds ("Trustee") requests an order approving a settlement agreement to resolve fraudulent transfer litigation between the estate and Tomas Mendiola ("Tomas" or "Defendant") pursuant to Fed. R. Bankr. P. ("Rule") 9019. Doc. #24.

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 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.

Homer Mendiola ("Debtor") filed chapter 7 bankruptcy on April 20, 2023. Doc. #1 Trustee was appointed as the interim trustee on that same date and became permanent trustee at the 341 meeting of creditors on May 22, 2023. See docket generally.

While investigating the assets of the estate, Trustee learned that on January 6, 2022, less than one year prior to the filing of the petition, Debtor conveyed his interest in certain real property commonly known as 4524 East Kaviland Avenue, Fresno, California ("the Property") to his son, Tomas. Doc. #24. On July 10, 2023,

Trustee filed Adversary Proceeding 23-01028 against Tomas to set aside the conveyance as a fraudulent transfer. *Id.* Trustee has a duty to administer the estate and recover the unrealized value of the estate's interest in the Property. To avoid litigation, Trustee and Tomas entered into a settlement. *Id.*

Under the terms of the settlement, Trustee will dismiss the adversary action, and, in exchange, Tomas shall pay Trustee \$27,800.00 in 24 monthly instalments of \$1,158.33, due by the 20th of each month commencing in February 2024). *Id.* Trustee avers that the sum of filed proofs of claim in this case is \$20,431.84 and that total settlement payments of \$27,800.00 will render the estate solvent or substantially solvent and allow for a 100% distribution to unsecured creditors or close to it. *Id.* Tomas' payment obligations will be secured by a deed of trust on the Property which is otherwise unencumbered by any recorded liens. *Id.*

The court notes that a copy of the settlement agreement has not been filed in this case. The motion will only be granted if Trustee separately files the settlement agreement and docket it as a stipulation.

As representative of the chapter 7 bankruptcy estate, Trustee has the authority to settle claims of Debtor subject to court approval. 11 U.S.C. § 323(a). On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Rule 9019. Approval of a compromise must be based upon considerations of fairness and equity. *In re A & C Props.*, 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).

A copy of the proposed settlement agreement accompanies the motion, and it appears to be consistent with the summation above. Doc. #27.

As representative of the chapter 7 bankruptcy estate, Trustee has the authority to settle claims of Debtor subject to court approval. 11 U.S.C. § 323(a). On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Rule 9019. Approval of a compromise must be based upon considerations of fairness and equity. *In re A & C Props.*, 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).

It appears from the moving papers that the Trustee has considered the *A & C Props.* and *Woodson* factors, which weigh in favor of approving the settlement agreement as follows:

1. Probability of success in litigation: Trustee concedes that there is a strong case that Debtor's transfer of the Property to Tomas was done with actual intent to hinder, delay, or defraud a creditor or a potential creditor. *Id.* Trustee further concedes that this factor weighs against approval, but Trustee also notes that the settlement will provide for a 100% distribution or close to it, that there is always a risk to litigation, and that if litigation proceeds, it will increase expenses to the estate. *Id.*

2. Collection: Trustee argues that collection would require first successful litigation of the adversary through trial, followed by the additional requirements for selling the property after obtaining a judgment. *Id.* All these obstacles to collection are obviated with the settlement. *Id.*

3. Complexity of litigation: The Trustee concede the litigation should not be complex but argues that the complexity factor is outweighed by the benefit of the settlement to the estate without the need for pursuing this matter to trial. *Id.*

4. Paramount interests of creditors: No creditors have made their views known and no oppositions to this motion have been filed. *Id.* Trustee argues persuasively that a waiver of claims in the Property in exchange for enough funds to pay creditor claims in full or substantially in full is in the best interests of all creditors.

The *A & C Props.* and *Woodson* factors appear to weigh in favor of approving the settlement. Therefore, the settlement appears to be a fair, equitable, and reasonable exercise of Trustee's business judgment. 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, this motion will be GRANTED. The settlement between the estate and Defendant will be approved. No order will be entered unless a copy of the settlement agreement docketed as a stipulation is filed.

This ruling is not authorizing the payment of any fees or costs associated with the settlement. Additionally, Trustee shall attach a copy of the settlement agreement as an exhibit to the proposed order and shall separately file the settlement agreement and docket it as a stipulation.