

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

February 20, 2025 at 10:30 a.m.

1. [22-90415](#)-E-7
[BLF](#)-16

JOHN MENDOZA
Peter Macaluso

**MOTION TO SELL AND/OR MOTION
FOR COMPENSATION FOR REMAX
EXECUTIVE, REALTOR(S)
1-30-25 [466]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on January 30, 2025. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion to Sell Property is granted.

The Bankruptcy Code permits Gary R. Farrar, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 1027 W. 18th Street, Merced, Ca 95340 ("Property").

The proposed purchaser of the Property is Marco Antonio Amezcua Alejo, and Gricelda Trujillo Ramos ("Buyer"), and the terms of the sale are:

February 20, 2025 at 10:30 a.m.

- Page 1 of 26 -

- A. Purchase Price: \$218,000.00.
- B. Initial deposit: \$6,500.00.
- C. Loan Amount: \$211,500.00.
- D. Close of escrow shall occur within 15 days of written court approval.
- E. Seller acceptance is subject to US Bankruptcy Court approval and possible overbid.
- F. Property is being sold in as-is condition, including but not limited to, buyer providing smoke detectors, carbon monoxide detectors, & water heater bracing, if necessary.
- G. Arbitration/Mediation to be removed from contract.
- H. Inspection contingency to be 5 days from acceptance.
- I. Buyer to immediately furnish proof of funds as part of acceptance of counter.
- J. Seller agrees to pay the obligation of Buyer to compensate Buyer's Broker under a separate agreement.
- K. Seller will pay for Natural Hazard Zone Disclosure Report, including tax information.
- L. Buyer and Seller to each pay ½ of the escrow fees 50/50.
- M. Seller to each pay for owner's title insurance policy; Buyer to pay for Buyer's Lender title insurance policy.
- N. Seller to pay for County and City transfer tax (if applicable).
- O. Seller to pay HOA transfer fees and HOA fee to prepare disclosures & Buyer to pay HOA certification fee.
- P. Buyer waives home warranty plan.
- Q. Seller to pay for Government Required Point of Sale inspections, reports, if applicable.
- R. Seller to pay for Government Required Point of Sale corrective/remedial actions, if applicable.
- S. Bathroom mirrors, stoves, ovens, stove/oven combos, dishwashers, and microwaves to be included in sale. (Exs. A-D).

- T. The Agreement is conditional on Bankruptcy Court approval of this Motion and Mr. Farrar is amenable to overbidding at the hearing on terms that are agreeable to this Court.

Mot. 3:3-21, Docket 466.

Overbidding Procedures

Movant proposes the following overbidding procedures with this Motion:

- a. Any party overbidding must agree to purchase the Property on the identical terms as the proposed Agreement (aside from increased price);
- b. The proposed overbidder must first qualify to bid by demonstrating to the satisfaction of the Court and Mr. Farrar, that they have the financial ability to close the transaction according to the Agreement - such demonstration should be made to Mr. Farrar within 7 days of the hearing on this Motion;
- c. The first overbid must be at least \$220,500.00 (\$2,500.00 more than the purchase price) and successive bids must be in increments of at least \$1,000.00;
- d. In addition, the successful overbidder must deliver to Mr. Farrar within 7 days of the hearing, by cashier's check, a deposit of \$6,500.00. If the overbidder timely completes the purchase, the deposit will apply to the purchase price, but if the overbidder defaults, the deposit will be nonrefundable.

Mot. 6:5-16. The court finds the overbidding procedures to be reasonable and adopts them for purposes of this sale Motion.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **XXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the estate will net \$98,412.80 pay administrative expenses, unsecured creditors, and lienholder WVJP 2021-4 LP.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately \$13,080.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the brokers, Brian Brazeal of Remax Executive, the Estate's broker, and Estevan Jimenez Cruz, Buyer's broker, an amount not more than six percent commission.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Gary R. Farrar, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and Gary R. Farrar, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Marco Antonio Amezcua Alejo, and Gricelda Trujillo Ramos (“Buyer”), the Property commonly known as 1027 W. 18th Street, Merced, Ca 95340 (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$218,000.00, on the terms and conditions set forth in the Purchase Agreement and Addendums, Exhibits A– D, Dckt. 468, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. The Chapter 7 Trustee is authorized to pay a real estate broker’s commission in an amount not more than six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be paid evenly to Brian Brazeal of Remax Executive, the Estate’s broker, and Estevan Jimenez Cruz, Buyer’s broker.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors that have filed claims and Office of the United States Trustee on January 30, 2025. By the court’s calculation, 21 days’ notice was provided. 21 days’ notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days’ notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 Subchapter V Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----
-----.

The Motion to Sell Property is XXXXXXX.

The Bankruptcy Code permits Heritage Home Furnishings, LLC, Debtor in Possession, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell items of personal property identified as inventory, customer list, and office equipment/furniture. The court would note there has been no attachment submitted as an Exhibit to the Motion detailing which particular assets are subject to this Motion, such as a list of the inventory and equipment. Moreover, there is no reference in the Motion to the Schedules to help identify with particularity which assets are to be sold. The court cannot issue an order that does not specifically identify the assets being sold.

At the hearing, XXXXXXX

Fabiola Sandoval, one of the two managing members of the Debtor (her brother, Carlos Sandoval is the other managing member), provides her Declaration in support of this Motion. Dckt. 69. In it she explains that the two members of the Debtor LLC have resolved to wind down the business, sell the assets, and pay creditors who they can be paid from the sale of all the assets. She concludes that if they were forced to have a liquidation sale, as opposed to the sale to George Sandoval (Fabiola Sandoval’s spouse).

George Sandoval, the spouse of Fabiola Sandoval and the sole shareholder of the proposed purchaser, Minerva's Home, Inc., provides his Declaration in support of the Motion. Dckt. 70. In it he testifies that Minerva's Home, Inc. proposes to purchase the assets for \$119,548.00, which will be payable over 60 months at 2.75% interest.

Though financed by the Debtor/Debtor in Possession and the Bankruptcy Estate over 5 years, there is no mention of providing a security interest or collateral to the Bankruptcy Estate. Using the Excel Loan Calculator, \$119,548.00, financed over 60 months at 2.75% interest, would result in the Bankruptcy Estate receiving monthly payments of \$2,134.87. Neither Fabiola Sandoval or George Sandoval provide any testimony as to how soon the inventory would be sold to Minerva's Home, Inc. It does not appear that it would be sold over a 60 month period, but would be sold, and the monies received by Minerva's Home, Inc. would occur much sooner.

The court would also note that the sale appears to be to an insider, Minerva Home, Inc. ("Buyer"). The sole shareholder of Buyer is George Sandoval. Mr. Sandoval is the spouse of Fabiola Sanchez Sandoval, who is a member of Debtor in Possession. The court does not have evidence that the property in question has been fairly marketed to realize the best return for the Estate. In fact, the sale is for \$119,548.00 payable over 60 months at 3.75% interest rate, which is multiple points lower than the prime rate of interest of 7.5%.

In explaining how this sale is fair and realizing the best return for the Estate, at the hearing,

XXXXXXX

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the liens of the Small Business Administration ("SBA"), CA Dept of Tax and Fee Administration ("CDTFA"), WebBank ("Bank"), and OnDeck Capital ("ODK"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

(f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

Movant seeks a sale free and clear pursuant to 11 U.S.C. § 363(f)(3) - that the sales proceeds exceed the debt that is secured by the property being sold. However, the court is not presented with any evidence that the property will be sold at a price greater than the aggregate value of all liens on such property. A review of the Claims filed in this Bankruptcy Case indicates that the liens exceed the proceeds of this sale.

Review of Secured Claims/Debt

The U.S. Small Business Administration has filed Proof of Claim 1-1, stating having a secured claim of (\$155,673.62). Attached to Proof of Claim 1-1 are copies of the underlying documents upon which the claim is based. These include:

A. Security Agreement. Attachment to Proof of Claim 1-1, pp. 17-21.

1. The Debtor granted the SBA a security interest in the following property (the court reformatting the text from the dense, security agreement format):

The Collateral in which this security interest is granted includes the following property that Borrower now owns or shall acquire or create immediately upon the acquisition or creation thereof: all tangible and intangible personal property, including, but not limited to:

- (a) inventory,
- (b) equipment,
- (c) instruments, including promissory notes
- (d) chattel paper, including tangible chattel paper and electronic chattel paper,
- (e) documents,
- (f) letter of credit rights,
- (g) accounts, including health-care insurance receivables and credit card receivables,
- (h) deposit accounts,
- (i) commercial tort claims,
- (j) general intangibles, including payment intangibles and software and
- (k) as-extracted collateral as such terms may from time to time be defined in the Uniform Commercial Code.

The security interest Borrower grants includes all accessions, attachments, accessories, parts, supplies and replacements for the Collateral, all products, proceeds and collections thereof and all records and data relating thereto.

ODK Capital, LLC has filed Proof of Claim 11-1, asserting a secured claim in the amount of \$236,782.98. Attached to Proof of Claim 11-1 are copies of the underlying documents upon which the Claim 11-1 is based. The Business Loan and Security Agreement, Attachment pp. 1-22, provides some interesting detail about the loan.

The terms of the Loan are stated to be:

1. The Loan Amount was \$210,000.00, of which (\$8,400.00) was deducted as the loan fee (4%). Attachment, p. 1.
2. The weekly payments are (\$3,758.46), to be made for 78 weeks. This total (\$293,159.88) in payments. *Id.* The loan repayment term was 18 months. *Id.*; p.20.
3. The Annual Percentage Rate Interest was 52.97%. *Id.*

The property that Debtor granted a security interest to secure the debt which is claimed in Proof of Claim 11-1 is described as (the court again reformatting the text from the dense, security agreement format):

11. SECURITY INTEREST. Borrower hereby grants to Lender, the secured party hereunder, a continuing security interest in and to any and all “Collateral” as described below to secure payment and performance of all debts, liabilities and obligations of Borrower to Lender hereunder and also any and all other debts, liabilities and obligations of Borrower to Lender of every kind and description, direct or indirect, absolute or contingent, primary or secondary, due or to become due, now existing or hereafter arising, related to the Loan described in this Agreement, whether or not contemplated by the parties at the time of the granting of this security interest, regardless of how they arise or by what agreement or instrument they may be evidenced or whether evidenced by any agreement or instrument, and includes obligations to perform acts and refrain from taking action as well as obligations to pay money including, without limitation, all interest, other fees and expenses (all hereinafter called “Obligations”). The Collateral includes the following property that Borrower (or Guarantor, if applicable, pursuant to Section 12) now owns or shall acquire or create immediately upon the acquisition or creation thereof: (i) any and all amounts owing to Borrower now or in the future from any merchant processor(s) processing charges made by customers of Borrower via credit card or debit card transactions; and (ii) all other tangible and intangible personal property, including, but not limited to

- (a) cash and cash equivalents,
- (b) inventory,
- (c) equipment,
- (d) investment property, including certificated and uncertificated securities, securities accounts, security entitlements, commodity contracts and commodity accounts,
- (e) instruments, including promissory notes
- (f) chattel paper, including tangible chattel paper and electronic chattel paper,
- (g) documents,
- (h) letter of credit rights,
- (i) accounts, including health-care insurance receivables,
- (j) deposit accounts,

- (k) commercial tort claims,
- (l) general intangibles, including payment intangibles and software and
- (m) as-extracted collateral as such terms may from time to time be defined in the Uniform Commercial Code.

The security interest Borrower (or Guarantor, if applicable, pursuant to Section 12) grants includes all accessions, attachments, accessories, parts, supplies and replacements for the Collateral, all products, proceeds and collections thereof and all records and data relating thereto.

Lender disclaims any security interest in household goods in which Lender is forbidden by law from taking a security interest, and disclaims any security interest in real estate and dwellings.

Id.; ¶ 12, p. 4-5.

These are the only Proofs of Claim filed as of the court’s February 18, 2025 review of the Claims Register in which the collateral includes (but is not limited to) the inventory, equipment, cash, accessories, parts, products, proceeds, records, data, accounts, and deposit accounts.

The secured claims asserted by these two creditors total (\$392,456.18), a number well in excess of the proposed sales price.

Review of Schedule D

On Schedule D filed in this Bankruptcy Case by the Debtor, the creditors with secured claims, and the amount thereof (as computed by Debtor) are:

- A. California Department of Fee Administration
 - 1. Collateral..... “F&M-Checking-Acct #xxxx”
 - 2. Amount of Claim.....(\$1.00)
 - 3. Value of Collateral.....\$1,560.00
- B. ODK Capital, LLC
 - 1. Collateral..... “F&M-Checking-Acct #xxxx.”
 - 2. Amount of Claim.....(\$265,000)
 - 3. Value of Collateral.....\$1,560.00
- C. SBA
 - 1. Collateral..... “All personal property of Debtor”

2. Amount of Claim.....(\$150,000)
3. Value of Collateral.....\$1,560.00

D. WebBank

1. Collateral..... “F&M-Checking-Acct #xxxx
2. Amount of Claim.....(\$40,000)
3. Value of Collateral.....\$1,560.00

Dckt. 18 at 11-13.

The information shown on Schedule D and the information provided with the Proofs of Claims filed so far show that the aggregate lien amounts are far greater than the requested purchase price of \$119,548.00. The court cannot authorize the sale free and clear of these creditors’ liens pursuant to 11 U.S.C. § 363(f)(3).

At the hearing, **XXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Heritage Home Furnishings, LLC, Debtor in Possession, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXX**.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED

It is not clear notice was provided, Movant having not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **XXXXXXX**

The Motion to Compel Abandonment was set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

The Motion to Compel Abandonment is granted.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Lakeview Loan Servicing, LLC (“Movant”) requests the court to order Geoffrey Richards (“the Chapter 7 Trustee”) to abandon property commonly known as 1521 Bella Terra Dr., Modesto, California 95355 (“Property”). The Property is encumbered by the lien of Lakeview Loan Servicing, LLC, Movant, securing a claim of \$193,328.79. Debtor Robert Lee Foss and Erica Quintero Foss (“Debtor”) filed Schedules valuing the Property at \$422,906.00 and claiming an exemption in the amount of \$460,000. Schedule C at 8, Docket 14.

The court finds that the debt secured by the Property and Debtor's homestead exemption exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property to Debtor.

CHAMBERS PREPARED ORDER

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Compel Abandonment filed by Lakeview Loan Servicing, LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is granted, and the Property identified as 1521 Bella Terra Dr., Modesto, California 95355 and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Geoffrey Richards ("Trustee") to Robert Lee Foss and Erica Quintero Foss, the Debtors, by this order, with no further act of the Trustee required.

4. [24-90776-E-7](#)

JELINA NICHOLAS
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-30-25 [\[67\]](#)**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 7 Trustee as stated on the Certificate of Service on February 1, 2025. The court computes that 20 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$25 due on January 16, 2025.

The Order to Show Cause is sustained, and the case is dismissed.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$25.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

FINAL RULINGS

5. [24-90584-E-7](#) **MICHAEL GULAS AND JILL** **MOTION TO APPROVE LOAN**
[SAD-1](#) **DAVIS** **MODIFICATION**
 Byron Nelson **1-23-25 [27]**

Final Ruling: No appearance at the February 20, 2025 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, and Office of the United States Trustee on January 23, 2025. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by LoanDepot.com, LLC (“Movant”) seeks court approval for Debtor Michael V Gulas and Jill L Davis (“Debtor”) to incur post-petition credit. Movant has agreed to a loan modification that is a payment deferral agreement. The payment deferral agreement includes the following terms:

Number of past due principal and interest payments to be deferred	5
Past-due principal and interest payment amount to be deferred	\$6,767.45
Other past-due amounts to be deferred	\$1,320.05
Total past-due amounts to be deferred	\$8,087.50
Late charges to be waived	\$203.01

Ex. 1, Docket 29.

As part of this agreement, the mortgage is deemed current and Debtor must repay the past-due amounts upon the notes maturity date or sale of the property.

The Motion is supported by the Declaration of Alicia P. January. Dckt. 28. The Declaration states Debtor and Movant have entered into this agreement on November 1, 2024. *Id.* at ¶ 8.

There being no objection from the Chapter 7 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Loan Modification filed by LoanDepot.com, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the court authorizes Debtor Michael V. Gulas and Jill L. Davis to amend the terms of the loan with LoanDepot.com, LLC (“Creditor”), which is secured by the real property commonly known as 1525 Brixton LN, Modesto, Ca 95356, on such terms as stated in the Payment Deferral Agreement filed as an Exhibit in support of the Motion (Dckt. 29).

Final Ruling: No appearance at the February 20, 2025 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on January 10, 2025. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank, N.A. ("Creditor") against property of the debtor, Jesus Contreras and Yaneth Carolina Contreras ("Debtor") commonly known as 4408 Green Knoll Ct. Salida, CA 95368 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$4,571.20. Exhibit A, Dckt. 20. An abstract of judgment was recorded with Stanislaus County on November 13, 2024, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$504,500 as of the petition date. Schedule A at 10, Docket 1. The unavoidable consensual liens that total \$404,090 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D at 18, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$104,410 on Schedule C. Schedule C at 16, Docket 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Jesus Contreras and Yaneth Carolina Contreras (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Citibank, N.A., California Superior Court for Stanislaus County Case No. CV-24-003526, recorded on November 13, 2024, Document No. 2024-0055065, with the Stanislaus County Recorder, against the real property commonly known as 4408 Green Knoll Ct. Salida, CA 95368, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

7. 24-90209-E-11	JEFFREY MCPHEE	MOTION TO DISMISS CASE
BN-1	David Johnston	1-13-25 [64]

Item 7 thru 8

Final Ruling: No appearance at the February 20, 2025 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, all creditors and parties and interest, and Office of the United States Trustee on January 13, 2025. By the court’s calculation, 38 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Dismiss is granted.
--

Farmers & Merchants Bank of Central California (“Movant”) moves this court for an Order dismissing the Chapter 11 case of Debtor in Possession Jeffrey Michael McPhee (“Debtor in Possession”) pursuant to 11 U.S.C. § 1112(b). Movant seeks dismissal for three reasons:

1. First, cause exists for dismissal under § 1112(b)(4)(A) because McPhee has suffered continuing losses and is unlikely to rehabilitate his financial condition. McPhee’s schedules and operating reports show that since he filed this case eight months ago, he has maintained a negative cash flow position over multiple months. McPhee has not formulated or filed any business plan showing how he can rehabilitate his financial affairs and fund a confirmable Chapter 11 plan. Mot. 2:6-11.
2. Second, cause exists for dismissal under § 1112(b)(4)(J) and (M) because McPhee has not filed a reorganization plan or disclosure statement despite having eight months to do so. *Id.* at 2:11-13.
3. Lastly, based on the cause for relief under § 1112, dismissal is the best option for creditors and the estate. McPhee’s schedules show that McPhee’s estate is mostly encumbered with secured liens and exemptions, leaving little assets to distribute to unsecured creditors. A Chapter 7 liquidation would burden the estate with administrative costs and yield little recovery to creditors. *Id.* at 2:13-17.

APPLICABLE LAW

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1). The code provides a non-exhaustive list of for cause factors:

(4) For purposes of this subsection, the term “cause” includes—

(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

(B) gross mismanagement of the estate;

(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

(D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;

- (E) failure to comply with an order of the court;
- (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;
- (G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;
- (H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);
- (I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;
- (J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;
- (K) failure to pay any fees or charges required under chapter 123 of title 28;
- (L) revocation of an order of confirmation under section 1144;
- (M) inability to effectuate substantial consummation of a confirmed plan;
- (N) material default by the debtor with respect to a confirmed plan;
- (O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and
- (P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

The Ninth Circuit has held that, although “section 1112(b) does not explicitly require that cases be filed in ‘good faith,’ courts have overwhelmingly held that a lack of good faith in filing a Chapter 11 petition establishes cause for dismissal. . . . The test is whether a debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy, efficient reorganization on a feasible basis.” *In re Marsch*, 36 F.3d 825, 828 (9th Cir. 1994). In *Marsch*, the Ninth Circuit upheld a bankruptcy court’s finding that the Chapter 11 Petition was not filed in good faith when “the debtor’s Chapter 11 petition was filed solely to delay collection of the restitution judgment and to avoid posting an appeal bond.” *Id.* at 829.

DISCUSSION

Movant first argues the case should be dismissed pursuant to 11 U.S.C. § 1112(b)(4)(A) as Debtor in Possession has not shown a reasonable likelihood of rehabilitation and Debtor in Possession has instead operated at a loss. The court agrees. The court has reviewed the four most recently filed Monthly Operating Reports at Dockets 58, 61, 62, 63, and 74. Debtor in Possession has ended the month of September of 2024 with a negative balance of approximately (\$1,984.03). Docket 61. Debtor in Possession

has ended the month of October of 2024 with a positive cash flow of \$1,984.83. Docket 62. However, Debtor in Possession ended the month of November of 2024 with a negative cash flow of (\$5,736.30). Docket 63. December fared even worse, ending the month in a negative net cash flow of (\$9,427.49). Docket 74. These numbers show Debtor in Possession lacks a reasonable likelihood of reorganization and that Debtor in Possession has been operating at a continuing loss or diminution to the estate. These are grounds for dismissal.

Movant further argues that Debtor in Possession has not proposed a Plan or Disclosure Statement in the case, but the case has been going on for 10 months now. Therefore, the case should be dismissed pursuant to 11 U.S.C. § 1112(b)(4)(J). The court again agrees and finds this as a separate and independent ground for dismissal. 11 U.S.C. § 1121(e) states:

(e) In a small business case—

(1) only the debtor may file a plan until after 180 days after the date of the order for relief, unless that period is—

(A) extended as provided by this subsection, after notice and a hearing; or

(B) the court, for cause, orders otherwise;

(2) the plan and a disclosure statement (if any) shall be filed not later than 300 days after the date of the order for relief. . .

(emphasis added). The case is now in its tenth month with no Plan or Disclosure Statement on file. This being a small business case, Debtor in Possession has missed his deadline. This is cause for dismissal pursuant to 11 U.S.C. § 1112(b)(4)(A).

The Motion is granted, and the case is dismissed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion To Dismiss filed by Farmers & Merchants Bank of Central California (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted..

Final Ruling: No appearance at the February 20, 2025 Status Conference is required.

Debtor's Atty: David C. Johnston

Notes:

Continued from 1/16/25 to be conducted in conjunction with the hearing on a Motion to Dismiss this bankruptcy case.

Operating Report filed: 2/4/25

<p>The Bankruptcy Case having been dismissed, the Status Conference is concluded and removed from the Calendar.</p>
--

Final Ruling: No appearance at the February 20, 2025 Hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on January 14, 2025. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Employ Auctioneer and for Authorization of Auctioneer's Fees and Expenses has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Employ Auctioneer and Sell Property at auction, and the Motion for Authorization of Auctioneer's Fees and Expenses are granted.

The Chapter 7 Trustee, Loris L Bakken ("Trustee"), seeks to employ Lonny Papp of TMC Auction ("Auctioneer") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 327, 328(a), 330, and 363. Trustee seeks the employment of Auctioneer to sell a 2016 Ford F-150; VIN 1FTEW1CF6GKD80048 ("Vehicle") from the Estate of Brian Belden Tercheria and Tina Jean Sexton-Tercheria ("Debtor"). Mot. 1:24.

The Vehicle is listed in the Schedule A / B filed by Debtor. Schedule A / B at 13, Docket 1. Trustee argues that Auctioneer's appointment and retention is because the Auctioneer is experienced in sales of property like the Vehicle and is able to expose the Vehicle to a large number of prospective purchasers. As a result, the Trustee believes the Auctioneer's efforts are reasonably likely to enable the estate to obtain the greatest possible return for the Vehicle. Mot. 2:18-22.

The essential terms of the Employment Agreement are as follows:

a. The sale of the Vehicle will be held on line. All bidding for the Vehicle will take place at www.trncauction.com. The Vehicle will be moved to a storage yard and removal will take place from that location.

b. Sale Date. The auction will be conducted no later than 30-45 days following Court approval of this motion or, in case of postponement, on a later date(s) agreeable to the Trustee and the Auctioneer.

c. Title. Trustee will convey title to the Vehicle as-is, where-is, disclaiming any and all representations or warranties, subject to all liens and encumbrances, if any, except those satisfied through the sale or of which the sale is authorized to be free and clear. All sales will be final and non-refundable.

d. Compensation. In addition to Expenses, the Trustee has agreed, subject to Bankruptcy Court approval of the instant motion, to compensate Auctioneer a commission of 20% on the Vehicle sale. In addition, for any buyers who pay by credit card, the Auctioneer will incur a credit card fee, which will be paid by the buyer. The Trustee respectfully requests the Court approve these terms as part of this motion. Further, no Buyer's Premium will be charged by Auctioneer in this matter.

e. Payments. The Auctioneer will be authorized to accept cash, cashiers' checks, guaranteed checks, credit card payments, and wire transfers as payment for the sale of the Vehicle. The Auctioneer shall promptly remit to the Trustee and account for all funds received from the sale of the Vehicle. The Trustee shall promptly pay the Auctioneer its allowed compensation and Expenses.

f. Taxes. When required by law, the Auctioneer shall collect all sales/use taxes or other applicable taxes, which will be added to the purchase price on the Vehicle. The Auctioneer is authorized to remit any such taxes and required reports to the proper taxing authority, on behalf of the Seller.

g. Sale of Vehicle. The Trustee shall reasonably assist with the transfer of title for the Vehicle, including but not limited to execution of any forms required by the state motor vehicle department or other necessary paperwork to complete the transfers. If the certificate of title showing no liens are not available and similar duplicate title cannot be obtained, the Trustee and the Auctioneer understand the Vehicle will be removed from the auction. The Trustee acknowledges any past due fees or penalties owed to the Department of Motor Vehicles will become the responsibility of the purchaser, and may adversely affect the bid price received at the auction sale.

Mot. 3:13-4:24.

Lonny Papp, owner of TMC Auction, testifies that TMC Auction will diligently market and sell the Vehicle. Decl. ¶ 8, Docket 20. Mr. Papp testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.* at ¶ 6.

DISCUSSION

Motion to Employ and Authorization to Sell

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Auctioneer, considering the declaration demonstrating that Auctioneer does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Lonny Papp of TMC Auction as Auctioneer for the Chapter 7 Estate on the terms and conditions set forth in the Auction Agreement filed as Exhibit A, Dckt. 23. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

Auctioneer is authorized to sell the Vehicle pursuant to this ruling and order.

Motion for Authorization of Fees and Expenses

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the professional exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Here, Trustee has estimated that a twenty percent broker’s commission from the sale of the Personal Property would be reasonable and appropriate in this type of employment. Trustee also states that expenses incurred in preparing for and conducting the auction in an amount not to exceed \$500 are reasonable and appropriate. As part of the sale in the best interest of the Estate, the court approves a twenty percent commission fee. The court further approves the requested expenses, not to exceed \$500, in connection with the auction.

The allowance of the fees and expenses is subject to the provisions of 11 U.S.C. § 328.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court to make the Vehicle more marketable and the sale be allowed to move forward as soon as possible. Mot. 7:13-20.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Employ Auctioneer and Sell Property at Auction, and for Allowance of Fees and Expenses filed by the Chapter 7 Trustee, Loris L Bakken (“Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ Auctioneer and to Sell Property at Auction is granted, effective February 20, 2025, and Trustee is authorized to employ Lonny Papp as Auctioneer for Trustee on the terms and conditions as set forth in the Auction Agreement filed as Exhibit A, Dckt. 23.

IT IS FURTHER ORDERED that Auctioneer is authorized to sell the 2016 Ford F-150; VIN 1FTEW1CF6GKD80048 (“Vehicle”).

IT IS FURTHER ORDERED that Auctioneer is authorized to receive a commission of twenty percent (20%) of the gross sales proceeds and expenses not to exceed \$500 and that the Trustee is authorized to pay such fees and expenses from the sales proceeds. The allowance of such fees and expenses is subject to the provisions of 11 U.S.C. § 328. In addition to the forgoing, the Auctioneer may recover from the Buyer any credit card fees that the Auctioneer is charged.

IT IS FURTHER ORDERED that the 14-day stay period imposed by Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.