



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Department B - 510 19th Street  
Bakersfield, California**

**Hearing Date: Wednesday, March 6, 2024**

***At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be as instructed below.***

Unless otherwise ordered, all matters before the Honorable René Lastreto II shall be simultaneously: (1) via **ZoomGov Video**, (2) via **ZoomGov Telephone**, and (3) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties or their attorneys who wish to appear at a hearing remotely must sign up by **4:00 p.m. one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>. Each party/attorney who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties and their attorneys who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest and/or their attorneys may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press who wish to attend by ZoomGov may only listen in to the hearing using the Zoom telephone number. Video participation or observing are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may attend in person unless otherwise ordered.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

**Unauthorized Recording is Prohibited:** Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

**Tentative Ruling:** **If a matter has been designated as a tentative ruling it will be called, 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.

9:00 AM

1. [22-10217](#)-B-13     **IN RE: ALFREDO HARO**  
[LMF-2](#)

CONTINUED MOTION TO MODIFY PLAN  
1-3-2024    [[42](#)]

ALFREDO HARO/MV  
LAUREN FOLEY/ATTY. FOR DBT.

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

DISPOSITION:         Denied.

ORDER:                The court will issue an order.

This matter was originally heard on February 7, 2024. Doc. #55.

Alfredo Haro ("Debtor") moves for an order confirming the *First Modified Chapter 13 Plan* dated January 3, 2024. Docs. ##42,44. Debtor's current plan was confirmed on July 19, 2022. Doc. #27. Chapter 13 trustee Lilian G. Tsang ("Trustee") timely objected to confirmation of the proposed modified plan for the following reason(s):

1. **11 U.S.C. § 1322(d)**: The proposed plan payments are not sufficient to complete the plan in 60 months.

Doc. #53.

The court continued this objection to March 6, 2024, at 9:00 a.m. Doc. #58. Debtor was directed to file and serve a written response to the objection not later than fourteen (14) days before the continued hearing date, or file a confirmable, modified plan in lieu of a response not later than seven (7) days before the continued hearing date, or the objection would be sustained on the grounds stated in the objection without further hearing. *Id.*

Debtor neither filed a written response nor a modified plan. Therefore, Trustee's objection will be SUSTAINED on the grounds stated in the objection, and this motion will be DENIED.

2. [22-10217](#)-B-13     **IN RE: ALFREDO HARO**  
[MHM-1](#)

CONTINUED MOTION TO DISMISS CASE  
12-5-2023    [[33](#)]

LAUREN FOLEY/ATTY. FOR DBT.

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

DISPOSITION:         Granted.

ORDER:                The court will issue the order.

The Chapter 13 Trustee ("Trustee") moves to dismiss the above-styled Chapter 13 case for delinquent plan payments. Doc. #33. On January 3, 2024, Alfredo Haro ("Debtor") filed his *First Modified Chapter 13 Plan*, which purported to cure

the deficiency, along with a *Motion for Confirmation* of same. Docs. ##42,44. The confirmation hearing was set for February 7, 2024, but the Trustee subsequently objected to the *First Modified Plan*, and the court continued that matter to March 6, 2024. Doc. #53.

Debtor was directed to file and serve a written response to the Trustee's objection not later than fourteen (14) days before the continued hearing date, or file a confirmable, modified plan in lieu of a response not later than seven (7) days before the continued hearing date, or the objection would be sustained on the grounds stated in the objection without further hearing. *Id.*

Debtor neither filed a written response nor a modified plan, and so, the court sustained the Trustee's objection and denied the motion to modify. See *Item #1*, above. Accordingly, the Trustee's motion to dismiss this case is ripe for review. Unless the trustee's motion is withdrawn before the hearing, the motion will be GRANTED without oral argument for cause shown.

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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Under 11 U.S.C. § 1307(c), the court may convert or dismiss a case, whichever is in the best interests of creditors and the estate, for cause. "A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1)." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011). There is "cause" for dismissal under 11 U.S.C. § 1307(c)(6) for failure to comply with the terms of the confirmed plan, including by failing to make plan payments.

The record reflects that, as of December 05, 2023, Debtor was delinquent in plan payments in the amount of \$5,284.00, with additional plan payments having since come due.

Trustee has reviewed the schedules and determined that this case may have a liquidation value of \$1,556.25 after trustee compensation. This amount consists of the value of Debtor's 2003 Mercedes E500 and funds in Debtor's checking and savings accounts. Doc. #35. The court finds this amount to be di minimis, and so, this case will be dismissed rather than converted.

Accordingly, the motion will be GRANTED, and the case DISMISSED.

3. [23-10472](#)-B-13     **IN RE: CRYSTAL JOHNSON**  
[RSW-2](#)

MOTION TO MODIFY PLAN  
1-31-2024    [[71](#)]

CRYSTAL JOHNSON/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

**After posting the original pre-hearing dispositions, the court has modified its intended ruling on this matter.**

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

DISPOSITION:     Granted

ORDER:            The court will issue an order.

Crystal Johnson ("Debtor") moves for an order confirming the *Second Modified Chapter 13 Plan* dated November 10, 2023. Doc. #71. Debtor's current plan was confirmed on August 21, 2023. Doc. #45. Chapter 13 trustee Lilian G. Tsang ("Trustee") timely objected to confirmation of the plan but subsequently withdrew the objection. Doc. ##81,85. No other party in interest has opposed confirmation. The 60-month plan proposes the following terms:

1. Debtor's aggregate payment through January 2024 will be \$2,068.00. Beginning in February 2024, plan payments will be \$353.00 per month.
2. Outstanding Attorney's fees in Section 3.06 will be modified to provide that Debtor's counsel will be paid a total of \$944.40 through January 2024, a single payment of \$968.49 in February 2024, and the remaining balance paid in month 60 of the plan.
3. Secured creditors to be sorted into appropriate Classes and paid as follows:
  - a. Celer Auto Solutions (Class 2A, PMSI). \$12,662.21 at 7.79% to be paid at \$328.50 per month beginning I February 2024.
4. A dividend of 0% to unsecured creditors.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of any party in interest, including but not limited to creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest except for the Chapter 13 Trustee can be 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.

No party in interest has responded except for the Trustee, whose Objection has been withdrawn. The defaults of all nonresponding parties are entered.

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

4. [23-10075](#)-B-13     **IN RE: REFUJIO GUILLEN**  
[RSW-10](#)

MOTION TO SELL  
2-8-2024    [[247](#)]

REFUJIO GUILLEN/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed for higher and better bids, only.

DISPOSITION:                    Granted.

ORDER:                            The Moving Party shall submit a proposed order after hearing signed by the Trustee.

Refugio Guillen ("Debtor") seeks authorization to sell his interest in 125 acres of hunting land at 4919 Deer Creek Mill Road, Pine Flat, CA in which he holds a fifty (50%) interest ("the Property"). Doc. #247. The remaining 50% is held by the prospective buyer, Ruben Cervantes ("Buyer"). *Id.*

Debtor filed this Chapter 13 case on January 18, 2023. Doc. #1. Debtor's most recently amended Schedule A/B describes the Property as follows:

Debtor is a 50% owner of 125 acres hunting land in Tulare County, with an unpermitted structure. Debtor did not pay his share of the mortgage payments, and his share of the down payment was \$120,000 less than the other owner, who is entitled to first be repaid about \$218,000 out of any sale.

Doc. #222. Debtor asserts in the *Amended Schedule A/B* that the value of the Property is \$650,000.00 and that the value of the portion he owns is \$325,000.00. *Id.* Debtor avers that he received an unsolicited offer from Buyer to purchase Debtor's interest in the Property and that Debtor does not know the value of the Property but suspects that his interest is \$0.00 because he has not been making payments and is presently vulnerable to foreclosure by his lenders, Edward and Betty Holtsnider, who have previously obtained stay relief from the court. *Id.* The proceeds from the sale will be turned over to the Trustee for the benefit of unsecured creditors. *Id.* The Property is encumbered by a mortgage with a balance of approximately \$375,000.00 owed to the Holtsniders. *Id.* Debtor suggests that the Buyer, who is also the co-owner of the Property, wishes to buy out Debtor because Buyer believes that he is more likely to obtain a refinance and be able to save the Property from foreclosure if he owns it in fee simple, presumably because sharing title with someone presently in bankruptcy will likely be an obstacle to getting a new bank loan. Dc. #249.

The motion does not outline any proposed overbidding procedures with which anyone wishing to offer a competing bid at the hearing must comply. *Id.* Any party wishing to overbid must appear at the hearing and acknowledge that no warranties or representations are included with the Property; it is being sold "as-is." Likewise, the motion does not request, nor will the court authorize, the sale free and clear of any liens or interests, and Buyer or any overbidding purchaser will take the property subject to any interests and liens.

No purchase agreement has been presented to the court, nor is there any evidence of a preliminary title report. Thus, the court is forced to rely on Debtor's representations as to the value of the Property and of his interest in it.

Debtor has never moved the court for permission to employ a realtor, and it appears from the moving papers that no realtor has been involved in the sale of the property which is pursuant to an unsolicited offer. See Docs. ##247, 249.

No party in interest timely filed written opposition. This motion will be GRANTED, and the hearing will proceed for bid solicitations only.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Rule 2002(a)(2) and (a)(6). The failure of any party in interest, including but not limited to 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). No party has opposed the motion, and so the defaults of all such parties in interest are entered and the matter will proceed for higher and better bids only. 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.

#### DISCUSSION

##### Sale of Property

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." The Debtor here has rights to sell the property under § 363(b). Section 1303 Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 N. Brand Partners v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer, 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998). The Trustee is not pursuing this sale - the Debtor is. The court has to consider the Debtor's justification for sale of the property.

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). Here, the Buyer is Debtor's co-owner in the Property which certainly seems to make him an insider. On the other hand, the fact that the Buyer is a co-owner seeking to prevent the loss of his own interest in the Property may be evidence of the sincerity of his bid. Based on the evidence before the court presently,

the purchase price appears reasonable. There is no objection to the sale by a party in interest.

If sold at the proposed sale price, it appears that, based on Debtor's representations, that the proceeds from the proposed sale could be illustrated as follows:

Sale price	\$11,000.00
Estimated taxes	- \$0.00
Estimated broker fee (6%)	- \$0.00
<b>Estimated sale proceeds</b>	<b>= \$11,000.00</b>
<b>Estimated proceeds for the Estate</b>	<b>\$11,000.00</b>

The sale under these circumstances should maximize potential recovery for the estate. The sale of the Property appears to be in the best interests of the estate because it will provide at least some funds that can be distributed for the benefit of unsecured claims, whereas the unsecured creditors will receive nothing if the Property is sold at foreclosure. The sale appears to be supported by a valid business judgment and proposed in good faith. There are no objections to the motion. Therefore, this sale is an appropriate exercise of the Debtor's business judgment and will be given deference.

Real Estate Brokers' Compensation

No real estate broker was involved in this sale.

Overbid Procedure

No overbid procedures were included in the motion. Should any parties wish to submit a higher, better bid at the hearing, the court will consider appropriate overbid procedures at that time.

Waiver of 14-day Stay

The motion does not request waiver of the 14-day stay of Rule 6004(h), and no such relief will be granted.

CONCLUSION

No party in interest timely filed written opposition. This motion will be GRANTED. Debtor will be authorized: (1) to sell the Property to the prevailing bidder at the hearing, as determined at the hearing; and (2) to execute all documents necessary to effectuate the sale of the Property. The 14-day stay of Rule 6004(h) will not be waived. The Chapter 13 Trustee shall approve the order and the court will entertain suggestions for the proceeds to be paid to the Trustee. No other relief will be granted.



5. [23-12779](#)-B-13     **IN RE: MARY HELEN BARRO**  
[DWE-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY WILMINGTON SAVINGS FUND  
SOCIETY, FSB  
2-8-2024    [[21](#)]

WILMINGTON SAVINGS FUND  
SOCIETY, FSB/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
DANE EXNOWSKI/ATTY. FOR MV.

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

DISPOSITION:         Overruled. Creditor's counsel to sign the confirmation order.

ORDER:                The court will issue an order.

Creditor Wilmington Savings Fund Society, FSB ("Creditor") objects to confirmation of the *Chapter 13 Plan* filed by Mary Helen Barro ("Debtor") on December 29, 2023, for the following reason(s):

Creditor holds a first deed of trust against Debtor's real property located at 201 Jefferson Street, Bakersfield, CA ("the Property"). Doc. #21. The plan lists Creditor's secured claim in Class 1, as it has an arrearage of approximately \$19,304.57. *Id.* However, Creditor argues that the plan and petition in the instant case were not filed in good faith because Debtor had two prior bankruptcies that were dismissed in 2023:

1. Case No. 20-12688, dismissed 7/19/23 for failure to make plan payments;  
   and
2. Case No. 23-12111, dismissed on 12/07/23 on motion of the trustee.

*Id.* Creditor notes that the automatic stay did not go into effect upon filing of the instant case pursuant to 11 U.S.C. § 362(c)(4), and Debtor did not file a motion to impose the stay. *Id.* Accordingly, Creditor argues, the automatic stay is not in effect. Creditor further argues that, based on the dismissals and the failure to file a motion to impose stay (which would require evidence of Debtor's good faith in filing this case), the instant case is not filed in good faith but simply to frustrate Creditor's foreclosure efforts. *Id.* Finally, Creditor states that Debtor has no equity in the Property, and if the case is otherwise a good faith filing for Chapter 13 relief, Creditor should be placed in the surrender class. *Id.*

Doc. #21. On March 2, 2024, Creditor and Debtor filed a joint *Stipulation Resolving Objection to Confirmation of Plan by Wilmington Savings Fund, FSB*. Doc. #27. Per this Stipulation, Creditor agrees to withdraw the objection provided that, upon any default under the plan, Creditor shall immediately have relief from stay to the extent necessary to immediately commence and/or continue with its default remedies, including but not limited to foreclosure and eviction, without further order, notice, or hearing, and not withstanding any confirmed plan or the pending bankruptcy case. *Id.* These terms shall be provided for in the Order Confirming Plan. *Id.*

Considering the foregoing, the Creditor's Objection is OVERRULED. Creditor's counsel to sign the confirmation order.

6. 24-10087-B-13     **IN RE: MARY MACKEY**  
LGT-1

MOTION TO DISMISS CASE  
2-2-2024    [16]

LILIAN TSANG/MV

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

DISPOSITION:     Granted.

ORDER:            The court will issue an order.

The Chapter 13 trustee in the above-styled case ("Trustee") moves the court to dismiss this case under 11 U.S.C. §§ 329 and 1307 with a bar against future filings for a minimum of two years and assessing sanctions for future filings on the grounds that Mary Mackey ("Debtor") is a serial filer and that this case was filed in bad faith. Doc. #16. This is the ninth petition filed by Debtor since 2010, and most of her prior cases were filed as "bare bones" petitions and dismissed prior to confirmation. *Id.* The instant case was also filed as a "bare bones" petition with no schedules, credit counseling certificate, or plan filed thus far, and the deadline set by the court for curing those delinquencies has run without response from Debtor. *See Docs. ##9, 14 and docket generally.*

Debtor did not oppose this motion. The motion will be GRANTED without oral argument for cause shown.

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 Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Trustee's motion outlines Debtor's past filings and their dispositions as follows:

1. 10-17807 (Chapter 7). Filed on 7/12/2010. Discharged 11/15/2010.
2. 11-13296 (Chapter 13). Filed on 3/24/2011; Dismissed 5/4/2011 for failure to pay filing fees.
3. 11-17115 (Chapter 13). Filed on 6/22/2011; Dismissed 12/2/2011 for failure to make plan payments. No plan was confirmed prior to dismissal.
4. 12-10469 (Chapter 13) case. Filed on 1/20/2012; Dismissed 6/28/2012 on for failure to set a modified plan for hearing. No plan was confirmed at the time of dismissal.

5. 20-10278 (Chapter 13). Filed on 1/28/2020; Dismissed 2/10/2020 for failure to timely file documents.
6. 20-10816 (Chapter 11). Filed on 3/3/2020; Dismissed on 3/18/2020 for failure to timely file documents.
7. 22-12088 (Chapter 13). Filed on 12/8/2022; Dismissed on 12/27/2022 for failure to timely file documents.
8. 23-11895 (Chapter 13). Filed on 8/30/2023; Dismissed on 12/7/2023 failure to appear at the 341 meeting of creditors, failure to provide documents, incomplete plan and schedules, failure to complete a credit counseling certificate prior to the bankruptcy filing date, and failure to commence making plan payments.

Doc. #16.

While Debtor obtained a discharge in her 2010 Chapter 7 case, the seven subsequent cases filed were all pro se reorganization cases which were swiftly dismissed. *Id.* The dockets of those cases reflect that only three survived to the point of filing actual plans, but both cases were dismissed prior to confirmation within the first six months for failure to make plan payments. See generally Case No. 11-17115, Case No. 12-10469, and Case No. 23-11895. The others were all dismissed within the first month after filing for failure to timely file documents and/or pay the filing fee. The instant case marks Debtor's fifth reorganization petition (four Chapter 13s and one Chapter 11) filed in the last four years and ninth case overall in the last fourteen years. It is currently set for a show cause hearing on April 3, 2024, due to Debtor's failure to pay the filing fee and is also ripe for dismissal after Debtor failed to file documents by the court's already extended February 13, 2024 deadline. Doc. #25. No plan has been filed yet.

Generally, dismissals of individual bankruptcy cases are governed by § 349 and § 109(g) of the Code. Section 349 states that dismissal of a bankruptcy does not "prejudice the debtor with regard to filing of a subsequent petition under this title, except as provided in section 109(g)." 11 U.S.C. § 349(a). Section 109(g) bars individuals from being debtors under the Code who have, within the preceding 180 days, had a prior case dismissed "for willful failure of the debtor to abide by orders of the court or to appear before the court in proper prosecution of the case." 11 U.S.C. § 109(g). Viewed in tandem, these Code provisions state the general proposition that a court may only impose a 180-day bar on refiling by a debtor after dismissing the debtor's case with a finding of willful failure to abide by the court's orders, which certainly seems to be the case here.

However, § 349 also implicitly empowers the court, *for cause*, to order the dismissal of a case and to impose a bar on the filing of any subsequent petition for periods longer than 180 days, or even permanently. *Leavitt v. Soto* (*In re Leavitt*), 171 F.3d 1219, 1223 (9th Cir. 1999) (*superceded on other grounds as recognized by In re Burkes*, Nos. 21-23813-rmb, 22-20431-rmb, 2023 Bankr. LEXIS 2401, at \*17 (Bankr. E.D. Wis. Sep. 29, 2023). See also *Duran v. Rojas* (*In re Duran*), 630 B.R. 797 (B.A.P. 9th Cir. 2021).

As the *Leavitt* court noted, the Code does not specifically define "cause" in the context of bankruptcy dismissal. *Leavitt*, 171 F.3d at 1224. However, the Ninth Circuit went on to note that "bad faith" is a "cause" for dismissal under § 1307(c), and the court reasoned that "bad faith based on egregious behavior can justify dismissal with prejudice." *Id.* To reach such justification, *Leavitt* continues, a bankruptcy court should consider "the totality of the circumstances," taking into account the following factors: (1) whether the debtor "misrepresented facts in his [petition or] plan, unfairly manipulated

the Bankruptcy Code, or otherwise [filed] his Chapter 13 [petition or] plan in an inequitable manner"; (2) the debtor's history of filings and dismissals"; (3) whether "the debtor only intended to defeat state court litigation"; and (4) whether egregious behavior is present. *Id.* (citations omitted).

"[T]he court is not obligated to count the four *Leavitt* factors as though they present some sort of a box-score but rather is to consider them all and weigh them in judging the 'totality of the circumstances.'" *In re Lehr*, 479 B.R. 90, 98 (Bankr. N.D. Cal. 2012). The court considers the *Leavitt* factors under the "preponderance of the evidence" standard. *In re Dores*, 2017 Bankr. LEXIS 1539, at \*14 (Bankr. E.D. Cal. June 7, 2017).

Here, Debtor's history of filings and dismissals clearly demonstrate an unfair manipulation of the Bankruptcy Code. Prior to the instant case, Debtor has filed bankruptcy petitions nine times in fourteen years and four cases in the last four years. Only her earliest case, a Chapter 7 bankruptcy, made it to a successful discharge. Only two of the others made it the point of even filing a plan before being dismissed within six months of filing. All of the other previous cases were dismissed within a month of filing, and the instant case is ripe for the same disposition. Thus, the first and second *Leavitt* factors support a finding of bad faith.

It is impossible to say one way or the other whether Debtor's goal is to defeat any pending state court litigation because Debtor's refusal to provide any documentation of her financial affairs beyond the petition over the course of the four most recent filings gives the court no information upon which to base such a determination. This is, at best, a neutral factor.

Finally, the court must consider whether Debtor's conduct is "egregious" and has little reservation about making such a finding. By way of comparison, the court in *Davis v. Brest-Taylor* applied the *Leavitt* factors and found the debtor's conduct egregious in part because of "[t]he sheer numerosity of filings." 572 B.R. 750, 756 (Bankr. E.D. Cal. 2017). In that case, the debtor had filed six bankruptcies within the preceding eight years, all of which had been dismissed for failure to file documents, make payments, or perform other obligations under the Bankruptcy Code. *Davis*, 572 B.R. at 756.

In the instant case, Debtor has filed nine bankruptcies within the last fourteen years and five within the last four years which were subject to dismissal within the first few months after filing for failure to file more than a "bare bones" petition. The court finds "the sheer numerosity of filings" to be indicative of egregious conduct.

Based on the foregoing analysis, the *Leavitt* factors clearly militate towards a finding of bad faith under § 349 on the part of this Debtor that is sufficient to justify the requested two-year bar against refiling. Accordingly, it is hereby ordered that:

1. This motion is GRANTED.
2. This Chapter 13 case will be DISMISSED FOR CAUSE AND WITH PREJUDICE.
3. Debtor Mary Louise Mackey is hereby barred from filing a bankruptcy petition without leave of the court for a period of two (2) years from the entry of this order.
4. Leave of court shall be obtained by Debtor Mary Louise Mackey attaching to a future bankruptcy petition, while this order is effective, a declaration under oath stating his specific reasons for filing the petition and this order. The petition, declaration, and this order shall

be presented to the Chief Judge of the United States Bankruptcy Court for the Eastern District of California. Said petition shall be filed only if permitted by the Chief Bankruptcy Judge.

5. Any bankruptcy case filed in violation of this order by Debtor shall be deemed null and void and dismissed without notice to Debtor.
6. If Debtor violates this Order by filing a bankruptcy petition within the two (2) years following the entry of this order without permission from the court, the court will issue an order to show cause why further sanctions including compensatory and coercive monetary sanctions should not be awarded against Debtor.

10:00 AM

1. [22-10218](#)-B-7     **IN RE: CHASE/ANGELA ATKINS**  
[JMV-1](#)

MOTION TO SELL  
2-12-2024    [78]

JEFFREY VETTER/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:                Granted subject to higher and better bids.

ORDER:                        The Moving Party shall submit a proposed order after hearing.

The Chapter 7 trustee ("Trustee") of the estate of Chase and Angela Atkins ("Debtors") seeks authorization to sell the estate's interest in certain personal property, specifically a 2014 GMC Sierra 2500HD and a 2017 Honda Pilot Touring (collectively "the Vehicles"), for the sum of \$14,037.55, subject to higher and better bids. Doc. #78 The Debtors are the proposed buyers, and the Trustee indicates that the estate has received the funds equal to the proposed purchase price from Debtors and is awaiting court approval. *Id.*

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and Rule 2002(a)(2) [requiring at least 28-days' notice for sale motions] and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

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

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889 quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference." *Id.* citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Sales to an insider are subject to heightened scrutiny. *Alaska Fishing Adventure, LLC*, 594 B.R. at 887 citing *Mission Product Holdings, Inc. v. Old*

*Cold, LLC (In re Old Cold LLC)*, 558 B.R. 500, 516 (B.A.P. 1st Cir. 2016). This proposed sale is to the Debtor.

The schedules describe the Vehicles as follows:

Vehicle	Mileage	Valuation	Exempted	Encumbered	Equity
2014 GMC Sierra 2500 HD	94,000	\$22,050.00	\$3,325.00	\$10,799.58	\$11,250.42
2017 Honda Pilot Touring	70,000	\$29,200.00	\$0.00	\$20,610.66	\$8,589.35

See Doc. #1 (*Sched. A/B, C and D*). The Sierra is encumbered by a purchase money security interest held by Valley Strong Credit Union, while the Honda is encumbered by a purchase money security interest held by Westamerica Bank. Doc. #1 (*Sched. D*).

Trustee contends that the fair market price which Debtors should pay is \$14,073.55. Doc. #78. Trustee calculated that value by adding together the valuations of the two vehicles and then subtracting the Debtors' exemption, the outstanding liens, and the costs of sale to arrive at an equity figure, as follows:

2014 GMC Sierra 2500 HD	\$22,050.00
2017 Honda Pilot Touring	\$29,200.00
Debtor's Exemption	- \$3,325.00
Liens	- \$31,410.23
Costs of Sale	- \$2,477.22
<b>EQUITY</b>	<b>\$14,037.55</b>

*Id.*

Trustee contends that the proposed sale is in the best interests of creditors. Decl. ¶¶ 3, 5. No commission will be paid to any party in connection with this sale. *Id.*, ¶ 4. Trustee has presumably conducted due diligence and concluded the sale in the best interest of creditors and the estate.

It appears that the sale of the Vehicle is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith. While the Debtors are insiders, Trustee avers that he considered the costs involved in taking possession of the Vehicles, the costs associated with a public sale/auction, and the risk of receiving a lesser amount in determining that \$14,037.55 is a fair offer for the purchase of the non-exempt equity in the Vehicles. In the absence of any objections or opposition at the hearing, the court is inclined to GRANT the motion.

The motion does not request, nor will the court authorize, the sale free and clear of any liens or interests. Debtors (or any other successful bidder) will take ownership of the Vehicles subject to the existing liens.

Any party wishing to overbid (1) must comply with the Overbid Procedures as outlined in the *Amended Notice of Hearing on Motion by Trustee for Order Authorizing Sale of Personal Property of the Debtor* (Doc. #83) which was filed in conjunction with this motion, and (2) appear at the hearing and acknowledge that no warranties or representations are included with the Vehicle, which is being sold "as-is."

2. [23-10487](#)-B-7    **IN RE: CHERYLANNE FARLEY**  
[CJK-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR  
MOTION FOR RELIEF FROM CO-DEBTOR STAY  
7-17-2023    [[41](#)]

LAKEVIEW LOAN SERVICING,  
LLC/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
CHRISTINA KHIL/ATTY. FOR MV.

NO RULING.



11:00 AM

1. [17-11028](#)-B-11 **IN RE: PACE DIVERSIFIED CORPORATION**  
[18-1006](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT  
2-5-2018 [[1](#)]

PACE DIVERSIFIED CORPORATION  
ET AL V. MACPHERSON OIL  
T. BELDEN/ATTY. FOR PL.

NO RULING.

2. [23-11965](#)-B-7 **IN RE: CELIA ACOSTA**  
[23-1053](#) [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT  
12-18-2023 [[1](#)]

FIRST NATIONAL BANK OF OMAHA  
V. ACOSTA  
CORY ROONEY/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

11:30 AM

1. [23-12835](#)-B-7     **IN RE: FRANCISCO GUTIERREZ**

PRO SE REAFFIRMATION AGREEMENT WITH HYUNDAI CAPITAL AMERICA  
2-16-2024    [\[12\]](#)

NEIL SCHWARTZ/ATTY. FOR DBT.

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

DISPOSITION:     Dropped.

ORDER:            The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

A Reaffirmation Agreement between Francisco M. Gutierrez ("Debtor") and Hyundai Capital America dba Hyundai Motor Finance for 2023 Hyundai Sonata was filed on February 16, 2024. Doc. #12.

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), and LBR 2017-1, if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by Debtor's counsel, does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable.

The Debtor shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

2. [23-12251](#)-B-7     **IN RE: JOSEPH ROMERO**

REAFFIRMATION AGREEMENT WITH AMERICREDIT FINANCIAL SERVICES,  
INC.  
1-10-2024    [\[14\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION:     Dropped.

ORDER:            The court will issue an order.

Debtor's counsel shall notify the debtor that no appearance is necessary.

A Reaffirmation Agreement between Joseph Manuel Romero ("Debtor") and AmeriCredit Financial Services, Inc. dba GM Financial for a 2020 Chevrolet Silverado 1500 was filed on January 10, 2024. Doc. #14.

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when entering into the agreement. The form of

the reaffirmation agreement complies with 11 U.S.C. § 524(c) and (k), and it was signed by the Debtor's attorney with the appropriate attestations. *Id.* Pursuant to § 524(d), the court need not approve the agreement.

3. [23-12091](#)-B-7     **IN RE: PERLA SANTIAGO**

REAFFIRMATION AGREEMENT WITH ADDITION FINANCIAL CREDIT UNION  
12-26-2023    [\[21\]](#)

R. BELL/ATTY. FOR DBT.

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

DISPOSITION:     Rescinded; taken off calendar.

NO ORDER REQUIRED.

Perla Santiago ("Debtor") has rescinded this reaffirmation agreement with Addition Financial Credit Union on January 30, 2024. Doc. #25. Accordingly, this matter will be taken off calendar.