



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Department B – Courtroom #13  
Fresno, California**

**Hearing Date: Wednesday, March 12, 2025**

Unless otherwise ordered, all matters before the Honorable René Lastreto II, shall be simultaneously: (1) **In Person** at, Courtroom #13 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered 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/CourtAppearances>. 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.

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

9:30 AM

1. [24-13508](#)-B-13      **IN RE: DENISE JACKSON**  
[SL-1](#)

MOTION TO VALUE COLLATERAL OF MOUNTAIN AMERICA CREDIT UNION  
1-31-2025    [\[18\]](#)

DENISE JACKSON/MV  
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION:      Granted.

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

Denise Jackson ("Debtor") moves for an order valuing a 2019 Jeep Cherokee ("Vehicle") at \$12,096.00 under 11 U.S.C. § 506(a). Doc. #18. Vehicle is encumbered by a purchase money security interest in favor of Mountain America Credit Union ("Creditor"). *Id.*; POC #12. Debtor complied with Fed. R. Bankr. P. 3012(b) and 7004(b)(3) by serving Creditor at the address listed on Creditor's proof of claim on June 22, 2023, and to the attention of an officer authorized to receive legal notice. Doc. #30. Creditor is not a federally insured depository within the meaning of Rule 7004(h), and so service by certified mail is not required.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

11 U.S.C. § 1325(a) (\*) (the hanging paragraph) states that 11 U.S.C. § 506 is not applicable to claims described in that paragraph if (1) the creditor has a purchase money security interest securing the debt that is the subject of the claim, (2) the debt was incurred within 910 days preceding the filing of the petition, and (3) the collateral is a motor vehicle acquired for the personal use of the debtor.

11 U.S.C. § 506(a) (1), which applies to all debtors under this title, states:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (2) states:

If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.

Here, Debtor declares that she borrowed money from Creditor to purchase Vehicle on or about March 30, 2022, which is more than 910 days preceding the December 5, 2024, petition date. Doc. #20. The motion is also supported by Exhibits, which include Debtor's payment history reflecting that the loan was taken out on March 30, 2022. Doc. #21 (Exhib. B). The Proof of Claim is silent as to the date on which the loan commenced. POC #12. Thus, the elements of § 1325(a) (\*) are not met and § 506 is applicable.

Debtor declares Vehicle has a replacement value of \$12,096.00. Doc. #20. Debtor is competent to testify as to the value of the Vehicle. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Creditor's secured claim will be fixed at \$12,096.00. The proposed order shall specifically identify the collateral and the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

2. [25-10009](#)-B-13      **IN RE: KATHERINE SCONIERS STANPHILL**  
[LGT-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY LILIAN G. TSANG  
2-24-2025    [\[20\]](#)

LILIAN TSANG/MV

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

DISPOSITION:      Continued to April 9, 2025, at 9:30 a.m.

ORDER:              The court will issue an order.

Chapter 13 trustee Lilian G. Tsang ("Trustee") objects to confirmation of the *Chapter 13 Plan* filed Katherin Sconiers Stanphill ("Debtor") on January 15, 2025, on the following basis:

1. Debtor's ability to make the plan payment of \$2,400.00 for 60 months is contingent upon a monthly contribution from other income, as listed on Debtor's Schedule I at line 8h. Debtor has failed to provide Trustee with an explanation or declaration as to the source of this income.
2. Debtor's petition fails to list her four prior bankruptcy filings since May of 2024, which Trustee argues is evidence of bad faith.
3. Trustee was unable to examine Debtor at the February 18, 2025, 341 meeting of creditors due to Debtor's failure to provide a valid photo identification, a copy of her Social Security Card, a copy of her 2023 Federal and State income taxes, and any payment advices. The 341 meeting has been continued to March 4, 2025.
4. The pro se debtor has failed to file a credit counseling certificate as required by 11 U.S.C. § 109(h).

Doc. #20.

This objection will be CONTINUED to **April 9, 2025, at 9:30 a.m.** Unless this case is voluntarily converted to chapter 7, dismissed, or the objection to confirmation is withdrawn, the Debtor shall file and serve a written response to the Objection not later than **14 days before the hearing**. The response shall specifically address each issue raised in the objection to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the

Debtors' position. Any reply shall be served no later than **7 days before the hearing**.

If the Debtor elects to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than **7 days before the hearing**. If the Debtor does not timely file a modified plan or a written response, this objection will be sustained on the grounds stated in the objection without further hearing.

3. [25-10021](#)-B-13      **IN RE: LIAN JOHNSTON**  
[TCS-1](#)

MOTION TO CONFIRM PLAN  
2-5-2025    [\[17\]](#)

LIAN JOHNSTON/MV  
TIMOTHY SPRINGER/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:      Continued to April 9, 2025, at 9:30 a.m.

ORDER:              The court will issue an order.

Lian Johnston ("Debtor") moves for an order confirming the *First Modified Chapter 13 Plan* dated February 5, 2025. Doc. #25. No plan has been confirmed so far. Chapter 13 trustee Lilian G. Tsang ("Trustee") timely objected to confirmation of the plan for the following reason(s):

1. The Trustee has not yet concluded the Meeting of the Creditors as Debtor failed to provide valid proof of identification. The continued meeting will be held on March 18, 2025. Debtor is required to appear and submit to an examination under oath. [11 U.S.C. § 343]. Additionally, Debtor has failed to provide any of the required documents including, but not limited to:
  - a. Non-filing Spouse's pay advices for the 60 days prior to filing
  - b. Business Tax Returns. Trustee has only received an Internal Revenue Service statement showing amounts owing.
  - c. Profit and Loss Statements broken down by month for July - December 2024
  - d. Inventory and Equipment
  - e. Bank Statements for all accounts Debtor is a signatory on for July - December 2024. The Trustee has only received business account statement.

2. The plan proposes a monthly payment of \$5,635.31. Trustee argues that this is not feasible, and the monthly plan payment must be increased to at least \$5,809.44 per month to complete payments in 60 months. According to Amended Schedule J, this is not feasible.

Doc. #53.

This motion to confirm plan will be CONTINUED to April 9, 2025, at 9:30 a.m. Unless this case is voluntarily converted to chapter 7, dismissed, or all objections to confirmation are withdrawn, the Debtor shall file and serve a written response to the objections no later than fourteen (14) days before the continued hearing date. The response shall specifically address each issue raised in the objection(s) to confirmation, state whether each issue is disputed or undisputed, and include admissible evidence to support the Debtor's position. Any replies shall be filed and served no later than seven (7) days prior to the hearing date.

If the Debtor elects to withdraw the plan and file a modified plan in lieu of filing a response, then a confirmable, modified plan shall be filed, served, and set for hearing not later than seven (7) days before the continued hearing date. If the Debtor does not timely file a modified plan or a written response, the objection will be sustained on the grounds stated, and the motion will be denied without further hearing.

4. 21-12723-B-13      **IN RE: MARK SCHAFFER**  
GEG-3

MOTION FOR COMPENSATION FOR GLEN E. GATES,  
DEBTORS ATTORNEY(S)  
1-14-2025    [44]

GLEN GATES/ATTY. FOR DBT.

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

DISPOSITION:      Granted.

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

Gates Law Group ("Applicant"), counsel for Mark Schaffer ("Debtor"), requests interim compensation in the sum of **\$2,358.50** under 11 U.S.C. § 330 and § 331. Doc. #44 et seq. This amount consists of **\$2,358.50** in fees and **\$0.00** in expenses from **October 28, 2021**, through **September 16, 2024**. *Id.*

Debtor executed a statement of consent dated January 8, 2025, indicating that Debtor has read the fee application and approves the same. *Id.* § 9(7).

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys. Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Section 3.05 of the *Chapter 13 Plan* dated March 2, 2022, confirmed June 10, 2022, indicates that Applicant was paid \$2,500.00 prior to filing the case and, subject to court approval, additional fees of \$7,500.00 shall be paid through the plan upon court approval by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, and Rules 2002, 2016-17. Docs. #26, #33.

This is Applicant's first fee application. Doc. #44. Attorney Glen Gates was the only professional to bill any hours for this application, and he billed 12.30 hours at a rate of \$395.00, for a total requested fee of **\$4,858.50**. Docs. #44, #46. Applicant does not seek any expenses in this application. After application of the prepetition retainer in the amount of \$2,500.00, Applicant seeks an award of **\$2,358.60** to be paid through the plan. *Id.*

11 U.S.C. § 330(a)(1)(A) & (B) permits approval of "reasonable compensation for actual necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

11 U.S.C. § 331 authorizes the award after notice and hearing of an interim award subject to subsequent final approval by the court pursuant to § 330.



Applicant's services here included, without limitation: prepetition consultation and fact gathering; preparation of the voluntary petition, schedules, and Form 22C; drafting and filing of the original plan; preparation and attendance at the 341 meeting; drafting and filing of the 1st and 2nd amended plans; and preparing filing this fee application. Doc. #46. The court finds these services and expenses reasonable, actual, and necessary.

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Applicant shall be awarded **\$4,858.50** in fees as reasonable compensation for services rendered and **\$0.00** in reimbursement of actual, necessary expenses on an interim basis under 11 U.S.C. § 330 and § 331. After application of the \$2,500.00 retainer, the chapter 13 trustee will be authorized to pay Applicant the outstanding **\$2,358.60** through the confirmed plan for services and expenses from October 28, 2021, through September 16, 2024.

5. [24-11629](#)-B-13      **IN RE: GUSTAVO/LINDA LEAL**  
[JDW-1](#)

CONTINUED MOTION TO CONFIRM PLAN  
12-11-2024    [\[33\]](#)

LINDA LEAL/MV  
JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION:      Objection sustained. Motion denied.

ORDER:              The court will issue an order.

This matter was originally heard on February 6, 2025. Doc. #48. Chapter 13 trustee Lilian G. Tsang ("Trustee") objected to confirmation of the *Chapter 13 Plan* filed by Gustavo and Linda Leal (collectively "Debtors") on June 13, 2024, on the following basis:

1. Debtors are delinquent in plan payments by \$4,862.00 as of December 2024. Debtor's Schedule J indicates a net disposable income of \$2,037.17, but the proposed plan payment is \$2,431.00.
2. Based on Debtors' disposable monthly income of \$2,432.14 as provided by Form 122-C, the distribution to unsecured creditors should increase from 70% to 75%.
3. No box was checked in Section 3.05 of the plan and no dividend for attorneys' fees was provided in Section 3.06 of the plan. Thus, Debtors' attorney must either file a Motion for Allowance of Fees or a Rule 60(b) motion to change the election.

4. The plan calls for payment of priority claims in the amount of \$12,612.51, but the priority claims that have been filed are in the amount of \$25,571.38. Debtors' Schedule D includes secured claims not provided for in the plan.
5. Debtors have not filed credit counseling certificates as required by 11 U.S.C. § 109(h).

Doc. #44. The plan was filed on June 13, 2024. Doc. #3. On September 18, 2024, the court sustained Trustee's prior objection to the plan. Docs. #14, #27. On November 14, 2024, Trustee filed a Motion to Dismiss. Doc. #33; *Item #5, below*.

Debtors did not respond to the motion to dismiss, nor did they file a modified plan. Instead, Debtors filed a second *Motion to Confirm* on December 11, 2024, again seeking confirmation of the June 13, 2024, plan to which Trustee's objections had already been sustained. Doc. #33. On January 10, 2025, Trustee duly filed a second Objection in response to the second Motion to Confirm, raising the points listed above. Doc. #44.

The court continued this objection to March 12, 2025. Doc. #50. 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.

6. [24-11629](#)-B-13      **IN RE: GUSTAVO/LINDA LEAL**  
[LGT-2](#)

CONTINUED MOTION TO DISMISS CASE  
11-14-2024    [[29](#)]

LILIAN TSANG/MV  
JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION:      Granted as modified. Converted to Chapter 7.

ORDER:              The court will issue an order.

Chapter 13 trustee Lillian G. Tsang ("Trustee") asks the court to dismiss this case on the following grounds:

1. Unreasonable delay by the debtors that is prejudicial to creditors. [11 U.S.C. §1307(c)(1)].
2. Debtors failed to file a modified plan with notice to creditor.
3. Debtors failed to set a modified plan for hearing with notice to creditors.

Doc. #29. Gustavo and Linda Leal ("Debtors") did not oppose. The plan was originally filed on June 13, 2024. Doc. #3. On September 18, 2024, the court sustained Trustee's objection to the plan. Doc. #27. On November 14, 2024, Trustee filed the instant Motion to Dismiss. Doc. 33.

Debtors did not respond to the motion to dismiss, nor did they file a modified plan. Instead, Debtors filed a second *Motion to Confirm* on December 11, 2024, again seeking confirmation of the June 13, 2024, plan to which Trustee's objections had already been sustained. Doc. #33; *See Item #4, above*. On January 10, 2025, Trustee duly filed a second Objection in response to the second Motion to Confirm, which the court will sustain. Doc. #44; *Item #4, above*.

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)(1) for unreasonable delay.

The record shows that there has been unreasonable delay by the Debtors that is prejudicial to creditors. The plan filed on June 13, 2024, has

been pending for over eight months. The court has previously sustained Trustee's objections to it. Rather than avail themselves of the opportunity to file a modified plan, Debtors have opted to simply file a second Motion to Confirm, which has gone the way of its predecessor. The court agrees that this delay is unreasonable and prejudicial to creditors.

Furthermore, although the Motion to Dismiss does not speak to the issues of delinquency, in Trustee's Objection to Confirmation, Trustee avers that Debtors are delinquent in plan payments by \$4,862.00 as of December 2024. Doc. #33.

The Trustee's office has reviewed the schedules and declares as follows:

In reviewing the case, Debtors have opted to use 704 exemptions. As of right now, there is a liquidation amount of \$40,095.26, after Trustee compensation. This liquidation amount is comprised of the value of Debtors' Cash & Bank Accounts, 2019 Lexus, 2023 GMC Denali, and Tractor. If Debtors were to amend the exemptions, there would remain non-exempt equity that could be realized for the benefit of unsecured creditors should the case be converted to Chapter 7.

Doc. #31 (Decl. of Linda Shields). The court agrees that conversion, rather than dismissal, best serves the interests of creditors and the estate. Accordingly, the motion will be GRANTED AS MODIFIED, and the case CONVERTED TO CHAPTER 7.

7. [24-13431](#)-B-13      **IN RE: OMAR AISPURO FELIX AND ERENDIDA AISPURO**  
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE  
LILIAN G. TSANG  
1-6-2025    [\[27\]](#)

FLOR DE MARIA TATAJE/ATTY. FOR DBT.  
WITHDRAWN

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

DISPOSITION:      Withdrawn.

No order is required.

On February 12, 2025, the Trustee withdrew the Objection to Confirmation. Doc. #48. Accordingly, this Objection is WITHDRAWN.

8. [24-13431](#)-B-13      **IN RE: OMAR AISPURO FELIX AND ERENDIDA**  
AISPURO  
[SKI-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY  
CARMAX BUSINESS SERVICES, LLC  
12-23-2024    [\[18\]](#)

CARMAX BUSINESS SERVICES, LLC/MV  
FLOR DE MARIA TATAJE/ATTY. FOR DBT.  
SHERYL ITH/ATTY. FOR MV.  
WITHDRAWN

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

DISPOSITION:      Withdrawn.

No order is required.

On February 10, 2025, Creditor Carmax Business Services, LLC withdrew the Objection to Confirmation. Doc. #44. Accordingly, this Objection is WITHDRAWN.

9. [25-10035](#)-B-13      **IN RE: ALEXANDER/REBECCA PILKINTON**  
[SL-1](#)

MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE  
2-6-2025    [\[19\]](#)

REBECCA PILKINTON/MV  
SCOTT LYONS/ATTY. FOR DBT.

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

DISPOSITION:      Granted.

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

Alexander and Rebecca Pilkinton (collectively "Debtors") move for an order valuing a 2021 Jeep Gladiator ("Vehicle") at \$27,912.00 under 11 U.S.C. § 506(a). Doc. #19 *et seq.* Vehicle is encumbered by a purchase money security interest in favor of Capital One Auto Finance ("Creditor"). *Id.*; *cf.* Proof of Claim No. 1-1.

Debtor complied with Fed. R. Bankr. P. 3012(b) and 7004(b)(3) by serving Creditor at Creditor's headquarters and to the attention of the "Officer Authorized to receive Legal Notice." Doc. #30.

Creditor is not a federally insured depository within the meaning of Rule 7004(h), and so service by certified mail is not required.

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

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

11 U.S.C. § 1325(a)(\*) (the hanging paragraph) states that 11 U.S.C. § 506 is not applicable to claims described in that paragraph if (1) the creditor has a purchase money security interest securing the debt that is the subject of the claim, (2) the debt was incurred within 910 days preceding the filing of the petition, and (3) the collateral is a motor vehicle acquired for the personal use of the debtor.

11 U.S.C. § 506(a)(1), which applies to all debtors under this title, states:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (2) states:

If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.

Here, Debtors borrowed money from Creditor to purchase Vehicle on or about September 3, 2021, which is more than 910 days preceding the January 7, 2025, petition date. Docs. #1, ##21-22. Thus, the elements of § 1325(a) (\*) are not met and § 506 is applicable.

Joint debtor Alexander Pilkinton, IV declares Vehicle has a replacement value of \$27,912.00, Doc. #21. Debtor is competent to testify as to the value of the Vehicle. Given the absence of contrary evidence, the debtor's opinion of value may be conclusive. *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No party in interest timely filed written opposition. Accordingly, this motion will be GRANTED. Creditor's secured claim will be fixed at \$27,912.00. The proposed order shall specifically identify the collateral and the proof of claim to which it relates. The order will be effective upon confirmation of the chapter 13 plan.

10. [24-12848](#)-B-13      **IN RE: CECILIA AGUILAR AND DAVID QUINONEZ**  
[LGT-1](#)

MOTION TO DISMISS CASE  
2-7-2025    [[29](#)]

LILIAN TSANG/MV  
ERIC ESCAMILLA/ATTY. FOR DBT.

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

DISPOSITION:      Withdrawn

No order is required.

On March 7, 2025, the Trustee withdrew this Motion to Dismiss. Doc. #42 Accordingly, this motion is WITHDRAWN.

11. [20-10150](#)-B-13     **IN RE: PAOLA ZAVALA LOPEZ**  
[LGT-1](#)

MOTION TO DISMISS CASE  
1-31-2025    [[94](#)]

LILIAN TSANG/MV  
BENNY BARCO/ATTY. FOR DBT.

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

DISPOSITION:     Withdrawn

No order is required.

On March 7, 2025, the Trustee withdrew this Motion to Dismiss. Doc. #101. Accordingly, this motion is WITHDRAWN.

12. [24-10060](#)-B-13     **IN RE: JENNIFER GITMED**  
[HDN-2](#)

CONTINUED MOTION TO CONFIRM PLAN  
4-16-2024    [[36](#)]

JENNIFER GITMED/MV  
HENRY NUNEZ/ATTY. FOR DBT.

NO RULING.



13. [24-13674](#)-B-13     **IN RE: YVONNE OLMOS**  
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE  
LILIAN G. TSANG  
1-27-2025    [[17](#)]

MARK ZIMMERMAN/ATTY. FOR DBT.

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

DISPOSITION:     Overruled as moot.

No order is required.

On February 12, 2025, the court entered an order dismissing the above-styled case. Doc. #31. Accordingly, this Objection to Confirmation is OVERRULED AS MOOT.

14. [24-13491](#)-B-13     **IN RE: SALATIEL/MARIA RUIZ**  
[LGT-1](#)

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE  
LILIAN G. TSANG  
1-6-2025    [[13](#)]

JOEL WINTER/ATTY. FOR DBT.

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

DISPOSITION:     Overruled as moot.

No order is required.

On February 12, 2025, the court entered an order dismissing the above-styled case. Doc. #24. Accordingly, this Objection to Confirmation is OVERRULED AS MOOT.

11:00 AM

1. [24-11900](#)-B-13     **IN RE: RICHARD/JANICE TOGNOTTI**  
[24-1058](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
12-12-2024     [[1](#)]

TOGNOTTI ET AL V. KAISER  
FOUNDATION HEALTH PLAN, INC.  
PETER SAUER/ATTY. FOR PL.

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

DISPOSITION:     Continued to April 9, 2025, at 11:00 a.m.

ORDER:     The court will prepare the order.

On March 11, 2025, Plaintiffs submitted a Status Report stating that the parties have agreed to a tentative settlement but "[t]he terms of the proposed settlement require certain steps be taken by the Defendants to ameliorate the harm alleged in the Complaint by March 30, 2025." Accordingly, the Plaintiffs request that this Status Conference be continued to April 9, 2025, at 11:00 a.m. The court finds that this request is well-taken, and this matter will be CONTINUED to **April 9, 2025, at 11:00 a.m.**

2. [19-15103](#)-B-7     **IN RE: NATHAN/AMY PERRY**  
[20-1017](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
3-15-2020     [[1](#)]

RICHNER ET AL V. PERRY  
RICHARD FREEMAN/ATTY. FOR PL.

NO RULING.

3. [22-11403](#)-B-7     **IN RE: STANFORD CHOPPING, INC.**  
[24-1023](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
8-14-2024     [[1](#)]

HOLDER V. AUGUSTAR LIFE ASSURANCE CORPORATION  
ESTELA PINO/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

4. [21-12407](#)-B-13     **IN RE: MANUELA BETTENCOURT**  
[24-1049](#)     [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT  
11-18-2024     [[6](#)]

BETTENCOURT V. NATIONAL COLLEGIATE STUDENT LOAN TRUST  
SUSAN SILVEIRA/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

5. [23-12019](#)-B-7     **IN RE: SHAWN VAQUILAR**  
[23-1054](#)

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

JONES V. VAQUILAR  
JUSTIN VECCHIARELLI/ATTY. FOR PL.

NO RULING.

6. [24-10350](#)-B-7     **IN RE: RAYMOND/CAROL TAVITA**  
[24-1028](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
8-27-2024     [[1](#)]

TAVITA V. DEPARTMENT OF EDUCATION/MOHELA ET AL

NO RULING.

7. [24-12751](#)-B-11     **IN RE: BIKRAM SINGH AND HARSIMRAN SANDHU**  
[24-1064](#)     [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT  
12-30-2024     [[1](#)]

GARICA ET AL V. SINGH HECTOR MARTINEZ/ATTY. FOR PL.  
RESPONSIVE PLEADING

NO RULING.

8. [24-12754](#)-B-7     **IN RE: LYNETTE HERRERA**  
[24-1051](#)     [FW-1](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT  
2-12-2025     [[18](#)]

EDMONDS V. WILLIAMS  
GABRIEL WADDELL/ATTY. FOR MV.

TENTATIVE RULING:     This matter will proceed as scheduled.

DISPOSITION:     Granted.

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

Irma Edmonds, Chapter 7 Trustee ("Trustee" or "Plaintiff") seeks entry of a default judgment against Myles Jay Williams ("Defendant" or "Williams") finding that judgment is granted to Plaintiff and against Defendant, that the Gift Deed and Transfer underlying this case are avoided as fraudulent transfers, and that the real property known as 5875 East Pitt Avenue, Fresno, California ("the Property"), which is the subject of this adversary proceeding, be declared property of the bankruptcy estate, and that the court order a judgment in the amount of \$133,000.00 against Defendant. Adversary Proceeding ("AP") Doc. #18.

Defendant has not opposed entry of default judgment.

This matter will be called and proceed as scheduled. The court is inclined to GRANT this motion.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least

14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

Neither Defendant nor any other party in interest has responded to the motion. Nevertheless, as the Debtor has filed her case pro se, this matter will be heard as scheduled.

The court's docket reflects the following relevant filings and dates:

Doc. #1 (11/21/24)	The complaint is filed.
Doc. #6 (11/25/24)	The certificate of service of summons and complaint is filed. Defendant is served at the Property.
Docs. #12, #13 (1/8/25)	The request for entry of default and certificate of service are filed. Defendant is served at the Property.
Doc. #14 (1/13/25)	Entry of default and Order re: Default judgment procedures.
Doc. #18 et seq (2/12/25)	Motion/application for entry of default judgment.
Doc. #25 (2/12/25)	Certificate of service. Defendant is served at the Property.

*See Docket generally.*

#### JURISDICTION

The United States District Court for the Eastern District of California has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) because this is a case arising under title 11. This court has jurisdiction to hear and determine this matter by reference from the District Court under 28 U.S.C. § 157(a). This is a "core" proceeding under 28 U.S.C. § 157(b)(2)(A) (matters concerning the administration of the estate), (E) (order to turn over property of the estate), and (O) (other proceedings affecting the liquidation of the assets of the estate. Venue is proper pursuant to 28 U.S.C. § 1409(a) because this adversary proceeding arises in a bankruptcy case pending in this judicial district.

## BACKGROUND

The facts as outlined below are drawn from the Complaint (AP Doc. #1) and the moving papers (Docs. #18 *et seq.*), which include (1) the Motion, (2) a Request for Judicial Notice of Debtor's bankruptcy petition and supporting documents, (3) the Declaration of Gabriel Waddell, counsel for Trustee, (4) Exhibits, (5) a Memorandum of Authorities, and (5) the Trustee's Declaration. The Exhibits include:

1. A copy of the voluntary petition.
2. The original Grant Deed conveying the Property to Debtor.
3. The Interspousal Transfer Deed.
4. The Gift Grant Deed.
5. An ALTA Settlement Statement showing a settlement date of May 3, 2021.
6. A mortgage statement from Servbank in Debtor's name dated October 4, 2024.

AP Doc. #23.

Lynette Renee Herrera ("Debtor") filed *pro se* the underlying chapter 7 bankruptcy case ("Main Case") on September 23, 2024, in Case No. 24-12754-B-7 (Bankr. E.D. Cal.). Main Doc. #1.

Debtor originally acquired the Property on or around May 17, 2021, individually as "a married woman, as her sole and separate property." AP Docs. #1, #23. On the same day as the deed was recorded transferring the Property to Debtor, an interspousal grant deed was recorded by which Richard Ortega, the spouse of Debtor, granted her the Property as a married woman, as her sole and separate property. *Id.* Thereafter, Debtor maintained the Servbank mortgage payments up until the filing of the bankruptcy. *Id.* On March 1, 2024, Debtor signed a "Gift Grant Deed" transferring the Property to the Defendant for no consideration. *Id.* The Gift Grant Deed states that "Documentary transfer tax is \$0. Mother is gifting her entire interest in following property to her son with no monies exchanged since he will be taking over the mortgage on the home." *Id.* The Gift Grant Deed was executed and recorded less than two years prior to the filing of Debtor's bankruptcy. *Id.* It appears that, after the transfer, Debtor's remaining assets were significantly less than her outstanding debts, meaning that she was insolvent. *Id.*

The Property was listed in Debtor's Schedule A/B as an asset of the estate which Debtor owned solely and in fee simple. Main Doc. #1. Debtor valued the Property at \$447,700.00, while the value of the Property owned by Debtor was listed as only \$135,342.10. *Id.* On Schedule C, Debtor checked the box to exempt "100% of fair market value [of the Property], up to any applicable statutory limit" pursuant to C.C.P. § 703.140. *Id.* On Schedule D, Debtor indicated that the Property was encumbered by a mortgage held by Servbank in the amount of \$312,375.88. *Id.* Debtor erroneously listed \$35,342.10 as the unsecured portion of the mortgage, when the Debtor, in fact, had

equity in the Property. *Id.* Significantly, the description of the property securing the claim as: "Mortgage for 5875 East Pitt Ave., Fresno, CA 93727 (home owned by son Myles)." *Id.* Notwithstanding the language indicating that Defendant would be assuming the mortgage payments, it appears that Debtor continued making the mortgage payments and listed Servbank as a secured creditor on Schedule D. AP Doc. #23 (Exhib. E - ALTA statement).

On November 8, 2024, Debtor amended her Schedules A/B and C to remove her stated interest in the Property and her exemption for it. Main Doc. #13. Debtor did not amend Schedule D and presumably is still responsible for the Servbank mortgage payment even though she no longer owns the Property.

On November 21, 2024, Trustee initiated this adversary proceeding against Williams seeking to avoid the Gift Grant Deed and property transfer or for recovery thereof for the benefit of the bankruptcy estate. AP Doc. #1. The Complaint raises five claims for relief:

1. Avoidance and Recovery of Fraudulent Transfer (Constructive Fraud pursuant to 11 U.S.C. §§ 548 and 550).
2. Avoidance and Recovery of Fraudulent Transfer (Actual Fraud pursuant to 11 U.S.C. §§ 548 and 550).
3. Avoidance of Fraudulent Transfer (Constructive Fraud Pursuant Cal. Civ. Code § 3439.05).
4. Avoidance of Fraudulent Transfer (Constructive Fraud Pursuant Cal. Civ. Code § 3439.04).
5. Recovery of Avoided Transfers or the Value Thereof and Preservation for the Benefit of the Bankruptcy Estate (11 U.S.C. §§ 550 and 551).

*Id.* The Trustee seeks the avoidance of the Grant Gift Deed and a determination that the Property is part of the estate and can be sold by Trustee. *Id.* Alternatively, Trustee argues that the value of the Gift Deed is \$133,000.00, which was Debtor's equity at the time of the transfer. *Id.*

## DISCUSSION

### I.

Civ. Rule 55, *as incorporated by* Fed. R. Bankr. Pro. 7055, governs default judgments.

Obtaining a default judgment is a two-step process. *See Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). First, the clerk of the court enters the default of the party [who has failed to plead or otherwise defend; the clerk or the court, depending on the nature of the plaintiff's claim, then enters a default judgment. Fed.R.Civ.P. 55(a) and (b), incorporated herein by Fed.R.Bankr.P. 7055.

*Burkart v. Brack (In re Brack)*, Nos. 10-26347-D-7, 16-02037, DCN: CDH-001, 2016 Bankr. LEXIS 3625, at \*2-3 (Bankr. E.D. Cal. Sep. 30, 2016). Factors the court must consider include the following:

1. the possibility of prejudice to the plaintiff;
2. the merits of plaintiff's substantive claim;
3. the sufficiency of the complaint;
4. the sum of money at stake in the action;
5. the possibility of a dispute concerning material facts;
6. whether the default was due to excusable neglect; and
7. the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

*In re Brack*, 2016 Bankr. LEXIS 3625, at \*3 (Bankr. E.D. Cal. Sep. 30, 2016).

"[A] default establishes the well-pleaded allegations of a complaint unless they are . . . contrary to facts judicially noticed or to uncontroverted material in the file." *Anderson v. Air West Inc. (In re Consol. Pretrial Proceedings in Air West Secs. Litig.)*, 436 F.Supp 1281, 1285-86 (N.D. Cal. 1977), citing *Thomson v. Wooster*, 114 U.S. 104, 114 (1885). Thus, a default judgment based solely on the pleadings may only be granted if the factual allegations are well-pled and only for relief sufficiently asserted in the complaint. *Benny v. Pipes*, 799 F.2d 487, 495 (9th Cir. 1986), *amended on other grounds*, 807 F.2d 1514 (9th Cir. 1987).

The court has broad discretion to require that a plaintiff prove up a case and require the plaintiff to establish the necessary facts to determine whether a valid claim exists supporting relief against the defaulting party. Entry of default does not automatically entitle a plaintiff to a default judgment. *Beltran*, 182 B.R. at 823; *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987) ("Rule 55 gives the court considerable leeway as to what it may require as a prerequisite to entry of a default judgment.").

## II.

### A. Avoidance for Fraud under 11 U.S.C. § 548(a)(1).

The First and Second Claims set forth in the complaint are premised on § 548 of the Bankruptcy Code which addresses fraudulent transfers and obligations. 11 U.S.C. § 548. In particular, subsections (a)(1)(A) and (a)(1)(B) address, respectively, avoidance actions for actual and constructive fraud, stating in relevant part:

- (1) The trustee may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including any obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was made or incurred on or



within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or

(B)

(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(ii)

(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;

(III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or

(IV) made such transfer to or for the benefit of an insider or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

11 U.S.C.S. § 548(a)(1)(A)–(B).

Looking first to the actual fraud claim, the court notes and the Trustee concedes that there is rarely direct evidence of actual fraud, and so courts look to circumstantial evidence and especially certain recognized 'badges of fraud.' *Acequia, Inc. v. Clinton (In re Acequia, Inc.)*, 34 F.3d 800, 806 (9th Cir. 1994).

Among the more common circumstantial indicia of fraudulent intent at the time of the transfer are: (1) actual or threatened litigation against the debtor; (2) a purported transfer of all or substantially all of the debtor's property; (3) *insolvency or other unmanageable indebtedness on the part of the debtor*; (4) *a special relationship between the debtor and the transferee*; and, after the transfer, (5) retention by the debtor of the property involved in the putative transfer.

*Acequia*, 34 F.3d at 806 (emphasis added) ("The presence of a single badge of fraud may spur mere suspicion; the confluence of several can constitute conclusive evidence of actual intent to defraud, absent 'significantly clear' evidence of a legitimate supervening purpose.")

Here, the unrebutted evidence submitted by Trustee demonstrates the following facts:

1. The transfer of Debtor's interest in the Property took place within 2 years before the date of the filing of the petition.
2. The Debtor had an estimated \$133,000.00 in equity in the Property but transferred it to Williams for no consideration, which is obviously less than a reasonably equivalent value for the Property.
3. Williams is Debtor's son and therefore is an insider.
4. With the filing of the petition which originally included the Property as an asset on Schedule A/B, Debtor reported total assets worth \$148,323.63 and total liabilities of \$412,461.95. Main Doc. #1. After amending Schedule A/B, Debtor reported total assets worth only \$16,168.20, with the liabilities not amended. Main Doc. #13. Accordingly, Debtor was insolvent at the time of the transfer and her insolvency was significantly worsened because of the transfer.
5. At the time of the transfer, the Property represented approximately 91% of the Debtor's assets, which the court considers to be "substantially all of the debtor's property."
6. After the transfer, the Debtor apparently continued to reside in the Property.

The court is satisfied that this undisputed evidence demonstrates "badges of fraud" of sufficient character to satisfy the requirements of § 548(a)(1)(A). While circumstantial, the court finds that the Property transfer represents an actual intent to defraud, which the Defendant has not attempted to rebut at all, let alone with "'significantly clear' evidence of a legitimate supervening purpose." The elements for actual fraud have been met.

Turning to § 548(a)(1)(B), the transfer was made to an insider for no consideration at a time when the Debtor was insolvent. This is sufficient to satisfy the statutory requirements of § 548(a)(1)(B), and so the court also finds that elements of constructive fraud have also been met.

The motion for entry of default will be GRANTED as to the First and Second Claims of the Complaint.

B. Avoidance under 11 U.S.C. § 544(b).

Trustee, to cover all the bases, also argues that avoidance of the Property transfer is proper because the Trustee "may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under [11 USCS § 502]." 11 U.S.C. § 544(b).

As a threshold matter, "[t]he burden is on the trustee seeking to take advantage of this provision to demonstrate the existence of an actual creditor with an allowable claim against the debtor." 5 *Collier on Bankruptcy* ¶ 544.06. The Complaint does not identify any specific creditor(s) who would have the power to avoid the transfer into whose figurative shoes the Trustee may step. AP Doc. #1. Rather the Complaint merely states that "[t]here are numerous general unsecured creditors of Debtor's bankruptcy estate holding allowable claims under 11 U.S.C. § 502" and "Plaintiff is informed and believes and thereon alleges that Debtor was indebted to these general unsecured creditors" at the time of the transfer. AP Doc. #1, ¶ 43.

The court takes judicial notice of the fact that Debtor's Schedule E/F lists nineteen unsecured creditors with claims totaling an aggregate of \$43,347.21. Main Doc. #1. For purposes of § 544(b), the court finds that sufficient to establish the existence of creditors who may be able to avoid the transfer and whose right to do so the Trustee may assume, though some courts had required greater specificity. *Accord In re Petters Co.*, 495 B.R. 887, 900-01 (Bankr. D. Minn. 2013):

To plead his standing to sue to set aside a transfer to any defendant as fraudulent under Minnesota law, the Trustee must identify by name, in his complaint, at least one unsecured creditor with a claim allowable against the estate whose standing he uses to sue that defendant, which creditor would have had the right to sue to avoid that transfer on the date that that Debtor filed for bankruptcy relief. The Trustee's generic pleading as to the existence of a predicate creditor does not satisfy Rule 8(a). To maintain his claims against the defendants beyond the stage of these motions, he must remedy this defect.

In this instance, the court finds that Trustee has adequately met the pleading standards to a degree sufficient to Rule 8(a) because the existence of creditors is demonstrated by the Debtor's own Schedule E/F. The court must next turn to the question of whether one or more creditors has standing to avoid the transfer. To do so, Trustee relies on the rights afforded creditors under Cal. Civ. Code §§ 3439.04 and 3439.05. Doc. #23.

Cal. Civ. Code § 3439.04 states:

(a) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation as follows:

- (1) With actual intent to hinder, delay, or defraud any creditor of the debtor.
- (2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor either:

- (A) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction.
  - (B) Intended to incur or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.
- (b) In determining actual intent under paragraph (1) of subdivision (a), consideration may be given, among other factors, to any or all of the following:
- (1) Whether the transfer or obligation was to an insider.
  - (2) Whether the debtor retained possession or control of the property transferred after the transfer.
  - (3) Whether the transfer or obligation was disclosed or concealed.
  - (4) Whether before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.
  - (5) Whether the transfer was of substantially all the debtor's assets.
  - (6) Whether the debtor absconded.
  - (7) Whether the debtor removed or concealed assets.
  - (8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.
  - (9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.
  - (10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred.
  - (11) Whether the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.
- (c) A creditor making a claim for relief under subdivision (a) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Cal. Civ. Code § 3439.04.

As the Trustee has demonstrated, (1) the transfer was made to an insider; (2) the Debtor retained possession or control of the Property after the transfer; (3) the transfer represented substantially all of Debtor's assets; (4) the value of the consideration received by the Debtor was not reasonably equivalent to the value of the asset transferred and was, in fact, for no consideration at all; and (5) the Debtor was insolvent at the time of the transfer and her insolvency worsened as a result of the transfer. Furthermore, at the time Debtor transferred the Property for no consideration, she reasonably should

have believed that she would incur debts beyond her ability to pay as they became due.

These factors demonstrate that the transfer would be avoidable by any of Debtor's unsecured creditors under § 3439.04. Consequently, § 544(b) allows the Trustee to step into the shoes of any such creditor and avoid the transfer on the same basis. 1 *Collier Real Estate Trans & Bankruptcy Code* ¶ 1.06. Accordingly, the motion is GRANTED as to the Fourth Count of the Complaint.

Cal. Civ. Code § 3439.05 is more problematic. That statute states:

A transfer made or obligation incurred by a debtor is voidable as to **a creditor whose claim arose before the transfer was made** or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

Cal Civ Code § 3439.05(a) (emphasis added). "A creditor making a claim for relief under [§ 3439.05(a)] has the burden of proving the elements of the claim for relief by a preponderance of the evidence." Cal Civ Code § 3439.05(b).

In her Schedule E/F, Debtor lists nineteen unsecured creditors with claims totaling an aggregate of \$43,347.21. Main Doc. #1. However, she did not list any dates upon which those debts were incurred in her Schedules. *Id.* The Debtor transferred the Property to Defendant on March 1, 2024, and filed her Chapter 7 petition on September 2, 2024. AP Doc. #22. That leaves a window of 185 days between the transfer and the filing of the petition.

Under Cal. Civ. Code § 3439.05(a), a transfer is only voidable as to "a creditor whose claim arose **before** the transfer was made," and the creditor seeking to avoid the transfer must show that the claim did indeed arise prior to the transfer which rendered the debtor insolvent. Granted, it seems wildly improbable that all of Debtor's listed claims were incurred in the 185 days *after* the transfer, but that is still an element which must be proven by preponderance of the evidence regardless of how improbable the alternative is.

While the Trustee did not identify any specific creditors as meeting the § 3439.05(a) standard, the court may take judicial notice of the Claims Register and the information contained therein, and even one creditor whose claims were incurred prior to March 1, 2024, would be sufficient for purposes of the instant motion. A cursory review has yielded several. See generally POC #5 (Intercoastal Finance, LLC; account opened on February 27, 2023); POC #6 (Citibank, N.A.; account opened August 15, 2019); POC #7 (Citibank, N.A.; account opened February 9, 2023).

While it would be preferable in the future for parties seeking to avoid transfers under § 3439.05 to provide the relevant dates when debts were incurred as part of the pleadings, in this instance, the court finds that there is sufficient evidence in the record to infer the existence of at least one creditor whose claim arose prior to the transfer and who thus has standing to seek avoidance under § 3439.05. And by extension, there is at least one creditor into whose shoes the Trustee may step for purposes of this avoidance action.

Having concluded that § 3439.05 is a viable path for the Trustee to take in avoiding the transfer, the court notes that the other elements of § 3439.05 have already been established: The Debtor made the transfer without receiving a reasonably equivalent value in exchange for the transfer and at a time when Debtor was insolvent or else became insolvent after the transfer. Accordingly, the motion is GRANTED as to the Third Claim.

#### C. Recovery of Avoided Transfers or the Value thereof.

In the Fifth and final count of the Complaint, the Trustee seeks recovery of either the Property or the value of Debtor's equity in the Property for the benefit of the estate. AP #1. 11 U.S.C. § 550(a). Under the Code, if a transfer is avoided under § 544, the trustee may recover the transferred property from the initial transferee for the benefit of the estate, or alternatively and if the court so orders "the value of such property." 11 U.S.C. § 550(a).

The Trustee argues that having shown that the transfer is avoidable, the Trustee is further entitled to avoid the Gift Deed and transfer the Property back to the estate or else the value of Debtor's equity as of the petition date.

Here, the Defendant is the transferee, and the Trustee has presented evidence that the "value" of the Property for § 544 purposes is \$133,000.00. AP Doc. #23. This figure represents the value of the Property as stated in Schedule A/B minus the outstanding mortgage balance, i.e. the equity in the Property.

Having found that Trustee is entitled to judgment on the question of whether the transfer should be avoided, the court agrees that the Trustee is further entitled to relief under § 544. The motion is GRANTED as to Claim 5. The Property is an asset of the estate which the Trustee may sell for the benefit of creditors upon proper motion and a hearing. Alternatively, Defendant shall pay to the estate the sum of \$133,000.00, the value of the Gift Deed and Transfer.

#### CONCLUSION

Defendant failed to respond to the allegations in the complaint. Under Civ. Rule 8(d), failure to respond to Plaintiff's allegations in the complaint means they are deemed admitted. *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir. 1977). This matter will be called and

proceed as scheduled. For the reasons outlined above, the court is inclined to GRANT this motion and enter judgment in favor of the Trustee as to all Claims.