



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Thursday, April 6, 2023  
Department A – 510 19<sup>th</sup> Street  
Bakersfield, California**

***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 hearings before Judge Niemann are simultaneously: (1) via **ZOOMGOV VIDEO**, (2) via **ZOOMGOV TELEPHONE**, and (3) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

To appear via zoom gov video or zoom gov telephone for law and motion or status conference proceedings, you must comply with the following new guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Review the court's [Zoom Policies and Procedures](#) for these and additional instructions.
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## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

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

**THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.**

1. [23-10211](#)-A-13     **IN RE: DAVID/KATIE ALVAREZ**  
[SKI-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY EXETER FINANCE LLC  
2-21-2023    [[13](#)]

EXETER FINANCE LLC/MV  
NEIL SCHWARTZ/ATTY. FOR DBT.  
SHERYL ITH/ATTY. FOR MV.

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

DISPOSITION:                    Dropped from calendar.

NO ORDER REQUIRED.

On March 23, 2023, the court entered an order approving the stipulation resolving the objection by Exeter Finance LLC. Doc. #29.

2. [22-11714](#)-A-13     **IN RE: FERNANDO/MARIA GARIBAY**

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY SOLAR MOSAIC LLC  
11-28-2022    [[14](#)]

SOLAR MOSAIC, INC./MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
GARRY MASTERSON/ATTY. FOR MV.

NO RULING.

3. [22-11714](#)-A-13     **IN RE: FERNANDO/MARIA GARIBAY**  
[RSW-1](#)

CONTINUED MOTION TO VALUE COLLATERAL OF SOLAR MOSAIC INC.  
1-26-2023    [[36](#)]

MARIA GARIBAY/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

4. [22-11927](#)-A-13      **IN RE: LAVONNA GRIMES**  
[MHM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE MICHAEL H. MEYER  
2-28-2023    [\[27\]](#)

ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

5. [22-11927](#)-A-13      **IN RE: LAVONNA GRIMES**  
[MHM-2](#)

MOTION TO DISMISS CASE  
2-28-2023    [\[32\]](#)

MICHAEL MEYER/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

6. [22-11927](#)-A-13      **IN RE: LAVONNA GRIMES**  
[MHM-3](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
2-28-2023    [\[36\]](#)

MICHAEL MEYER/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:      This matter will proceed as scheduled.

DISPOSITION:              Set for evidentiary hearing.

ORDER:                      The minutes of the hearing will be the court's findings  
and conclusions. The court will issue an order after the  
hearing.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). On February 23, 2023, Lavonna Nicole Grimes ("Debtor"), the chapter 13 debtor, filed timely opposition. Doc. #48. The matter will proceed as scheduled.

Michael H. Meyer ("Trustee"), the chapter 13 trustee, objects to Debtor's claim of a homestead exemption in the residence located at 4701 Beechwood Street, #132, Bakersfield, California (the "Property") under California Code of Civil Procedure ("C.C.P.") § 704.730. Schedule C, Doc. #1. Tr.'s Obj., Doc. #36. Debtor opposes Trustee's objection. Doc. #48.

After reviewing the objection, opposition, and included evidence, the court concludes that an evidentiary hearing is needed to resolve Debtor's entitlement to a homestead exemption.

California has opted out of the federal system and the validity of exemptions are controlled by California law. C.C.P. § 703.130; Phillips v. Gilman (In re Gilman), 887 F.3d 956, 964 (9th Cir. 2018); Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). The property to which California's homestead exemption applies must be a homestead as that term is defined by C.C.P. § 704.710(c). California Code of Civil Procedure § 704.710(c) defines a homestead as follows:

"Homestead" means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead.

C.C.P. § 704.710(c). "'Dwelling' means a place where a person resides."

C.C.P. § 704.710(a). The following examples of a dwelling are provided in the California statute:

- (1) A house together with the outbuildings and the land upon which they are situated.
- (2) A mobilehome together with the outbuildings and the land upon which they are situated.
- (3) A boat or other waterborne vessel.
- (4) A condominium.
- (5) A planned development.
- (6) A stock cooperative.
- (7) A community apartment project.

C.C.P. § 704.710(a).

"[T]he debtor, as the exemption claimant, bears the burden of proof which requires her to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under California Code of Civil Procedure § [704.730(a)] and the extent to which the exemption applies." In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); see Diaz, 547 B.R. at 337 (concluding "that where a state law exemption statute specifically allocates the burden of proof to the debtor, [Federal Rule of Bankruptcy Procedure] 4003(c) does not change that allocation.").

Debtor believes she is entitled to claim a homestead exemption in the Property because the Property is and has been Debtor's primary residence since Debtor moved into the Property in November 2021. Decl. of Lavonna Grimes, Doc. #49. Debtor states that Debtor lives at the Property, only leaving temporarily to sleep in an apartment located at 3401 Wible Road, #95, Bakersfield, California (the "Apartment"), which Debtor leased on a month-to-month basis starting in February 2022 because the Property was too noisy to sleep. Id. Debtor states that she used the Apartment only to sleep and go directly to work afterwards. Id. Debtor further states that Debtor only took a few things to the Apartment, including her clothes, a couch, and television. Id. Debtor sleeps on a blow-up mattress at the Apartment and still receives her mail at the Property. Id. Debtor further states, since her father passed post-petition, Debtor will be giving back the Apartment shortly and staying full-time at the Property. Id. Trustee contends that Debtor does not currently reside on the Property and/or Debtor has not intended to retain the Property as her homestead as of the

petition date because Debtor executed a lease agreement with respect to the Apartment in February 2022. Doc. #36.

If the court determines that there is a disputed material factual issue that must be resolved before the relief requested in the motion can be granted or denied, an evidentiary hearing may be held. LBR 9014-1(g). In this case, the objections by Trustee, and Debtor's responses, require the court to decide disputed questions of material fact that can be resolved only after an evidentiary hearing.

Accordingly, an evidentiary hearing is needed to resolve the objections to Debtor's homestead exemption. The court is inclined to treat this motion as a "long cause" matter pursuant to LBR 9014-1(g)(4)(C). At the hearing, the parties shall be prepared to propose a schedule for an evidentiary hearing.

7. [22-11635](#)-A-13      **IN RE: EMELITA BROWN**  
[MHM-2](#)

CONTINUED MOTION TO DISMISS CASE  
12-23-2022    [\[29\]](#)

MICHAEL MEYER/MV  
JOSHUA STERNBERG/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

8. [22-11635](#)-A-13      **IN RE: EMELITA BROWN**  
[MHM-2](#)

CONTINUED MOTION TO CONFIRM PLAN  
12-29-2022    [\[33\]](#)

EMELITA BROWN/MV  
JOSHUA STERNBERG/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

9. [22-11635](#)-A-13      **IN RE: EMELITA BROWN**  
[SLG-1](#)

MOTION TO SELL FREE AND CLEAR OF LIENS  
3-9-2023      [\[69\]](#)

EMELITA BROWN/MV  
JOSHUA STERNBERG/ATTY. FOR DBT.

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

DISPOSITION:      Overruled as moot.

ORDER:              The court will issue an order.

This motion is OVERRULED AS MOOT. The debtor filed a second motion to sell on March 9, 2023 (Doc. #74, SLG-2, matter #10 below) that the court treats as superseding this motion to sell.

10. [22-11635](#)-A-13     **IN RE: EMELITA BROWN**  
[SLG-2](#)

MOTION TO SELL FREE AND CLEAR OF LIENS  
3-9-2023    [\[74\]](#)

EMELITA BROWN/MV  
JOSHUA STERNBERG/ATTY. FOR DBT.  
RESPONSIVE PLEADING

TENTATIVE RULING:        This matter will proceed as scheduled for higher and better offers.

DISPOSITION:                Granted in part.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). A timely conditional non-opposition was filed by secured creditor Wells Fargo Bank, N.A. ("Creditor") and a timely limited opposition was filed by chapter 13 trustee Michael Meyer ("Trustee"). Doc.## 84, 86. The failure of other creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.

Emelita Bartolome Brown ("Debtor") filed a voluntary chapter 13 petition on September 23, 2022. Doc. #1. Debtor filed an amended chapter 13 plan on December 29, 2022 that has yet to be confirmed and provides for a 100% dividend to general unsecured creditors. Am. Plan, Doc. #37.

By this motion, Debtor petitions the court for an order authorizing Debtor to sell real property located at 21648 95th Street, California City, California 93505 (the "Property") to Conor Fitzgerald ("Buyer") for \$270,000.00, subject to higher and better bids. Doc. #74. Debtor has a fee simple ownership interest in the Property. Schedule A/B, Doc. #1. Debtor's proposed chapter 13 plan revests property of the estate in Debtor upon confirmation. Am. Plan, Doc. #37. Debtor asserts the offer will benefit the estate by allowing Debtor to turnover \$30,298.59 to Trustee to pay 100% to unsecured creditors. Decl. of Emelita Bartolome Brown, Doc. #76.

The Property is encumbered by a note and deed of trust held by Creditor in the amount of approximately \$165,170.18. Id. Debtor exempted \$150,800.00 in the Property. Schedule C, Doc. #1. A commission of \$13,500.00 will be paid to brokers for facilitating the sale and closing costs will total \$23,396.05. Brown Decl., Doc. #37. Debtor will receive \$68,965.90 from the sale and will turn over \$30,298.59 to Trustee to pay 100% to unsecured creditors. Id. Debtor also asks for an award of attorney's fees in the amount of \$1,845.00 plus costs

of \$750.00 for preparing and filing said motion, to be paid directly from escrow. Id.; Settlement Statement, Ex. B, Doc. #77.

LBR 3015-1(h)(1)(E) provides in relevant part that "if the debtor wishes to . . . transfer property on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

This motion was properly served and noticed. Doc. ##75, 78. Creditor filed a conditional non-opposition, and Trustee filed a limited opposition. Doc. ##84, 86. Pursuant to Creditor's conditional non-opposition, Creditor has no opposition to Debtor's motion, except Creditor does not consent for purposes of 11 U.S.C. § 363(f), or otherwise, to any sale free and clear of its lien unless Creditor receives proceeds sufficient to satisfy its lien in full, the amount of which is to be determined by Creditor's payoff demand, as may be updated, submitted to escrow. Doc. #86. Creditor sets forth that any such short sale proposal must be subject to Creditor's final, express, written approval. Id. Finally, Creditor requests a deadline for the sale closing and receipt of funds to be within 60 days from the date of entry of order granting the Motion, or such other date that the court deems reasonable. Id.

It does not appear that Debtor proposes to sell the Property as a short sale. The court is not inclined to require closing and receipt of funds to be received by Creditor to occur within 60 days as requested in the conditional non-opposition. The court will, however, require any sale free and clear of Creditor's lien to be subject to payment in full of Creditor's lien as determined by Creditor's payoff demand submitted to escrow, as may be updated.

Pursuant to Trustee's limited opposition, Trustee does not oppose the sale of the Property; however, the plan, which has yet to be confirmed, and confirmation of which has been continued to April 6, 2023, does not provide for the sale of the Property. Doc. #84. The plan also provides for the mortgage creditor in Class 1, although this treatment of the claim in Class 1 of the plan is not prohibitive to the sale of the Property. Id. Trustee questions whether the proposed sale is in the best interest of Debtor since the motion indicates that the Property is worth \$311,800.00, but the sale price is \$270,000.00, which is \$41,800.00 below the purported market value. Id.

Regarding confirmation of Debtor's proposed plan, as of March 15, 2023, Debtor is delinquent one month's payment (February 2023), in the amount of \$2,016.00, and Trustee's objection to confirmation remains unresolved with regard feasibility and funding of the plan on a monthly basis. Doc. #84. While the court may grant Debtor's motion to sell the Property, that is no guarantee that the escrow will close, and thus Trustee believes that the issues with regard to plan confirmation should be resolved in addition to the concerns raised by Trustee regarding the sale motion. Id. Finally, Trustee objects to the attorney fees of \$1,845.00 and costs of \$750.00 being paid from escrow, as Section 3.05 of Debtor's proposed plan provides that the attorney has "opted-in." Id. The plan indicates that there is a remaining balance of \$1,845.00 to be paid through the plan. Trustee asserts that the payoff amount estimated in Debtor's motion of \$30,298.59 is only the amount of the unsecured claims filed, and not the total required to payoff the case and does not include Trustee's compensation. Id. Trustee asks that all proceeds received from the sale be paid to the estate so that Trustee may administer the claims, and Trustee will refund all remaining proceeds back to the Debtor. Id.



While Trustee questions whether the proposed sale of the Property is in the best interests of Debtor, the sale of the Property will pay Debtor's creditors in full if it is approved and closes, so the court is inclined to find that the sale of the Property is in the best interests of the estate. However, Trustee's other objections are well taken. The court is inclined to condition approval of the sale on confirmation of Debtor's current plan or a modified plan. Further, the court will not award attorney's fees and costs to be paid directly from escrow since Debtor's attorney is to be paid through the plan. Am. Plan, Doc. #37. Finally, Trustee should receive all proceeds from the sale to pay the balance owed under Debtor's chapter 13 plan and Trustee's compensation, and Trustee will refund all remaining proceeds back to the Debtor.

Accordingly, this motion will be GRANTED in part. Debtor is authorized, but not required, to sell the Property in a manner consistent with the residential purchase agreement filed as Exhibit A, Doc. #77, and this ruling.

11. [19-14844](#)-A-13      **IN RE: NANCY METCALF**  
[RSW-1](#)

MOTION TO MODIFY PLAN  
2-16-2023    [23]

NANCY METCALF/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.

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

DISPOSITION:      Granted.

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

This motion was set for hearing on at least 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(2). The failure of creditors, 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 amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

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

12. [19-10854](#)-A-13     **IN RE: VIOLA REYNOLDS**  
[RSW-3](#)

CONTINUED MOTION TO MODIFY PLAN  
1-16-2023    [[47](#)]

VIOLA REYNOLDS/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

13. [19-11865](#)-A-13     **IN RE: MANUEL DURAN**  
[RSW-2](#)

CONTINUED MOTION TO MODIFY PLAN  
12-14-2022    [[74](#)]

MANUEL DURAN/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
RESPONSIVE PLEADING

NO RULING.

14. [21-11666](#)-A-13     **IN RE: LOUIS/TIFFANY RODRIGUEZ**  
[PK-3](#)

MOTION TO SELL  
3-2-2023    [[44](#)]

TIFFANY RODRIGUEZ/MV  
PATRICK KAVANAGH/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.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, 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 amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movants have done here.

Louis Rene Rodriguez and Tiffany Lannette Rodriguez (collectively, "Debtors") filed a voluntary chapter 13 petition on June 30, 2021. Doc. #1. Debtors' amended chapter 13 plan was confirmed on September 10, 2021 and provides for a 100% dividend to general unsecured creditors. Am. Plan, Doc. #8; Order, Doc. #27.

By this motion, Debtors petition the court for an order authorizing Debtors to sell the one-third interest of joint debtor Tiffany Lannette Rodriguez ("Joint Debtor") in real property located at 1916 Lucky Street Bakersfield, CA 93307 (the "Property"). Doc. #44. According to an Order Determining Succession to Real Property from the Kern County, Joint Debtor owns an undivided one-third interest in the Property that was previously owned by Joint Debtor's late father. Ex. B, Doc. #48. Joint Debtor owns her interest in the Property with her sisters. Doc. #44. Joint Debtor and her sisters have agreed to sell the Property to Giuliana Vista GP ("Buyer") for \$142,000.00. Doc. #44.

LBR 3015-1(h)(1)(E) provides in relevant part that "if the debtor wishes to . . . transfer property on terms and conditions not authorized by [LBR 3015-1(h)(1)(A) through (D)], the debtor shall file the appropriate motion, serve it on the trustee, those creditors who are entitled to notice, and all persons requesting notice, and set the hearing on the Court's calendar with the notice required by Fed. R. Bankr. P. 2002 and LBR 9014-1."

This motion was properly served and noticed, and no written opposition has been filed. Joint Debtor asserts that the offer of \$142,000.00 for the Property will benefit the estate by allowing Debtors to pay Trustee \$5,000.00. Decl. of Tiffany Lannette Rodriguez, Doc. #46. The sale agreement provides for a six percent real estate commission, and there are back property taxes owed to Kern County totaling \$26,000.00. Id. Debtors will use the sale proceeds to be paid to Joint Debtor to: (1) pay for substantial delayed dental work for Joint Debtor in the approximate amount of \$5,000.00; (2) replace the oven, stove, and microwave, and dishwasher in Debtors' home in the approximate amount of \$6,000.00; (3) pay for work to Debtors' bathroom in the approximate amount of \$9,000.00 to repair plumbing and three pin hole leaks; and (4) pay Trustee \$5,000.00. Id. The court finds that the sale of the Property is in the best interests of the estate and will result in a payment of \$5,000.00 to Trustee.

Accordingly, this motion is GRANTED. Debtors are authorized, but not required, to sell the Property in a manner consistent with the residential purchase agreement filed as Exhibit B, Doc. #48.

15. [23-10168](#)-A-13      **IN RE: ROBERT IRVIN**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
3-16-2023    [\[29\]](#)

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

DISPOSITION:      The order to show cause will be vacated.

ORDER:              The court will issue an order.

The record shows that the unpaid filing fee for the amended master address list has been paid.

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS  
3-2-2023    [\[22\]](#)

MICHAEL MEYER/MV

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

DISPOSITION:      Sustained.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the debtor 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 amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Michael H. Meyer ("Trustee"), the chapter 13 trustee in the bankruptcy case of Robert Shane Irvin ("Debtor"), objects to Debtor's claim of a \$296,400 exemption in Debtor's real property located at 7401 Cibola Drive, Bakersfield, California 93309 (the "Property") because Debtor fails to specify the subsection of California Code of Civil Procedure ("C.C.P.") § 704 that Debtor is utilizing to make his claimed exemption. Tr.'s Obj., Doc. #22; see Schedule C, Doc. #1. Debtor has not responded to Trustee's objection.

"[T]he debtor, as the exemption claimant, bears the burden of proof which requires [him] to establish by a preponderance of the evidence that [the property] claimed as exempt in Schedule C is exempt under California Code of Civil Procedure [§ 704.020] and the extent to which the exemption applies." In re Pashenee, 531 B.R. 834, 837 (Bankr. E.D. Cal. 2015); see Diaz v. Kosmala (In re Diaz), 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016) (concluding "that where a state law exemption statute specifically allocates the burden of proof to the debtor, [Federal Rule of Bankruptcy Procedure] 4003(c) does not change that allocation."); see also Bd. of Trs. v. Castillo, No. 1:15-mc-00037-EPG, 2015 U.S. Dist. LEXIS 165816, at \*6-7 (E.D. Cal. Dec. 10, 2015) (applying the burden of proof set out in C.C.P. § 703.580 to the defendant's claim of exemption under C.C.P. § 704.020).

Trustee objects to Debtor's exemption because Debtor fails to set forth the subsection of C.C.P. § 704 that Debtor is utilizing to claim his exemption. Doc. #22. Debtor has not responded, and therefore has not met his burden of proof establishing the validity of the exemption.

Accordingly, Trustee's objection is SUSTAINED.

MOTION TO EXTEND AUTOMATIC STAY  
3-17-2023    [\[8\]](#)

BEATRIZ RODRIGUEZ/MV  
SCOTT LYONS/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

ORDER:                        The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Debtors Reynaldo Rodriguez and Beatriz Rodriguez (together "Debtors") move the court for an order extending the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B).

Debtors had a Chapter 13 case pending within the preceding one-year period that was dismissed, Case No. 22-12012 (Bankr. E.D. Cal.) (the "Prior Case"). The Prior Case was filed on November 23, 2022 and dismissed on February 15, 2023. Decl. of Reynaldo Rodriguez, Doc. #10. Under 11 U.S.C. § 362(c)(3)(A), if a debtor had a bankruptcy case pending within the preceding one-year period that was dismissed, then the automatic stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the current case. Debtors filed this case on March 13, 2023. Petition, Doc. #1. The automatic stay will terminate in the present case on April 12, 2023.

Section 362(c)(3)(B) allows the court to extend the stay "to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed[.]" 11 U.S.C. § 362(c)(3)(B).

Section 362(c)(3)(C)(i) creates a presumption that the case was not filed in good faith if (1) the debtor filed more than one prior case in the preceding year; (2) the debtor failed to file or amend the petition or other documents without substantial excuse, provide adequate protection as ordered by the court, or perform the terms of a confirmed plan; or (3) the debtor has not had a substantial change in his or her financial or personal affairs since the dismissal, or there is no other reason to believe that the current case will result in a discharge or fully performed plan. 11 U.S.C. § 362(c)(3)(C)(i).

The presumption of bad faith may be rebutted by clear and convincing evidence. 11 U.S.C. § 362(c)(3)(C). Under the clear and convincing standard, the evidence

presented by the movant must "place in the ultimate factfinder an abiding conviction that the truth of its factual contentions are 'highly probable.' Factual contentions are highly probable if the evidence offered in support of them instantly tilt[s] the evidentiary scales in the affirmative when weighed against the evidence offered in opposition." Emmert v. Taggart (In re Taggart), 548 B.R. 275, 288 n.11 (B.A.P. 9th Cir. 2016) (citations omitted) vacated and remanded on other grounds by Taggart v. Lorenzen, 139 S. Ct. 1795 (2019).

In this case, the presumption of bad faith arises. A review of the court's docket in the Prior Case disclosed a chapter 13 plan that was not confirmed. Case No. 22-12012, Doc. #14. On February 15, 2023, the chapter 13 trustee filed and set for hearing a motion to dismiss the Prior Case for unreasonable delay by Debtors that is prejudicial to creditors (the "Motion"). Case No. 22-12012, Doc. #65. Debtors did not oppose the Motion, and the court dismissed the Prior Case. Case No. 22-12012, Doc. ##35-38, 65-66. Debtors acknowledge that the Prior Case was dismissed for unreasonable delay by Debtors that was prejudicial to creditors for failing to: (a) appear at their scheduled 341 meeting of creditors; (b) provide required documents, tax return, payment advices, creditor counseling certificate and other documents to chapter 13 trustee; and (c) file complete and accurate schedules and statements and a chapter 13 plan. Decl. of Reynaldo Rodriguez, Doc. #10.

In support of this motion to extend the automatic stay, Debtors declare that the reasons for the above-stated deficiencies in their Prior Case occurred because Debtors went to Consumer Defense Law Group to get help modifying their home mortgage after being scammed by a company called Home Matters USA where they paid Home Matters USA \$1,023.00 per month for at least 14 months for their services. Rodriguez Decl., Doc. #10. Debtors paid Consumer Defense Law Group \$2,000.00 in November 2022 to modify their home mortgage and also were advised by Consumer Defense Law Group to file for bankruptcy due to a pending a foreclosure sale. Id. Consumer Defense Law Group communicated to Debtors that Consumer Defense Law Group did not get involved in bankruptcy matters and Debtors should file for bankruptcy on their own. Id. Consumer Defense Law Group provided Debtors with forms and paperwork, which Consumer Defense Law Group prepared for Debtors. Id. Debtors took the paperwork to the bankruptcy court in Fresno and filed for bankruptcy without an attorney, but Debtors did not know the process or procedure to properly complete their case. Id. Debtors state that because Debtors were unaware of how to complete their Prior Case properly, Debtors' Prior Case was eventually dismissed. Id.

Debtors state that they refiled for chapter 13 on March 13, 2023 and retained competent bankruptcy counsel, Scott Lyons, who has advised and instructed Debtors regarding their rights and responsibilities under the Bankruptcy Code. Rodriguez Decl., Doc. #10. Debtors state that Debtors have completed their credit counseling classes and have provided their certificates of completion to the court. Id. Further, Debtors filed their complete chapter 13 statements, schedules, and chapter 13 plan concurrently with their chapter 13 voluntary plan. Id. In addition, Debtors are receiving an increased contribution to their household from both their granddaughter who lives with them and pays them \$200.00 as well as from their son who also lives with them and pays them \$100.00. Id. Debtors filed a proposed plan on March 13, 2023. Doc. #3. Debtors' Schedules I and J filed in this case list monthly income of \$5,022.78 and expenses of \$1,841.42, resulting in monthly net income of \$3,181.36, of which Debtors propose to apply \$3,170.00 to plan payments in this case. Schedules I and J, Doc. #1; Rodriguez Decl., Doc. #10. Debtors are confident that a chapter 13 plan will be confirmed in this case and that Debtors have the income ability to maintain plan payments. Rodriguez Decl., Doc. #10.

The court is inclined to find that Debtors' filing of the Prior Case without an attorney to advise Debtors of the process or procedure for ensuring their chapter 13 bankruptcy case was completed properly rebuts the presumption of bad faith that arose from Debtors' failure to: (a) appear at their scheduled 341 meeting of creditors; (b) provide required documents, tax return, payment advices, creditor counseling certificate and other documents to chapter 13 trustee; and (c) file complete and accurate schedules and statements and a chapter 13 plan, and that Debtors' petition commencing this case and being represented by counsel was filed in good faith. Moreover, the court recognizes that Debtors' increased monthly income represents a substantial change in financial affairs since the dismissal of the Prior Case.

Accordingly, the court is inclined to GRANT the motion and extend the automatic stay for all purposes as to those parties that received notice of Debtors' motion (see Doc. #8), unless terminated by further order of the court.

18. [23-10297](#)-A-13     **IN RE: MARY RALPHS**  
[MHM-1](#)

MOTION TO DISMISS CASE  
3-7-2023    [[9](#)]

DISMISSED 3/13/23

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

DISPOSITION:     Denied as moot.

ORDER:             The court will issue an order.

An order dismissing this case was entered on March 13, 2023. Doc. #17.  
Therefore, this motion will be DENIED AS MOOT.

10:00 AM

1. [15-11835](#)-A-7     **IN RE: JAMES/JAMIE CANNON**  
[PWG-4](#)

MOTION TO COMPEL ABANDONMENT  
3-9-2023    [[772](#)]

JAMIE CANNON/MV  
PHILLIP GILLET/ATTY. FOR DBT.  
RESPONSIVE PLEADING

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

DISPOSITION:        Continued to May 4, 2023 at 10:00 a.m.

ORDER:                The court will issue an order.

On March 23, 2023, the court issued an order to show cause why this motion should not be stricken for the failure of the moving party to pay the required \$188.00 filing fee. Doc. #786. The order to show cause is set for hearing on May 4, 2023 at 10:00 a.m. Id. Therefore, the hearing on this motion will be continued to May 4, 2023 at 10:00 a.m. to be heard in conjunction with the order to show cause.

2. [20-11367](#)-A-7     **IN RE: TEMBLOR PETROLEUM COMPANY, LLC**  
[PRG-1](#)

CONTINUED MOTION TO VACATE SALE ORDER, AS AMENDED  
2-2-2023    [[500](#)]

GENAUTICA OIL HOLDINGS, LP/MV  
LEONARD WELSH/ATTY. FOR DBT.  
PAUL GLASSMAN/ATTY. FOR MV.  
RESPONSIVE PLEADING

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:        Determination that the motion raises a substantial issue.

ORDER:                The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). On March 23, 2023, the vice president for Trio Petroleum LLC, ("Trio") timely filed written opposition together with a supporting declaration (collectively, "Response"). Doc. ##510-512. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered.



As a procedural matter, the notice of motion does not comply with LBR 9004-2(c)(1), which requires a notice of hearing on a motion to be filed as a separate document. Here, the notice of motion and motion were filed as a single document. Doc. #500. The notice of motion also does not comply with LBR 9014-1(d)(3)(B)(iii), which requires the notice to advise respondents that they can determine whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling by viewing the court's website at [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov) after 4:00 p.m. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing. Additionally, the motion and memorandum of points and authorities may only be combined as a single document if six pages or less. LBR 9014-1(d)(4).

As a further procedural matter, the exhibit document filed with the motion (Doc. #502) does not comply with LBR 9004-2(d)(2), which requires that "[e]ach exhibit document filed shall have an index at the start of the document that lists and identifies by exhibit number/letter each exhibit individually and shall state the page number at which it is found within the exhibit document." The exhibit document filed with the motion does not include the required exhibit index.

As a further procedural matter, the certificate of service filed in connection with the reply (Doc. #513) does not comply with LBR 7005-1 and General Order 22-03, which require attorneys and trustees to use the court's Official Certificate of Service Form as of November 1, 2022.

The court encourages counsel for the moving party to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

As a further procedural matter, the court is inclined to strike Trio's Response because Trio is a limited liability company and is not represented by counsel. Under applicable legal authority, a limited liability company cannot appear in this bankruptcy case without assistance of legal counsel. The Ninth Circuit has held that "[c]orporations and other unincorporated associations must appear in court through an attorney." Licht v. America W. Airlines (In re America W. Airlines), 40 F.3d 1058, 1059 (9th Cir. 1994); see also Orsini v. Interiors of Yesterday, LLC (In re Interiors of Yesterday, LLC), 284 B.R. 19, 23-26 (Bankr. D. Conn. 2002) (requiring limited liability company to file bankruptcy petition through counsel). Here, Steven A. Rowlee signed Trio's opposition as Trio's vice president. Doc. #510. There is no indication that Mr. Rowlee is authorized to practice law before this court. To the extent Mr. Rowlee is attempting to represent Trio in this bankruptcy case, "[a] person not an active member of the State Bar who practices law commits a misdemeanor." Gerhard v. Stephens, 68 Cal. 2d 864, 917-18 (1968); Cal. Bus. & Prof. Code § 6126(a). If Trio wishes to oppose a motion in this bankruptcy case, Trio must appear through an attorney.

By this motion ("Motion"), Genautica Oil Holdings, LP ("Movant") seeks to vacate an order that currently is the subject of an appeal to the United States District Court for the Eastern District of California ("District Court"). Motion, Doc. #500. Specifically, on August 10, 2022, this court held an auction of the 24.22% interest of the debtor, Temblor Petroleum Company, LLC, in an oil field known as Hangman's Hollow ("Working Interest"). Id. Trio was a stalking horse bidder to purchase the Working interest for \$10,000.00, subject to higher and better offers. Doc. #416. Prudent Resources was the winning bidder at the August 10 auction for \$101,000.00, with Movant as the back-up bidder for \$86,000.00. Doc. #431.

On August 19, 2022, the court entered an order authorizing the sale of the Working Interest to Prudent Resources as the winning bidder and to Movant as the back-up bidder ("Sale Order"). Doc. #432. Neither Prudent Resources nor Movant completed the sale as set forth in the Sale Order. Decl. of Jeffrey M. Vetter, Doc. #471. On November 3, 2022, the court granted the chapter 7 trustee's ex parte motion to amend the Sale Order and authorized the sale of the Working Interest to Trio for \$10,000.00 ("Amended Order"). Doc. #473. On November 17, 2022, Movant appealed the Amended Order to the District Court. Doc. #481. Movant filed the Motion on February 2, 2023. Doc. #500.

Movant seeks to vacate the Sale Order and the Amended Order pursuant to Federal Rules of Civil Procedure ("Civil Rule") 60(b)(1) and (b)(6), incorporated into this matter by Federal Rule of Bankruptcy Procedure ("Rule") 9024. Movant asserts that neither Movant nor Prudent Resources knew at the time of the auction that the sale of the Working Interest was "as is" and subject to the debtor's liabilities with respect to the Working interest, including substantial claims asserted by Trio, and Movant only learned this information after the auction. Decl. of Dan Scholefield, Doc. #501. Movant also contends that representations of the broker and the marketing materials related to the Working Interest contained material mistakes of fact as to the status of the Working Interests that Movant learned about only after the auction. Id. On this basis, Movant requests that this court vacate the sale of the Working Interest and reopen the auction. Motion, Doc. #481.

"The filing of a notice of appeal is an event of jurisdictional significance - it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 58 (1982) (per curiam). Here, the court lacks authority to consider Movant's motion for reconsideration under Civil Rules 60(b)(1) and 60(b)(6) because such authority has been divested by the appeal of the Amended Order to the District Court.

However, Rule 8008 "provides a procedure for the issuance of an indicative ruling when a bankruptcy court determines that, because of a pending appeal, the court lacks jurisdiction to grant a request for relief that the court concludes is meritorious or raises a substantial issue." Fed. R. Bankr. P. 8008 Advisory Committee Note to 2014 Amendment. Rule 8008 applies "when a post judgment motion - such as a motion for relief from judgment under Civil Rule 60(b) made more than 14 days after entry of the judgment - which does not suspend the time for filing a notice of appeal - is made in the bankruptcy court at a time when a pending appeal has deprived the bankruptcy court of jurisdiction to decide the motion." 10 COLLIER ON BANKRUPTCY ¶ 8008.01 (Richard Levin & Henry J. Sommer eds., 16th ed.). Under Rule 8008, "[i]f a party files a timely motion in the bankruptcy court for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending," Rule 8008(a)(3) allows the bankruptcy court to inform an appellate court that the motion raises a substantial issue. Fed. R. Bankr. P. 8008(a).

For the reasons set forth above, the court informs the District Court that the court finds that the Motion raises a substantial issue with respect to the propriety of the auction of the Working Interest that underlies the Amended Order.

10:30 AM

1. [20-12258](#)-A-11 IN RE: JARED/SARAH WATTS  
[LKW-20](#)

MOTION TO SELL  
3-28-2023 [[384](#)]

SARAH WATTS/MV  
LEONARD WELSH/ATTY. FOR DBT.  
OST 3/29/23

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 the hearing.

On March 29, 2023, the court granted the debtors' ex parte Motion for Order Shortening Time to hear the debtors' Motion for Authority to Sell Real Property by Private Sale. Doc. #391. This motion was set for hearing on April 6, 2023 at 10:30 a.m. pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3) 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.

Jared Allen Watts and Sarah Danielle Watts (together, "DIP") are operating under a confirmed Subchapter V plan of reorganization that was confirmed on November 20, 2020. Doc. #194. DIP own real property located at 1601 Shafter Road, Bakersfield, CA (the "Property"). Doc. #384; Schedule A/B, Doc. #1. The Property includes a family residence, a shop, and other improvements. Id. DIP seek approval to sell the Property outside the ordinary course of business pursuant to 11 U.S.C. § 363(b)(1) by private sale to Juana Barron or her nominee ("Buyer") for \$850,000.00. Doc. #384. DIP believed that the Property had a value of \$509,400.00 when DIP filed their Schedule A/B on July 2, 2020. Decl. of Jared Allen Watts, Doc. #388. However, DIP have determined the Property has a value greater than the value indicated in their Schedule A/B after consulting with a real estate broker. Id.

The Property secures the claim of Kern County Treasurer - Tax Collector ("Kern County"). DIP believes that the balance owed to Kern County based on Kern County's tax lien on the Property is \$12,843.76 as of March 28, 2023. Watts Decl., Doc. #388. DIP proposes to pay Kern County \$12,843.76 from the sale of the Property. Id. The Property also secures the claim of Safe 1 Credit Union. DIP believes that the balance owed to Safe 1 Credit Union is \$342,364.54 as of March 28, 2023. Id. DIP proposes to pay Safe 1 Credit Union \$342,364.54 from the sale of the Property. Id. The court will grant the motion so long as Kern County and Safe 1 Credit Union are paid in full as of the close of escrow, not as of March 28, 2023. DIP shall be prepared at the hearing to confirm that there will be sufficient amounts from the surplus to be paid to DIP to pay these to secured claims in full at close of escrow.

Section 363 of the Bankruptcy Code states that a trustee, or debtor in possession, may use, sell, or lease property of the estate outside the ordinary

course of business after notice and a hearing. 11 U.S.C. §§ 363(b)(1), 1184. The debtor in possession proposing a sale under § 363(b) must demonstrate a valid business justification for the sale and that the sale is proposed in good faith. 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996). "Good faith encompasses fair value, and further speaks to the integrity of the transaction." Id. (quoting In re Wilde Horse Enters., Inc. 136 B.R. 830, 842 (Bankr. C.D. Cal. 1991)). To make such a determination, "the court and creditors must be provided with sufficient information to allow them to take a position on the proposed sale." Wilde Horse Enters., 136 B.R. at 842.

DIP understand that the bankruptcy court must authorize the sale of the Property. Watts Decl., Doc. #388. DIP believe that the \$850,000.00 proceeds received from the sale of the Property will be distributed to pay the Kern County's tax lien of \$12,843.76 in full, Safe 1 Credit Union's lien of \$342,645.54 in full, real estate commission of \$34,000.00, costs of sale of \$17,000.00, Class One priority claims of \$72,048.00 per DIP's first modified plan, Class Twenty-Two general unsecured creditors of \$285,000.00 per DIP's first modified plan, Subchapter V trustee for payment to secured creditors of \$57,000.00 per DIP's first modified plan, attorney fees of \$10,000.00, Subchapter V trustee's fees of \$5,000.00, and a seller credit of \$12,750.00. Id. A surplus of \$3,394.46 will be paid to DIP to provide operating capital for DIP to use for in DIP's business as permitted by DIP's first modified plan. Id. Assuming that there are sufficient amounts from the surplus to be paid to DIP to pay Kern County and Safe 1 Credit Union in full at close of escrow, the court finds that DIP's business judgment is reasonable and the proposed sale of the Property is made in good faith.

DIP request that Juana Barron be deemed to have acted in good faith pursuant to 11 U.S.C. § 363(m). Section 363(m) provides that the validity of a sale or lease of property under § 363 to a good faith purchaser "cannot be challenged on appeal unless the bankruptcy court's authorization and such sale or lease were stayed pending appeal." Adeli v. Barclay (In re Berkeley Del. Court, LLC), 834 F.3d 1036, 1039 (9th Cir. 2016); 11 U.S.C. § 363(m). "A good faith buyer 'is one who buys "in good faith" and "for value."' '[L]ack of good faith is [typically] shown by 'fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.'" Paulman v. Gateway Venture Partners III (In re Filtercorp, Inc.), 163 F.3d 570, 577 (9th Cir. 1998) (internal citations omitted).

Here, DIP state that there is no connection between DIP and Juana Barron other than the agreement to sell the Property. Watts Decl., Doc. #388. Robert Dees, a real estate agent, testifies that the sale of the Property is for a fair and reasonable price based on current market conditions and the condition of the Property. Decl. of Robert Dees, Doc. #389. Mr. Dees concludes that the sale of the Property is for a fair and reasonable price. Dees Decl., Doc. #389. There is no evidence of any collusion in an attempt to drive the sale price down. Based on the evidence before the court, the court finds that Juana Barron is a good faith purchaser for the purpose of 11 U.S.C. § 363(m). The court will not make a 11 U.S.C. § 363(m) finding with respect to any nominee of Juana Barron because there is insufficient evidence before this court for such a finding.

DIP also requests that the 14-day stay of Fed. R. Bankr. P. 6004(h) be waived because Buyer wants to close on the Property as soon as possible. The 14-day stay of Fed. R. Bankr. P. 6004(h) will be ordered waived because Buyer is prepared to close escrow as soon as the bankruptcy court enters an order granting this motion and permitting the sale of the Property to close promptly will benefit creditors and the estate.

The court is inclined to GRANT this motion so long as Kern County and Safe 1 Credit Union will be paid in full as of the close of escrow, not as of March 28, 2023. Pursuant to 11 U.S.C. § 363(b)(1), DIP is authorized to sell the Property pursuant to 11 U.S.C. § 363(b)(1). The court finds that Juana Barron is a good faith purchaser for the purpose of 11 U.S.C. § 363(m). The 14-day stay of Rule 6004(h) will be ordered waived.

2. [23-10202](#)-A-11      **IN RE: GRANDE OAK, LLC**

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION  
2-2-2023    [[1](#)]

PAUL MANASIAN/ATTY. FOR DBT.

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

DISPOSITION:      Continued to May 10, 2023 at 9:30 a.m.

ORDER:              The court will issue an order.

Pursuant to the debtor's status conference statement filed on April 4, 2023 (Doc. #32), this chapter 11 status conference will be continued to May 10, 2023, at 9:30 a.m.

If the debtor has not filed and set for hearing a motion to dismiss by May 3, 2023, the debtor shall file and serve a status report not later than May 3, 2023.

3. [23-10208](#)-A-11      **IN RE: GRANDE, LLC**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION  
2-3-2023    [[1](#)]

PAUL MANASIAN/ATTY. FOR DBT.

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

DISPOSITION:      Continued to May 10, 2023 at 9:30 a.m.

ORDER:              The court will issue an order.

Pursuant to the debtor's status conference statement filed on April 4, 2023 (Doc. #50), this chapter 11 status conference will be continued to May 10, 2023, at 9:30 a.m.

If the debtor has not filed and set for hearing a motion to dismiss by May 3, 2023, the debtor shall file and serve a status report not later than May 3, 2023.

CONTINUED MOTION TO BORROW  
3-1-2023    [\[121\]](#)

FUTURE VALUE CONSTRUCTION, INC./MV  
D. GARDNER/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.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered.

This matter was continued from the original hearing held on March 29, 2023 to permit the debtor to address the requirements of LBR 4001-1(c)(3) and Federal Rule of Bankruptcy Procedure ("Rule") 4001(c)(A). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary, and the matter will be resolved without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As an informative matter, the caption of the notice of hearing indicates that the motion to be heard is a motion to approve borrowing/priming loan under 11 U.S.C. § 364(d)(1); however, the body of the notice of hearing states that the motion to be heard is the debtor's motion to utilize funds held in escrow. Doc. #122. In the future, the body of the notice of hearing should refer to the actual motion that is set for hearing.

By this motion, Future Value Construction, Inc. ("Debtor" or "DIP") seeks to borrow up to \$250,000 from CAVU/Rock Project 1, LLC ("Lender") secured by a second deed of trust against DIP's real property commonly referred to as Lot 16 in Lakeview at Rio Bravo (the "Property"). Decl. of Chuck A. Thomason, Doc. #123. The purpose of the loan is to complete the construction of a house on the Property so that the Property can be sold. Id. Lender already holds a second deed of trust on the Property that secures a \$40,000 loan pursuant to a promissory note dated April 11, 2019. Letter of Intent, Ex. A, Doc. #124. Interest on the post-petition loaned funds will be 5% per annum from the date received by DIP. Deed of Trust Modification, Ex. B, Doc. #153. The loan will be repaid upon the sale of the Property. Id. The due date of the loan is extended to April 11, 2024, and any late payment penalty is waived until the new due date. Id.

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Section 364(c) provides:

If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

. . .

(2) secured by a lien on property of the estate that is not otherwise subject to a lien[]; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c). In a chapter 11 case, the debtor in possession has the rights and powers of a trustee. 11 U.S.C. § 1107(a). Debtors in possession must obtain the approval of the bankruptcy court when they wish to incur secured debt. 11 U.S.C. § 364(c)(2) and (3); In re Harbin, 486 F.3d 510, 521 (9th Cir. 2007). Section 364(c)(2) and (3) provide exceptions to the general prohibition against creating post-petition encumbrances on property of the bankruptcy estate. Harbin, 486 F.3d at 521.

Courts generally give debtors in possession considerable deference to determine, in their business judgment, the terms under which they obtain post-petition secured credit. See, e.g., In re Los Angeles Dodgers LLC, 457 B.R. 308, 313 (Bankr. D. Del. 2011) (“[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender.”); In re Ames Dep’t Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”).

To determine whether a debtor in possession has met this business judgment standard, a court need only “examine whether a reasonable business person would make a similar decision under similar circumstances.” In re Exide Techs., 340 B.R. 222, 239 (Bankr. D. Del. 2006); see also In re Curlew Valley Assocs., 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (recognizing the court should not entertain objections to a trustee’s business decision when that decision involves “a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the [Bankruptcy] Code”).

The court will grant the motion based on the supplemental pleadings filed by DIP on March 3, 2023. Doc. #152, 153. First, DIP provided a copy of the Deed of Trust Modification as required by Rule 4001(c)(A). See Ex. B, Doc. #153. Second, LBR 4001-1(c)(3) requires DIP to identify and provide substantial justification if certain provisions are contained in the post-petition financing transaction with Lender. Here, DIP has provided a supplement to the motion that complies with LBR 4001-1(c)(3). Doc. #152.

Since DIP adequately satisfied the court’s concerns, the court will grant the motion. Further, the declaration of Chuck A. Thomason provides evidence for the court to make a finding that the proposed loan is needed to complete the house on the Property so the Property can be sold and DIP will have a better chance of obtaining take-out financing. Thomason Decl., Doc. #123. The declaration of Chuck A. Thomason also provides evidence for the court to make a finding that DIP has shown that DIP is unable to obtain an unsecured loan for the amount requested by the motion. Id. In addition, the declaration of Chuck A. Thomason

provides evidence that there is sufficient equity in the Property to support the pre-petition lenders and the post-petition loan. Id.

DIP has adequately satisfied the court's concerns through supplemental pleadings; therefore, the motion is granted.



11:00 AM

1. [22-12203](#)-A-7     **IN RE: LARRY GRAVES**  
[23-1010](#)     [CAE-1](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT  
2-13-2023     [[5](#)]

GRAVES, JR. V. ALLISON ET AL

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

DISPOSITION:     Continued to May 4, 2023 at 11:00 a.m.

ORDER:     The court will issue an order.

On March 14, 2023, the court issued an order to show cause why this adversary proceeding should not be dismissed for lack of subject matter jurisdiction. Doc. #20. The order to show cause is set for hearing on May 4, 2023 at 11:00 a.m. Id. Therefore, this status conference will be continued to May 4, 2023 at 11:00 a.m. to be heard in conjunction with the order to show cause.

2. [23-10026](#)-A-7     **IN RE: TYREESE REED**  
[23-1007](#)     [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT  
1-27-2023     [[1](#)]

REED V. ALLISON ET AL  
TYREESE REED/ATTY. FOR PL.

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

DISPOSITION:     Continued to May 4, 2023 at 11:00 a.m.

ORDER:     The court will issue an order.

On March 14, 2023, the court issued an order to show cause why this adversary proceeding should not be dismissed for lack of subject matter jurisdiction. Doc. #18. The order to show cause is set for hearing on May 4, 2023, at 11:00 a.m. Id. Therefore, this status conference will be continued to May 4, 2023, at 11:00 a.m. to be heard in conjunction with the order to show cause.

3. [22-11042](#)-A-7     **IN RE: TIFFINI HUGHES**  
[22-1019](#)     [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT  
2-9-2023     [[37](#)]

LABOR COMMISSIONER OF THE STATE OF CALIFORNIA V. HUGHES  
EDELMIRA DIAZ-WEAVER/ATTY. FOR PL.

NO RULING.

4. [22-11042](#)-A-7     **IN RE: TIFFINI HUGHES**  
[22-1019](#)     [DMG-3](#)

MOTION TO DISMISS CAUSE(S) OF ACTION FROM SECOND AMENDED COMPLAINT  
3-9-2023     [\[39\]](#)

LABOR COMMISSIONER OF THE STATE OF CALIFORNIA V. HUGHES  
D. GARDNER/ATTY. FOR MV.

TENTATIVE RULING:             This matter will proceed as scheduled.

DISPOSITION:                     Denied.

ORDER:                             The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This motion was set for hearing on at least 28 days' notice as required by Local Rules of Practice 9014-1(f)(1) and 9014-1(f)(2)(A). The plaintiff timely filed written opposition on March 23, 2023. Doc. #42. The moving party did not reply to the opposition. However, as noted below, the certificate of service filed with the opposition does not indicate the email address to which the opposition was served, so it is unclear to the court whether the moving party was served timely with the opposition. In any event, the court has reviewed the complaint and, for the reasons set forth below, determines that the motion to dismiss should be denied. This matter will proceed as scheduled.

As noted above, the certificate of service for the opposition (Doc. #43) does not include an Attachment 6B1 showing the email addresses to which the opposition was served. Prior to the hearing, the plaintiff should file an amended certificate of service that includes the proper attachment. In addition, the front page of the certificate of service form improperly indicates that the certificate of service is for the second amended complaint, although section 4 of the certificate of service form properly indicates that the certificate of service is for the opposition to the motion to dismiss.

As a further procedural matter, the opposition has the incorrect Docket Control Number. "Once a Docket Control Number is assigned, all related papers filed by any party, including motions for orders shortening the amount of notice and stipulations resolving that motion, shall include the same number." LBR 9014-1(c)(4). See LBR 9004-2(b)(6). Here, the motion to dismiss was assigned a Docket Control Number of DMG-3, while the opposition had a Docket Control Number of LCO-003 and the certificate of service has a Docket Control Number of LCO-004. The correct Docket Control Number for both the opposition and related certificate of service should have been DMG-3.

On September 19, 2022, plaintiff Labor Commissioner of the State of California, Lilia Garcia-Brower ("Plaintiff"), commenced this adversary proceeding by filing a complaint. Doc. #1. Defendant Tiffini R. Hughes ("Defendant") filed a motion to dismiss, which this court granted in part with leave to amend. Doc. ##8, 20. On December 1, 2022, Plaintiff filed a first amended complaint. Doc. #21. Defendant filed a second motion to dismiss, which this court granted with leave to amend. Doc. ##25, 32. On February 9, 2023, Plaintiff filed a second amended complaint ("Complaint"). Doc. #37.

Defendant moves to dismiss the first two claims against her pursuant to Federal Rule of Civil Procedure ("Civil Rule") 12(b)(6) for failure to state a claim upon which relief can be granted. Doc. #39. Civil Rule 12(b)(6) is made

applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 7012(b). As set forth in Defendant's Motion to Dismiss ("Motion"), Defendant moves on the grounds that the Complaint does not: (1) establish elements of fraudulent representation under § 523(a)(2)(A); and (2) sufficiently describe actual fraud under § 523(a)(2)(A). Doc. #39.

For the reasons set forth below, the court is inclined to deny the Motion.

#### **APPLICABLE LAW**

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citation omitted). "In considering a Fed. R. Civ. P. 12(b)(6) motion to dismiss for failure to state a claim for relief, the court accepts as true all material facts alleged in the complaint and draws all reasonable inferences in favor of the plaintiff. The motion to dismiss is granted only if no set of facts can be established to entitle the plaintiff to relief." Enron Corp. v. Credit Suisse First Boston Int'l (In re Enron Corp.), 328 B.R. 58, 64 (Bankr. S.D.N.Y. 2005) (citations omitted).

The first cause of action of the Complaint seeks to have Plaintiff's claim against Defendant determined to be non-dischargeable under 11 U.S.C. § 523(a)(2)(A) based on fraudulent representation. The second cause of action seeks to have Plaintiff's claim against Defendant determined to be non-dischargeable under 11 U.S.C. § 523(a)(2)(A) based on actual fraud.

A creditor seeking to except a debt from discharge under § 523(a)(2)(A) based on false pretenses, false representation, or actual fraud bears the burden of proving by a preponderance of the evidence five elements:

- (1) misrepresentation(s), fraudulent omission(s), or deceptive conduct;
- (2) knowledge of the falsity or deceptiveness of such representation(s), omission(s), or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor; and
- (5) damage to the creditor proximately caused by its reliance.

Cardenas v. Shannon (In re Shannon), 553 B.R. 380, 388 (B.A.P. 9th Cir. 2016) (citations omitted).

With respect to causes of action relating to fraud, Civil Rule 9(b), incorporated into this adversary proceeding by Bankruptcy Rule 7009, requires a party to "state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). However, "malice, intent, knowledge, and other conditions of a person's mind may be alleged generally." Id.

In the Ninth Circuit, "in order for a complaint to allege fraud with the requisite particularity [of Civil Rule 9(b)], a plaintiff must set forth more than the neutral facts necessary to identify the transaction." Yourish v. California Amplifier, 191 F.3d 983, 993 (9th Cir. 1999) (internal quotations and citation omitted). Civil Rule 9(b) requires that when allegations of fraud are made "the circumstances constituting the alleged fraud" must be "specific enough to give defendants notice of the particular misconduct . . . so that they can defend against the charge and not just deny that they have done

anything wrong.'" Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003) (citations omitted). "Averments of fraud must be accompanied by 'the who, what, when, where, and how' of the misconduct charged. '[A] plaintiff must set forth more than the neutral facts necessary to identify the transaction. The plaintiff must set forth what is false or misleading about a statement, and why it is false.'" Id. (emphasis in original) (citation omitted).

However, Civil Rule 9(b) is balanced by Civil Rule 8.

[A]lthough allegations of fraud are to be plead with "particularity," such requirement is to be viewed in light of Fed. R. Civ. P. 8, which provides that such allegations be made in a short, plain and concise statement. In this regard, the Ninth Circuit has recognized that allegations of fraud or misrepresentation must be specific enough to allow defendants to "defend against the charge and not just deny that they have done anything wrong." Semegen v. Weidner, 780 F.2d 727, 731 (9th Cir. 1985) (citation omitted).

Mission Viejo National Bank v. Englander (In re Englander), 92 B.R. 425, 428 (B.A.P. 9th Cir. 1988).

As explained in Moore's Federal Practice with respect to Civil Rule 9,

The purposes of the pleading requirement are:

- To protect a defending party's reputation from harm,
- To minimize strike suits, and
- To provide detailed notice of a fraud claim to a defending party.

Although a purpose of Rule 9(b) is to provide detailed notice of the circumstances constituting fraud, not every alleged misrepresentation need appear in the pleadings. A claimant is required to set forth only the major misrepresentations or omissions on which the fraud claims are based.

2 Moore's Federal Practice - Civil § 9.03 (2023) (footnotes 5 through 8 omitted). Moore's Federal Practice further provides:

[P]laintiffs are not absolutely required to plead the specific date, place, or time of each of the fraudulent acts, provided they use some alternative means of injecting precision and some measure of substantiation into their allegations of fraud. . . .

Because the complexity and other circumstances of each case will determine the amount of specificity required, misrepresentations that are numerous and occur over extended periods of time may be alleged with somewhat less specificity. In such cases, it would be impractical to detail every instance of fraudulent conduct. A complaint may be sufficient if it pleads a fraudulent scheme with particularity along with representative examples showing fraudulent conduct. Moreover, Rule 9 must be read together with Rule 8, which requires that pleadings be "simple, concise, and direct." Excessive pleading of multiple instances of fraud might violate Rule 8.

Moore's Federal Practice - Civil § 9.03 (2023) (footnotes 16 through 20 omitted).

## 1. First Cause of Action for False Representation

With respect to the first cause of action under 11 U.S.C. § 523(a)(2)(A) for false representations, Plaintiff alleges in paragraphs 36 and 60 of the Complaint that Defendant in her individual capacity and/or as the owner of certain entities, which Plaintiff asserts were either sole proprietorships or alter egos of Defendant's sole proprietorship, obtained services from at least 26 employees by promising to pay contractual wages to these employees but did not pay such wages when due and continued to engage the employees' services by promising to catch up on those payments and/or by stating that Defendant would eventually receive enough funds to pay the employees.

Defendant asserts that Plaintiff has not sufficiently pled the element of reliance because Plaintiff has not pled that element with specificity as to any employee. Motion at 4:4-15, Doc. #39. Defendant also asserts that Plaintiff has not pled sufficiently:

1. The names of all the employees who were promised to be paid.
2. The period of time they worked based on these representations.
3. The period of time they were not paid and whether those periods are linked to a specific misrepresentation by Defendant.
4. Who specifically relied on the misrepresentation and whether such reliance was justified.
5. The amount of unpaid wages linked to a specific misrepresentation.

Motion at 5:3-12, Doc. #39.

Based on the court's understanding of the balance between Civil Rules 8 and 9, the court disagrees with Defendant as to the specificity required and determines that the Complaint is specific enough to allow Debtor to defend against the claim for non-dischargeability under 11 U.S.C. § 523(a)(2)(A) for false representation. Based on the allegations that the misrepresentations occurred almost every pay period between December 2015 and July 2018, and the number of employees involved, Plaintiff can plead false representation with sufficient specificity by pleading a fraudulent scheme with particularity along with representative examples showing fraudulent conduct. The same holds true for the element of reliance at this pleading stage.

Accordingly, Defendant's motion to dismiss the first cause of action is denied.

## 2. Second Cause of Action for Actual Fraud

With respect to the second cause of action under 11 U.S.C. § 523(a)(2)(A) for actual fraud, Defendant seeks dismissal of this cause of action on the ground that the second cause of action does not include "a factual allegation that forms the basis for a finding that these transfers actually hindered, delayed or defrauded Plaintiff of Plaintiff's assignors." Motion at 6:2-3, Doc. #39 (emphasis in original). However, Plaintiff alleges in paragraphs 78 through 87 of the Complaint that Defendant transferred the assets of Mulberry 123, LLC to Ever Dawn Foundation and that transfer left Mulberry 123, LLC unable to pay its debts, including those owed to former employees for wages and to Plaintiff at a time when Debtor knew of the obligations owed to Plaintiff and Plaintiff's assignors. Plaintiff further alleges that Defendant intended to hinder, delay, or defraud creditors of Mulberry 123, LLC by making these transfers and created a web of entities to absorb debts and hide assets. Complaint, ¶ 85. Plaintiff further alleges that Defendant's series of fraudulent transfers damaged employees and Labor Commissioner by depriving them of the ability and

opportunity to collect on unpaid wage debt directly from Mulberry 123, LLC. Id. at ¶ 93. Plaintiff further alleges Labor Commissioner has also incurred additional costs to enforce these debts, including personnel hours, attorneys' fees, process server fees, and filing fees. Id.

The court determines that the Complaint sufficiently pleads factual allegations that support a claim for non-dischargeability under 11 U.S.C. § 523(a)(2)(A) for actual fraud, including sufficient factual allegations that the alleged transfers actually hindered, delayed or defrauded Plaintiff or Plaintiff's assignors at this pleading stage.

Accordingly, Defendant's motion to dismiss the second cause of action is denied.

#### **CONCLUSION**

For the reasons set forth above, the Motion is DENIED. Defendant shall file and serve an answer to the Complaint no later than 14 days after the entry of the order denying this Motion.